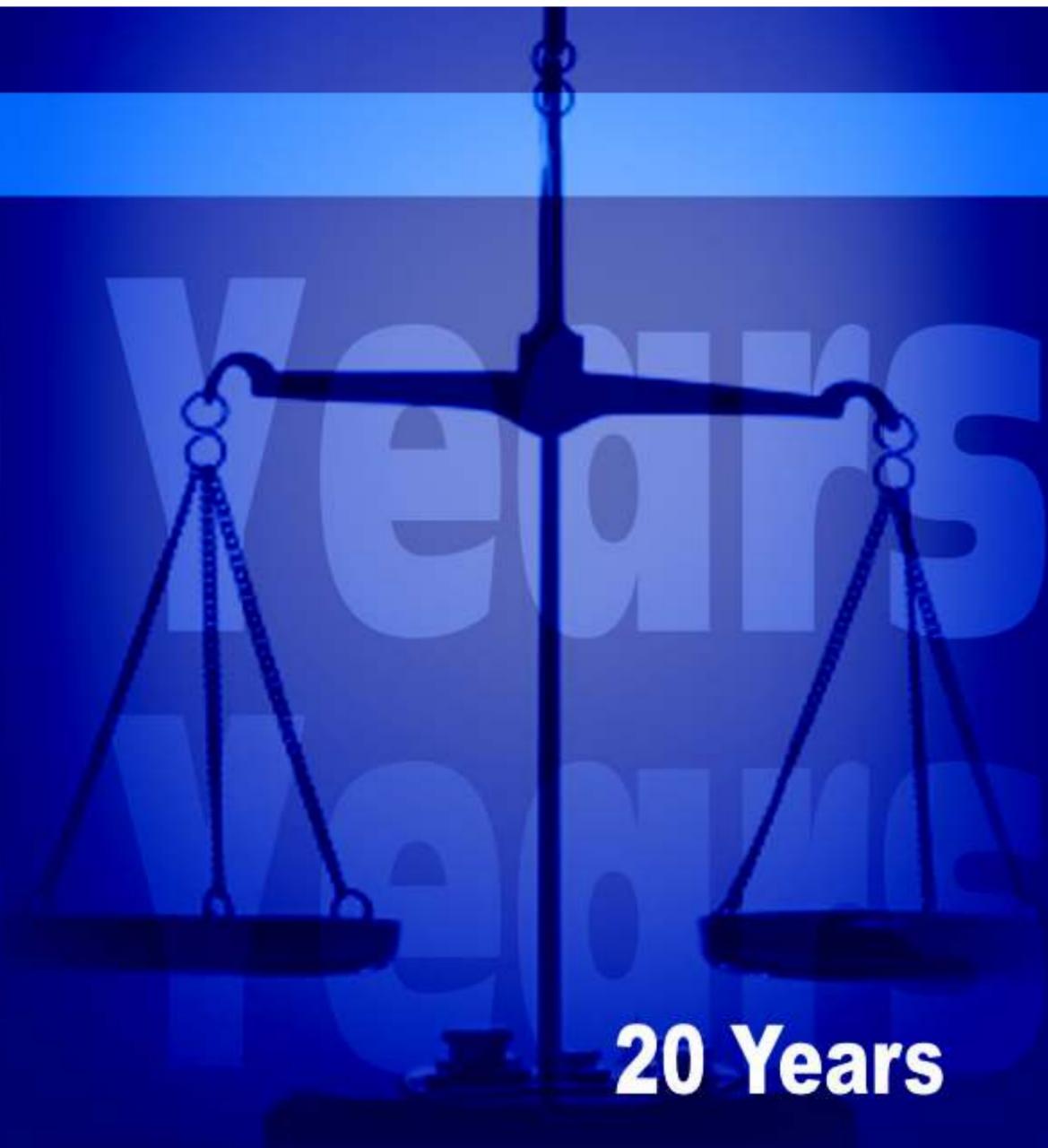


20 Years



20 Years
Scheduled Castes & Scheduled Tribes
(Prevention of Atrocities) Act

REPORT CARD



National Coalition for
Strengthening SCs & STs (Prevention of Atrocities) Act

“For a successful revolution it is not enough that there is discontent. What is required is a profound and thorough conviction of the justice, necessity and importance of political and social rights.”

Dr. B.R. Ambedkar

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20 Years
Scheduled Castes & Scheduled Tribes
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Strengthening SCs & STs (Prevention of Atrocities) Act**

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NATIONAL JUDICIAL ACADEMY INDIA

Prof. (Dr.) G. Mohan Gopal

Director

Foreword

The continuing violence on the Scheduled Castes and Scheduled Tribes, its nature and the response (or the lack of it) of the law and order machinery represents deep-rooted fault lines in our society and demands multi-faceted action as a nation. I am greatly encouraged by the National Coalition for Strengthening SC & ST Prevention of Atrocities Act (National Coalition from now) for bringing this important piece of work to our attention.

The SC & ST (Prevention of Atrocities) Act 1989 is a recognition of the inability of the general laws to address specific protection needs of excluded and highly marginalized communities. This 'Report Card' on its implementation during last 20 years once again reflects how dominant ideology, social systems and practices continue to undermine its implementation and thereby defies its laudable purpose and objective. At the outset, the law enforcing machinery refuses to register the crimes under the provisions of this Act. In fact, the data from 1995 to 2007 (as analyzed in the report) show that at the end of the trial only 4.6% of the total cases brought to the court in a year (2007) materialized in conviction. Data reveals that on an average of 93 crimes are registered in a day. It is clear that the registration is minuscule as against the actual violence occurring against the members of these communities. The nature of some of these cases –naked parading of women, murder for building inter-caste relationships, social and economic boycott for protesting/breaking caste/social norms. punishments to a whole community for the dereliction of an individual, crimes by the law enforcing and administrative machinery on the members of the community, the neglect and collusion with the perpetrators reflects continuing frame of the caste system operative in our society, and its hold in our democratic and administrative systems.

The Report Card brings to fore the need for comprehensive implementation of the different provisions in the Act. It presents the essential elements across the board for effective implementation- performance of different implementing mechanisms (the police and judiciary), building of a protective environment through the additional mandates, mechanisms to discourage crimes and build confidence in vulnerable sections, urgent relief measures to support the victims and families in their fight for justice. The work is also valuable in collating the many gaps in the implementation of the Act on the ground and gives us a valuable set of recommendations to move forward.

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The Report Card rightly points out that to speak of a nation's phenomenal progress is to recognize the full development of its people on the lowest rung of the ladder; to speak of the full protection of a nation is to realize the security of the last and the least of its citizens". This message resonates with those who struggled for our independence and the makers of our Constitution. After all the 'nation is made of people and not the land and its assets'.

I am greatly encouraged by the large number of organizations that have come together under the coalition and it is my fervent hope that they will not cease the struggle to impress upon the state to start a process of reform in the implementation of this Act. It is also my hope that this process will ensure that we move forward as one nation and not as "many nations" within our national territory, divided by castes and creed, poverty and powerlessness.


(G. Mohan Gopal)

PREFACE

The 20th anniversary of the passing of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, provides an opportunity to review the implementation of this very important Act, promulgated to protect Scheduled Caste and Scheduled Tribe (SC & ST) communities from abuse and violence, perpetrated on them owing to their vulnerable positions in the caste/social ladder. The violence are largely the outcomes when they protest against inhuman demands and conditions, assert their rights, try to improve their agency or try to access benefits from the resources and developments in the country.

After the effort of Dr. Babasaheb Ambedkar in 1928 to highlight the violence against depressed classes in his submission to the Simon Commission (the Indian Statutory Commission), post independence brought a number of instances of violence against the community. The new Constitution did not change the caste and other social norms and demands on the SC & ST communities or the caste and exploitative mindset of the dominant communities. Sporadic but gruesome, some of these shocked the nation in their nature of violence – murdered for protesting against untouchability, burnt to death for demanding just wages, beaten to death for falling in love with a dominant caste community member, mass murder by police over land dispute, murder and large scale destruction of house and property for questioning the wrong use of common property resources, violence for participating and conducting social functions and celebrations ... the long list of such incidents in addition to the daily untouchability and exploitative practices are spread through the length and breadth of the country and reflect the cultural roots in the Manusmriti.

Dalit and Adivasi representatives in the parliament and social activists put pressure on the government over the growing incidences which lead to monitoring 'gruesome cases' against SCs and STs from 1974 to 1981. The 80s saw another spate of gruesome violence finally resulting in the passing of the SCs & STs (POA) Act in 1989. The rules not being framed till 1995, the Act remained on the papers for a long time. In 1991 during the centenary celebrations of Babasaheb many social activists across the country propagated this Act, held awareness camps and meetings with the community to highlight the provisions to them. They also took the Act to the law enforcing agencies, demanding that they use the provisions of the Act when registering crimes against SC&ST communities. There was very little knowledge about the Act among the police force and much less willingness to use its provisions. The framing of the Rules in 1995 provided mechanisms for the implementation though the enforcement agencies continue to resist it. On the other hand there have been heavy lobbies for the withdrawal of the Act, they were being misused and were against the sense of fairness and justice for the larger society.

Moving forward from the creation of awareness, a few Dalit and human rights organizations took to monitoring violence against the SC&ST communities, documenting them, publicizing them and also monitoring the use of the Act in dealing with these crimes. Special attention was given to

ensure that the filing of the First Information Report (FIR) included sections from the Act. Some organizations also used the provisions of the Public Interest Litigations (PIL) to demand better implementation under the Act at High Court level and National Campaign on Dalit Human Rights (NCDHR) at Supreme Court Level.

In promoting the use of the Act over the past decades, many gaps and lacunae have been identified and the 20th anniversary provided the opportunity to come together across the country to review the implementation. A national coalition was formed that met together several times to review the implementation. Further to this, task groups worked together on a set of amendments for improving the implementation. Many important areas; social and economic boycotts, causing hurt, destruction of property, defining the SC communities to include those who profess a religion other than Hinduism, Sikhism, Buddhism, and better monitoring mechanisms were identified.

Recognizing the vulnerability and the multiple barriers experienced by SC&ST communities in accessing justice, the National Coalition stresses upon the importance of the holistic nature of Act encompassing the creation of a conducive environment, setting up vigilance and monitoring committees, ensuring adequate and speedy implementation of compensatory provisions in addition to the registration of the case at the police station and its follow up through the courts. The sections of this report thus look at the many aspects of the Act and its provisions that can result in a real prevention, reduction and protection of SCs & STs from atrocity. In addition, the reality of violence on SC & ST communities is spread across every aspect of their engagement and interface with the dominant communities, particularly when they demand dignity and development. Hence it is important that development actors and administrative parties across the board are aware of the provisions of this Act and can judiciously use it to ensure the protection and promotion of the rights of the most marginalized in our context.

The National Coalition has brought fresh energy and coordination across the civil society organizations and other supporters of the SC&ST communities and it is our hope that this momentum will lead to changes on the ground for the community, in particular the victims and survivors of violence. We thank each and everyone who is part of this process and are committed to taking it forward.

Dr. Sirivella Prasad
National Convener
National Coalition for Strengthening SCs & STs Prevention of Atrocities Act

Acknowledgments

We dedicate this 'Report Card' to the Dalit children, women and men, activists, leaders and organizations who through their relentless struggles against discrimination, and violence, for better enforcement of Constitutional and legal mechanisms to realize Dalit Human Rights.

We thank all the organizations, movements, activists and friends who in solidarity have contributed to this process and thereby made this report possible.

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National Coalition for Strengthening SCs & STs (PoA) Act

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Significance of the Act: Supreme Court

“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.”

State of Madhya Pradesh and Anr vs. Ram Krishna Balothia and Anr (1995 (2) SCC 221

The term 'atrocities' was not defined until the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC/ST (PoA) Act)* was passed by the Parliament in 1989. In legal parlance, the Act understands the term to mean an offence punishable under sections 3(1) and (2). In specific terms:

- (i) Atrocity is “an expression commonly used to refer to crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) in India.”
- (ii) It “denotes the quality of being shockingly cruel and inhumane, whereas the term 'crime' relates to an act punishable by law”. (*Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 1.1*)
- (iii) It implies “any offence under the *Indian Penal Code (IPC)* committed against SCs by non-SC persons, or against STs by non-ST persons. Caste consideration as a motive is not necessary to make such an offence in case of atrocity”. (*As per clarification of Ministry of Home*

Affairs, noted in NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.28)

- (iv) It signifies “crimes which have ingredients of infliction of suffering in one form or the other that should be included for reporting”. This is based on the assumption that “where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes caste considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime.” (*As per another clarification from Ministry of Home Affairs*)
- (v) The Act lists 22 offences relating to various patterns of behaviours inflicting criminal offences for shattering the self-respect and esteem of SCs and STs, denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process, etc. (*National Commission for SCs, First Report 2004-05, New Delhi, 2006, p.223*)

“Atrocities committed on the most underprivileged segments of our society, i.e. SCs and STs... is a scourge which demands the formulation and articulation of our Nation's collective will and a determined effort to fight it and root it out of our society without any loss of further time.”

Prime Minister Manmohan Singh's address at 10th Meeting of Inter-State Council, New Delhi, 2006

Atrocities against SCs/STs: Rooted in Caste System

A study conducted by the National Commission for SCs and STs in 1990 on *Atrocities on Scheduled Castes and Scheduled Tribes: Causes and Remedies* pointed out various causal factors for atrocities: land disputes; land alienation; bonded labour; indebtedness; non-payment of minimum wages; caste prejudice and practice of untouchability; political factions on caste lines; refusal to perform traditional works such as digging burial pits, arranging cremations, removing carcasses of dead animals and beating drums; etc. The deep root for such atrocities is traceable to the caste system, which “encompasses a complete ordering of social groups on the basis of the so-called ritual purity. A person is considered a member of the caste into which s/he is born and remains within that caste until death....” (*Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 1.2*)

Considered ritually impure, SCs have been physically and socially excluded from mainstream society, denied basic resources and services, and discriminated against in all areas of life. Accordingly, they face various forms of exploitation, insults and violence, as well as degrading practices of untouchability. The Scheduled Tribes were equally exploited on grounds of not falling within the caste system but having a distinct culture and worldview of their own. “Women belonging to these castes and tribes bore double burden. They were exploited by caste and gender, and were vulnerable to and powerless against sexual exploitation.” (*Parliamentary Committee on the Welfare of SCs and STs, 4th Report 2004-05, New Delhi, 2005, para 1.4*)

The SC/ST (PoA) Act: A Historical Sketch

In modern times, atrocities against the Scheduled Castes can be traced back to the 19th century in parts of India when the systemic practice of 'untouchability' began to be challenged by the 'Untouchables'. A Committee which toured British India in the 1920s to review the working of the *Government of India Act 1919* noted that many atrocities were being committed during those days against the 'Untouchables', but were going unnoticed and unpunished because witness would not come forward to give evidence. Dr Ambedkar, then MLC of Bombay, cited some early instances of atrocities against Dalits in his submission to the Indian Statutory Commission (Simon Commission) on behalf of the *Bahishkrita Hitakarini Sabha* on 29 May 1928.

The post-Independence era was marked by frequent instances of atrocities springing up across the country: for example, the assassination of the young, educated Dalit leader Emmanuel Sekaran in Tamil Nadu for defying the untouchability-based interdicts on SCs, which resulted in the Ramanathapuram riots of 1957; the Kilavenmani massacre of 42 Dalits in 1968 in Tamil Nadu; the gruesome killing of Dalit Kotesu in Kanchikacherla in 1969 in Andhra Pradesh; the killings of 10 STs by police in connection with a land dispute in

Indravalli in Andhra Pradesh in 1978. All such events shook the then national leadership. Hence, under pressure from Dalit MPs, the Government of India started monitoring atrocities against SCs from 1974, and in the case of STs from 1981 onwards, with special focus on murder, rape, arson and grievous hurt.

Atrocities continued to rise with ferocity and frequency – for example, in Bihar the massacres of SCs at Belchi in 1979 and at Pipra in 1980; in Uttar Pradesh the massacre following a SC bridegroom riding on horseback at Kafalta in 1980; in Madhya Pradesh the killing of Bacchdas in Mandsaur district in 1982; in Bihar the killing in police firing on 15 STs at Banjhi in Sahibganj district in 1985. In all such cases, the Indian State at both the national and state levels avoided addressing basic contradictions, vulnerabilities and causative factors; the treatment was mainly symptomatic and palliative instead of the required radical solutions. Under continued pressure from Dalit MPs and political leaders, the magnitude and gravity of the problem was finally recognised by Prime Minister Rajiv Gandhi. In his Independence Address on 15 August 1987, he announced that an Act would be passed, if necessary, to check atrocities. (*P.S. Krishnan, 'Atrocities against Dalits: Retrospect and Prospect', Combat Law, Vol.8, Issue 5-6, 2009, p.12*)

The SC/ST (PoA) Act: Its Necessity and Objectives

Despite the right to non-discrimination on the basis of race or caste enshrined in Article 15 of the Indian Constitution, discrimination against SCs and STs is pervasive. Though abolished and forbidden by Article 17, the practice of 'untouchability' persists due to its systemic character. Hence, the Indian Parliament enacted the *Untouchability Offences Act 1955*, which underwent amendment and renaming in 1976 to become the *Protection of Civil Rights (PCR) Act*. Under this Act, 'untouchability' as a result of religious and social disabilities was made punishable. However, due to legal loopholes, the levels of punishments being less punitive as compared to those of the IPC, and the law and order machinery being neither professionally trained nor socially inclined to implement such social legislation, a more comprehensive and more punitive Act was required to protect SCs and STs from violence committed by other communities. This gave rise to the *SC/ST (PoA) Act 1989*.

The basic objective and purpose of this more comprehensive and more punitive piece of legislation was sharply enunciated when the Bill was introduced in the Lok Sabha:

“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 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 terrorise them. When the SCs and STs try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty...

Under the circumstances, the existing laws like the *Protection of Civil Rights Act 1955* and the normal provisions of the *Indian Penal Code* have been found to be inadequate to check and deter crimes against them committed by non-SCs and non-STs... It is considered necessary that not only the term 'atrocities' should be defined, but also stringent measures should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect SCs and STs from being victimized and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.” (*National Commission for SCs, First Report 2004-05, New Delhi, 2006, pp.222-3*)

The objectives of the Act, therefore, very clearly emphasise the intention of the India state to deliver justice to SC/ST communities through affirmative action in order to enable them to live in society with

dignity and self-esteem and without fear, violence or suppression from the dominant castes. (NHRC, *Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.14-15*)

The SC/ST (PoA) Act & Rules: Some Special Features

1. Offences

Enlarges the area of criminal liability by identifying new types of offences, thereby including several acts of omission and commission not covered under either the IPC or PCR Act.

Protects SCs/STs from various kinds of atrocities relating to social disabilities, property, malicious persecution, political rights and economic exploitation.

2. Victims and perpetrators

Defines an atrocity crime by sole reference to caste identification of the offender (non-SC/ST member) and the victim (SC/ST member).

3. Investigations

Ensures that investigating officers are police officers not below the rank of Deputy Superintendent of Police with experience and ability to investigate such cases.

Mandates the completion of police investigations within 30 days of occurrence of the atrocity.

Prohibit grant of anticipatory bail to persons accused of offences under the Act.

4. Judicial Process

Makes arrangements for setting up Special Courts and grants special powers to them to ensure speedy trials of atrocity cases, and for Special Public Prosecutors to conduct the cases.

5. Penal Action

Imposes exemplary punishment at a scale much higher than under the IPC for atrocities on SCs/STs, except for the offence of rape. A public servant accused under the Act also has been made liable to a higher minimum punishment, and importantly, neglect of official duties has been deemed punishable.

6. Relief & Rehabilitation Measures

Provides legally justiciable rights to the victims of atrocities by way of a scale of graded financial assistance and provision of relief and rehabilitation, apart from travel and maintenance

allowances for victims and witnesses during investigation and trial, etc.

7. National & State level Monitoring Mechanisms

Setting up SC/ST Protection Cell at the State Headquarters under the charge of Director / Inspector General of Police for supervision of various actions taken under the Act.

Appointing (i) Nodal Officers to coordinate the functioning of District Magistrates and Superintendents of Police or other authorized officers, and (ii) Special Officers at the district level to coordinate with the District Magistrate, Superintendent of Police or other officers responsible for implementing the provisions of the Act.

Constituting State and District level Vigilance and Monitoring Committees for enhancing accountability and greater political supervision of the implementation of the Act.

Submitting annual report about measures taken for implementing the Act by the State Government to the Central Government.

Authorising the National Commission for Scheduled Castes (NCSC) & National Commission for Scheduled Tribes (NCST):

(a) to investigate, monitor and evaluate the safeguards provided for SCs/STs;

(b) to inquire into specific complaints by SCs/STs of rights violations;

© to discharge such other functions in relation to the protection, welfare and development and advancement of SCs/STs.

8. Preventive Measures

Implementing a range of preventive measures, including: preparing a model contingency plan; identifying atrocity prone areas; cancelling arms licences of potential offenders under the Act; granting arms licences to SCs/STs as a means of self defence; setting up awareness camps in atrocity prone areas to educate SCs/STs about their rights.

“Rights are real only if they are accompanied by remedies. It is no use giving rights if the aggrieved person has no legal remedy to which he can resort when his rights are invaded.”

Dr. B.R. Ambedkar

Twenty Years in Retrospect: Probing Questions

Since the Indian nation became a Republic 60 years ago, the ways in which the State has been responding to the situation of SCs/STs is striking. Atrocities against SCs/STs have caused periodic jolts to the nation's conscience. The results were the enactment of the *Untouchability Offences Act 1955* five years after the adoption of the Indian Constitution, which was amended and renamed as the *Protection of Civil Rights Act 1976* after 21 years.

Thereafter the Parliament enacted the *SC/ST (PoA) Act 1989* after a further 13-year gap. No doubt with every forward step, the political establishment has tried to plug the loopholes and come out with new laws that are more relevant, newer mechanisms were evolved to deal with atrocities against the SCs/STs arising from new situations and perpetrated by dominant castes. However, what the brief history of *SC/ST (PoA) Act* sketched above undeniably shows is that such changes have not happened due to the initiatives of the political elite; they were rather the product mainly of the awakened SC/ST population, their movements and

their supporters in civil society. It is because these citizens dared to raise their voice against the oppressive forces that they were able to shake the caste based socio-economic and political establishment to some or great extent over the years.

History may look predetermined because it repeats itself; at the same time, however, its repetition is also creative and rejuvenating in tune with changing contexts and challenging future situations. Holding this powerful perspective of history in mind and aware of its role as one of the watchdogs of the democratic, socialist and secular polity, the **National Coalition for Strengthening the SC/ST (Prevention of Atrocities) Act** seeks to engage the Indian State on the latter's accountability to protect, defend and promote the safety and security of its most discriminated SC and ST citizens. In the subsequent sheets in this Black Paper, the National Coalition embarks upon this engagement process in search of answers to the following critical questions:

Have the SCs/STs been able to enjoy their fundamental rights, especially their right to life and security as enshrined in Article 21 of the Indian Constitution?

Have the SCs/STs been able to access the law enforcement machinery as well as the judiciary as a matter of right, in order to obtain justice when faced with atrocities against them?

Have the rights of the SCs/STs to justice through the Act been facilitated in terms of financial and legal assistance, safeguards for their security of life and property, etc?

Have the law enforcement machinery and the courts been able to prosecute the perpetrators of atrocities with adequate punishment given the gravity of the offences?

Have efforts been made to make information on this Act available to the SCs/STs?

Is the Act comprehensive enough to cover every important aspect of the security and safety needs of the SCs/STs?

Should not the definitions of 'Scheduled Castes' and 'Scheduled Tribes' in the Act be amended so as to include all Christians and Muslims belonging to any of the castes in the Schedule; SC/ST migrant labourers on the basis of their caste/tribal status in their state of origin; and all ethnic minority communities subjected to atrocities on the basis of their ethnicity?

Is there need to further strengthen the national and state level mechanisms of the Indian State to ensure implementation of the Act, and if needed, in what ways should this be done?

In what ways should civil society organizations keep the Indian State continually engaged in the latter's fulfilment of its moral, legal and political obligations towards the SCs/STs?

I. What are the National and International Standards of Measurement?

Everyone has the inherent right to life. No one is to be arbitrarily deprived of her/his life. (Art. 6(1) ICCPR; Art. 21 Indian Constitution)

No one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Art. 7 ICCPR)

Everyone has the right to liberty and security of person. (Art. 9(1) ICCPR; Art. 21 Indian Constitution)

No one is to be subjected to arbitrary or unlawful interference with her/his privacy, family, home or correspondence, nor to unlawful attacks on her/his honour and reputation. (Art. 17(1) ICCPR)

State to prohibit and eliminate racial discrimination and to guarantee right to equality before the law, especially regarding security of person and State protection against violence. (Art. 5(b) ICERD)

State to take measures to eliminate multiple discrimination including descent-based (caste) discrimination against women, particularly as regards personal security. (para 12 CERD General Recommendation XXIX 2002)

State to take measures against dissemination of ideas of caste superiority/inferiority which attempt to justify or incite violence against descent-based communities. (paras 18-19 CERD General Recommendation XXIX 2002)

State to protect [SCs and STs] from social injustice and all forms of exploitation. (Art. 46 Indian Constitution)

NOTE: Read also – (1) Art. 8(3)(a) ICCPR; (2) para 11 CERD General Recommendation XXIX; (3) para 3 CERD General Recommendation XXXI; (4) Arts. 17 & 23(1) Indian Constitution.

“While section 438 is available for graver offences under the IPC, it is not available for even 'minor offences' under the SC/ST (PoA) Act. This grievance also cannot be justified. The offences which are enumerated under section 3 [of the SC/ST (PoA) Act] are offences which, to say the least, denigrate members of SCs and STs in the eye of society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of SCs and STs with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the IPC.”

Supreme Court in State of Madhya Pradesh vs Ram Krishan Balothia and Another, 1995

II. What are the Facts? What do these Facts Say?

1. Trends over a Decade: Unyielding Levels of Crimes and Atrocities

Despite the SC/ST (PoA) Act being the premier legislation to protect security of life for SCs/STs, from 1995 to 2007 less than one-third (30.7%) of crimes against SCs/STs across India were registered under SC/ST (PoA) Act provisions.

<u>Crimes registered under SC/ST (PoA) Act</u>	<u>Total Crimes</u>	<u>% of Total Crimes</u>
1,21,464 against SCs	3,71,942	only 1/3 of total crimes against SCs!
14,263 against STs	69,482	only 1/5 of total crimes against STs!

