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The [^]Search for Justice

30 Year review of the SCs & STs (PoA) Act



Institute of Human Rights Advocacy and Research, Chennai

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Editor: Edwin

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Foreword

30 years... the search goes on

Thirty years is a short time in history, yet too long a wait for justice. India has been grappling with the eradication of caste-based discrimination and violence for millennia. Dr. Ambedkar is reported to have said, *'avatars have come and gone, saints have come and gone, social reformers have come and gone, yet untouchability remains.'* The Constitution of India abolished untouchability in 1950, and brought forth the Untouchability (Offences) Act in 1955, thoroughly amended it in 1976 as the Protection of Civil Rights Act, brought forth another law the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, and thoroughly revamped it again in 2016.

In this time, there have been several attempts at several levels to address caste discrimination at the local, district, state, national, and international levels, including in the UN fora. Solidarity and support groups and networks have sprung up all over the world, and several international documents have explicitly referred to caste, or in UN parlance - descent and work based discrimination (DWD). Despite India formally opposing the inclusion of DWD in UN documents or later asserting that caste-based discrimination is an internal issue of India, it has been conclusively proven that caste and caste-based systems exist in, and is indigenous to all parts of the world, from Africa to Japan to Europe and beyond. It is not an Indian or South Asian phenomenon. However, a vast majority of Dalits - perhaps up to 75% - are in the sub-continent. The support and solidarity has ranged from getting diverse governmental and inter-governmental bodies to recognise caste, drafting a model UN convention on the elimination of caste discrimination, and developing specific business and human rights principles the Ambedkar Principles for addressing and eradicating caste-based discrimination and violence in employment and supply chains. These efforts resulted in official recognition of caste by several UN procedures, general comments on UN conventions, and national and regional parliaments.

The progress in India has been mixed. Success in the campaigns have been tilted towards success. However, the tide is reversed with the law enforcement, administration of justice, and society at large. Inter-caste marriage continues to be death penalty with social approval, despite lip-service by the opinion leaders and the crystal clear statute. Brilliant judicial minds suddenly get clouded and equate all acquittals with false cases, with accusations of blackmail by the victim thrown-in for good measure. Super efficient police forces and legal eagles suddenly become so incompetent as to have nil convictions for years on end.

This volume collects the experiences of those trying to engage with DWD from the local to global levels, those from the stigmatised communities to the international solidarity community. Each of these experiences tries to pinpoint reasons for the failure to enforce statutory provisions, despite several ideological advances. They offer a candid view of the multiple gauntlets that the Dalit and Adivasi human rights defenders face - especially if they are from the communities themselves. From these, we hope to draw lessons, and then move to recalibrate our responses.

The road has been long, sometimes lonely, and the burden heavy. Much has been done, much more remains. As the data and the experiences show, justice has been barricaded behind high social, religious, procedural, and judicial walls. If the path followed is not going anywhere, then perhaps different paths and strategies need to be explored. Only time will tell. But by getting the stories told, striking in their similarity across time and space, we hope a small beginning has been made, and over time, we hope to be asking the right questions.

We will move the caravan forward.

Edwin

Director (Programmes)

11 September 2020

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GLOSSARY

ACP	Assistant commissioner of police. The investigating officer in urban areas
Adivasi	Indigenous and tribal peoples, literally ‘first dweller’. They are classified as scheduled tribes
CrPC	The Criminal Procedure Code 1973
CBDV	Caste based discrimination and violence
DAHRD	Dalit Adivasi Human Rights Defenders
Dalit	Those who face extreme forms of caste oppression, especially untouchability. Some of them (the Buddhists and Hindus) are classified as scheduled castes, while others (Christians, Muslims) are not so classified
DLSA	District Legal Services Authority. Supposed to give free legal aid for those who cannot afford to pay for their own lawyers
DM	District Magistrate
DOP	Director of Prosecutions
DSP	Deputy Superintendent of Police
DVMC	District level vigilance and monitoring committee, set up under Rule 17 of PoA
DWD	Descent and Work based Discrimination (the present international terminology used to describe caste-based discrimination)
DySP	See DSP
ESC	Exclusive Special Court
ESPP	Exclusive Special Public Prosecutors. Often political appointees, they have a track record of zero convictions.
HRD	Human Rights Defender
IO	Investigating Officer, normally the DSP in rural areas and Assistant Commissioner of Police in urban areas
IPC	Indian Penal Code 1860
LSA	Legal services authority. A government funded body to provide free legal aid for those who cannot afford to pay for their lawyers.
MBC	Most backward classes
Nodal officer	Appointed under Rule 10 to oversee atrocity prone areas.
NCRB	National Crime Records Bureau
OBC	Other backward classes.
Patta	Title deed

PCRA	Protection of Civil Rights Act 1955. The total revamp of the Untouchability Offences Act 1955, which also changed its name but retained the year of enactment.
PoA	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, and Rules 1995.
PI	Police Inspector
r/w	read with, normally used when two legal clauses / provisions need to be used together to enhance understanding.
RTI	Right to Information, also used as a popular abbreviation for the Right to Information Act 2005
SC	Scheduled Caste, administrative classification of some communities based on historical discrimination based on work and descent. Drawing from Article 341 of the Constitution of India, these are implemented through 'Presidential Orders' Constitution (Scheduled Castes) Order, and the periodic amendments, that lists the Scheduled Castes in its schedules. There are 76 scheduled caste communities in Tamil Nadu (see also Dalit).
SCRB	State Crime Records Bureau
SDM	Sub divisional magistrate
SdVMC	Sub divisional vigilance and monitoring committee, set up under Rule 17A of PoA
SP	Superintendent of police
SPP	Special Public Prosecutor, appointed under Rule 4(1A) of the Act.
ST	Scheduled Tribe, an administrative classification of some tribal communities that grants them specific recognition under the Constitution of India. Drawing from Article 342 of the Constitution of India, these are implemented through 'Presidential Orders' Constitution (Scheduled Tribes) Order 1950, and the periodic amendments, that lists the Scheduled Tribes in its schedules. There are 37 scheduled tribe communities in Tamil Nadu. (see also Adivasi)
SVMC	State level vigilance and monitoring committee, set up under Rule 16 of PoA.
TA/DA	Travel allowance and daily allowance. To be paid within three days, but rarely done. The daily allowance is to be at the rate of the rural minimum wages
TAME	Travel and maintenance expenses (see TA/DA)
UOA	Untouchability Offences Act 1955, later renamed as the Protection of Civil Rights Act in 1976.

Why this Act: A brief introduction

The social context

The protection of the life and liberty of the weakest sections of the society is the prime duty of any government. Successive governments have acknowledged that the plight of the scheduled castes and scheduled tribes is dismal. Caste-based discrimination and violence (CBDV) is endemic in India. The atrocities are committed when the scheduled communities become less dependent on the other castes, and break out of their caste roles, such as wearing slippers or trousers, getting better marks in schools, sitting in a bus—less than 50 miles from state capitals. When CBDV such as making only Dalit girls clean school toilets and atrocities are committed close to exams, there is multi-generational impact and opportunity costs being paid by the entire community. They live about 10 years behind, have higher incidence of maternal mortality, school dropouts, and lower literacy rates.

Caste-based violence is to prevent the economic development of Dalits and Adivasis, to prevent them from becoming less dependent on the dominant castes. Preventing atrocities and ending impunity to the perpetrators thus becomes the first step in the advancement of the Dalits and Adivasis. This is admitted even by the government at the highest levels as the following quotations show:

‘Despite various measures to improve the socio-economic conditions of the SCs and STs, they remain vulnerable... They have, in several brutal incidents, been deprived of their life and property... Because of the awareness created... through the spread of education, etc., when they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded

and forced labour, the vested interests try to cow them down and and terrorise them.’

Statement of the basic objective and purpose of the SCs and STs (Prevention of Atrocities) Act when the Bill was introduced in the Lok Sabha in 1988: Quoted from National Commission for SCs, First Report 2004–05, New Delhi, 2006, pp.222–3.

‘Attempts by the Scheduled Castes and Scheduled Tribes to ... improve their lot and claim what is rightfully theirs, are often the principal cause of the atrocities that are perpetrated on them. There is a lack of sensitivity on the part of the police and the district administration. The law enforcers themselves, in many cases, fail to act promptly or collude with the other side.’

Prime Minister P. V. Narasimha Rao inaugural address, meeting of chief ministers, 4 October 1991

‘The offences of atrocities are committed to humiliate and subjugate the SCs and STs with a view to keep them in a state of servitude. Hence, they constitute a separate class of offences and cannot be compared with offences under the Indian Penal Code.’

The Supreme Court in State of Madhya Pradesh & Anr vs. Ram Krishna Balothia & Anr (1995 (2) SCC 221)

- ‘Untouchability has been abolished by the law but the shades of it remain in the ingrained attitude nurtured by the caste system. Though the provisions of reservation in educational institutions and public services flow from our constitution, these provisions remain unfulfilled through bureaucratic and administrative deformation or by narrow interpretations of these special provisions.’

President K. R. Narayanan, 26 January 2000

‘Even after 60 years of constitutional legal protection and support ... Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general.

The only parallel to the practice of untouchability was Apartheid. Untouchability is not just social discrimination, it is a blot on humanity.'

Prime Minister Manmohan Singh, Dalit-minority international conference, 27 December 2006

'In fact, a part of the reason why atrocities are committed is economic activity. It is because of the economic activity, because of the enterprise, there are areas where the Scheduled Caste people have also become prosperous. The Scheduled Caste people are able to build brick and stone houses. The Scheduled Caste people are able to acquire vehicles. The Scheduled Caste people are able to dress better, send their children to better schools. One of the reasons why atrocities take place in those places is to cripple them economically. Every riot, every arson case cripples them economically. Therefore, it is important that the State must immediately rush in social and economic measures for the rehabilitation of those who have suffered through these atrocities.'

Home Minister P. Chidambaram in the Lok Sabha on 30 August 2010.

The practice has been to articulate lofty ideals, but ensure that the practice of these ideals does not happen. The government freely admits that it does not implement the laws effectively, and then refrains from taking steps for effective implementation. India does have some of the best legislation possible. Despite 30 years of the PoA Act, implementation remains faulty. Even the government officials tasked with implementing the Act do not know the provisions, and the MPs and MLAs do not know their rights and responsibilities under the Act. The experience of human rights defenders (HRDs) in their effort to get the government to implement this Act has been uneven. Their rich experience has remained scattered, and the implementation still remains weak.

The National Crime Records Bureau (NCRB) statistics do not show any decline in the atrocities, though there are some years when the number dips. The number of cases registered nationally of atrocities (Crime in

India 2018) against the scheduled communities is increasing from 44,946 (2015) to 48,679 (2016) to 51,712 (2017) to 50,749 (2018). Many cases are simply not registered.

‘We cannot be happy about the fact that approximately 33,000 cases are being registered as atrocities against Scheduled Castes in one year. What makes it doubly painful is that there is a rise in atrocities, but when you try to prosecute and convict, the conviction rate is only 30%. Not only are acquittals very high; pendency is about 80%. Look at the kind of crimes that are committed against these people! The worst kind of crimes... murder, rape, kidnapping, abduction, and arson. These are not petty crimes. These are pre-meditated crimes ... among the worst crimes in the Indian Penal Code. This shows how vulnerable the Scheduled Castes and the Scheduled Tribes are.’

Minister for Home Affairs P. Chidambaram, Lok Sabha, 30 Aug 2010

The dominant castes are emboldened to commit atrocities since the conviction rates are so low to virtually assure them impunity. The ‘harsh’ and ‘draconian’ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995 has just a single digit conviction rate in Tamil Nadu.

This impunity results in more and more gruesome cases of violence and atrocities, with heinous crimes (murder, attempt to murder, rape, attempt to rape, grievous injury) showing a fast-paced increase, apart from the overall instances, which also show an increase. Preventing atrocities and ensuring swift action according to the law thus becomes the first step – and a prerequisite – in enabling the sustained social and economic development of the scheduled communities. Ending impunity will prevent, in large measure, repetition of caste-based discrimination and violence.

The constitutional architecture

The Indian caste system was not a static and uncontested institution, but

was challenged throughout history and allowed upward social mobility¹. Even before the Constitution of India was adopted, many states enacted their own 'removal of social disabilities' Acts. The Schedule to Section 17 of the Untouchability (Offences) Act 1955 lists 21 separate legislations extant in India at the time, among them The Madras Removal of Civil Disabilities Act, 1938 (Madras Act XXI of 1938). The caste system faced a significant de jure attack in the post-independent India when the Constitution of India - in addition to guaranteeing liberty, equality and fraternity affirmative action measures to the socially and economically backward classes-explicitly abolished the practice of 'untouchability' and declared it an offence under Article 17.

The promise of the Constitution of India towards its citizens can be found in the Directive Principles of State Policy (DPSP) enumerated in Part IV. Articles 38 and 46 in Part IV require special emphasis. It obligates the state to render socio-economic and political justice to scheduled castes and scheduled tribes². Article 38 envisages a society characterised by social, political, and economic justice. Article 46 obligates the state to promote with special care the educational and economic interests of the scheduled communities in particular, and to protect them from social injustice and exploitation.

Unlike the fundamental rights, the DPSP are non-enforceable but nevertheless fundamental in governance, and are to be applied by the state in making laws³. With regard to fundamental rights and DPSP, one is not superior to the other. The courts have stressed balancing and harmonising both of them during interpretation⁴. They complement and supplement each other⁵. The scope of fundamental rights has been enlarged by the

1 *Gail Omvedt, Understanding Caste: From Buddha to Ambedkar and Beyond (Orient BlackSwan 2011).*; M.N. Srinivas, 'A Note on Sanskritisation and Westernisation' (1956) 15 *The Far Eastern Quarterly* 481.

2 M.P. Jain, *Indian Constitutional Law*, 1009 (7 ed. 2015).

3 *Constitution of India*, Article 37.

4 M.P. Jain, *Indian Constitutional Law*, 1411–16 (7 ed. 2015).

5 *Chandra Bhavan Boarding and Lodging, Bangalore vs State of Mysore*, A.I.R. 1970 S.C. 2042.

judiciary as they are interpreted through the lens of DPSP⁶. Therefore, it can be said that DPSP has become enforceable ‘by riding on the back of fundamental rights’⁷.

The Constitution of India provided the base by abolishing untouchability and declaring it an offence, though it did not define the term ‘untouchability’. Article 35 authorised the parliament to enact laws for prescribing punishment for those acts which are declared to be offences under Part III of the Constitution. Accordingly, the Untouchability (Offences) Act 1955, renamed Protection of Civil Rights Act (PCRA) in 1976, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (PoA) were enacted. These legislations did not define ‘untouchability,’ but only listed out certain practices arising out of untouchability and declared them to be offences.

From the constitution to PCRA

Post-independence, India witnessed an increase in atrocities against the scheduled communities. Normally, when a crime is committed, the Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC) are invoked. In the case of the scheduled communities, however, many crimes against them were not even recognised as crimes by the IPC or CrPC— and Article 20(1) of the Constitution of India is clear that no one can be convicted for an act which is not defined as an offence at the time. Special laws became necessary to recognise and define these crimes, to give effect to Article 17 of the Constitution of India which abolished untouchability, 39A equal justice and free legal aid to the poor, and Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and protect them from social injustice and all forms of exploitation. The last is particularly important since it is only now being understood in legal and administrative circles how the atrocities are economic crimes

⁶ M.P. Jain.

⁷ *Ibid.* at 1413.

with intergenerational consequences. Since the atrocities cover the entire spectrum of human activity, the prevention of atrocities encompasses virtually every right – from work, to freedom of movement, to voting – mentioned in the Constitution of India.

Article 17 of the Constitution of India states that, ‘Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law’. This now needed an Act to implement. Five years after the Constitution of India was adopted, the necessary legislation – the Untouchability (Offences) Act (UOA) 1955 – was enacted.

Though UOA did not precisely define the offence, it was a major step forward, and had several enabling provisions. UOA recognised ‘wilful negligence’ (UOA Section 10) and was proactive in that it stated clearly that the presumption of the court would be that the crime arose from ‘untouchability’ and it was the defendant who should prove that it wasn’t (UOA Section 12). The Act was farsighted in that it recognised the culpability of companies and those in charge, including their directors (UOA Section 14).

The government later recognised that the Untouchability (offences) Act 1955 was not sufficient to eradicate untouchability, and to punish the perpetrators and brought about many changes to UOA after 21 years on 19 November 1976 (the then prime minister’s birthday), and renamed it the Protection of Civil Rights Act (PCRA) 1955.

In the 1976 amendment, discrimination on the basis of untouchability was also brought under this Act (PCRA S4). The amendments made it clear that all offences under this Act are cognisable (PCRA S15(1)). It made mandatory provision of legal aid, appointment of supervising officers, setting up of special courts and committees, and periodic survey of the working of the provisions of this Act to suggest measures for the better implementation

(PCRA Section 15A2). It even had provision for state and central government annual implementation reports being placed before parliament (PCRA Section 15A4). Much of this is carried forward to the PoA Act and its amendments, though the liability of companies has been removed.

However, it suffered from severe infirmities, chief among them being that it did not even recognise many of the caste-based crimes, was too lenient, and did not have an empowered mechanism to monitor the implementation of the Act (especially given that the police and judiciary were drawn from the same social milieu).

According to law, if an ‘act’ or ‘omission’ is not defined as an offence (Article 20(1)), then it is not a crime. PCRA covered disabilities arising out of untouchability, but not of atrocities against the scheduled communities. Omitting this fundamental tenet of law from PCRA, the non-recognition of many forms of caste-based discrimination and violence as crimes, was its fatal flaw.

The general criminal law framework (IPC and CrPC and PCRA) was found to be inadequate to curb these acts of CBDV due to the following reasons.

- a) PCRA was handicapped with lack of definitions of distinct acts of atrocities committed against the scheduled communities.
- b) PCRA prohibited certain social and religious disabilities imposed on the scheduled communities, but had meagre punishments. Therefore, it was not a deterrent.
- c) Invoking IPC sections for atrocities against the scheduled communities failed to recognize the caste and ethnic dimensions of those crimes.
- d) The non-victim friendly criminal law procedures affected the victims – the scheduled communities who were already disadvantaged – and was a hurdle in their access to justice. The Anglo-Saxon jurisprudence that presumed that the accused was ‘innocent till proven guilty,’ and based on the dictum of ‘better a hundred guilty go free rather than one innocent be convicted,’ failed to consider the acute asymmetry of

power and the total dependence of the survivors (the plaintiffs) on the perpetrators (ironically the ‘defendants’) for their life and livelihoods.

e) Rising indignation among the scheduled communities due to the increasing incidents of atrocities.

Therefore, separate legislation to curb the atrocities against the scheduled communities was favoured, and the PoA Act was enacted.

From PCRA to PoA

Instead of tinkering with the PCRA, the parliament of India passed a new legislation that addressed all these lacunae in 1989, and enforced from 31 January 1990. It was explicitly to prevent offences against the scheduled communities by members of other communities. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was thus passed on 11 September 1989. The rules took a long time to be framed, but it too was notified on 31 March 1995 – some five and a half years after the Act. However, a comprehensive list of crimes would wait until the Amendment Act 2015 was enforced from 26 January 2016.

The Act brought the crimes against the scheduled communities directly to the notice of the highest political, civil, executive, and judicial officers of the state and district. At the state level, it involves the chief minister directly monitoring implementation of the Act every January and July, together with a high level State Vigilance and Monitoring Committee (SVMC), comprising the ministers and principal secretaries of social welfare, home, the Director General of Police (DGP), head of the scheduled castes and scheduled tribes protection cell (normally the Additional Director General of Police - ADGP), Director of Public Prosecutions (DPP), with specific roles to be executed in specific timeframes.

The amendments

In 2009, on the twentieth anniversary of the Act, knowing the gaps in implementation, armed with the evidence of multiple studies and government datasets, several civil society organisations and human rights

defenders mobilised to rectify the law. There were a series of multi-stakeholder consultations. Civil society organisations and human rights defenders undertook a countrywide review of the functioning of the Act and Rules. The review found that a) most of the provisions of the Act and Rules were not used b) several new crimes needed to be added and c) victims and witnesses had to be protected.

This resulted in a comprehensive overhaul of the Act and Rules. The amendment was passed as an ordinance on 4 March 2014, just a day before the model code of conduct for elections kicked in. After the new government was sworn in, they conducted their own consultations. Finally the Act and Rules were amended by parliament in 2015 and 2016 respectively.

The Rules, 1995 were amended by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016, and notified on 14 April 2016.

The amendments broadly relate to:

- Provision of relief for 47 offences of atrocities.
- Rationalisation the phasing of relief payment.
- Enhancement of relief between Rs. 85,000 to Rs. 8,25,000, depending upon the nature of the offence.
- Payment of admissible relief within seven days, completion of investigation and filing of charge sheet within 60 days to enable timely commencement of prosecution.
- Periodic review of the scheme for the rights and entitlements of victims and witnesses in accessing justice, by the State, and District Level Vigilance and Monitoring Committees in their respective meetings.

The Rules were further amended on 27 June 2018 to:

- Provide for relief to victims of unnatural offences and grievous hurt by throwing acid.
- Removed the limit of 25 members of SVMC.
- Provision of relief in case of death, injury, rape, gang rape, unnatural

- offences, grievous hurt by throwing acid etc., damage to property, shall be in addition to any other right to claim compensation in respect thereof under any other law.

The Act has been further amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, to add section 18A to remove the requirement for preliminary inquiry for registering a FIR and removing the need for approval before arrest of officials. The Amendment Act, 2018 (No. 27 of 2018), was notified in the Gazette of India on 17 August 2018 and enforced on 20 August 2018.

Challenges to the Act

There have been several challenges to the Act, right up to the Supreme Court of India even before the Rules were framed by the Government of India. There has always been an undercurrent of resistance to the Act, with some privileged communities being quite shrill about its ‘misuse’, much like the rules protecting women from domestic violence. Earlier courts understood the context (for instance in *State of Madhya Pradesh and Anr vs. Ram Krishna Balothia and Anr* (1995) (2) SCC 221 quoted earlier).

In contrast, more recent judgements show a high degree of ignorance even in the highest judiciary. The ill-informed judgement of the Supreme Court of India in *Dr. Subhash Kashinath Mahajan vs The State of Maharashtra* on 20 March 2018, resulted in large-scale protests and the killing of 10 Dalits in the aftermath. The parliament had to pass an amendment to restore automatic registration of FIRs (Act No. 27 of 2018).

The total repeal of the Act is also a manifesto promise of some political parties and raison d’être of some dominant caste outfits, including from Tamil Nadu.

However, on 10 February 2020, the Supreme Court of India upheld the constitutional validity of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.



**“There is no shared vision
and goal at all levels of
society (of course including
business) and government
on the urgent need to
tackle the caste system and
its extremely pernicious
consequences.”**

1

Gerard Oonk

Ambassador of the International Dalit Solidarity Network (IDSN)

Justice for Dalits in India: What is to be done

Gerard Oonk

Being asked to write a note about ‘*why it is so difficult for getting justice for Dalits in India*’, I was eager to do it as I have spent almost 40 years of my professional life on international solidarity work on the struggles of the poor and oppressed in India. During the last roughly 20 years, this included a strong focus on the position of Dalits in India and South Asia. During this period, I worked with the *India Committee of the Netherlands*, ICN (now renamed as *ARISA: Advocating Rights in South Asia*) and participated for many years in the *International Dalit Solidarity Network (IDSN)*, of which I am at present an Ambassador. However, this note is written on a personal basis.

At the same time, I am overwhelmed by the question put forth to me: this is such a complex and difficult issue on which many excellent books, reports, stories, pamphlets have been written, and films have been made by mainly Indians, but also non-Indians. So the question for me was: what can I add that might nevertheless be valuable for an audience interested in this enormous issue that is touching every aspect of Indian society? I am still not sure if I can add something, but what I can do is to put some of my personal learnings – mainly in the form of ‘headline thinking’ – on paper. These insights are of course heavily influenced by what I have read, experienced, and learnt over the years from my Dalit and other friends and colleagues.

Larger pattern of injustice

The question of getting justice for Dalits has to be seen as part of (changing) a larger fundamental pattern in Indian society, which is based on a hierarchy of people as higher and lower, and as a result, on

subjugation, exclusion, oppression, and exploitation. The position of Dalits, men and women, as 'lowest' in the caste hierarchy is the expression of an essential feature of the fabric of both historic and present-day Indian society. It is the outcome of a Hinduism—instigated, caste—based philosophy and practice: *people are not fundamentally equal with regard to their rights but fundamentally unequal based on the group in which they are born.* This, of course, stands in sharp contradiction to the Constitution of India according to which every Indian is born equal and with the same rights. It is also fundamentally opposed to the international human rights treaties that India has signed. What this caste—based societal system practically means in terms of the complex birth—based hierarchical system of varnas and jatis (sub—castes), with Brahmins at the top of the hierarchy and Dalits at the bottom, is of course well known to you.

Before going further, I would like to emphasise that there are millions of Indians that detest and abhor the caste system and thousands of organisations that fight against it and against specific manifestations, and consequences of the caste system. These include violence (most heavily against women) and atrocities which mostly go unpunished, forced labour, lack of equal access to public services such as education, health care, and legal remedy, as well a large range of untouchability practices.

In the 1980s and part of the 1990s, thinking from a class—angle, I still thought that such practices would slowly disappear with 'modernisation' and a stronger unionised working class, but since then I became convinced that caste and caste—based discrimination is still a defining feature of Indian society and that most of its institutions have to be fought through a permanent, long and hard struggle. This realisation started in the late 1990s with my engagement on the issue with the *National Campaign on Dalit Human Rights* and reading books like *Broken People* (HRW, 1999). But I still think that caste strongly interacts with class and the position of women and therefore, makes it even more difficult to achieve justice for Dalits. If you are, for example, a Dalit informal worker, male or female, in agriculture or industry, you certainly have many more hurdles to get

justice. And as a Dalit woman, you are in addition also stigmatised and oppressed as being of ‘a lesser sex’.

What is going wrong at present?

I was also asked to reflect on the question: *what are we doing wrong (in terms of achieving justice for Dalits) in view of the very low conviction rate of the 30-years old PoA Act?*

There is no simple answer. Also, speaking in terms of ‘we’ is problematic because there are of course a number of societal forces and actors that play very different roles: from more or less outspoken in favour of the caste system to (more frequently) silently support or cover it up, to various forms of opposition against untouchability and caste-based discrimination and (more seldom) opposition to the caste system as such.

But what could still be seen as a common (though not universal) denominator of what Indian society and its government are ‘doing wrong’ – though I do not see it primarily in terms of personal guilt but of societal forces and interests – is that *there is no shared vision and goal at all levels of society (of course including business) and government on the urgent need to tackle the caste system and its extremely pernicious consequences*. Or putting it a bit broader: *in the Indian society and government, joint urgent motivation and action to tackle the extreme inequality and discrimination of Dalits and other discriminated and oppressed groups, is lacking*. In practical terms, what is missing are strong policies and their implementation to achieve (more) equal access to crucial institutions like education, health, the judicial system (e.g. the PoA Act), government budgets, land, and other resources. These institutions and assets generally fail to reach Dalits. But not only them, Adivasi and Muslims are also often at the receiving end, and so are parts of other ‘low caste groups’.

So, the expectation that one law like the PoA Act, or even a few laws can substantially improve the position of Dalits, Adivasi, and Muslims is not realistic in a society that is still reigned and permeated by caste and caste

discrimination at all levels. The PoA Act might be good in itself and even improved recently, and sometimes activists make good use of them, but the forces in society undermining the implementation of the Act are still a lot stronger. In addition, there is the issue of systemic and deeply ingrained discrimination of women in all spheres of life, in particular of Dalit, Adivasi, and Muslim women, which also intersects with caste-based discrimination, minority-based discrimination and poverty as such.

In India, there is a permanent debate: is it caste or class that is defining the position of India's 'broken people'? I think it is both: while caste exclusion and discrimination reinforce exploitation based on class, the latter reinforces caste practices that keep workers, both women and men subjugated. The fact that most Dalits, men and women, are informal workers who have no or hardly any actual labour rights makes their position and their struggles to achieve them even more difficult.

The laws are good, but...

A phrase that often comes up when discussing laws in India is: the laws are good, but implementation is lacking or almost non-existent. Often the analysis stops there. But the big question seems to be: why is implementation of these laws lacking? Good implementation of laws comes from a dedicated state and government, as well as dedicated state institutions and staff who are professionally doing their assigned work. In addition, of course, a vibrant and critical civil society would monitor outcomes, doing advocacy and campaigning work; and undertake their own local and sometimes national practical efforts

Bureaucracies worldwide always do have their implementation problems, but in India, caste (and class) prejudices and dependency of political patrons with their own caste background and interests play a big role. In particular, those laws and programmes that should mainly benefit the people of 'low castes' and classes, Adivasi, and people with religions other than Hinduism, are often hardly or shoddily implemented. This is even more the case where people's movements demanding good implementation

are absent or weak. Of course, there are also government programmes like reservation or (rather meagre) budgets for upliftment of Dalits and Adivasi but the total effect has been limited, though not zero. For example, reservation gave chances for a limited Dalit middle class and intellectuals to come up. Most Dalits however are informal workers, many of them agricultural labourers, whose position in the caste and class hierarchy has hardly improved.

With regard to the question of whether one should fight caste discrimination or also the caste system, I would say: the end goal should be the elimination of the caste system, as this system itself tends to create and recreate unequal outcomes in terms of access to *all* human rights. But ‘on the way’ and as part of the struggles by people’s movements, local organisations, unions etc. towards reaching that goal, one should also use all non-violent means to fight caste discrimination in its multiple, often also changing, forms.

Out of the complexities of the caste system, I would like to highlight an element which I think is a big hindrance to getting justice for Dalits. This is the fact that Dalits also, being an amalgamation of ‘untouchable’ sub-castes, have a hierarchical relation to each other and are also perpetrating certain untouchability practices on each other as part of the same larger caste system by which they are also oppressed. A Dalit organisation in Gujarat, Navsarjan, in 2010 published the report, *Understanding Untouchability – A Comprehensive Study of Practices and Conditions in 1589 villages*. It noted that besides large-scale discrimination by dominant castes, there is also the so-called ‘*Dalit on Dalit discrimination*’ in terms of untouchability practices. This does not implicate that all those practices are equally oppressive or that ‘all castes are doing it, so everybody is to blame’. Dalits are by far most affected by untouchability practices and oppression in all spheres of life. However, this intra-Dalit discrimination shows that every person and sub-caste has its own hierarchical position in the caste system, which gives it a certain place and ‘vested interest’ in the system because there is (almost) always someone lower in the hierarchy to look down upon.

Even when this is not the case, it is difficult for most people to think and act beyond their own sub-caste, because what mostly counts is what people in your family, village, and broader social network expect from you. This also makes it more difficult to create a strong joint counterforce by Dalits and other groups that want to fight caste discrimination, let alone the caste system itself. Nevertheless, a number of organisations are working hard on the joining of forces beyond (sub)caste, religion, and other traditional divisions.

What should be done differently?

‘What should we be doing differently’ is possibly the most difficult question put to me. A full range of possible solutions, also ones based on a holistic analysis of the caste-infected patterns of Indian society, have already been proposed by both governmental institutions and non-governmental organisations in India. I remember that, many years ago, the Indian *National Commission for Human Rights (NCHR)* published a very thorough report of hundreds of pages on caste-based discrimination with hundreds of recommendations to fight it. However, nothing happened in terms of the government taking this up in a big and systematic way. Not even the Indian media seem to be interested in it.

The spark for real change has to come from people and their movements. Dalit movements and organisations have been doing excellent work on all aspects of the caste system, caste discrimination, and its (gendered) consequences. They also gave countless recommendations to central and state governments on specific issues and in specific areas – sometimes important – gains have been made. Dalits are now more visible than before. But what is still missing is a broadly shared vision and goal to get justice for Dalits and other discriminated groups in every aspect of life. The forces against such a vision and goal are still very strong and probably getting stronger under the present Hindutva government. They are trying to co-opt ‘Hindu Dalits’ – there is also another caste hierarchy among Muslims and Christians – under the Hindu-fold by ‘semi-inclusion’ of Dalits under the Hindutva banner, while at the same time creating ‘outside’ enemies like Muslims and Christians.

The growing strength of the *Black Lives Matter* movement in the USA, has also inspired and galvanised many people of colour as well as white people in other countries, including my own (The Netherlands). Dalit and other pro-Dalit organisations and forces in India and South Asia are also undoubtedly inspired by it. Also, in India, there are thousands or rather tens of millions of ‘George Floyds’ and their female equivalents who suffer from a range of caste-induced violence and dehumanising discrimination. The slogan ‘Dalit Rights are Human Rights’ is an Indian equivalent to Black Lives Matter. Both slogans and follow-up action can inspire to create a more united true national (and international) movement against caste discrimination, the caste-system, and other forms of discrimination. What seems of crucial importance to me in India is the recognition by non-Dalits and non-Dalit organisations that India/South Asia has a huge caste problem, and that it is also very much their own problem and a problem of society as a whole. As a result of this recognition, one would hope for much more support for Dalit organisations in India from non-Dalits and non-Dalit organisations.

One goal, various strategies

Apart from a strong common dedication to get justice for Dalits, another important factor for the success of the Dalit cause is to not only tolerate, but also appreciate differences of opinion on specific analyses, strategies, and tactics of organisations and individuals as well as the recognition of ‘multiple leadership’ of men and women. Any divisive infighting among Dalit organisations and supportive organisations – as also unfortunately happens in other movements – will be very detrimental to achieving the goal of justice.

A broad movement might also succeed in reaching a part of the middle class, which now largely seems unwilling to engage in or even be sympathetic to the plight of Dalits. This might change if the movement becomes more vocal, visible, and more united in purpose – that is not a contradiction but a strength – and more diverse.

International solidarity with the movement of and for Dalits, is of increasing importance in this globalised world. For the last more than 20 years, IDSN including its South Asian partners, has played an important role in this. All UN Special Rapporteurs on thematic issues of human rights have – sometimes in great and painful depth – reported on the manifold forms of caste discrimination and exclusion in India and other South Asian countries; a number of governments have spoken up during various sessions of the Human Rights Council on it. The international press writes more on this issue than before. But it is still, by far, not enough and there is much less attention for the Dalit justice cause than for most other important human rights issues. One reason is the role of the Indian government over many years. India has almost been pushing and pressurising the UN, and especially its member states, to not discuss this issue in the relevant UN forums and many countries, including my own, therefore shy away from discussing it because of their increasing economic and political relations with India. It is also the task of international organisations to keep countering this cowardly attitude.

Justice for Dalits and similarly discriminated groups has to become an issue on top of everybody's human rights concerns and agenda, not only in India but also in other countries where people are discriminated against.

The issue of and movement for justice by and for the roughly 300 million Dalits globally, should become another strong moving force to create justice and equality for themselves, and for other discriminated and excluded groups.



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Sandra Claassen

Director, Advocating Rights In South Asia (ARISA)

“Over 90% of the cases presented in Tamil Nadu are acquitted in court and not being appealed by the government. These figures are alarmingly high and will not encourage future victims to come forward and present their cases to the authorities.”

Linking PoA to business and human rights in global supply chains

Sandra Claassen¹

The Human Rights Advocacy and Research Foundation (HRF) is presenting the second state report on the implementation of the PoA Act in Tamil Nadu. Using government data and reports, the report provides an overview on the number of cases presented under the Act and how these cases were treated in court.

The Tamil Nadu track record

Arisa (Advocating Rights in South Asia) is a Dutch human rights organisation that has been following the position of Dalits in India and South Asia for many years. We welcome the HRF report as it shows that still a lot of atrocities are committed against people from the scheduled communities in Tamil Nadu and that the implementation of the Act is still lacking. As Mr. P.S. Krishnan, Former Secretary, Welfare, Government of India, explained during a roundtable in April 2018²: *'We have a proper legal framework and instruments for the implementation of PoA Act, 1989. But still the Act is not implemented in many ways. Most of the provisions of the Act are not at all implemented.'* It is a pity that after 30 years, the Act does not protect scheduled caste and scheduled tribes communities sufficiently.

One of the most striking outcomes of the report is the high level of acquittal. Over 90% of the cases presented in Tamil Nadu are acquitted in court and not being appealed by the government. This means that perpetrators are

¹ Director Arisa (Advocating Rights in South Asia)

² From: Report of the Strategic Multi Actor RoundTable on SCsandSTs (Prevention of Atrocities) Act, 23 April 2018.

not being convicted and victims are not receiving remedy. These figures are alarmingly high and will not encourage future victims to come forward and present their cases to the authorities. Rights of Dalits are therefore not protected. It is important that this report is being published. It can be used for advocacy purposes, both in India and abroad, in order to show the lack of legal protection faced by the scheduled communities despite the existing legal instruments. By using government figures, the report has a neutral reference point, providing strong evidence. It would be good to have this kind of report for every state in India, or even at the national level, preferably every year, in order to monitor progress.

