



ATROCITIES AGAINST DALITS AND ADIVASIS

**SCHEDULED CASTES AND SCHEDULED TRIBES
(PoA) ACT, 1989 & Rules 1995**

**PROPOSED AMENDMENTS
for effective monitoring & implementation**

Crime against Humanity

- Every 15 minutes 4 Dalits and Adivasis are subjected to atrocities
- Every day 3 Dalit women are raped, 2 Dalits are murdered & 11 Dalits are beaten up
- Every week 13 Dalits are murdered, 5 Dalits' houses are set on fire, 6 Dalits are kidnapped

**NO MORE
UNTOUCHABILITY!
END ATROCITIES!!**

**हुआछूत,
अत्याचार खत्म करो!!**



**National Coalition for Strengthening SCs & STs (PoA) Act
(NCSPA)**

National Coalition for Strengthening the SC/ST (Prevention of Atrocities) Act
Organisations Associated:

Adharshila, Adivasi Solidarity Council (South India Network), Alternative Forum for Dalit Liberation, AP, Dalit Bahujan Shramik Union, Alliance for Dalit Rights, All India Dalit Mahila Adhikar Manch, Ambedkar Lohiya Vichar Manch, Anhad, Bachpan Bachao Andolan – Bihar & Jharkhand, Behavioral Science Centre, Bhartiya Gramin Vikas Evam Kalyan Samiti, Campaign for Human Rights, CBCI Commission for SC/ST/BC, Centre for Dalit Rights-Rajasthan, Centre for Social Equity and Inclusion, Centre for Mountain Dalit Rights -Himachal Pradesh, Centre for Social Justice, Centre for Social Justice & Development, CSRD- People Monitoring Committee, Cornerstone, Dalit Aarthik Adhikar Aandolan, Dalit Action Group, Dalit Bahujan Front, Dalit Dasta Virodhi Manch, Dalit Foundation, Dalit Movement for Human Rights and Dignity, Dalit Mukti Morcha, Dalit Nyay Andolan, Dalit Samanway, Dalit Sthree Shakti, Delhi Forum, Development Initiative, Domestic Workers Forum – Chetanalaya, Dr. Ambedkar Agriculture Development and Research Institution, Dr. Ambedkar Excellence Education and Public Welfare Institution Samiti, Dynamic Action Group, Evidence, Human Rights Alert, Human Rights Forum for Dalit Liberation – Karnataka, Human Rights Forum for Dalit Liberation – TN, Human Rights Foundation, Human Rights Law Network, Indian Alliance for Child Rights, Indian Confederation of Indigenous and Tribal Peoples, Indian Institute of Dalit Studies, Indraprastha Public Affairs Centre, Insaaf Dilao Committee, Integrated Rural Development Service Organisation, Jana Vikas, Jan Sahas, Janvikas, Jeevika, Jogini Vyavastha Vithirekha Poreta Samiti, Karnataka Dalit Mahila Vedike, Madhya Pradesh Dalit Mahila Hitkari Sanstha, Manuski, Multiple Action Research Group, NCCI Commission on Dalits, Narigunjan, National Action Forum for Social Justice, National Campaign on Dalit Human Rights, National Council of Dalit Christians, National Dalit Election Watch, National Dalit Forum, National Dalit Movement for Justice, National Federation for Dalit Land Rights Movement, National Federation for Dalit Women, Navsarjan Trust, Open Space, Orissa Goti Mukti Andolan (OGMA), People's Vigilance Committee on Human Rights, People's Action for Rural Awakening, People's Media Advocacy & Resource Centre, People's Monitoring Committee, People's Watch – Tamil Nadu, Pradeepan, Praxis – Institute for Participatory Practices, Prayas Gramin Vikas Samiti, Rajiv Gandhi Institute of Contemporary Studies, Rajpipla Social Service Society, SC/ST Employees Association (AP Bhawan), Safai Karmachari Andolan, SAKSHI – Human Rights Watch, Sampurna Gram Vikas Kendra, Sanchayaneele, Sasvika, Social Action For Advocacy & Research (SAFAR), Social Awareness Society for Youth, Society for Participatory Research in Asia (PRIA), SICHREM, Unnati, VICALP, Working Group for Human Rights in India and UN, YUVA

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In the last 15 years, a total of 5, 58, 103 cases of atrocities were registered.

Around 1.5 cores of Dalits and Adivasis have been affected.