Annual average of crimes registered against SCs/STs = 33,956 crimes

Daily average of crimes registered against SCs/STs = 93 crimes

The rate of registered crimes against SCs is significantly higher than that of STs, due to such factors as the larger SC population and their greater interaction with dominant caste communities, as well as greater non-reporting of atrocities against STs.

The number of registered crimes against SCs/STs has shown no appreciable decline between 1995 and 2007.

(National Crimes Records Bureau, Crime in India 1995-2007, New Delhi, 1996 - 2008)

Atrocities Against SCs and STs

10 states with 69% of India's SC/ST population account for over 90% of cognisable crimes against SCs/STs during 1995-2007

State	Total crimes against SCs/STs	Rank as per % share
Uttar Pradesh	95,319	1
Madhya Pradesh	81,941	2
Rajasthan	78,782	3
Andhra Pradesh	39,286	4
Gujrat	22,820	5
Karnataka	21,362	6
Tamilnadu	20,063	7
Bihar	19,682	8
Orissa	18,232	9
Maharashtra	14,630	10

(NCRB, *Crime in India 1995-2007*, New Delhi, 1996 – 2008)

In 1996-97: "NO Decline in Atrocities"

"...Despite provisions of various Acts including the SC/ST (PoA) Act, there has been no clear decline in the crimes and atrocities against SCs and STs. There is a need to step up preventive action stipulated in the SC/ST (PoA) Act and Rules." (*National Commission for SCs & STs, Fourth Report 1996-97 & 1997-98, New Delhi, 1998, para 9.22*)

In 2006-07: "NO Decline in Atrocities"

"The Committee note that there has been no appreciable decline in the incidence of atrocities on the persons belonging to SCs and STs even after passage of more than half a century since Independence, as admitted by the Home Secretary during the course of evidence." (*Parliamentary Committee on the Welfare of SCs and STs, 14th Report 2006-07, New Delhi, 2006, p.10*)

Does not the fact that only one-third of atrocities/crimes against SCs/STs are being registered under the SC/ST (PoA) Act indicate the need to closely monitor the registration process and ensure that police correctly apply the Act? Given the objectives of the Act, should not these statistics be taken as an indication of gaps between the Act's provisions and the range of atrocities to which SCs/STs are subjected?

Does not the government data disprove any myth that atrocities against SCs and STs have declined over the years? Should not the Indian State take action now to rapidly change this situation, so that we do not have yet another Committee saying the same refrain of continuing atrocities in another ten years' time?

"Despite elaborate provisions in the Constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. There are reports in the press about atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet. The humiliation which... Dalits suffer even today, more than half a century after India proclaimed itself to be a Republic, is a matter of shame."

Justice A.S. Anand, foreword to NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p. vii

2. Yet More Atrocity Cases Unreported

"These figures [of government-reported atrocity cases] do not faithfully reflect the ground situation. These are only the figures reported by the state governments/union territories to the Ministry of Welfare. The actual number of cases of atrocities on SCs and STs may be much more... For example, Delhi reported only two cases of atrocities during 1992, but during that year five cases of atrocities that occurred during 1992 were dealt with in the Commission." (*National Commission for SCs & STs, Second Report 1993-94, New Delhi, 1996, para 5.15*)

Why is there under-reporting of crimes against SCs/STs?

- Victims are too powerless to complain against the dominant caste, rich offenders
- Tremendous local pressures applied to ensure a

compromise is made and atrocity case not registered

- Reluctance by police to register atrocity cases
 - Caste bias and corruption among police leading to non-registration of cases
 - Pressure on the police to keep reported crime rates low in their jurisdiction
 - Slow investigation by police and low rates of conviction leading to victims' losing hope of justice through registering cases
 - Lack of awareness among the SCs/STs about provisions of the SC/ST (PoA) Act.
- (1) *Committee of Governors, Report on Certain Aspects concerning the Welfare and the Rights of SCs and STs, New Delhi, 2001, p.68;* (2) *National Commission for SCs, First Report 2004-05, New Delhi, 2006, Preface II;* (3) *NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.33*)

A study of 500 Dalit women's cases of violence across four states revealed that the overwhelming majority of cases “are not spoken out in public by the women themselves, or not reported in the media, or not registered by law enforcement authorities, or hidden by the women's families, relatives and community, or suppressed by the diktat of the perpetrators and/or the perpetrators' caste community.

The effect is the creation and maintenance of *a culture of violence, silence and impunity when it comes to violence against Dalit women.*” (Aloysius Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India, Chennai: IDEAS, NCDHR & NFDW, 2006, p.106*)

Given official evidence and acknowledgment of the under-reporting of atrocities, doesn't fulfilling the State's duty under Art. 46 of the Constitution demand that national and state governments move beyond merely listing registered crimes against SCs/STs each year and take more proactive steps to spread information about this Act, discipline police officials who fail to report or register atrocity cases, as well as to initiate campaigns against caste/racial discrimination and violence?

3. Extreme Forms of Atrocities Persist

Breakdown of the **4,41,424** registered crimes against SCs/STs during 1995 to 2007 includes:

- 9,593 cases of murder
- 61,168 cases of hurt or grievous hurt
- 20,865 cases of rape
- 4,699 cases of arson
- 4,484 cases of kidnapping
- 10,512 cases of 'untouchability' practices.

(NCRB, *Crime in India 1995-2007, New Delhi, 1996 - 2008*)

Of 1,041 cases of atrocities against Dalits monitored across 57 districts of nine states – Andhra Pradesh, Bihar, Gujarat, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu & Uttar Pradesh – during 2007-08, some of the most common atrocities included:

- i. Caste-based abuse: 172 cases (18%)
- ii. Grievous hurt: 158 cases (17%)
- iii. Murder: 105 cases (11%)
- iv. Rape: 101 cases (11%)
- v. Hurt: 75 cases (8%)

(Report of EIDHR Project of Christian Aid on civil society approaches towards achieving equality and realisation of SC rights in India, 2007-08)

Extreme Violations of Human Dignity	Collective Violence
<p>An increase in recent years of atrocities violating human dignity like: stripping of SC/ST women forcing SC/ST persons to drink urine and eat human excreta blackening their faces shaving their heads parading them in village streets. (National Commission for SCs & STs, Second Report 1993-94, New Delhi, 1996, para 7.33)</p>	<p>Individual insult, humiliation or injury has given way to organised collective violence against SCs/ STs with regard to: land reforms political factionalism representation in government services “Such cases need to be tackled by collective punishment... collective fine can be a strong and effective deterrent.” (National Commission for SCs & STs, Atrocities on SCs and STs: Causes and Remedies, New Delhi, 1990, p.36)</p>

Despite being banned by the Bihar government, the Ranvir Sena, a dominant caste private army of landlords in Bihar, is reported to have killed around 200 Dalits between 1995 to 1999. (Frontline, Vol. 16, No.5, 1999)

Atrocities Against SCs and STs

Violations of sec. 3(1)(vii) SC/ST (PoA) Act abound during National Elections

NCDHR-National Dalit Election Watch recorded 490 complaints during the 2009 Lok Sabha Elections across 264 constituencies in 13 states:

I. Threats, intimidation, violence by dominant castes:	157 complaints (32%)
ii. Threats, intimidation, violence and/or Dalits not allowed to vote by political party members, <i>pradhans</i> , etc.:	108 complaints (22%)
iii. Violence, threats by police or polling agents:	8 complaints (1.6%)
iv. Intimidation of Dalit activists or leaders by police through arbitrary detention, false cases:	3 complaints (0.6%)
v. Exclusion from voter list, lacking voter ID card or job card:	94 complaints (19.2%)
vi. Vote rigging wherein Dalit votes cast by others:	26 complaints (5.3%)
vii. Efforts to influence Dalit voters through money, liquor, transport:	51 complaints (10.4%)
viii. Unable to vote due to non-acceptance of identity proof at polling station, early closure of polling, EVMs not working, etc.:	43 complaints (8.8%)

(*Dalit Election Watch, Dalits and the Right of Franchise, New Delhi: NCDHR-NDMJ, 2009, p.11*)

What is the meaning of democracy when during elections atrocities against SCs/STs interfere with or even deny their right of franchise?

Out of 2,307 cases of atrocities on Dalits in Rajasthan during 2007-08:

- practices of 'untouchability' (24.7%)
- land disputes (18.8%)
- violence against women (14.8%)
- mass violence (13.0%)
- violence during the 2008 elections (181 cases).

(*Centre for Dalit Human Rights database, Rajasthan, 2007-08*)

Out of 3,107 crimes against Dalits in Andhra Pradesh during 1999-2008:

- attacks (27%)
- practises of untouchability (18.7%)
- caste discrimination in State agencies (13.3%)
- rapes and gang rapes (13.1%)
- murders (9.8%)

(*Sakshi Human Rights Watch – A.P. database, Secunderabad, 1999-2008*)

Out of 8,317 cases of atrocities against Dalits registered with police in 26 districts of Gujarat between 30.01.2001 – 31/03/2008:

- Nearly $\frac{3}{4}$ of cases for caste abuse, threats or insults
- 125 cases for murder
- 213 cases for rape
- 578 cases for serious assault
- 771 Dalits forced to migrate from their villages
- 212 Dalits faced social boycotts.

(*Letter no.Ajk/c-1/2008/2993 of Director of Social Welfare, Gujarat, dated 29/05/2008, in response to RTI by Navsarjan Trust, Ahmedabad, 2008*)

Should not all Indian politicians and citizens alike openly acknowledge that extreme indignities like naked parading forced on Dalits in the 21st century is a national shame that should no longer be tolerated? Should not the numbers of heinous crimes continuing to be committed against SCs/STs provoke greater efforts to implement the SC/ST (PoA) Act?

4. The Why of Atrocities

According to the National Commission for SCs and STs, “Economic dependency of the poor on rich non-SC/ST persons, social discrimination arising out of the practice of untouchability and the age-old urge to subjugate the weakest of the weaker sections make SCs/STs vulnerable and victims of atrocities...”

During 1993-94, prevalent causal factors for 418 atrocity cases dealt with by the Commission were:

- i. Untouchability and social disabilities: 68 cases (16.3%)
- ii. Economic causes - land, financial transactions, wages, forced or bonded labour, etc.: 87 cases (20.8%)
- iii. Sexual violence - rape: 32 cases (7.7%)

(National Commission for SCs & STs, Second Report 1993-94, New Delhi, 1996, para 7.13)

National Commission for SCs and STs: A study showed that many atrocities against Adivasis (STs) relate to land: “The predatory expansion of non-tribals into tribal areas and the dispossession of tribals through fraud or because of debt has been a continual source of violence, crimes and atrocities against tribals... [as well as] tensions between forest officials and tribals, which erupt in many cases in atrocities on the tribals.” (National Commission for SCs & STs, *Atrocities on SCs and STs: Causes and Remedies*, New Delhi, 1990, pp.9,29)

Clear case of interfering with ST's rights over land? “Reports received from various States, indicate that 5.06 lakh cases of tribal land alienation have been registered, covering 9.02 lakh acres of land, of which 2.25 lakh cases have been disposed off in favour of tribals... 1.99 lakh cases... have been rejected by the Courts on various grounds.” (Ministry of Rural Development, *Annual Report 2007-08*, New Delhi, 2009, p.171)

Court no Solace to Adivasis

In 2007, according to the Asian Centre for Human Rights, around 29,000 cases of land disputes involving tribal people were reported and not a single case was adjudicated in favour of the tribal people. Adivasis continue to be displaced from their lands in the name of development, security concerns and conflicts.

(*High and Dry*, Frontline, 4/12/2009, pp.23-4)

SC/ST Assertion meets with Aggression

“Causes of atrocities on SCs/STs are increasingly on account of land disputes, land alienation, forced labour and refusal to pay minimum wages, besides the traditional practice of untouchability and associated social disabilities... reservations is also becoming a source of animosity for other communities, and due to increasing education and awareness, SCs/STs have also started asserting their rights.”

(National Commission for SCs & STs, *Sixth Report 1999-2000 & 2000-01*, New Delhi, 2001, para 9.10)

Should not displacement due to development projects and land alienation be treated as a 'interference with the enjoyment of rights over land' falling under sec. 3(1)(v) of the Act? If this were the case, would not reality reflect a much higher number of atrocities against STs?

In most cases of violence from dominant caste perpetrators, Dalit women identified their gender-caste-class status as the overall or key cause for the violence. Clear examples were given not only of the jogini system or 'untouchability'-related violence, but also of the petty reasons that often triggered violence (eg: trying to cross a dominant caste's fields, asserting equal rights to water, or asserting the right to own economic resources). These reasons fall broadly into two categories related to: (i) coercive violence utilised to maintain caste norms or caste-based gender norms; and (ii) retaliation against Dalit women defying 'untouchability' norms or asserting their rights to cultural, economic and political resources.

Aloysius Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India*, Chennai: IDEAS, NCDHR & NFDW, 2006, p.113

5. Police and Security Forces turned Perpetrators!

Contrary to their duty to protect all Indian citizens, some police exhibit their caste/racial biases clearly in perpetrating or colluding in atrocities against SCs/STs, or allowing perpetrators to evade the arms of the law:

Pattern of Police Neglect: During 1992 to 1995, only 12 states/union territories reported 699 registered crimes against SCs/STs committed by police officials, namely:

- deaths or rapes in police custody; other atrocities or excesses by police;
- complaints including police inaction on SC/ST atrocity complaints
- police involvement or negligence leading to commission of atrocities or preventing justice after atrocities. (*National Commission for SCs & STs, Second Report 1993-94 & Third Report 1994-95 & 1995-96, New Delhi, 1996 & 1998, pp.167-70 & pp.215-17*)

Pattern of Police Torture: “SCs account for a sizeable number of deaths in judicial custody in Bihar, Uttar Pradesh and Maharashtra... SC inmates are routinely insulted, intimidated and forced to do menial work inside the jail and carry

out various commands of not only the jail staff but sometimes of caste Hindu prisoners as well.” (*NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.120-1*)

Patterns of Police Atrocities identified by Human Rights Watch include: custodial torture and deaths; encounter deaths; raids on SC colonies after inter-caste clashes; violence against Dalit women; false arrests of Dalits; violence to crush peaceful protests by Dalits; violence against entire Dalit colonies while searching out a Dalit accused; and violence against Dalit villagers caught in crossfire in insurgency/ naxalite affected areas. (*Human Rights Watch, Broken People: Caste Violence against India's "Untouchables", New York, 1999*)

Patterns of Atrocities by Security Forces: In areas where security forces operate, they have been “responsible for gross violation of the rights of the tribal people including arbitrary arrests, illegal detention, torture, custodial kills and extrajudicial killings in the name of “counter-terrorism” measures.” (*Asian Indigenous & Tribal Peoples Network, The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, p.4*)

Given their duty to uphold law and order and protect Indian citizens, do not atrocities against SCs/STs by police and security forces, along with police negligence in filing, registering and investigating atrocity cases, deserve stringent punishment?

6. Deprived of Respect and Security: Gendered Crimes

“In the commission of offences against... Scheduled Caste women, the offenders try to establish their authority and humiliate the community by subjecting their women to indecent and inhuman treatment, including sexual assault, parading naked, using filthy language, etc.” (*National Commission for Women, Women of Weaker Sections: Socio-Economic Development of SC Women, New Delhi, 1996, p.33*)

Registered cases of rape against ST women during the period 1995 to 2007 outnumber cases of murder, kidnapping, dacoity, robbery and arson against STs put together. (*NCRB, Crime in India 1995-2007, New Delhi, 1996–2008*)

A study of 100 Adivasi villages across 10 districts of Tamil Nadu over the period 1989 to 1999, conducted by Institute of Development, Education, Action and Studies, Madurai, revealed the following atrocities against Adivasi women:

Main Perpetrators:	No. of villages in which women faced:		
	Physical Assault	Sexual Exploitation	Sexual Harassment
Forest officials	23	23	21
Non-Adivasis	21	34	42
Estate owner/manager	16	25	24
Moneylenders	11	6	14
Revenue Officials	10	8	9
Police + STF	10	8+1	8+2

(*Aloysius Irudayam & Jayshree Mangubhai, Adivasis Speak Out: Atrocities against Adivasis in Tamil Nadu, Bangalore: Books for Change, 2003, p.13*)

A study of 500 Dalit women's cases of violence across Andhra Pradesh, Bihar, Tamil Nadu and Uttar Pradesh between 1999 and 2004 revealed that the majority of the women faced several forms of violence from either or both perpetrators in the general community and the family. The most frequent forms of violence were **verbal abuse (62.4%), physical assault (54.8%), sexual harassment and assault (46.8%), domestic violence (43.0%) and rape (23.2%)**.

While the majority of violence against Dalit women came from 'ordinary' members of non-SC/ST communities, dominant caste landlords emerged as the largest single class of perpetrators. Police and forest officials, as well as business people, were other key perpetrators. Where police were not active perpetrators, they also acted in a significant number of cases in collusion with the perpetrators by failing to enforce the law when violence against Dalit women took place. Two other perpetrators were from the professional category (hospital nurses and doctors and teachers) and political category (local political party leaders and elected panchayat members).

(Aloysius Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India*, Chennai: IDEAS, NCDHR & NFDW, 2006, pp.106-7, 110-11)

“The Committee recommends that the [Indian] State put in place a mechanism to monitor effective enforcement of the SC/ST (Prevention of Atrocities) Act in order to ensure accountability and end impunity for crimes committed against Dalit [and Adivasi] women. It calls upon the State party to increase Dalit [and Adivasi] women's legal literacy and improve their access to justice in bringing claims of discrimination and violation of rights.”

CEDAW Concluding Comments on Government of India's 2nd-3rd Report, CEDAW/C/IND/CO/3, 2007, para 29

7. Scope of SC/ST (PoA) Act: Updating Required!

While the Act spells out 22 offences of atrocities, patterns of atrocities change over time and new forms emerge or some forms become more prevalent. Common atrocities not included in the Act are:

1. Voluntarily causing hurt and grievous hurt:	While hurt is the largest reported crime against SCs/STs, and assaults often accompany other atrocities, this crime finds no mention in the Act!
2. Murder and mass murder	
3. Rape, gang rape and mass rape	
4. Abduction and kidnapping:	Once achieved, this major crime often leads to other forms of violence or forced labour or forced marriages.
5. Ransacking of SC/ST homes and destruction or theft of moveable/immovable property:	Violence against SCs/STs is often accompanied by destruction or theft of their property, with implications that victims are less likely to have the economic means to pursue a case.
6. Filing of false counter cases against SC/ST victims of atrocities:	Done by non-SC/ST perpetrators, sometimes with police collusion, and often leads to police arresting SC/ST victims and further harassment until the original atrocity case is withdrawn.
7. Refusal to pay agreed/contract/ minimum wages to SC/ST	
8. Employment of persons for manual scavenging	
9. Fraud in maintenance of loan accounts:	Done to trap SCs/STs into indebtedness or bonded labour.
10. Denial or limitation of access to opportunities afforded by educational institutions:	Increasing caste/race based discrimination and violence against SC/ST children in educational institutions, from primary school up to IITs/IIMs, including discrimination in midday meal schemes.
11. Discrimination or obstruction to ST from enjoying forest rights	Forest rights being defined here as rights under <i>secs. 3(1) & 4 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006</i>

Atrocities Against SCs and STs

<p>12. Obstruction in using common property resources of an area equally with others, or exercising rights under law or custom to collect non-timber forest produce or minor forest produce</p>	
<p>13. Prevention of access to burial or cremation grounds of SCs/STs</p>	
<p>14. Disrespecting, disfiguring or damaging statues of Dr Ambedkar:</p>	<p>Given Dr Ambedkar's importance as a political leader, Dalit rights champion and framer of the Indian Constitution, damaging his statues amounts to a clear expression of caste hatred, a public insult against SCs.</p>
<p><i>(National Commission for SCs & STs, Atrocities on SCs & STs: Causes and Remedies, New Delhi, 1990, p.36; National Coalition for Strengthening SC/ST (Prevention of Atrocities) Act, Position Paper presented on 11/09/2009 at New Delhi)</i></p>	
<p>15. Social or Economic Boycotts or Blackmail</p> <p>Sec. 3 in the Act does not list among the crimes of atrocities Social Boycott, Economic Boycott, Social Blackmail and Economic Blackmail, which are realities faced by SCs/STs whenever they make just demands or resist injustices or asserts their rights. <i>(P.S. Krishnan, quoted in NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.292)</i></p> <p>The Courts have resisted interpreting secs. 3(1)(v), (xiv) & (xv) SC/ST (PoA) Act broadly so as to include social and economic boycotts. Further, these provisions are rarely included in FIRs and are not resorted to by Courts at later stages. As a result, most registered cases only refer to violence or threats that surround the boycott, but do not address the boycott itself, which is a much less visible atrocity. <i>(Navsarjan Trust, Report on Socioeconomic Boycotts of Dalits in Gujarat, Ahmedabad, 2009, p.48)</i></p>	

I What are the National and International Standards of Measurement?

Any person whose rights are violated to have an effective remedy, even if the perpetrator acted in an official capacity. (Art. 2(3)(a) ICCPR)

All persons are equal before the law and entitled without discrimination to equal protection of the law. (Art. 26 ICCPR; Art. 14 Indian Constitution)

Law enforcement officials to fulfil their legally mandated duty to serve the community and protect all against illegal acts. (Art. 1 Code of Conduct for Law Enforcement Officials 1979)

State to ensure that police services have adequate and accessible presence in neighbourhoods and regions where persons discriminated against because of their descent (caste) reside, so that complaints from such persons can be expeditiously received. (para 10 CERD General Recommendation XXXI 2005)

Complaints by victims of racist acts should be recorded immediately, investigations pursued without delay and in an effective, independent and

impartial manner, and files kept relating to racist incidents. (para 11 CERD General Recommendation XXXI 2005)

Any refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions, and those sanctions increased if corruption is involved. (para 12 CERD General Recommendation XXXI 2005)

Public servant, not being a SC/ST, who wilfully neglects her/his duties under this Act, to be punished. (sec. 4 SC/ST (PoA) Act)

Offences committed under this Act to be investigated by a police officer not below the rank of Deputy Superintendent of Police (DSP), and investigations to be completed within 30 days and report submitted. (rule 7 SC/ST (PoA) Rules)

NOTE: Read also – (1) Art. 5(b) ICERD; (2) paras 24-26 CERD General Recommendation XXIX 2002; (3) paras 5 & 13 CERD General Recommendation XXXI 2005; (4) Arts. 7 & 8 Code of Conduct for Law Enforcement Officials 1979.

II. What are the Facts? What do these Facts Say?

“It is universally accepted that the success of a special Act which deals with social offences goes to the enforcement machinery to which it is entrusted.”

Justice Punnayya Commission of Enquiry into the Practice of Untouchability against SCs and STs, Andhra Pradesh, 2001, p.140

The significance of this Commission statement lies in the critical role that the police department, as the main organ of Home Ministry, is expected to play, especially in matters concerning security of life for marginalised SC and ST communities. When, despite every possible

preventive efforts, an atrocity is committed on SCs or STs, the police are fully responsible for registering a case, investigation, arresting the accused and filing a charge sheet.

Have the Police performed their Duties satisfactorily during the past Two Decades of the SC/ST (PoA) Act?

Police apathy and bias: NHRC

The police resort to various machinations to discourage SCs/STs from registering cases, to dilute the seriousness of the violence, to shield the accused persons from arrest and prosecution and, in some cases, the police themselves inflict violence. This apathy and bias extends to other agencies of the government and the district civil administration. (NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.113-4)

Police dereliction of duty: UN Committee on Elimination of Racial Discrimination

“The Committee notes with concern allegations that the police frequently fail to properly register and investigate complaints about acts of violence and discrimination against SC/ST members, the high percentage of acquittals and the low conviction rate in cases registered under the SC/ST (PoA) Act and the alarming backlog of atrocities cases pending in the courts.” (CERD Committee Concluding Observations on India's Report, CERD/C/IND/CO/19, 2007, para 26)

“Continuing atrocities against the weaker sections are a matter of national disgrace in a civilized society... There are also shocking reports at times of apathy and a lack of sensitivity in handling the aftermath of such incidents.”

Prime Minister Manmohan Singh's address at 10th Meeting of Inter-State Council, New Delhi, 2006

Responses at Four Stages in Passage of Atrocity Cases through the Police Machinery Stage 1: Filing First Information Report (FIR)

Response 1

Non-registration of cases

Police Impunity at its height! In spite of law laid down by the Supreme Court, police do not register FIRs unless some direction is given by the Chief Judicial Magistrate or the High Court or this [lower] Court. Even after orders are passed by the concerned courts for registration of the case, the police do not take the necessary steps and when matters are brought to the notice of the Inspecting Judges of the High Court during the course of inspection of Courts and Superintendents of Police are taken to task, then only FIRs are registered. (*Human Rights Watch, Broken System: Dysfunction, Abuse and Impunity in the Indian Police, New York, 2009, p.45*)

According to a State Secretariat member of the CPI(M) party, for atrocities against tribals in

Rajasthan, “Whenever cases are registered, they are not followed up and cognizable offences are not registered. The conviction rates for atrocities (mostly land-related crimes) committed against tribal people are very low.” (*Hostile Acts, Frontline, 4/12/2009, p.13*)

The monitoring advisories set up in states on an ad hoc basis by the Ministry of Social Justice and Empowerment and Ministry of Home Affairs noted that in many cases the police wilfully neglected the SC/ST (PoA) Act and did not register FIRs. (*Victims Always, Frontline, 4/12/2009, p.6*)

Ministry of Social Justice and Empowerment Advisories included recommendations that:

Any non-SC/ST police officer refusing to register a FIR for a reported atrocity can be prosecuted under Section 4 of the Act for wilful neglect of duties

While registering a FIR, the police officer should not insist on production of caste certificate by an atrocity victim (*No. 11011/8/2006-PCR(Desk), dated 14/03/2006*)

Sensitizing police officers with regard to the implementation of the Act (*No. 11012/3/2004.PCR (Desk), dated 28/12/2004*)

Special Police Stations can be at least set up in identified atrocity prone areas in a State, as well as police force deployed in those areas to take preventive measures (*D.O.No.11020/1/2003-PCR(Desk), dated 7/10/2003*)

BUT what has been the follow up on these Advisories to State/UT Governments?

In what ways do the police ensure non-registration of atrocity cases?

showing apathy, negligence and passivity towards SC/ST atrocity victims

discouraging SCs/STs from registering cases, to instead come forward for amicable settlement

pressurising victim complainants to compromise for money

threatening victims into silence or even inflicting violence on victims

refusing to register cases under SC/ST (PoA) Act to avoid punitive measures against perpetrators

foisting false cases against victims at behest of perpetrators to pressurise them for compromises

accepting bribes from perpetrators to drop the

victim's case

declaring perpetrator innocent without following due process of law

beating/reprimanding perpetrator without pursuing any process of formal justice

delaying arrival at the scene of atrocity.