Including the economic sector

Arisa has been focusing its activities on the issue of business and human rights in global supply chains. We know that in many economic sectors, Dalits and tribal communities are in a very vulnerable position, facing exploitation, forced labour, child labour, and intimidation. It would be very interesting to see if it is possible to link specific cases under the PoA Act to economic sectors, such as the garment and textile sector, so that advocacy and dialogue is possible with international brands in the supply chain.

In the last year, there has been some international attention to the position of Dalits in global supply chains with the publication of a guidance document from the Ethical Trade Initiative³. With more evidence-based figures, we could work together in order to improve the position of Dalits and tribal communities in global supply chains. Arisa would be happy to further work on this.

For now, we congratulate all Tamil Nadu partners with this new report.

Keep up the good work!

3 https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Base%20Code%20guidance%2C%20caste%20in%20global%20supply%20chains.pdf



3

Paul Divakar

Convenor, Global Forum on Descent and Work-based
Discrimination

“There is an urgent need to make them aware of the right to remedy and reparation. There shall be a demand for this at a greater level by Dalits and Adivasis, like the Blacks in America are doing.”

Recalling the vision of zero untouchability India

Paul Divakar

The nation called India, is well-known for the diversified human ecosystem carrying an image across the world of being the ‘world’s biggest democracy’ with the longest constitution guaranteeing the rights to equality, fraternity, and liberty. But the moment we get closer to the grassroots reality, it is fairly evident that the country, even after the adoption of a fairly strong constitution, is still run by caste based-autonomous structures. Although the Government of India, which itself is a structure built of the bricks made out of the caste-based mud, has almost succeeded in convincing the world that caste is an internal issue, and it does not affect the functioning of the state. But one aspect which hollows the claim of the Government of India is untouchability, which is still practiced widely throughout the nation. Where has the vision of elimination of untouchability gone? Why can’t we have a zero untouchability India?

Analysing the constitutional guarantees against practicing untouchability

Article 17 of the Indian Constitution abolishes untouchability. However, we all have been hearing several brutal incidents, against the scheduled castes (Dalits) and the scheduled tribes (Adivasi) depriving them of their right to equality, dignity, property, and most importantly, their right to life. It’s like, a Dalit is born with a stamp on the forehead which they can never erase. There has been no specific agenda about abolition of untouchability. Why?

Despite Article 15, which clearly highlights non-discrimination on the basis of caste and race, discrimination against the Dalits and Adivasis is pervasive.

Without combining Article 17, in India, implementation of Article 15 may not be possible. This has to be a dual action with Article 17 and Article 15 – only then will we have some traction in the Indian Society. Even though there exists a legislation, namely the PoA Act, its implementation at the grassroots is condemnable.

A look at the implementation of the PoA Act

The continuing violence and denial of justice to the scheduled communities in India epitomises the caste-based mindset and biases prevalent among all the sections in our society and demands multi-layered action as a nation.

As per the findings in the report by the Human Rights Advocacy and Research Foundation (HRF), for making the state accountable for effective implementation of this very important legislation towards strengthening access to justice by the scheduled communities, there are some facts which need to be taken into serious consideration:

1. There is a *pendency rate* of 81% in the court cases registered under the PoA Act.
2. The state level *acquittal* rate is 92.21% in Tamil Nadu while the national acquittal rate is 74.3%. About 94% of the accused were acquitted by courts. What is the effect of the rule of law then?
3. The Government of Tamil Nadu has not gone for an *appeal* against the decision of acquittal even in a single case in the years 2015 and 2016.
4. Less than 10% of survivors have received *compensation*.
5. Only 6 out of the 32 exclusive special courts have been set up under the PoA Act.
6. Only 55% District Vigilance and Monitoring Committees (DVMCs) were functioning. None conducted all the mandatory meetings. Even among the 55%, not one was functioning efficiently.
7. No action has been taken against erring police officials for their '*negligent behaviour*' even though there is provision for that in the PoA Act.

The above facts indicate that the impunity rate is very high in the crimes

against Dalits and Adivasis. Without cracking impunity, it is very difficult to achieve the objective of the law - which is to eliminate untouchability.

The harsh world of Dalit realities

The PoA Act has been legislated to proscribe an array of discriminatory and humiliating actions carried out against members of the scheduled communities, based on caste and/or tribal identity. The Act itself, and the increasing number of cases filed under this Act, is a recognition of the increasing violence and discrimination against Dalits and Adivasis and the inability of the general laws to address these issues.

There had been a huge number of cases of atrocities soaring across the country like the Ramanathapuram riots of 1957 in Tamil Nadu, Kilavenmani massacre in Tamil Nadu in 1968, Belchi massacre of Dalits in Bihar in 1979, killing of Bacchdas in Mandsaur district, Madhya Pradesh in 1982, and so on. These growing instances of violence in the post-independence era and the continuous pressure from the Dalit MPs and political leaders led to the monitoring of cases against Dalits and Adivasis between 1974 and 1981. The 1980s saw another series of growing violence against them resulting in the Act being introduced under the Prime Ministership of Rajiv Gandhi in 1989.

However, even 30 years after the enactment of the PoA Act, the number of incidents of atrocities against the members of these communities has not abated. The National Crime Records Bureau (NCRB) data reveals that more than 42,793 cases of atrocities against Dalits were reported in 2018. There has been an increase of 27.3% in crimes registered under this Act in the past 10 years. These figures suggest that crimes continued to rise even after the enactment of the Act and newer forms of violence have been appearing. With every forward step, newer mechanisms are being evolved to deal with the atrocities faced by the scheduled communities by dominant caste groups. However, there is still much to be covered to enable them to live in society with dignity and self-respect, and without any kind of fright, violence, or suppression from the dominant caste groups.

The need of the hour, therefore, is to review the holistic implementation mechanisms and processes, evolve a more receptive administrative structure, so as to make the PoA Act more effective and operative.

The uncovered untouchability

If we look at the history of the Acts which looked at untouchability so far, it has progressed from protection of civil rights to prevention of atrocities. In the amendments of 2015, new practises of untouchability have been taken into cognisance and have been included in the list of crimes.

Thus the PoA Act, mainly covers body harm, hate crimes, destruction of property, abetment to crime, bearing false witness, and mechanisms for monitoring the implementation of the Act. *However, it doesn't cover some serious forms of discrimination like access to public places, discrimination in public services, exclusion in public sphere, discrimination in market place, discrimination in recruitment, work place and supply chain in the private sector, murders due to inter-caste marriages, and institutional discrimination faced by students in schools, colleges, universities, and institutions of higher learning, due to which a number of Dalits and Adivasi students have committed suicide.*

This means that *only a quarter of the areas of untouchability* has been captured, scrutinised, and brought under the oversight of the law. The remaining three quarters of the untouchability practises – the most common forms of discrimination and exclusion – are not taken cognisance of, as crimes under the law, and are yet to be outlawed. There is a need to have the various areas mentioned above interrogated and thoroughly examined to bring more untouchability practises under the scrutiny of the law, and make relevant provisions to prohibit and prevent those practises.

Who is to compensate for the centuries of slavery and exploitation?

There is yet another area which needs a thorough examination: what about the years and centuries of exclusion, slavery, and grabbing of land and

resources of Dalits and Adivasis by the dominant and the rulers of the past including the British? Who is to compensate them? What is to be done to reconcile the past mistakes? *Reparation*, as per the Oxford Learners Dictionary means, the act of giving something to somebody or doing something for them in order to show that you are sorry that you have caused them to suffer. There is no other remedy to reconcile the past blunders which have almost erased the existence of the Dalits and Adivasis.

Reparation will have *retrospective* impact. It is a step which tries to reinstate the original situation, although not fully but partially. The community has been facing violence and discrimination for centuries, which includes grievous hurt, murder, social boycott, rape, and most importantly modern day slavery-denial of socio-economic rights.

Dalits have suffered and as we all know, they were not even considered as human by 'so-called' other Varnas of the Hindu caste-based society. This needs to be compensated. In America, due to the intergenerational harms done to the Blacks and their people for years, they are claiming the right to reparation, a rightful share in the wealth that was created off the toiling backs of their ancestors. In India, slavery existed in a parallel system, through practises of the bonded labour system, '*Begar*' the free labour which the dominant caste demand, and several other slave like practises including the practise of manual scavenging. The Dalits faced labour exploitation and were denied their rights like the Blacks in America. Even after independence, we have several forms of modern day slavery in existence, and the laws like Bonded Labour Abolition Act, PoA Act, and Article 23 of the Constitution of India have still not been able to erase this evil practice. Both the Blacks and Dalits have a rightful share in the property as well as the wealth that was generated out of the sweat and blood of their ancestors.

A Dalit or Adivasi has to be numerous times better than an average dominant caste person to attain a morsel of social prerogatives. The dominance of dominant caste names in every lucrative, white-collar, respected, thriving

field is an evidence of that. Reservation, although a good affirmative action, cannot lead to complete social equity. Reservation, when executed in black and white and in essence, helps oppressed, deprived, and vulnerable groups in getting access to opportunities and resources that were comprehensively denied to them. However, it *doesn't* address the reasons for *existing* gaps in opportunities, resources and wealth, nor does it claim to remove them. Reservation might secure a few spots in the race for marginalised groups but it doesn't solve the problem that they are starting way behind the rest. How are we going to level this skewed playing field?¹ Another limitation of the reservation is that it is applicable only to the public sector. But reparation is something which is universal, it applies to everyone and everyone has the right for the same.

As the definition of reparation itself suggests, every member of vulnerable, deprived, and oppressed community will be able to obtain, not exactly what their ancestors have lost due to this caste-based structure, but something which can partially heal the wounds and further enjoy the benefits without any discrimination. There were many Dalit and Adivasi art forms – including Warli, Gond and many more – which were all destroyed. We need to look towards that also and preserve their cultural rights which are not possible through reservation.

There have been numerous protests and movements for justice and equality by Dalits and Adivasis. But there is an urgent need to make them aware of the right to remedy and reparation. There shall be a demand for this at a greater level by Dalits and Adivasis, like the Blacks in America are doing. Almost every institutional mechanism in this country is responsible for atrocities and crimes against Dalits and Adivasis and, as mentioned earlier,

1 *Its time we start discussing Caste Based Reparation Policies, Sanjana Pegu, 4/4/2019*

this has become part of the Indian governing system. We have reservation for tackling economic exclusion, but social exclusion is something which needs to be dealt with, because it is in the mind of the people and so is untouchability. Although reservation is a good affirmative action, it can never lead to what we are trying to achieve.

The PoA Act is only one part of the total vision of elimination of untouchability in India. As we have seen in the evolution of this Act, it has grown from various stages of Untouchability (Offences) Act to the Protection of Civil Rights Act to the prevention of atrocities stage. We now need a deeper mandate to achieve this larger vision of elimination of untouchability. The following are a few steps towards the agenda of zero untouchability in India. We need to recommit ourselves to this vision of Baba Saheb Ambedkar – total elimination of untouchability from this land.

What needs to be done now?

Crack impunity: Looking at the NCRB data, it is evident that a number of cases registered under the PoA Act have resulted in acquittal. The acquittal rate is above 90%. Also, the number of appeals filed by the state against acquittal is very less. We need to ensure that proper trial takes place with proper investigation, and that the state ensures that Rule 4(5) of the Act is implemented, which empowers the survivors to appoint a Special Public Prosecutor (SPP) of their choice.

All erring and negligent officials to be brought under the law: Although there is provision under the PoA Act for inquiry against erring and negligent officers (Section 4) but the same has not been implemented. Secondly, not only in the matter of atrocity, whenever there are cases of discrimination reported, either in schools, colleges, public offices, courts, and other institutions, the responsible officers should be held liable and be brought under the law.

Ensure that the judiciary brings down the ‘process of untouchability’: It should be ensured by all the three pillars of Indian democracy, especially

the judiciary, that the process of untouchability is brought down. The same shall be reflected in the judgments which can be precedents for the courts, as well as the Indian legal education system to follow.

Make rule of law cover all aspects of untouchability: The state shall, in accordance with Article 17 of the Constitution of India, ensure that the rule of law shall cover all the aspects of untouchability, which have not been covered under the PoA Act or the Protection of Civil Rights Act. These aspects need to be identified by the states with the help of civil society organisations which are working at the grassroots.

Codifying acts of commission as well as omission: The state should codify acts of commission as well as omission that unleash or perpetuate untouchability in all areas of social, economic, political, and cultural life of a person as well as institutions. Once codified, the state should enact laws to prevent them.

Prevent exclusion in budget allocation and expenditure: Ensure adequate budget allocations to central and state assistance provided for the welfare and development of the scheduled communities. The Tribal Sub Plan (TSP) and the Scheduled Castes Special Component Plan need to be legislated, to bridge the development gap between the scheduled communities and the rest of the population.

Better laws to protect socio-economic and cultural rights: Apart from the PoA Act, the country needs laws to protect the socio-economic and cultural rights of Dalits and Adivasis. Although there have been numerous policies and schemes, their implementation at the grassroots is almost nil, be it for education, housing, land rights, water, or sanitation. It has been found that the root cause for non-implementation is discrimination. To crack the code for complete abolition of untouchability, the state shall ensure that civil and political rights go hand-in-hand with socio-economic and cultural rights.

Enact law of reparations: As the maxim, *expression units exclusion alterius* suggests, we need to have an express and strict law or provision towards ensuring the right to remedy and reparation, so that it gives a narrow and specific interpretation and the same (right to remedy and reparation) may not be compromised with. As per the Basic Principle and Guidelines on Right to Remedy and Reparation for victims of Gross Violation of International Human Rights Law and Serious Violation of International Humanitarian Law, adopted by the UN General Assembly in December 2005, the states shall, in accordance with its domestic laws and international legal obligations, provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.



4

Rahul Singh

Director, National Dalit Movement for Justice

“Tremendous pressure is placed on the victims not to lodge their initial complaints of atrocities. They are often threatened and intimidated not to speak about the incident. Quite often, police officials refuse to write the complaint of the victims, or register the FIR, or to register cases under the PoA Act.”

Implementing PoA Act: The challenges

Rahul Singh

The Act

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015 is the latest step in the evolution of the jurisprudence of enforcement of the right to life of Dalits and Adivasis. The Right to Life includes the right to live with security and dignity. This Act received the President's assent on 31 December 2015 and came into force on 26 January 2016. It comprehensively amends and strengthens the original PoA Act, which was a watershed in Dalit and Adivasi protective jurisprudence. The PoA Amendment Act seeks to help in the process of the elimination of certain gruesome biases that have damaged our society.

Strengthening the Act

While the PoA Act was meant to address the violence and abuse faced by the scheduled castes and scheduled tribes in India, it has since proven to be inadequate in living up to this promise. Despite stringent provisions of the PoA Act meant to prevent caste-based atrocities, offences against the scheduled communities have only increased over the years. In response to the situation and realising that a range of reforms, including legal, judicial, and institutional, needed to be instituted for dealing with delays and ensuring access to justice, in 2009 members of the scheduled communities, human rights organisations and movements, activists, and experts from across the country formed themselves into the National Coalition for Strengthening the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (NCSPA).

The Coalition prepared a position paper and drafted the necessary amendments to the Act based on recommendations gathered from consultations with national and state commissions, civil society

organisations and experts, alongside the guidelines issued by the Ministry of Social Justice and Empowerment (MSJE) and the Ministry of Home Affairs for better enforcement of the Act. Thereafter, the Coalition launched a nationwide campaign to advocate for necessary amendments to the Act. Finally, with the intense advocacy and lobbying in the year 2015, the amendments to the Act were finally passed in the Lok Sabha. The Act with new amendments is in force since 2016.

The continuing hurdles

However, even after the enactment of amendments to the PoA Act in 2016, the experiences of monitoring and intervening in cases of atrocities have clearly shown the large hurdles that Dalit and Adivasi victims and survivors of atrocities face in the process of seeking legal justice. Despite constitutional rights and protective legal provisions, the reality for Dalits and Adivasis is often that of delay or denial of justice. The criminal justice system, as a whole, serves as a limited tool for securing justice after atrocities take place. This is a law created to check and deter crimes against the scheduled communities committed by the non-scheduled communities due to the inadequacy of existing laws, such as Indian Penal Code and the Protection of Civil Rights Act 1955.

The experience of activists and CSOs shows that hurdles exist at every stage of the process to attain justice after atrocities take place, including at the stages of registration of cases, investigation of cases, charge sheeting, and during trials. Tremendous pressure is placed on the victims not to lodge their initial complaints of atrocities. They are often threatened and intimidated not to speak about the incident. Quite often, police officials refuse to write the complaint of the victims, or register the FIR, or to register cases under the PoA Act. Even if the case is somehow registered under the PoA Act, often police will not register the case under the proper sections of this Act. Moreover, counter and false cases are increasingly being registered against the victims at the behest of the dominant castes, sometimes in collusion with police officials. Police do not arrest the accused immediately.

Cases are not investigated in time. Inquiries are not made with all the victims and witnesses during the investigation. Most of the time, the victims and witnesses of atrocities are not provided with protection during and after investigation of atrocity cases. It is also seen that the investigations into counter cases are faster than in PoA Act cases. At the time of filing the charge sheet, often the statements are not corroborated with the contents of the charge sheet. Sometimes, vital information is deliberately left out of the charge sheet in order to weaken the case in favour of the accused.

On the other hand, over the years, the number of cases of atrocities against the scheduled communities has only increased. Over the decade to 2018, the crime rate against scheduled castes (Dalits) rose by 6%; from 20.1 reported crimes per 100,000 Dalits in 2009 to 21.3 reported crimes in 2018, according to the latest available National Crime Records Bureau (NCRB) data. Meanwhile, the crime rate against scheduled tribes (Adivasis) remained static with a nominal decrease from 6.4 crimes per 100,000 Adivasis in 2009 to 6.3 crimes in 2018.

With regard to the disposal of cases before courts under the PoA Act, the average pendency rate (calculated at the end of every calendar year) is very high. While a number of cases are charge sheeted and turned over to the courts for trial each year, most end up pending trial at the end of the year. Of the cases that reach judgement in these special courts, the overall conviction rate under PoA Act averages around 25% for the scheduled castes.

A number of issues contribute to the denial of speedy justice to Dalit and Adivasi victims of atrocities inside the special courts. These include the non-appointment of judges or Special Public Prosecutors (SPP) and the poor competence of appointed SPPs. Notably, while PoA Rule 13(1) stipulates that administrative officers and other staff appointed to areas prone to atrocities should have the right aptitude and understanding of the problems of scheduled castes and scheduled tribes, this does not extend to the staff in the special courts trying PoA Act cases.

Trials are delayed due to the accused, victims, and witnesses not appearing for trial; the judge being absent; the defence advocates requesting frequent adjournments and undertaking long cross-examinations of prosecution witnesses; the arguments taking a substantial length of time; administrative delays where the courts are not exclusively trying PoA Act cases and are overburdened with other cases. Certain procedural matters also delay the trials.

Even the monitoring and accountability mechanisms under the law are either not constituted or not regular in conducting the mandatory review meetings, such as the mandatory reviews by district magistrates, and the district and state vigilance and monitoring committee meetings.

The way ahead

Looking at the above gaps and challenges, we all need to strategise and secure the proper implementation of the provisions of the PoA Amendment Act by ensuring following:

- Ensure that every state government frames and implements a plan to effectively implement the provisions of the Act as detailed in Amendment Rule 15, which should inter alia specify the roles and responsibilities of various departments and officers; contain schemes to provide immediate relief; scheme for the rights and entitlements of victims and witnesses; allotment of agricultural land, house-sites and housing; rehabilitation packages; scheme for employment, pension scheme, compensation; strengthening of socio-economic conditions; healthcare, electrification essential facilities like roads, funeral grounds, etc.
- Ensure that every state government constitutes the high-powered State Vigilance and Monitoring Committee (SVMC) with the Chief Minister as the Chairman, and with composition as required by Rule 16. Ensuring that the SVMC meets in January and July every year to review the implementation of the provisions of the Amendment Act; the scheme for the rights and entitlements of victims and

witnesses in accessing justice; relief, rehabilitation, and rehabilitation facilities provided to the victims; prosecution of cases under the Amendment Act; and review of various reports as prescribed by Rule 16.

- Ensure that exclusive special courts are set up in every district.
- Ensure that exclusive special courts are really exclusive i.e., they shall not be entrusted with any work other than that of atrocities against the scheduled communities.
- Ensure that SPPs of victim's choice are appointed in the courts. To facilitate that, Dalit rights organisations should prepare a list of devoted and competent lawyers for appointment as special public prosecutors in the exclusive special courts, and give the list to the government.



5

Avinash Kumar

Executive Director, Amnesty International India

“Data suggests that one in four Dalit women is raped every day. In most cases that received national and international media attention, the sluggishness of the police in registering the crime has been highlighted.”

Justice for Dalit women

Avinash Kumar¹

Communities discriminated based on work and descent constitute over 260 million people across the globe, including but not restricted to peoples of South Asia and their diaspora. The scheduled caste and scheduled tribes in India, because of their birth identities, have been historically subject to not only structural inequalities, but also are faced with exclusion and marginalisation in society. Despite constitutional mandates, policies, and affirmative actions, the axioms of casteism perpetuate oppression, exclusion, and marginalisation of these communities. Intergenerational inequality and discrimination continue to thrive and adversely impact on the education, health, housing, food security, livelihood, and protection of these communities. Caste-based violence against these communities, in particular against the women and girls of these communities, is normalised and unleashed with impunity. It is not without a reason that the imposition of social inequalities because of birth into certain castes has drawn parallels with the system of apartheid.

While acknowledging the broader challenges that plague Dalit and Adivasis facing atrocities, this piece is primarily focussed around the challenges that women face while seeking redressal under the PoA Act. Despite progressive constitutional provisions on equality and legislation like the PoA Act, caste-based crimes against the Dalit and Adivasi communities continue unabated across the country. The National Crime Records Bureau (NCRB) data demonstrates a steady escalation in the number of cases from 40,401 in 2014 to 40,801 in 2016 (NCRB, 2018). Statistics from NCRB show

1 *Executive Director, Amnesty International, India. This brief piece is based on an internal perspective paper that Amnesty International India has developed along with its partners TISS Hyderabad and NCDHR on the theme.*

that the conviction rates for crimes against scheduled castes and scheduled tribes have declined by 2% and 7% respectively. While an increase in the number of cases could be an indication of increased reporting, the low levels of conviction erode the faith in the ability of the existing institutions to deliver justice.

Data suggests that one in four Dalit women is raped every day.² In most cases that received national and international media attention, the sluggishness of the police in registering the crime has been highlighted. Even after more than seven decades of the Constitution and three decades of the passing of the PoA Act, such violence stubbornly persists in the Indian society. While prevention is the long term and sustainable answer to address gender-based violence of Dalit and Adivasi women and girls, for crimes that have already occurred, conviction requires an effective process of reporting, investigation, and prosecution. Gaps and loopholes in implementation exist in all these three areas.

Importantly, new forms of violence are emerging that the existing literature is still grappling with. These include the use of social media for vilification through online trolling that is far more intense for women from marginalised sections, especially Dalit and Muslim women (Amnesty International India's Troll Patrol Report, 2020).

Indeed, the very process of seeking justice is characterised by different types of humiliations as the deep-seated hierarchies, both of caste and gender, are embedded in the systems and the structures. All (in)famous cases of atrocities against scheduled caste and Scheduled tribe women, such as the Mathura case, the case of Bhanwari Devi, the Khairlanji Massacre, the case of Shalini, and the Birbhum gang rape, illustrate that as the process of seeking justice unfolds, women face humiliation at every layer, and by every formal institution that

2 *Crime in India, National Crime Records Bureau, 2017*

she encounters. This indicates that despite being ostensibly formal (i.e. guided by secular, non-partisan frameworks), institutions are deeply embedded in social structure and reflect the existing social order.

There is an entire set of literature that shows how legal processes are scuttled by institutions. Not performing health investigations properly post-assault, not registering FIR, not registering cases under PoA Act (but under less serious offenses), pressurising women for evidence, compelling for compromise, causing unnecessary delay, warning people of repercussions, and the general apathy are widely documented as the means used to discourage Dalit and Adivasi communities from registering their complaints. Studies have pointed to the continued hold of the dominant castes on the police and the judiciary (across levels but more among the lower levels). Indeed, the entrenched social hierarchy and power structure has led to an informality that is imbibed by the formal institutions, such as the panchayat, police, courts, and similar institutions, and articulated/manifested in their functioning. To add to this, there are regular attempts to weaken the PoA Act on pretence of ‘misuse’ by the members of the Dalit and Adivasi communities by ‘false accusations’ against the members of the dominant groups.

Administration of justice with respect to the scheduled castes and scheduled tribes is not a low hanging fruit. The low rate of convictions, the frequency and gravity of offences as registered in the public domain are telling examples of the lived reality of violations experienced by these communities.

What would be critical to pursue in this regard, therefore, is to:

- Unpack each stage of PoA Act including filing of FIRs, investigation and prosecution: both from the legal and procedural perspectives in order to highlight lapses committed under these stages, and to unpack the institutional biases that work against the survivors and victims, resulting in low convictions.
- Shift the gaze from a narrative of victimhood to projecting and

working with such women as individuals with agency, who are seekers and defenders of human rights.

- Identify processes that strengthen women's claim to equity and justice in these institutional spaces.

During COVID-19, we have continued to witness the renewed forms of stigma, abuse, and further marginalisation against these communities. But this is also an opportunity for us to hold the states accountable to the same.



6

Bezwada Wilson & Deepthi Sukumar

Safai Karmachari Andolan

“The state has conditioned the Dalit society to connect the PoA only for cases of extreme atrocities, like rape and murder. But where protection of dignity has been compromised, and in situations of unequal treatment, the victims have been conditioned to accept it as normal and trivial.”

Implementing PoA for the Safaikarmacharis

Bezwada Wilson & Deepthi Sukumar

The law

Today, we have two laws and a 2014 Supreme Court of India order prohibiting manual scavenging as a caste-based atrocity.

The Prohibition of Employment as Manual Scavengers, and their Rehabilitation Act 2013 (MS Act) was passed in 2013. It was generally welcomed as an improved and stronger legislation than the one that existed from 1993. The 1993 Act had no reference to manual scavenging as a caste-based atrocity against persons of scheduled castes, though it had already been established beyond all doubt that almost all the persons engaged in manual scavenging are from the scheduled communities. The MS Act 2013 explicitly discloses the link between caste, untouchability, and manual scavenging in the preamble.

Though the PoA Act 1989 did not explicitly make a reference to manual scavenging, it had ample scope to be used for the protection of Dalits from manual scavenging. When the PoA (Amendment) Act 2015 was passed, it included manual scavenging as a caste-based atrocity.

The law has established manual scavenging as a caste-based discrimination and atrocity. Generation after generation of manual scavengers are from the same scheduled caste families and households. Without a dignified livelihood, and forced into the inhuman work of manual scavenging, the Safaikarmacharis live in conditions of exclusion, untouchability, and discrimination. Their houses are spatially segregated from other communities, and in locations set aside by the state administration, easily identified by caste and work-based names like ‘sweeper colony’, bhangi basti etc.

The record: Official denial

After all these democratic processes, the rhetoric of justice to scheduled castes, and laws and their amendments, the entire system has consistently failed to protect and empower the scheduled communities. It has been a wasted journey of 30 long years of the PoA Act and 27 long years of the MS Act. At least two generations of the scheduled communities have experienced the failure of the state in implementing these laws, and the failure to establish a safe and equal social, political, cultural, and economic environment for them.

A recent survey of 1,686 Safaikarmacharis in four states (Bihar, Uttar Pradesh, Madhya Pradesh and Jharkhand) revealed that all (100%) of them are from the scheduled caste community. Moreover, the number of women cleaning dry latrines and open drains is disproportionately large. Of those who participated in the study, 75% of the women and 14% of the men reported manual cleaning of dry latrines.

The caste and patriarchal nature of manual scavenging is clearly visible. These forms of scavenging are more visible increasing the vulnerability of the women to caste, and patriarchal attitudes, and behaviour. Women form 92% of persons cleaning dry latrines, which is done alone and is individual in nature. Making a Dalit woman scoop out human excreta with bare hands is a clear manifestation of patriarchy and the caste-based untouchability.

The PoA Act was amended in 2015 and included manual scavenging, but manual scavenging continues to be rampant. It is very visible everywhere, and the official denial and negligence is in itself an atrocity. There are frequent deaths in manholes and septic tanks, which are sometimes reported. Invisible and unreported however, are the injuries and physical and psychological maiming of the Safaikarmacharis due to this caste-based work. However, in the last 30 years, the PoA Act has never been implemented even once in the cases of manual scavenging. It is only filed under IPC Section 304 – death due to negligence.

In the last few years, due to the pressure from the Safai Karmachari Andolan (SKA) and other Safaikarmachari-based organisations and activists, FIRs have been filed under the PoA Act, but a charge sheet has never been filed till date. There is blatant impunity for employing a person as a manual scavenger. Not a single case has been charge sheeted under the PoA Act. As soon as a death occurs, SKA will reach the family of the victim and assist them in filing a FIR, availing the post mortem report, identity documents of the deceased and make submissions to the police department and collector for filing the case under the MS 2013 Act and the PoA Act. Only after much struggle and persistence, the police file the FIR under these Acts.

The COVID conundrum

Today, with the COVID-19 pandemic, the situation has become worse for the Safaikarmacharis. The state has used the emergency environment of the COVID-19 pandemic and state machinery to manipulate the Safaikarmacharis by calling them as ‘frontline warriors’ in the ‘war’ against COVID-19, giving them a false ‘status of importance’ and making the Safaikarmacharis take on the most dangerous task of cleaning medical and virus affected waste.

They are forced to carry the bodies of persons who died due to COVID-19 virus infection. The Safaikarmacharis are in daily contact with the virus. The pandemic induced behaviour of handwashing and social distancing has not only increased untouchability, but also normalised it in everyday life.

The already negligent and apathetic system is now blatantly violating the right to safety, and protection of the Safaikarmacharis. Masks and other Personal Protective Equipment (PPE) kits are denied to the Safaikarmacharis.

Low awareness, lower accountability

The Safaikarmacharis have low awareness of the law; and even where there is awareness, their feeling of unequal citizenship and disempowerment blocks them from accessing the law. The survey revealed that only 25% of

the persons surveyed have some knowledge of the laws and entitlements. Only 9% of the women were aware of the PoA Act. The community can demand and access rights and entitlements only if they are aware of them. The state is accountable not only to effect laws and policies that protect historically discriminated and oppressed communities, but also to ensure that there is widespread awareness and sound knowledge about the laws across the population in order to effectively implement them.

The state and police have been repeatedly denying Safaikarmacharis their due protection and liberation. Till date, not a single case of death by manual scavenging has been charge sheeted under the PoA Act. Every instance of manual scavenging must be booked under the PoA Act. If this had been systematically done by the state, this country would have been rid of manual scavenging many years ago.

The cover up

But even after 30 years of this law and 73 years of independence, this atrocity is continuing as a normal, day to day, routine activity. In the last two years, more than 3000 persons have self-declared themselves to the Government of Tamil Nadu as being employed as manual scavengers. Several of them have claimed that they are employed, either directly or indirectly by the local governments. The Safaikarmacharis who have petitioned the government are scheduled caste persons, and covered by the PoA Act. But the state and public use their own methods to manipulate, and escape from being held accountable for the caste discrimination.

A few years back, the same persons were called thoti, bhanghi, paki, scavenger etc. Now these names have morphed into sanitation worker, and during the pandemic time into health worker, and 'frontline warrior'. But has this changed the social status of the Safaikarmacharis? It has only served to disguise and cover-up for the caste discrimination that is taking place daily in full public view. It is deemed that these are the dignified names for the same caste-based atrocity. However, the atrocity remains the same. But by calling it by a different name, the public and government have protected

themselves. During the present pandemic, there are other cover ups too. Showering flowers and garlands, even as they pick up virus-affected waste with bare hands and faces, putting them on stage along with ‘upper-caste VIPs’ for hand-outs, shoulder pats, doles, etc. The same system continues to deny justice and legal rights of the Safaikarmacharis.

Commissions of omission

Even the Safaikarmacharis only seem to consider rape and murder as an atrocity under the PoA Act. The state has conditioned the Dalit society to connect the PoA Act only for cases of extreme atrocities like rape and murder. But where protection of dignity has been compromised, and in situations of unequal treatment, the victims have been conditioned to accept it as normal and trivial. In this way, the state and caste society have managed to keep the implementation of the PoA Act to a bare minimum. There are many ways in which this is manipulated.

For instance, when a Safaikarmachari approaches the National Commission for Scheduled Castes (NCSC), the person is directed to approach the National Commission for Safaikarmacharis (NCSK), thus giving the impression and influencing the Safaikarmachari to believe that the PoA Act will not apply to them. The chairperson of the NCSC has the powers to even issue an arrest warrant, but the chairperson of the NCSK has no powers at all, and can only advise and notify.

The same is with the National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRC) who direct Safaikarmacharis to the NCSK, and never use their offices and powers to protect the dignity and equality of the Safaikarmacharis. In such a society and country, where caste and untouchability influences every segment and domain, the only recourse is the law of the land. There has been systematic and deliberate disempowerment of the Safaikarmacharis by the state and society.

Systematic abuse of caste-based power using violence in different forms, has messed up this country and the life of citizens belonging to the

scheduled communities. Caste is visible in every sphere – politics, economy, employment, culture, trade, etc. The laws have been made for justice and equality. Only the 100% implementation of the PoA Act is a solution to many of this country's problems.



7

Dr. Jayshree Mangubhai

**“The lack of accountability
for such atrocities denies
25% of the Indian population
security of life and the
opportunities to participate,
at par with other citizens,
in social, economic, and
political life.”**

Where lies Justice for Dalits and Adivasis today?

Dr. Jayshree Mangubhai

India's Independence Day in 2020 offers a moment to reflect on the meanings of freedom and dignity. If freedom is the opposite of oppression and subjugation, dignity means valuing each person as equally deserving of freedom and respect. Yet, today there are multiple struggles underway against significant assaults on freedom and dignity across the country, whether it be against Kashmiris, Muslims, women, Dalits, Adivasis or other marginalised communities. The unfolding context, of both a global pandemic and an accelerating religious–political onslaught against India's secular democracy threatens to further entrench the wide gap between those who enjoy freedom and dignity in the country, and those who do not.

The constitutional context

In this situation, addressing socio–economic inequalities and ensuring the enforcement of legal rights become all the more important, as a means of ensuring social justice and protecting marginalised communities. Laws, in particular, provide guidelines for how we should behave and conduct ourselves in relation to others, in order to uphold dignity and rights for all. The question is, though, how far the implementation of constitutional protections of rights and accompanying laws have fulfilled their purpose of enabling social justice for marginalised and discriminated communities.

One cannot talk about social justice in India without a focus on the elimination of caste inequalities that produce discrimination based on work and descent against Dalits. A constitutional prohibition on caste discrimination, and the practice of 'untouchability' exists. It is complemented by the enactment, just over 30 years ago, of the PoA Act to provide protection and justice for

Dalits and Adivasis, who face discrimination and violence based on their caste (work and descent), and ethnicity.

What the data says

Despite these legal protections, in 2018 alone, as per Crime in India 2018, the annual report of the National Crime Records Bureau (NCRB), there were 49,321 registered crimes against scheduled castes and scheduled tribes. The majority were charged under the PoA Act, meaning they were caste/ethnicity-motivated crimes. Over 80% were charge sheeted, indicating that sufficient evidence existed to take the cases to trial. Once in court, the reported conviction rate of those cases completing trial that year averaged 27.5% under the PoA Act.

However, given mandated speedy trials under the PoA Act, if one considers the number of cases pending trial at the start of that year alone, the conviction rate drops significantly to less than 5%. Contrast is also the disproportionately lower conviction rate for crimes prosecuted under the PoA Act than under the Indian Penal Code. While a common misperception is that the PoA Act is misused by the scheduled communities to file false cases. However, the data show that the core problem is, in fact, that of under-utilisation of the Act as well as poor investigations and prosecutions of genuine cases.

This data, moreover, masks the reality of a large number of cases of atrocities that go unreported each year. Research among Dalit women survivors of violence¹. for example, revealed that as much as 84% of cases of violence do not appear in official statistics of cases of atrocities against scheduled castes due to various reasons, including social pressures applied on the women, and police turning away cases or refusing to file First Information Reports (FIR). Endemic discrimination based on caste, often compounded

1 Irudayam, Mangubhai, and Lee, 2016. *Dalit Women Speak Out: Caste, Class and Gender Violence in India*. New Delhi: Zubaan

by class and gender, continues to plague Indian society and deny access to justice for Dalits at par with others.

