

**Brief Report of the National Consultation on
20 YEARS OF SC & ST PREVENTION OF ATROCITIES ACT 1989**

**August 11, 2009
Gurajada Conference Hall, Andhra Bawan**

Background

Those who are all concerned about Dalit Rights no doubts are also concerned about the atrocities and violence that are happening about Dalits. It is need less to say that SC& STPOA Act 1989 is the only one act which was aimed to stop all sorts of atrocities that are occurring against SCs and STs at the same time provide protection, compensation and rehabilitation and all necessary support to Victims of atrocities. It is exactly 20 years passed after the passing of this Act. Number of individuals , organizations have felt to review and reflect on the experiences of Act during the past two decades. As follow up of this idea, on the occasion of 20th anniversary of the SC/ST PoA Act NCDHR-NDMJ organized a two hours preliminary discussion on 25th June 2009, at Indian Social Institute, Delhi. Some of you participated in the discussion and reflected your experience, suggested for amendment of the Act and expressed the need of initiating a national level process to strengthen the Act and its enforcement. The following decisions were taken:

1. A group of people would prepare a position paper and draft amendment bill under the guidance of Sri. PS Krishnan
2. To circulate the draft bill widely and get the feedback before finalizing it
3. To organize a National level event on 11th September 2009, the same day of 1989 the Act has received assent of the President of India
4. Eolve a strategize to take up a National level campaign and advocacy on the Act

As follow up of these decisions, a working group was formed with Mr. Ossie Fernandez, Mr. Narender, Mr. Nandagopal and Dr. Sirivella Prasad to prepare the draft amendments and position paper. This group have prepared first draft group of draft amendments with justifications based on various recommendations for amendments given by SC/ST Commission, NHRC, Justice Punnaiah Commission and also various civil society organizations and experts apart from the guidelines issued by the Ministry of Social Justice and Empowerment and the Ministry of Home for better enforcement. This Working Group organized a consultation on 11th August 09 in New Delhi with a small group to discussion on the first draft prepared.

Welcome and Keynote Address:

Mr. Vijay Parmar, Convener, NCDHR welcomed the participants and Dr. Prasad briefed purpose of the consultation. Sri. PS Krishanan delivered key note address.

Presentation of Draft Position Paper and Amendments

Mr. Nandagopal presented gaps in implementation of the Act and Mr. Ossie Fernandez presented the draft amendments proposed and justification.

Working Group proposed draft amendments based on recommendations given by National Scheduled Caste Commission, National Human Rights Commission, Justice Punnaiah Commission, reports of various human rights organizations and movements and various advisories issued by Ministry of Social Justice and Empowerment and Ministry of Home Affairs for better enforcement of the Act.

The following are the broad categories of the amendments proposed:

1. **Gravity of offenses and punishments:** The very spirit and the purpose of the difference in the offences in the SC/ST Act and IPC is to determine the gravity of the offence and punishment designed to realize objective of the Act. Therefore keeping the objective and nature of offenses and its gravity we have proposed to enhance punishment defined for Section 3(1) from six months to 5 years under the existing act to 2 years to 7 years.
2. **New types offenses not defined in the Act:**
 - a. Proposed new sections on Social Boycotts or Economic Boycotts as Sec 3(2)(iv), Voluntarily Causing Hurt or Grievous Hurt as Sec 3(1)(xv), Ransacking of Household items and destruction of Movable or Immovable property- Sec 3(1) (xvi), Abduction and Kidnapping -3(1)(xvii) and Discrimination or Harassment or Insult or denying or limiting access to opportunities in any educational Institutions as Sec 3(1)xviii)
 - b. Proposed amending existing section by inserting new offenses - Refuses to pay wages or contract wages in Sec3(1)(vi); filing Counter Cases against SCs/STs- Sec 3(1)(vii); and Disrespecting or Disfiguring or damaging the statues of Dr. B.R.Ambedkar in Sec 3(2) (iii b)
3. **Limitation in appreciation of certain words - "Intent", "Intention", "on the ground" ,"public view" and "public place":** Proposed to insert presumption clause under Section 8 as Sub Section (c)- "Wherever the words "Intent", "Intention", "on the ground" are mentioned as ingredient, it shall be presumed, that a particular act allegedly committed, will in the normal course will lead to a consequence which is an atrocity, unless the accused proves that he has no intention or knowledge". Also proposed to delete the word "public view" from section 3 (1)(x).
4. **Nature of willful negligence and its scope in the Act:** Proposed to delete the word "willful" in Section4 and insert non-registration of FIR, not registering under appropriate sections; not investigating and filing charge sheet within stipulated period; filing counter FIRs; not providing relief, compensation and rehabilitation and; non-implementation of other protective and preventive provisions or rules defined under the Act as negligence as negligence.
5. **Scope of definitions given in the Act:**
 - a. To bring the Scheduled Castes, who or whose fore fathers have changed their religion to Christianity or Islam and are not eligible for protection under SC and ST (PoA) Act only for the purpose of the Act.
 - b. For the Purpose of the Act provide protection to the migrant labors under the Act, even though that particular caste is not included in the list of scheduled caste by the respective state.