(*NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.113-4; Sakshi Human Rights Watch - A.P., Dalit Human Rights Monitor 2000, Secunderabad, 2000, pp.96-7; Human Rights Watch, Broken People: Caste Violence against India's "Untouchables", New York, 1999, pp.189-91; M.A. Britto, Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, pp. 167-8; Aloysius Irudayam et al, Dalit Women Speak Out: Violence against Dalit Women in India, Chennai: IDEAS, NCDHR & NFDW, 2006, pp.499-501*)

Silenced victims of atrocities!

“Ignorance of law and the remedies available, fear of reprisal from caste Hindu offenders, lack of faith in the neutrality of police and judicial system have all combined to compel SC victims to acquiesce to the existing unjust situation and even illegal compromises.”

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.91

Why non-Registration? Departmental Suppression of Reality

“The non-registration of cases, apart from reflecting caste bias and corruption, has also been attributed to the pressure on the police to keep reported crime rates low in their jurisdiction. One NGO in Gujarat reported that according to police record, during the period of four years, the incidents of atrocities increased by 90% due to truthful reporting and yet police reports showed that the general crime rate was down by 1.35%. The increase in crime rate is not viewed favourably in police administration and has negative implication for the police personnel as their superiors feel that they are not doing their job.”

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.33

Response 2

Not registering cases under SC/ST (PoA) Act but only under IPC

As per the National Crimes Records Bureau, 67% of crimes during 1992 to 2000 and 64.9% of crimes during 2001 to 2007 were not registered under the *SC/ST (PoA) Act*. (*NCRB, Crime in India 1992-2007, New Delhi, 1993-2008*)

Gujarat: A sample study covering 11 atrocity-prone districts exposed that between 1990 and 1993, 36% of atrocities cases were not registered under the *SC/ST (PoA) Act*. In 84.4% of cases where the Act was applied, the cases were registered under wrong provisions with a view to concealing the violent nature of the incidents. (*Martin Macwan & Harshad Desai, Atrocities on Dalits in Gujarat-1990-93: A Documentation and an Evaluation, Ahmedabad: Centre for Social Studies, 1997, p.78*)

Two police strategies to avoid registering cases under the *SC/ST (PoA) Act*:

(i) Deviant strategy which follows two methods:

FIR is registered under PCR Act which attracts lenient punishment as compared to *SC/ST (PoA) Act*, and does not provide for relief or compensation to the victims.

When offences are not covered by the PCR Act,

FIR is registered under IPC provisions which attract lesser punishment than *SC/ST (PoA) Act* provisions for the same offence. The enforcement of this Act is not taken seriously. Perhaps cases are not being registered under the Act at all but are being booked under the IPC. (*NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.45*)

ii) **Distortion strategy:** Police state that *SC/ST* victims did not explicitly mention that they were abused by caste name. The fact of the matter is that **this** constitutes a distorted interpretation of the Act since such mention is not necessary at all. Such a requirement is only provided for in sec. 3(1)(x) of the Act and in no other section. (*Sakshi Human Rights Watch - A.P., Dalit Human Rights Monitor 2000, Secunderabad, 2000, p.98*)

Consequences of not registering FIRs under *SC/ST (PoA) Act*

Investigation done by officers of Sub-Inspector or Inspector rank with less experience and sensitivity
Perpetrators punished with a lesser sentence
Relief or compensation not given to victims
Perpetrators are likely to be released on bail.

“I am told that the implementation of this Act and its provisions has not been as effective as it could have been. Cases continue to be registered under weaker provisions of the *IPC* rather than the stronger provisions of the *SC/ST (PoA) Act*. More often than not, the distinction between regular crimes and those covered by the *SC/ST (PoA) Act* has not percolated down.”

Prime Minister Manmohan Singh's address at 10th Meeting of Inter-State Council, New Delhi, 2006

Response 3

Not registering cases under proper sections of *SC/ST (PoA) Act*

In many cases where police do register a case under the Act, they purposely cite improper sections. For serious crimes such a murder, rape, destruction of property, dispossession of land, fouling drinking water sources, etc., police tend to cite only sec.3(1)(x) of the Act, which relates to insulting or intimidating a *SC/ST* person. (*People's Commission against Atrocities on Dalits, Draft Observations & Advises on Effective Measures to Address Atrocities against SCs & STs, New Delhi, 2008, p.2*)

Regarding 112 cases before the Commission, appropriate sections of the *SC/ST (PoA) Act* and *PCR Act* were applied only in 49 cases (43.8%). In the remaining 63 cases (56.3%), either the relevant sections of these two Acts had not been applied, or wrong sections thereof had been applied by the police. (*National Commission for SCs & STs, Second Report 1993-94, New Delhi, 1996, para 7.35*)

What implications for not registering under proper sections of the SC/ST (PoA) Act?

Ensured lesser punishment for perpetrators by diluting seriousness of the case.

Victims lose higher compensation if case is

registered under less serious sections.

Encourages police to neglect their duties in successive cases.

Also encourages police collusion with dominant caste perpetrators of atrocities in future.

The Committee are of the opinion that correctly registered FIRs will certainly help in pursuing cases strongly in courts and getting the accused convicted.

Parliamentary Committee on the Welfare of SCs and STs, 4th Report 2004-05, New Delhi, 2005, para 3.19

Case study of Gujarat

Sec. 3(1)(iv) : Dalits' land rights violations **applied to only 37 (20.4%) out of 181 cases**

Sec. 3(1)(v) : Interference with Dalit house-sites, water for agriculture and drinking water..... **applied to only 113 (66.5%) out of 170 cases**

Sec. 3(1)(xi) : Outraging modesty of Dalit women **applied to only 92 (48.7%) out of 189 cases**

Sec. 3(2)(iii) : Setting fire to property of Dalits **applied to only 1 (2.7%) out of 37 cases**

Sec. 3(2)(v) : Offences relating to abetting suicide, grievous hurt, rape, robbery, murder, kidnapping, etc. **applied to only 10 (5.5%) out of 190 cases**

Sec. 3(2)(vii) : Punishing a public servant perpetrator of atrocity..... **not applied to even a single case although 26 offences under this section were recorded**

(Martin Macwan & Harshad Desai, Atrocities on Dalits in Gujarat 1990-93: A Documentation and an Evaluation, Ahmedabad: Centre for Social Studies, 1997, pp.81-2)

Case study of Tamil Nadu

Cases filed without proper sections of SC/ST (PoA) Act 171 out of 386 (44.3%) instances of atrocities

Sec. 3(1)(x) : As attracts least penalty under the Act **applied to majority of 289 FIRs (74.9%)**

Sec. 3(1)(xi) : Outraging the modesty of Dalit women **applied to only 9 of 50 cases (18%)**

Sec. 3(1)(xiv) : Preventing SCs from accessing/using public place **applied to only 2 of 32 cases (6.3%)**

Sec. 3(2)(v) : Murder of SCs **applied to only 11 of the 41 (26.8%)**

(M.A. Britto, Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, p. 179)

Case study of Andhra Pradesh

Out of 101 atrocity cases in Andhra Pradesh studied between 1999 and 2002:

In a majority of cases (43.6%) the police did not register the FIR under proper legal sections.

Not even 1/5 of the cases (only 17.8%) were registered under proper legal sections.

More shockingly, close to 1/3 of the cases (28.7%) did not even get registered.

10 cases related to violations of sec. 4 of the Act, namely police negligence of duties. *(Sakshi Human Rights Watch - A.P., Dalit Human Rights Monitor 2000-2003, Secunderabad, 2003, p.76)*

CERD Concluding Recommendations on Indian State's Report

Provide effective protection to SCs and STs; ensure complaints under SC/ST (PoA) Act and other criminal law provisions are properly registered and investigated, perpetrators prosecuted and sentenced, and victims compensated and rehabilitated; introduce mandatory training on the SC/ST (PoA) Act for police, judges and prosecutors; take disciplinary or criminal law measures against law enforcement officers who violate their duty of protection and/or investigation in relation to atrocities.

CERD/C/IND/CO/19, 5 May 2007, paras 14 & 26

Response 4 Filing false counter cases

A potent method the Tamil Nadu police have discovered to punish victims who insist on pursuing their atrocities cases is to file counter cases against

them. (*M.A. Britto, Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, p.167*)

Punnayya Commission Report:

Police deter SC/ST victims by colluding with the accused in filing false counter cases

Whenever SC/ST victims of atrocities present a report to the Sub-Inspector or Circle-Inspector in charge of Police Station and if the latter records FIR and register a case, these officials, instead of arresting the assailant(s), often register FIRs against the SC/ST victims on the basis of counter reports filed with them by the assailant(s). This is done with the sole intention of counter blasting the complaint filed by the SC victims.

As a result of the counter cases, SC victims of atrocities are being arrested and subjected to criminal litigation as accused in the counter cases. Dominant castes utilise this method in a concerted effort to make the 1989 Act dysfunctional.

Since counter cases are on increase and are dominating not as private cases but as state cases, i.e. as cases filed by the police, it is the responsibility of the government to save the SCs and STs from the harassment and disaster caused to them as a result of counter cases... (*Report of the Justice Punnayya Commission of Enquiry into the Practice of Untouchability against SCs and STs, Andhra Pradesh, 2001, p.145*)

Stage 2: Case Investigation

PIL in Andhra Pradesh: The High Court of Andhra Pradesh, in an interim order on Writ Petition 1019 of 2006 filed by Sakshi Human Rights Watch - A.P., observed that as per the statistics furnished by the Director General of Police regarding cases registered under the *SC/ST (PoA) Act*:

- 1 case has been pending investigation for almost six years
- 53 cases for between three to five years
- 190 cases for almost two years
- 805 cases are for about one year.

Does this not amount to violation of sec. 4 of the Act, and yet not a single police official has been prosecuted for negligence of duties?

Why such pendency in investigation of cases?

Three Tactics of Police

1. Delay beyond stipulated 30-day investigation time limit:

Even where the formality of registration of a case has been done, *investigation is tardy*, trials slow and convictions almost nil.” (*NHRC, Report on Prevention of Atrocities against Scs, New Delhi, 2002, p.68*)

Less personnel, more delayed or poorer quality investigation: shortage or non-availability of DSPs; no staff assigned exclusively for the investigation of the atrocity cases. (*Committee of Governors, Report on Certain Aspects concerning the Welfare and Rights of SCs & STs, New Delhi, 2001, pp.68-9*)

Flouting the 30-day investigation rule to acquit the accused: Police often delay investigation of atrocity cases, record

statements from solely dominant castes, and see that incompetent or unauthorised officials investigate the case, thus laying the foundation for acquittal on technical grounds. (*People's Commission against Atrocities on Dalits, Draft Observations & Advises on Effective Measures to Address Atrocities against SCs & STs, New Delhi, 2008, p.2*)

Bias against victims results in denial of investigation: “Ignoring the complaints of SCs, discouragement and even rejection of them, giving no credence to the version of victims but believing in the version of the victimizers, shoddy investigation, deliberately creating loopholes to benefit the accused persons, discouraging victims from pursuing

the case, pressuring them to compromise, failing to expeditiously conclude investigation and above all failing to provide necessary protection either before or even after the [atrocities], are some expressions of these biases.” (NHRC, *Report on Prevention of Atrocities against SCs*, New Delhi, 2002, p.131)

2. **Compromise persuaded or forced:** According to a study of 386 atrocity cases in Tamil Nadu, out of 157 cases investigated by the DSP, only 34 (21.9%) were found satisfactory. Regarding the remaining cases, the DSP was both partial and biased in his approach, or threatened or forced victims/witnesses to compromise with the accused and withdraw their complaints. (M.A. Britto, *Implementation of the SC/ST (PoA) Act 1989 (Tamil)*, Madurai: Doctor Ambedkar Cultural Academy, 2007, p.198)

3. **Poor quality of investigation**

In Tamil Nadu: Investigation of atrocity cases by the DSP or higher ranking police was done in only 42% of the 386 atrocity cases studied.

Otherwise, the common practice was for a lower ranking police official to conduct the investigation, prepare the report and get it signed by the DSP. Still worse, in 146 out of 386 cases (37.8%), a formal investigation was not done; in 47 (32.2%) out of these 146 cases, only a preliminary enquiry was carried out by a lower ranking police soon after the incident. (M.A. Britto, *Implementation of the SC/ST (PoA) Act 1989 (Tamil)*, Madurai: Doctor Ambedkar Cultural Academy, 2007, p.195-6)

In Gujarat: Of the 19,080 cases of atrocities against SCs registered with the police in 25 districts of Gujarat from 30/01/1989 to 31/12/2006, in 7,468 cases (39.1%) the investigation was done by a police officer below the rank of DSP. (data from DSP Offices, Gujarat, obtained through RTI petition by Navsarjan Trust, Ahmedabad, 2008)

Consequence of pursuing the three tactics: Closure of cases

Police closed a large 21.7% of cases under the SC/ST (PoA) Act during 1997 to 2007. (NCRB, *Annual Reports 1997-2007*, New Delhi, 1998-2008)

With regard to closure of cases by the police, Rajasthan topped the states during 1992 to 1995 with about 55% closure, though Rajasthan was also leader with highest overall disposal rate of 99.4%. (National Commission for SCs & STs, 3rd Report 1994-95 & 1995-96, New Delhi, 1998, pp.208-220)

Delay causes closure: There are districts which have closed a large number of cases as false, the main reason given by the SPs/DSPs being delayed investigation leading to eventual compromise between the victims and accused. (Social Welfare Department, Government of Andhra Pradesh, Video Conference on Atrocities against SCs/STs under POA Act, 21/03/2009, RC.No.H2/8193/2008-2)

Stage 3: Arrest of the Accused

Not arresting or delaying arrest of the Accused

A National Commission for SCs and STs study on implementation of the SC/ST (PoA) Act in Uttar Pradesh, analysing 1,311 cases of atrocities, revealed patterns of late registration of FIRs, delays in the investigating officer's visit, accused not being arrested, charge sheets being submitted late and relief and compensation not being paid on time. Of these, the most glaring inaction related to not arresting the accused; this enabled them to surrender in the court and robbed the judicial proceedings of its immediate deterrence effect. (NHRC, *Report on Prevention of Atrocities against SCs*, New Delhi, 2002, p.123)

In Gujarat: A study covering 11 atrocity-prone districts during 1990 to 1993 showed that the time gap between registration of murder cases and arrest

of the accused was 121.2 hours; for rape cases it was 532.9 hours; and for grievous cases it was 862.4 hours! (Martin Macwan & Harshad Desai, *Atrocities on Dalits in Gujarat-1990-93: A Documentation and an Evaluation*, Ahmedabad: Centre for Social Studies, 1997, p.85)

In Tamil Nadu: Out of 371 cases of atrocities for which data was available on arrests, in 25.6% of cases the accused were never arrested, while in only 25.9% of cases were all the accused arrested immediately after the registration of the FIR or the next day. For 20.7% of cases, the arrests occurred only after one week up to one year after the incident took place. Further, in 23 cases (6%) the accused succeeded in getting an anticipatory bail order from the High Court. (M.A. Britto, *Implementation of the SC/ST (PoA) Act 1989 (Tamil)*, Madurai: Doctor Ambedkar Cultural Academy, 2007, p.205)

“Sub-Inspectors or Circle-Inspectors are not prepared to arrest perpetrators of atrocities, especially where there is large-scale violence involving many perpetrators, and even though FIRs have been recorded and cases registered.”
Report of the Justice Punnayya Commission of Enquiry into the Practice of Untouchability against SCs and STs, Andhra Pradesh, 2001, p.62

Why police delay arrest or do not arrest accused?

- to dilute the seriousness of the violence
- to shield the accused persons from arrest and prosecution
- to prevent public servants from being arrested
- to protect local political leaders from arrest

(NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.114)

In response to this writ petition demanding effective implementation of the *SC/ST (PoA) Act* and *Rules*, counter affidavits filed by the police reveal that: during the period 1995 to 2006, 21,000 cases were registered under the Act. Of these, **more than 14,000 are pending without a charge sheet being submitted, even though the Act stipulates that investigation must be completed within 30 days of the FIR being filed.** *(Many Hurdles', Frontline, 4/12/2009, p.20)*

Stage 4: Charge Sheetting

According to the report of **Committee of Governors on Certain Aspects concerning the Welfare and Rights of SCs and STs** *(New Delhi, 2001, Table 5.1)*, for cases registered under the Act during 1990-99:

Average registered cases per year:	29,713
Average investigated cases per year:	26,706 (89.9% of registered cases)
Average charge sheeted cases per year:	18,212 (61.3% of investigated cases)
Average cases pending charge sheetting per year:	8,494 (31.8% of investigated cases)

Disposal of Cases of Crimes against SCs/STs during 1997-2007

	No. of Cases under all laws*	No. of Cases under SC/ST (PoA) Act
Investigation completed	3,05,647	1,34,534
Final Report True submitted	17,028 (5.6%)	7,932 (5.9%)
Charge sheet submitted	2,33,213 (76.3%)	97,341 (72.4%)
Investigated cases pending charge sheetting in 10 years	72,434 (23.7%)	37,193 (27.7%)
Average investigated cases pending charge sheetting per year	7,243 (26% of average investigated cases)	3,719 (30.4% of average investigated cases)

* Data on SC/ST (PoA) Act and PCR Act for years 1997-2007; data on IPC and other provisions only for years 2001-2007
(NCRB, Annual Reports 1997-2007, New Delhi, 1998-2008)

A look at the above data for 1990-99 & 1997-2007 shows that:

During 1997 to 2007, the charge sheetting rate of cases under the *SC/ST (PoA) Act* was almost equal to the rate under all laws.

Comparing the two time periods (1990-99 and 1997-2007), the average percentage of cases under the Act pending charge sheetting per year has reduced only slightly from 31.8% to 30.4%.

However, does not the fact that over one-quarter of cases are pending charge sheetting each year indicate breach of the 30-day investigation rule?

“Not even a single case of punishing guilty officers was presented to the Committee either during examination on the subject or thereafter. The Committee hence feel that there is serious lapse on the part of implementing agencies in enforcing the Acts.”

Parliamentary Committee on the Welfare of SCs and STs, 14th Report 2006-07, New Delhi, 2006, pp.9-10

Why performance level *satisfactory to some extent only or fairly good?*

UNDUE DELAY!

Data from PIL before Supreme Court: Only in 9.3% of cases were charge sheets filed within the stipulated time of 30 days. Even if we take the Cr.P.C. time limit of 90 days, charge sheets were filed within this time limit in only 22.1% of cases. In 40.7% of cases charge sheets were filed between 90 days to 1 year, and for 27.9% of cases the investigating officer took more than one year. (*PIL by NCDHR, Sakshi Human Rights Watch - A.P. & Centre for Dalit Rights - Rajasthan (WC 104/2006), p.17*)

State Police Department of Andhra Pradesh: In response to a PIL filed by Sakshi Human Rights Watch – A.P. (W.P. 1019/2005), the State Police Department admitted that in 14,452 cases delays in charge sheeting were due to the following reasons:

- i. 3,381 cases - getting approval, legal opinion and superior's order;
- ii. 1,662 cases - having more witnesses in the case;
- iii. 1,893 cases - delay in obtaining caste certificates;
- iv. 2,972 cases - delay in the collection of Documents & evidence;
- v. 1,462 cases - delay in receipt of Wound & Medical Certificates & Post-mortem Report;
- vi. 1,006 cases - non-apprehension and absconding of the accused;

- vii. 752 cases - delay in tracing and examining the witnesses/ victim;
- viii. 813 cases - delay in busy schedule of officers/ work pressure;
- ix. 375 cases - transfer of the officer;
- x. 78 cases - cases being investigated by CID/CBID;
- xi. 58 cases - case diary files were not available.

Tamil Nadu: Out of 344 cases of atrocities in which charge sheeting status was known, barring 60 cases referred as 'mistake of fact' during the investigation process itself, charge sheets were prepared within 30 days only in 32 cases (9.4%). In some cases it took up to two years for police to file charge sheets before the courts! (*M.A. Britto, Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, p.205*)

During 1992 to 1995, against 96.3% disposal rate for atrocity cases in **Haryana**, the challaning of cases was only 68.8%. In **Tamil Nadu** the disposal rate was 89.8% while challaning was 60%. In **Bihar** the disposal rate of 86.5% could be contrasted with the challaning rate of only 67.5%. (*National Commission for SCs & STs, 3rd Report 1994-95 & 1995-96, New Delhi, 1998, p.208*)

Consequences of Undue Delay

Failure to file charge sheets early results in slow disposal of cases which, in turn, causes undue delay for the victims to access justice. This has negative social and psychological consequences for the victims, legal implications for the cases (e.g. police colluding with offenders to manipulate witnesses and evidence), not to speak of violation of victims' right to security of life as a result of pressure, threats or force from perpetrators and/or others to withdraw cases.

Another serious consequence of delaying investigation and charge sheeting of cases of atrocities beyond the 30-day legal limit under the *SC/ST (PoA) Act* or the 90-day limit under the *IPC*, especially for offences attracting up to life imprisonment like rape, murder and grievous hurt, is that the accused are almost certain to get bail from the courts.

This delay in charge sheeting can affect the direction of the court case to a large extent, where courts let off the accused on the sole ground of delay in filing the charge sheet. (*M.A. Britto,*

Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, p.205)

What reasons for police apathy and prejudice in implementing the Act?

The majority of police and revenue officials are from dominant caste backgrounds.

Police are not sensitised to take seriously atrocities and discrimination against SCs/STs. Typically they perceive the Dalits as having provoked the dominant castes by not conforming to their will and wishes. They do not see atrocities and discrimination against SCs/STs as crimes.

Most of the officials are not aware of the legal provisions of the *SC/ST (PoA) Act*.

The police are under continuous pressure from elected representatives and local politicians of the same dominant caste as the perpetrators.

(*Sakshi Human Rights Watch - A.P., Dalit Human Rights Monitor 2000, Secunderabad, 2000, p.100*)

I. What are the National and International Standards of Measurement?

Anyone whose rights are violated is to have an effective remedy, and claim that remedy through competent judicial, administrative or legislative authorities. (Art. 2(3) ICCPR)

State to grant effective protection and remedies against acts of racial discrimination (Art. 6 ICERD), and equal treatment before tribunals administering justice. (Art. 5(a) ICERD)

All persons are equal before the law and entitled without discrimination to equal protection of the law. (Art. 26 ICCPR; Art. 14 Indian Constitution)

Needs of victims facilitated by avoiding unnecessary delay in the disposition of court cases and the execution of orders granting awards to victims. (Art. 6(e) Declaration of Basic Principles of Justice for Victims 1985)

State to pursue national strategies aimed at: (d) promoting proper representation of racial/ethnic groups in the police and system of justice; and (i) implementing plans of action to eliminate structural racial discrimination, including guidelines for prevention, investigation and prosecution of racist incidents. (para 5 CERD)

General Recommendation XXXI 2005)

State to ensure lack of racial prejudice by judges, jury and other judicial personnel, including prejudices created by direct influence of pressure groups, ideologies, religions and churches. (paras 31-32 CERD General Recommendation XXXI 2005)

Supreme Court of India: Speedy trial is a component of social justice... (Babu Singh vs. State of Uttar Pradesh(1978) Cr.L.J. 651), speedy trial is a fundamental right... (Sheela Barse vs. Union of India (1986) Cr.L.J. 1736)

For the purpose of speedy trials, State Government to specify for each district a Sessions Court to be a Special Court to try offences under this Act. (sec. 14 SC/ST (PoA) Act)

For every Special Court, State Government to specify a Special Public Prosecutor to conduct the cases. (sec. 15 SC/ST (PoA) Act)

NOTE: Read also – (1) Art. 14 ICCPR; (2) Art. 15(1) CEDAW; (3) paras 22-23 CERD General Recommendation XXIX 2002; (4) paras 9, 15 & 33 CERD General Recommendation XXXI 2005

II. What are the Facts? What do these Facts Say?

1. High Pendency of Atrocity Cases before Courts

At the end of 2007, 99,659 cases of crimes against SCs/STs (79.0%) remained pending for trial in criminal courts across the country, no significant improvement over the trial pendency rate (82.5%) in 2001. Similarly, the trial pendency rate for crimes registered under the SC/ST (PoA) Act has not decreased below 80% pendency during 1997 to 2007, averaging 82.9%. ***Given that the trial pendency rate is roughly the same for all crimes under the SC/ST (PoA) Act, PCR Act and IPC, reality shows no 'speedy trials' for crimes under the SC/ST (PoA) Act. Why is this so?***

The trial pendency rate for cases involving SC/ST victims before Special Additional Sessions Courts in Tamil Nadu during 1998 to 2001 averaged 82.2%, with a mere 10.3% of cases completing trial in 2000. The average conviction rate was also a dismal 10.4%.

However, the Department reported that “the disposal of cases by these Special Courts is highly encouraging”! (*Adi Dravidar & Tribal Welfare Department, Notes for Review by National Commission for SCs & STs Chairman, Chennai, 2002, Statement IV*)

Pendency Rate for Cases of Crimes against SCs/STs during 1997-2007

Year	(a) No. of Cases for Trial including Pending Cases at start of year	(b) No. of Cases Pending Trial at end of that Year	Trial pendency rate (%) [(a) – (b)/100]
1997	45,591	37,299	81.8
1998	47,155	39,447	83.7
1999	49,703	40,963	82.4
2000	50,908	43,044	84.6
2001	52,314	43,602	83.3
2002	53,481	44,061	82.4
2003	51,278	42,487	82.9
2004	49,180	40,533	82.4
2005	47,688	39,595	83.0
2006	46,421	38,576	83.1
2007	46,091	37,895	82.2

(National Crimes Records Bureau, Crime in India 1997-2007, New Delhi, 1998-2008)

2. Speedy Trial vitiating: Inadequate Special Courts

Lack of Special Courts in all districts: District Session Courts have been designated as Special Courts in all States and Union Territories except for Arunachal Pradesh, Mizoram and Nagaland, which are predominantly tribal states, as well as Jammu & Kashmir, where the SC/ST (PoA) Act is deemed not applicable. (*Ministry of Social Justice & Empowerment, Report under sec. 21(4) SC/ST (PoA) Act for 2006, New Delhi, 2007, pg. 7*)

However, in contravention of sec. 14 of the Act, **Special Courts are still not setup in 133 districts/divisions out of the 612 districts** across India. (*People's Commission against Atrocities on Dalits, Draft Observations & Advises on Effective Measures to Address Atrocities against SCs & STs, New Delhi, 2008, pg. 4*)

Moreover, “designated Special Courts are not in a position to do justice with these cases of atrocities against SCs and STs because of prolonged proceedings, lack of interest by witnesses and their preoccupation with other Sessions Cases... **There should be exclusive Special Courts, not just**

designated courts, for speedy trial of atrocity cases.” (*National Commission for SCs & STs, Fourth Report 1996-97 & 1997-98, New Delhi, para 9.17*)

Some Positive Trends... but Advisories largely neglected

Few exclusive Special Courts in the country: Only nine out of 35 states/union territories have set up exclusive Special Courts to try cases under the Act. Even in the states with exclusive Special Courts: (i) **the number of atrocity-prone districts continues to outstrip the number of such Courts;** and (ii) around 50% of districts have not set up such Courts.