Injustice is often further perpetuated for the majority who seek to access their right to a legal remedy and protection under the law. Article 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 states that, *'victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.'*

Some ground truths

In reality, large hurdles exist at every stage of the process to attain justice after atrocities take place. Much evidence has been compiled over the years² to show that even if the case is somehow registered under the PoA Act, often police will not register the case under the proper sections of this Act. Moreover, counter and false cases are increasingly being registered against the survivors at the behest of the dominant castes, sometimes in collusion with police officials. Police do not arrest the accused immediately. Cases are not investigated in time. Inquiries are not made with all the survivors and witnesses during the investigation. Most of the time, survivors and witnesses of atrocities are not provided with protection during and after investigation of atrocity cases. At the time of filing the charge sheet, often the statements are not corroborated with the contents of the charge sheet or vital information is deliberately left out to weaken the case against the dominant caste accused.

For the small number of atrocity cases that make it through the legal system to the courts, similar hurdles exist. Despite the PoA Act mandating a speedy trial through the establishment of special courts with special public

2 See, for example, the POA Act report cards compiled by NCDHR –NDMJ.

prosecutors focusing on these cases, and administrative arrangements to regularly review the progress of these cases through the justice system, the reality reflects anything but speedy justice. There continue to be inadequate number of special courts with attendant staff established across the country to deal with the volume of cases.

This is compounded by the absence of adequate judicial procedures to ensure a speedy trial, allowing for numerous tactics employed to delay these trials, including frequent adjournments and long cross-examinations of prosecution witnesses, and counter cases against the survivors filed in different courts. Research has also revealed the widespread caste discrimination and obstructions faced by survivors and witnesses that prevent a fair hearing before a court of law, and the absence of adequate mechanisms to monitor and protect their right to security of life as they undertake the court process. Judicial processes fail to place survivors of violence at the centre, whether by ensuring they have access to information throughout the trial process, or space to participate in trials and to have their voices heard.

Consequently, a high rate of acquittals in PoA Act cases occur, both on multiple procedural and substantive grounds. These grounds include the victims and witnesses turning hostile during court proceedings due to fear or threats; the preconceptions of judges that the PoA Act is being misused or that it is being used for less serious criminal offences or that the violence occurred on grounds other than caste³. The results send a clear message, to both perpetrators and survivors of violence alike: for the perpetrators, it is a message of impunity and that the law operates to protect their interests; for the survivors and their communities, it is that the justice system does not serve justice and freedom from violence for them, reaffirming their fate linked to their 'outcast' caste status.

3 *Mangubhai and Singh, 2014. Justice under Trial: Caste discrimination in Access to Justice before Special Courts. New Delhi: NCDHR – National Dalit Movement for Justice.*

What needs to be done

Reflecting back on 17 years of working with Dalit and Adivasi communities, with Dalit women in particular, and specifically on access to justice issues and PoA Act reforms, it is hard not to feel frustrated that so little has changed. Despite the struggles of many Dalit and Adivasi movements and organisations across India, and those standing in solidarity with these communities in fighting for their rights, and legal reforms that have sought to close some of the gaps in ensuring effective enforcement of the PoA Act, atrocities continue unchecked, and the system continues to fail to consistently deliver justice to survivors. The lack of accountability for such atrocities denies 25% of the Indian population security of life and the opportunities to participate, at par with other citizens, in social, economic, and political life. How can any Indian or global citizen accept this situation? The structural cause for this situation is undoubtedly caste, which manifests both in rampant discrimination and violence that defies humanity, harassment, threats, and other deliberate attempts to obstruct access to justice to survivors of atrocities.

From a human rights perspective, the rights to equal protection of the law, and to an effective legal remedy are core elements in upholding justice, freedom, and human dignity. The enforcement of social laws, therefore, continues to be a moral and political priority for any democratic government in India. This requires courage and commitment at multiple levels. Politicians must be courageous enough to publicly denounce caste discrimination and atrocities, regardless of the caste/political pressures applied on them to keep silent. They must ensure adequate resources for the proper enforcement of the PoA Act and send a clear message of zero tolerance for discrimination and violence of any kind.

Police and civil servants must equally be bold enough to impartially monitor and enforce the law, and stringently punish those who neglect their duties under the PoA Act. Where politicians and officials fail in addressing structural inequalities and the ensuing violence, large scale social movements have a critical role to play in demanding that Dalit and Adivasi lives matter, and

accountability to ensure the law supports access to justice for these communities. As the Black Lives Matter movement in the US has shown, the collective power of people across the social and political spectrum coming together to demand justice is sometimes the only way to force those in power or wield the power of the state to act.

However, we need to also go beyond a focus on the implementation of laws and access to justice. Laws such as the PoA Act deliver one form of justice and freedom from fear (of violence), but social justice demands a much wider vision of social and economic justice that enables freedom for Dalits and Adivasis to live dignified lives.

While legal protection and access to justice are extremely important in struggles for freedom and dignity, tackling structural inequalities of caste, class, and gender require a simultaneous and equal focus on system transformation at several levels.

First is the enabling environment built through people's collective pressure to change formal structures and institutions. Laws, policies, budgets, and programmes must be made more inclusive in terms of addressing discrimination and enabling marginalised social groups, such as Dalits and Adivasis to enter into public and private institutions, or access resources.

Second is to address the economic exploitation built into the caste system by ensuring dignified access and control over resources for Dalits and Adivasis. This will look different for each community: recognising the rights of Adivasis as the indigenous peoples of India, to have control over their ancestral lands and natural resources; and recognising the rights of Dalits to socio-economic resources required to achieve economic freedom and dignified livelihoods.

Third is to build the capacity to aspire and drive change among these excluded and marginalised communities. We must value and promote the contributions these communities make to enriching Indian society and to the development of the country. At the same time, we must support and

facilitate their ability to access new opportunities that counter the social stigma, negative stereotypes, and discrimination that they currently face.

Fourth, and perhaps most importantly, is to create the social conditions for sustained change. We must aim for no less than the transformation of inequitable social norms based on caste, class, and gender; and begin to build new norms and ways of relating based on mutual freedom, equality, and respect for human dignity for all Indians. This requires those privileged by caste, class, and gender inequalities to examine how privilege and oppression operate, and critically question the truth of discriminatory beliefs and practices that appear to be natural and given. It requires uncovering our common humanity such that the news of a thirteen-year-old Dalit girl in Uttar Pradesh being raped and brutally murdered on the day India celebrates its Independence causes all of us the shock, disgust, and anger required to demand justice, and an immediate end to violence and impunity.

At the personal level, true leadership and commitment to the idea and values of a vibrant, thriving Indian nation means acknowledging that unless we work together towards liberation from oppression for marginalised communities, we too remain unfree, as does India. Already Dalit and Adivasi communities are leading the way through their struggles against discrimination and violence to realise the vision of a just, equal, and free society. If they can imagine another world is possible and work tirelessly towards it, it is time for us all to step up.

Jai Bhim, Johar!



P. S. Krishnan, I.A.S (Retd.),

Former Secretary to Government of India,
Ministry of Welfare

“The caste system and its all-round harm including its harm to the optimal economic progress of the nation with its adverse consequences on the growth of employment opportunities for the youth of all communities should be effectively impressed on the younger generation through the education system and syllabus.”

Action Required

P. S. Krishnan¹

Action required to be taken by the state and central governments for the effective implementation of the PoA Act as amended by PoA Amendment Act 2015.

The central government

The implementation of the Act should not be treated as a miscellaneous matter, but as a central concern of the Central Government.

Sub-section (1) of Section 21 of the PoA Act 1989, as amended by the PoA Amendment Act, 2015, requires that the state governments shall take necessary measures for the effective implementation of this Act.

The central government must play a proactive role while coordinating under sub-section (3) of Section 21 of the PoA Act and the measures taken by the state governments under sub-section (1). In particular, the central government shall take proactive steps to ensure that the following important measures are taken by the state governments and union territory administrations:

- 1) Urgently set up exclusive special courts in every district of every state and union territory in compliance with Section 14 of the Act as amended in 2015 – there is no district which is free from atrocities

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or free from potential for atrocities against scheduled castes and scheduled tribes.

2) Ensure that exclusive special courts are really exclusive i.e., they shall not be entrusted with any work other than that of atrocities against scheduled castes and scheduled tribes.

3) Carefully select and urgently appoint a competent and experienced lawyer devoted to social justice as an exclusive special public prosecutor for every exclusive special court, to whom no other work shall be entrusted.

4) Ensure protection for and all rights of victims and witnesses as detailed in new Section 15A in new Chapter IVA of the Amendment Act, inter alia to protect them from threats and reprisals to silence them and defeat the law

5) Ensure that trials are completed within a period of two months, as per Section 14(2) to have deterrent effect and to avoid opportunity for powerful oppressors to silence witnesses.

6) Constitute the high-powered vigilance and monitoring committees in every state with the chief minister as the chairman and with composition as required by Rule 16 under the Amendment Act.

7) Ensure that the vigilance and monitoring committees meets in January and July every year, as specified in Rule 16 to review the implementation of the provisions of the Amendment Act scheme for the rights and entitlements of victims and witnesses in accessing justice, relief, rehabilitation, and rehabilitation facilities provided to the victims, prosecution of cases under the Amendment Act and review of various reports as prescribed by Rule 16.

8) Frame and implement a plan for effectively implementing the provisions of the Act as amended, as required by Rule 15.

9) Closely watch every major case of atrocity and ensure that the time-limit for investigation and trial prescribed by the Amendment Act and Amendment Rules are strictly followed.

10) Spread awareness in all languages among Dalits and Adivasis about their rights under the Act and Rules and how to exercise them.

11) Take up actively with state governments, major cases of murders,

massacres, mass arsons, social, and economic boycott in which the accused have been acquitted.

Examples are the massacre cases of Laxmanpur Bathe, Bathani Tola, Shankar Bigha, Miyanpur, and Nagri Bazaar in Bihar and Kambalapalli atrocity case in Karnataka. In the cases of Laxmanpur Bathe and Bathani Tola, the accused were acquitted by the High Courts after the trial courts had sentenced them.

12) Closely work with the state government in ensuring that appeals in high courts by persons convicted in the trial court are fought effectively so that such convictions, rare in the totality, are not set aside or diluted.

Examples are

- Vachhati atrocity case of 1992 in Tamil Nadu in which 215 persons including Chief Conservator of Forests, Conservators of Forests and other officers and personnel of the forest, police and finance departments were convicted and sentenced in 2011, which has been taken in appeal by the convicted to the High Court;
- The judgment of the Tiruppur Principal District and Sessions Court dated 12.12.2017 in the case of the gruesome murder of an educated Dalit youth on 13.3.2016 for his marriage with an educated non-Dalit girl by mutual consent, sentencing to death six of the nine accused. This will go to the High Court for confirmation and then may also be appealed by the convicted.

13) Along with the concerned state governments, actively fight in state appeals to the Supreme Court against acquittals by high courts.

14) A special conference of chief ministers, state home ministers, chief secretaries, and DGPs should be called for, by the central government to review the position and impress on them the seriousness of the central government in the effective implementation of the PoA Act. It should be followed by such six-monthly review meetings. During the tours to the states, the prime minister and the union home minister, must take with them particulars of serious cases in each state and enquire about their progress and give appropriate instructions.

15) The Report of the Governors' Committee headed by the Late Dr PC Alexander must be taken out of cold storage, and in its light, agricultural

land should be given to every rural scheduled caste and scheduled tribe family in order to reduce their vulnerability and enhance their capacity to peacefully and successfully resist atrocities like social and economic boycott and ‘untouchability’. This should be undertaken as a national programme with central funding with one task force in every taluk to go village by village.

The prime minister

All this will not be possible by mere correspondence. An appeal by the prime minister by a personal letter to all chief ministers is essential as a first step. Thereafter, the ministers and officers of the Ministry of Social Justice & Empowerment and Ministry of Tribal Affairs should visit the states and review the position, especially of important cases of atrocities with the chief minister and state officers.

The prime minister must devote his next monthly “Mann Ki Baat” to the PoA Act 1989 and Amendment Act 2015, and its proper implementation.

State governments²

1) Honour partners in inter-caste marriages

Annihilation of caste is a goal which was placed before Indian society by great reformers like Dr Babasaheb Ambedkar and Periyar. Recently, the Hon’ble Prime Minister has given a call for *Jatimukt Bharat* (i.e. Caste-free India). Young Dalit-non-Dalit couples and Adivasi-non-Adivasi couples have made significant contribution towards the achievement of this goal. All children and young people are dear to us and need to be supported for their progress. Those of them who breach caste and ‘untouchability’ barriers in the most important decision of their personal lives, namely marriage, are also socially valuable. They not only need to be protected and rehabilitated, but should also be felicitated and honoured at public functions presided over by the chief

2 *Urgent Action to be Taken by the Chief Minister to Effectively Prevent and Severely Punish Atrocities Against SCs and STs including Partners in Dalit and non-Dalit Marriages of Choice, Letter to Chief Minister E. K. Palaniswami, 16 December 2018.*

minister in Chennai and minister(s) and district collectors and SPs in respective districts. This should be done in respect of all such existing couples, surviving partners where one has been murdered, and all future couples.

2) Need for a new Act in addition to the existing PoA and PoA Amendment Acts Killings and other outrage occur to a maximum extent when marriages are between Dalits and non-Dalits. This is in addition to atrocities on grounds like land, wages, resistance to 'untouchability' etc., which have been happening in the past and still happen. But there are also instances where such crimes take place when the partners belong to a non-Dalit 'lower' caste and an 'upper' caste. To cover such cases, it will be necessary to have a separate Act with provisions for effective protection, deterrent death sentence, and total rehabilitation. Where a case involves a Dalit, the existing PoA Amendment Act and the new Act can be invoked. Where neither of the partners is a Dalit, the new Act will be of effective use. This is particularly important because inter-caste marriages are bound to become, and should become, more and more frequent in future.

Such an Act can be legislated by the parliament as well as state legislatures. The Tamil Nadu State Government can take the initiative without waiting for the centre to move for a national legislation. The chief minister may consider moving for such a state legislation. In drafting this legislation, in addition to the concerned departmental officers, social justice-minded lawyers, educationists, social workers, and Tmt. Gowsalaya who has been pleading for such an Act, and others like her may also be associated. Retired judges who are known for social justice-sensitivity will be valuable in guiding this. I shall also be happy to help if the state government so desires.

3) Education regarding harm of the caste system

The caste system and its all-round harm including its harm to the optimal economic progress of the nation with its adverse consequences on the growth of employment opportunities for the youth of all communities

should be effectively impressed on the younger generation through the education system and syllabus. In Tamil Nadu, there are educationists and other professionals who are committed to social reform, social justice, and eradication of the caste system. They, apart from concerned departmental officers, should be associated in drawing up syllabi appropriate to different age groups.

4) Close study of the PoA Act by leaders of government and administration

The Act needs to be closely studied by the chief minister, home minister, scheduled castes and scheduled tribes department ministers, chief secretary, home secretary, DGP, and they need to take full charge of its thorough and sincere implementation. Training courses should be held at different levels for police officers and other police personnel and for district collectors and other officers of the district administration and the syllabi for these courses should be prepared carefully with the help of reform-minded and social justice-sensitive educational and other professionals as mentioned above.



“There is a paradoxical situation of personnel in all state institutions who believe in the caste system in their hearts, and it is they who are mandated to implement the Constitution of India, human rights, PoA Act and other laws.”

9

Jhansi Geddam, MA.,ML.

Advocate Hight Court

**Andhra Pradesh and
Telangana**

Implementation in Andhra Pradesh and Telangana States

Jhansi Geddam, MA.,ML.

Human rights and women rights discourses are taking new strides and clear concepts of rights and elimination of discrimination against women are emerging at the global level. In India too, at the theoretical plane, all citizens have all human rights and the Constitution of India guarantees equality of all human beings, cutting across caste. India has been party to all important human rights conventions and has established National and State Human Rights Commissions and Women's Commissions. The Supreme Court of India has unequivocally asserted human rights as part of fundamental rights under Article 21 and other articles in Part III of the Constitution of India. Thus, at the conceptual and theoretical plane, India stands second to none in advocating for human rights and dignity to its citizens, including women. However, the ground reality of women, particularly Dalit women and Dalit girl children in India, remains deplorable, and their situation still continues to be little explored by academic, governmental and non-governmental institutions, judiciary, human rights and mainstream feminist movements, media, and literary circles.

In India, caste hierarchy continues to be the living law. Professor Eugen Ehrlich of Austria, a sociological jurist expounded the organic concept of living law. According to him, 'the law is much wider than legal regulations,' and there is always a gap between the formal law i.e., law in legislation and precedent and the living law i.e., law as it actually lives or functions in society. The '*living law*', as conceived by Ehrlich, is the '*inner order of associations*' that is the law practiced by society as opposed to law enforced by the State. Central to his theory is that '*the law of a community is to be found in social facts and not in formal sources of law*'. The law

in the formal sources, like legislation and precedent, does not reflect the actual life of the people. With this conceptual outlook, one has to see what is the living law of PoA Act and Rules 1995 (popularly PoA), and attempt to transform the living law into the ideal law as prescribed in the Act. Thus, by reading the Constitution of India or PoA Act, one cannot have a full knowledge of the actual rules of conduct observed by the society, which includes police, legal profession, and judiciary.

The reality, in both rural and urban India, is different. Strangely, the mindset of even the 'educated' in the country continues to remain rooted in the backward, age-old, feudal caste system, and patriarchal bias. The concepts of modern democratic institutions remain only on their lips, and the ideas of liberty and equality has not actually been digested by the elite in the country – be it urban or rural. Unfortunately, this is so even among those who occupy public positions of all levels and who take an oath to uphold the Constitution of India.

Thus, we have a strange situation of institutions based on rule of law and human rights on the one hand, and on the other hand, everyone that runs these institutions don't believe in these laws or the concept of equality (with infinitesimally small exceptions, if any). Consequently, there is a paradoxical situation of personnel in all state institutions who believe in the caste system in their hearts, and it is they who are mandated to implement the Constitution of India, human rights, PoA Act and other laws. Naturally, it is reluctance and circumvention that one can see all through, with minor exceptions. If there is any officer who implements the law with seriousness, such an officer is regarded as an aberration by the political elite. Such personnel are either transferred or are eliminated by the political – landlord – contractor mafia. It is evident that caste is not on the decline but becoming more and more brazen in politics and in all institutions, including universities, government departments, and the judiciary. Due to increased casteism, one can see the emergence of new forms of untouchability practices, and growing atrocities on Dalits and Dalit women with impunity. A dominant caste perpetrator of violence on Dalit women,

even if he is illiterate, knows that everyone from top to bottom in the police, revenue, and judiciary are one with him – similar to him in caste perceptions – and this gives him a feeling of legitimacy and impunity. In private conversations, the accused can talk with the officers openly in terms of caste solidarity.

Role of police and judiciary

Even 70 years after the Constitution of India was adopted, and three decades after PoA Act was passed, the culture of rights and rule of law has not dawned on the police establishment. Their mindset continues to be the same old culture of looking down on Dalits, and not considering them to be social equals. Added to this, is the corruption that permeates the police. The police do not positively respond when an atrocity takes place, not even when the victims are poor Dalit women or girl children. Their response is usually lethargic and casual. So far, Dalit Sthree Sakthi (DSS) has not witnessed any police officer leaping into action and collecting all possible evidence from the crime scene or investigating the cases speedily and scientifically. In a majority of incidents, the police register the First Information Report (FIR) only after Dalits or Dalit organisations organise protests against police inaction or the incident is highlighted in the media.

The attitude of the judiciary is no different. The complainants are not seen as victims or survivors, but looked upon as if they are the criminals. Though the accused is not entitled for bail, it is granted liberally. There is no proper training for the judicial officers on the PoA Act either. Most of the Special Public Prosecutors (SPPs) appointed under this Act are of mediocre calibre in terms of their knowledge of the Act and lack of commitment. Corruption is rampant. An accused in a case under the PoA Act can often ensure that the case ultimately fails by spending money liberally from the stages of FIR, investigation, charge sheeting up to trial, conviction, and appeal.

The dominant trend in the police establishment is to behave as if the Constitution of India and the laws are only for the books and not for observance. Recently, in the village of Dorasanivari Palem, of East Godavari

district in Andhra Pradesh, a Dalit woman was gang raped. When the police were approached, they responded that they were busy with a more important and pressing work than taking up the investigation of the gangrape. In Medak, Telangana, when a Dalit woman was burnt alive, there was no response from any quarter.

A steep chase for justice

The police generally exhibit apathy, negligence, and inertia when Dalit or Adivasi victims approach the police. The general spirit that a public servant should have in enforcing law is not seen. In contrast, if a rich man approaches the police, they show a lot of interest, particularly if it is a property crime like theft. Scheduled communities are discouraged from registering cases, and are pressurised to go for 'amicable' settlements. In most of these cases, apart from lack of spirit, corruption is also a motivating factor for the police to encourage compromise. If the police are forced due to public protest or instructions from higher ups to register a case, they do it grudgingly with all loopholes like omitting necessary details in the FIR (facts, figures, names of the perpetrators, words and weapons used, etc.).

The experience of DSS in the past 15 years reveals the following hurdles in the access to justice for Dalits in general, and the implementation of the PoA Act in particular.

Hurdles at the stage of registration of cases

a) *Reluctance of police to register cases:* As far as the PoA Act is concerned, the police are never proactive. Instead of discharging their legal and ethical duty of registering the case, investigating, and collecting evidence, the police refuse to register the case until the victim brings witnesses. Victims narrated that the police don't go to the scene of the offence immediately nor try to arrest the accused. Instead, they require the victim to provide them transport to arrest the accused. The general and overwhelmingly prevalent attitude among the police is that of reluctance to set the law into motion. On the other hand, there are many instances where the police brazenly took the side of the accused and

threatened the victims to withdraw the complaint or to compromise, often for a pittance.

b) Registering counter cases against the Dalit complainant is a well-known tactic adopted by the police. The crime committed by the dominant caste group is portrayed as if it was a clash between Dalits and dominant caste groups, in which both are equally guilty. Towards this end, the police record the complaint from the attackers with false allegations knowing fully well that it is false. This counter case is a weapon in the hands of the police and the accused, to pressurise the Dalits to withdraw their case as a bargain for withdrawing the counter cases. Thus, the victims are deliberately turned into the accused. The police speed up the investigation in counter cases foisted on Dalit victims and the investigation is done by the inspector himself. Though the Act says that in such situations both the cases are to be investigated by the same Investigating Officer (IO), i.e., the Deputy Superintendent of Police (DSP), this is seldom done. In the counter cases, all the Dalit accused are arrested and they face a lot of problems in remand and in getting bail. They become paupers by the time they are bailed out. The police see to it that the counter case comes up for trial very soon and much before the atrocity case. This drives the Dalits to compromise before the trial, for fear that they may be convicted first and who knows what happens in the atrocity case later. At this juncture, they 'compromise', take whatever money is offered and agree to withdraw the case or turn hostile.

c) Hyper technicality: The police and revenue department officials raise hyper technicalities during the implementation of the PoA Act, and thus delay the registration and investigation of the cases. In many places in Andhra Pradesh, police require that the victims bring community certificates from the Mandal Revenue Officer (MRO) to prove that the victim belongs to a scheduled community to register a case invoking PoA Act. This insistence on community certificates is just to delay the registration and investigation.

d) Dalits professing other faiths are not covered: PoA Act covers only Dalits professing the Hindu, Buddhist, or Sikh faiths. Many Dalits in Andhra profess

Christianity, and many go to Church even though they have not converted. In these cases, the MROs issue BC 'C' (Backward Class Christian) certificates thus helping the accused to evade justice, since the Act does not apply to those without the SC or ST certificates.

e) *Improper registration* is another hurdle. The police do not register the case under the PoA Act but book the case only under sections of the Indian Penal Code (IPC) or register under improper sections of the Act.

f) *Delay in registration*: Police should register the FIR immediately after receiving a complaint or at least within 24 hours. By and large, however, police officials do not observe this rule. They register the case after delay – sometimes of days and weeks. In such instances, they (falsely) write that they received the information or complaint only on that day, implying that the victim delayed complaint. This weakens the case and the victims cannot prove that they immediately approached the police, and it is the police who did not register the case.

g) *Oral complaints diluted*: The police, when reducing the oral complaint of the victim into writing omit important details to weaken the case. They omit or falsify important facts like the names of the accused, time and place of occurrence, nature of weapons, injuries etc., and take the thumb impression of the victim. The Dalit victims who are mostly illiterates simply put their thumb impression or sign and go away. Later, in court depositions, the accused's lawyer bombards them in cross examination showing that what they stated earlier and what they are stating in the court are contradictory and argues that the victims are stating falsehoods. Thus, the unfair recording of FIR statements to police etc., help the accused in many ways.

h) *Forced compromise*: From the stage of complaint itself, the police advise, lure, and even threaten victims to not register a case, but instead advise them to '*settle the issue*' by entering into a '*compromise*' with the perpetrator for a financial consideration. Having demoralised the victims through 'advice' and threats, they delay the registration of cases, arrest of the accused, and investigation etc. to force the compromise. The police force compromises not only due to their ingrained caste prejudice, but also because they stand to gain considerably from the accused if they succeed in rescuing the accused from the case.

Hurdles at the stage of investigation of cases

a) *Investigation not conducted by a DSP*: Though a DSP is appointed as the Investigating Officer (IO) as per the PoA Act, often the investigation is entrusted to juniors, such as Sub Inspectors (SI) and head constables, thus reducing the efficiency of the investigation, giving scope for weakening the case. The DSP's role in the investigation, in practice, is confined only to signing the papers. Cases have been squashed on the grounds that the investigation is not done by competent authorities.

b) *Delay in filing charge sheets*: In more than 70% of the cases, the investigation was not completed within 30 days. This helps the accused to get bail as a right. This laxity in investigation is due to the lack of sincerity and commitment. In many cases, due to corruption, the investigation is done tardily, so that much of the evidence gets destroyed and it automatically helps in getting an acquittal. There is usually a delay in filing the charge sheets in the cases of violence on Dalit women, reasons being; collusion with perpetrators to give them time to pressurise the witnesses or purchase them, transfers of concerned investigating officers, delay in receipt of the medical certificate, collection of the evidence, post-mortem reports, delay in arrest of the accused, etc. For all these reasons, delayed charge sheet filing is a common feature with regard to the cases relating to violence on Dalit women and Dalits in general. One of the reasons for the delay as per the police version in the cases studied, was that they had to wait for the legal opinion from the public prosecutor and pass the buck. But the SPPs deny this. DSS team members were told that they raised this issue many times in the District Vigilance and Monitoring Committee (DVMC) meetings by quoting specific cases, and in the meeting, it was seen that the concerned IOs and the SPPs are at loggerheads accusing each other for delay.

c) *Delay in forensic laboratory reports (FSL and RFSL) and DNA tests*: This, in turn, delays the filing of charge sheets. Consequently, it results in all sorts of troubles for the victims and weakens the cases. In the incidents of Dalit girls being cheated and made pregnant by sexual exploitation, the police should send the minor girls and women for DNA tests so that proper cases can be booked. But usually, the police don't send the

pregnant girl for a DNA test until after delivery. Due to this police negligence, DNA tests were done after minor girls delivered babies. In the incidents of rape, the police deliberately delay sending the victims for medical examination. If immediate medical examination is done, the semen and other evidence can easily be collected. Delay paves the way for disappearance of such crucial incriminating evidence. Not much care has been taken for collection of all the evidence in the incidents of Triveni, Divya Sri, Sirisha, etc.

d) *Bail and charge sheet linkage in IPC and PoA Act cases*: Normally, in the cases registered under IPC, bail is not granted unless and until the charge sheet is filed subject to a maximum of 90 days, whereas in the PoA Act cases, the accused are granted bail immediately i.e., within days. This gives scope for forced compromise so that the victims withdraw the case, or the accused themselves manage to get rid of the case.

Hurdles in receiving timely relief and compensation

Relief and compensation are the rights of the victims, and the duty of the State and society. It is not charity, but a gesture of atonement for the violation of the human rights of the Dalits. In other words, it is a sort of admission of guilt by the State for its failure to protect the scheduled communities, and compensation is an immediate palliative. This juristic philosophy behind providing compensation is never grasped by any of the personnel in the government machinery. They think that giving compensation is giving charity and behave like feudal lords dispensing charity and patronage. Thus, they try to turn the victim into a beggar moving around for compensation. So far, compensation is not paid by the government on its own initiative, even in a single case. Without representation no compensation is paid, which is proof that none in the executive hierarchy understand the concept or philosophy of payment of compensation under the PoA Act, nor did they digest the spirit of the Constitution of India or the laws.

The social welfare department has to pay compensation stage-wise to the victims, based on the rules under the Act. Usually what happens is that,

that too after representation only, the first tranche of compensation is released, and the rest is not paid. Likewise, the rehabilitation process is also not taken care of. One reason is lack of perspective, and the other is the lack of proper procedure. Compensation is paid only after repeated pursuance by concerned human rights organisations in the form of representations, advocacy, and lobbying. Getting compensation from the Women and Child Welfare Department is almost impossible, and is a testing time for the victims. To get the compensation is running the gauntlet.

a) In many cases compensation to victims is:

- Not paid at all.
- Not paid as prescribed by the PoA Act Rules.
- Not provided at each stage i.e. registration of FIR, on completion of medical formalities, filing of charge sheet, and conviction as prescribed.
- Not paid on time (and sometimes released only after a percentage is given to the government officials).

b) The administration does not conduct inquiries, thereby evading its duty to give relief, and compensation to victims. Instead, it makes false promises of compensation, and then delays indefinitely.

c) Victims are not paid medical expenses immediately after the atrocity.

d) Victims are not paid travelling allowances or maintenance expenses for their visits to police stations and courts during investigation, and the trial.

e) Victims are not given employment as per the PoA Act Rules. The government denies compensatory employment under the guise of non-availability of regular jobs, as all work is now being done through outsourcing.

f) Monthly pensions are not given to the victims as per the Rules.

g) When Dalit property is destroyed during mass attacks, no assessment is made to pay compensation for the loss.

h) The district administration ignores the socio-economic boycotts of Dalits. These boycotts lead to denial of employment; and access to basic necessities like ration shop goods, refusal to buy, or sell any

goods in the village, etc.; to pressurize Dalits into submission and cause intense suffering to them, though no physical violence may take place in the process. The attitude of the district administration in such situations ranges from indifference to negligence.

i) Rape survivors are treated inhumanely, and stigmatised.

Hurdles during trial

Crossing all hurdles, if an atrocity case reaches the court, the conviction of the accused depends on various factors like the efficiency of the special public prosecutor, proper deposition by the victims and witnesses, the appreciation of the evidence by the judge concerned, and other factors. The appreciation of evidence and application of law is the privilege of the judge who conducts the trial. There is a general rule in the administration of justice, that the guilt of the accused shall be established beyond all reasonable doubt and, where there is a doubt as to the guilt, the benefit of doubt shall go to the accused. Though this is a cardinal principle in the administration of justice, this is selectively applied. In all cases, where there is large scale hue and cry in the media and in public, this principle is never applied and the courts usually go by public opinion, even without strong evidence. In many cases, due to the media trial, the courts convict without strictly applying this doctrine, even if they are not convinced that the accused committed the crime. But in atrocity cases, the benefit of doubt is given to the accused and most of the accused are acquitted on this ground.

It is observed that the trial is conducted haphazardly. Key witnesses are not involved, certain witnesses are not called by the prosecutors, no briefing of victims and witnesses by SPPs, SPPs don't communicate with the victims, don't listen to the victims' version of the case, and they are not efficient in dealing with evidence substantiating the elements of the offences and other provisions of the Act. It is told by activists that special courts do not have a fair proportion of SPPs from the scheduled communities, who can function with a sense of duty towards protecting the rights of the scheduled communities. It is also observed that SPPs are already overburdened with

other cases. Hence, they are unable to give priority to cases under the PoA Act.

a) The '*committal procedure*' followed in the present legal system is meaningless and only serves to delay the trial. In the name of committal procedure, months and years pass before the case is taken up by the court of jurisdiction. The charge sheets are normally filed in the lower courts or the committal courts. Once all the documents are in place, then the concerned case is given a Police Reference Case (PRC) number. This stage takes a long time. At a later stage, the summons are issued, and after obtaining the compliance report of the summons, the summons for the accused are prepared. At each step, the police and the court are at loggerheads. After various other similar procedures, the committal order is given and the session number is given once all the documents are found to be correct. In many cases, the transmission process takes a long time, and since the designated courts have many other cases, the trial of the PoA Act cases is further delayed.

b) *The trial is lengthy and many cases are pending* in the 'special courts'. These courts are simply designated as 'special courts' by a notification to deal with cases under the PoA Act in addition to their regular work.

c) *Incompetent and compromised SPPs*: SPPs are not appointed in all the districts as mandated by the Act. The appointment of SPPs is often influenced by political considerations. When appointed, some SPPs pressurise the victims to compromise cases for monetary gains, and even collude with defence lawyers to dilute the case. The SPPs do not ask the critical questions that establish atrocities as untouchability related discrimination and violence, and do not give importance to written arguments. A study on the special courts conducted by DSS has revealed that the SPPs are not giving sufficient time to the victims and witnesses. Further, the SPPs are not briefing the victims and witnesses on how to depose before, or give evidence in the courts. The activists felt that Assistant SPPs helping the SPPs before the hearings would minimise unnecessary delay in trial.

d) *Victims and witnesses turning hostile, due to the failure of the*

state to fulfil its duties under Section 15A of the Act: This happens at every stage – right from filing the complaint, to FIR, to investigation, to charge sheet, to conviction. Many cases are closed as ‘false’ due to lack of evidence. During the trial, the SPPs, community elders, and brokers come together and force the victims to turn hostile through a combination of inducements and threats. Due to the time lag between incident and trial, even the victims succumb to the threats. By the time the trial commences, the very persons who deposed against the accused at the time of investigation refuse to give evidence and turn hostile in the court. This enables the accused to get the case quashed or stayed. Thus, crossing all hurdles, even if a case comes up to the stage of trial, it frequently ends in acquittal.

e) *Problems of women victims and witnesses in trials:* The victims and witnesses are tormented in the courts by the defence advocates, and often are not protected by the SPP or the judges. Irrelevant and sometimes personally degrading questions, subject the victims and witnesses to confusion and dismay.

What is to be done

DSS pays the maximum attention to the issue of right to life of Dalit women, and has been struggling through various fora in the form of filing cases, complaints to various rights commissions, and representations to the government agencies due to the above mentioned reasons. The attitude of utter disregard and neglect towards the right to life of Dalit women and girl children is prevalent all round and in the institutions of administration of justice.

The following need to be done immediately, to ensure better administration of justice:

- a) All Dalits, irrespective of faith, need to be covered under the PoA Act.
- b) Police and revenue departments have the chief responsibility for the implementation of the Act in letter and spirit. They need to act swiftly. Therefore coordination between them is necessary. The

district collectors and Superintendents of Police (SP) need training on the Act to clarify the doubts and issue circulars for effective implementation of the Act.

c) Assistant SPPs need to be appointed to help the SPPs before the hearings to minimise delay in trial.

The continuous campaigns of DSS motivated the Dalit women to stand up for their rights, and they refuse to lie low when it comes to their dignity as individuals. With our intervention and follow up, we could see that in many cases, we could compel the law enforcing agencies to act and we could ensure that the guilty get their due. In the working area of DSS, we have been able to shatter the feeling of impunity among the dominant castes generally.

Our experience in tackling various issues of atrocities on Dalit women and girl children, the way the enforcement agencies and judicial system operated, the way we had to work against the odds to make these agencies discharge their duties, and the methods to surmount the problems etc. are presented below:

- a) *General sensitisation* of the public at large, through campaigns, seminars and meetings is done on a regular basis to expose the tardy implementation of the law.
- b) *Law in Action* was conducted with all concerned to expose the legal system's functioning.
- c) *Public hearings* have been organised to sensitise the public at large about the plight of Dalit women, and to lay bare the hypocrisy of personnel and agencies of criminal justice administration.
- d) *Roundtable conferences* of the victims and witnesses with officials, intellectuals, media and all concerned is another strategy to focus the pending cases and loopholes in the administration of criminal justice.

DSS can claim that its policy of persistent follow up of cases has led to results. The conviction of the accused in the rape of minor girl Darla Durga after a 'nine year' struggle stands out as a symbolic victory.



10

Vudayagiri Nandagopal

Founder-director, Sakshi Human Rights Watch,
Andhra Pradesh

“The responsibility for the effective implementation of the Act lies on the state government vis-a-vis all the authorities under the purview of the PoA Act. However, for the state government and its authorities, it is seen as an additional responsibility. Therefore, it is given low priority and their discharge of the responsibilities under this Act become notional.”