6. **Measure to realize Right to Speedy Trial:** Proposed to establish exclusive special court with powers of cognigence, undertake trail on day to day basis; Courts to ensure protection of the victims, complainants and witnesses. Also appointment of exclusive special prosecutors and assistant prosecutors.
7. **Rights of the victims and witnesses: Proposed to add a new chapter on rights of victims and witnesses with the right to** Registration of FIR, fair Investigation and inquiry, Protection, Medical Examination and reports, to be informed progress of the case at all level and to have copies all legal documents and right to relief, compensation and rehabilitation

Suggestions:

All the participants shared their comments and given suggestions on the position paper and draft amendments presented. The discussions and suggestions can be broadly categorized under the following:

1. **Speedy trial:** It is spoken that the process of trail in atrocity cases is very slow and it should be reduced. It is felt that there is a need to speed up the process. Therefore it is suggested that there is need for providing legal service as per the victims need as well as it is necessary to be monitored. As a defender, we should also accompany with the victims during the trial process. And also the linkages with the legal service authority need to be drawn. The legal service authority should be persuaded to take up the atrocity cases.
2. **Investigation:** It is articulated by the participants that the investigation process by DSP in atrocity cases is very slow and it is very necessary to speed up the process. Hence it is suggested that the investigation can be done by the inspector level of the respective police station.
3. **Gravity of Punishments:** It is expressed that the punishments should be made very stringent in this amendment mainly the neglected public authorities to be penalized very severely. It is needed to make the penalty work very promptly. It is suggested that sexual assault law may be referred for the punishment for the cases like rape, sexual harassment etc.
4. **Imposing Collective fine:** The provision of imposing collective fine to be implemented properly. Some felt that it is essential to bring up the seizure of property and asserts apart from imposing punishments
5. **Provision of Relief and Compensation:** It was discussed that the state should not alone take the responsibility of paying compensation but the perpetrator also to be given the responsibility of paying half of the compensation.
6. **Setting up of Monitoring Mechanisms:** Discussion ensued on setting up of monitoring mechanisms was aimed at and this was thought that to include the provision to monitor the function of different authorities in this act.
It was expressed that there is a need for monitoring mechanisms for the following:
 - To monitor the role of special public prosecutor.
 - To monitor the state government in submitting its reports as per the section 21(4) of PoA act.

- To monitor the functions district and state level monitoring vigilance committee and the role of its members
- 7. New offence:** Suggested to include of new atrocities in the draft amendment since the act was not dealt properly with all atrocity. It is suggested that employment issues to be taken up. Children issues can be added and the discrimination in higher education also to be included. Abolition of Safai Karamcharis and devadasis to be brought out in this amendment.
- 8. Discussion on the word "Intention":** Discussion was focused on "mens rea" and its importance in jurisprudence. Most of the participant suggested deleting the word in respective sections.

Way forward

The Group decided the following:

- It is suggested to start an e-group and share the draft amendments through this e group across the country and get the feed back .
- To circulate the draft prepared for further suggestions and feedback.
- Bring two or three legal expertise into the draft amendment working group to absorb the current changes being brought in the jurisprudence in the criminal law and to refine with professional legal language
- Undertake discussion on the draft at various level
- Involve different organizations, movements and experts to launch the campaign and make them to take part of it
- To organizing a National level consultation on September 11 – 12 at Delhi and launch campaign and make draft amendment public and to evolve an action plan.
- Tentatively it was suggested to name this process as National Coalition for Strengthening PoA Act.

Organizations and experts attended: (I feel this list can be given at the end of the matter in a list)

Representatives of Centre for Dalit Rights, Centre for Equity and Inclusion, Centre for Mountain Dalit Rights, Centre for Social Justice, Dalit Action Group, Dalit Ardhik Adhikar Andolan, Dalit Foundation, Dalit Movement for Human Rights and Dignity, Dalit Samanvay, Human Rights Foundation, HRFDL-K, Human Rights Law Network, Indraprastha Public Affairs Centre, Janvikas - Gujarat, Multiple Action Research Group (MARG), National Campaign on Dalit Human Rights, National Action Forum for Social Justice, National Dalit Election Watch, National Dalit Forum, National Dalit Movement for Justice, National Federation of Dalit Women, National Forum for Social Justice, Navsarjan Trust, Participatory Research in Asia (PRIA), Safai Karmachari Andholan, Safar, Sakshi Human Rights Watch, Social Awareness Society for Youth – (SASY), SC&ST Employees Association – AP Bawan and Prof. Krishnadeva Rao IGNOU were attended the consultation. Representative of All India Dalit Mahila Adhikar Munch, Dalit Dasta Virodi Andholan, Evidence, Janvikas – Orissa, Jeevika, National Federation of Dalit Land Rights Movement, People's Watch expressed their inability to attend consultation but some of them shared their feedback through mail on the report.