“The greatest defect is that **special mobile courts** are not set up in each district as means of handing out swift and deterrent punishment on the spot. Wherever a mobile court exists and has delivered punishment immediately, I have personally seen the impact of fear and curbing of untouchability practice at least for some time...” (*P.S. Krishnan, 'Atrocities against Dalits: Retrospect and Prospect', Combat Law, Vol 8, Issue 5-6, 2009, p.15*)

Advisories sent by Central Government to State Governments:

- Set up *exclusive* special courts at least in identified atrocity prone districts for trial of cases under the Act alone... (*Ministry of Social Justice & Empowerment, D.O.No. 11020/1/2003-PCR(Desk), dated 7/10/2003*)
- Set up *exclusive* special courts in all districts for trial of offences under the Act; timely prosecution of cases under the Act by special public prosecutors who are paid appropriate remuneration/fee so as to take up such cases effectively; review factors responsible for high level of acquittals under the Act... (*Ministry of Home Affairs, D.O.No. 24024/9/2004-SC/ST Cell, dated 03/02/2005*)
- Set up *exclusive* special courts, especially in districts where atrocity cases are significant in number... (*Ministry of Social Justice & Empowerment, D.O.No. 11011/8/2006-PCR(Desk), dated 14/03/2006*)

Pendency Rate for Cases of Crimes against SCs/STs during 1997-2007

State	No. of Identified Atrocity Prone Districts	No. of Exclusive Special Courts in districts (% of total districts)	No. of districts without Exclusive Special Courts
Uttar Pradesh	20	40 (55.6%)	32
Madhya Pradesh	19	29 (64.4%)	16
Rajasthan	0	17 (51.5%)	16
Andhra Pradesh	12	12 (52.2%)	11
Bihar	33	11 (28.9%)	27
Gujarat	12	10 (40.0%)	15
Chhattisgarh	0	7 (38.9%)	11
Karnataka	15	7 (25.9%)	20
Tamil Nadu	28	4 (13.3%)	26
Orissa	19	0	30
Maharashtra	31	0	35
Kerala	3	0	14
Jharkhand	1	0	18
Total	192	137	271

(*Ministry of Social Justice & Empowerment, www.socialjustice.nic.in/excourt.php & www.socialjustice.nic.in/pronearea.php, as on 1/12/2009; NCRB, Crime in India 1995-2007, New Delhi, 1996 - 2008*)

When designated Special Courts now exist in all states, why has there been no decrease in the high trial pendency rates for SC/ST atrocity cases? Does this situation not suggest that the existing Court set-up is grossly inadequate to ensure SC/ST victims their right to a speedy trial? Where existing designated Special Courts are over-burdened with cases other than SC/ST (PoA) Act crimes, what chance is there that SC/ST cases will receive priority?

Why has there been no monitoring and follow-up on the implementation by state governments of the advisories of the Law Ministry and Ministry of Social Justice and Empowerment? Should not these advisories be made mandatory orders in order to ensure speedy and effective trials of atrocity cases?

Should not sec.14 of the Act be amended to specify that exclusive Special Courts must be set up in all districts in all states to try offences under this Act, on a day-to-day basis, with exclusive Special Public Prosecutors and Special Investigating Officers, in order to fulfil the objectives – ie: speedy trials – of the very creation of Special Courts under this Act?

3. No or Few Judges and Special Public Prosecutors

Vacant judicial posts: “One of the main reasons for delay in the disposal of [atrocity] cases in courts is that a large number of posts (1,857 posts as on 1 June 2001) of Judges/Magistrates in the District and Subordinate Courts are vacant.” (*Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 3.25*)

Non-appointment or poor competency of Special Public Prosecutors: “The appointment of Special

Public Prosecutors for the operation of the Act does not exist in many states... Further, often Special Public Prosecutors appointed to handle such cases are of very poor competence and experience, the reason for which is their meager remuneration and lack of facilities provided to them to do their job effectively. Their appointment is also often influenced by political considerations.” (*National Commission for SCs and STs, Sixth Report 1999-2000 & 2000-01, New Delhi, 2001, para 9.9.6; NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.25-26, 123-4*)

How can Special Public Prosecutors be expected to effectively function with poor facilities and remuneration? Given the number of atrocity cases pending before courts, should not concerted efforts be made to ensure that all posts of judges and special public prosecutors are filled? Do the facts not suggest a lack of interest by state governments to ensure prompt and successful prosecution of SC/ST atrocity cases?

When Rule 4 SC/ST (PoA) Rules gives clear instructions for the identification of qualified senior advocates to become Special Public Prosecutors and mandates bi-annual reviews of their performance, alongside monthly reviews of progress on all cases in the Special Courts, why is there still a huge pendency of atrocity cases before the courts and low conviction rate?

4. Granting Anticipatory Bail in violation of the Act

Parliamentary Committee on the Welfare of SCs and STs: The Supreme Court has upheld the validity of *sec. 18 SC/ST (PoA) Act* in *State of Madhya Pradesh vs Ram Krishan Balothia and Another* (1995), clearly restricting anticipatory bail to an accused... [Therefore,] if a case under *sec. 3 SC/ST (PoA) Act* is registered against an accused, no court is empowered to grant him/her anticipatory bail under any circumstances...

AND YET The Committee are pained to note that in Gujarat [in particular, but generally in other states], accused persons are easily getting bail from Magistrates or Sessions Courts in atrocity cases. (*Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, paras 3.11, 3.19, 3.35*)

According to the Council for Social Justice, Ahmedabad, out of 400 cases registered under the *SC/ST (PoA) Act* in 2004, despite *sec. 18* of the Act restricting anticipatory bail, bail was granted in 80% (320) of the cases. (*‘Victims Always’, Frontline, 4/12/2009, pp.6-7*)

5. Gaps in Procedure and Conduct of Trial

Trial proceedings not conducted in a speedy manner: In Uttar Pradesh, on average it takes around 3.15 years from registration to disposal of cases under the *SC/ST (PoA) Act* before the exclusive Special Courts and other Designated Courts. (*study by Centre for Social Justice & Welfare for the Handicapped, Varanasi, 2000, quoted in Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 3.23*)

Madhya Pradesh: A study by the National Commission for SCs and STs on the status of implementation of the *SC/ST (PoA) Act*, using a sample 82 Special Court judgments, noted an overall high pendency of cases due to:

- i. Absence of investigating police officers in almost 60% of cases
- ii. Witnesses not appearing in the court on scheduled date and time in 70% of cases

- iii. Accused and victims not appearing in 30-40% of cases
- iv. Arguments taking substantial length of time in 10% of cases.

(National Commission for SCs and STs, Fifth Report 1998-99, New Delhi, 2000, para 8.136)

Punjab: Reasons for the delay in trials of cases registered under this Act are:

- i. Special Courts notified under the Act are overburdened, due to which Courts grant long adjournments which delay trials.
- ii. Absence of accused on hearing date results in trial delays until the accused are found and arrested.
- iii. Delays of up to 4 years because prosecution's evidence cannot be recorded due to non-appearance of prosecution witnesses.
- iv. Lengthy proceedings where a person is summoned by the Special Court on the complainant's statement under *sec. 319 Cr.P.C.* (alleging that person declared innocent during the investigation did commit the offence), with a result that the Court has to frame the charges afresh and record evidence in the presence of the summoned accused.
- v. Lengthy investigations, resulting in *challans* being filed only after 3 to 4 years.

(Letter by Additional Director General of Police: Crime, Punjab, dated 23/02/2007, No.751/SC Cell, filed before the Supreme Court in reply to a PIL on implementation of the SC/ST (PoA) Act (WC 104/2006))

No power for Special Courts to take cognizance of atrocity cases: In Gangula Ashok and others vs State of Andhra Pradesh (2000), the Supreme Court held that Special Courts cannot take cognizance of offences directly without the case being committed to them by a Magistrate in view of the interdict imposed by *sec. 193 Cr.P.C.*... The Parliamentary Committee on the Welfare of SCs and STs, however, "is of the opinion that under *sec. 14 SC/ST (PoA) Act* the existing Courts of Sessions are notified as Special Courts for the main reason of providing speedy justice and if Special Courts are not allowed to directly hear cases, the goal visualized will be totally lost..." (Parliamentary Committee on the Welfare of SCs and STs, 14th Report 2006-07, New Delhi, 2006, p.68)

Connected cases are not tried in the same Court: Often counter cases, filed in retaliation to the original complaint by the SC/ST victim of atrocities, are tried in different courts. Advocates inform the proceedings of the regular court to the Special Court and take adjournments. The courts also sometimes wait for the orders of the other courts, which delay the trial. (National Coalition for Strengthening SC/ST (PoA) Act, Position Paper on Amendments to the SC/ST (PoA) Act, presented on 11/9/2009 at New Delhi)

Do not the prolonged trial proceedings due to various reasons suggest that day-to-day trials are required in order to ensure disposal of the number of pending cases under the SC/ST (PoA) Act?

Should not the Law Ministry take the advice of the SC/ST Parliamentary Committee and move a Bill to amend the relevant laws so as to empower Special Courts to take cognizance of offences under the SC/ST (PoA) Act directly?

6. Low Conviction versus High Acquittal Rates

Crimes registered under the <i>SC/ST (PoA) Act</i> completing trial during 1997 to 2007:	Average conviction rate – 30.3% Average discharge/acquittal rate – 69.7%
Crimes against SCs/STs under the <i>PCR Act, IPC</i> and other legal provisions completing trial during 1997 to 2007:	Average conviction rate – 31% Average discharge/acquittal rate – 69%

However, if one looks at the conviction rate in relation to the total number of cases under the SC/ST (PoA) Act in courts, then the average conviction rate becomes less than 10%!

The average conviction rate for cases of atrocities against STs under *SC/ST (PoA) Act* completing trial during 2001 to 2007 was even lower (24.8%) than for cases of atrocities against SCs (27.4%) during the same time period.

By comparison, **for overall crimes under the IPC, the conviction rate in 2007 was significantly**

higher, at 42.3%. Averaging the conviction rate under IPC over the period 2003 to 2007, it was as high as 50.5%.

At the same time, the **conviction rate under the SC/ST (PoA) Act in 2007 was the fourth lowest (26.1%)** when looking at over 20 Special and Local Laws (SLL) cases. In fact, the average conviction rate during 2003 to 2007 under the *SC/ST (PoA) Act* stood at just 25% as compared to 72% for other SLL cases. (NCRB, *Crime in India 2003-2007*, New Delhi, 2004-2008)

Disposal of Cases of Crimes against SCs/STs before the Courts during 1997-2007

Crimes Registered under Act	Cases Withdrawn by Govt	No. of Cases for Investigation in which:			
		Case Compounded or Withdrawn	Trials Completed and:		
			(a) Convicted	(b) Acquitted or Discharged	Total [(a) + (b)]
SC/ST (PoA) Act	198	12,429	63,513	1,46,269	2,09,782
PCR Act	71	4,339	15,265	46,765	62,030
IPC & other legal provisions	164	13,397	61,713	1,24,458	1,86,171
Total	433	30,165	1,40,491	3,17,492	4,57,983

(NCRB, *Crime in India 1997-2007*, New Delhi, 1998 – 2008)

Tamil Nadu: A study of 386 cases registered under the *SC/ST (PoA) Act* during 1996 to 2001 in six southern districts revealed that only 75 cases (19.4%) ended in court judgements. Convictions were secured in only 18 of these cases (24%), or 4.7% of the total cases studied. (*M.A. Britto, Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, p.231*)

Gujarat: Of the 14,242 cases of atrocities against SCs/STs under the *SC/ST (PoA) Act* completing trial in District Sessions Courts during 30/1/1990 to 31/7/2007, 91.8% ended in acquittals, 3.9% in compromises and a mere 2% in convictions. (*data from Special Public Prosecutors in District Sessions Courts, Gujarat, obtained through RTI by Navsarjan Trust, Ahmedabad, 2008*)

Andhra Pradesh: Even though Special (Sessions) Courts trying cases under the *SC/ST (PoA) Act* exist in all 23 districts, in 2008 these Courts recorded a very low conviction rate of 8.7%. Interestingly, very low conviction rates were observed in six districts which the state government has declared as atrocity prone. (*data from Video Conference on Atrocity cases against SCs/STs under PCR & POA Acts, conducted by Commissioner of Social Welfare & Nodal Officers, Hyderabad on 21/03/2009, RC.NO.H2/8193/2008-2*)

Taking 78 High Court judgements on *SC/ST (PoA) Act* cases across the country, 64.9% of cases ended in favour of the dominant caste accused. Particularly for serious offences where maximum punishment was over 10 years' imprisonment, 76.2% of the judgements favoured the dominant caste accused. (*Sakshi Human Rights Watch - A.P., Dalit Human Rights Monitor 2000-2003, Secunderabad, 2003, p.80*)

The Only Conclusion:

“The conviction rates under the [SC/ST (PoA) Act and PCR Act] have been found to be very much lower than those cases booked under the IPC... This reflects the unsatisfactory condition of delivery of justice to the victims of atrocity under the existing conditions of bureaucracy in courts, legal loopholes, lack of support to the victims, lack of commitment of the law and order machinery, and their indulgence and connivance with the accused.”

National Commission for SCs, First Report 2004-05, New Delhi, 2006, para 6.19

No State performing up to Satisfaction of NCSC!

The National Commission for Scheduled Castes recently criticised the Tamil Nadu government for high pendency of cases and low conviction rate under the *SC/ST (PoA) Act*. Asked which State was doing good work in the Commission's assessment, the Vice-Chairman replied that no State was performing up to the satisfaction of the panel.

'Conviction rate under SC, ST Act low in State: National Commission', The Hindu, 19/02/2010

A study of 500 Dalit women's experiences of violence in four states during 1999 to 2004 revealed that only 3.6% of incidents of violence reached the court: eight cases ended in acquittals/ dismissals due to forced compromises, lawyers mishandling cases, the accused pressuring victims/witnesses into turning hostile in court, etc.; and only three cases ended in convictions. (*Aloysius Irudayam et al, Dalit Women Speak Out: Violence against Dalit Women in India, Madurai: IDEAS, NCDHR & NFDW, 2006, pp.545-6*)

The data leave it hard not to agree with the pronouncement of the NHRC that 'after experiencing biased conduct of police officials and indifference of civil administration, victims pin their last hope on the judiciary to deliver justice. This hope has also been belied, judging by the low rate of conviction under the Act.'

Given the importance of this special law for around 1/5th of the Indian population of SCs/STs and yet it having the 4th lowest conviction rate of all special and local laws, should not it be a priority of the government to monitor the progress of trials and investigate the reasons behind the low conviction rate under the SC/ST (PoA) Act as well as for crimes against SCs/STs in general?

7. Grounds for Acquittals

“In interpreting the Act, the judge should be cognisant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act, and interpret the Act in this light...to annihilate untouchability, to accord to the Dalits and the Tribals the right to equality, make social integration a fruition, and fraternity a reality.”

State of Karnataka vs. Appa Balu Ingale (Criminal Appeal No. 164 of 1983, D/-1-12-1992)

A study of 112 judgements of Special Courts in Andhra Pradesh during 2001 to 2004 on *SC/ST (PoA) Act* cases revealed the following **main patterns in grounds for the 103 cases (92%) of acquittals**:

<i>Based on Procedural Rules (35.7% of cases):</i>	<i>Based on Substantive Issues related to the Case:</i>
<p>i. Investigations done by police officer(s) below rank of Deputy Superintendent of Police (DSP) in contravention of Rule 7 SC/ST (PoA) Rules: In 18 cases the accused were acquitted merely on this ground. This occurred even though there was enough evidence to prove the <i>SC/ST (PoA) Act</i> charges beyond a reasonable doubt, even where the DSP had later verified the investigations of the lower police official, and though the judge could have instead dismiss the charges under this Act and continued with trial under IPC provisions.</p>	<p>i. Grounds related to personal stand of victim/de facto complainant taken in court: In 62 cases (54.7% of the 108 cases in which accused acquitted of <i>SC/ST (PoA) Act</i> charges), a disturbing trend was for the victim to be unable to produce the evidence required to prove the case (e.g. by reiterating their statement to the police at the time of incident). Some victims also denied the incident took place, or denied reporting the incident to the police. <i>What could be the explanations for this?:</i> The average of 4 years between the incident and trial leading to difficulties retelling in exact words the incident; fear of retaliation if the accused was convicted; intimidation of victim by accused... “Neither the SC/ST Act itself, nor the government and courts, are able to create an atmosphere in which victims feel free to unconditionally support their own case.”</p>
<p>ii. Delay in filing the FIR: In 12 cases, FIR delay was one of the grounds or the sole ground for the acquittal. However, there was no logical pattern in application of the “FIR delay rule”: in some cases a delay of even 6 hours proved fatal for the prosecution, whereas in other cases a time interval of a couple of days, even up to 42 days in one case, was not a ground for acquittal.</p>	<p>ii. Grounds related to personal stand of witness taken in court, 'turning hostile witness': The witnesses in 74 cases (69% of cases in which accused acquitted of <i>SC/ST (PoA) Act</i> charges) had given a statement to the police soon after the incident. However, once in court either they decided not to repeat their previous statement, or gave a version of the facts that was insufficient to contribute to the establishment of the accused's guilt.</p>
<p>iii. Victim does not belong to SC/ST categories: In 7 cases, the accused were acquitted or <i>SC/ST (PoA) Act</i> charges were dropped due to lack of documentary evidence proving the victim's SC/ST status, or the fact that the victim was a Christian. Interestingly, for cases dropped on the latter reasoning of religion, the charge was abuse using the victim's caste name!</p>	<p>iii. Problems with medical evidence: In a few cases the contents of or the absence of medical evidence was a ground to acquit the accused.</p>
<p>iv. Offence not committed on the ground that the victim is SC/ST: Parliament clearly stated that the term 'atrocities' applies to all crimes under the IPC committed against SCs/STs by non-SC/ST perpetrators. This means that there is no separate requirement for establishing <i>mens rea</i> (motive of the accused). However, in 3 cases the judges revealed their lack of understanding of the spirit of the Act, by focusing on the intent of the perpetrator regarding committing the atrocity. The court then acquitted the accused on the basis that evidence did not prove that the caste status of the victim was a motivating factor for the atrocity.</p>	<p>iv. Evidence problems regarding abusive words in sec. 3(1)(x) SC/ST (PoA) Act cases: The accused were given the benefit of the doubt by the Courts in some cases where the abusive words that the victim mentioned during the trial did not match with the words mentioned in complaint, or the victim and witnesses did not concur on the exact wording used. This places an unfair burden on the victim and witnesses to recall the exact words, especially when it can take years for such atrocity cases to come to trial.</p>

Max Haan, An Analysis of 112 Judgements of Special Courts for SC/ST (PoA) Act Cases, Secunderabad: Sakshi Human Rights Watch - A.P., 2005, pp.22-50)

Why victims/witnesses turn hostile in Court:

Research in Tamil Nadu shows that 'in many cases the victims of atrocities and witnesses have been either threatened or induced by the accused, police, lawyers or village leaders to compromise the cases. As a result, the victims and witnesses have turned hostile in court... In 45 cases, victims expressed living without fear after turning hostile in court or withdrawing their complaints. Witnesses turned hostile not out of choice, but due to fear arising from their socio-economic vulnerability, particularly in rural areas'. (M.A. Britto,

Poor Investigations by Police: "The Committee note the submission made by the Home Secretary during evidence that weakness in police investigation, difficulty in pursuing cases so investigated, coupled with loss of interest in pursuing cases in courts, are responsible for high acquittals, besides stringent requirements under the Indian Evidence Act." (Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 3.16)

Gujarat: A study by Council for Social Justice, Ahmedabad exposed the main reason behind the collapse of over 95% of cases filed under the SC/ST

(PoA) Act as due to technical lapses in the investigation (i.e. police negligence) and prosecution. ('Oh Gujarat!, on the Caste Front, too?', *Communalism Combat*, March 2005, p.12)

"[SC victims] also find that even when recourse is taken to law, the **proceedings are protracted, witnesses are reluctant to testify** in their favour against powerful persons, potential for manipulation is large. Also, even though victims, they lose interest because they **cannot afford to forego wages for days in attending the courts**. The result is that legal provisions become ineffective in delivery of justice." (NHRC, *Report on Prevention of Atrocities against SCs*, New Delhi, 2002, p.91)

Madhya Pradesh: The National Commission for SCs and STs, analysing 82 judgments of Special Courts where the acquittal rate was 95.1%, indicated the main reasons for acquittals as: (i) delay in lodging FIR; (ii) Courts attributing FIRs to enmity between the plaintiffs and accused; (iii) contradictions in the statements of plaintiffs/witnesses; (iv) witnesses/plaintiffs turning hostile in court; (v) accused and victims reaching compromises; (vi) Prosecution unable to prove the charges. (*National Commission for SCs and STs, Fifth Report 1998-99, New Delhi, 2000, para 8.138*)

While expressing its 'anxiety' over the high acquittal rates for atrocity cases before the Courts, the National Commission for SCs noted that the main reasons for acquittals are: **(i) compromises between complainant and accused; (ii) poor case preparation by prosecution; (iii) complainant and witnesses turning hostile; (iv) insufficient evidence, no eye-witnesses, discrepancies in evidence; (v) benefit of doubt given by Courts; economic dependence of the victims on other castes for livelihood; (vi) delay in framing the charge sheet; (vii) delay in court proceedings.** (*National Commission for SCs, First Report 2004-05, New Delhi, 2006, para 6.16*)

Do the following judicial trends exposed by these studies of court judgements equate to justice towards SC/ST victims of atrocities?

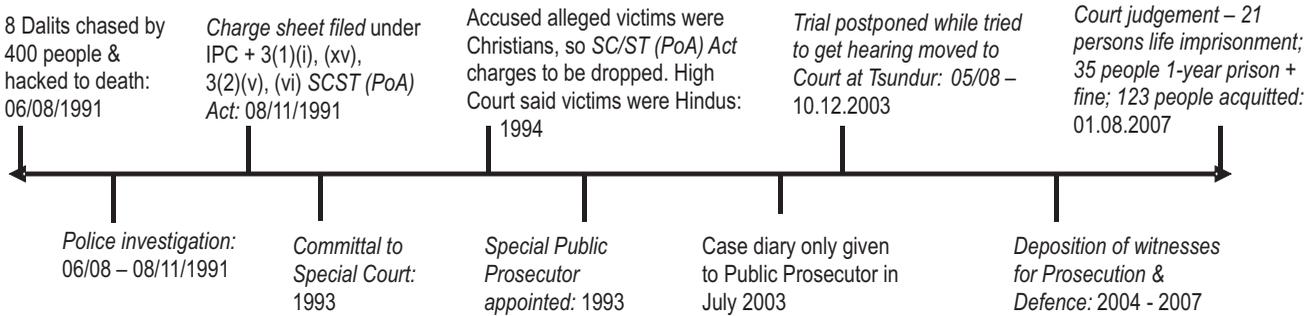
- *Technicalities seem to often take priority over the intent of the Act and the merits of the case.*
- *Prosecutions are quashed on the ground that the offence was not committed on account of victim being SC/ST, but on other accounts such as lust for sex, political rivalry, enmity, etc. Yet the legislative intent behind this Act shows that the accused's motive is irrelevant to proving an offence.*
- *Tendency is to accept evidence only from non-SCs/STs, while SC/ST evidence is not considered valid because they are an interested party, which shows prejudice in itself.*
- *Personal beliefs and caste/gender prejudices appear to play a role in determining judicial appreciation of evidence, determination of guilt and award of judgment.*

"Cases at all levels have the potential to be influenced by the judge's personal perception of caste and gender that are brought to bear in determining the credibility of evidence or the likelihood of guilt... These biases are pervasive all the way to the top of the legal system."

Human Rights Watch, Broken People: Caste Violence against India's "Untouchables", New York, 1999, p.176

The Judiciary

Speedy Trial denied to Tsundur massacre victims in Andhra Pradesh:

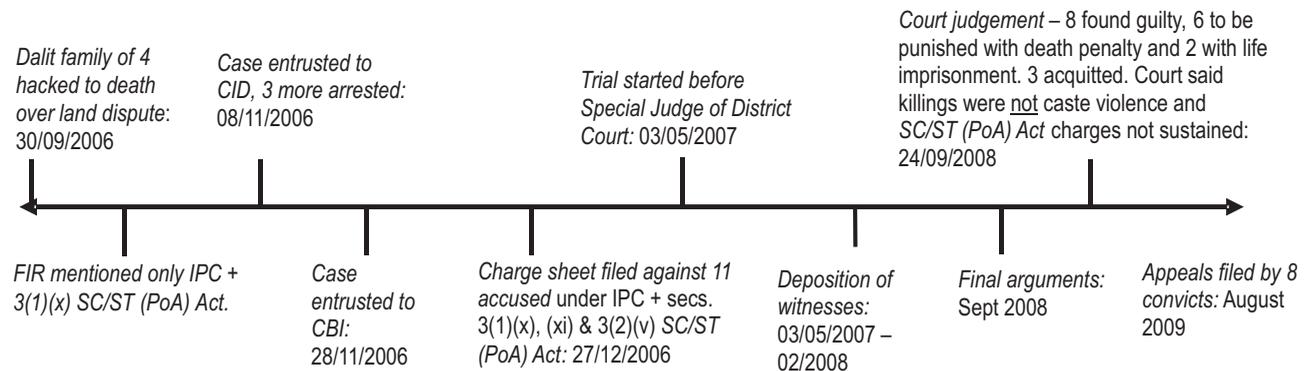


Does not 3-month police investigation contravene 30-day investigation rule under SC/ST (PoA) Rules? And why did it take 9 years to appoint a Special Public Prosecutor for this case?

Is it not reprehensible how, when a clear situation of atrocity committed on the ground of the victims being Dalits, the Defence tried to use the alleged minority religious status of the victims to delay the trial proceedings?

Ultimately, what deterrence message does a 16-year gap between crime and judgement send to perpetrators of atrocities?