Andhra Pradesh

30 years: A stocktaking

Vudayagiri Nandagopal

It was in 1989 that, for the first time, an Act was enacted in the country to prevent atrocities against the scheduled castes and scheduled tribes and to provide protection to people affected by atrocities committed by the non-scheduled communities. Do we need to feel happy? Or do we need to feel sad, that such an Act was needed even after 42 years of Independence? Whom do we blame for having taken six years until 1995, to frame rules to this Act? Whom do we blame for making the situation worse? Whom do we blame for the increase in atrocities on the scheduled communities, even 74 years after independence? Whom do we blame for the fact that only in 8.5% of the cases are getting justice in the court under this Act?

The constitutional architecture, social infrastructure

Preamble of our constitution says, 'we the people having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens, JUSTICE, social, economic and political; LIBERTY of thought expression, belief, faith and worship; EQUALITY and of status and of opportunity and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation'.

In the preamble, the constitution drafting committee, under the chairmanship of Dr. B.R.Ambedkar, has very clearly expressed the essence of the entire Constitution of India, and the commitment that this country should strive towards.

When the constitution was being adopted, the Indian society was divided under various castes, religions, and tribes. Though there was diversity in culture and living conditions, beliefs, and faiths, it restricted intermingling

of communities; imposed discriminatory identities among these communities, such as higher and lower, superior and inferior, powerful and powerless, rich and poor, weak and strong; to the extent that the divisions decided who was touchable and who was untouchable. Many inhuman practices were unquestioningly adopted.

Bonded labour, manual scavenging, vetty, Talary, Thoti, disposing carcasses, digging graves and burials, beating drums and dancing in the burial processions, removing the skin of dead animals and processing it to make leather, are some of many manifestations of the menial work forced on the socially excluded communities under the practice of discrimination. Prohibition of access to public places and public services (roads, temples, Ghats, baths, burials, Jathas, tea stalls, hotels, saloons, dhobis) to natural resources (common land, lakes, streams, hills, and forests); restrictions to education, profession, business, residence, costume, and participation are some of the manifestations to keep them subservient to other communities forever.

Any protest against any of these inhuman practices by any individual would be met with severe punishment on the entire community, most of the time specifically targeting women. These forms of violence could be individual or mass attacks, using small weapons to deadly weapons, individual murder to mass killing, individual rape to gang rape, and individual boycott to social boycott, bans on the use of roads to bans on the use of lands, ostracising from the community to eviction from the village itself.

All the violence and all the abuse against these socially excluded communities are indulged in by all dominant communities, i.e non-scheduled communities, the non-Dalit and non-Adivasi. Most of the time, these dominant communities humiliate by public shaming, making them to eat faecal and obnoxious matters or drink urine, garlanding with chappals, by tonsuring the head fully or partially, blackening the face, parading women naked, and so many other inhuman and barbaric practices to destroy their self-esteem, economic growth, and opportunities for social mobility.

Article 17 of Indian constitution says ‘untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. The Untouchability (Offences) Act 1955 and the Protection of Civil Rights Act 1977 were efforts made to give teeth to Article 17 of the Indian Constitution. But the impact was almost nil. The number of cases registered and number of cases convicted under this Act is clear evidence that the efforts to implement this Act at the ground level are negligible.

Can anyone say that there is no untouchability in this country? Studies by Sakshi and other organisations show that the practice of untouchability is manifested in more than 150 ways and is ever increasing in more hidden methods. Justice Punnaiah’s study of untouchability practices in Andhra Pradesh proved that prohibition on temple entry, two glasses system in hotels, denial of saloon and dhobi services are still prevalent in many villages.

If this is the situation even today, when do we expect the promised justice, liberty, equality, and fraternity for these communities as envisaged by our constitution? How do we, as a country, achieve this dream?

A fundamental shift: Chundurur and Karamchedu

From the 1980s onwards, there was a change in the development approach among the Civil Society Organisations (CSOs), from charity to development, from individual development to community development, from development to rights, from rights to human rights, from human rights to women and child rights, and from human rights in general to Dalit rights and Adivasi rights.

This change in thinking from development to Dalit human rights, made CSOs to look into the fundamental rights guaranteed under the constitution – social, civil, political, and economic rights – and the applicability of these rights to land, water, livelihoods - participation and development. The focus thus shifted to the access of the socially excluded communities to these

rights at the ground level. This resulted in many issues, conflicts, controversies, challenges, violations, and violence.

On the other hand, the emergence of Dalit and Adivasi mass organisations and raising their challenges to the government and to the society to realise their rights, self-respect, and dignity, has become more visible and stronger by the day.

The Karamchedu massacre of 1985 and the Chunduru (also spelt Tsunduru) massacre of 1991 in Andhra Pradesh, and many similar incidents in other parts of the country made the government to bring in the PoA Act. By the time the PoA Act Rules were framed in 1995, CSOs were actively working on issues of land rights, civil rights, housing rights of the scheduled communities, and against atrocities on them.

Sakshi Human Rights Watch, a CSO, was established to work exclusively on the human rights of the socially excluded communities – the scheduled castes (Dalit) and the scheduled tribes (Adivasi) – with the slogan ‘Dalit Rights are Human Rights’. Of course, there were comments like ‘why should there be separate human rights for Dalits and Adivasis’. But in no time, they realised that this change in approach brought out real issues of the scheduled communities which were never brought up in ‘general’ human rights discourse.

A witness for human rights

Sakshi Human Rights Watch, Andhra Pradesh, started monitoring the status of Dalit and Adivasi human rights by monitoring the implementation of the PoA Act. The preliminary study itself brought out many issues.

General awareness

There was no awareness about the PoA Act among the Dalits, Adivasis, CSOs, Human Rights Defenders (HRD), and the general public. CSOs, community leaders, and HRDs seeking justice for Dalits and Adivasis actively pursued the cases up to police stations. Once the case was filed, they

were back to their routine work as if their task was complete. There was no proper follow up support to the affected people in the judicial process.

The police

The police, who are responsible for investigation and filing charge sheets, were not well versed with the PoA Act. This resulted in charge sheets without proper sections of the Act being invoked. Section 3i(x) of the PoA Act was routinely invoked for every case.

As per the Act, the investigating officer should be not less than the rank of deputy superintendent of police (DySP), and should file the charge sheet. But in many cases investigations were done, and the charge sheets were filed, by officers below the rank of DySP. Because of this, some cases were technically disqualified and disposed-off in the court. In some cases, there were gaps between the charge sheet and the presentation of the investigation officer in court. The charge sheet should be filed within three months (90 days) of the incident. In 90% of the cases, it was not filed within prescribed time and in some cases, it exceeded three years.

Instead, counter (false) cases were filed against victims, witnesses, their family members and they were threatened with arrests and dire consequences. In many cases, the accused were not arrested, but the victims and their dependents were arrested using these false counter cases. They were under pressure continuously and forced into 'compromise' to withdraw the case or turn hostile through caste, political, and economic influence.

Survivors, witnesses, dependents, and community leaders who accompanied them were disrespected at the police station. They were disrespected irrespective of their age and gender, and filthy language was often used against them. Throughout the process, they were discriminated against, discouraged, and dehumanised. This created a fear among them to even approach the police station.

They had no knowledge about special courts and Special Public Prosecutors (SPP). There was no proper coordination between them and the SPP. In most of the cases, they did not even know that the SPP was appointed on their behalf.

Though there was provision of travel allowance, daily allowance, and maintenance expenses, there was no proper system to see that these allowances were paid. In the majority cases, these allowances were not paid at all.

The special public prosecutors

The SPPs used to ill-treat the survivors. The survivors and witnesses were not given proper briefing about the case, how to give the statement in the court, or about cross examination by the defence lawyers. They were not given proper or timely information about adjournments and other court proceedings of the case.

In many cases, when the witnesses were from the same community of the victim – and naturally so – that witness was judged as an interested witness. Though it was very clear that the SPP was biased and colluding with the defence advocate, the survivors were not given the option to choose their own advocate. They were forced to retain the prosecutor employed by the government.

The special courts

The Act provided for exclusive special courts. Many district sessions courts were designated as special courts, but not as exclusive special courts. Hence all types of cases were dealt in those courts. Consequently, these designated courts took a long time to deal with cases under PoA Act. Survivors were frustrated and scared of engaging with the long and tedious judiciary process.

If the survivor persisted, the accused were acquitted on hyper-technical grounds like – the offence was not committed '*on the grounds of victims*

being scheduled caste or scheduled tribe', or was not 'in public view' – as required under the PoA Act.

Where there was acquittal in the special courts, the state seldom filed appeals in the high court. Neither the SPP nor the state government show any interest in getting justice to the victims. Little wonder then that the conviction rates are in the single digits even now. At the turn of the century, in the early 2000s, the conviction rate of cases under POA Act was hardly 2.5%. After 20 years, i.e. in 2020, it is not more than 8%.

The monitoring mechanisms

In many districts, the District Vigilance and Monitoring Committees (DVMCs) were not constituted, and no proper compliances of reviews and reports. Instead of identifying atrocity prone areas, and drafting preventive plans and measures, the officials and political leaders, in the mistaken belief that more cases registered under the PoA Act would reflect badly on them, tried to suppress cases without proper registration and follow up.

The Sakshi response

Building awareness: Sakshi Human Rights Watch thought it very important to create knowledge and awareness about the PoA Act and Rules, while simultaneously monitoring its implementation status. To that end, several seminars and workshops were conducted with university students, CSOs and community leaders, and HRDs. The Act and Rules were translated into Telugu and brought out as pocket books for quick reference in the form of calendars, posters, books, etc. This was distributed widely to community leaders, HRDs, CSOs, and government officers. Concurrently, meetings were organised with officials, legislators, and cabinet ministers to share information about the PoA Act, Rules, and challenges in getting justice to the victims. There was a good response from every sector.

Building capacity: Sakshi collaborated with mass organisations, trained them on fact finding, reporting, and follow up processes in getting justice to affected people. Simultaneously, Dalit and Adivasi advocates in each

district were trained on the Act, the judicial process, and to support victims and witnesses in their struggle for justice. Later, these advocates formed the state level 'Sakshi Dalit Advocates Forum Andhra Pradesh', highlighted the issues of Dalits at the state level, and brought out the need for effective implementation the PoA Act and Rules.

Building support: Then a meeting of survivors, witnesses, and advocates was organised. This encouraged proper follow up and support of advocates in dealing with their cases and supported the survivors and witnesses in interfacing with the judicial processes. In a number of cases, the Dalit advocates joined as assisting advocates to the public prosecutors, and coordinated between victims and SPPs, and ensured that proper sections of the PoA Act were invoked in the charge sheet.

Building evidence: With the awareness and support processes in place, Sakshi collected incontrovertible evidence on the lapses in implementation of the Act. Sakshi conducted fact findings (citizens investigations) on the most inhuman atrocities: murder, rape, gang rape, social boycott, etc., brought out reports, and shared them with concerned authorities and sectors. In addition, all atrocities published in the newspapers and other direct sources were collected and analysed. The analysis covered the reasons for the atrocities, damages, losses, and the status of the case. These were brought out in a comprehensive annual report on the *Status of Rights of the Scheduled Castes and Scheduled Tribes and the Implementation of the PoA Act in Andhra Pradesh*. This report was shared and discussed widely through various channels.

A generational shift

Now, in 2020, 30 years have passed since the PoA Act has come into existence. A lot of changes have taken place in the society. The scheduled communities – the Dalits and the Adivasis – especially their leaders and educated youth are well aware of the Act. There is a sense of confidence among them that the PoA Act is for their protection. Many CSOs, Dalit and Adivasi mass organisations, and HRDs are actively

involved in protecting Dalit and Adivasi human rights, standing in support of victims, witnesses, survivors and their dependents using the PoA Act as main instrument in getting justice. Police and other concerned officials also know the importance of this Act in the present situation, their responsibility, and the need to be cautious while discharging their duties under this Act.

Networks of CSOs and mass organisations came together at the national level and demanded the effective implementation of the PoA Act, due to which amendments to the Act were brought in 2014, 2016, and 2018. Many issues and hurdles faced by victims and witnesses in accessing this Act were addressed and solutions were incorporated into the Act through these amendments.

Though there are appreciable changes taking place in connection to the Act and its accessibility to communities, there are no equal changes taking place in getting justice to the victims and survivors. The conviction rate remains stubbornly at 8%.

The way forward

Unlike other Acts, the PoA Act provides special mechanisms for the effective implementation of the Act and its Rules. Robust mechanisms are built into the Act for the effective implementation, including for prosecution of the cases, and for monitoring the implementation of its various provisions.

Some of the special provisions are:

- Sub-divisional, district, and state level vigilance and monitoring committees, headed by the sub-divisional magistrate, district magistrate, and the state chief minister respectively are mandatory. The roles of the committees and its members are also clearly spelt out in the Act and rules.
- It is the binding responsibility of the state to identify and declare atrocity prone areas, draft contingency plans for prevention, investigation, relief and rehabilitation.
- Punishment for the negligence of duties by officers responsible under the Act is explicit in the Act.

- The responsibility to respect and ensure all the rights of victims, their dependants, and witnesses provided under Section 15A, chapter IVA of the Act is unambiguously fixed on the respective state governments.
- Timely reviews and reporting systems to be followed at each level, with specific dates, periodicity, and specific officials to generate the report and to receive them is clearly delineated.

It is clear, even for a lay person, that the responsibility for the effective implementation of the Act lies on the state government vis-a-vis all the authorities under the purview of the PoA Act. However, for the state government and its authorities, it is seen as an additional responsibility. Therefore, it is given low priority and their discharge of the responsibilities under this Act become notional.

This is where CSOs in Tamil Nadu have made new intervention into this PoA Act. They realised that unless we make the inbuilt monitoring mechanisms of the Act to function actively, effective implementation of this Act will not take place. So, they have come up with a strategy of '*monitoring of monitors of the PoA Act*'. Citizens Vigilance and Monitoring Communities (CVMCs) are promoted at every level parallel to the government committees. Through these committees, the CVMCs are systematically collecting information about the discharge of responsibilities by the officials using the Right to Information Act, 2005. These reports are consolidated, analysed, and disseminated in annual reports on the status of implementation of the PoA Act in Tamil Nadu. It is shared with the state government at all levels and thereby, alerts those officials about the status of implementation in their jurisdiction.

I think this is the need of the hour. CSOs and human rights organisations in every state should take up this approach and increase the access of justice to victims of atrocities.



11

Kanooni Margdarshan Kendra

Centre for Social Justice

“Owing to entrenched caste dynamics, pursuing legal action exposes victims to considerable risk from the community. The potential dangers and pressure to reach an out-of-court settlement, also deter witnesses from testifying in court.”

Chattisgarh

Legal responses to caste atrocities in Chhattisgarh

Kanooni Margdarshan Kendra (KMK)

Introduction

The Constitution of India protects the fundamental right of all citizens to live with dignity, free from discrimination, exploitation and violence based on caste, religion, gender etc. Article 17 further bans the practice of untouchability, while Article 46 directs states to protect members of the scheduled castes and scheduled tribes from ‘injustice and all forms of social exploitation’. Constitutional safeguards, however, require an adequate implementation machinery. Recognising this, the PoA Act was introduced in 1989 to prevent and prosecute caste-based atrocities and rehabilitate victims of such atrocities.

The Act is a comprehensive piece of legislation, aimed at curbing the high prevalence of caste-based atrocities in the country. The first section of the Act defines behaviour or conduct that is considered an ‘atrocities’ and stipulates punishment. Committing an atrocity is made both a cognisable and non-bailable offence by the Act. The 37 offences that meet this definition include the following: physical violence, sexual violence, exclusion from public spaces, humiliation/act derogatory to human dignity, economic damage, forceful occupation of land and tampering with voting, amongst many others. Another central tenet of the Act is a robust victims’ rights framework, which includes relief, rehabilitation, compensation, and protection. The Act additionally establishes a number of special institutions and bodies, and appoints designated officials to ensure effective implementation. These include special courts, special police cells, and special public prosecutors. It simultaneously prescribes specific duties to various public officials such as conducting spot-checks, submitting

action reports etc., and creates a system for prosecuting official inaction. Furthermore, it mandates preventive action by requiring the state government to identify and take active steps to curtail atrocities in atrocity prone areas, and empowers public officials to remove individuals likely to commit atrocities from their jurisdiction. To monitor overall implementation, the PoA Act calls for the constitution of state, district, and sub-divisional level vigilance and monitoring committees. Additionally, all states are meant to appoint a nodal authority to oversee implementation of the Act. In Chhattisgarh, the Secretary of the Department of Tribal and Scheduled Castes, Chhattisgarh, has been appointed as the nodal authority¹.

Yet, atrocities against Dalits and Adivasis continue unabated. According to data compiled by the National Crime Records Bureau (NCRB), 645 cases were registered under the PoA Act in Chhattisgarh in 2016². Considering low rates of reporting, this represents merely a fraction of the total number of incidents of caste violence. Even when victims report to the police, they are confronted by an apathetic and often violent state machinery. A significant gulf thus exists between the law as written and realities on the ground, revealing the failure of the state in protecting some of its most vulnerable citizens. Immediate and effective state action that is proportionate to the gravity of the situation is hence imperative.

Drawing on research undertaken by Kanooni Margdarshan Kendra (KMK) on the implementation of the PoA Act, the present report puts forward a number of critical demands to the Chhattisgarh Government aimed at ensuring proper implementation of the Act in question. These are the interim findings and related demands of an ongoing research project. This report is structured as follows: an overview of the PoA Act followed

1 Ministry of Social Justice and Welfare, Report u/s 21 (4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for the year 2016 <<http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20Report%20-PoA-2016636583494050069100.pdf>>

2 Crime in India 2016, National Crime Records Bureau <<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEUPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>>

by an analysis of barriers to implementation of the Act. Here, the focus is on four thematics namely – criminal process from FIR to trial, relief and rehabilitation, precautionary and preventive mechanisms, and implementation mechanisms. The report ends with recommendations based on the research so far. The report draws on experiences of 17 victims (who KMK assisted in court) and data collected through Right to Information applications.

PoA Act and the criminal justice system: from FIR to trial

The following section documents the experience of KMK victims in progressing through each stage of the criminal justice system. The qualitative experiences are complemented by RTI data to analyse the status of both laws/policies and institutions in the PoA Act that fall within this theme. The analysis reveals concerning levels of state inaction.

FIR registration

Registration of FIR is the first and most important aspect of any criminal proceeding. Without this, the criminal justice machinery cannot be activated. Recognising this, Section 4 of the PoA Act places a duty upon police officers to register an FIR under relevant provisions of the Act, and provides for criminal prosecution of police officers for failing to do so. Furthermore, Section 154 of the Code of Criminal Procedure makes registration of FIR by the police compulsory on receiving any information that reveals the commission of a cognisable offence (all offences under the Act are cognisable).

Despite this, we found a number of irregularities in the FIR registration process:

- In 5 out of 17 cases, the police registered the complaint under the Indian Penal Code, but refused to include relevant sections of the PoA Act in the FIR. Here again, PoA Act was only included after KMK's intervention.

- Police often insist on procuring caste certificates before registering an FIR under the PoA Act. The Supreme Court, in the case of *Lalita Kumari vs Govt of UP*³, held that pursuant to Section 154 of CrPC, police need not ascertain credibility of information received to lodge an FIR for cognisable offences as long as the information reveals commission of a cognisable offence. Proof of caste is hence not required at the FIR stage.
- It has become routine practice for police stations to lodge an FIR under IPC, and subsequently transfer the FIR to special scheduled caste/scheduled tribe Police Stations for registration under PoA Act. While information of all cases concerning scheduled caste/scheduled tribe individuals must be transferred to the Special Police Station, registration of FIR is the responsibility of the officer-in-charge of the police station where the complaint is first made.

The consequences of this are manifold. Not only does this absolve perpetrators, but non-registration of PoA Act on the FIR also deprives victims of special measures under the Act, including compensation. As a result, justice is being denied before the legal process can even begin.

Submission of charge sheet

Section 4(2)(e) and Rule 7(1) place a duty upon the investigating officer to submit the charge sheet to the special court established under the PoA Act within 60 days. However, this condition is rarely followed. The charge sheet was not submitted within 60 days in 15 out of 17 of KMK's cases. Furthermore, NCRB data shows that police in Chhattisgarh had 756 cases under PoA Act in 2016 (112 were pending cases from the previous year), of which 108 were pending with the police at the end of 2016 i.e. no charge sheet was submitted⁴. While these numbers do not convey the exact

³ *Lalita Kumari v. Govt. of U.P* [W.P.(CrI) No; 68/2008]

⁴ *Crime in India 2016*, National Crime Records Bureau <<http://ncrb.gov.in/StatPublications/CI/CI2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>>

number of cases where it took longer than 60 days to file the charge sheet, the high pendency rate suggests that the 60 day rule is being blatantly violated, leaving victims in a state of uncertainty.

Trial

Section 14 similarly stipulates that, wherever possible, the trial must conclude within 60 days of filing of a charge sheet, and that trial must be conducted on a continuous day after day basis. This did not happen in any of KMK's cases, with some cases pending in court for over two years. NCRB data on case pendency of PoA cases in Chhattisgarh courts shows that there were a total of 2,545 cases pending at the end of 2016⁵. The fact that this figure is almost four times the number of total PoA Act cases registered in Chhattisgarh in 2016 (645) speaks to the alarming extent of the problem⁶. It is therefore clear that cases are not ending within the prescribed two month period.

Special police stations

The PoA Act framework further establishes special police stations in all districts to address cases of atrocities. The underlying rationale is to designate a space that is sensitive to the issues facing Dalits and Adivasis and is capable of upholding their rights within the criminal justice system. According to RTI data sought by KMK, as of 2016, special police stations had been set up in only 13 out of 27 districts (corroborated by the Ministry of Social Justice and Welfare report on implementation of PoA Act, 2016)⁷. In the absence of special police stations, mechanisms to check rampant bias amongst ground level functionaries are further weakened.

⁵ *Ibid*

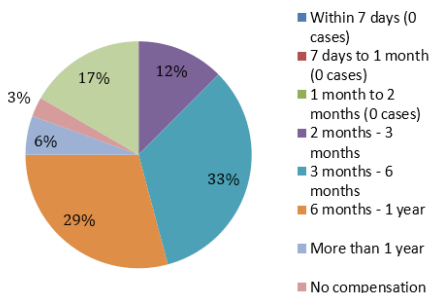
⁶ *Ibid*

⁷ *Ministry of Social Justice and Welfare, Report u/s 21 (4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for the year 2016* <<http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20Report%20-PoA-2016636583494050069100.pdf>>

Protection of victims and witness during trial

Owing to entrenched caste dynamics, pursuing legal action exposes victims to considerable risk from the community. The potential dangers and pressure to reach an out-of-court settlement, also deter witnesses from testifying incourt. To counter this, Section 15A states that the special court is required to make all arrangements to protect witnesses and victims including through police protection, and calls upon all states to formulate a policy including such measures. None of the victims assisted by the centre were provided any protection by

RAIPUR: Time between FIR and first compensation (1/1/16 - 31/12/18)



the state. Moreover, experience on the ground suggests that no police protection scheme has been notified, or if it has, relevant institutions at the district and block level such as scheduled caste/scheduled tribe police stations, DVMCs and district level representatives of the scheduled caste/scheduled tribe Department are not aware of the scheme. As a result, the very people that the PoA Act purports to protect are subjected to greater risk and uncertainty.

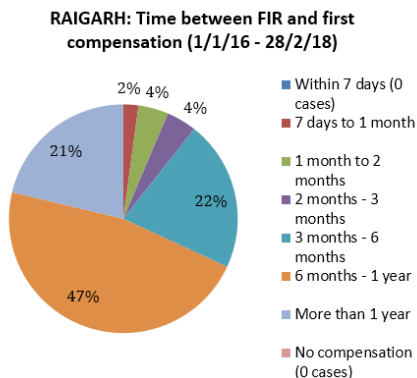
Relief and rehabilitation

While conviction is undeniably, a key component of justice for victims, compensation, and rehabilitation are equally important. Adequate compensation within a reasonable time frame and rehabilitation in the way of housing, employment, education, legal and medical aid etc., are critical for allowing victims to rebuild their lives. However, the analysis below reveals multiple gaps and implementation failures.

Disbursement of monetary compensation

Rule 12(4) of the PoA Act stipulates that victims must receive compensation within seven days of FIR registration to meet their immediate needs. For most offences, compensation is to be disbursed in three stages – on FIR

registration, on submission of charge sheet, and on conviction, as per Annexure I of the Act. In some cases, such as murder, only two stages are prescribed (50% on post mortem report and 50% on charge sheet), the Act further stipulates a compensation scale for various offences and provides minimum amounts. KMK sought information from special scheduled caste/scheduled tribe police stations in Raipur, Bilaspur and Raigarh on the gap between FIR registration and disbursement of the first instalment through RTI applications. The data reveals significant delays in disbursement of compensation. Compensation was not released within seven days in any of the recorded cases. Most cases in Raipur and Bilaspur fell within the '3 to 6 months' category, followed closely by the 'more than 1 year' category. In Raigarh, the inverse was true, wherein most cases fell in the 'more than 1 year' category, followed by the '3 to 6 months' category.

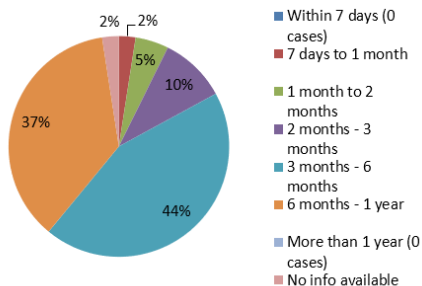


Experiences from the field corroborate these findings. None of the victims whom KMK has assisted received the first instalment within seven days or any form of immediate relief (medical, shelter, clothing, food). Moreover, the staged process of compensation disbursement was not followed in any of KMK's cases. Instead, in all cases, the first and second instalment were combined and released at the charge sheet stage, thereby defeating the purpose of immediate compensation.

Another significant finding is that in many districts compensation disbursement is taking place solely during the meetings of the District Vigilance and Monitoring Committee (DVMC), established as per Rule 17 of the PoA Act. A review of DVMC minutes from 16 districts, obtained through an RTI application, shows that in many districts, meetings have become a forum for mass disbursement of compensation. This was confirmed by

reviewing data on compensation in individual cases sought from special scheduled caste/scheduled tribe police stations (discussed above). It was observed that the date of compensation disbursement was the same for multiple cases occurring within a certain time frame. The date of disbursement also often corresponded with the date of the DVMC meeting in the concerned district. Together, this reveals that collective disbursement of compensation has become a routine practice. Since DVMC meetings are only meant to take place every quarter, and happen even less frequently in reality, payment of compensation is being significantly delayed. While it is the duty of the DVMC to monitor cases and compensation (Rule 17), nowhere in the PoA Act or Rules is the DVMC given exclusive power to release compensation.

BILASPUR: Time between FIR and first compensation (1/4/16 - 1/10/17)



Disbursement of non-monetary compensation

In addition to the above, the PoA Act and Rules stipulate that the following non-monetary rehabilitation be provided to victims. This includes:

- Immediate relief in the form of clothing, medical aid, shelter and food within seven days of complaint (Rule 12(4A)).
- KMK sought details of all victims who were given non-monetary immediate relief within seven days as per Rule 12(4) from special police stations in Raipur, Bilaspur and Raigarh. Bilaspur Special Police Station responded that no such relief had been provided, while Raipur Special Police Station replied that they did not have the required information. Raigarh Special Police Station returned a list of all victims, with no information on relief provided. This suggests that non-monetary immediate relief has not been provided to anyone in these three districts.
- Non-monetary compensation was not provided in any of KMK's cases.

- Socio-economic rehabilitation during investigation, inquiry and trial (to be provided by special/exclusive special courts – Section 15A(6)(c)).
 - No such rehabilitation was provided in the 17 cases that KMK is involved in.
- The following additional measures for victims of murder, massacre, rape, gang rape, permanent incapacitation, and dacoity within three months of the atrocity (S no. 46, Annexure I)
 - Pension to widows or other dependents of the deceased person.
 - Employment to one member of the family of the deceased person.
 - Provision of agricultural land and house to family of the deceased.
 - Full cost of the education up to graduation level and maintenance of the children of the victims.
 - Provision of utensils, rice, wheat, dals, pulse etc. for a period of three months.
 - Many of KMK's cases fall within this category. Yet, none of the victims were given any rehabilitative measures apart from monetary compensation.
- Travelling allowance and daily allowance to be provided by the district magistrate and special courts, as per Rule 11.
 - While some of KMK's clients received TADA, it is rare for the court to order payment on its own initiative. In most cases, it was only on requesting TADA from the court that KMK's clients were given the payment. This suggests that a victim, without someone to guide them, would not be able to avail this entitlement
 - KMK has also observed that victims are often not given TADA if the hearing gets adjourned.
- Free legal aid

PoA Act stipulates that all victims of atrocities will be provided free legal aid (Section 21(2)(a)). The Legal Services Authorities Act 1987 further mentions that District Legal Service Authorities (DLSA) are to provide free legal aid to all scheduled caste/scheduled tribe victims and litigants. However, KMK's experience suggests that this rarely, if ever, happens.

Furthermore, state governments are meant to formulate schemes containing relief and rehabilitation packages pursuant to Section 15A(11) and Rule 15. The schemes must provide for immediate relief and rehabilitation, allotment of agricultural land, government, employment, pension, housing, health care etc. KMK's experience suggests that no schemes have been notified in Chhattisgarh. Moreover, KMK sought information from the Chhattisgarh Scheduled Caste/Scheduled Tribe Department on victims who had received the following pursuant to Rule 15 from 1 January 2016 – 30 July 2018 in the entire state: agricultural land, employment, pension, and rehabilitation packages. No information was received. The RTI application is currently in the appeal process. From this, an inference can be drawn that the above has not been provided anywhere.

Power of district magistrate to access treasury

Rule 12(4A) of the PoA Act stipulates that the state government may give the district magistrate powers to access the state treasury in order to provide monetary and non-monetary relief within the mandated seven-day period. KMK filed an RTI seeking names of districts where such powers have been granted. Despite multiple appeals, KMK did not receive any information from the Scheduled Caste/Scheduled Tribe Department, Chhattisgarh or the various institutions that the RTI was transferred to (Law and Legislative Affairs Department, Chhattisgarh and Scheduled Caste/Scheduled Tribe Protection Cell, Chhattisgarh). Non-availability of this information with the scheduled caste/scheduled tribe Department suggests that no such power has been granted anywhere. Without powers to access the treasury, releasing compensation within seven days at the district level becomes challenging.

Precautionary and preventive measures

An Act aimed at curbing atrocities is meaningless unless it establishes precautionary and prevention mechanisms. Three such mechanisms that the PoA Act contains will be discussed below.

- Identification of atrocity prone areas

Section 17 of the Act states that the district magistrate, deputy superintendent of police, or superintendent of police must declare an area as 'atrocity prone' if they have sufficient reason to believe that an atrocity is likely to occur or if there is a risk of reoffending. Once declared as atrocity prone, they must seize all illegal firearms and cancel arms licenses, if necessary. In all areas identified as atrocity prone, a special officer not below the rank of additional district magistrate is to be appointed to coordinate implementation of the Act (Rule 10).

According to RTI data, no such areas have been identified as of 2018. KMK's RTI application was initially addressed to the scheduled caste/scheduled tribe department, which transferred the application to the scheduled caste/scheduled tribe Protection Cell, which then transferred the application to the police headquarters. None of these bodies had the required information, leading to the inference that atrocity prone areas have not been declared. The Ministry of Social Justice and Welfare's 2016 monitoring report under Section 21 of the Act confirms that atrocity prone areas have not been declared⁸. Curiously, according to the report, special officers pursuant to Rule 10 have been appointed in all districts as a preventive measure, even though atrocity prone areas have not been declared⁹. However, despite extensive ground experience through which KMK has developed strong relationships with government departments, we have never come across any special officers. This suggests that special officers, even if appointed, exist merely on paper.

8 Ministry of Social Justice and Welfare, Report u/s 21 (4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for the year 2016<<http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20Report%20-PoA-2016636583494050069100.pdf>>

9 Ibid

- **Spot inspections**

As per Rule 6, whenever the district magistrate, sub-divisional magistrate, or any other executive magistrate, or any police officer not below the rank of deputy superintendent of police receives information that an atrocity has occurred within their jurisdiction, they must immediately visit the place where the atrocity has occurred and submit a report to the state government. Further, the official must immediately order intensive police patrolling of the area, provide protection to victims and witnesses, and arrange immediate relief for the victims. KMK sought reports of '*Spot Check*' inspections pursuant to Rule 6 from the Chhattisgarh Scheduled Caste/Scheduled Tribe Department. The response KMK received was that the department had received no such reports, suggesting that spot checks have not taken place anywhere in the State.

- **Awareness centres**

Pursuant to Rule 3, the state government is required to establish awareness centres in atrocity prone areas to disseminate information about the rights and protection mechanisms under the PoA Act. No information was received in response to an RTI application seeking information on the number of awareness centres established in Chhattisgarh as of 2017, suggesting that no awareness centres exist.

Considering the high rates of violence against Dalits and Adivasis in the state, it is alarming that state functionaries are taking no steps to prevent atrocities. This ultimately allows caste violence to continue, further undermining and eroding the rights and safety of Dalits and Adivasis in the state.

Monitoring mechanisms

To ensure smooth implementation, and to hold public officials accountable for performing their duties under the PoA Act, the Act sets up monitoring and vigilance committees at the state, district and sub-divisional level. These committees, consisting of public servants and civil society representatives and chaired by the district magistrate, are an indispensable part of the

overall framework of the PoA Act.

Based on Rule 17 (that establishes DVMCs) and a perusal of various government duties under the PoA Act, the functions of the DVMCs can be summarised as follows:

- Sit four times a year.
- Identify cases of atrocities in their area.
- Monitor and follow up on cases.
- Ensure that victims are getting relief and rehabilitation according to the provisions of this Act.
- Monitor implementation of the victims and witnesses rights and protection scheme under Section 15A(11) of the Act.
- Identify atrocity prone areas and take appropriate measures.
- Take preventive measures.
- Review performance of various bodies and officials under the PoA Act (special public prosecutor, special police stations, special officers under Section 10).
- Review reports of spot checks under Rule 6.
- Raise awareness of rights and entitlements under the Act.
- Hold public officials accountable for non-performance, invoking Section 4 of the Act.

KMK sought minutes of DVMC meetings from all 27 districts in Chhattisgarh from 1 January 2016 – 30 June 2018 and received data from 16 districts. The data shows the following:

- Meetings are not being held regularly (4 times a year) in most districts.
- None of the meetings in any of the districts discussed the following: spot checks, review of special public prosecutors, special police stations, special officers, reports of violations under Section 4 (non-performance of public servant) preventive measures and scheme under Section 15A(11).
- None of the committees took any active steps to seek out or identify cases of atrocities.

- In two districts (Jashpur and Sarguja), there was some discussion of identification of atrocity prone areas in six and one meetings respectively, but no further action was taken. In Jashpur, the committee concluded that no atrocity prone area existed, in four out of the six meetings. None of the other districts discussed were atrocity prone areas.
- In general, non-monetary compensation, including whether victims are receiving immediate relief within seven days, was not discussed anywhere. Skill development training was organised in some cases in Dhamtari, and the committee discussed awarding a business loan to some women in Sarguja. However, these were the exceptions by far.
- There was some discussion about the need for awareness programmes in four districts, but no concrete steps were taken to organise these sessions (as inferred from minutes of subsequent meetings).
- Most meetings have become a forum to cursorily discuss cases i.e., the facts of cases and status of pending cases were briefly discussed. There was never any discussion on the performance of various public officials in handling the cases being discussed, and rarely any follow up steps to ensure compliance with provisions of the Act. Where follow up steps were decided upon or instructions given to public servants, these were rarely, if ever, monitored in subsequent meetings. Some general observations, such as video recording statements and expediting caste certificates for investigation, were made in several meetings, but no concrete follow up steps were ever finalised.
- The focus of the meetings in almost all districts is on finalising and disbursing compensation (in some, even this is not happening). As discussed above, compensation disbursement does not fall within the committee's duties and is resulting in significant delays.

The above analysis highlights that the committees are largely ineffective in monitoring implementation, and that meetings fail to address key issues

under the Act. As a result, the efficacy of the Act is being severely undermined.

Recommendations

A close analysis of the status of various provisions and implementation bodies under the PoA Act shows that laws, policies, and institutions, while present on paper, are not being properly implemented. This is impinging upon the overall effectiveness of the Act and leaving it largely toothless, despite its potential in theory. Based on the above research, KMK makes the following demands to the State Government:

- Order all district magistrates, as chairs of the DVMCs, to monitor the following and enquire into non-performance under Section 4 of PoA Act
- Refusal of police officers to register FIRs.
- Delays in charge-sheeting by investigation officers.
- Protection offered to victims and witnesses in the aftermath of an incident.
- Order district magistrates to submit monthly reports on status of cases registered under the PoA Act.
- Establish special police stations in the 14 remaining districts.
- Establish exclusive special courts in all districts.
- Appoint special public prosecutors in all districts.
- Immediately take action to expedite pending cases, and fill judge vacancies to do so.
- Empower all district magistrates under Rule 12(4) to access the treasury, in order to provide monetary and non-monetary relief within seven days.
- Take appropriate action against district magistrates for inaction under Section 4, as well as for failing to provide compensation and rehabilitation, in compliance with other provisions of the Act (as discussed above)
- Order all FIRs to be sent immediately to the DM, in order to begin the compensation process promptly.

- Formulate and implement a scheme for provision of relief and rehabilitation pursuant to Rule 15.
- Formulate and implement a scheme to protect victims and witnesses rights, pursuant to Rule 15A(11).
- Establish shelter homes for victims of atrocities in all districts.
- Coordinate with the District Legal Services Authority (DLSA) to provide legal aid.
- Immediately identify atrocity-prone areas, and activate special officers in these areas.
- Demand reports of spot checks from all districts under Rule 6 after every incident of atrocity, and commence action under Section 4 for failing to submit reports.
- Establish awareness centres, and coordinate/collaborate with the DLSA in doing so.
- Demand quarterly reports of implementation from all DVMCs, and review performance based on the functions summarised above. Take appropriate action against district magistrates for non-performance of DVMCs under Section 4 of PoA.
- Immediately appoint official and civil society members belonging to scheduled caste/scheduled tribe communities in DVMCs.
- Demand monthly reports from the DVMCs and district magistrates, which review the special public prosecutors, police stations, and the status of all pending cases.
- Table Chhattisgarh's annual report under Section 21(4) of PoA.



12

Manjula Pradeep

Director (Campaigns),
Dalit Human Rights Defenders Network

“That the police officials do not know proper sections of the PoA Act and they don’t feel ashamed about it. The police stations are neither women-friendly nor poor-friendly and, when it comes to marginalised communities like the Dalits, the behaviour of the police is quite insensitive towards them.”

Gujarat

Gujarat: A long way to ensure social justice for Dalits

Manjula Pradeep

Gujarat is one of the states in India, which has high extent of atrocities against Dalits despite it having just 7.01% Dalit population in the state.

My journey of becoming an activist started through my work addressing the issues of Dalits and Dalit human rights violations. While organising and making the Dalit communities aware of their rights and laws to protect their rights, I have prominently used the Constitution of India and the PoA Act.

Increasing crimes

There has been a rapid increase in serious forms of atrocities against Dalits from 2014 to 2017 as shown in NCRB website.

Crimes against Dalits in Gujarat				
Year	Murder	Rape	Grievously hurt	Total cases
2014	27	74	70	1122
2015	17	73	64	1046
2016	32	83	99	1355
2017	25	103	71	1517
Source: National Crime Records Bureau				

Incidents of violence against Dalits have seen a 35% rise in the four years, since 2014. The most shocking fact which is visible in the above table is high number of rape cases reported against Dalit women and girls. Presently as per RTI application of a Dalit rights activist, police protection for Dalit communities is being provided in 30 villages of Gujarat. The state government has declared 11 districts as atrocity prone areas.

Registering a complaint

There are several reasons for the conviction rate of just 3% in Gujarat. The first shocking reality for me, as an activist taking the survivors of atrocities to the police stations, was that the police officials do not know proper sections of the PoA Act and they don't feel ashamed about it.

The police stations are neither women-friendly nor poor-friendly, and when it comes to marginalised communities like the Dalits, the behaviour of the police is quite insensitive towards them. When the affected Dalits go to the police stations, they are in fear and pain, but there is no provision to help them become stable, and then register their complaints. There are times when the police in Gujarat resist in filing complaints of Dalits.

Many times before an atrocity complaint is registered, the accused from dominant castes informs the police to not register the complaint. When a complaint is filed, police insist on filing it under less severe sections, and many times, they insist on filing an application rather than a complaint. There are times when the police face political pressure, to not register the complaints of Dalits and Dalit political leaders, and try to force a compromise in order to better serve their party, and not the best interest of the victim. There are many cases, where the accused have registered cross complaint against the Dalit person, to put pressure on him/her to withdraw the complaint.

Violence against Dalit women

In the cases of sexual violence against Dalit women and girls, the shame which is brought on them by the dominant castes, and Dalit communities as well, make their situation more vulnerable. They are forced to leave their place of dwelling or, as is the case often, they are forced to compromise, and there are times when they end their lives. Despite the PoA Act, Dalit women are not able to use it effectively as they are less literate, and have less access to the police stations. Usually in the cases of sexual violence, the rape survivor is not the complainant, and that's a challenge as there are more possibilities of a compromise, as the complainant most of the times is a Dalit man from her family.

A small study was done by Navsaran titled 'Gender violence and access to justice for Dalit women in three districts of Gujarat'. Through the Right to Information Act, applications were sent to the office of the District Superintendents of Police of Rajkot, Bhavnagar, and Kutch Districts to obtain data on registered cases of atrocities against Dalit women by non-Dalits, from December 2004 to November 2009. The three districts in the study recorded a total of 185 crimes against Dalit women by non-Dalits. Of these, the PoA Act was violated 165 times, as in some instances more than one act of atrocity was committed within a single crime. The 185 crimes included one murder, 20 rapes or gang rapes, 19 acts of outraging modesty, 22 kidnappings, 20 abductions and 18 cases of serious physical injury.

Some of the important findings in this study were:

- The delays in filing a First Information Report (FIR) occurred in 54% of cases, delay in arrest of the accused occurred in 77% of cases, and delay in filing the charge sheet or summary occurred in 26% of the cases.
- Under the provisions of the PoA Act, the court should not grant bail to someone arrested for rape or murder of a Dalit woman. In the 20 cases of rape of Dalit women, in one case bail was granted, and in another the FIR was quashed by the Gujarat High Court. Summary was filed in one case; although it did not mention which type, in two cases Summary B was filed (where the police determine the case was a false complaint), in one case Summary C was filed (where due to lack of evidence complaint is determined to be neither true nor false), and in 16 cases no information regarding bail was available. Additionally, no information was available for one murder case filed.
- With regard to the judicial trial in these cases, we found zero conviction. In 42 cases, there was acquittal, and 25 cases were pending in the trial courts. In 114 cases, information was not available and no follow-up record of case status was submitted to us.

One of the major challenges in the atrocity cases is that despite provision of Deputy Superintendent of Police to do investigation in the cases registered under PoA Act, in a large number of cases the investigation is actually done by the lower ranking officers.

Social and economic boycott

Gujarat has highest number of cases where there are social boycott and forced migration of the affected Dalit communities, due to serious atrocities against them. Social boycott is used as a weapon by the dominant castes when Dalits register a complaint of atrocity to put pressure on them to 'compromise' in the original complaint of atrocity.

Social boycott is done by all the dominant castes in the village. They call a meeting where they declare social boycott of not only the complainant and his family, but of all the Dalit communities in the entire village. It's a collective punishment given to Dalit communities by the dominant castes. During the social boycott, the economic means of Dalits were obstructed. Nobody provides them employment. Nobody allows them to use public or private transport. The Dalits cannot buy vegetables and milk. They cannot get flour from the flour mill. Access to drinking water and irrigation water for Dalits is stopped. The Dalit children cannot go to the village school. This is a trap which is created by the dominant castes to put pressure on the Dalit communities. The state government does not take any action most of the time, and also does not declare it as a social boycott, which means the affected Dalit communities cannot get any kind of support from the state government to survive.

In serious atrocities such as murder of Dalits, there are villages where the entire Dalit community has fled to save their lives. They have demanded that the state government resettle them in another village, and with great effort and support from Dalit rights NGOs, the affected Dalits are being resettled.

Police atrocities and vigilantism

Gujarat is the state where three innocent Dalit youth, of whom two were minor, were shot dead by Gujarat Police in Thangadh town on 22 and 23 September 2012. It was due to the support of Dalit activists that the police was compelled to register an atrocity complaint, though until now no judicial trial has been undertaken, despite several public protests, and petitions in the Gujarat High Court.

On 11 July 2016, a serious atrocity which shook the entire country happened in Una town of Gujarat. Four Dalit youth were accused of killing a cow, tied behind a vehicle, dragged and beaten up badly by more than 40 dominant caste men who are the cow vigilantes. This entire incident happened right in front of Una police, and their sticks and batons were also used by the attackers in this incident. Four years have passed, and still the case is pending in the sessions court. Through the efforts of Dalit activists and Dalit lawyers, a hope is still alive that Una Dalit youth will get justice in this gruesome atrocity.

The major challenge is that despite so many written representations given to the state legal department, the special public prosecutor in this case is not provided any kind of support – neither remuneration, nor a vehicle to defend the atrocity case – by the state government. The reason is that the cow vigilantes function with the support of the right wing party which has been ruling the state since 1995.

Despite high extent of atrocities in Gujarat, no special police stations and no exclusive courts are set up for speedy trial in atrocities cases, not even in the 11 government declared atrocity prone districts.

It's a long way to go to ensure social justice and dignity for Dalits in Gujarat.



13

Yashodha P

Director, SanchayaNele

“The PoA Act is not implemented throughout the state as it should be because the implementing authorities do not show keen interest in getting justice to the Dalits and Adivasis. Many authorities claim to not even know the POA Act in its entirety, despite several millions sunk in training them.”

Karnataka

Social justice: The Karnataka Experience

Yashodha P

Introduction

SanchayaNele, meaning Support Space, is a Dalit woman-led civil society organisation working for the social and economic development of the socially excluded communities, particularly Dalit women, children and men. SanchayaNele started its work in April 2002, and later it was registered as a society under the Karnataka Society's Act in April 2004. In the beginning, it worked in 120 villages of Anekal taluk, Bangalore Urban district, and now it has spread its outreach activities throughout the state of Karnataka, and has its interventions carried out in 20 districts of the state. SanchayaNele is founder–convener of two state level networks working in 20 districts: Karnataka Dalit Mahilla Vedike (KDMV), a network of Dalit women, and the Committee for Monitoring and Strengthening the SCs and STs (PoA) Act–Karnataka (CMASK) with monitoring committees in 20 districts - a broad civil society coalition consisting of Right to Information Activists, human rights defenders, writers and others.

SanchayaNele has systematically monitored the implementation of the PoA Act in Karnataka, initiating CMASK for the purpose. CMASK has released annual monitoring reports on the implementation of the Act in Karnataka, every year since 2010 – the first, and only, state to do so. The annual report monitored for the 10th successive year, was released at Ambedkar Bhavan, Bengaluru on 18 December 2019.

Each report collects information from different government departments, and has specific recommendations for the chief minister, who is the chairperson of the State Vigilance and Monitoring Committee (SVMC), Karnataka, under the PoA Act. The government has taken cognisance of the reports and issued orders for Action Taken Reports (ATRs) from the

concerned departments based on our recommendations, and instructed them to fulfill all their duties under the PoA Act, since ‘the NGOs were asking for it’. Our chief minister’s report card has been referred to, on the floor of the state assembly.

The status of implementation in Karnataka 2018

Karnataka continues to hold the notorious distinction of being one of the worst states for the scheduled castes and scheduled tribes. The 2018 annual report reveals that 2140 recorded crimes committed against the scheduled communities in 2018 – about one every five hours. There were 164 rape cases and 122 attempts to murder or murders reported during the year. Translated that means every two days one Dalit or Adivasi woman was raped, and one murder or an attempt to murder was committed. Karnataka continues to hold the top place for the rate of recorded atrocities against the scheduled communities according to the National Crime Records Bureau (NCRB).

The number of actual crimes is suspected to be much more than the actual crimes reported, as the skewed urban – rural numbers show. This could be because of a combination of the relatively greater awareness and enforcement in urban areas, in comparison to the rural areas where this behaviour has been normalised, and the relatively better ability of the Dalits to ensure enforcement in urban and rural areas. Bengaluru Urban district recorded the maximum number of recorded cases for the seventh year running, with the highest number of cases at 163 reported during 2018. About 33.12% cases have remained pending. Bengaluru Urban (4) and Bengaluru Rural (7) districts reported 11 murder or attempt to murder cases. Bengaluru Urban recorded 8 rapes and Bengaluru Rural recorded 11 rapes under this Act. Mysore recorded the highest number of rapes (13). Belgaum recorded the highest number (16) of murders or attempt to murder.

The administration of justice faltered in the courts. Of the 1087 cases disposed-off, there were only 46 convictions (4.23%) with 874 acquittals

(80.4%), and 167 cases disposed-off in other ways. 10 districts have 0% convictions. There were 1205 pending cases (68.81%) during the year 2018. Only 11 districts have conducted the mandatory four District Vigilance and Monitoring Committee (DVMC) meetings in 2018. The remaining districts have conducted three or two or even just one meeting. Similarly, at the state level, the mandatory State Vigilance and Monitoring Committee (SVMC) meetings were not conducted during the year. The state thus has failed miserably in its duties and responsibilities, as it was supposed to conduct SVMC meetings in January and July each year.

Outcomes and achievements

- The number of DVMC meetings has increased year after year, due to the monitoring reports - it touched 110 in the year 2017.
- The Principal Secretary, SWD-GoK has sent a circular to all the DCs of the state asking for action taken report on all those SPPs who had given 0% conviction during implementation year 2018.
- In 2018, the government had sent circular to all the police stations in the state to observe Dalit Day in all the police stations on all second Sundays, to solve the problems faced by Dalits and for their speedy clearance;
- The Contingency Plan (under Rule 15) has been notified, as a result of the continuous advocacy, including meetings with the minister, the principal secretary and the commissioner of social welfare.

In the pipeline

There is discussion at the state level for some important innovations:

- Establishing a new portfolio 'Additional Advocate General' at the state level to deal with all cases registered under the PoA Act.
- File all atrocity cases at the DCRE of each district headquarters instead of the police stations where the complaints are not being registered properly.
- Establish exclusive special courts in each of the 30 districts. Now there are only eight.

Challenges in monitoring

The delays in getting information from the government considerably hinder our monitoring efforts. The monitoring report consolidates information from three different departments – the Social Welfare Department (SWD), Directorate of Civil Rights Enforcement (DCRE), and the Directorate of Public Prosecutions (DPP). Each department takes their own sweet time to provide the requested information.

The annual report on the implementation of the POA Act prepared by the Government of Karnataka (GoK) is supposed to be sent to the Government of India (GoI) before 1 July. Though our report is scheduled to be released on 14 October, we had to delay our release several times since the GoK report is seldom completed on time.

The third set of delays is the fruits of success. Since the monitoring report revealed and highlighted the performances of all those responsible for implementing the Act, no officer was willing to give the requested information as they were scared that their poor performances would be brought to the notice of the public through this monitoring report. This challenge to the state government as well as district administrations, also impacts access to information.

In the initial stages, we used to get the information relatively easier. As the monitoring report became powerful in the hands of the human rights defenders and Dalit leaders - who started questioning the poor performances of the authorities concerned - the departments concerned demanded that we get the needed information from the departments only through submitting formal RTI requests. The information we received through RTI requests were most often incomplete, and we had to approach the departments concerned repeatedly for complete information.

In some cases, there was non-cooperation from the officers. Cumulatively, these resulted in delays in the compilation of the report, the release, and the post-publication advocacy intervention.

Main blocks to access justice

- *Under recording:* Most crimes against Dalits and Adivasis go unreported, and those that are reported go unrecorded. This helps perpetrators to escape from legal consequences, and justice is denied to the victims.
- *Diluted FIRs:* FIRs are not filed properly and sections of the PoA Act are not invoked, or not correctly invoked. This weakens the cases and helps the culprits escape appropriate punishments.
- *Weak investigation:* Many cases end up as 'B reports' – mistake of fact – blocking access justice.
- *Intimidation:* Victims and witnesses are intimidated by the dominant castes, and so they often cannot bear witness in court. Due to this intimidation, they lack the staying power as the cases move upwards in the courts of law in the fight for justice.
- *Ineffective prosecutors:* SPPs fail to argue the cases forcefully or effectively, and many are not interested in getting justice to the victims. Lack of knowledgeable and skilled advocates from the scheduled communities - who could have shown interest in the community members and got more access to justice for the victims.
- *Insufficient courts:* Only 8 out of 30 districts have exclusive special courts to deal with cases registered under the PoA Act, resulting in a huge number of cases pending without getting the needed attention from the courts of law.
- *Indifferent state:* The PoA Act is not implemented throughout the state as it should be because the implementing authorities do not show keen interest in getting justice to the Dalits and Adivasis. Many authorities claim to not even know the POA Act in its entirety, despite several millions sunk in training them.
- *Ignorance:* Not many community members are aware of the POA Act, and still less about its provisions. Thus, they fail to use the POA Act extensively. Hence, ignorance is one of the blocks to access justice.

The way ahead

Building a team of knowledgeable and skilled leaders from the Dalit and Adivasi communities, is the key to the effective monitoring and implementation of the POA Act in all the districts of the state. There are district and taluk CMASK committees in 20 districts, and in a few taluks for advocacy and intervention. The state level CMASK does the advocacy intervention at the state level. The committee leaders need training in the Act and appropriate skills so that they become efficient in monitoring and advocacy. Regular awareness training on the POA Act has to be conducted for the CMASK members, so that they remain updated to tackle any problem that may arise while doing the monitoring.

The state machinery needs to be motivated to implement the PoA Act properly and effectively, and therefore advocacy with them is essential. Post publication advocacy with the departments, authorities, and ministers concerned, is integral to the monitoring process. The findings and recommendations in the report need to be brought to their notice, and constant follow up with each of them makes a difference.

While compiling the monitoring reports, we may come across many hurdles, but we should never give up. All the needed information needs to be gathered from the departments concerned, consolidated, analysed, and then published so that the data of the performance of the authorities is intimated to the general public. Through this process the implementing agencies can be held accountable for the current status of the implementation of the POA Act in the state. We are hopeful that better implementation of the Act can be achieved, as we strengthen the monitoring activities across the state in the days to come.



**“Three decades down
the line, the case study
of Karnataka makes it
conspicuous that mere
enactment of the law is
insufficient.”**

14

Jayna Kothari

Senior Advocate in the Supreme Court of India

&

Almas Shaikh

Research Associate, Centre for Law & Policy

Karnataka

30 years on and still not being implemented

Jayna Kothari & Almas Shaikh

A brief perusal of the implementation of the PoA Act in Karnataka shows a glaring gap. Although the PoA Act was enacted in 1989 to address violence and atrocities against scheduled caste and scheduled tribe persons, even after 30 years, the legislation is still not being implemented effectively. The PoA Act was amended in 2015, to include new offences and expand the scope of provisions already present to specifically include atrocities against women from scheduled communities, institutional strengthening, access to appeals, establishment of rights of victims and witnesses, and strengthening preventive measures. However, despite the elaborate provisions, its implementation in Karnataka is abysmal. The past decade in fact shows a trend of increasing discrimination and caste-based violence.

Low conviction rates

As per the latest 2017 National Crime Records Bureau's (NCRB) Crime Statistics Report, being the report of the year 2016, Karnataka was the 7th ranked state in India, in terms of the incidence of crimes against scheduled castes. Further, Karnataka was the 5th ranked state in India in terms of incidence of crimes against scheduled tribes. The rate of crime against the scheduled castes in Karnataka has increased from 2015 to 2017. The conviction rate for crimes against the scheduled castes in Karnataka is extremely low, at 1.2% of the 3,564 arrests made. The rate of crime against the scheduled tribes in Karnataka has also seen an increase from 2015 to 2017, and the rate of conviction in crimes against scheduled tribes is at 2%. In 2014, while 1,633 cases were registered under the PoA Act, there was not a single conviction and the conviction rate was 0%. This was despite the state standing third in the country in terms of the number of atrocity cases

being registered¹.

Setting up of special courts and exclusive special courts

Under Section 14 of the PoA Act, the state is responsible for establishing special courts or exclusive special courts to try cases under the Act. The 2016 annual report on the Implementation of the PoA Act by the Department of Social Welfare shows that many districts such as Rural, Ballari, Hassan, and Mandya have a very high number of cases registered under the PoA Act, thereby showcasing a need for establishment of exclusive special courts. However, only eight exclusive special courts have been set up out of 30 districts in total, and some of these districts, which have a very high number of cases, do not have exclusive special courts set up.

Vigilance committee meetings not conducted

Rule 3(vi) of the PoA Rules requires the local authorities to set up vigilance committees, and Rule 16 allows the said committees to have regular meetings. In 2016, there has been only one meeting of the State-level Vigilance and Monitoring Committee (SVMC) in Karnataka². It has been reported that in 2018, only 11 out of 30 districts conducted the meetings of the District level Vigilance and Monitoring Committee (DVMC). Hence, even these minimal provisions of the law are not being complied with³.

Periodic survey not done

As per Section 21(2)(vi) of the PoA Act, the state government has the duty to carry out a periodic survey of the implementation of the Act and the Rules. The aim of this provision is to ensure that the state government is in

1 *Deccan Herald, No justice for SC/ST victims of atrocity, 27.10.2015*

2 *Deccan Herald, Bengaluru City stands second in SC/STs atrocities, 13.11.2018*

3 *The Hindu, No meetings of SC,ST Committees held in 25 States in 3 years', 17.03.2020*

a position to suggest measures for better implementation of the Act. The latest report released is the annual report in 2016.

These are only a few areas of implementation that are focused upon. Conducting investigations, compensating and rehabilitating victims, precautionary measures and preventive actions are the other areas where implementation is appalling. Three decades down the line, the case study of Karnataka makes it conspicuous that mere enactment of the law is insufficient. A continuous monitoring and evaluation of the implementation of the law is needed, if we really want to ensure that caste-based violence is addressed, and there is no discrimination based on caste.



15

Dr.Keval Ukey

State General Secretary, NDMJ Maharashtra

Maharashtra

“The low performance level of SPPs under the PoA Act also adds to the lacunae in the implementation of the Act. Therefore, the data clearly nullifies the claim that the Act is being misused. Instead, it does add up to the evidence of the PoA Act not being implemented.”

Maharashtra: Increase in caste atrocities

Dr.Keval Ukey

The population of Maharashtra was 112,374,333 (Census of India 2011). Maharashtra is the second most populous state in India, after Uttar Pradesh. The scheduled castes population of the state was 13,275,898 (11.81%, Census of India 2011). The scheduled tribes population of the State as per the Census 2011 was 10,510,213 (9.35%). In Maharashtra, Dalits and Adivasis (indigenous people) comprise about 21.16% in total, and have been denied their basic rights due to the lack of law enforcement, and are adversely affected by caste-based violence and atrocities. Maharashtra has a liberation history of over 60 years, but this liberation has not been brought to the lives of Dalits, women, tribes, and many other marginalised sections of the society. Dalits in Maharashtra are the slaves of the caste system, and they are not entitled for their natural rights.

Caste-based discrimination and atrocities are worst form of inhuman practices which Dalits – men, women and children – suffer from even today. Around 14 years back, there were protests in and outside Maharashtra, against the brutal killing of a Buddhist family and of daughter and mother which is known as Khairlanji Hatyakand. There are a number of such atrocities on Dalits in Maharashtra. The main objective of the PoA Act is to prevent various types of offences, injustice, and harassment of Dalits and Adivasis. It is to improve the socio-economic conditions of the communities by safeguarding their lives and rights. Therefore, this special legislation with specific preventive and punitive measures was enacted by parliament. The callousness and impunity within the investigation and legal systems, have prevented the communities to access justice. Long decades of active work in the field of Dalit and Adivasi human rights reveal the non-implementation of PoA Act, which results in the increase of brutal atrocities like Khairlanji.

There are a number of safeguards on paper to ensure the all-round development of the Dalits and Adivasis, and to protect them from all types of exploitation. But the state has failed in its mandate to prevent their victimisation. This is because of wrong perceptions of the community. Some of it is plain denial, such as; *'untouchability is a thing of past and it does not exist at present'*; *'caste based restrictions are part of the system to be maintained'*; *'calling by caste is a practice, not a crime'*; *'educated or economically well-off or social and politically dominant people will not practice caste system and will not commit crimes based on caste'*; *'educated or well-settled Dalits are liberated from caste system'*; *'untouchability exists in rural areas not in urban or in institutions'*. Justification for the bias and discrimination has its own playbook and begins with doubts with statement such as *'Dalits are habituated to commit crimes.'* The courts often rule that atrocities are not committed on the ground of caste-based discrimination, or even that the Act is misused mainly to get compensation. The police and judiciary try to brush the caste angle under the carpet justifying it as: convicting cases under IPC is enough, so the PoA Act need not be invoked; justice to individual is important than social change and therefore 'settling the cases' is better; closing case if victim becomes hostile (not acknowledging that the victim becomes hostile only if there has been threats or social pressure); importance is given to procedural grounds (FIR delay, Investigation not done by competent authority); and crime is not committed on the ground of caste etc.

In many cases, IPC and CrPC are only invoked, and the Act is deliberately ignored. For instance, in 2015, in Maharashtra, only 1% of all FIRs registered by the police were filed by members of the scheduled castes and scheduled tribes. Of these, PoA Act was applied in less than 40% of the complaints. The conviction rate under the Act has been even more dismal, an average of 7% in the last five years. A staggering 87% of the cases are still pending trial. The National Crime Records Bureau (NCRB) data clearly shows a sharp increase in atrocities on scheduled castes in Maharashtra. The atrocities reported against the scheduled tribes remain much lower owing to their lower percentile in the state. Atrocities against the scheduled castes

between 2013 and 2015, reflect a sharp increase in Maharashtra as compared to 2011 and 2012.

According to the state home ministry, 331 cases of rape and 97 cases of murder of Dalits in the year 2015, were reported. In 2016, the number of rapes of Dalit women had already reached 142 and murder 36 by June 2016. Highest number of crimes against Dalits was registered in Pune division: with 544 cases in 2015, and 245 till June end in 2016.

Types of crimes committed

The forms of violence that are on an increase in Maharashtra are murder, attempt to murder, sexual assault on Dalit women and girls, use of caste based abusive language, grievous hurt, and obstructing access to cremation grounds. Dalit Adivasi Human Rights Defenders (DAHRD) are subjected to repression due to their commitment to human rights and justice for the marginalised by the dominant caste actors. For instance, the National Human Rights Commission (NHRC) records the increase in incidents as backlash on DAHRDs and has also intervened in such cases. Chandrakant Gaikward, a DAHRD associated with NDMJ in Baramati Pune was murdered on 12 February 2013 (NHRC-HRDs Cases Documents). The case was reported to the NHRC to speed up the process of investigation and enable justice. Similarly, the NHRC has intervened in many such cases of crimes and false cases being charged on HRDs.

Pendency and disposal of cases by police and courts

The national level pendency rate in courts soared to 85.3% in 2014, and in Maharashtra, it reached 90.7% in 2013. The provision for exclusive police stations, special officers, exclusive courts, and speedy trial under the PoA Act Rules are important mechanisms for preventive measures in the wake of atrocities. However, in Maharashtra, these legal provisions are not implemented, reflecting adversely on the political will. The court of sessions has been identified as special courts to try cases under the PoA Act. Exclusive courts exist in only three districts namely Nagpur, Aurangabad,

and Mumbai (Thane). There are no special officers and no exclusive police stations. In a few districts, there are specific police cells within the police stations.

Pendency and Disposal of Cases by Police and Courts under SCs and STs (PoA) Act in conjunction with IPC					
Year	2010	2011	2012	2013	2014
Pendency rate - Police	27.2	24.7	26.3	27.6	24.42
Charge Sheet	90.7	90.7	91.8	89.8	92.3
Pendency Rate – Court	78.7	79.9	83.5	84.1	85.3
Conviction Rate	35.0	26.3	23.9	23.8	28.8
Source: Fact Sheet – Maharashtra, Status of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (as Amended 2015) and Rules 1995 (as Amended 2016), published by NDMJ Maharashtra					

The conviction rate is as low as 6.3% for Maharashtra. The table below indicates all India status for the years 2011-2013, in regard to percentage of cases under PoA Act ending in convictions, and as well as gives figures on the number of pending cases in courts. The situation for the state of Maharashtra is far worse in terms of pendency rate, and high level of acquittals. The data reflected in the table are government's official numbers, from NCRB and Ministry of Home Affairs.

Convictions and pendency SCs and STs (PoA) Act (%)				
Year	India		Maharashtra	
	Conviction	Pendency in courts	Conviction	Pendency in courts
2011	30.0	79.9	5.4	88.2
2012	23.8	83.1	6.3	89.3
2013	22.8	84.1	6.3	90.7

Cases registered under PoA Act

The table has consolidated data of cases registered under the Act, from the year 2010 to March 2016, from the Maharashtra Police headquarters. The data captures the status of implementation of the Act in the state from registration of cases, investigation, to trial in courts and the final judgement.

Consolidated data of cases under SCs and STs (PoA) Act 1989 from 2010 to March 2016									
Agency	Year	2010	2011	2012	2013	2014	2015	2016 (upto March)	Total
Police	Cases brought forward	390	473	523	556	771	782	927	4,422
	Fresh Cases	1,423	1,469	1,407	2,068	2,188	2,311	605	11,471
	New Cases	28	26	32	36	60	80	25	287
	Chargesheet	1,121	1,181	1,143	1,571	1,786	1,725	451	8978
	Pending Investigation	471	522	553	770	776	923	970	4,985
Courts	Cases brought forward	5,283	5,368	5,601	5,778	6,519	7,408	8,168	44,125
	Conviction	39	55	55	61	62	81	20	373
	Acquitted	961	871	901	749	801	870	171	5324
	Pending	5,368	5,599	5,776	6,519	7,422	8,169	8,422	47,275
Source: Maharashtra Police Headquarters http://mahapolice.gov.in/									

This clearly brings out the judicial bias and delayed justice to the victims of caste atrocities in the state, as a high percentage of cases are pending investigation by the police, pending trial in courts, along with higher acquittal rates in the past six years.

Absence of exclusive special courts

‘Setting up exclusive special courts for speedy trial of offences under the PoA Act’ was one of the action points in the minutes of the Meeting with Principal Secretaries/Secretaries of Social Welfare Departments of the States/Union Territories, dated 28 May 2013, Ministry of Social Justice and Empowerment. Similarly, the agenda notes from the Conference of State Ministers of Welfare / Social Justice held on 17 and 18 June 2011 in New Delhi, recognises that ‘in several states, the pendency of cases in the courts during 2007-2009 was more than 70% namely: Maharashtra (83.7%), Haryana (74%), Himachal Pradesh (76.3%), Jharkhand (72%), Kerala (75.2%), Orissa (88.3%), Punjab (78.5%) and Uttarakhand (74.1%), but exclusive special courts have not been set up for prompt disposal of cases’.

Taking the statistics as quantitative evidence, it's significant to mention even after the 2011 analysis of high pendency of cases in courts, Maharashtra has only three special courts under the PoA Act for 36 districts.

Identification of atrocity prone areas

Rule 3(1)(i) of the PoA Act Rules, 1995, provides for identification of atrocity prone areas. In 2012, four districts namely Akola, Bhandara, Chandrapur, and Gadchiroli have been identified as atrocity prone, with specific areas within the districts. In 2014, the number increased to nine districts namely Jalgaon, Amaravati, Akola, Washim, Yavatmal, Bhandara, Chandrapur, Gadchiroli, and Osmanabad. From 2011 to August 2016, the districts that recorded highest number of cases in Maharashtra were Ahmednagar, Jalgaon, Dhule, Nashik, Pune, Kolhapur, Solapur, Satara, Sangli, Bhed, Usmanabad, Parbhni, Hingoli, Nagpur, and Chanderpur, which accounted for a total 8,698 cases.

Setting up the state scheduled castes and scheduled tribes protection cell

Under Rule 8(1), the state government is responsible to set up a scheduled castes and scheduled tribes protection cell. The cell is at the state police headquarters under the supervision of a special inspector general of police. Special district social welfare officers in all districts are required to implement the programmes to rehabilitate the victims under the Act.

Travelling and maintenance expenses to witnesses and victims of atrocities

As per Rule 11, the state government is to provide Travel and Maintenance Expenses (TAME) to the witnesses and victims of offences of atrocities during investigation and trial. The assistance provided is negligible for the survivors of caste atrocity, who are doubly affected owing to their caste and class location, to take forward their fight for justice. There remains a difference in the number of cases reported during the years, and the number victims receiving the support for travel.

Contingency plan

Under Rule 15(1) of the PoA Act, the states are required to have a model contingency plan to provide for allocating timely relief and rehabilitation for the victims, survivors, witnesses, and their dependents (family). The Government of Maharashtra has not yet developed a contingency plan.

Appointment of special public prosecutors

The appointment of Special Public Prosecutors (SPP) is still to pick up. In many cases, the SPPs appointed are not the choice of the victim nor are they aware of the provisions of the PoA Act. Due to this lack of knowledge of the rules, many cases end in acquittals. The data clearly shows the large number of pending cases and low conviction rate under the PoA Act. The low performance level of SPPs under the PoA Act also adds to the lacunae in implementation of the Act. Therefore, the data clearly nullifies the claim that the Act is being misused. Instead, it does add up to the evidence of the PoA Act not being implemented.

Performance review of special public prosecutors

Under Rule 14(2), the state government is responsible to review at least twice in a calendar year in the month of January and July: the performance of the Special Public Prosecutor (SPP) and Exclusive Special Public Prosecutor (ESPP) specified or appointed under section 15 of the PoA Act; various reports received investigation made and preventive steps taken by the District Magistrate (DM), Sub-Divisional Magistrate (SDM), and Superintendent of Police (SP); relief and rehabilitation facilities provided to the victims and the reports in respect of lapses on behalf of the concerned officers.

Usually no appeals are sent by SPPs for the entire year. In Sangli district, the district magistrate held a meeting on 7 February 2015, to review the performance of SPP in the district. Minutes of the meeting highlighted major gaps in the performance of SPPs in eight cases, which were tried from January 2014 to December 2014. One SPP appeared in five cases, of which three cases ended in acquittal, and two cases were mentioned as

‘not fit for appeal,’ and therefore, the SPP did not file an appeal in the said two cases.

The SPPs in Islampur said that they did not file an appeal in the case because of lack of evidence. Another SPP appointed in three cases in the Islampur Special Court, informed that he filed a proposal to the Law and Judiciary Department for an appeal in a special case in the high court. In one case, the law and judiciary department rejected the appeal, in another - the result is awaited and the third led to acquittal. As most of the cases ended in acquittals, the district magistrate directed all the public prosecutors to entrust all cases under the PoA Act to senior and experienced public prosecutors, to fast track the cases and ensure justice. The DM also expressed displeasure in the performance of SPPs S.S. Bamane, S.A. Patil and D.V. Shinde, as none of the cases they were entrusted with ended in conviction.

Grounds for acquittal

This author with the government Babasaheb Ambedkar Research and Training Institute (BARTI), undertook an in-depth scrutiny of the 31 acquittal judgments under this PoA Act in Latur District in 2010. It excluded two judgements, where the cases ended in convictions of the total 33 cases where judgements were passed. They revealed various grounds of acquittals. Some were acquitted on procedural grounds viz, investigation not done by proper authority as per Rule 7, delay in filing FIR, victim does not belong to a scheduled community, offence not committed on ground of victim being from a scheduled community etc. The substantive grounds were the personal stand of victims and witnesses viz., victim and witness turned hostile, or that the statement is not reliable, or inconsistent with the earlier statement. Some technical grounds for acquittal are: place of offence not within public view, accused intention was not to humiliate the complainant, problems regarding the abusive word and medical evidence. If everything was correct and proved, then the court acquitted on grounds of ‘insufficient evidence’.

Functioning of state vigilance and monitoring committees

The State Vigilance and Monitoring Committee(SVMC) is constituted under Rule 16. It is to meet at least twice a year in the months of January and July to conduct reviews on the status of the implementation of the PoA Act and Rules. However, these meetings have been held only once a year, instead of twice. Most of the RTI responses received do not provide details of the meeting such as action taken. The minutes only record a list of members present in the meetings, cases registered, and stage of trial.

Functioning of district level vigilance and monitoring committees

District Level Vigilance and Monitoring Committees(DVMC) are to be constituted by the district magistrate under Rule 17(1). They should meet at least quarterly to review the status of the implementation of the PoA Act and Rules. In the report, Ministry Social Justice and Empowerment states the number of meetings held with no details of the content of discussion and decisions taken. Similarly, most of the RTI responses received do not provide details of the meeting in terms of action taken. The minutes present a list of members present and status of cases.

The way ahead

Historically in India, the scheduled communities, both the Dalits and the Adivasis, are denied the right to land, education, and political power. Maharashtra is no exception. The social, economic, and political relations are hierarchical. The scheduled communities are perceived by the dominant to be in the lower rungs of the society in terms of ritual purity, are economically weak, and politically marginalised. They have been struggling hard against all odds, created by the combined power of the dominant communities, state power, and forces of privatisation in the era of globalisation, to retain their dignity. India has a number of laws and constitutional safeguards for the protection of the weaker sections, and safeguarding their rights. The ingrained casteism (the caste hatred) of those in government do not want to implement those laws. Maharashtra continues to be atrocity prone due to the above reasons. Atrocities against the scheduled communities are increasing.