Partial Justice only for Khairlanji victims in Maharashtra:



When a Dalit family is brutally murdered by non-SCs/STs, is this not clearly a case of caste violence and so an atrocity under the SC/ST (PoA) Act? When, according to the Supreme Court (State of Karnataka vs. Appa Balu Ingale), intention is not a criteria in determining social crimes like atrocities against SCs/STs, then why was motivation for the murders considered relevant in Khairlanji case?

I. Twenty Years of Victims' & Witnesses' Rights

Victims to be treated with compassion and respect for their dignity. They should have access to justice mechanisms and prompt redress under the law for harm suffered. (*Art. 4 Declaration of Basic Principles of Justice for Victims of Crime 1985*)

State to secure equal access to justice system for descent-based (caste) communities...by providing legal aid and facilitating group claims. (*para 21 CERD General Recommendation XXIX 2002*)

Facilitating steps for victims of racist acts to bring cases to court include guaranteeing to victims: (b) legal aid; (c) information about the progress of proceedings; (d) protection against any form of intimidation or reprisals. (*para 17 CERD General Recommendation XXXI 2005*)

State to ensure that the justice system:

- (a) grants a proper place to victims, their families and witnesses, throughout court proceedings;
- (b) treats victims without discrimination or prejudice, while respecting their dignity;
- (c) guarantees the victim a court judgement within a reasonable period;
- (d) guarantees victims just and adequate reparation for harm suffered as a result of

racial discrimination. (*para 19 CERD General Recommendation XXXI 2005*)

Offenders to make fair restitution – payment for harm suffered, expenses incurred due to crime, restoration of rights, etc. – to victims, their families or dependants. (*Art. 8 Declaration of Basic Principles of Justice for Victims 1985*)

State to ensure operation of the legal system promotes justice on the basis of equal opportunity and, in particular, provide free legal aid by suitable legislation or schemes, etc. (*Art. 39A Indian Constitution*)

State governments to take measures including provision of: (i) adequate facilities like legal aid to enable victims to access justice; (ii) travelling and maintenance expenses for victims and witnesses during investigation and trial; (iii) economic and social rehabilitation for victims. (*sec. 21(2) SC/ST (PoA) Act*)

NOTE: Read also – *Art. 6 ICERD; para 7 CERD General Recommendation XXIX 2002; rules 5, 11, 12 & 14 SC/ST (PoA) Rules*

II. What are the Facts? What do these Facts Say?

“Acknowledging the disabilities and emphasizing the need for equal protection of the laws to the weaker sections [like the SCs and STs], certain provisions of criminal procedure and evidence have been modified; police and courts are given additional powers; and punishments have been made stringent... In some cases, even separate institutions have been set up to conduct proceedings in respect of these laws. It is important that criminal justice administration... advances the constitutional mandate and legislative objectives in order to ensure that weaker sections are not denied their due in criminal judicial processes. This transformation is not fully reflected in the attitudes and practices of criminal justice functionaries despite a series of decisions of the highest court and circulars and directions from superior authorities.”

Report of Committee on Draft National Policy on Criminal Justice, New Delhi: Ministry of Home Affairs, 2007, para 8.1.2

What rights of SC/ST victims and witnesses?

These rights barely feature under the existing criminal laws, including the *SC/ST (PoA) Act*. Their role in a case is reduced to being no more than a prosecution witness. No legal provisions exist specifying their *rights* to: (i) have their FIR registered; (ii) receive all documents related to their atrocity case; (iii) relief and compensation; (iv) information on the status of their case; (v) witness protection.

Disturbing Trends in Law Enforcement and Judiciary...

Sheet III indicated the predominant negative trend of police discouraging, preventing or

delaying the registration of FIRs; registering FIRs under inappropriate sections of law or failing to register cases under the *SC/ST (PoA) Act*. All these deny the victims relief and rehabilitation, information on the progress of investigation including the release of the accused or closure of cases by police, and documents such as FIRs or medical reports.

Sheet IV indicated the predominant negative trend of SC/ST victims of atrocities and witnesses turning hostile in court for a number of reasons, including fear or coercion of the non-SC/ST perpetrators or police, lack of money and time to pursue lengthy court proceedings, etc.

1. Right to Immediate Relief, Compensation and Rehabilitation, Travelling and Maintenance Expenses

Rights not honoured by the State:

While government officials provide prompt relief and compensation to SC/ST victims where atrocities receive a lot of publicity, “their response to other incidents of [atrocities] is characterized by apathy, negligence and passivity”. Breaches of duty include:

- i. Not conducting an enquiry, thereby evading duty to give relief and compensation;
- ii. Making false promises to give compensation and delaying distribution of compensation;
- iii. Not providing witnesses and victims with allowances, such as travel allowance relating to trial and investigation, maintenance expenses and daily allowance, medical expenses, etc.;
- iv. Officials and intermediaries misappropriating compensation meant for atrocity victims;
- v. State governments deciding not to register cases under the *SC/ST (PoA) Act*. (NHRC, *Report on Prevention of Atrocities against SCs*, New Delhi, 2002, pp.50, 119)

Law on economic relief to victims flouted in first decade of the Act: There are a few states which are yet to start rehabilitation for victims... There is a need “to pursue those States/ UTs which have not made use of [the Central Government Assistance for implementation of the *SC/ST (PoA) Act*] in making full payment to victims... For example, **Government of Orissa does not provide economic relief to victims of atrocity as per scale laid down in Rule 4 SC/ST (PoA) Rules.**” (National Commission for SCs and STs, *Sixth Report 1999-2000 & 2000-01*, New Delhi, paras 9.5.3, 9.9.8)

Law on economic relief to victims flouted in second decade of the Act too!: 'Non-payment of financial compensation and other relief to the victims of atrocities, even in cases booked under the *SC/ST (PoA) Act*, by state governments are common and this has very demoralizing effect on SC communities.' “**Compensation should be provided to the victims according to the law without any further delay to instil confidence in the law of the land.**” (National Commission for SCs, *First Report 2004-05*, New Delhi, 2006, p. 1)

Many cases with no relief in Andhra Pradesh: Analysis of 101 cases under the *SC/ST (PoA) Act* revealed that in 27.4% of cases the district

administration provided the full relief and rehabilitation package. In 49.5% of cases, however, the administration failed to provide any compensation. This situation arose where police did not file a FIR, or the administration neglected its duties to dispense relief and compensation to victims when required... Further, in a large number of cases, the administration refused to divulge information on its compliance with compensation provisions. (Sakshi Human Rights Watch - A.P., *Dalit Human Rights Monitor 2000-2003*, Secunderabad, 2003, pp.78-9)

Atrocity cases against SCs in Gujarat receive less: In 2006, financial assistance of Rs. 85.52 lakhs was given to 1,096 SCs, which averages out to a mere Rs.7,803 per person. (Ministry of Social Justice & Empowerment, *Report under sec. 21(4) SC/ST (PoA) Act for 2006*, New Delhi, 2006, p.28)

Parliamentary Committee recommends relief payment at one go: “It [is] absolutely unnecessary to make [victims] wait to get the second and final instalments of compensation from the government, keeping in view the high pendency of cases in courts and low conviction rate and the time taken in delivering the judgements. **The Committee, therefore, recommend that the Ministry must consider bringing a suitable amendment to the *SC/ST (PoA) Rules 1995* to allow payment of the total relief amount in one single instalment by the time the charge sheet is presented in courts.**” (Parliamentary Committee on the Welfare of SCs & STs, *14th Report 2006-07*, New Delhi, 2006, p.40)

National Commission insists on mandatory compensation payment: “There are States who do not pay compensation to the victim even though the cases are booked under the *POA Act 1989* and compensation amount to the victim should have been got as per the *POA Rules 1995*. **It is therefore insisted upon that such practice of providing compensation to the SC community per se, should be resorted to throughout India.**” (National Commission for SCs, *First Report 2004-05*, New Delhi, 2006, para 6.33)

NHRC notes recommendation for compensation regardless of which Act applied: “Monetary compensation to the victims of atrocities or next of kin should be paid immediately on registration of the FIR in the concerned police station, irrespective of whether the offence under the *SC/ST (POA) Act*

West Bengal government does not register cases under the *SC/ST (PoA) Act* as matter of policy, since it refuses to acknowledge that atrocities on SCs are committed due to caste.

Does not the number of breaches of official duties related to relief, compensation and allowances suggest the need to strengthen the law by granting victims and witnesses justiciable rights in these regard? Should this not be coupled with greater monitoring of enforcement of these provisions at the state level, to ensure that victims in all cases receive the due relief?

Relief and Compensation denied in different ways:

The case of Tamil Nadu

No or lesser relief granted in Tamil Nadu: Financial relief to SC/ST victims of atrocities during 1999 to 2001 was provided in only 64.7% of cases. (*Adi Dravidar & Tribal Welfare Department, Notes for Review by National Commission for SCs & STs Chairman, Chennai, 2002, p.180*)

Compensation denied or received with bribes: A study examining 386 cases of atrocities under the *SC/ST (PoA) Act* revealed that only in 256 cases (71.9%) was compensation awarded to the victims or their dependents. This included 22 murder cases where relief was not distributed even after the post-mortem, as well as 23 rape cases where relief did not follow the medical examination/ FIR registration. Notably, some lower level revenue officials demanded bribes in order to release the relief amounts.

Delayed payments of even mandatory relief amount: In 144 cases (37.3%), the mandatory relief amount (first instalment), usually given either at the FIR stage or on filing the charge sheet, instead was disbursed between six months to four years after the atrocity incident.

Rehabilitation component almost missing: In only 6 of the 386 cases had concrete houses been constructed for the victims, and in two cases house *pattas* had been issued. In a few other cases, the victims had received a small relief amount for damages caused during caste clashes.

(*M.A. Britto, Implementation of the SC/ST (PoA) Act 1989 (Tamil), Madurai: Doctor Ambedkar Cultural Academy, 2007, pp.221-6*)

“Even in respect of such a non-contentious matter as payment of compensation to the SC [and ST] victims according to their entitlement, the subtle bias/ lack of sensitivity operates even at the highest level, both bureaucratic and political... Overall, therefore, the legal framework of protection against atrocities is neither able to ensure punishment of offenders, nor payment of cash compensation and other relief to victims... It is extremely important that the NHRC and National Commission for SCs and STs jointly evolve an understanding that irrespective of whether cases are registered under the *SC/ST (PoA) Act* or not, if the atrocities are committed on SCs [and STs] the compensation entitlement, as per the Act and rules framed thereunder, should be provided to them.”

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.51

2. Right to Legal Aid and Protection

Few atrocity victims receive legal aid:

Haryana: Despite 283 registered crimes against SCs in 2006, only 27 persons received Rs.13,500 as legal aid!

Rajasthan: Despite 4,877 registered crimes against SCs and STs in 2006, just over half the victims alone received legal aid (1166 SCs and 1375 STs). (*Ministry of Social Justice & Empowerment, Report under sec. 21(4) SC/ST (PoA) Act for 2006, New Delhi, 2006, pp.29,51*)

struggle they face in their lives...”

Committee on Procedural Justice to the People: Recommended extension of criminal legal aid, both as complainant and accused in case of SCs and STs back in 1973.

(*NHRC, Report on Prevention of Atrocities against Scs, New Delhi, 2002, pp.91-2*)

‘Official approach: leave victim to due process of law without help of lawyer!’

The NHRC has therefore called for a “serious review of the reasons for very poor access of SCs to legal aid and taking of expeditious and strong steps to promote access to and availability of legal aid to them, wherever necessary, to facilitate the process of accrual of justice to them in the highly unequal

Legal aid to SC [and ST] victims in [atrocity] cases would go a long way in enhancing the accountability of the existing prosecution machinery, strengthening the presentation of cases and witnesses in the court and more effective delivery of justice.

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.91

Protection a necessity! A study involving 500 Dalit women in four states exposed:

In 26.5% of instances of violence the women attempted to obtain legal or community redress for the violence, but were **prevented by the perpetrators and their supporters, or the community**. This included verbal and physical attempts to silence victims, false cases against victims, forced compromises, etc.

In a further 17.4% of instances of violence, **attempts to secure justice are blocked by the police** through threats or pressure to drop cases or compromise, failure to register FIRs or investigate, etc.

This was in addition to 40.2% of instances of violence where the women did not register cases mainly out of fear or belief that they would not get justice because of the above obstacles from perpetrators and police.

(Aloysius Irudayam et al, Dalit Women Speak Out: Violence against Dalit Women in India, Chennai: IDEAS, NCDHR & NFDW, 2006)

In this situation, does not victim and witness protection, along with legal compulsion for police to register FIRs in atrocity cases, seem the most just solution?

“Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality.”

Law Commission of India, 154th Report, New Delhi, 1996, p.9

3. Envisioning a New Chapter on Rights of Victims and Witnesses under SC/ST (PoA) Act

Comprehensive protection and justice for victims of atrocities and witnesses is achievable where the following rights are reduced to law through suitable amendments to the *SC/ST (PoA) Act*:

Right to immediate registration of FIR on complaint of atrocity, with FIR copy given to complainant

Right to have atrocity case investigated by a police officer not below the rank of Deputy Superintendent of Police, with investigation completed within 30 days of incident followed by prompt charge sheeting

Right of victim/s and witnesses to protection from time of incident up to conclusion of trial, including ensuring privacy of victim-survivors of sexual violence, shelter homes for safety, video testimonies, etc.

Right to prompt medical examination, and to receive copies of medical, post-mortem, etc. reports

Right to information on trial dates and travelling and maintenance allowances

Right to comprehensive relief, compensation and rehabilitation to compensate for harm and loss suffered, as well as to ensure development and economic independence of victims from non-SC/ST communities

Right to documents and information regarding atrocity case from first contact with police through to the conclusion of court trial.

I. What are the National and International Standards of Measurement?

State to periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, promote policies and mechanisms for the prevention of such acts, and make readily available appropriate rights and remedies for victims of such acts. (*Art. 21 Declaration of Basic Principles of Justice for Victims 1985*)

State to take steps to identify areas prone to descent-based violence in order to prevent the recurrence of such violence. (*para 31 CERD General Recommendation XXIX 2002*)

State to protect [SCs and STs] from social injustice and all forms of exploitation. (*Art. 46 Indian Constitution*)

State governments to take necessary measures for the effective implementation of the Act, including:

- d) appointment of officers for initiating or exercising supervision over prosecutions for the offences;
- e) setting up committees to assist the government in formulation or implementation of such measures;
- f) periodic survey of the working of the Act's provisions to suggest measures for better implementation;
- g) identification of atrocity prone areas and adoption of preventive measures to ensure safety of SCs/STs.

(*secs. 17 & 21 SC/ST (PoA) Act*)

Special Mechanisms to Implement and Monitor the Act: Under the *SC/ST (PoA) Rules*, State Governments are to:

1. take precautionary and preventive measures in areas identified as atrocity prone (*rule 3*)
2. set up SC/ST Protection Cell to assist in and monitor implementation of the Act (*rule 8*)
3. nominate Nodal Officer to coordinate and review the functioning of all officials responsible for implementation of the SC/ST (PoA) Act (*rule 9*)
4. appoint Special Officer to coordinate with all officials responsible for implementation of the Act, various committees and the SC/ST Protection Cell (*rule 10*)
5. prepare a model contingency plan for implementing the provisions of the Act, specifying the roles and responsibilities of government officials, local bodies and NGOs, as well as package of relief measures for victims of atrocities (*rule 15(1)*)
6. constitute State-level and District-level Vigilance and Monitoring Committees to review implementation of the Act across the state and districts respectively (*rules 16 & 17*)

II. What are the Facts? What do these Facts Say?

Inadequate Implementation of Mandatory Provisions across India!

No state government has complied with *all* the mandatory provisions under the *SC/ST (PoA) Rules* to set up mechanisms to ensure effective implementation of the *SC/ST (PoA) Act!*

Non-implementation of Mandatory Provisions by State Governments

Mandatory Provisions	States/UTs Implemented	States/UTs Not Implemented
Precautionary and Preventive Measures	12	22
SC/ST Protection Cell	17	17
Nodal Officer	29	5
Special Officer	14	20
State Level Vigilance and Monitoring Committee	21	13
District Level Vigilance and Monitoring Committees	21	13
Contingency Plan	9	25

(*Ministry of Social Justice & Empowerment, Annual Report 2008-09, New Delhi, Annex. 4.8 – all states except Jammu & Kashmir*)

Urgent Attention Needed!

Given the dismal situation where so few atrocity prone areas have been identified, a fair conclusion seems to be that state governments attach little priority to implementation of the SC/ST (PoA) Act in full in order to realise its objectives. But surely it makes more sense to invest time and energy in identifying atrocity prone areas and taking preventive measures, than in reacting after an atrocity takes place?

Mandatory Provisions

A sample case from Gujarat of State non-Compliance

Taking 12 cases of social boycotts against Dalits:

in none of the cases was a proper spot inspection carried out as per *rule 6 SC/ST (PoA) Rules*

in only eight cases were charge sheets filed within 30 days of the initial complaint as per *rule 7*

in no case did the District Collector call a Vigilance and Monitoring Committee meeting to discuss the boycott and give direction to officers as to action to take

in no case did the District Magistrate review the position of *SC/ST (PoA) Act* cases as per *rule 4*.

(Navsarjan Trust, *Report on Socioeconomic Boycotts of Dalits in Gujarat, Ahmedabad, 2009, pp.35-8*)

1. Declared Atrocity Prone Areas

Government-Identified Atrocity Prone Districts

State	No. of Identified Atrocity Prone Districts in States	No. of Identified Atrocity Prone Districts/Areas	No. of cases under <i>SC/ST (PoA) Act</i> for 1995-2007	Ranking in terms of atrocities under <i>SC/ST (PoA) Act</i> during 1995-2007
Uttar Pradesh	72	20	41,369	I
Rajasthan	33	17	17,991	II
Karnataka	27	15	13,953	III
Andhra Pradesh	23	12	13,212	IV
Bihar	38	33	10,142	V
Madhya Pradesh	45	19	7,956	VI
Orissa	30	19	6,964	VII
Tamilnadu	32	28	6,668	VIII
Gujrat	26	11	6,541	IX
Mahashtra	35	31	3,676	X
Kerala	14	3	2,748	XI
Jharkhand	18	1	1,061	XIII
Total	393	209	1,32,281	

(Ministry of Social Justice and Empowerment, <http://www.socialjustice.nic.in/pronearea.php>, accessed 12.01.2010; National Crimes Records Bureau, *Crime in India 1995-2007, New Delhi, 1996 - 2008*)

Making a Mockery of the SC/ST (PoA) Act?

Shocking facts: Despite the number of crimes against SCs/STs in general, and atrocities registered under the *SC/ST (PoA) Act* in particular, **only 12 of the 35 States/UTs have identified atrocity prone districts.** Moreover, out of these 11 states, six states have identified over 50% of their districts as atrocity prone. Notably, Uttar Pradesh, with the highest number of atrocity cases in the country, has only declared 20 of its 72 districts (27.8%) as atrocity prone.

Startling omission: Further striking is the fact that Rajasthan, with the second highest number of registered atrocities against SCs/STs under the Act over the period 1995 to 2007, has identified 17 districts but not publicly declared a single district/area as atrocity prone.

Atrocity prone but so few registered: Tamil Nadu

holds the distinction of the largest percentage of its 32 districts declared as atrocity prone: in 28 districts there are 186 villages considered as atrocity prone, and 230 as dormant atrocity prone, and among them 166 villages have been described as 'highly sensitive'. However, of the total cognisable crimes against SCs/STs in the state reported during 1995 to 2007, only 33.2% were under the *SC/ST (PoA) Act*. ('Little Impact', *Frontline*, 4/12/2009, pp.15-16)

Surprising discrepancies: "The Committee are surprised to note that three districts of Kerala and coastal districts of Orissa shown as 'untouchability' prone areas have not been placed under atrocity prone areas despite the fact that caste prejudice and practice of 'untouchability' are the major causes of atrocities." (*Parliamentary Committee on the Welfare of SCs & STs, 14th Report 2006-07, New Delhi, 2006, p.84*)

Common criteria must be developed as to how to identify atrocity prone districts/areas, while atrocities are certainly not been limited to those identified districts or areas alone.

Limited Protection Mechanism in SC/ST (PoA) Act: Protection through removal of potential perpetrators of atrocities under *sec.10 SC/ST (PoA) Act* from an area is made available only to STs in Scheduled or Tribal Areas. This protection is not extended to SCs, even though SCs form a larger proportion of victims of atrocities. (P.S. Krishnan, 'Atrocities against Dalits: Retrospect and Prospect', *Combat Law, Vol 8, Issue 5-6, 2009, p.17*)

NB: Back in 1990 the National Commission for SCs & STs made the same recommendation!

2. SC/ST Protection Cells

Failure to set up functioning Protection Cells: "The Committee are pained to note that there are States which are yet to set up Special Cells despite all persuasion. In some States, such Cells are functioning in a pathetic condition with poor infrastructure and unsuitable working conditions." **The Committee recommended instructions to State Governments to improve the condition of these Cells as well as 100% Central Government assistance to those State Governments yet to establish Special Cells.** (*Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi: Lok Sabha Secretariat, 2005, para 2.49*)

As of 2009, only half the states/UTs have set up SC/ST Protection Cells.

As the Parliamentary Committee on the Welfare of SCs and STs has noted, is not the fact that atrocities and untouchability practices still continue to occur across the country an indication that these Protection Cells are not working properly? Should not the government do more than merely indicate numbers of Cells set up and look into their actual functioning?

3. Appointment of Nodal Officers & Special Officers

While nodal officers have been established in all but five states by 2009, **only 14 states have nominated special officers** to ensure proper coordination of all the mechanisms and officials implementing the Act.

Instead of merely listing the number of states which have established nodal and special officers as per the SC/ST (PoA) Rules, should not the Ministry of Social Justice and Empowerment now move further to assess their functioning?

Is it sufficient that nodal officers and special officers are appointed merely to coordinate and review implementation of the Act? Should not there be a State Authority to monitor and ensure enforcement of the Act, with powers to intervene in any atrocity case?

4. State and District Level Vigilance and Monitoring Committees

Lack of interest in setting up functioning Committees: As of 2001, in most states monitoring and vigilance committees at the state and district levels had either not been constituted, or committee meetings were not being held on a regular basis. (*National Commission for SCs and STs, Sixth Report 1999-2000 & 2000-01, New Delhi, 2001, para 9.9.1*)

In 2009, there were still one-third of states/UTs which have not set up these Committees at the state and districts levels.

Committees existing on Paper only!

Even when such Committees have been [constituted], no regular meetings are held and when meetings are held, hardly any substantive issues are discussed and even their transactions are not transparent. There is no attempt to involve those in its deliberations who are working for

SCs to get meaningful feedback and obviously no serious follow up action emerges from the deliberations of such committees. (*NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.131*)

State and District-level Monitoring and Vigilance Committees, though constituted, do not meet as required. Even when they meet, there is rarely any attempt to interact with activists, human rights groups, NGOs working with and for SCs/STs. The meetings are not announced in advance or proper intimation not given to members. The reports prepared by implementing agencies are not made available to concerned groups and individuals, who can comment upon the conduct of delivery agencies. (*Sakshi Human Rights Watch - A.P., Dalit Human Rights Monitor 2000, Secunderabad, 2000, pp.110-11*)

Mandatory Provisions

Bihar: A survey of the functioning of District level Vigilance and Monitoring Committees in 2009 revealed -
 District authorities could not even produce the list of members of the Committee in some districts
 Many members of the Committees are not even aware of being members!
 Even when people know they are a member of the Committee, they are mostly not aware of their roles and responsibilities as members in monitoring the implementation of the Act
 Very few of the Committee members (mainly civil society members) are aware of the various provisions under this Act
 Consequently, many members were not able to raise questions on the status of implementation of the Act in meetings, with meetings consisting of mainly officials presenting reports.
(data collected by NCDHR-NDMJ, New Delhi, 2009)

Tamil Nadu: The Adi Dravidar Welfare Department admitted that between 2006, when the State level Vigilance and Monitoring Committee was constituted, and 2009, the Committee had not met even once! (*'Panel in place to monitor atrocities on Dalits: State', The Hindu, 09/12/2009*)

Madhya Pradesh: Analysis of the functioning of District Vigilance and Monitoring Committees in 2008 and 2009 showed that in almost all districts the Committees failed to regularly meet -

No. of Times	In 2008 (out of 48 districts)	In 2009 (up to Sept., out of 50 districts)
Committee never met	4 districts	7 districts
Met once	7 districts	16 districts
Met Twice	12 districts	22 districts
Met three times	20 districts	5 districts
Met Four times	5 districts	

(Department of SC/ST Welfare, 'Steps taken by Government of M.P., Department of SC/ST Welfare', Bhopal, dated 27.10.2009, prepared for visit of Central Minister of Social Justice & Empowerment, 2009)

Andhra Pradesh: Only 45 visits by the Vigilance and Monitoring Committees were recorded in 19 districts in 2008, data not being available for remaining 4 districts. (*'Many Hurdles', Frontline, 4/12/2009, p.20*)

Union Minister for Social Justice and Empowerment and State Ministers agree on need for more meetings of monitoring committees

“We discussed the rate of conviction in cases registered under the [SC/ST (PoA)] Act, which is low compared to with the rate of conviction under other laws of the Indian Penal Code. It was suggested that the vigilance and monitoring committee set up under the Act should meet more regularly for better monitoring of cases in each state.”

Mukul Wasnik, Minister for Social Justice & Empowerment, 'Beyond Politics', Frontline, 4/12/2009, p.18

5. Contingency Plan

As of 2006, only Gujarat had created a contingency plan, while Bihar was in the process of doing so. (*Ministry of Social Justice & Empowerment, Report under sec. 21(4) SC/ST (PoA) Act for 2006, New Delhi, 2006*)

By 2009, this number had risen to only nine states with contingency plans, as per the Ministry of Social Justice and Empowerment's data.

Does the lack of a model contingency plan in most states indicate that state governments are not interested in coordinating the activities of various government departments and their officers, as well as linking with non-governmental organisations who could support monitoring and implementation of the Act?

“This [SC/ST (PoA)] Act was necessary as the normal provisions of IPC did not provide adequate deterrence in preventing atrocities. This Act is one of the most far-reaching legislations and provides State Governments with optimal powers to create institutional instrumentalities that could strike at the roots of the causes that feed atrocities on the underprivileged sections. Creation of these instruments is necessary for effective implementation of the provisions.”