The following recommendations, if implemented, could mark a beginning in the prevention of atrocities, and justice delivery:

- a) Implement the PoA Act in letter and spirit.
 - Hold periodic reviews with the reports by the principal secretary (home), SVMC, DVMC, DM, appointment of SPPs, DSPs, nodal officer, rehabilitation, and TA/DA. The principal secretaries, home and social justice and empowerment, director of prosecution, officer-in-charge of prosecution, and the DGP reviews all investigations conducted by the investigating officers, by the end of every quarter.
 - Official postings: Deploy proportionate police personnel and administrative officials belonging to the scheduled castes and scheduled tribes at local, block, and district level for effective implementation of the PoA Act.
 - Submit annual reports to parliament and legislature on time. Ensure submission of the government's annual report to both houses of parliament under Section 21(4) of the PoA Act and to the respective state legislatures under Rule 18.
 - Accountability: Ensure that Section 4 of the PoA Act is strictly enforced.
 - Monitor at the highest level. The SVMC should review the implementation of all the various provisions.
- b) *Raise awareness*: The police department, department of prosecution, and the judicial academy should develop institutional mechanisms to conduct the regular institutional programmes to raise awareness of the PoA Act and Rules among officials and communities. There should be more awareness camps on the chapter of rights of victims and witnesses at the block and village levels.
- c) *Have a single SPP per case*: The SPP to be appointed from the beginning through all stages of the court proceedings – hearing bail application, framing of charges, recording statements, and filing written arguments. The SPP should also recommend to the state government to file all revision petitions, criminal miscellaneous petitions, and appeals against acquittals when needed.



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Amba Salelkar

Lawyer

“The Bar seemed to be in full force to support those defending the accused, the collective energy in the room seemed like it was reversing the burden of proof.

At that moment, it was very clear what a person was up against when they filed a case under the PoA Act.”

Maharashtra

Reflections of a trial lawyer

Amba Salelkar

I realise that I may be an odd person to tell this story. I worked as a defence lawyer in Mumbai trial courts, from 2006 to 2012. I worked on a few cases involving charges under the PoA Act, and in fact, the only reported judgment I have to my name is an appeal against acquittal under the Act.

The experience, though, has shaped a lot of my activism today, especially around access to justice. I am a cisgender woman born into a savarna Hindu family, and the way I look and sound can lead no one to imagine otherwise. The reason I write this, besides having been asked to do so by the team at HRF, is also because I think that all savarna criminal lawyers need to reflect on the ways in which we have been spectators, and perhaps abettors to casteism in the judicial system, and how a lot of the arguments on ethics which have been seen in feminist lawyering for instance, have not been similarly encouraged with regard to other marginalised groups.

I was exposed to feminist lawyering through an internship with an organisation devoted to the cause when I was in my penultimate year of law school. Many of the alumni of the organisation still refuse to represent men, regardless of the validity of the case. I had no such qualms when I began practice. I was in a 'hardcore' trial practice chamber, earning barely enough to cover expenses, so the luxury of choice was not a thing. In hindsight, my being autistic also perhaps contributed to focusing on cases over people. Nevertheless, what stayed with me about feminist lawyering, was the need to ensure that the narrative we use as defence lawyers was rights based. The law did not allow for asking questions on sexual history, for example. The law protected the identity of victims, for example. This was the result of sustained advocacy by the feminist movement. Even so, when I represented victims of domestic violence under the then newly

enacted Protection of Women from Domestic Violence Act, which often felt like the majority of my work, what the law said was irrelevant. The dismissal of your client's case as frivolous, misconstrued, and false began at the point at which you filed the complaint in the court department. The eye rolls of the court clerks and peons, the blank stares of the *shirestidar* when you asked for the matter to be heard urgently, the laugh of the magistrate when you made an application for interim relief – clearly, one was up against an entire system that did not believe in you or your client.

Imagine my surprise when I first found myself filing a case for anticipatory bail for clients against whom an FIR has been registered under the PoA Act, and despite the fact that this was not even tenable in law (at the time, there was a judgment of the Bombay High Court which said that anticipatory bail could be ordered if the contents of the FIR did not make out a case), I was treated with kindness and empathy by the court staff. The senior clerk asked me what the case was about (which is quite usual practice) and then launched an entire spiel on how 'some people' were taking advantage of the system, and it was good that 'lawyers like me' were making daring interventions. When our application was (expectedly) rejected, the sessions judge seemed almost apologetic. I remember the clerk reassuring me when I applied for the certified copy of the order, that he would expedite it so that we could approach the high court immediately. There was no need as suggested by the Learned Sessions Judge: our clients surrendered before the court, were immediately released into judicial custody, and we immediately handed a bail application across, which was granted.

Jurisprudence under the PoA Act was as regressive as that of rape laws, yet we hear very little of the former. Hundreds of cases were quashed because the FIR did not explicitly state that the accused person did not belong to a scheduled caste or scheduled tribe, which is the *chapeau* of Section 3. There were stories of the Aurangabad bench being flooded with 482 petitions on this issue, and quashing them all at one stroke. Someone being abused in an office cabin with glass doors was held to not be 'in public view' because no one could hear what was being said. Every edition of the

All Maharashtra Law Reporter had another precedent, that would be whispered across the lawyer's row if you were arguing for bail, discharge, or as I was, in an appeal against acquittal. The Bar seemed to be in full force to support those defending the accused, the collective energy in the room seemed like it was reversing the burden of proof.

At that moment, it was very clear what a person was up against when they filed a case under the PoA Act. There was no need to question someone about their history to discredit them, their very existence was a reason for suspicion or doubt. The act of filing a complaint to protest injustice was deemed to be insolence. The abuse and humiliation that led to them approaching the justice system was one thing, where could they go to protest the humiliation that this very system was perpetuating?

My deep discomfort ultimately led me to pass on matters under the PoA Act to colleagues, which was admittedly not much of a solution. I could not turn 'savarna savior' either, one because I did not even know the term existed, but two, because anyone who could afford a 'watching advocate', (the term used for lawyers who represent victims and assist the prosecution) could do much better than hire me. The fact is that people accused of any crime had a right to quality representation, but if you were accused of an offence under the PoA Act, even mediocre representation would do. The system was your senior counsel.

In prosecutions under the PoA Act, you knew what the caste of the victim was, it was in the FIR. Even in cases where this wasn't relevant, the caste of a bahunjan accused was always public knowledge. I represented a bank employee in a CBI prosecution who was openly made a scapegoat by his co-accused, the manager and deputy manager of the bank. In general, co-accused leave 'cut-throat' defence tactics till the end, after the prosecution presents evidence.

These two were pointing fingers at him right from the stage of remand, even refusing to be represented by the same lawyer. One of them even

had the audacity to come to me to tell me that I too, would be cheated by my client. I was livid, and when I spoke to my seniors, they put it down to me being a young woman, and that somehow made it okay for someone I wasn't even representing to come and speak to me that way. I realised only later, that it probably had to do with my client being from a scheduled caste. These men decided to use savarna kinship to attempt to isolate him from the support he was receiving.

I succeeded in avoiding defence cases under the PoA Act for a long time. One day a family member was asked to come to the police station, to respond to charges of caste-based abuse and humiliation of one of his employees. On his request, I reluctantly accompanied him where, as usual, we were made to wait. We picked up A1 sandwiches and sat around in his car outside the police station. We all like to think our family is 'not like that', so I felt like I was doing the right thing by being there to support him. We went in to check if everyone was back from lunch, and the police gave us oddly specific information that was enough to throw the young man into a rage. "*They* are all eating at Jughead Jones", he said, referring to a faux American eatery a few kilometres away. *They* referred to the person who made the complaint, and the rage, it was quite evident, was that we were eating sorry sandwiches while *they* were living it up. He turned to the officer on duty and said, very matter of factly: "*This* is what *they* do."

At that moment, I knew that there was a good chance that the incident alleged was exactly what had happened. It made me sick, but again, I lacked the courage to confront him. The police negotiated a settlement which was immediately agreed to.

I had to revisit the PoA Act when I began working as a disability rights advocate and some of the similar provisions were being taken into the Rights of Persons with Disabilities Act, 2016. When I see the jurisprudence, I am hit with a feeling of déjà vu. I see the court remarks in reported cases that adding charges are 'afterthoughts.' I see the Department of Disability trying to dilute the provisions in the guise of 'ease of doing business'.

I see it all happening again. I imagine the special court set up to now be ableist on top of being casteist.

Criminalising something is a very powerful statement on behalf of the State. It means, whoever commits this transgression isn't just harming this one person, they are challenging the State, and will be prosecuted. But criminalising discrimination is impossible without annihilating the casteism that hangs over the judiciary and police machinery. I think of how insensitive the machinery was even though many of my experiences were just after Khairlanji in 2006. In the wake of the 2G Telecom case, the accused in cases resembling financial scams were not being given bail by the high court. When there was increased media coverage on domestic violence, lawyers were ensuring that their petitions in 498A cases were not taken on board, fearing prejudicial orders. Casteism was so entrenched that Khairlanji was not only considered to be an outlier, but it was also, in passing conversation, considered the only valid reason to invoke the law. This resulted in the seriousness of every day abuses and transgressions faced to be completely overlooked.

Trial lawyers, particularly those of us from privileged communities, need to reflect on how we respond to casteism when it presents itself before us, looking for allies. This applies to both prosecutors and defence lawyers. Lawyers are trained to believe that they must employ all means necessary to make the best defence for their client, but like feminist lawyering which calls for ethical limits to be observed, we must find our own ways to end supporting the caste-based biases of the judicial machinery, while we wait for true criminal justice reform.



“There is a mistaken, but widespread belief that the PoA Act is only for scheduled castes, and only for untouchability related offences. A lot of effort needs to be put in to dispel this myth of it being an ‘untouchability Act’, and to convince the scheduled tribes that this Act protects them.”

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Executive Director,

Foundation for Sustainable Development

Tamil Nadu, Telangana & Maharashtra

The scheduled tribe experience

Dr. K. Krishnan

The experience of the National Adivasi Solidarity Council (NASC) in using the PoA Act is rather unique in a couple of ways. First, that the PoA Act has been used for access to justice of the scheduled tribes, who normally do not use this Act in the mistaken perception that the Act is only for untouchability-based offences, and therefore does not apply to them. Second, because it has been used in diverse cases – from release and rehabilitation of bonded labour, to cases of eviction from forest lands and commons, to intimidation. Using the PoA Act in tandem with other legislation such as the Bonded Labour System (Abolition) Act (BLSA) 1976, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) 2006, enabled faster resolution, better compensation, and more deterrence.

Liberating bonded labour in Tamil Nadu

Gayathri and her family were working in SMS brick kiln. They were liberated in 2019, after being in forced labour for two years from 2017 to 2018. They belong to the Irula community, which is categorised as a scheduled tribe. They are natives of Tamil Nadu. They were trafficked intra-state for bonded labour from their native Villupuram District to Salem District. They were in bonded labour for the advance loan of Rs. 70,000. Gayathri accepted this loan due to poverty.

In the beginning, the SMS brick kiln owner promised them good wages of Rs.700 per thousand bricks. Gayathri and her family manufactured over 7,000 bricks per week. They should have been paid Rs.4,900 per week, according to the agreed rates. But they were given only Rs.500. When they asked the reason, the owner replied that the rest is deducted from their advance loan. But their loan amount kept increasing to over Rs.1,00,000,

instead of decreasing from Rs.70,000. They could not demand their rights due to poverty and inter-district migration. They were working from 5am to 6pm.

The problem was identified by a member of NASC and reported to the District Collector (DC). An inspection was conducted in the presence of police, labour officials, and the Sub-Divisional Magistrate (SDM). The SDM conducted an inquiry as per the legal provisions under Sections 10, 11, 12 of the Bonded Labour System (Abolition) Act and Section 3(1)(h) of the PoA Act 1989. Petitions and copies of the case laws and rules were submitted to the authorised officers by the NASC members. The SDM also received a statement from the victim.

After continuous pressure from the NASC, the workers were rescued by the SDM and the Superintendent of Police (SP) rescued and released Gayathri, her family and 12 others in the same condition. Later, the police filed a case under the PoA Act. The charge sheet has been filed and the case is in court.

Compensation for bonded labour in Telangana

Over 45 people were in bonded labour in the canal works of Chippakurthi Village, Ramadugu Mandal, Karimnagar District of Telangana State. Non-scheduled tribes exploited labour and committed other atrocities on the vulnerable tribal communities. The issue was identified by an NASC member. A complaint was made to the SP and the DC specifying that atrocities were being committed. They were liberated on 3 August 2018 by using Section 97 of the Code of Criminal Procedure 1973. The NASC team educated the police and the court to apply sections 16, 17, and 18 of BLSA 1976, Section 370 of the Indian Penal Code (IPC) 1860, and Section 3(1)(h) of the PoA Act in the FIR for justice, to eliminate the bonded labour system, and to prevent atrocities on the scheduled tribe communities.

The amended PoA Act specifies 47 categories of offences, including bonded labour, in which the states will pay compensation ranging from Rs.1,00,000 to Rs.8,25,000 to victims, survivors, and their dependents. The amount

must be paid by the state within seven days of the incident being reported, either in full or at various stages of the investigation and trial, as per a schedule. District Magistrates (DM) have been authorised to immediately withdraw money from state treasuries and courts empowered to also order socio-economic rehabilitation.

In this case, the police have filed FIR, completed investigation, filed the chargesheet, and the case is in court. Advocate Brundhadar is representing the victims through the support of NASC. Under the provisions of the PoA Act, the 45 freed labourers have received Rs.75,000 each. A total of Rs 3.375 million was credited to the bank accounts of these families on 29 June 2020. The NASC team verified it through bank records and the updated report was submitted to the DC. A copy was presented to the Director of Prosecutions (DOP) of the Government of Telangana, for replicating it as a best practice in similar locations.

Legal Action against forced displacement by using PoA Act

Valparai is a hill station in the Coimbatore District of Tamil Nadu, South India. It is located 3,500 feet (1,100 m) above sea level on the Anaimalai Hills range of the Western Ghats, 105 kilometres from Coimbatore town. Valparai had a population of 70,859 with a sex ratio of 1,013 females for every 1,000 males, much above the national average of 929 (Census of India 2011). Scheduled castes and scheduled tribes accounted for 59.68% and 1.75% of the population respectively. Most of the people are estate and forest workers. There are a total of 38,440 workers, comprising 107 cultivators, and 4,828 main agricultural laborers. Some seem to be bonded labourers. There are 12 tribal settlements in the hills and rest are in the foothills.

Scheduled tribes such as Muduvars, Kadars, Malasar, Mahamalar are living in this Pollachi sub-division. While major portions of the land are owned by private tea companies, large forest areas continue to be wildlife and tiger sanctuaries owned and controlled by the forest department.

The scheduled tribes live within the sanctuaries. The negative impact of development projects is very visible. Many have lost their tribal identity due to poverty.

Kadamparai is one of the tribal villages. Over 45 families of Muduvartribal community – with 50 children and 100 adults – settled here after their displacement from Kadamparai lower valley. Their original village is now converted into Kadamparai Dam–Hydroelectric Power Station. Their traditional cultivation areas are converted to reserve forests, leading to extreme poverty.

NASC had a meeting with the community. Women, men, and children participated along with local leaders and explained their current poor situation. During the meeting, we talked about the advantages of the PoA Act amendment and section 2(1)(be) that forest rights of the tribal people cannot be violated, and if there is a violation, it is an atrocity against the life and livelihoods of the scheduled tribe communities. It was explained to them that a complaint can be developed and submitted to the higher officials for preventing these atrocities. Based on the peoples' request, we prepared a petition and submitted it to the DC. A copy was sent to the director of tribal welfare and the Ministry of Tribal Affairs, in February 2018.

The DC and District Forest Officer (DFO) visited the tribal village and tried to persuade them to withdraw their complaints. The community used legal provisions of the PoA and FRA 2006, to demand their basic rights including drinking water, anganwadi centres, ration shops, and livelihood support. They talked about their right to collect minor forest products, livelihoods, health conditions, nutrition, and education of the children along with other socio-economic needs. The district administration immediately approved the plans, sanctioned the budget, and took action to provide drinking water, right to collect minor-forest products, and ration shops.

The forest department has started cooperating with the village for the advancement of the community due to the strategic use of PoA and FRA.

Inter-state migrant Chenchu rescued in Maharashtra

On 25 June 2020, 24 people from the Chenchu tribal community were rescued from Jigaon irrigation-based construction work in Buldhana district of Maharashtra, after being made to work in bonded labour-like conditions for nine months, including during the national COVID-19 lockdown. The Chenchu are a scheduled tribe, classified as a particularly vulnerable tribal group, that suffers from widespread exploitation, especially by unscrupulous traffickers and labour contractors. These 24 were trafficked from Mahabubnagar district of Telangana with promises of good wages, decent living conditions, and the freedom to return whenever they wanted to. Once in Maharashtra, they were made to work on the construction of the Jigaon Dam for water conservation. They were paid only Rs.500 per week, per family, which is far less than the minimum wages.

They were also made to work at night to camouflage the operations at the construction site during the national COVID-19 lockdown. In addition to being paid less than minimum wage, their wages were deducted on account of interest on the advance they had taken, so they were perennially in debt to the owner and the trafficker. When they wanted to go back to their homes in Telangana, they were told that they had to first pay back the advance.

This information was collected by the village leader from the community. A complaint was prepared by the NASC team, which quoted sections under the PoA Act. The complaint was submitted to the SP and DC at Buldhana district. The DC initiated an inquiry by using the PoA Act. Then, the rescue was conducted by the district officials along with NASC.

All the freed labourers need to be paid their pending wages. They got release certificates – vital to obtain rehabilitation benefits under various government schemes, and without which they remain vulnerable to continued exploitation. On 27 June 2020, all of them reached their homes in Telangana.

Lessons learnt

1. There is a mistaken, but widespread belief that the PoA Act is only for scheduled castes, and only for untouchability related offences. A lot of effort needs to be put in to dispel this myth of it being an 'untouchability Act', and to convince the scheduled tribes that this Act protects them and therefore can also be used by them. The Amended Act 2016 covers livelihoods, forest rights, land rights, evictions, and many more issues that directly affect the scheduled tribes.
2. This Act is more efficient in the liberation of bonded labour, especially with respect to compensation and rehabilitation. In the BLSA, the compensation and rehabilitation amount of Rs. 1,00,000 is given in three states – 25% at the time of filing the FIR, 50% at the time of filing the charge sheet, and 25% on conviction by the court. If Section 3(1)(h) of PoA Act is invoked, 25% is given at the time of filing the FIR and 75% at the time of filing the charge sheet, considerably speeding up the process. This makes a lot of difference in the rehabilitation of the liberated labour, since time is of essence to prevent them from falling back into the clutches of the bonded labour system. Once they get the money in sufficient amounts, they can restart their life. The only condition is that the perpetrator should not belong to the scheduled communities (in which case only BLSA can be invoked).
3. The unfortunate reality is that the police dilute the cases by not invoking the PoA Act, sometimes due to mistaken notions of caste solidarity, sometimes dreading paperwork, and political implications. We need to frame the violation as an 'atrocities case,' not as a 'caste issue' and tell them which PoA Act sections to include in the FIR. When it is called a caste issue, their caste solidarity comes into play, and they see it as a 'communal' issue with all its 'law and order' ramifications and paperwork. Though the intentions are very different in both cases, the result is to dilute the case.

Way forward

1. PoA Act should be framed as a human rights law, and included in the school syllabus, so that all students learn it, and learn it in the right spirit – as one of the foundational commitments of our republic. It should be placed within the constitutional architecture and the legal ecosystem.
2. Lawyers should argue these cases as a constitutional law, not only as a caste issue. The constitutional provisions of equality before law, non-discrimination, forced labour, and right to life (Articles 14, 15, 16, 21, and 23) should be invoked, and not only Article 17 which deals with abolition of caste. The issue should be more broadly framed, than as a narrow caste issue.
3. To the above end, all public prosecutors should be trained continuously. A spirit of public service to the scheduled communities, and a keen sense of justice sans personal monetary benefits needs to be inculcated in them. In addition, lawyers from the community and other public-spirited lawyers should be conducted regularly.
4. A study should be conducted on the functioning of the special courts, the state and district level vigilance committees; followed by public interest litigation under Articles 226 (in the high court) or 32 (in the supreme court) of the Constitution of India; reconstitute those that are dysfunctional.
5. The annual reports from the states to the federal government under Rule 18, should be made into half-yearly review and action taken reports, and put into public domain as part of the suo moto declarations under the Right to Information Act 2005. Several states do not conduct the mandatory January and July state vigilance and monitoring committee meetings. The half-yearly reports to the federal government will incentivise the state government to conduct the statutory meetings.



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P.L.Mimroth

Centre for Dalit Rights, Jaipur

“Though the Dalit participation in social activities has slightly improved, yet, the scheduled communities have to wait for their turn to eat after the non-Dalits have finished off their plates, and in some places, the Dalits are even expected to wash the dishes of the non-Dalits.”

Rajasthan

Rajasthan: The need for justice

P.L.Mimroth

Untouchability and caste-based discrimination is still alive in its very crude form in Rajasthan, especially in the villages, despite constitutional safeguards, special enactments like the Protection of Civil Rights Act (PCRA) 1955, the PoA Act 1989 and its Rules 1995, PoA amended in 2015 and 2016 respectively. The atrocities against Dalits, women, and marginalised people are increasingly rising day by day in the state, partly because of Dalit assertion, and mainly due to the apathetic and biased attitude of the state machinery to combat it.

The villages in Rajasthan are dens of the inhumane practice of untouchability where: Dalits are barred from entering the temples; no access to water resources; Dalit bridegrooms are not allowed to ride on horseback; Dalits cannot even wear clothes of their choice in certain pockets of Rajasthan. Though the Dalit participation in social activities has slightly improved, yet, the scheduled communities have to wait for their turn to eat after the non-Dalits have finished off their plates, and in some places, the Dalits are even expected to wash the dishes of the non-Dalits.

In Rajasthan, Dalit children are still growing under the stigma of being from an inferior and untouchable class. In many places, Dalit students are asked to do manual work in schools, and sit in the last row of the classroom. In the schools of western Rajasthan, Dalit students are served mid-day meals in plates colour coded by caste, and Dalit students are forbidden from serving food or touching the utensils, cans, and jugs that are used in the community water tanks. Even today, a Dalit groom riding atop a horse can lead to violent reprisal. Dalits who built the temple, are prevented from entering the temple by dominant castes in rural areas citing the social hierarchy. In the interiors of Rajasthan, incidents of barbers refusing to cut

the hair of Dalits, have been frequently reported.

The Centre for Dalit Rights (CDR) based in Jaipur, Rajasthan has been involved in monitoring the atrocities and excesses against Dalits and women in Rajasthan, along with follow ups of the serious cases of atrocities with the state, district officials, and various other forums like the commissions for human rights, scheduled castes, scheduled tribes, and women to ensure that their rights are fully and effectively protected by strict enforcement of legal safeguards, like the PoA Act. Figures of atrocities monitored by CDR during 2019 in the state are given below:

Type of Atrocity	Number of cases
Untouchability practice	10
Murder	09
Rape	42
Violence against Women	18
Mass Violence	08
Violence against Children	03
Bonded Labour	05
Land dispute	30
Custodial / police torture	02
Assault on Dalit bridegroom	10
Violence during elections	11
Negligence on the part of the administration	05
Others	37
Total	190

Police negligence and collusion

Dalit victims in Rajasthan are deterred from making complaints of atrocities, and as a result, FIRs are rarely registered, or if done, registered late.

Scheduled communities are discouraged from registering the case to dilute the seriousness of the violence, to shield the accused from arrest, and weaken the prosecution. In some cases, the police themselves inflict violence. Under-reporting of atrocities under the PoA Act is a very common phenomenon. It has been further observed that even in respect of heinous crimes, the police machinery in Rajasthan has been deliberately avoiding to register the case under the PoA Act. The non-registration of cases, apart from reflecting caste bias and corruption, has also been attributed to the pressure on the police to keep the reported crime rate low in their jurisdiction. In addition, the undue political and administrative pressure on the police force is also one of the factors leading to non-registration of the cases of Dalit victims. Their murders are often termed by the police as suicides or accidents to shield the perpetrators.

A study conducted by CDR in 2018 also indicates that around 12% of the FIR lodged in Rajasthan are as a result of legal intervention by filing a petition in the courts, under section 156(3) CrPC.

In many cases where police do register a case under the PoA Act, they do not cite proper sections. For serious crimes, which include murder, rape, destruction of property, dispossession of land, and fouling of drinking water sources, police are registering cases under section 3(1)(x) of the Act. This section is related to insult or intimidation, with intent to humiliate in public view. One of the reasons for police commonly citing this section, is that this clause is the most minor offence under the Act, and generally attracts the least punishment. A majority of the cases are never brought within the purview of the law at all due to police failure or refusal to register the case, thereby, neglecting their official duties and colluding with the perpetrators of atrocities.

Charge sheet delay

Besides non-registration of cases, despite merit, there is delay in investigation and manipulation of witnesses and evidence, all contributing to reduce the effectiveness of legislation on atrocities. The CDR survey

revealed that in Rajasthan, a mere 5% of the cases registered under the PoA Act were actually charge sheeted. Of them, only 9% were charge sheeted within the stipulated time of 30 days. Even if the CrPC time limit of 90 days is the benchmark, charge sheets are filed only in 31% cases. For about 28% of cases, the investigating agency took more than 365 days to book the perpetrators. Delayed charge sheet filing is a common feature with regard to the atrocity cases of Dalits.

The NHRC and the Justice Punnaiah Commission of Inquiry in Andhra Pradesh have stated in their reports that, *'the sub-inspector or circle inspectors did not arrest the perpetrators who committed the atrocities even though the sub-inspector or the inspector of police recorded FIRs and registered cases'*. Non-arrest of perpetrators in serious offences are resulting in quashing of the whole case, since the accused resort to unethical means like pressurising the victim to withdraw the case, intimidating the witnesses and victims, destroying and diluting the medical evidence, etc. In this long testing process, the victim and their family are completely broken and lose faith in the rule of law. In many cases, it is also observed that the main perpetrators of an atrocity sometimes co-opt a few Dalits, taking advantage of differences among the Dalits, and even promote and engineer crimes, but get them executed by the Dalits.

It has been witnessed that in a number of cases, police has colluded with the accused in filing false counter cases against the Dalit victims. It is generally observed that the tendency of the police to not register cases on the complaint of the scheduled communities is on the increase. At the same time, the tendency on the part of police to indiscriminately entertain counter complaints, and to arrest the complainants on the basis of counter complaints is increasing.

The National Human Rights Commission (NHRC) report on atrocities against scheduled castes 2002 notes that, *'When the SC or ST victim of atrocity reports to the sub-inspector or circle inspector in-charge of a police station if he records an FIR and registers a case, the sub-inspector or circle inspector*

should act on the complaint of the victim and arrest the assailant or the one who committed the atrocity. But, the sub-inspector or circle inspector who recorded the FIR and registered the case did not arrest the assailant except in rare cases’.

The NHRC and the Punnaiah Commission further stated in their reports that when a counter complaint was registered by the accused against the Dalit victims, it was filed obviously with the sole intention to counter the complaint filed by the victims. As a result of the counter cases, the victims are arrested and subjected to criminal litigation. This practice of counter complaints is found to be hatched by police at the instance of the perpetrators, to mount pressure on Dalit victims to compromise with the culprits and withdraw their cases. The police invariably collude with the perpetrators of violence, and render injustice to the Dalit victims. CDR has recorded cases, where this type of methodology is also adopted by the police authorities in Rajasthan.

Role of the state

Despite numerous government orders for implementing the PoA Act and Rules, setting up of protection cells at different levels in the state, and implementation of relief and rehabilitation measures under the Act and Rules, compensation and rehabilitation rights continue to be denied where atrocities against Dalits take place.

The breach of duty by the state is committed in the following ways:

1. Not conducting on-the-spot enquiry on the site of atrocity immediately by senior district officials, thereby evading the duty to give relief and compensation.
2. Inordinate delay and total denial in distribution of cash compensation, and other legally entitled monetary relief provision for heinous crimes ensured under the PoA Act.
3. Not providing allowances, including travel allowance relating to trial and investigation, maintenance expenses and daily allowance, medical expenses etc., to witnesses and victims.

4. The state of Rajasthan ignores basic problems of Dalits, in the name of ‘maintenance of law and order’.

The state and district administrations do not recognise caste-based discrimination, and tension between Dalits and non-Dalits resulting in atrocities such as social and human rights violations. Wherever Dalits have resisted and emerged united, their voice and efforts are suppressed. Dalit rights activists are implicated in false cases, and hurdles are created for Dalits at the behest of dominant caste groups, supported by local political and powerful interests.

The vigilance and monitoring committees

The Government of Rajasthan has failed to set up effective state and district level monitoring and vigilance committees, provided under the Rule 16 and 17, for monitoring the implementation of the PoA Act in the state. These statutory committees are entrusted with tracking the status and prosecution of cases registered under the PoA Act, reviewing relief and compensation to victims, and evaluating the role and performance of different officers and agencies responsible for implementation of the Act. Since 1995 till date, the state government has constituted only two state-level monitoring committees, but their meetings were never convened, and they hardly functioned. As far as the constitution and functioning of district-level monitoring and vigilance committees are concerned, CDR surveys reveal that they are virtually defunct barring two or three of the 33 districts in Rajasthan. Since these committees are not functioning properly, and have no visibility as such, the state should be held accountable.

Rajasthan is one of the most atrocity prone states in India. According to the NCRB, it stands fourth in the country in terms of violence against women and Dalits. The various reports, statistics, and media reportage on violations of Dalits rights are indicators in this respect. In spite of these glaring facts, the state government has not woken up from its slumber, and is yet to declare ‘atrocity prone’ districts and areas in the state. It appears that the government deliberately decided not to

enforce or implement the special preventive and protective measures, as enumerated in the PoA Act to combat atrocities in the state. It is high time that exclusive special courts be set up in atrocity-prone districts for the trial of cases under the Act.

Scanner on the SPP

The survey conducted by CDR about the role and performance of Special Public Prosecutors (SPP) in special courts has revealed that many SPPs do not cooperate with the Dalit victims or witnesses, but instead often join hands with perpetrators or their lawyers, to weaken the case of the victim for obvious reasons and other considerations. In several cases, the SPP behaves like a defence lawyer in and outside the court instead of the lawyer of the victim, resulting in acquittal of a majority of the accused. This problem needs to be seriously reviewed by the state government and some mechanism to oversee the performance of the special public prosecutor must be evolved.

There is an urgent need to strengthen the enforcement of the provisions of the PoA Act for the effective prosecution and speedy justice in atrocity cases in Rajasthan. There is a need to put in checks and balances to the obstacles in attaining the right to speedy trial, and also activate state mechanisms to review the large number of acquittals due to the abuse of this Act.



“Establishing movements, platforms and NGOs i.e. Samta Andolan Samiti, Jaipur just to crash the constitutional safeguards, special laws, policies, and reservation by challenging the constitutional validity of the PoA Act before the higher courts.”

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Adv. Satish Kumar

Director CDR, Jaipur

Rajasthan

Rajasthan: Status of implementation

Adv. Satish Kumar

Rajasthan was constituted by merging more than 30 princely states, between 1947 and 1949. Since there was a feudal structure along with feudal tradition in erstwhile Rajputana, the same continues to be perpetuated in the culture of villages of Rajasthan. In Rajasthan, especially in villages, caste system and caste discrimination is deep-rooted even after 73 years of independence. The right to equality is still a distant dream for the Dalits.

It is little wonder then that Rajasthan ranks among the top two ‘atrocity prone’ states in India for over a decade, under the PoA Act, as per data of National Crime Records Bureau (NCRB) from 2003 to 2015. However, the state still doesn’t have the statutory contingency plan (Rule 15) for the overall rehabilitation of the atrocity victims.

Year	Cases under PoA
2003	5,242
2004	5,391
2005	4,657
2006	4,877
2007	5,284
2008	4,302
2009	4,985
2010	6,298
2011	6,390
2012	6,910
2013	8,126
2014	8,415
2015	6,998
Source: National Crime Records Bureau	

No FIR has been lodged under the Protection of Civil Rights Act 1955 in the last 5 years. Decades after the PoA Act has been passed, the required objective has not been achieved, due to wilful negligence by law enforcement agencies, legal loopholes, failure of monitoring mechanisms, and unwillingness by officials to implement such social legislations. On the contrary, the situation has worsened. Report after report, has expressed the need for more effective implementation.

Those pursuing justice under the PoA Act face difficulties at every stage in the process – from the time of registering a First Information Report (FIR) to convictions and appeals.

At the stage of registering FIR

- The police refuse to file the FIR.
- The police do not invoke the correct sub sections of the PoA Act.
- A free copy of the FIR is not given to the complainant.
- The police have not uploaded the FIR on time on the web portal of the Department of Social Justice & Empowerment, for releasing monetary relief.
- The police inform the accused persons, and suggest that they register a counter case against the victims, just to harass the victim/survivor to withdraw the case.
- The police book or arrest the victims, survivors, witnesses, or their dependents under section 151 of the Police Act or Section 107 or 116 CrPC.

Investigation

- The local police do not conduct free, fair, or impartial investigation under the PoA Act.
- Defective & poor investigations.

Non Application of certain sections and rules

Some rules and sections are almost never enforced or applied.

- Section 10: Removal of a person likely to commit offence.

- Section 15A: The rights and entitlements of victims and witnesses are seldom protected.
- Rule 6: Spot visit reports - The authorities not only don't visit the place of occurrence, but even when they do, they do not prepare the detailed reports of the extent of the atrocity, loss and damages to the property of the victims for providing immediate relief to the victims.
- Rule 11: The authorities do not pay travelling allowances, daily allowances, and maintenance expenses.
- Rule 12(4): The authorities pay monetary compensation to the victims after extreme delay. They do not pay any additional relief to the victims of murder, death, massacre, rape, gang rape, permanent incapacitation, and dacoity under rule 12(4)(21) and amended Rule 12(4)(46) of the Act. According to NCRB, 1434 murders and 4510 rapes have been committed in Rajasthan, from 1993 to 2015, but the authorities have not paid the additional relief. Even after our demands, the authorities have not yet paid additional relief from the year 2004 to 2015.
- Rule 15: No contingency plan has been framed, as per the provision of the Rule 15 read with Section 15A & 21 and Rules 6, 11 & 12 of the PoA Act.
- Rule 12(7): A report of relief & rehabilitation facilities that is mandatory after every atrocity, has not been submitted to date.
- Rule 11 & 12: All the state governments submit annual reports on the implementation of the PoA Act before the Ministry of Social Justice and Empowerment under Section 21 of the Act. The Ministry of Social Justice and Empowerment publishes the Annual Report on implementation of PoA Act by the State, under section 21(4) of the PoA Act.

Out of the above report, the glimpse of the implementation of PoA Act in Rajasthan State from 2004 to 2014 has been given below:

Year	Total cases registered	Murder	Rape	Rule 11	Rule 12	Rule 12(4)(40) (46) Additional Relief (Legal Aid)
2004	5,391	60	151	No. not available	No. not available	No Data available
2005	4,657	67	165	No. not available	No. not available	No Data available
2006	4,877	80	164	No. not available	No. not available	No Data available
2007	5,284	70	198	No. not available	No. not available	No Data available
2008	4,302	68	193	No. not available	1,409	No Data available
2009	4,985	77	202	100	1,465	No Data available
2010	6,298	77	242	179	1,376	No Data available
2011	6,390	70	266	94	1,961	No Data available
2012	6,910	81	261	173	1,956	No Data available
2013	8,126	97	377	No. not available	1,542	No Data available
2014	8,415	100	433	No. not available	2,530	No Data available

The above data reflects the dehumanising, insensitive, apathetic, and willful negligence of the authorities to implement the statutory measures of PoA Act, to provide relief and rehabilitation to the victims, witnesses, and dependents.

Only one victim has got additional relief under Rule 12(4)(21) and Rule 12(4) (46) in the last 22 years in the entire state of Rajasthan. The authorities are not paying the travelling allowances, daily allowances, and maintenance expenses to them.

Role of the statutory monitoring bodies

Rule 9, 10, 16, 17, 17-A: For ensuring effective implementation of the PoA

Act, the Act has empowered the statutory bodies such as the State Vigilance and Monitoring Committee (SVMC) (Rule 16), District Level Vigilance and Monitoring Committee (DVMC) (Rule 17), Sub-Division Level Vigilance and Monitoring Committee (SDVMC) (Rule 17-A), Nodal Officer (NO) (Rule 9) and Special Officers (SO) at the district level (Rule 10), to review and monitor the overall relief and rehabilitation measures to the victims, their dependents, and witnesses. Many do not fulfil their statutory obligations to protect the rights of the victims & witnesses.

Role of Special Public Prosecutors (SPPs)

- Lack of knowledge about the PoA Act and Rules.
- No regular training sessions to enhance the skills.
- Lack of capacity to handle the cases.
- Not scrutinising the investigations for defects and lacking evidence.
- Not paying attention to add or invoke the Protection of Civil Rights Act.
- Submitting wrong legal opinions to mislead the cases.
- Not filing miscellaneous applications under CrPC i.e., fair investigation, amending or adding charges, or filing supplementary charges sheets to collect additional evidence.
- Not filling miscellaneous applications under Sections 10, 15-A, Rule 6, 11, 12, PoA Act & Rules i.e. police protection, releasing monetary compensation, etc.
- Bias and anti-Dalit mindset.
- Lack of sensitivity towards witnesses.
- Harassing witnesses.
- Non-cooperation with the witnesses.
- Not informing the victims about the progress of the trial or hearing of bail application of the accused persons.
- Not filing written arguments in the cases of heinous crimes during trial.
- Not reporting prosecution reports on time i.e., monthly, quarterly, half yearly, and annually, as per Rules, 1995.

Causes of very low conviction

- Lack of knowledge of the PoA Act and Rules by the authorities, SPPs, and the community.
- Defective or improper investigations are a major cause of low convictions. They result from acts of omission and commission, deliberate or otherwise, of the investigating officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions.
- Filing counter cases against the victims.
- No police protection to the witnesses.
- Lack of sensitivity towards witnesses.
- Very long trials.
- The victims and witnesses turn hostile due to various reasons.
- Anti-Dalit mindset and attitude of the judges.
- Judges believe that PoA Act is being misused by the Dalit and tribal communities.
- No institutional mechanism to scrutinise and challenge acquittals in the higher judiciary.

Role of judicial institutions

Out of the 202 judges (Retired & Sitting) appointed so far to the Rajasthan High Court, not a single Dalit or Adivasi advocate has been elevated from 1949 to 2019. Only one judge each from the Dalit and Adivasi communities – 0.9% in all – have been elevated to the Rajasthan High Court from Judicial service quota, in the seven decades since the Rajasthan High Court was established. This is a serious and grievous lacuna in the composition of the High Court.

Non-implementation judicial orders

That Hon'ble Apex Court in *State of Karnataka Versus Appa Balu Ingale and others* - AIR 1993 SC 1126 (1) – has dealt with the phenomena of untouchability to a great extent and has written that,

“Untouchability has been an integral facet of socio-religious practices being observed for over centuries; kept the Dalits away from the mainstream of the Society on diverse grounds, be it of religious, customary, unfounded beliefs of pollution etc. It is an attitude and way of behaviour of the general public of the Indian social order towards Dalits. Though it has grown as an integral part of caste system, it became an institution by itself and it enforces disabilities, restrictions, conditions and prohibitions on Dalits for access to and the use of places of public resort, public means, roads, temples, water sources, tanks, bathing ghats, etc., entry into educational institutions or pursuits of a vocation or profession which are open to all and by reason of birth they suffer from social stigma. Untouchability and birth as a scheduled caste are thus intertwining root causes. Untouchability, therefore, is founded upon prejudicial hatred towards Dalits as in independent institution. It is an attitude to regard Dalits as pollutants, inferiors, and out-castes. It is not founded on mens rea. The practice of untouchability in any form is, therefore, a crime against the Constitution of India. The PoA Act also protects the civil rights of Dalits. The abolition of untouchability is the arch of the Constitution to make its preamble meaningful and to integrate the Dalits into the national mainstream.”

Further in the above judgment, the Hon’ble Apex Court held that,

“disabilities to which Dalits are subjected to have been outlawed and denial thereof offends the right to equality enshrined in Article 14 of the Constitution etc. These provisions also furnish evidence of sociology that Dalits have been denied access to all the public means open to the general public and of public amenities. The practice of untouchability is the root cause for social segregation, denial of opportunities for educational, economic, and cultural pursuits; Dalits are subjected to severe discrimination, disabilities, liabilities, prohibitions, restrictions, or conditions etc. The scheme in Part III, namely, fundamental rights, is to remove disabilities to which the Dalits are subjected to and to provide positive rights in their favour and Part IV directive principles fasten

duties on the State to render socio-economic and political justice and to protect them from all forms of exploitation and injustice by operation of Article 38 and Article 46 of the Constitution. In other words, the Constitution charges the state to improve the quality of their life, social, economic, and cultural pursuits as part of a meaningful right to life guaranteed under Article 21 of the Constitution.”

The Hon’ble Supreme Court in the case of *Arumugam Servai Versus State of Tamil Nadu* [2011 (6) SCC 405] vide judgement dated 19 April 2011 has directed the Government of Tamil Nadu to:

“immediately suspend the district magistrate/collector, senior superintendent of police or superintendent of police of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not

(1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or

(2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.”

Almost a decade later, *Arumugam Servai Versus State of Tamil Nadu* looks for its compliance. The Hon’ble Supreme Court in its judgment dated 15 December 2016 in *National Campaign on Dalit Human Rights and Ors vs. Union of India and Ors*, reported in {SCC 2017 (2) 432},

“while Central Government and State Governments should be directed to strictly enforce the provisions of the Act and we do so to discharge their duties to protect the Scheduled Castes and Scheduled Tribes.”

The Hon’ble Supreme Court in its judgment dated 1 October 2019 in the case of *Union of India Versus State of Maharashtra and Ors. in Review Petition (Crl.) no.228 of 2018 in criminal appeal no. 416 of 2018* has observed:

‘42. Though Article 17 of the Constitution prohibits untouchability, whether untouchability has vanished? We have to find the answer to

all these pertinent questions in the present prevailing social scenario in different parts of the country. The clear answer is that untouchability though intended to be abolished, has not vanished in the last 70 years. We are still experimenting with 'tryst with destiny'. The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. They cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods of scavenging to Harijans due to lack of resources and proper planning and apathy. Whether he can shake hand with a person of higher class on equal footing? Whether we have been able to reach that level of psyche and human dignity and able to remove discrimination based upon caste? Whether false guise of cleanliness can rescue the situation, how such conditions prevails and has not vanished, are we not responsible? The answer can only be found by soul searching. However, one thing is sure that we have not been able to eradicate untouchability in a real sense as envisaged and we have not been able to provide downtrodden class the fundamental civil rights and amenities, frugal comforts of life which make life worth living. More so, for Tribals who are at some places still kept in isolation as we have not been able to provide them even basic amenities, education and frugal comforts of life in spite of spending a considerable amount for the protection, how long this would continue. Whether they have to remain in the status quo and to entertain civilized society? Whether under the guise of protection of the culture, they are deprived of fruits of development, and they face a violation of traditional rights?

43. *In Khadak Singh vs. State of Himachal Pradesh, AIR 1963 SC 1295, this Court has observed that the right to life is not merely an animal's existence. Under Article 21, the right to life includes the right to live with dignity. Basic human dignity implies that all the persons are treated as equal humans in all respects and not treated as an untouchable, downtrodden, and object for exploitation. It also implies that they are not meant to be born for serving the elite class based upon the caste. The caste discrimination had been deeprooted, so the consistent effort*

is on to remove it, but still, we have to achieve the real goal. No doubt we have succeeded partially due to individual and collective efforts.

44. *The enjoyment of quality life by the people is the essence of guaranteed right under Article 21 of the Constitution, as observed in Hinch Lal Tiwari v. Kamla Devi, (2001) 6 SCC 496. Right to live with human dignity is included in the right to life as observed in Francis Coralie Mullin v. Union Territory Delhi, Administrator, AIR 1981 SC 746, Olga Tellis v. Bombay Corporation, AIR 1986 SC 180. Gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits are instances of human rights violations as observed by this Court in People's Union for Civil Liberties v. Union of India, (2005) 2 SCC 436:*

'34. The question can also be examined from another angle. The knowledge or experience of a police officer of human rights violation represents only one facet of human rights violation and its protection, namely, arising out of crime. Human rights violations are of various forms which besides police brutality are — gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits, etc. A police officer can claim to have experience of only one facet. That is not the requirement of the section'. (emphasis supplied)

45. *There is a right to live with dignity and also a right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the Act of 1989. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of a citizen under Article 21 as observed by this Court in Umesh Kumar v. State of Andhra Pradesh, (2013) 10 SCC 591, Kishore Samrite v. State of Uttar Pradesh, (2013) 2 SCC 398 and Subramanian Swamy v. Union of India, (2016) 7 SCC 221. The provisions of the Act of 1989 are, in essence, concomitants covering various facets of Article 21 of the Constitution of India."*

Emerging hates and protest against PoA Act, Dalits & Tribals

There have been several caste based mobilisations to repeal the PoA Act, and spreading hate against the Dalits and Adivasi. Some of them are:

- Maratha Movement to repeal PoA Act in Maharashtra, Madhya Pradesh and other states.
- Filing litigations against PoA Act to get it repealed.
- Challenging the constitutional validity of various sections and rules, just to hush up PoA Act before the High Courts and Supreme Court in future.
- Establishing movements, platforms and NGOs i.e. Samta Andolan Samiti, Jaipur just to crash the constitutional safeguards, special laws, policies, and reservation by challenging the constitutional validity of the PoA Act before the higher courts.

Recently, an accused has challenged the circular dated 29 May 2020, issued by the ADG Police (Civil Rights), before the High Court that not to extend the benefit of provision under Section 41(A) CrPC (which pertains to notice of appearance before the police officer) to an accused in cases where the PoA Act is invoked because it is contrary to the law laid by the Hon'ble Supreme Court in the cases of Arnesh Kumar Vs State. The Samta Andolan Samiti, Jaipur is supporting the accused behind the back.

Relief and rehabilitation

The National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST) have consistently and explicitly recommended to all state governments to provide monetary compensation to the victims, witnesses and their dependents, and to rehabilitate them in the annual reports of the NCSC and NCST from 2002 to 2014. Though each of these public reports, the NCSC and NCST have clearly stated overall rehabilitation, as well as economic rehabilitation of victims and their dependents should be the norm.

The NHRC Report on Prevention of Atrocities against Scheduled Castes, New Delhi, 2002 issued specific recommendations:

Recommendation no. 10.4: *Appropriate instructions may be issued by NHRC that value of property destroyed in the course of atrocities committed against SCs is included in the compensation package provided to them.*

Response by the Government of Rajasthan: *In the Action Taken Report 10 years after the recommendations were made: State Government is providing compensation as per SC.ST PoA Rules, 1995 sub rule 12 (40 in different categories).*

The Government of Rajasthan misled the NHRC in the action taken report because the state has not provided additional relief to the murder, massacre, rape, gang rape, arson victims as per Rule 12(4)(40)(46) of the PoA Act.

Under the main statement and object for enactment of the PoA Act 1989, are preventive and punitive measures to protect the scheduled castes and the scheduled tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them. Therefore, it is the prime duty of the state to implement the PoA Act and Rules.

The state must ensure that the victims, survivors, and their dependents can get redressal. Victims and witnesses must also have an enforceable right of fair and adequate holistic rehabilitation, including full rehabilitation. Redress entails restitution, compensation, rehabilitation, reparation, satisfaction, measures for empowering victims and witnesses i.e., constant mental & physiological counselling by the experts, honouring their rights, rebuilding their lives and guarantees of non-repetition and intensive aftercare programmes to restore dignity and respect, fair and impartial treatment. The state has to strengthen all institutional mechanisms in the spirit of the PoA Act and build capacities to all stakeholders.

There has been a breakdown of the criminal justice system in respect to implementation of the PoA Act in all the states in India. Because it is a duty of the state to protect its citizens from any unlawful intrusion to their fundamental rights, it hardly matters from where this illegal violation comes. However mighty may be the caste system, it is the duty of the state authorities to prevent illegal action, and to take them to task. However, the state authorities are not acting at all, perhaps under some political compulsions.

Howsoever high you ever be, the law is above you is the basic dictum of law. Howsoever mighty be the caste system, they are not above the Constitution of India, which has removed untouchability by giving equal rights to its citizens, no citizen can be discriminated on the ground of caste.



20

Vidya Bhushan Rawat

Author

“Most often, when a Mushahar or any other Dalit is murdered, the cases are rarely filed, and blame is put on the individual. The ‘accepted’ cause of death is ‘drinking’ or some old ghost of the river being responsible for the death.”

**Uttar Pradesh &
Uttarakhand**

Strengthening the PoA Act, nuance the implementation

Vidya Bhushan Rawat¹

The PoA Act 1989 has been an eyesore of many, including those in power and those supposed to implement it. Every year, the National Crime Records Bureau (NCRB) brings out statistics of crimes in India, with a separate chapter on crimes by non-Dalits against Dalits (scheduled castes). The statistics indicate the trends, and not reality, as things are much worse than the bureau's statistics can show - as we know that cases are not filed in the police stations. In many states, authorities are asked to file cases only when there is a murder or rape case. The fact is, how rape cases are recorded and disposed-off, are too well known to need description here. Even the 2017 NCRB data showed that there were 5,775 cases of violence against Dalits, of which 3,172 cases are related to insults and humiliations. States which top in the recorded violence against Dalits are Uttar Pradesh, Karnataka, Bihar, Tamil Nadu, Rajasthan, and Madhya Pradesh.

There is an urgent need to analyse why the number of recorded cases are so low and convictions just about 27%:

“The latest data for three years, starting 2014, shows the conviction rate under the SCs and STs (Prevention of Atrocities) Act is as low as 16.3 percent, said the Ministry of Home Affairs (MHA) report for 2017-18, released on Wednesday. But the number of crimes reported under this Act came down annually in this period – from 8,887 in 2014 to 6005 in 2015 and 5082 in 2016”.²

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- ² <https://economictimes.indiatimes.com/news/politics-and-nation/conviction-in-crimes-against-dalits-is-abysmally-low-mha-report/articleshow/63833473.cms> Conviction rate in crimes against Dalits abysmally low: MHA report by Ananya Das

It is time to carefully look into some specific cases, and suggest points to strengthen the PoA Act. We need to also understand that the Act has its strengths as well as its weaknesses. I will share several cases related to it, and then provide my analysis at the end. These are the cases which I followed up closely. It is with these cases, did I realise the extent of the problems. It is equally important for us to understand that the issues of all scheduled communities are not similar. The PoA Act mostly relates to the issues of caste discrimination, but it does not address the issues of tribal isolation and exploitation with similar rigour.

Case 1: Delay in filing FIR and charge sheet actually kills the case

Chhotu Mushahar,³ 30 years, s/o Yogendra Mushahar, was found murdered because of some dispute over a fish by two persons of the Udaipura village in Deoriadistrict, Uttar Pradesh, on 28 October 2019. His dead body was found floating at the river Chhoti Gandak, in village Raman Chhapara, about a kilometre from his home. The accused Lav Mishra, s/o Chandra Pal Mishra, and Rikesh Saini s/o Ram Ratan, allegedly beat him mercilessly on the banks of river Gandak where they had asked him to get river fish for them. As Chhotu could not get enough catch, he did not give anything, and in the process got killed, leaving behind his parents, wife Rinku, and three children. Adding to the cruelty, Rinku is pregnant again, and the family lives in a one - room house that Yogendra Mushahar got. Chhotu's father was away in Sikandarabad (Telangana) for work and rushed back to his home when he was informed about the death of his son.

Divers failed to trace the body in the night, and continued their effort in the morning too, but it floated up around 8 pm. The body of Chhotu was recovered from the river, the morning of 29 October 2019. The people found injuries in the body, bleeding on head and blood oozing out of his mouth and ears. The police came in and soon did a 'panchnama' of the body and took it to the District Hospital Deoria for the post mortem. The doctor gave the report within an hour with his 'finding' that the body does not have any injury mark, and the death occurred due to drowning, thus

indicating categorically that he did not consider any foul play or murder in the death of Chhotu. Most often, when a Mushahar or any other Dalit is murdered, the cases are rarely filed, and blame is put on the individual.

The accepted cause of death is drinking or some old ghost of the river being responsible for the death. In the case of Chhotu, initially rumours were spread that he was drunk but the post mortem report too does not indicate any alcohol in him.

I had written the initial report after meeting the family, and visiting the village Udaipura, which falls under Thana Kotwali, Deoria district⁴. A more detailed report of mine was also published in Hindi by many online portals⁵.

The additional district magistrate's findings

For the last one and a half decades, the Social Development Foundation has worked for the uplift of the Mushahar community and mobilised them. Its coordinator Ms.Sangeeta Kushwaha was trying to help the community from day one. She accompanied them to all the relevant officials but nothing moved. Finally, District Magistrate (DM) Amit Kishore ordered an inquiry by the Additional District Magistrate (ADM) Rakesh Kumar. The ADM visited Udaipura and conducted his inquiry, meeting the victim's family as well as other villagers. ADM Rakesh Kumar submitted his report (No. 3071/aa.li-2019) on 30 November 2019 to the DM. His report acknowledged the Social Development Foundation's request for the inquiry.

Based on his inquiry, the ADM noted that Chhotu died because of terrible beating by rods, stones, and bricks by Rikesh Saini, s/o Ram Ratan and Lav Mishra, s/o Chandra Pal Mishra. Chhotu got injured and then was pushed into the river, where he died of drowning. It was a well-known fact that Chhotu, and for that matter, most of the Mushahars know swimming,

4 <https://countercurrents.org/2019/11/dalit-man-killed-by-upper-caste-in-uttar-pradesh> on November 2nd, 2019.

5 <https://www.hastakshep.com/old/dalit-killed-for-not-selling-fish-to-dominant-caste-men-2/>

as fishing is a lifeline for them. Perhaps, he died because he was injured and hence could not swim. He could have survived, if he was not pushed into the river. The ADM's report noted that the information of Chhotu's disappearance was given to the local police thana, but the police did not register the FIR. The Panchnama of Chhotu's dead body was not carried out in the presence of Chhotu's family, said ADM's finding.

Instead, the police took the body, misbehaved with the widow of Chhotu, and got the post mortem done without engaging or taking into confidence the family. The report further opines, after speaking to the police-in-charge of the chowki, Jeetendra Kumar Tiwari, that there was a lack of action on the part of the police officers, as they failed to respond to the various complaints by Chhotu Mushahar's family. How can the police not file FIRs or take the matter seriously when all the people, including family members and villagers, were openly suggesting that Chhotu Mushahar was beaten up? The ADM's report put the chowki-in-charge of the Karndi police station in Deoria district under suspicion. The ADM's report categorically states that, *prima facie*, there is absolute negligence on the part of the police.

Police FIR and dereliction

Even after the ADM's report indicating police inaction, and his suspicion that the local police inspector ignored the pleas for FIR, there has not been any action against the said police-in-charge of the chowki. The police did not want to file the FIR under the PoA Act. However, they had no option after the ADM's report. They resisted at all levels, and insisted that they could not file a case under Section 302 of the Indian Penal Code (IPC), but only under IPC 304. Finally, they filed the FIR on 5 December 2019, after nearly 40 days of the incident. The FIR was filed under Section 3(2)(v) of the PoA Act and Section 304 of IPC 1860.

According to the PoA Act, the police should investigate the matter as soon as it comes to their notice. But police behaviour in this entire case was related to foiling the case. What can you expect when the FIR is filed after 40 days and the charge sheet is not furnished to the victim's family, despite asking

for it. Frankly speaking, the family of the victim and those associating with them, don't know about the case till date, which is nearly nine months. Even the compensation amount came much later, and the family informed the police of being threatened by the accused's family and friends.

Case 2: Declaring an entire area as a tribal area deflates the entire act

This story is from the Jaunsar region of Uttarakhand⁶. This region is declared as a tribal area and hence the PoA Act is not applicable here. It is not really a tribal area. Jaunsar is the location, but the corrupt political leadership converted jaunsar into a tribal ethnic identity, which is factually wrong. Jaunsar is the region bordering Himachal Pradesh, which has diverse communities residing, including Dalits and non-scheduled communities. Once the entire region was declared as being tribal or scheduled tribe, then the jobs for scheduled communities were appropriated by the dominant castes as all became scheduled tribes. The caste system in this area is much more rigid than in the other parts of Uttarakhand. Violence against Dalits is high, and in many temples, Dalits are not allowed to worship even today. A big movement for temple entry of Dalits emerged around 2015-2016, but it was vehemently opposed by the caste forces.

The irony is that no case is, or can be registered against anyone in the Jaunsar region invoking the PoA Act, since all people, including dominant castes, are classified as scheduled tribes. Hence the dominant caste violence against the scheduled communities cannot be filed under the PoA Act, as everyone is declared as a scheduled tribe, and the PoA Act can be invoked only if the violence is by the non-scheduled communities on the scheduled communities. All the reservation is actually appropriated by the dominant castes in the name of scheduled tribes because they are so

6 For details: <https://countercurrents.org/2018/09/the-curious-case-of-a-brahmin-becoming-st-in-uttarakhand/>

classified and certified by the government. So, in this particular region, the PoA Act must be implemented in the case of violence against scheduled communities by anyone, and not merely go by the faulty certification, and not exempt them by the logic that it cannot be invoked for violence or crimes by the scheduled castes and scheduled tribes against each other. This is a very specific situation in a specific region. The savarna violence against Dalits and Adivasis must be recorded in Jaunsar region, regardless of the savarna's administrative classification and certification as scheduled tribes. The entire region and its demography needs a relook.

In a curious case, a person posted as a senior functionary in Uttarakhand under the scheduled tribe category, happened to be a Brahmin. Nautiyals in Uttarakhand are Brahmins – a well-known and established fact. But then, if Nautiyal Saheb is a scheduled tribe on a piece of paper duly signed by an officer, then that is what he is. Nautiyal filed a case against a person under the Act suggesting that the person abused him. The accused too happened to be a Brahmin, and challenged Nautiyal doing so under the PoA Act. He said that Nautiyal was a Brahmin but was lying in the court but Nautiyal presented his caste certificate that said Jaunsari tribe. The High Court then imposed a fine of Rs. 200,000 on the litigant for falsely accusing the person and tarnishing his image.

The person has now approached the Supreme Court of India, and unless the court dwells on this in detail, the situation would remain the same. The Supreme Court must look into the Jaunsar case in its entirety, as to how the dominant non-scheduled communities have appropriated everything from jobs to other positions in the name of the Janusari Tribe. There is nothing called Janusari tribe. It is a misnomer. There are so many castes and communities in Jaunsar. It is a region and not a homogeneous identity. An impression was created, and thanks to the Brahmanical leadership in Uttar Pradesh of those years, a mystique was created. A bill was also tabled in the Parliament in 1969 to include certain communities in the scheduled tribe list, while delisting others but due to pressure of powerful political leadership, it was withdrawn.

Now, we come to the facts of the matter, which will be an eyes opener for all those who call for a Bharat Bandh – nationwide general strike – for removing the PoA Act from the statute books. We will show how legislation meant for the benefit of the scheduled communities have been circumvented. The example is from Uttarakhand, but it may be present in other areas too, and the need is to work on them and expose them.

The Government of Uttar Pradesh has never ever properly acknowledged the presence of Adivasis (indigenous and tribal people, scheduled tribes) in the state. With Brahmanical leadership at the helm, they cleverly created certain zones, and declared them scheduled tribe zones. One such zone in Uttarakhand is the Janusar area. Now that the entire area is a scheduled tribe zone, it should come under the Panchayat (Extension to Scheduled Areas) Act, PESA, and other similar Acts. The fact is there is a huge number of Brahmins and Rajputs in the region, who have appropriated all the jobs under the quota meant for scheduled tribes. Tragically, the Dalits (the scheduled castes) don't easily get their caste certificate.

The caste system is pernicious here. It is more pervasive and strictly enforced than in any other region of Uttarakhand. The Dalits are not even allowed to enter into the temple. In fact, I told some of our friends that they should not try to go to these temples, but make them redundant. If you are not welcome in the temple, that means that you are not a Hindu. Just follow Baba Saheb Ambedkar. Many socialist friends wanted to launch a campaign for the temple entry. Another one became a hero claiming to follow Dr. Ambedkar. I said, Dr. Baba Saheb Ambedkar wanted people to come out of the mental slavery, and would not have liked young students to fight for temple entry rights.

One of the most marginalised Dalit communities here is Kolta, but it does not come under any administrative category requiring affirmative action. It does not get a reservation. The other is the Bajagi, who are drum beaters and remain untouchables. In this Yamuna valley of Jaunsar, on the death of

a person, the Bajagis have to beat the drum and if they don't, they face violence and boycott.

Boycott and violence are powerful weapons of the casteist forces. The political leadership knows it well, but will not act. The PoA Act is virtually redundant in the entire Jaunsar area as everybody is counted as scheduled tribe, and hence it is not applicable. This also brings us to two important points. First, it is not merely the PoA Act that needs to be amended, but also the related Acts. Second, an entire area should not be declared as a scheduled tribe area, unless the region has significant tribal population. Jaunsar in Uttarakhand is a regional identity, and not a homogenous tribal identity. This regional identity has been converted into an ostensibly ethnic identity. Even if an area is declared as a scheduled tribe zone, it is important that the PoA Act remains in force in the region. It is important that the Act is used against untouchability and caste discrimination practices, whether done by dominant castes or the scheduled communities. We live in graded inequality and if the PoA Act is not applicable on those practicing caste-based discrimination, then it is bound to fail.

Case 3: Social boycott in Bhagana, Haryana - no resolution in sight

The struggle for social justice and human rights of the Dalits from Bhagana village in district Hisar, Haryana has been going on for over eight years⁷. The entire village dominated by the Jats, turned against them since May 2012. On 21 May 2012, they were evicted from the village by economic boycott by the dominant castes. The Jats had demanded that the Dalits move out of the Shamlat i.e., the village commons, where the Dalits had been residing for years.

Over the years, Haryana's powerful Jats have benefitted highly from the soaring land prices, as agricultural land soon turned into booming real

7 For Bhagana, Haryana complete story <https://www.countercurrents.org/rawat190815.htm>

estate. Therefore, the land-sharks in the villages, with active support of the powerful politicians, were grabbing Shamlat land meant to be distributed to Dalits and other landless people of the region. Bhagana had over 250 acres of Shamlat land, which was promised to the Dalits once upon a time, but the Jats felt that once the land went to the Dalits, they would assert their rights and refuse to work on their fields as landless laborers.

In May 2012, all the 450 odd Dalit families of Bhagana were forced to leave their village by the land owning Jats, who never wanted them in the first place. Most of these families moved to Hisar's mini-secretariat and stayed in tents and other makeshift shelters. About 150 of them walked bare chested to Jantar Mantar, Delhi when the temperature was nearly 45 degrees Celsius. At the time, they demanded redistribution of land and action against those who wanted to evict them. In Delhi, we were together, and I saw them meeting various leaders, ministers, and Members of Parliament (MPs) but nothing happened. Most of them remained at their tents and some would go back to their place and work.

Nearly a year later, on 23 March 2013, four minor girls of the community were gang raped in the village. They were abducted in a Maruti car when they had gone out to defecate in the evening, and taken to Bhatinda, a city in Punjab nearly 100 kilometres away. They were drugged and raped. As the community came to know about it, they approached one panchayat leader who happened to know about it, and accompanied the families to Bhatinda. While coming back he threatened them not to reveal the incident to the family. There was outrage in the village, and families protested in both Hisar and Delhi. They met officials, the National Human Rights Commission (NHRC), the National Commission for Scheduled Castes, and the National Commission for Women. Yet nothing happened. We protested in front of the parliament so many times. We had candle light marches and whatever was possible to claim as a peaceful democratic protest, yet the end result was nothing.

Embracing Islam in desperation

What can one do when none of the state mechanisms is ever ready to support when justice is needed? There are many implications of this, including anarchy, disturbance, and absolute cultural slaughter of the community. For over two years, the community was living in camps at Jantar Mantar, they lost everything, yet there were no tears shed for them. The Government of India offered Kashmiri Pandits land in Jammu and in Delhi, but neither the Government of Haryana nor the Government of India could make a promise to the Dalits of Haryana. Where do people go when all the roads are blocked for them? Let us see the turn of events in Bhagana for the past three years.

The desperation was clear. The villagers did not want to go back to the village, where they are unwanted and their life security was threatened, hence they called a meeting on 8 August 2015 in Delhi, and nearly 150 people embraced Islam at Jantar Mantar, while it was reported that others did so, in Hisar.

Things have not changed in 2020 too. Now people have even lost the right to protest in Delhi. They have been forcibly evicted from Jantar Mantar in Delhi, and are now out of the capital. A few have been sitting in Hisar's mini-secretariat, as it is difficult for them to return to their home in Bhagana. Nobody knows the status of the case. Not a single conviction happened so far. Dalits are on the roads while the perpetrators of the crime enjoy full protection, and political patronage.

Case 4: Shivam never got justice

Eight-year old Dalit child Shivam's⁸ left arm was crushed on 28 December 2015 in sugarcane crusher by a Brahmin family in Janupur in Uttar Pradesh. The entire family was suffering from humiliated, courtesy the Jaunpur

8 For Shivam's story read the following <https://www.countercurrents.org/rawat280116.htm>. Other cases of how caste atrocities goes unreported and unpunished. My report from Gujarat <https://www.sabrangindia.in/article/stories-change-makers-kutch-gujarat>

police which refused to file an FIR in the case when the incident happened. The police officers scolded the mother of Shivam when she went along with two local human rights defenders, Ms Shobhna Smriti and Ms Renu Singh, both of whom were responsible for getting the FIR filed in the Maharajganj police station.

The SP of Jaunpur actually insulted the two women activists asking them as if they were middle women. It is shameful that that the Jaunpur police and high officials, rather than admitting their own grave mistake, are trying to cover up things and humiliating those who are trying to help the vulnerable family.

The people in village GauraKhurd of Maharajganj district are tight lipped, as both the police as well as the local feudal lords have made their life difficult. The family of Shivam has gone to an undisclosed location, as they know that the police are not helping them, and that they will not get justice anywhere. Most of the Dalits here are landless, and work on the land, of either the Brahmins or Thakurs. Hence, the communities are tight lipped on the issue due to economic dependency, as none want to lose their livelihoods.

I followed up this case with NHRC, which finally closed the case as they claimed, the Uttar Pradesh police was following the case. One can imagine how things move in India. The police on their part actually attempt to force a compromise.

A review of two districts in Uttar Pradesh

Deoria and Kushinagar are two districts in eastern Uttar Pradesh with a large population of Mushahars. Kushinagar is a famous Buddhist town, where Buddha died and it was part of district Deoria before Ms Mayawati declared it a separate district. Mushahars are one of the most marginalised and politically non-represented communities among the Dalits. One of my colleagues, Ms Sangeeta Kushwaha, filed an RTI with both the Deoria and Kushinagar district police to find out the cases filed under the PoA Act and the convictions in the last five years. And to our utter dismay, there is not a

single conviction in the cases filed under the PoA Act in the two districts. In many cases, even the charge sheets have not been filed. We are still in the process of evaluating the data from local communities, but one fact stands out: most of the marginalised people are unable to reach the police station. There is a lot of pressure on them to compromise with the accused. Caste loyalties have been visible among the police

officials who work under tremendous political pressure. Both the districts are among the poorest in terms of the scheduled communities, and the non-scheduled communities have an almost absolute dominance. Communities such as Mushahars and Doms can't even file the case in the court. In the 17 police stations of Deoria district, we were informed that 568 cases were filed under the PoA Act in the five years from 2015 to 2019, but there has not been a single conviction so far. Similarly, for the same period, Kushinagar district has 754 cases under 13 police stations without any conviction. We are analysing the information received to frame concrete suggestions for the area.

Conclusion

Based on my experience, my understanding is given below.

- Police discourage the victims from filing cases, and if that fails, delay filing of cases.
- The autopsy is done under the control of the police. Since the family of the victim is not in a position to monitor it, there are strong chances for manipulation. Many a time, the family members are frightened as the police just ask them to get away. The autopsy and the post mortem reports are the most important tools where a case can be easily killed. Many times, people take the victim to private hospitals. But those reports are not acceptable in the court of law. Hence, it is important that these things are known to people.
- The police delay arresting the accused. This often results in instilling fear among the victims and intimidation of the witnesses. It negatively affects the final outcome of the case.

- The PoA Act is to prevent atrocities against the scheduled communities. Hence, it should be made applicable in all areas, and for all violence against the scheduled communities, irrespective of their caste and region status. This will prevent misuse of the provisions as is happening in a particular area.
- The Act is to fight discrimination and untouchability at individual level. In the case of combined onslaught of communities and caste dominance, this Act has remained mute and redundant. Social and economic boycotts are now the biggest tool in the hands of dominant communities against the Dalits and Adivasis. This Act has failed against collective and community based-violence or oppression. There is a dire need to seek amendment in this Act and bring more focus on the issues of mass oppression, mass economic boycott and social ostracisation.
- This Act is mostly related to the scheduled castes as it does not really take into account the issues of Adivasis, which are quite different. Unlike Dalits, Adivasis are victims of the modern developmental system and faced displacement. It is rare that Adivasis are protected by the PoA Act against unmindful and ecologically disastrous development.
- Merely an Act, however well-intentioned, will not work as the bureaucracy and police are heavily politicised and suffer from caste prejudices. It is important to look beyond the Act, and form district human rights commissions everywhere in the country. They should be made accountable to audit the cases in the police and report to the National Human Rights Commission (NHRC).
- Police files related to FIRs, charge sheets, and convictions of the crimes against the scheduled communities must be audited every year. Ideally, it should be monthly, but if that is not possible, the government must order annual audits of these to analyse whether the case has been properly investigated and pursued.
- Every state and district must have a grievance redressal mechanism. Though it exists on paper in every police station, given the nature

of the work that the police officers have, these result mostly in verbal assurances or a compromise between the powerful and the victim. It is essential that an independent body within the police department must be formed from the top to bottom so that victims can complain against their district head, if their grievances do not get resolved.

- The PoA Act permits victims to hire an advocate of their choice, paid for by the government. It is impractical most of the time, particularly if victims are living in far flung and most marginalised areas. The district police must have an efficient government that appoints lawyers from the scheduled communities in their department to prosecute the cases, under the PoA Act. Most of the government standing lawyers and advocates are caste-Hindus, who are appointed due to political connections, and therefore, don't take much interest in the case. Lawyers to represent cases under this Act, must be from the scheduled communities in every district.
- There must be stricter penalties for government servants, if they are found neglecting their duty by delaying filing FIRs, or attempting to prejudice investigations by not following up the cases, or attempting to thwart the justice.
- There must be special benches in the High Courts and in the Supreme Court of India to deal with cases related to the scheduled communities. The special bench should understand the socio and cultural-economic dimensions of these communities. It is equally important that judges are appointed from these communities, so that diversity is maintained in the courtrooms and people have more faith in them.



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Adv. Bhavani Mohan

Advocate

“The state does not cooperate with the victim - appointed SPPs. The victim - appointed SPPs are not given proper help by the police, and it is treated as a private case, except in sensational cases with wide publicity.”

Tamil Nadu

Laws and flaws in the implementation of the Act

Adv. Bhavani Mohan

The past five years have seen many ups and downs in the PoA Act 1989 and Rules 1995, with substantial amendments to the Act in 2015, and to the Rules in 2016. A judgement by the apex court necessitated an amendment in 2018 – just a few months after it was substantially amended, and passed by the parliament.

This article is based on my experience in prosecuting cases as a victim-requested special prosecutor when the PoA Act 1989 was invoked. Though the experience is largely in Tamil Nadu, it draws on the judgements and judicial precedents across the nation.

Some welcome developments

A welcome development is the latest judge-made-law by the three judges of the apex court in Haribhai Vinubhai Malaviyavs State of Gujarat, reported in 2019 SCC (16.10.2019). It held that the victim has the right to seek further investigation, and also forwarding the case under 156(3) of the Criminal Procedure Code (CrPC), 1973. This is a welcome deviation from the 43 year old precedent.

This has opened the gates for victims to apply for further investigation even after taking cognisance. The reinvestigation will remedy many flaws created by some investigation officers to covertly help the accused. The piquant situation is seen in a number of cases during examination of witnesses.

Precautions during framing charges

It is a duty of the Special Public Prosecutors (SPP) to open the prosecution,

and apprise the court on the brief facts of the case, and manner of examination of witnesses, even before the framing of charges under section 226 of CrPC. This initiation has to be comprehensive enough so that the court would understand the basic facts of the case, and it would be on record. That will be useful during examination of witnesses. Even affidavits may be filed to spare the time of the court in respect of undisputed facts of cases, and to mark documents under Section 269 of the CrPC.

SPPs must be vigilant while framing charges under the different heads of offences committed by the accused, under the Indian Penal Code (IPC) 1860, or with other special laws. Framing of charges is not an empty formality. It is incumbent on the court to frame correct charges on main offences, failing which, it will result in a miscarriage of justice. It goes without saying that Section 216 of the CrPC can be invoked at any time by the court to alter charges, even after the judgment is pronounced in an extraordinary situation to do complete justice. The SPP should assist the court (AIR 2018 SC 5604, *State of M.P Vs Deepak*) in this voyage.