Prime Minister Manmohan Singh, Address at the 10th Meeting of Inter-State Council, New Delhi, 09/12/2006

I. What are the National and International Standards of Measurement?

Anyone whose rights are violated is to have an effective remedy, and claim that remedy and have it enforced through competent judicial, administrative or legislative authorities. (*Art. 2(3) ICCPR*)

State to establish statutory mechanisms to promote respect for the equal human rights of members of descent-based communities. (*para 7 CERD General Recommendation XXIX 2002*)

State to implement national strategies for eliminating structural racial discrimination which include: specific objectives and actions; indicators against which to measure progress; guidelines for

prevention, investigation and prosecution of racist incidents; assessment of satisfaction among communities concerning their relations with the police and justice system. (*para 5(i) CERD General Recommendation XXXI 2005*)

State to entrust an independent national institution with the task of monitoring and measuring progress made under national plans of action against racial (and caste) discrimination, identifying undetected manifestations of racial discrimination and submitting recommendations and proposals for improvement. (*para 5(j) CERD General Recommendation XXXI 2005*)

II. What are the Facts? What do these Facts Say?

Parliament created the *SC/ST (PoA) Act*, and MPs can question annual reports received on its implementation.

Central Government, through the Ministry of Social Justice and Empowerment, monitors overall implementation of the Act and provides financial assistance for its implementation.

State/UT Governments have set up mechanisms to oversee implementation of the Act to varying degrees, and MLAs and MPs can question implementation of the Act especially when they are part of District or State Vigilance and Monitoring Committees.

Political parties make occasional reference to their commitment to social justice for SCs/STs.

National Commission for SCs and STs is the oldest of the Commissions with a constitutional mandate to investigate and monitor all matters related to

safeguards for SCs/STs under the law, and to inquire into specific complaints regarding deprivation of rights and safeguards of SCs/STs.

Other Commissions, including the National Human Rights Commission, National Commission for Safai Karmacharis, National Commission for Women and their state counterparts, have authority to examine the situation of SCs/STs as regards atrocities.

Parliamentary Committee exists to examine issues related to the welfare of SCs/STs, including protection from atrocities.

And yet... As the previous Sheets show, despite 20 years of the operation of the *SC/ST (PoA) Act*, **atrocities against SCs/STs have not decreased**. The **socio-economic circumstances** in which SCs/STs live have **not radically changed** in order to facilitate security of life to an acceptable degree.

So what has been the response of these various Commissions, Committees, Government Departments and Political Parties to the persistent tide of atrocities? How have they acted to guarantee security of life to SCs/STs through implementation of the SC/ST (PoA) Act?

“The constitutional commitment of the State to the SCs and STs is not yet fully achieved and the laws designed to ensure equal rights and protection are not strictly enforced. Although there are two legislations which are potentially powerful, their implementation is hampered by lack of political will and lack of willingness on the part of enforcement machinery. The situation has further worsened by the long judicial delays. The need of the hour is, therefore, to eliminate delays and adopt a system under which no one is able to misinterpret the special laws and provisions for SCs and STs.”

Parliamentary Committee on the Welfare of SCs & STs, 14th Report 2006-07, New Delhi, 2006, para 1.4

1. National Commission for SCs and STs (1978-2003): Matching Performance against Expectations

1992-93:	45 on-the-spot inquiries into atrocities, 23 being for mass atrocities, the other majority being for murder and assault
1993-94:	418 cases of atrocities taken up, 44 through on-the-spot inquiries, most being various IPC offences, murders and untouchability practices. In addition, field offices had dealt with total of 1273 cases.
1994-95:	891 cases of atrocities taken up, mostly for caste abuse, around ¼ for murders and rapes.
1996-97:	1651 cases of atrocities taken up, the majority for C & R.
1999-2001:	Over 2,000 complaints received.

(National Commission for SCs & STs, First - Sixth Reports, New Delhi, 1992 - 2001)

The rising number of cases dealt with by the Commission suggests rising expectation on the Commission.

The Commission has dealt with a number of cases of atrocities of heinous nature like rape and mass atrocities.

In proportion to the increasing expectations of SC/ST victims on the Commission for delivering justice, so too does the level of accountability of the Commission increase. **Hence, what has been the performance level of the Commission?**

Crippled by lack of resources and powers:

Case Investigation Wing was non-functional for nearly ten years as the post of Director-General in charge was lying vacant.

Lack of supportive staff rendered the Director-General's post virtually non-functional.

Investigation Wing Director-General considered as low status post, handicapping dealings with senior police officials in the states.

Lacked Law Wing and so unable to examine in-house various legal matters, particularly important in criminal cases and reservation matters.

Inadequate facilities such as computers to process large number of complaints.

Suffered from acute shortage of funds.

Excessive preoccupation with reservation-related complaints, meaning less emphasis on protection against discrimination and atrocities.

In dealing with individual complaints of atrocities, lacked adequate powers to see its directions regarding disciplinary action against government personnel implemented by state governments.

Felt handicapped due to ineffectiveness in getting its recommendations implemented, as no pressure on Central and State/UT governments and their agencies to comply with recommendations; no information on how many of its recommendations have been accepted or being acted upon.

(NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.94-5)

Undue Delay in Submitting and Tabling Reports in Parliament:

The Commission submitted a total of seven annual reports and four special reports to the President of India between 1994 and 2004. There was always a gap of two-three years between 'annual' reports, in contravention of *Article 338(5)(d) Indian Constitution*.

All the annual reports have been laid on the Table of both Houses of Parliament, though with delays. Further, the last report for 2001-02 still remains inaccessible to the public. One of the four special reports was tabled before Parliament, while the remaining three reports concerning issues in the states of Bihar, Madhya Pradesh and Uttar Pradesh were submitted to the respective state governments for action. *(Ministry of Social Justice & Empowerment, Annual Report 2008-09, New Delhi, 2009, p.72)*

The time lag between submission of the Commission reports to the President and tabling before Parliament along with the Action Taken Reports of the concerned government departments was as long as three years. *(NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.101, 122)*

Negative results of this tardiness in reporting and tabling reports:

No discussions in Parliament partly because reports outdated and lost some of their relevance.

As no time limit in submitting Action Taken Reports, no means to expedite replies from government ministries and departments on the Commission reports.

Without timely action taken on the Commission recommendations, the purpose for which the recommendations were made lose their relevance. *(Parliamentary Committee on the Welfare of SCs & STs, 36th Report, New Delhi, 2009, para 2.9; NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.101-2)*

Hence, the Commission recommended in its Fourth Report 1996-98 that **its reports should be placed before each House of Parliament within 3 months of its submission to the President, and the Action Taken Report placed before the Parliament within 6 months of its submission** (para 3.29).

2. Two New Commissions: Changes for Increasing Effectiveness?

From 2004, the National Commission for SCs and STs was bifurcated into the National Commission for SCs (NCSC) and National Commission for STs (NCST), in acknowledgement that the needs and problems of the SCs and STs were different, hence requiring different solutions.

During 2008, the NCSC handled 2,648 cases of discrimination and atrocities. (*Ministry of Social Justice and Empowerment, Annual Report 2008-09, New Delhi, 2009*)

BUT... NCSC / NCST also relatively ineffective to protect SC/ST rights due to:

Strength of both Commissions is inadequate in relation to both the population of the communities and the number of issues they deal with, in terms of both Commission members and staff.

Less freedom to function independently as under the control of the Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs respectively, with limited administrative and financial powers

Ineffective investigation process as not given judicial powers, only the powers of a civil court to inquire into atrocities; effectively made subservient to State authorities during investigation of rights violations

Recommendations treated as only advisory in nature, and lacks power to implement recommendations

Very existence of NCST is not known to many STs and other citizens

Inadequate number of regional offices (12 for the NCSC and 6 for the NCST), given remote location of many STs in particular, and lack of human and financial resources.

(*Parliamentary Committee on the Welfare of SCs & STs, 33rd*

& 36th Reports, New Delhi, 2008 & 2009; Asian Indigenous & Tribal Peoples Network, The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, pp.51-60)

Key issues affecting STs not studied at all:

While development-induced displacement, land alienation [and denial of forest rights] are three pressing issues facing Adivasis across the country today, neither the Ministry of Tribal Affairs nor the NCST have undertaken any study in this regard. (*Parliamentary Committee on the Welfare of SCs & STs, 33rd Report, New Delhi, 2008, para 4.16*)

No response from State Governments to review meetings:

The NCSC has conducted various State level review meetings in the last three years. However, state governments have not responded to the minutes of the review meetings circulated to them. "In case of persisting indifferent attitude, State governments [should] be made accountable for their lapses..." (*Parliamentary Committee on the Welfare of SCs & STs, 36th Report, New Delhi, 2009, para 3.9*)

No Reports Tabled before Parliament to date!

The First Annual Report (2004-05 & 2005-06) of the NCST has not so far been made public, as it has not yet been laid before Parliament even after being completed in August 2006. (*Asian Indigenous & Tribal Peoples Network, The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, p.59*)

The First Annual Report (2004-05) of NCSC, submitted in July 2006, has not been laid before each House of Parliament as comments have not been received from all relevant government ministries. (*Parliamentary Committee on the Welfare of SCs & STs, 36th Report, New Delhi, 2009, para 2.9*)

The Ministry's explanation for the delay: 'tardy responses from state governments'. (*Welfare of Dalits is mere lip service, Hindustan Times, 27/07/2009*)

"The Committee are of the firm opinion that when it was decided to create NCST, it was never envisaged that it would function as a part of the Ministry of Tribal Affairs... The NCST will not be able to work fearlessly and independently unless it is given independence in its day to day working by allowing it to decide on its own administrative, financial and legal matters..."

What does it say... when both Commissions, like their predecessor, have been unable to maintain their mandate under sec. 338 Indian Constitution to submit annual reports on the welfare and rights of SCs and STs respectively? ...when both reports still remain to be tabled before Parliament after three years?

The Ministry's explanation for the delay in circulating the Commission's report: it was a bulky report covering two years, containing nine chapters, etc.

The Parliamentary Committee's reaction: "In this era of rapid information technology the reasoning is not at all convincing." (*Parliamentary Committee on the Welfare of SCs & STs, 33rd Report, New Delhi, 2008, para 2.6*)

Even allotted funds for ST welfare and protection not spent!

Non-utilisation of sanctioned grant to NCST:

Year	Amount Received	Amount not Utilised
2004-05:	Rs. 4,50,50,000/-	Rs. 59,99,000/-
2005-06:	Rs. 4,56,00,000/-	Rs. 1,27,94,000/-
2006-07:	Rs. 4,39,00,000/-	Rs. 1,14,54,473/-
2007-08:	Rs. 4,32,00,000/-	

(*Asian Indigenous & Tribal Peoples Network, The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, p.59*)

Does not non-utilisation of available funds by the NCST, a pattern repeated in its regional offices, adversely affect the exercise of its mandate for the protection and promotion of rights of STs?

3. National Human Rights Commission(NHRC): Overstretched and Constrained by Rules

On the one side:

The NHRC has the widest reach of all the Commissions, with 18 State Human Rights Commissions across the country.

The NHRC recognised caste discrimination as an existing reality in its Annual Report 1999-2000.

In the World Conference against Racism in Durban, South Africa in 2001, the NHRC took a bold stand that the debate on whether race and caste are co-terminus, or similar forms of discrimination, "was not the essence of the matter"; rather, "exchange of views on human rights matters including fighting discrimination (including against SCs and STs), whether at national, regional or international level, contribute constructively to promotion of such rights". (*Statement by Dr. Justice Ramasamy, NHRC, at World Conference against Racism, South Africa, 2001*)

The NHRC, in its 2002 report on Prevention of Atrocities against SCs, detailed 150 recommendations to protect the security of life of Dalits (and Adivasis), including for effective enforcement of the *SC/ST (PoA) Act*. A total of 53 recommendations were actually addressed to the NHRC itself. **The question to be asked is what is the status of implementation of these 53 recommendations?**

On the other side:

Overstretched capacity to take up cases: The NHRC receives a large number of complaints from SC/ST victims. However, in view of the increasing volume of complaints received by the NHRC and limited capacity to look into cases directly, it is not able to provide the desired degree of satisfaction to the complainants.

Lack of staff and facilities: Since most of the complaints received by the Commission in relation to SCs are against State agencies, the lack of sufficient personnel and infrastructure for directly investigating into these complaints stands in the way of rendering justice to SCs.

Core issue of accountability of State agencies for atrocities still not settled: In the matter of atrocities, the complaints are primarily against acts of omission and commission of the police machinery and, in some cases, also against civil personnel... The NHRC has recommended systemic reforms in police organisation, prison system and criminal justice administration, which if accepted, would go a long way in establishing accountability of State agencies... The NHRC's efforts to inculcate **greater sense of accountability in State organisations** through monitoring and directives, though welcome, have not succeeded in achieving this objective [of SCs of getting justice through the NHRC]. (*NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.97-8*)

According to the NHRC, its Annual Reports do not detail any information on atrocities against SCs/STs because this does not fall within its mandate. Does this mean that atrocities against Dalits do not constitute human rights violations, deserving equal treatment alongside other rights violations?

NHRC's dealings with Atrocity Cases: A Study

Between 2005 and 2008, out of 224 cases across 11 states represented to the NHRC by Dalit rights organisations, the majority were cases of attacks and mass attacks, murder and rapes.

Large dismissal rate for complaints on various grounds:

36 cases (16.1%) not addressed to NHRC received no response

18 cases (8%), deemed outside the purview of NHRC, were dismissed

Transfers were done to the SHRCs for 27 cases (12.1%), district officials for 34 cases (15.2%), and to state authorities for 7 cases (3.1%)

In 101 cases, Action Taken Reports were requested and received from the concerned authorities, leading to closures of 34 cases (15.2%) where necessary action deemed taken (charge sheets filed, etc.), and 20 cases (8.9%) due to being *sub judice*.

Cases were also dismissed where no complainants had not made any comments on the Action Taken Reports forwarded by the NHRC, or where no caste based allegation was made out.

(Data analysis by NCDHR-NDMJ, 2009)

Routine bureaucratic comments on the [NHRC] recommendations as Action Taken Report should not become the manner of their disposal. The fact that initiatives are not taken to ensure effectiveness of existing institutional arrangements to safeguard rights of SCs is a clear indication of the overall apathy of the system towards them.

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.96

Constrained from intervening in atrocity cases:

Sec. 36(1) Protection of Human Rights Act: NHRC not to inquire into matters pending before a State Commission or other Commission. "This provision has been cleverly used by Governments to prevent inquiry by National Human Rights Commission by appointing separate Commissions for inquiry into specific incidents."

Sec. 36(2): NHRC not to inquire into matters after the expiry of one year from the date on which the

alleged incident took place. BUT many cases of atrocities may not be brought to the public attention for months, particularly because SC victims are unaware of the provisions of law, or victims try first to approach local authorities for justice. "Setting a time limit to registration of a complaint may virtually result in the offender getting away with his act."

(NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.108)

Does it not defeat the purpose of having a monitoring institution like the NHRC if it bars itself from inquiry into a number of complaints? Should not the NHRC agree to use its discretionary power in relaxing the time limit in serious cases of atrocities?

**Same story of how many recommendations accepted unknown:
National Commission for Women**

NCW's Annual Report 1996-97 contained recommendations on improving the socio-economic status of SC women, including more stringent application of existing laws on crimes against women, employment for rape victims, legal awareness programmes, and the National Commission for SCs and STs creating a separate chapter on the situation of SC/ST women.

"It is unknown how many of its recommendations have been accepted and what is the status in regard to those which have been accepted. The Commission has complained like the National Commission for SCs and STs that its reports are placed in the Parliament with great delay/with the result that inputs and observations of MPs are not available to them in time."

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.99-100

"It would be evident that all four watchdog institutions feel that they are handicapped in relation to the tasks assigned to them and the expectations which their client groups have from them in delivering rights and entitlements... All Commissions feel overloaded with complaints and responsibilities against which their infrastructure is inadequate. The manner in which it significantly impinges upon delivery of justice to SCs [and STs] relates to the machinery available to them to carry out independent investigations."

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.101,107

4. Role of the Central Government

Non-Adherence to submission of mandatory annual report on the SC/ST (PoA) Act by Ministry of Social Justice & Empowerment:

The Ministry's annual report on the Act for 1991-92 was placed before Parliament only in 1998.

Finalisation of the annual reports for 1993 to 1995 was delayed for almost four years.

Annual report for 2000 was not placed before Parliament for over two years.

The Ministry's last annual report on the Act laid before Parliament was four years ago, in 2006.

(National Commission for SCs & STs, Sixth Report 1999-2000 & 2000-01, New Delhi, 2001, para 9.9.2; NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.47-8)

Poor quality of information given in reports:

“Annual reports laid before Parliament do not bear the impress of in-depth and critical analysis, identification of problems and efforts at resolution. They look like a mere enumerative and uncritical recital of state governments' reports... The annual reports do not contain any indication either of the state governments or the central government making efforts to fulfil the specific mandates of sec. 15A, nor do they show any application of mind to critically identify deficiencies and anomalies in he reported statistics and correct them.” *(P.S. Krishnan, 'Atrocities against Dalits: Retrospect and Prospect', Combat Law, Vol 8, Issue 5-6, 2009, pp.15-16)*

State governments default on sending reports on the Act:

“When the Committee inquired about the regularity of reports/ returns from the States, the Ministry of Social Justice & Empowerment replied

that reports/returns were delayed from almost all the States.” *(Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 1.34)*

In its last annual report on the Act of 2006 available to the public, the State/UT Governments of Jharkhand, Manipur and Dadra & Nagar Haveli did not provide requisite information, despite repeated reminders. States of Meghalaya, Arunachal Pradesh, Mizoram and Nagaland gave no detailed write up, citing majority ST population or no atrocities during 2006 as rationale. *(Ministry of Social Justice & Empowerment, Report under sec. 21(4) SC/ST (PoA) Act for 2006, New Delhi, 2006, p.63)*

AND YET... Inter-State Council considered Atrocities matter of common concern:

The Prime Minister, State/UT Chief Ministers and senior officials met on 09/12/2006 to discuss 'Atrocities on Scheduled Castes and Scheduled Tribes and Status of Implementation of the SC/ST (PoA) Act'.

According to Prime Minister Manmohan Singh, “The figures of atrocities should be a matter of grave national concern for all of us... the time is ripe for a serious introspection and a comprehensive review of our existing approaches, existing strategies and existing measures which are in place so that we are effective in controlling such incidents and are able to generate a greater sense of security and hope among our weaker sections.” *(Address at the 10th Meeting of Inter-State Council, New Delhi, 09/12/2006)*

“The Committee feels that the Ministry [of Social Justice and Empowerment] seems to have restricted their duty to preparing Annual Reports and laying the same in Parliament, which also has not been carried out fully. This shows that the Ministry has neither carried out their constitutional duty fully under Article 256 of the Constitution, nor have they been able to comply with the provision of Section 21(4) of the Prevention of Atrocities Act relating to Annual Reports. The Committee deplores the lackadaisical approach of the Ministry as exemplified by the unwarranted and avoidable delay of almost four years in finalization of the Annual Reports on the two Acts for the years 1993 to 1995.”

Parliamentary Committee on the Welfare of SCs & STs, 14th Report 2006-07 New Delhi, 2006, p.46

Instead of merely listing the mechanisms laid out for enforcement of the Act in each state, should not the annual reports of states and central governments provide full and comprehensive analysis of the trends in preventing and addressing atrocities, so as to enable identification and sharing of best practices?

No mention is made in the Ministry of Tribal Affairs annual report 2008-09 regarding one of its mandates, namely implementation of the SC/ST (PoA) Act!

What is required? Political Will!

“In dealing with social violence there must be compassion for the victim and a firm resolve to deal with the perpetrator of these crimes. What is needed is the political will to eliminate atrocities; the will to enforce the law; the will to ensure easy access to the police and the justice system to vulnerable sections; the will to provide relief and succor to all those who are affected by atrocities; the will to ensure that all sections of society feel that they are part of our polity and society and are equal partners in processes of growth and development; the will, in the final analysis, to ensure that every section of society has a sense of belonging.”

Prime Minister Manmohan Singh's address at 10th Meeting of Inter-State Council, New Delhi, 09/12/2006

Coordination Committee reviewing implementation state-wise:

As per the recommendation of the Parliamentary Committee on the Welfare of Scs and STs, the Ministry of Social Justice and Empowerment, Ministry of Home Affairs, National Commission for Scheduled Castes and National Commission for Scheduled Tribes have met regularly from 2006 onwards to discuss and devise

means to curb offences of untouchability and atrocities against SCs/STs. This Committee is also tasked to ensure effective implementation of the SC/ST (PoA) Act and PCR Act.

Eight meetings have been held so far between 2006 and 2009, reviewing implementation of the Acts in 24 of the 28 states, and 4 of the 7 union territories. *(Ministry of Social Justice & Empowerment, Annual Report 2008-09, New Delhi, para 4.4.4)*

What has been the outcome of all these meetings? Why are these outcomes not made public so that civil society representatives can collaborate in strengthening implementation of the Act?

“Most complaints of atrocities on SCs are directed against police personnel and security agencies [for acts of omission or commission]... Despite availability of well researched material no initiative has been taken to pursue the matter with the concerned State, or the Central agencies, as the case may be, about action taken by them in the light of the [research] findings... To the best of our knowledge, National Commission for SCs and STs has also not done so...”

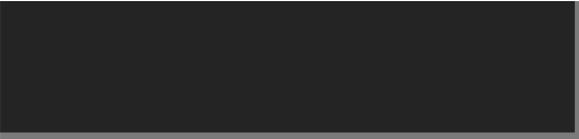
NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, pp.47, 102

Over 5,000 Recommendations in Annual Reports Mostly Unheeded!

“[The Government's] non-acceptance of recommendations [in the annual reports of the National Commission for SCs and STs] on a large scale is disheartening and even frustrating to the Commission because its efforts seem wasted.”

“The issue of non-acceptance of recommendations [on specific complaints of atrocities by individuals]... is a crucial one and needs to be dealt with seriously in the larger interest of the vitality of these institutions and their credibility with their client group (SCs/STs).”

NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.102



“Reports of atrocities against SCs, STs and senior citizens continue to appear with disturbing regularity. I have, in fact, written to the Chief Ministers of all states recently to enforce the provisions of the SCs and STs (Prevention of Atrocities) Act. It is shocking that conviction rate for cases of atrocities against SCs and STs is less than 30% against the average of 42% for all cognizable offences under IPC.”

Prime Minister Manmohan Singh,
Inaugural of Conference of
State Ministers of Welfare and Social Justice, New Delhi, 07/09/2009

I. What are the National and International Standards of Measurement?

Each State Party undertakes to take the necessary steps to adopt such laws or other measures - legislative, judicial, administrative, educative and other appropriate measures - as may be necessary to give effect to civil and political rights. (*Art. 2(2) ICCPR*)

The State Government shall make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocities. (*Rule 14 SC/ST (PoA) Rules*)

“History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them.”

Dr. B. R. Ambedkar

1. Physical and Financial Security for SCs/STs: One of the key national objectives

As per the Planning Commission, the broad objectives of the Special Component Plan (SCP) and Tribal Sub-Plan (TSP) are:

substantial reduction in poverty and unemployment;

creation of productive assets in favour of SCs and STs to sustain the growth likely to accrue through development efforts;

human resource development of the SCs and STs by providing adequate educational and health services; and

provision of physical and financial security against all types of exploitation and oppression.

(*Planning Commission, SC Sub-Plan: Guidelines for Implementation, New Delhi, 2006, p.48*)

Political mechanism allocating funds to implement SC/ST (PoA) Act: Ministry of Social Justice & Empowerment

The Ministry of Social Justice & Empowerment (MSJE) is entrusted with the overall task of empowering the disadvantaged and marginalised target groups (SCs, other backward classes, persons with disabilities, senior citizens, victims of substance abuse). In this respect, among several other responsibilities, MSJE has the task of realising one of the four objectives listed above, that is, **to provide physical and financial security to SCs/STs against all types of exploitation and oppression.** Accordingly, this Ministry is responsible for monitoring the implementation of the *PCR Act* and

SC/ST (PoA) Act. For this, financial resources are provided, through the Special Central Assistance (SCA), to the State Governments on 50:50 basis, and to Union Territory Administrations on 100% basis.

What Budgetary Items for Financial Assistance?

To ensure effective implementation of the *PCR Act 1955* and the *SC/ST (PoA) Act 1989* by the respective State Governments and Union Territory Administrations, the Special Central Assistance has the following purposes:

- (i) Functioning and strengthening of the SC/ST Protection Cell and Special Police Stations – inclusive of conducting periodic surveys, identification of untouchability/ atrocity prone areas, etc.
- (ii) Setting up and functioning of exclusive Special Courts - including appointment of officers for initiating or exercising supervision over prosecution, setting up of Committees and Special Courts, etc.
- (iii) Relief and Rehabilitation of atrocity victims – including minimum wages to the victims/ dependents of atrocities on FIR investigation, reimbursement of the payment of medicines, special medical consultation fee, costs towards blood transfusion, legal aid, etc.
- (iv) Awareness generation.

(*Ministry of Social Justice & Empowerment, Report under sec. 21(4) SC/ST (PoA) Act for 2006, New Delhi, 2006, p.12*)

2. What has been the Budget of Government of India?

The Special Central Assistance, initially introduced for implementing the *PCR Act* in 1974-75, was extended to cover the *SC/ST (PoA) Act* in 1990-91. Listed below are available data regarding the amounts released by the Central Government to the State Governments/UTs during three Five Year Plans – 9th (1997-2002) through to 11th (2007- 2012) Plans – except for the years 2010-11 & 2011-12 in the 11th Plan for which data is not available.

9th Five Year Plan: Total amount allotted: Rs. 113.49 crores

(1)	1997-1998 :	Rs. 16.47 crores
(2)	1998-1999 :	Rs. 15.50 crores
(3)	1999-2000 :	Rs. 24.94 crores
(4)	2000-2001 :	Rs. 27.08 crores
(5)	2001-2002 :	Rs. 29.50 crores

10th Five Year Plan: Total amount allotted: Rs. 185.85 crores

(6)	2002-2003:	Rs. 40.17 crores
(7)	2003-2004:	Rs. 36.37 crores
(8)	2004-2005:	Rs. 34.57 crores
(9)	2005-2006:	Rs. 38.31 crores
(10)	2006-2007:	Rs. 36.43 crores

11th Five Year Plan : Total amount allotted: Rs. 178 crores (so far)

(11)	2007-2008:	Rs. 39.00 crores
(12)	2008-2009:	Rs. 39.00 crores
(13)	2009-2010:	Rs. 42.00 crores
(14)	2010-2011:	Rs. 58.00 crores
(15)	2011-2012:	Rs.

[(1) NHRC, *Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.48*; (2) *National Commission for SCs and STs, Sixth Report 1999-2000 & 2000-01, New Delhi, p.214*; (3) *Union Budget Expenditure, Vol. II, 2002-03, 2007-08 & 2008-09*; (4) *N. Paul Divakar & Abhay Kumar, 'A Neglected Component', Combat Law Vol. 8 Issue 5&6, 2009, pp.53-4*]

3. What do the facts on the Special Central Assistance Budget say?

GOOD NEWS Increased amount in very recent years!

According to the National Commission for SCs and STs (*Sixth Report 1999-2000 & 2000-01, para 9.5.2*), there has been a substantial increase in financial assistance provided by the Central Government, as seen particularly during the last four years of the Fourth Plan. But the actual figures, as given above for these four years, show that the increased amount is not so substantial! The allocations during the next two Plans are somewhat better. The same is true when all the three Plans are seen in comparison.

BAD NEWS Budget allocation inadequate!

However, the increased allocation, whether little or more, is not that important for consideration. What is of relevance here is whether the increase in financial outlay is adequate for the effective implementation of the *SC/ST (PoA) Act*. That the allocations have been inadequate cannot be overlooked when one takes into account the phenomenal increase in atrocities as a result of increased awareness and assertion of rights by Dalits and Adivasis over recent years.

Ag glance at the Union Government's allotted budget for 2006-07 shows the following:

The SCA released by the Union Government for the purpose of effective implementation of the Act was Rs. 36.4 crores. This amounts to 50% of the proposed allocation. States are supposed to share equivalent to the amount received as SCA. Considering this, the actual expenditure for the purpose is claimed to be Rs. 71 crores, inclusive of the cost incurred for the maintenance of the trial courts.

If one were to assume that 40% of the costs would go to maintaining the court institutions and 60% would be available for the payment of compensation to victims in any year, then Rs. 43 crores would be available for compensation. During 2007, the number of cases registered by the National Crime Records Bureau and attracting compensation is 29,825, as per the Annual Report 2008-09 of the Ministry of Social Justice & Empowerment. Minimum compensation when calculated towards travel, medical and minimum wages for victims and witnesses as per the guidelines will work out to approximately Rs. 90 crores, whereas that available out of the proposed Rs. 71 crores is only Rs. 43 crores. This is almost 50% less than what the victims should receive.

(*N. Paul Divakar & Abhay Kumar, 'A Neglected Component', Combat Law, Vol. 8 Issue 5&6, 2009, pp.53-4*)

What is the human cost of inadequate Budget? Denial of access to justice for Victims & Witnesses!

If adequate budget existed and was spent appropriately, wouldn't there be then exclusive special courts set up across the country instead of in only nine states?

If adequate budget existed and was spent appropriately, wouldn't there be adequate relief and compensation paid to the victims instead of the current lacunae?

If adequate budget existed and was spent appropriately, wouldn't part of the budget be spent on creating awareness among SCs/STs on the SC/ST (PoA) Act, as being one of the four objectives of the SCP and TSP?

If adequate awareness has been created, then why should the various Commissions and Committees suggest that lack of knowledge of the Act leads to non-registration of cases?

If adequate budget existed and was spent appropriately, why is it that only half the states have set up SC/ST Protection Cells, and only four states have special police stations?

Special Central Assistance: Has the distribution of SCA to the States/UTs been fair and proper? Have the States/UTs utilized the SCA satisfactorily?

Funds released to the State/UT governments bear *no correspondence to volume of atrocity cases* therein.

Drawing of Central Assistance by some States is extremely low despite the sizeable percentage of SC [and ST] population and also high incidence of cases of violence against SCs [and STs]. The States in this category include Bihar, Orissa, Punjab, West Bengal, Assam, Himachal Pradesh, etc. The case of West Bengal is particularly striking because it has the second largest SC population in the country. Perhaps non-registration of cases under the Act may be the reason why the State is not claiming adequate assistance. This obviously points towards indifference in the implementation of the Act.

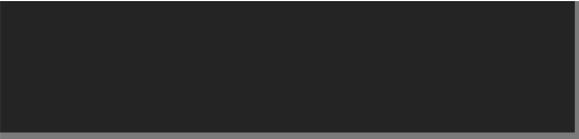
There is *uneven distribution of assistance across years in various States*, except for some States like Madhya Pradesh, Karnataka and Gujarat. This may be due to **unsatisfactory utilization of the assistance** already provided in certain years. If this is so, it would further reflect the laxity in the

implementation of the Act.

Some States have been drawing disproportionately large amounts in certain years, such as Uttar Pradesh, Tamil Nadu and Rajasthan – reasons for which are not very clear. This, however, does show uneven implementation of the Act across States and within the same State during different years. Madhya Pradesh is the only State which has been consistently asking for large amounts.

The *lower level of demand from States which have high percentage of SC [and ST] population as well as high incidence of cases of atrocities* can only be explained by lack of interest in implementation of the Act.

(NHRC, *Report on Prevention of Atrocities against SCs*, New Delhi, 2002, p.49)



“Incidents of atrocities immediately negate any positive results of growth. Justice for the weakest has to have the highest priority even more than the productivity indices and it is here that each one of us has a role to play. It should be our endeavour to ensure that the members of the SCs and STs are equal stakeholders in processes of economic and social development and that they are able to deal with atrocities and the curbing of their civil, social, economic and political rights. We need a development paradigm where we are able to guarantee to hitherto suppressed sections the freedoms of an open society and an inclusive democracy which we all cherish.”

Prime Minister Manmohan Singh's address at
10th Meeting of Inter-State Council, New
Delhi, 2006

I. What are the National and International Standards of Measurement?

Everyone has the inherent right to life. No one is to be arbitrarily deprived of her/his life. (*Art. 6(1) ICCPR; Art. 21 Indian Constitution*)

Everyone has the right to liberty and security of person. (*Art. 9(1) ICCPR; Art. 21 Indian Constitution*)

Anyone whose rights are violated is to have an effective remedy, and claim that remedy and have it enforced through competent judicial, administrative or legislative authorities. (*Art. 2(3) ICCPR*)

State to take measures to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. (*Art. 4(1) Declaration on the Rights of Minorities 1992*)

State not to deny any person equality before the law or the equal protection of the laws within the territory of India. (*Art. 14 Indian Constitution*)

State not to discriminate against any citizen on grounds of religion, race, caste, sex, or place of birth. (*Art. 15(1) Indian Constitution*)

II. What are the Facts? What do these Facts Say?

Dalits and Adivasis together comprise about one fourth of the Indian population: Dalits (SCs) constitute 16% and Adivasis (STs) 8%.

Dalits continue to face wide-ranging economic and social disadvantages, and day to day humiliation and degradation, denial of justice and violent atrocities. By and large, the Dalit condition is marked by high incidence of poverty, low education, limited employment opportunities and marginalisation in all spheres of public life. These deprivations are compounded by diverse types of violence to which they are subjected.

Apart from poverty and deprivation in general, key issues affecting Adivasis across the country include the absence of self governance, the negative effects of the forest and excise policies, land alienation, forced evictions and displacement, multifaceted forms of exploitation, cultural humiliation and political marginalisation. Other major problems are the failure to implement protective regulations in Scheduled Areas, absence of credit mechanisms leading to dependence on money lenders and consequent loss of land and often even violence by the State functionaries. (*Planning Commission of India, Development Challenges in Extremist Affected Areas - Report of Expert Group, 2008, pp.3-9*)

1. Atrocities against STs in Non-Scheduled Areas and SC/ST inter-State Migrants

(i) STs in Non-Scheduled Areas

Focus of the Fifth Schedule

It is in the above-mentioned context that one needs to understand the Fifth Schedule (*Art. 244(1)*) in the Indian Constitution dealing with the administration and control of Scheduled Areas and Scheduled Tribes. The aim is to provide special protection to the tribes' traditional land and resources, culture and customary practices and local autonomy in governance which face threats from certain internal disadvantageous conditions (illiteracy, poverty, etc.) and external forces (non-tribal immigration, private economic enterprises, etc). This Schedule currently covers only certain STs and tribal areas in nine states of India, namely, Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan.

Implications for STs in non-Scheduled Areas

STs residing in States/UTs not officially

recognised by this Fifth Schedule, their small population being one of the reasons, are treated unequal to STs covered by the Fifth Schedule and do not have access to any special rights protection concerning areas covered by the Fifth Schedule.

Even worse is the case of ST communities who are not included in the Schedule as STs, who then cannot benefit from the protection of the *SC/ST (PoA) Act* or Fifth Schedule.

Moreover, owing to non-implementation or inadequate implementation by State actors of the *SC/ST (PoA) Act* and *Rules*, non-inclusion in the Fifth Schedule or in the Schedule of tribes means that these STs become vulnerable to discrimination and atrocities.

(ii) SC/ST Migrants from their State of origin to other States

Under constitutional provisions, a caste or tribe is notified (scheduled) with reference to a State or Union Territory. Hence, a person born in a State/UT gets the SC/ST certificate if his/her father belongs to specified caste/tribe in that state/UT as SC/ST. If he/she migrates to another state/UT, he/she loses the SC/ST status for the purpose of affirmative action; that is, benefits of admission in educational institutions, reservation in government employment, etc. However, he/she does not lose the protection guaranteed by the Constitution and other protective laws such as the *SC/ST (PoA) Act* in any other state/UT. In other words, once a person is notified as SC/ST in any State/UT, he/she gets protection under the *SC/ST (PoA) Act* throughout the country, irrespective of whether that person's caste or tribe is notified in the state/UT where the offence is occurred.

Atrocities against SCs/STs: Contexts, Causes and Effects

(I) Armed Conflicts and Forced Migration

Presently, 21 out of 28 states in India are afflicted by internal armed conflicts.

All the areas afflicted by internal armed conflicts, except Jammu and Kashmir, are pre-dominantly inhabited by indigenous and tribal (Adivasi) peoples.

Adivasis suffer serious human rights violations from both the security forces and the armed opposition groups. Impunity granted to security forces under *section 6 Armed Forces (Special Powers) Act 1958* and *section 197 Criminal Procedure Code* has further perpetuated the human rights violations.

Media reports estimated that nearly 1.2 lakh Gutti Koya tribals have fled to Andhra Pradesh's Khammam district from Bastar and Bijapur districts of Chhattisgarh during January-June 2008 to escape violence by the Maoists and Salwa Judum activists.

(IWGIA and AITPN, 'India: No democracy for those living on the margins', *Universal Periodic Review Special, Vol. II, No. 04, 2007*, www.aitpn.org/IRQ/vol-II/Issue-04/story02.html; *Asian Indigenous & Tribal Peoples Network, The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, p.4*)

(ii) Social oppression by dominant castes

“The fight against the social oppression that the Dalits and the lower among the OBCs have been regularly subjected to is perhaps the most significant among the

Implications for SC & ST Migrants

Those tribes migrating to other States/UTs due to poverty, internal displacement on account of mega-development projects, or forced displacement owing to conflicts between the state police or security forces and the leftist militant groups, may not in practice be recognised by the State/UT to which they migrate as entitled to the special protection guaranteed by the *SC/ST (PoA) Act*.

Those SCs listed in the Scheduled Caste List of one State/UT may in practice also face the danger of not being recognized as such by the State/UT to which they migrate, thereby losing their entitlement to the special protection guaranteed by

issues used by the Naxalite movement.” (*Planning Commission of India, Development Challenges in Extremist Affected Areas - Report of Expert Group, 2008, p.51*)

(iii) Atrocities by dominant castes on SCs/STs

“Apart from poverty and land alienation, the atrocities against the SCs and STs provide the grounds of growth of Naxalism. Whether it is in the case of the massacre of Dalits at Tsundur village in Guntur district in 1991 or brutal murder of a Dalit leader, Birusanti Obanna from Koilkuntla area of Kurnool district on 22 January 2004, perpetrators often go unpunished.” (*Asian Centre for Human Rights, Review embargoed for 13 October 2004, Review/42/2004*, www.achrweb.org/Review/2004/42-04.htm)

(iv) Dual violence – collusion of landlords and state machinery

“In insurgency/naxalite affected areas, SCs/STs face dual violence, one from caste Hindu landlords (private militias) leading to gruesome atrocities on them, secondly from the State. The two operate with a certain degree of nexus but with different motivations and through different methods. The State bans both the insurgency/naxalite organizations as well as private militias of dominant castes/class in pursuance of its primary duty to maintain public order. As a result, police and security forces carry out combing operations in search of leaders and sympathizers of both. But the police and security agencies during their investigation and search operations make a differential approach. They unleash violence during this operation on inmates of SC colonies during which treatment of SC women is extremely offensive and humiliating.

Similar operations are not carried out in the upper caste settlement at all or if resorted to under pressure is executed mildly and with no indignity shown to their women.” (NHRC, *Report on Prevention of Atrocities against SCs*, New Delhi, 2002, p. 115)

(v) Weak State intervention in development and law & order areas

“The areas in Central India where unrest is prevailing cover several States (like Andhra Pradesh, Orissa,

Chhattisgarh, Madhya Pradesh, Jharkhand and part of Maharashtra), and are minimally administered. State interventions both for development and for law and order had been fairly low. In fact, there is a kind of vacuum of administration in these areas which is being exploited by the armed movement, giving some illusory protection and justice to the local population.” (Planning Commission of India, *Development Challenges in Extremist Affected Areas - Report of Expert Group*, 2008, p. 80)

To sum up:

- Due to their positioning at the crossroads of conflicts between the state army and police personnel on the one hand, and the militants on the other hand, SCs/STs become victims of crossfire between these two forces. The ensuing result is that the law and order concerns precede rights obligations to the extent that state perpetrators of atrocities are not subjected to the provisions of the *SC/ST (PoA) Act*.
- When atrocities are perpetrated on SCs/STs by militant groups in the name of liberating the lower classes from state oppression, there is the danger of the *SC/ST (PoA) Act* being rendered de facto non-applicable. The situation becomes worse when the state law enforcement machinery exhibits weakness not only in dealing with the militants, but also in enforcing the *SC/ST (PoA) Act*.
- Besides the above-mentioned two conflict contexts, non-inclusion of certain Tribes in the Scheduled Tribe list, non-scheduling of protected areas under the Fifth Schedule in other states/UTs where STs are located, migration resulting from various natural or human-made disaster circumstances – all these situations give rise to rights violations against STs, necessitating the applicability of the *SC/ST (PoA) Act*.

Is there a way forward for the affected SCs/STs?

Livelihood Entitlements for Migrant Tribals:

“The Committee are concerned that a number of tribals migrate from their villages in search of employment. The Committee recommend that the Ministry of Tribal Affairs should take up this matter with the concerned authorities to ensure that tribals who migrate to work elsewhere for a limited period of time on a year, should be covered under the Rural Employment Guarantee Schemes, so that the migrant tribals do not have to leave their homes for seeking employment elsewhere.” (Parliamentary Committee on the Welfare of SCs & STs, 33rd Report, New Delhi, 2008, para 4.17)

Good Governance: “The basic steps required in this direction include establishment of credibility and confidence of government; keeping a continuous vigil for fulfilment of people’s vision; effective protection, peace and good governance; rejuvenating tribal economy including social services; sustainable development with equity in tribal areas; holistic planning from below in

scheduled areas; and negotiating crises by focussing on ending of confrontation.” (Planning Commission of India, *Development Challenges in Extremist Affected Areas - Report of Expert Group*, 2008, p. 80)

Realizing full potential of SC/ST (PoA) Act: “The task of putting an end to social discrimination should not have required the threat of Naxalite-inspired militancy. Discrimination on grounds of caste, sex, religion, etc is barred by the Constitution in Articles 14 to 17. Positive enactments for penalising discrimination have been legislated in the case of the SCs and STs. The *SC/ST (PoA) Act* is not merely a penal law. It envisages the setting up of an elaborate system for prevention of such atrocities. The law has, however, been seen as merely a penal law which the victims have to set in motion. Its full potential has not been actualised by the administration. Instead much time is spent discussing its misuse.” (Planning Commission of India, *Development Challenges in Extremist Affected Areas - Report of Expert Group*, 2008, pp. 51-2)

2. Atrocities against STs in North-East India

The Sixth Schedule Areas in the North-East

(Art. 244(2)) in the Indian Constitution ensures special protection to Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram by ensuring autonomous administration. Although the implications of this Sixth Schedule for the STs in terms of enjoying protection under the *SC/ST (PoA) Act* are similar to what has been discussed above regarding the Fifth Schedule, striking differences exist in the extent of accessing protection measures from the Indian State. This is due to the unique context prevailing in the Sixth Schedule areas, namely, that of the armed conflicts between the state and the ethnic groups on the one hand, and the armed conflicts among the ethnic groups

on the other hand. The net result of this unique situation is that the importance of the *SC/ST (PoA) Act & Rules* and its implementation tend to be diluted, even neglected.

The non-Scheduled Areas in the North-East

The STs in three other States in the North-East (Arunachal Pradesh, Manipur and Nagaland) not covered by the Sixth Schedule are considered unequal to STs covered by the Sixth Schedule. Moreover, they are denied the benefit of accessing any special rights protection concerning areas covered by the Sixth Schedule.

Atrocities against SCs/STs: Contexts, Causes and Effects

(i) Armed conflicts: Multiple issues, actors, rights violations, losses

Northeast India, comprising the seven states of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, has suffered from a large number of distinct conflicts for over five decades, fuelled by a number of issues such as land distribution, immigration, ethnicity, religion and political autonomy/secession.

More than half a million people have lost their lives to insurgency in that area since Indian Independence in 1947.

Each conflict has its own roots and history, and each insurgent group – of which there are currently over 72 (and this number continues to rise) – has its own agenda. These include the protection of language and ethnicity and tribal rivalry.

(Mandy Turner & Binalakshmi Nepram, *The impact of armed violence in Northeast India: A mini case study for the Armed Violence and Poverty Initiative, Centre for International Cooperation and Security, 2004, p.8*)

(ii) Main actors of armed conflicts: The State and ethnic groups

The North-East region is an ethnic minefield, as it comprises of around 160 Scheduled Tribes, besides an estimated 400 other tribal or sub-tribal communities and groups. Turbulence in the area, therefore, is not caused just by armed separatist groups representing different ethnic communities fighting the central or the state governments or

their symbols to press for either total independence or autonomy. There are also recurring battles for territorial supremacy among the different ethnic groups themselves.” (Wasbir Hussain, *India's North-East: The Problem : Part 1, paper presented as part of the Interaction on the North East, conducted by Observer Research Foundation, New Delhi, 18/11/2004*)

The security forces were responsible for gross violation of the rights of the tribal people including arbitrary arrests, illegal detention, torture, custodial killing and extrajudicial killings in the name of “counter-terrorism” measures. (Asian Indigenous & Tribal Peoples Network, *The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, p.4*)

(iii) Cause of Atrocities

“Militarisation is a huge obstacle to peace. The fact that all authority lies with the military apparatus, the reality that ordinary people have no recourse to justice, and the fact that civil society is not involved in the development strategies imposed on it, means that widespread antipathy to the Government of India is unlikely to abate. The development strategies adopted as well as the process of militarization need to be addressed simultaneously.” (Mandy Turner & Binalakshmi Nepram, *The impact of armed violence in Northeast India: A mini case study for the Armed Violence and Poverty Initiative, Centre for International Cooperation and Security, 2004, p.25*)

(iv) Effects of Armed Conflicts

Massive displacement: According to one estimate, a total of 4,01,425 tribals have been displaced due to the armed conflicts and ethnic conflicts across India, resulting in huge deterioration of their lives. This includes:

- 47,940 Adivasis -----in Chhattisgarh
- 2,03,485 tribals (Bodos, Santhals and Garos) -----in Asom (formerly Assam)
- about 1,20,000 Gutti Koya tribals (from Chhattisgarh) ----in Andhra Pradesh
- 30,000 Brus -----in Tripura.

(Asian Indigenous & Tribal Peoples Network, The State of India's Indigenous and Tribal Peoples 2009, New Delhi, 2009, pp.7- 8)

Targeting of children: “Children are not just at risk from the violence of insurgent groups. Children and juveniles are routinely arrested and detained under repressive emergency laws. In Manipur, for example, evidence suggests that children and youths arrested by security forces

are subjected to torture, some even “disappear” while in custody. In addition, children have witnessed to their mothers being sexually abused and raped by the security forces.” *(Mandy Turner & Binalakshmi Nepram, The impact of armed violence in Northeast India: A mini case study for the Armed Violence and Poverty Initiative, Centre for International Cooperation and Security, 2004, pp.28-29)*

Violations of civil & political rights: “As a result of increasing armed conflicts, indigenous/tribal peoples have been facing serious violations of their civil and political rights including arbitrary arrest, detention, torture, extrajudicial executions, rape etc at the hands of the security forces.” *(IWGIA and AITPN, 'India: No democracy for those living on the margins', Universal Periodic Review Special, Vol. II, No. 04, 2007, www.aitpn.org/IRQ/vol-II/Issue-04/story02.html)*

Victims of arbitrary use of fire arms: Indigenous/tribal peoples have become disproportionate victims of arbitrary use of fire-arms while exercising the right to freedom of association and assembly. *(IWGIA and AITPN, India: No Democracy for those Living on the Margins, Joint Submission for Examination of India's human rights obligations and commitments under the UPR of the Human Rights Council, 2007, p.13)*

Fatalities in insurgencies and terrorist conflicts in North-East India: 1992-2001

Year	Civilians	Security Force	Militants	Total
1992	257	115	120	492
1993	551	188	174	913
1994	685	181	192	1058
1995	621	196	254	1071
1996	710	240	285	1235
1997	839	250	556	1680
1998	865	189	377	1431
1999	578	208	430	1216
2000	907	162	585	1654
2001	662	137	581	1380
Total	6675	1901	3554	12130

(Ajai Sahni, Survey of Conflicts & Resolution in India's Northeast, www.satp.org/satporgrp/publication/faultlines/volume12/Article3.htm, accessed 12/12/2009)

Is there a way forward for the affected Sts?

Good governance: Restoration of the integrity of governance, and the various institutions of civil governance, including justice administration, is essential in order to restore the rule of law and Constitutional politics.

De-legitimising culture of violence and impunity: There is a need to refine and implement an unambiguous counter-terrorism policy that is seen

clearly to punish – and not reward, as is often the present case – acts of extremist violence. Alongside this, there must be active promotion of a 'culture of peace' that rejects and de-legitimises political violence as a means to the resolution of political problems or grievances. *(Ajai Sahni, Survey of Conflicts & Resolution in India's Northeast, www.satp.org/satporgrp/publication/faultlines/volume12/Article3.htm, accessed 12/12/2009)*

3. Atrocities against SC/ST Religious Minorities

“The [SC/ST (PoA)] Act fails to take the SC converts to Christianity (SCX) or Dalit Christians within the protective umbrella of its ambit though SCX have been subjected to atrocities not because of their religion but because of the same reason why SC Hindus have been victimised. This was among the issues, which held up the commencement of the proper trial in the Tsundur case till November 2004.” (P.S. Krishnan, *Atrocities against Dalits: Retrospect And Prospect, Combat Law, Vol.8, Issue 5&6, 2009, p.15*)

There can be no doubt whatsoever that Dalit Muslims and Dalit Christians are socially known and treated as distinct groups within their own religious communities. Nor is there any room for disputing the fact that they are invariably regarded as 'socially inferior' communities by their co-religionists. In short, in most social contexts, Dalit Muslims and Dalit Christians are Dalits first and Muslims and Christians only second. (National Commission for Minorities, *Dalits in the Muslim and Christian Communities: A Status Report on Current Social Scientific Knowledge, New Delhi, 2008, p.78*)

Since the Constitutional (Scheduled Caste) Order 1950, restricts the SC status only to Hindu groups (later amended twice to include Sikhs in 1956 and neo-Buddhists in 1990) having 'unclean' occupations, their non-Hindu equivalents have been bracketed with the middle caste converts and declared OBC. While the Ashrafs and the Ajlafs occupy the highest and the middle positions in the Muslim social structure, the Arzals are the lowest comprising of those having similar traditional occupation as their Hindu counterparts in the SC list. It is widely believed that these communities are converts from the 'untouchables' among Hindus. Change in religion did not bring any change in their social or economic status. Because of the stigma attached to their traditional occupation, they suffer social exclusion... and remain impoverished and marginalised. Despite this, they have been deprived of SC status available to their Hindu counterparts. (Prime Minister High Level Committee, *Social, Economic and Educational Status of the Muslim Community in India, 2006, pp.193, 202*)

Is not the Constitutional Order of 1950 inconsistent with Articles 14, 15, 16 & 25 Indian Constitution that guarantee equality of opportunity, freedom of conscience and protect the citizens from discrimination by the State on grounds of religion, caste or creed? Should not similar amendments to those for Sikhs and neo-Buddhists be made, to include Muslims and Christians facing similar forms of untouchability practices and discrimination into the Scheduled Castes list?

What is the religious composition of SCs/STs?

The Sachar Committee report 2006 referred to the 61st NSS Survey 2004-05, according to which almost 90% of Buddhists and one-third of Sikhs in India belonged to the notified SCs in the Constitution, while one-third of the Christians belonged to the notified STs in the Constitution.

Religion	SC	ST
Buddhism	89.5%	7.4%
Christianity	9.0%	32.8%
Hinduism	22.2%	9.1%
Islam	0.8%	0.5%
Jainism	-	2.6%
Sikhism	30.7%	0.9%
Zoroastrianism	-	15.9%
Other	2.6%	82.5%

(Prime Minister High Level Committee, *Social, Economic and Educational Status of the Muslim Community in India, 2006, p.7*)

taken together (at least on the NSSO estimates) appear to be under three million people, constituting about 1.25% of all rural Dalits, and about 2.25% of all urban Dalits. (NCM, *Dalits in the Muslim and Christian Communities: A Status Report on Current Social Scientific Knowledge, New Delhi, 2008, p.82*)

Unlike the category Scheduled Caste, the category Scheduled Tribe irrespective of the religious affiliation of the members of the tribe is entitled for reservation... The Muslim component of ST population is very small. According to 1991 Census, it accounts for only 0.25 % of the total ST population of the country... It must be noted that while STs get all entitlements irrespective of their religious backgrounds, all Muslims of tribal background do not get this benefit. There are many cases of claims of ST status by Muslim groups that have remained unattended. (Prime Minister High Level Committee, *Social, Economic and Educational Status of the Muslim Community in India, 2006, p.205*)

The National Commission for Minorities has acknowledged that Dalit Muslims and Dalit Christians

What Atrocities with what Effects on SC/ST Religious Minorities?

Communal conflicts on the rise:	
In 2007:	In 2008:
761 incidents	943 incidents
99 persons killed	167 persons lost lives
2,227 persons injured	2,354 persons injured

Violent communal conflicts, especially like some recent ones in a state (Gujarat), in which there is large-scale targeted sexual violence against Muslim women, has a spread affect even in regions of the country not directly affected by the violence. There is immense fear, a feeling of vulnerability, and consequently a visible impact on mobility and education, especially of girls. The lack of adequate Muslim presence in the police force accentuates this problem in almost all Indian states as it heightens the perceived sense of insecurity, especially in a communally sensitive situation.