PoA Act standards should be maintained

According to Rule 7, It is mandatory that the investigation carried out by an officer not below the rank of Deputy Superintendent of Police (DSP), should have been complied with by the investigation, before it starts the proceedings. The superintendent of police of the concerned district, or the commissioner of police in metropolitan cities, and SPP should verify all original documents submitted by the prosecution by filing a memo in the court. In doing so, many flaws committed by the police in favour of the accused can be discovered. These flaws can then be rectified in the course of proceedings in accordance with the law. The ultimate goal of the trial is to find out the truth and only the truth. The trial court is nothing but a truth finding court.

The brutal murder of six Dalits in Melur police station case by 40 armed caste fanatics and goons tried by Salem Principal District Judge (PDJ) ended in conviction of 17 accused, and the same was upheld up to the apex court.

But they were not convicted under the PoA Act because of non-compliance of Rule 7. The same happened in the Chennagarampatti double murder case, where two Dalits were murdered for the only reason that they competed in the auction of temple land at par with caste-Hindus. That resulted in their brutal daylight murder, while alighting from a bus. 28 accused were convicted with double sentences under two counts (2012(1) MWN (CrI.) page 87, Sekar vs State), but not under the PoA Act due to the single reason of non-compliance with Rule 7.

The rights of victims and witnesses

Thanks to the amended provisions in Chapter V(A) in section 15A of the PoA Act, the court and the police should ensure that proper protection is given to victims, witnesses, informants, and their dependents. That has to be monitored by the SPP, by filing petitions in the court and instructions being given during examination of witnesses.

Section 8 of the PoA Act is on the presumption by the court as soon as the prosecution places evidence of the victims being from the scheduled communities, and the accused being from non-scheduled communities, and if there is any existing dispute or motive between victims and accused, group violence or gang rape, and financial assistance by the accused and the occurrence. Presumption is drawn by the court on proof of the facts stated above.

Under Section 134 of the Indian Evidence Act (IEA), when there is direct evidence, such as an eyewitness, even solitary evidence with believability and credibility is sufficient. The court expects only quality evidence and not quantity. The court is not a recording machine or mute spectator during the examination of witnesses. The inherent power of the court under Section 165 of the IEA has to be used whenever witnesses are confused, or their statements are twisted by defence, and to help the often rustic witnesses to clarify their statements, in accordance with law.

The SPP has the right to know about witnesses, their mood to depose, and

whether they have been won over or intimidated by the other side. Since many cases start belatedly due to late filing of the charge sheet, late appointment of SPP on the application of the victim, and other inevitable circumstances, it is a prerogative and duty of the SPP to have a dialogue with witnesses about what to depose at the trial.

As the newly amended provisions of the PoA Act (Section 15A) mandates that victims are entitled to be informed right from the stage of bail, to even after end of court jurisdiction, to when remission is considered by the government. The victim can very well file applications in the midst of trial to examine any witness, or for any documents to be marked in the interest of justice, in the event of SPP fails to do so.

Examining the investigating officer

During the examination of the investigation officer, SPPs should be vigilant to see that evidence is not tilted in favour of the accused. Most of the investigating officers are prone to dispose-off the case mechanically without taking note of different stages of the case during investigations, and foul play being caused in the case in diluting the very spirit of fair investigation by vested interests. The SPP should ensure that the contradictions elicited in the hostile witnesses should be put forth to the investigating officer. The final shape has to be given in their evidence about how they came to invoke the particular sections of the PoA Act, both in the chief and cross examinations.

In most of the cases, the dominating caste associations and their leaders play a vicious role in weakening the trial by using their money and muscle power, coupled with their caste and political influence, to win over (intimidate) the witnesses. This can be prevented by the concerned Deputy Superintendents of Police (DSP) of the jurisdiction using the provisions of Section 10 of the PoA Act, to ensure a free and conducive atmosphere for witnesses to depose in the court, without any objective and subjective fear will prevail.

In my personal experience, it would be possible to successfully achieve the desired end if the investigation is duly monitored by victims and rights movements, the SPP is appointed at an early stage (prior to filing the final report or even prior to framing charges), and the proper protection is provided to witnesses right from the beginning of the trial. Only then can justice be said to be done at all stages in the administration of justice, and the prevention of avoidable errors will take place.

The trials of an advocate

As an advocate, conducting prosecution for victims, especially those from the scheduled communities, is a stupendous task. The work of the prosecutor is two-fold as preparation of notes on the final report submitted by the investigation agencies could unearth a lot of weaknesses to dilute the case, while evaluating the papers and witnesses.

In most cases, the district administration does not comply with the mandatory provision of Rule 4(5) when victims petition to appoint a counsel of their choice. Meanwhile, the trial would begin, and without having proper guidance and instruction about the real status of the case, witnesses depose from their knowledge that will run counter to the papers found in the final report. Then the SPP treats the witness mechanically as hostile, under Section 154 of the Indian Evidence Act, and fails to elicit the truth from them. Therefore, it is my sincere request to social activists and stakeholders to see that the SPP is appointed in every case as early as possible, even prior to the filing of the charge sheet.

The final report is to be studied in depth to find out whether it needs further investigation under 173(8) CrPC that has been incorporated in the amended CrPC. It is pertinent to note that Sections 91 and 311 CrPC can be pressed into service, even if the investigation has failed to place appropriate documents, or to cite connected witnesses.

It is my duty to place facts of bitter experience in conducting the prosecution of PoA Act cases to the SPP appointed by the victims,

as against the state-appointed SPP. The state does not cooperate with the victim-appointed SPPs. The victim-appointed SPPs are not given proper help by the police, and it is treated as a private case, except in sensational cases with wide publicity. SPPs should be assisted by advocates in the trial of sensitive and high profile cases, as a lay SPP cannot singlehandedly bear the entire burden of conducting the cases in the court, and simultaneously attend to the other administrative aspects, for which victims may approach district administration and the high court, with the remuneration provided by the government. The state sponsored SPPs are provided with two government assistant public prosecutors, (for instance, as in the Udumalaipet Shankar murder case in the Tiruppur Special Court) so that the SPP can effectively discharge his duty in conducting the prosecution. Similar provision must be extended to SPPs appointed under Rule 4(5).

To the last mile

After completing the introduction of evidence by the prosecution, during preparation of the questioning under Section 313 of the CrPC, the SPP should play an active role to assist the court to ensure that no miscarriage of justice will take place in placing incriminating evidence against the accused in a proper manner, in accordance with law. It is always important to file written arguments along with oral arguments under Section 314 of CrPC. This will be useful, not only to the trial court, but also in the appeal, as all the material evidence is placed for the appreciation of the court.

Last but not the least, the mindset of the police and some of the judicial officers need to be taken to account. They are not inherently faithful to the constitutional obligation to implement this special Act. This constitutional obligation flows from the fundamental duty and mandate of law to implement Article 17 of the Constitution of India namely - untouchability has been abolished and any form of practice of the same is an offence.

Social justice and equality in all spheres of life will be achieved, if the atrocities perpetrated on the scheduled communities stop, the offenders are brought to book, and punished as specified in the PoA Act. In this, the

role of the SPP is an inseparable part of the institution that plays an integral part in the administration of criminal justice.

I conclude with the words of our former president K.R. Narayanan who said, *‘Untouchability has been abolished in law, but shades of it remain ingrained in the attitude nurtured by the caste system. Though the positive policies of reservations and public service flow from the constitution, the provisions remain unfulfilled through bureaucratic and administrative deformation or by narrow interpretation of these provisions.’*



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Adv. M.S. Krishnakumar, B.A., B.L.,

Tamil Nadu Tribal People's Association

“The reality is that the lower courts lack the perspective that the victims’ land is tribal land, and the lawyers too do not have that understanding.

When civil cases are filed in the lower courts, the old revenue documents of the tribes are seldom taken into consideration.”

Tamil Nadu

The Tamil Nadu Tribal Experience

Adv. M.S. Krishnakumar, B.A., B.L.

The PoA Act 1989, as we now know, it came into existence after many amendments and changes at various points in time. The Untouchability (Offences) Act was brought in the year 1955, which was later replaced by the Protection of Civil Rights Act and then in 1989 the PoA Act was enacted. The PoA Act 1989 and its Rules 1995 can be divided into three different categories. The first category classifies crimes against the scheduled communities, as per provisions of criminal law and penalties under the Indian Penal Code 1860. The second category is related to the relief and compensation for victims of atrocities. The third category refers to the establishment of separate vigilance and monitoring committees at the state, district, and sub-divisional levels.

Police department

When the victims lodge a complaint in the police station under the PoA Act, it is seen that a First Information Report (FIR) is not filed as per the Police Standing Orders, Guidelines of the High Court and the Supreme Court of India. The officers-in-charge of the police station refrain from filing FIRs without the permission of higher officials.

For instance, a case was not registered under the provisions of the PoA Act on the caste-Hindus who drove away Thundan, an individual belonging to a scheduled tribe, hailing from the Bargur Hill Revenue Village in Andhiyur taluk, Erode district from his agricultural lands, assaulted him and issued death threats. Instead, an ordinary case (Cr. No.33/2018) was registered. When asked, the police responded that there is no evidence to prove that the lands belong to the said person, and therefore refused to file a case under the PoA Act. As per the PoA Act, if there is an attempt to alienate a person from lands on which he has been doing agriculture for generations,

action should be taken as per the provisions of the Act.

In Onnakarai hamlet of the above village, the house of Murugan and Madevan who belong to a scheduled tribe was demolished at overnight, saying that they should not reside in the vicinity of the temple of the caste-Hindus, and the fence around their house was set on fire, and big rocks were piled in front of their house rendering it uninhabitable. Although a complaint was lodged against the persons who indulged in these atrocities, the police officials of Bargur did not register a case. Later, on the intervention of the Tamil Nadu Tribal People's Association, the Tahsildar of Andhiyur called both parties thrice for peace meetings, and after this too, when the Bargur police officials did not register a case, the Tamil Nadu Tribal People's Association staged a sit-in protest at the Tahsildar's office condemning the Bargur police. After this, cases (Cr. Nos. 11/2019 and 12/2019) were registered at the Bargur police station.

In the same village, instead of filing cases against the person who grabbed the land of Peran, a case (Cr. No. 63/2019) was registered against the victims, and they were arrested. Although the PoA Act provides for action against the officials who fail to do their duty, there is no clarity on who should take the action. Violating the condition, the Conditional Pattas (title deeds) that were granted to persons from the scheduled tribes in Thingalur village, Thalavadi taluk, in Erode district, were changed to names of other persons and revenue documents were created. Though a petition was given regarding this to the district collector, no action was taken. Therefore, the Tamil Nadu Tribal People's Association sent a complaint to the National Human Rights Commission (NHRC). During the NHRC inquiry, the district administration acknowledged that conditions had been violated, and assured the NHRC that the Condition Pattas would soon be restored to the concerned people. But the Erode District Administration has not fulfilled its assurance till date.

The police department has no understanding of the tribes. They look upon the PoA Act with a casteist view, without considering that it is

a special Act. This attitude prevails at all levels from the lower grade officials to the top. Although the Act clearly defines which acts are atrocities against the scheduled tribes, the police act with the attitude that the Act can be applied only when casteist abuses are used.

A young tribal woman belonging to the Kongadai hamlet of the above revenue village was given assurances of marriage by a youth belonging to a dominant caste, who then established a sexual relationship with her. He then went back on his promise, which made the dejected victim consume poison. The doctor at the government hospital who treated the said girl, failed to make relevant entries in the accident register, or inform the concerned police station. This is the negligent attitude that prevails among the doctors of the government hospital. Later, after two months, as a result of the efforts of the Tamil Nadu Tribal People's Association and given the circumstances that the girl went through, a case (Cr. No. 449/2019) was registered in Erode North police station. As far as the police department is concerned, when a case is registered under the PoA Act, they look upon it as an unwanted addition to their workload, and their attitude is to somehow to get rid of the case.

In the Sundapody hamlet of the above revenue village, persons of dominant caste chased away five families belonging to scheduled tribes from their agricultural lands, though the tribals had the title deeds granted to them by the government and all other relevant revenue documents. Though action was sought against the perpetrators, the Bargur police officers did not take any action against them. Since the officials who ought to take action under the PoA Act against the offending officers are also police officials, the victims undergo financial loss, practical difficulties, and hardships in approaching the court. Also, when a lawyer's notice from the victims is sent to the concerned officials seeking explanation on why action should not be taken against them for failing to do their duty, they take on a lackadaisical attitude without furnishing any response.

Revenue department

Tribal lands should not be purchased by, or sold to other persons. This has been specified in the Revenue Standing Order 15, drafted in accordance with the Supreme Court Ruling in the Lingappa Bochchamma Vs. Maharashtra case in AIR 1985 SC 389, that states that even if tribal lands are in possession, and enjoyment of other persons, they should be handed back to the tribes. Also, according to the judgment of the Madras High Court in WP (MD).No.8285/2010, and judgments given by Justices Chandru and Hariparandhaman, the execution of sale of tribal lands to others will not be deemed valid. But the officials of the revenue department make patta transfers of lands belonging to the scheduled tribes in the name of other persons and create documents in total violation of the PoA Act, guidelines of the courts of law and revenue standing orders. Although the supreme court and the high courts have passed various judgments as per the Revenue Standing Order Rule 15, the officials of the revenue department do not seem to take it seriously at all. Also, even if persons of the scheduled tribes approach the courts of law, the lower courts after much delay, pronounce judgments in favour of the third persons because they are the ones who are in possession of the sale deeds, and revenue documents.

The reality is that the lower courts lack the perspective that the victims' land is tribal land, and the lawyers too do not have that understanding. When civil cases are filed in the lower courts, the old revenue documents of the tribes are seldom taken into consideration. In recent times, the cases are also heard only taking into account the person in whose name the documents and possession exist. The officials of the revenue department also do not produce the old documents of the tribes. They adopt a lackadaisical attitude, without taking any action on the grabbers of tribal lands.

There is no doubt that the main reason for the tribes being deprived of their land is the inaction of the revenue department. In Bargur village, about 200 Condition Pattas have been issued. But currently those agricultural lands are in the name, possession, and enjoyment of other persons. Although

many complaints have been sent regarding this to the revenue department, officials at all levels try to shirk-off their responsibility, saying that it is a civil issue and should be addressed in a court of law. For the tribes, the legal battle is a big financial challenge.

Vigilance and monitoring committees

As per the PoA Act, a vigilance and monitoring committee should be set up at the state level under the chairmanship of the chief minister, and it should comprise of officials from various departments, including the police department. It should meet twice a year after getting state-wide review reports. But it doesn't seem to be conducted. Likewise, as per the Act, a vigilance and monitoring committee headed by the district collector should also be set up. Many organisations, volunteers and social activists should be made a part of the District Vigilance and Monitoring Committees (DVMC). The DVMC should meet four times a year, undertake district-wise reviews, and submit a report. But it does not seem that this committee functions at all. The fact is that persons who are close to the higher officials, persons who are not connected to the issue in any manner, and are mere letter-pad party members, are made members of the CVMCs, and the whole purpose of the Act is defeated. Instead of making just persons of the scheduled communities as members of the DVMCs, persons who belong to other communities but work as social activists for the cause of the scheduled tribes should also be made members. Only then a proper monitoring will be possible.

Judiciary

Even the view of the judiciary regarding atrocities against the scheduled tribes, their dispossession from agricultural land, and livelihood issues is not appropriate. The Act says that a special court should be set up to hear cases regarding atrocities against the scheduled tribes. But the state government does not take necessary steps in this direction, and the district courts double up as special courts too. The situation that prevails is that the PoA Act cases are dealt by these courts in the same manner as that of other cases. The district administration appoints Special Public Prosecutors

(SPP) to conduct the PoA Act cases in the special courts. The appointment is made from among the lawyers of the ruling party, and the experience and functioning of the lawyers are never taken into consideration.

The Investigation Officers (IO) who conduct investigations in the PoA Act cases do not search for witnesses, get their testimonies, nor collect evidence or exhibit it responsibly. The investigation officers do not show any interest in conducting the investigation in a proper manner by consulting the SPP during examination of the witnesses, as outlined by the PoA Act. If the investigation officers do not investigate the cases in a proper manner, they are liable to be prosecuted for dereliction of duty, as provided under the law in the concerned court itself. But no SPP takes any effort for this. The affected persons from the scheduled communities can make a special appeal in the special courts, but the courts do not have any understanding of this and cause delays without looking at the Act or the guidelines. In many genuine cases relating to offences under the PoA Act, it is a regular practice to question the credibility of the witnesses and acquit the accused on the grounds that the charge against them could not be proved, which creates the suspicion that even some judges have a casteist mindset.

The tribes generally have been people who were not desirous of land ownership and did not give it much importance. Since they did not pay much attention to procure revenue documents for the lands, which they have been cultivating for agriculture for generations, third persons in collusion with the revenue officials, have created documents in their names for the tribal lands and rendered the tribes landless.

When the Tribes, who are guardians of the forests, are driven away from their land, it results in great threat to the forest, the environment, and to the whole of society. It is the duty of the government to redeem the tribal lands, and return it to them. When the tribal lands are grabbed, third persons enter the forests and destroy them. The government should take immediate steps to recover the lost tribal lands, as per the PoA Act. The rights of the tribal people should be ensured, also as per the Forest Rights Act.

The irresponsibility and negligence of the officials are main reasons for the difficulty in implementing the PoA Act. The courts ought to be places where action is taken against officers of the police and administrative departments who neglect their duties.



**“The Constitution of India,
does not declare the
abolition of caste, it only
declares the abolition of
untouchability practices.”**

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Thiagu

General Secretary, Tamil National Liberation Movement

Tamil Nadu

PoA: Lessons from experience

Thiagu

The Constitution of India does not declare the abolition of caste, it only declares the abolition of untouchability practices. Article 17 states, *'Untouchability is abolished, and its practice in any form is forbidden. Performing any act arising from untouchability is a punishable offense by law.'*

Untouchability is not merely just an abuse of not doing this, or not doing that. It includes all atrocities committed against people who were, and in many cases still are considered untouchables, on whom such atrocities have been perpetrated. That it has left its mark on the course of history is a painful fact. In a situation of centuries-old Manusmriti permitting the so-called caste-Hindus to commit atrocities on the so-called untouchables, merely the abolition of untouchability as an article in the Constitution of India, will neither put an end to these atrocities on its own, nor is it expected that these can be addressed by normal criminal laws, such as the Indian Penal Code, that defines the individual criminal activities and the punishments thereof.

Having realised this fact, the Protection of Civil Rights Act of 1955 (PCRA) was enacted. It is a reality that not only the police, but also the judiciary has been caught up in the caste-Hindu mental attitude in cases where the perpetrators have escaped the punishment by using loopholes in the law. The socially excluded communities are not only a minority, but also a powerless minority compared to caste Hindus. Because of this fact, it became obvious that there needs to be a special law to prevent, and punish atrocities against them.

Consequently, the PoA Act, 1989 was enacted. The Act and its rules provide

a comprehensive description of the atrocities. No previous law has provided such a detailed description.

The Atrocities Act has three objectives. To:

- a) Prevent atrocities against scheduled castes and scheduled tribes;
- b) Establish special courts for trial of atrocity related criminal cases;
- c) Rehabilitate victims of atrocities.

Apart from these, the law paves the way for resolving all other issues related to crimes and atrocities. The unique feature of the PoA Act is that it is a complete criminal law of detention, punishment, and rehabilitation. The rules for the PoA Act were framed by the Government of India in 1995.

A brief history

In the historical context of Indian society, the PoA Act has been enacted after a very long period. Atrocities against the oppressed have been a daily occurrence, even in Tamil Nadu that has witnessed many movements against untouchability. Not only is there no legal action against them, they hardly become news. But a few incidents shook the entire community.

On 11 September 1957, Emanuel Sekaran, an activist against untouchability, was assassinated in Paramakudi. This led to the Mudukulathur riots. It drew the attention of the world to the atrocities arising from untouchability.

Eleven years later, on Christmas Day, 25 December 1968, 44 slum dwellers in Venmani, mostly women and children, were burned alive. They were brutally killed not only because they asked for wages, but also for their right to form associations, and for their resistance to the landlords of the dominant caste. Similar massacres against Dalits and Adivasis took place in Andhra Pradesh, northern states like UP, Bihar, and many other parts of the country.

At a time when the struggle for the right to livelihood was growing among the Dalits and the Adivasi, these atrocities were carried out by the dominant forces to prevent, or at least delay, the moment of reckoning.

My experience

As far as I am concerned, I learned about these atrocities through practical experience more than academic education. It was the East Venmani atrocity that motivated me to join a full-fledged revolutionary movement giving up my college and family life. I lived in slums and laboured with these people, and I experienced their tragedies and atrocities directly in hamlets in East Thanjavur. If this were the case in villages with a revolutionary movement, then what might have been the case in the southern districts like Ramanathapuram and the western districts like Dharmapuri?

Let me tell you about an event that I witnessed while staying in a small village near Kudavayil. A landlord had been using various atrocities to force the Dalits to bow down. One of them was a social boycott against them. It was easier for the landlord to mobilise all the caste-Hindus against the Dalits. Public stores refused to sell things to them. None of the landowners gave them jobs. They were forced to go to other villages to look for jobs. To prevent even this, a fence was built on the lands surrounding their residence. All these atrocities took place with the connivance of government officials. Since the Dalits were all members of the Agricultural Union and the Agricultural Labourers Union, the union leaders petitioned the officials of the revenue department and the police. There are cases from both the sides pending in the courts.

In this situation, a Dalit girl went to the field to collect cow dung. The landlord's son harassed her demanding, 'How can cow dung be collected from our land?' She escaped and cried to her brother but what had happened. The brother was stabbed when he went in person, and questioned. When the Union decided to go to the police station to lodge a complaint, the landlord was sitting in the chair opposite to the police inspector.

When we look at the caste-based communities, and the oppressive state machinery inventing new forms of violence, the need to rely on people's movements rather than relying solely on the law becomes evident.

The social context

What would happen to the impunity of caste-Hindus, especially affluent landlords, to inflict any cruelty against the Dalits without punishment – the impunity of Manusmriti dominating the colour-based caste communities – if the principle of equality before the law continues in modern society? The answer to this question was the PoA Act. Law refers to social cognition. The meaning of the PoA Act is that the government recognises, on behalf of the society, that a section of the population remains enslaved, and that not only discrimination, but also atrocities are perpetrated against them. Otherwise, just because the law has been enacted, it does not mean that the evils will be eliminated. This law is just a tool in the fight against atrocities, and that is all. The tool does not automatically fight without anyone to pick it up.

A 1990 study by the National Commission for Scheduled Castes and Scheduled Tribes on the causes and solutions to atrocities highlighted various factors: atrocities occur due to various reasons such as a land disputes, land grab, bonded labour system, debt burden, denial of the minimum wage, caste discrimination, untouchability, caste politics, denial of carrying out works related to cremation and burial grounds, refusal of drum beating, refusal to lift dead cow, etc. The root cause of all atrocities is the caste system.

The tribal people do not belong to the caste system, their hill and forest-based way of life refuses to accommodate the exploitation of nature and labour. Only after removing the people who stand as fortification of nature can they be subdued. Therefore, we see the state machinery engaging in atrocities against them to help the ruling classes to plunder the forests. Since sexual violence occupies the predominant place in the atrocities against tribals, women are more likely than men to be targeted. There is evidence across the country that the police, the forest department, and the military are at the forefront of atrocities against tribes. The manhunt in the name of Veerappan hunting in Tamil Nadu led to cases like Vachchathi.

Contemporary events

Even in this time of the pandemic, the atrocities against the Irular tribe continues. The situation outside Tamil Nadu is even worse. Many of those who walked long distances on highways during the full-lockdown period and died in accidents and starvation belonged to scheduled castes and scheduled tribes. They were uprooted from their roots and pushed every other way. The suffering of these people should be considered as atrocities committed by the government. Caste mentality is the foremost reason why not only the state, but also the general public is not shocked by these atrocities.

The recent uprising due to the brutal killing of a Blackman, George Floyd by a policeman in Minnesota, North America, made us realise the inadequacies of the laws. So we sloganised that 'Black lives matter' and also 'Dalit lives matter'.

Not only the police, but the judiciary also plays an important role in the legal fight against systemic evils. It is stated in Rule 13 (1) of the PoA Act that the special judges hearing the cases of atrocities should be clear and sensitive about the lives of the scheduled castes and scheduled tribes. With the help of the internal evidence of many judgments, the difference in the current situation can be proved. This is manifested in the acquittal of criminals in many cases, and the indefinite delay of many other cases.

The Udumalai Shankar murder case has shocked Tamil Nadu in recent times. The case was prosecuted not only under the Indian Penal Code, but also under the PoA Act. But in the District Sessions Court as well as in the high court, judges with a sense and clarity about caste atrocities do not seem to have prosecuted the case. That is why the main culprits have been acquitted.

It is a matter of concern that the majority of sexual harassment cases under the PoA Act often end in acquittal. One reason for this is the social outlook of the judges.

Experience suggests the need to further strengthen the implementation of the PoA Act in letter and spirit. But caste politicians and governments are involved in efforts to water down this law. The false impression is fostered that this law is being misused. It is disgraceful that the courts are also complicit in this conspiracy. On the one hand, there must be a demand to implement laws against atrocities accurately and honestly, and on the other hand, there must be an initiative to develop movements for social liberation.

Because the law only recognises the need for liberation, it does not bestow it.



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Manoharidas

Director, ISM-WDRC

“Under this Act, the presumption is that the crime has been committed due to caste, and the onus of proving otherwise is on the accused. Therefore, the police functioning in favour of the accused, is in violation of the rules of the PoA Act.”

Tamil Nadu

Running the gauntlet for justice

Manoharidas

The Constitution of India, which came into force in 1950, says that untouchability stands abolished, and any restrictions in the name of untouchability would be a crime as per law. Based on this the Untouchability Offences Act 1955, amended and renamed the Protection of Civil Rights (PCR) Act in 1976, was enacted. Various reports make it clear that this Act was not implemented properly. This, along with growing political awareness and education, led to protests by the Dalits (scheduled castes) and Adivasis (scheduled tribes) to reclaim their rights. The protests staged against untouchability, and those demanding release from bonded labour, and ensuring of minimum wages were met with strong attempts to suppress them. A majority of the women subjected to sexual atrocities are Dalit.

It is difficult to describe the kind of suffering that the Dalits and Adivasis face, and in particular the atrocities and hardships that they are subjected to, in the police stations, in courts, and in the human rights commissions.

Weakening the case at the police station

In many police stations, officials refuse even to receive a complaint lodged under the PoA Act. In some police stations, even if a complaint is received, the receipt is not issued. There are police stations, where bribes are taken from the accused using the PoA Act. In some cases, where the complainant is not well aware, the accused and the complainant are called to the police station and a compromise is enforced via a kangaroo court. Thereby, the legally sanctioned protections for Dalits are denied to them, in violation of the PoA Act, even at the stage of filing a complaint.

Acknowledgement receipts are issued to the complainant in some cases, but the first information report (FIR) is not registered, and the police find

a way to see that the accused is not imprisoned under the PoA Act. First, by attempting a compromise through friends and relatives of the complainant, or sometimes supporting the brute forces of the dominant castes to threaten the complainants into submission. If the complainant does not agree to the above, a counter complaint against the complainant is filed by the accused, alleging that the complainant attacked the accused with weapons. In cases where the complainant is very weak, it is alleged that the complainant was involved in crimes like theft, and then kangaroo courts are held with these threats, and the complainant is forced to withdraw the complaint.

Another tactic is delay in arrest. The accused is not arrested as soon as the FIR is registered. The police do not receive a complaint lodged by a Dalit right away. If at all it is accepted, because of some compulsion or pressure, no action is taken upon the same. Therefore, in general, not only is justice denied to victims of atrocities, they are also subjected to additional hate and vengeful behaviour because of the complaint they lodged, which actually becomes a double-edged sword.

In these circumstances, to make the police receive a complaint and arrest the accused, invariably it becomes necessary to rally as a movement, issue handbills, paste posters, and stage demonstrations, which result in a lot of financial expenditure. These requirements waste time, effort, and resources that Dalit movements and the leaders ought to spend on the livelihood and development of the community. These are calculated efforts by all parties involved to change the focus from the struggle of Dalits for their right to life to such wasteful activities.

Arresting the accused under the PoA Act is not considered as a social duty, and instead, it is looked upon as something that depends on their personal likes and dislikes, hatred, or mercy. The police receive a complaint viewing the incidents of atrocities like an ordinary clash between two parties from the same community and file a case with crime sections, in which bail can

be easily obtained, and thus betray Dalits and Adivasi, and also receive a huge bribe from the accused for the same.

The Rule is that in complaints lodged under the PoA Act, the victim should be a Dalit or Adivasi, and the accused should not be either a Dalit or Adivasi. Cases of atrocities are lodged under ordinary IPC sections alone, saying that the complaint will not come under the PoA Act as, *'it is mentioned nowhere in the complaint that they were abused as Parayan, Pallan or Chakkiliyan'* (i.e. caste slurs were not used). Due to this reason, many Dalits mention that they were abused as a lowly Parayan, a rotten cow eating Parayan or Chakkiliyan, or as a low caste Pallan in their complaint. Some people in the police department and many among the Dalits, believe innocently or have wrongly understood that only casteist abuses would make a complaint valid under the PoA Act.

The Rule is that the Sub Inspector (SI) of the concerned police station who receives the complaint should register an FIR, and hands over the case for investigation to the Deputy Superintendent of Police (DSP). But in many cases, as the police do not register FIR, and say that they are doing investigation. The Dalits and Adivasi are subjected to ridicule, mocked, and intimidated by the accused. Only if the FIR is lodged as soon as the complaint is received, will it create any fear in the mind of the accused. But the police function in a casteist manner, arrogant of the power that they wield, and ignore complaints of the Dalits to save the non-Dalit accused.

In some police stations, the complainants are sent away saying that complaint would be accepted only if they bring the caste certificate of the accused. The caste certificate is required only when the charge sheet is filed, or when the case comes for hearing in the court. Moreover, no section of the Act says that the Dalit submitting the complaint should furnish the caste certificate of the accused. The job of submitting such a certificate in court is that of the Police Inspector (PI) of the police station, and not that of the complainant. This too, is one of the tactics of the police to refuse the complaint, and cause delays, and thereby kill the purpose of the PoA Act.

In some police stations, the FIR is filed but the police themselves advise the accused to go into hiding for a few days. One month later, they produced the accused in court, taking both the FIR and charge sheet there at the same time. The sections of the PoA Act applied in the FIR are removed from the charge sheet, stating that the investigation did not find the accused had abused the complainant based on caste. Under this Act, the presumption is that the crime has been committed due to caste, and the onus of proving otherwise is on the accused. Therefore, the police functioning in favour of the accused, is in violation of the rules of the PoA Act.

When victimised Dalits lodge complaints in the police station against persons of the dominant caste who grab their property and usurp it from them, often the police officers do not register a case. They refuse to receive the complaint saying that the complaint pertains to a civil matter, and that it will not come under the ambit of the PoA Act, and that they should seek justice directly from the court by filing a case there.

Civil issues pertain to problems that arise between shareholders of a property within the same family, joint trade, partners in business ventures, divorce proceedings between husband and wife, settling maintenance amounts, etc. How can a dispute between two communities be dismissed as a civil issue, particularly when a community is subjected to atrocities of untouchability by another community? How can the nonchalance of the police be justified in cases of blatant casteist atrocities that ought to be dealt with under Section 3(1) of the PoA Act, instead, are brushed aside as civil issues?

In complaints received in other cases, i.e. cases among caste-Hindus, or complaints lodged by caste-Hindus against the scheduled communities, the PI or the Sub Inspector (SI) of the police station can arrest the accused without the permission of the Superintendent of Police (SP). However, when the complainant approaches the jurisdictional police station, the constables, SI, PI etc, although aware that it is a crime, refuse to receive the

complaint, and wrongly guide them to approach the District Protection of Civil Rights Wing.

Sometimes the police of the District Protection of Civil Rights Wing receive the complaint, and send a copy of the FIR to the PI of the jurisdictional police station. In such cases, the PI of the concerned police station threatens the complainant, and makes them run around, questions the complainant about the reasons for approaching the District Protection of Civil Rights Wing, instead of approaching the PI first, and thus delays the case.

Diluting the case during investigations

After registering the FIR, the DSP is supposed to do an investigation, and in the event that the DSP dismisses the case, saying that there is no real issue or there is no truth in the case, the reasons should be explained and provided as a Reference Certificate (RC) to the complainant. In many such cases, the DSPs do not issue the RCs, and if the complainant is not satisfied with the outcome of the case, this deprives the complainant of the opportunity to approach the court for further legal actions.

In the name of investigation, the DSPs abuse their power and remove Section 3(1) of the Act. This should be audited by the state. Only the Indian Penal Code (IPC) 1860 is used. However, the majority of the crimes are perpetrated by the accused only because the complainants are Dalits. Here, the investigation officer's (IO) role is to investigate and ascertain if the crime took place. However, it is not the IO's role to remove Section 3(1) of the PoA Act, and apply only the Sections from the IPC. By such acts, the IOs themselves pave the way for the Dalits remaining in fear of the accused.

As per the Rules of the PoA Act, cases of atrocities are to be investigated by an officer not below the rank of DSP. The purpose of the Rule is that a full-time official, in-charge of the duties under the Act, would function with empathy towards the Dalits and Adivasi, would totally concentrate on the task, be dutiful and honest, and bring the perpetrators to book.

But presently the Government of Tamil Nadu has given the duty of investigating cases under the PoA Act to the DSP (Law and Order). In between a lot of other work, if the DSP (Law and Order) is also required to investigate cases of atrocities under the PoA Act, the effective discharge of duties will be impossible in the given circumstances. Therefore, appointing a Special DSP to exclusively investigate cases of atrocities under the PoA Act is essential, to ensure justice for Dalits.

In many complaints of atrocities under the PoA Act, the police fail to invoke sections apart from 3(1)(r) or 3(1)(s) (previously section 3(1)(x)). Oftentimes, instead of filing cases under relevant sections of the IPC along with the sections under the PoA Act, they weaken the case by filing the case only invoking sections of the PoA Act.

When the cases end in acquittal in the special courts, the government does not file appeals in the high court. Thus, the Dalits and Adivasis lose their basic right to receive justice, that was denied to them in the lower court from the appellate courts.

Damaging the case in the courts

The police, who know that anticipatory bail cannot be granted to the accused under the PoA Act, take a bribe from the accused. To save the accused from being sent to prison, they go to the high court to get a direction. Armed with this direction, the accused appears in the special court, and immediately the judge lets them out on bail, instead of remanding them to judicial custody.

High court directions are not orders for magistrates or judges of the special courts to immediately grant anticipatory bail, instead of remanding the accused. But 98% of the judges misuse the guideline that says that the judges of the special court can use their discretion, instead, they consider the bail applications only to save the accused from going to prison as undertrials. Since there is no provision for anticipatory bail in the PoA Act,

the directions of the high court is a loophole that that court has invented to save the accused.

The Special Public Prosecutors (SPP) appointed by the government for the victims under the PoA Act are appointed by the ruling party from their ranks. Depending on the party in government in Tamil Nadu, DMK or the AIADMK, party faithful lawyers from Dalit communities who are not very well versed in law, or do not have much social concern are appointed. They are also conscious that they will be in the post only for five years. The SPPs, thus chosen, have in mind only the welfare and growth of the party to which they are affiliated. Therefore, for cases under the PoA Act, they always bend the law in favour of political interventions, and recommendations of the political bigwigs who have influence over them. The young, inexperienced Dalit advocates appointed from time to time by the ruling party, are unable to match the arguments or cross examination of the legal experts appointed by the defendants.

The Act says that if the petitioner or the complainant feels that the SPP is incompetent or unreliable, they can enlist the services of another lawyer to argue their case. But many complainants are unaware of this provision. Besides, the police don't provide the necessary documents to the complainant-appointed lawyers. The government too does not come forward to disburse the fee that is due to them immediately.

To seek justice for every irregularity and every hurdle, the complainant has to repeatedly meet the police officers, and repeatedly approach the court and the human rights commissions. It is not possible for every citizen to approach the court, and human rights commissions for every hurdle in a case.

Only Dalits and Adivasis can comprehend the psychological trauma, the sense of betrayal, and hurt they feel due to the acts of commission and omission by the government. It is difficult, if not impossible for others, however empathetic, to understand the constant humiliation, petty insults

and stigma they face every waking moment, and yet their trusting belief that the state will come to their rescue only for their hopes to be dashed time after time. It is difficult for non-Dalits and non-Adivasis who have not undergone this centuries-long subjugation, to understand the continued trust of the Dalits and Adivasis in the government, the depth of their despair, or its intergenerational consequences.

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