(Prime Minister High Level Committee, Social, Economic and Educational Status of the Muslim Community in India, 2006, p.14)

Hindu-Muslim Communal conflicts

In 2007:

- **Incidents:** 681 communal incidents were reported in the country, leading to 96 deaths and injuries to 2,117 persons.

In 2008:

- **Incidents:** 656 incidents, including 4 riots, resulting in death of 123 persons and injuries to 2,272 persons.
- **States where majority of incidents took place:** Madhya Pradesh, Uttar Pradesh, Maharashtra, Gujarat and Karnataka.
- **Few places where the riots took place:** In Indore, Madhya Pradesh on July 3, resulting in death of 8 persons and injuries to 30 persons; In Dhule, Maharashtra on October 5-8, resulting in death of 9 persons and injuries to 176 persons; In Adilabad, Andhra Pradesh on October 10-12, in which 10 persons were killed and 4 injured; In Burhanpur, Madhya Pradesh on October 11, resulting in death of 9 persons and injuries to 25 persons.

(Ministry of Home Affairs, Annual Reports 2007-08 & 2008-09)

Hindu-Christian Communal Conflicts

In 2007:

- **Incidents:** 80 communal incidents, leading to death of 3 persons and injuries to 110 persons.

In 2008:

- **Incidents:** 287 Hindu-Christian communal incidents in the country, resulting in death of 44 persons and injuries to 82 persons.

➤ **States where majority of incidents took place:**

In Orissa, large scale incidents of attacks on the Christian community and their religious structures took place, particularly in Kandhamal district after the killing of Swami Laxmanananda Saraswati and four of his associates on 23/08/2008. As a result of the violence, 40 persons were killed. During the violence, extensive damage to houses and religious structures was reported.

Attack on Christian religious structures followed in Karnataka in September 2008.

The Ministry of Home Affairs issued regular advisories to the State Governments with a view to containing the violence and also deployed additional Central Para Military Forces to assist the State Governments in the restoration of peace and normalcy.

(Ministry of Home Affairs, Annual Reports 2007-08 & 2008-09)

Report of an independent Fact-finding Team in Orissa:

We have recorded over 200 cases of violence (against Christians) across the country before the outbreak in Kandhamal in Orissa. Attempts are also being made to present the incidents (in Kandhamal) as a Tribal versus Christian conflict. The evidence is to the contrary. The relations between Christian tribals and Christian Non-tribals, Christian Dalits and Dalits of other faiths, as well as between Christians belonging to the tribal and Dalit communities, remain cordial as they have been historically. The issue that remains pertinent is the targeting of Dalit and Tribal Christians by political-religious fundamentalists.

(Preliminary Report of Non-Government Fact-Finding Team on Violence in Kandhamal District, Orissa, based on visits 29/12/2007-03/01/2008, released at Bhubaneswar on 05/01/2008)

**What responses to socio-economic status of religious minorities?
What responses to communal violence against religious minorities?**

- **Sachar Committee Report 2006:** Highlighted the deplorable social and economic status of Muslims in India today, and made a strong case for boosting the Muslim community's share in jobs and educational institutions. (*Prime Minister High Level Committee, Social, Economic and Educational Status of the Muslim Community in India, 2006*)

BUT “The Sachar Committee Report has exposed the false propaganda of the BJP and Sangh Parivar that the Muslims have been 'appeased'. However, the Congress-led government's approach towards implementing the Sachar Committee recommendations has been halfhearted and most of the wide-ranging recommendations ignored.” (*Communist Party of India (Marxist), Highlights of Pamphlet on Minorities, 27/03/2009, www.cpim.org/content/highlights-pamphlet-minorities*)

- **Ranganath Misra Commission Report 2007:** Recognised that caste is a social phenomenon shared by almost all Indian communities irrespective of their religious persuasions, and many (scheduled) castes found simultaneously in various religious communities equally face problems of social degradation and mistreatment both by their co-religionists and the others. Hence, the Commission recommended that *para 3 Constitution (Scheduled Castes) Order 1950* be deleted so as to completely de-link the Scheduled Caste status from religion and make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes. (*Ministry of Minority Affairs, Report of the National Commission for Religious and Linguistic Minorities, New Delhi, 2007, pp.153-4*)

BUT “Despite the recommendation of the Ranganath Commission's Report, the government has failed to table its report in Parliament.” (*Communist Party of India*

(*Marxist), Highlights of Pamphlet on Minorities, 27/03/2009, www.cpim.org/content/highlights-pamphlet-minorities*)

- **National Commission for Minorities:** “There is no compelling evidence to justify denying SC status to Dalit Muslims and Dalit Christians... Whether one looks at it positively (justifying inclusion) or negatively (justifying non-inclusion), the Dalit Muslims and Dalit Christians are not so distinct from other Dalit groups that an argument for treating them differently could be sustained... According due statutory recognition to Dalit Muslims and Dalit Christians would not only right a wrong, it would also remove an indefensible anomaly in our politico-legal system that can legitimately be construed as discriminatory.” (*NCM, Dalits in the Muslim and Christian Communities: A Status Report on Current Social Scientific Knowledge, New Delhi, 2008, pp.81, 83*)

- **UN CERD Committee:** Noted with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes (and protection under the *SC/ST (PoA) Act*), unlike converts who become Buddhists or Sikhs. The UN CERD Committee recommends that the State party restore the eligibility for affirmative action benefits (and protection under the *SC/ST (PoA) Act*) of all SCs and ST having converted to another religion. (*UN CERD Committee, Concluding Observations on Government of India Report, CERD/C/IND/CO/19, 2007, para 21*)

“The Commission in its report for 1996-97 questioned the protected status accorded to armed forces by Protection of Human Rights Act as it diminishes the credibility of the NHRC and its goal to protect human rights. It made specific recommendations intended to remove the privileged status of armed forces and bring the authority, when inquiring into human rights complaints, under the direct control of the Commission. It also reiterated its recommendations in earlier report that armed forces report directly and promptly to the Commission any instances of death, rape or torture occurring while a person was in their custody and also indicated that failure to report such cases in a prompt and accurate manner would lead to adverse inferences being drawn by the Commission that effort was being made to suppress the truth.” (*NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.105*)

The Indian State as a whole, at both the Central and State Government levels, should give priority concern to the ever increasing, as well as continuance of, atrocities against SCs and STs. This should prompt urgent government measures to ensure thorough and effective implementation of the SC/ST (PoA) Act and Rules.

As an initial step, high level Committees at the Centre and in the States/UTs could be appointed to review the implementation of the Act, assess the realisation of its objectives, and take appropriate and speedy action for strengthening the Act and for effective implementation in future. Such action would necessarily include a direction to Central and State Ministries dealing with the implementation of the Act and Rules to formulate the required legal amendments to strengthen implementation.

Along this line, the following recommendations are formulated as proposals to the Indian State, implementation of which would greatly aid in ensuring a decrease in incidence of atrocities as well as ensuring justice to the SC/ST victims where such atrocities do take place.

To Prevent Atrocities against SCs/STs

1. Amend section 3(1) of the Act to add crimes to which SCs/STs are subjected, but which do not figure at present in the list of offences of atrocities in the Act, such as the following: social and economic boycott and blackmail; filing of false counter cases; murder and mass murder; rape, mass rape and gang rape; hurt and grievous hurt; abduction or kidnapping; discrimination or obstruction of ST from enjoying forest rights under *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*; destruction of property; obstructions to filing nominations for electoral positions or exercising authority as elected representatives; refusing to pay wages or proper wages; employment of a child in any occupation prohibited under the *Child Labour (Prohibition and Regulation) Act 1986*; employment of any person for manual scavenging; dedicating a SC/ST woman as a *devadasi*; discrimination in *anganwadis* and educational institutions.
2. Amend sec. 3(1) of the Act to delete terms such as “with intent”, “intentionally” and “wrongfully”, and amend sec. 3(2) of the Act to delete the term “on the ground”, in order to remove the current leeway granted to the police and judiciary to dilute cases of atrocities through subjective interpretations of these words in the Act.
3. Amend section 3(2)(vii) of the Act to state that any public servant who commits any offence under this Act should immediately be suspended after registration of the FIR and no promotion, award, reward or any other benefit given to the accused until the conclusion of trial.
4. Make it mandatory, as per Home Ministry guidelines, that all complaints be immediately registered as FIRs, forbidding all discretionary powers to the police officer responsible for registering complaints.
5. Designate one agency to collect, compile, authenticate and supply data on the implementation of the Act and Rules in order to avoid the current situation of multiplicity of agencies resulting in data variations emanating from the states/UTs.

To The Police

6. Amend section 4 of the Act on negligence of official duties to include the following:
 - (i) not reading out to the informant/s any oral complaint which has been reduced to writing by the Officer In-Charge of the police station before taking the signature of the informant/s;
 - (ii) misleading the complainant to change the content of the complaint;
 - (iii) non-registration of FIR;
 - (iv) not registering the FIR under the Act;
 - (v) not registering the FIR under appropriate sections of the Act;
 - (vi) investigating officer not recording the statement of the victims or witnesses;
 - (vii) investigating officer delay in investigation for more than 30 days; and
 - (viii) impolite treatment by an officer or staff of a police station towards the complainant, informant and any social worker helping the victim in any manner.

Recommendations

7. Take immediate legal and departmental disciplinary action against police officials who neglect to discharge their duties under section 4 of the Act.
8. Ensure that the Superintendent of Police promptly visits the place of occurrence of an atrocity and fulfils his responsibilities under *Rule 12(1), (2) & (3) SC/ST (PoA) Rules*, particularly:
 - (i) Ensuring a FIR is registered under the Act and effective measures are taken for apprehending the accused.
 - (ii) Deploying police force in the area and taking other preventative measures to prevent the further occurrence of atrocities.
9. For all cases filed under the *SC/ST (PoA) Act*, ensure that the investigating officer is of a rank no less than the Deputy Superintendent of Police, in accordance with *Rule 7(1) SC/ST (PoA) Rules*.
10. In each district, appoint more Deputy Superintendent of Police, depending on the intensity, frequency and spread of atrocities in the district, who would be specifically in-charge of investigating atrocities under the Act.
11. Make it mandatory that a police officer cannot arrest any complainant, victim, witness or any other person helping the victim for interrogation or for any other purpose without an order from a Magistrate and without a warrant.
12. Sensitise all state/UT police departments on the *SC/ST (PoA) Act, Human Rights Act 1993* and the international human rights standards set forth in ICERD, ICCPR, ICESCR and CEDAW. In particular, educate police personnel on the *SC/ST (PoA) Act* and *PCR Act*, particularly addressing such issues as the necessity of the Acts, their origins and purpose, mechanisms and how they are intended to address and to protect the rights of SCs/STs.
13. Conduct regular orientation trainings for police officers on the *SC/ST (PoA) Act* and *Rules*.

To The Judiciary

14. Amend secs. 14 and 15 of the Act to establish **Exclusive Special Courts, Exclusive Public Prosecutors** and **Exclusive Investigators**, who will try, prosecute and investigate only cases under this Act on day-to-day basis and also give the power to take cognisance of atrocity cases. should be filled within 30 days after the opening of such vacancies.
15. Amend sec. 14 of the Act to establish as many additional special courts as required to be able to effectively deal with the number of cases in a district so as to ensure speedy trial of atrocity cases under this Act in that district. These courts should:
 - (i) try only cases of atrocities against SCs/STs under the Act;
 - (ii) try cases of offences under the Act on a day-to-day basis, and complete trial as quickly as possible within a period not exceeding 90 days;
 - (iii) submit quarterly reports on the status of cases to the Chief Justice of the High Court of the State.
16. Appoint Judges to the Special Courts of Sessions taking into consideration their record of and reputation for protecting the rights of SCs/STs against 'untouchability' practices, discrimination and violence.
17. Plan judicial transfers in such a manner that the posts of judges in the special courts are never kept vacant and any such vacancies arising on account of unexpected and unforeseeable contingencies
18. Appoint one or more Assistant Public Prosecutors or senior advocates, including SC/ST advocates, who have been in practice for not less than seven years and on the basis of their record of and reputation for protecting the rights of SCs/STs, to assist the Special Public Prosecutor in conducting trials of cases under this Act.
19. Fill all vacancies in the posts of Special Public Prosecutor or Assistant Public Prosecutors arising from unexpected and unforeseeable contingencies within 30 days after the opening of such vacancies.
20. In each district the District Magistrate should prepare a panel of eminent advocates, including SC/ST advocates wherever available, who have been in practice as advocates for not less than seven years, on the basis of their record of and reputation for upholding the rights of SCs/STs. These advocates shall monitor and deal with the cases of atrocities.
21. The District Magistrate should review at least twice a year the performance of Special Public Prosecutors and Assistant Public Prosecutors, and submit a report to the State/UT Government and to the State level Vigilance and Monitoring Committee.

To Ensure Victims' and Witnesses' Rights

22. Include a new chapter on 'Rights of Victims and Witnesses' in the Act, therein defining their rights in terms of accessing justice along the lines of the following recommendations.
 - (i) Ensure that a copy of the FIR should be given forthwith, free of cost, to the informant or victim or social worker/advocate helping them immediately after the registration of the FIR.
 - (ii) Ensure full compensation is paid promptly to victims of atrocities upon registration of a FIR, filing of charge sheet, receipt of the medical examination report and conviction, according to the scale as in the schedule annexed to the *SC/ST (PoA) Rules*.
 - (iii) Ensure protection of the victims, informants and witnesses against all forms of ill-treatment, violence, threats or intimidation, and any other form of pressure or coercion, from the time of submission of the complaint till the conclusion of the trial.
 - (iv) Make arrangements at all Special Court venues for ensuring the privacy and protection of victims and witnesses from any kind of intimidation, including a separate waiting area wherever possible.
 - (v) Notify victims of the offender's eligibility for parole or application for a governor's pardon, and allow victims to have input into the parole decision making process or to make a written statement regarding any pardon application.
 - (vi) Make arrangements to promptly provide all information to victims from the time of their first contact with police officials to the final judgement for the case.
 - (vii) Inform every victim and witness of every stage of a case pertaining to them, including investigation, framing of charges, bail, offender's release from police custody, trial dates, hearings on miscellaneous petitions by the Investigating Officer or Public Prosecutor.
 - (viii) Investigating Officer and Public Prosecutor should inform the victim/s about the possibilities of obtaining financial assistance and social services, practical and legal advice, compensation from the offender and state compensation.
 - (ix) Investigating Officer should ensure that victims and witnesses are provided shelter where necessary at government cost, with all facilities to ensure their effective social and economic rehabilitation, including alternative means of livelihood, food and medical aid.
 - (x) Ensure traveling allowances, daily allowances, maintenance expenses and transport facilities for the victims of atrocities, their dependents and witnesses as per *Rule 11 SC/ST (PoA) Rules*.

To Ensure Other Mandatory Provisions

23. Ensure the formation of State and District level Vigilance and Monitoring Committees, and regular meetings of these committees, as per *Rules 16 & 17 SC/ST (PoA) Rules*.
24. Involve human rights organisations and individuals working for and with SCs/STs in the deliberations of these State and District level Vigilance and Monitoring Committees as members or invitees.
25. Ensure adequate publicity and availability of information on the proceedings and outcomes of State and District level Vigilance and Monitoring Committee meetings.
26. In accordance with rule 3 of the *SC/ST (PoA) Rules*, cancel all arms licenses for non-SCs/STs in those areas listed as atrocity prone with a view to preventing atrocities from occurring, and provide arms licenses to SCs/STs in those same areas to enable them to protect themselves.
27. Those State Governments/UT administrations who have not done so already should set up SC/ST Protection Cells as per *rule 8(1) SC/ST (PoA) Rules* in each police station to ensure timely registration of cases under the proper sections of the *SC/ST (PoA) Act*.
28. The National Commission for Scheduled Castes and National Commission for Scheduled Tribes should investigate and monitor all matters relating to the constitutional safeguards provided for the SCs and STs respectively, and inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs and STs. To this end, the Commissions should hold annual meetings of the heads of the PCR cells set up in all states/UTs and the Nodal and Special Officers designated under the *SC/ST (PoA) Act* to review implementation of the Act.

Recommendations

29. State governments/UT administrations, in collaboration with NGOs and SC/ST lawyers, should set up victims and witnesses protection cells at the district level under the Social Empowerment Commissionerate, to provide protection and confidence to fight for justice where atrocities take place.
30. Appoint in each district a Nodal Officer with the rank of District Collector, preferably a SC/ST, for coordinating the functions of the District Magistrate, Superintendent of Police and Deputy Superintendent of Police for implementing the provision of the Act.
31. Provide relief, compensation and rehabilitation to victims of atrocities as per norms contained in *rule 15 SC/ST (PoA) Rules* and prepare a model Contingency Plan consisting of a package of measures for this purpose.
32. State Governments/UTs should prepare Contingency Plans as required under *rule 15 SC/ST (PoA) Rules* to check atrocities on SCs/STs.
33. Ensure the implementation of precautionary and preventive measures in atrocity prone areas as prescribed under *rule 3 SC/ST (PoA) Rules*.
34. Ensure equal protection of SCs through appropriate amendment of *sec. 10 SC/ST (PoA) Act* to allow Special Courts to order the removal of potential perpetrators of atrocities against SCs from an area, as is currently available to STs in Scheduled or Tribal Areas.

To National and State Governance Institutions

35. The Indian State as a whole, at both the Central and State Government levels, should give priority attention to **accepting and implementing the recommendations** of the National Commission for SCs, National Commission for STs, National Human Rights Commission, National Commission for Minorities, National and State Commissions for Women, National and State Child Rights Commissions, Punnaiah Commission, National Coalition for Strengthening the SC/ST (Prevention of Atrocities) Act and those of many other civil society organisations working to defend the rights of SCs/STs.
36. Include a new chapter on 'National Monitoring and Enforcement Authority' in the Act, defining the roles and responsibilities of this Authority in order to ensure effective coordination by State Governments and other state agencies as prescribed by the Act, and to ensure enforcement of the provisions of the Act.
37. Table the annual reports of the National and State level Commissions for SCs and for STs in particular, and all National Commission reports in general, in the next sessions of the Houses of Parliament/Assemblies following the submission of each annual report by the respective Commission, without tying tabling of reports to the Action Taken Reports so as to eradicate the delays in tabling and debating these annual reports –Action Taken Reports may be followed later and debated separately.
38. Ensure that the Central Government places each year on the table of each House of Parliament a report on the measures taken by this government and by state/UT governments in implementing the Act, including an assessment of the functioning of these measures, in accordance with *section 21(4) SC/ST (PoA) Act*.

For Budget Allocation & Expenditure for Enforcement of the Act

39. Ensure the provision of Special Central Assistance (SCA) in the Special Component Plan (SCP), such as by legislating the SCP and SCA therein into an Act which defines clear entitlements for SCs/STs and has necessary redressal mechanisms to ensure that all duty bearers implement the SCP and SCA effectively. The allocation of SCA from the Central Government should be on the basis of the SC/ST population in that state and the rate of crimes of previous year.
40. All state governments should constitute SCA Monitoring Committees wherein SCs/STs are invited to be members of these Committees and to take active part in monitoring the SCA expenditure at the State, Department/Ministry and district levels, with necessary powers to intervene wherever necessary.

Atrocities against other excluded Vulnerable Groups

41. Amend the definition (section 2) of 'Scheduled Castes' for the purposes of the Act so as to include members of the any of the castes in the Schedule who profess a religion other than Hinduism, Sikhism, or Buddhism, and the descendents of such members.
42. Bring SC and ST migrant labourers under the definition of 'Scheduled Castes' and 'Scheduled Tribes' for the purposes of the Act even though they are not included in the Schedule of 'Scheduled Castes' and 'Scheduled Tribes' for the State to which they have migrated.

Violent communal conflicts, especially like some recent ones in a state (Gujarat), in which there is large-scale targeted sexual violence against Muslim women, has a spread affect even in regions of the country not directly affected by the violence. There is immense fear, a feeling of vulnerability, and consequently a visible impact on mobility and education, especially of girls. The lack of adequate Muslim presence in the police force accentuates this problem in almost all Indian states as it heightens the perceived sense of insecurity, especially in a communally sensitive situation.

(Prime Minister High Level Committee, Social, Economic and Educational Status of the Muslim Community in India, 2006, p.14)

“History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them.”

Dr. B. R. Ambedkar

Why this National Campaign?

- *Scheduled Castes (SCs) and Scheduled Tribes (STs) are the worst affected regarding all forms of atrocities covered under the SC/ST (PA) Act because, inter alia, they are minorities; because they are excluded from full enjoyment of national and state level resources and power; and because the SCs in particular are considered untouchables and hence denied social mobility.*
- *There is a clear trend of increasing atrocities against SCs and STs, with new forms of caste, class and gender discrimination and violence emerging over the years. This is compounded by the difficulties in accessing justice once atrocities take place, and inadequate implementation of protection mechanisms to stem the tide of atrocities.*

These are weighty reasons to assess the status of implementation of the Act by national and state governments, to scrutinize the lacunae in the scope of the Act, and to suggest ways to make it a more effective mechanism for guaranteeing security of life to all SCs/STs and above-excluded minority communities.

Two decades of the Act and over 60 years of India's Independence provide an opportune time span to embark on this enterprise of demanding state accountability to the most excluded and neglected communities in the country.

What is the thrust of this National Campaign?

- **State accountability for inadequate implementation of the SC/ST (PoA) Act.**
- **Adequate political will to ensure State implementation of the Act *in toto*.**
- **Legislative amendments to the Act to expand and strengthen its scope and provisions, particularly regarding the rights of victims and witnesses.**
- **Greater gender focus in the Act.**
- **Exclusive judicial mechanisms to ensure speedy trials so as to fulfil the deterrence purpose of the Act.**
- **Inclusion in the Act of excluded marginalised communities: various tribal and ethnic groups in the country; SCs/STs belonging to religious minority communities especially Muslims and Christians; and SC/ST migrant workers.**

Who has launched this National Campaign?

- On 25 June 2009, the National Campaign on Dalit Human Rights (NCDHR) initiated a consultation in New Delhi on the status of implementation of the SC&ST (PoA) Act through one of its core units, National Dalit Movement for Justice. Adivasi, Dalit and human rights organizations and movements, activists and experts from various states participating in the consultation formed themselves into the *National Coalition for Strengthening the SC&ST Prevention of Atrocities Act*.
- The Coalition decided to prepare a position paper and draft Amendment Bill based on various recommendations given by the National and State Commissions, various civil society organisations and experts, apart from the guidelines issued by the Ministry of Social Justice and Empowerment and the Home Ministry for better enforcement of the Act.
- On 11 September 2009, marking 20 years since the Act received assent from the President of India, a National Convention was organised in New Delhi to review the implementation of the Act and the accompanying Rules, and deliberate on the amendments and strategies required to strengthen implementation.
- A National Campaign Programme is underway to disseminate information on the proposed Amendment Bill and mobilise support among Dalits, Adivasis, their solidarity partners and all those believing in equal security and empowerment for all Indian citizens. The Amendment Bill will finally be presented to the Government of India, with sustained lobbying and advocacy to ensure that it is placed before, and thereafter passed by, the Parliament.

Coalition Advisor: Shri P.S Krishnan – Rtd IAS

Convener: Dr. Sirivella Prasad, NCDHR-NDMJ

Core Group: Ossie Fernandez - HRF, Nandagopal - SAKSHI, Adv. Vrinda Grover - MARG, Rameshnathan - SASY, Narendra Kumar - IPAC, Prof. Krishna Dev Rao - IGNOU, Adv. P.L. Mimroth - CDR, N. Paul Divakar - NCDHR-DAAA, Ruth Manorama – NFDW, Henri Tiphagne – People's Watch, Babloo Loitongbam - HRA R. Ravikumar-NDF.

Scheduled Castes and Scheduled Tribes: Are their lives safe and secure in India today?

- Article 21 of the *Constitution of India 1949* stipulates the right to life of all citizens.
- Article 17 abolishes the age-old phenomenon of 'untouchability'.
- Article 46 mandates the State to protect SCs and STs from all forms of exploitation and social injustice.

In pursuance of these fundamental rights:

- *Indian Penal Code 1869* provides for punishment for crimes committed against citizens;
- *Protection of Civil Rights Act 1955 (PCRA)* punishes those preaching and practising 'untouchability.'

However, these laws have proved inadequate to prevent and eliminate gross indignities and atrocities targeted towards SCs and STs on account of their social identity and status. Hence, the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (SC&ST (PoA) Act)* and the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995* were enacted specifically to protect SCs and STs from atrocities committed against them by persons belonging to non-SC/ST communities.

Twenty years have passed since the enactment of this Act. To what extent are the lives of SCs and STs safe and secure in India today? **It is shocking to note that the implementation of the Act has remained very weak and inadequate!**

Recommendations

- Appoint high level Committees at the Centre and in the States/UTs to review the implementation of the Act, assess the realisation of its objectives, and take appropriate and speedy action for strengthening the Act and for effective implementation in future.
- Direct the concerned Central and State Ministries dealing with implementation of the Act and Rules to evolve ways and means for formulating and including the required legal amendments, as well as for their effective operation.
- Set up exclusive special courts, exclusive public prosecutors and exclusive investigators for the speedy trial of cases under the Act.
- Include additional crimes which SCs and STs are subjected to, but do not figure in the present list of offences in the Act, such as social and economic boycotts and false counter cases.
- Delete expressions such as "intent", "on the ground", "wilful", etc. from various sections of the Act which give leeway to the police and judiciary to dilute cases of atrocities through subjective or arbitrary interpretations of the Act.
- Add a new chapter in the Act to deal with the rights of victims and witnesses, thereby explicitly granting various citizen rights to them with regard to their atrocity cases.
- Amend the Act to explicitly bring in all the types and nature of negligence by public servants at various stages in their handling of atrocity cases.
- Enhance punishment for offences of atrocities under the Act to be on par with the *Indian Penal Code* as well as based on the nature and gravity of the offences, so as to ensure its deterrent effect.
- Amend the definitions of 'Scheduled Castes' and 'Scheduled Tribes' in the Act so as to add: all Christians or Muslims belonging to any of the castes in the Schedule; all ethnic minority communities subjected to atrocities on the basis of their ethnicity; and SC/ST migrant labourers on the basis of their caste/tribal status in their state of origin.
- Give priority attention to accepting and implementing the recommendations of National and State Commissions as well as civil society organisations working to defend and promote the rights of SCs and STs.