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Preface

While every Indian is equal before the law and is entitled without any discrimination to the equal protection of the law, the reality for Dalit and Adivasi citizens who suffer atrocities is often that of the delayed justice. Based on the experiences of 15 years of monitoring and intervening in cases of atrocities against Dalits, the lessons learnt by the victims and witnesses, activists, Dalit organisations include the large hurdles that Dalit and Adivasi victims/survivors face in the process of seeking legal justice after atrocities take place against them. Hurdles exist at every stage of the process to attain justice—including at the stage of registration of cases, investigation of cases, charge sheeting, and at the trial stages in the court of law. And also include the inadequate use of precautionary measures, inadequate protection, inadequate and irregular functioning of monitoring committees, inadequacy and delay in providing relief and rehabilitation etc., Emerging trend shows that there is increase in the quantum of atrocities against Dalits and Adivasis even after the existence of PoA Act. During the last 15 years (1995 to 2010), total of 5, 58, 103 cases of atrocities (4, 71,717 against SCs and 86,386 against STs) were registered in police stations. A crude estimate reveals that around 1.5 cores of Dalits and Adivasis are affected by the atrocities in last 15 years and the number is increasing day by day at the annual rate of 2.9 per cent.

In the above context a large number of Dalit, Adivasi and Human Rights organizations and activists came together and formed a “National Coalition for Strengthening of the POA Act” in the year 2009. They critically reviewed the performance of the State and the realization of the objective of the PoA Act and came out with measures and amendments required to further strengthen the PoA Act to end atrocities in the country. The amendment proposed in the Act includes setting up of exclusive special courts and exclusive public prosecutors necessary for speeding up trials. Further, there are certain social disabilities and discriminatory practices which Dalits and Adivasis are subjected to but do not figure in the list of atrocities, and need to be now included. Major examples are, tonsuring of head or moustache, garlanding with chappals, social & economic boycott, etc. The legal provisions for victims and witnesses rights do not exist in the Act. Therefore, in order to provide victims of crime with a meaningful role there is a need to add a new chapter in the Act focusing on rights of victims and witnesses. Comparing the quantum of punishment for offences of atrocities under the Act and IPC for similar offences shows wide variance and therefore, the



punishments need revision. There is a need to delete certain words from the offences, which are giving scope for the offenders to come out of the purview of the Act such as “intent”, “intention”, “Public Place” and “on the ground” etc. The elements of negligence by government officials which are not mentioned in the Act now need to be clearly defined. Further, there is a need of an autonomous National Authority which is not influenced by any Government authority and has representation from civil society to monitor the Atrocity act.

In last two years, several efforts being made by coalition with various enforcement and constitutional bodies for effective implementation and the introduction of proposed amendments. There were several questions raised in the parliament and state legislative assemblies on enforcement of the Act and amendments proposed by us. Ministry of Social Justice & Empowerment initiated a process by sending concept note for amendments to all states govts. and concerned bodies for their feedback. Organised several meetings with ministry. National Advisory Council (NAC) along with Rajeev Gandhi Institute of Contemporary Studies and National Law School has also taken up drafting of amendments to the Act based on proposed amendments and had series of consultations with us.

Now the time has come, when we need to build a cumulative community consensus. We need to take these amendments as a tool before the Dalit and Adivasi communities and leaders, to generate awareness against atrocities and get their consensus to raise the amendments in the form of demands. This Booklet has been prepared having experience of field level activists, leaders and organisations. This booklet will help the community and organisations to demand for the amendments in the PoA Act in the realisation of its objective, demands from the community that will help in exerting community pressure for the speedy introduction and amendment of the Act and Rules in the Parliament. We are thankful to the initiating organisations of the coalition and advisors and experts all over the country for taking up this campaign a step further and making it a collective historical event.

Jai Bhim

Dr. Sirivella Prasad
Convener

(National Coalition for Strengthening of SCs & STs PoA Act)



***Ours is a battle not for wealth or for power.
It is a battle for freedom.
It is a battle of reclamation of human personality.***

- Dr. B. R. Ambedkar

India attained independence 65 years ago in 1947. Three years later it became a republic nation with the self-confidence of having a government of the people, by the people and for the people. But in reality a large section of its citizens, the Dalits and Adivasis, have been neglected by successive governments and, therefore, were denied the full enjoyment of all the rights of citizenship assured by the Constitution. They still face subjugation, humiliation and exclusion on a daily basis from India's mainstream caste society.

This is so despite the new Constitution, which the people of India gave unto themselves in 1950, loudly proclaiming the explicit abolition of "Untouchability" and its practice in any form (Article 17). Notwithstanding Parliament's enactment of the Protection of Civil Rights Act (PCR), 1955, "Untouchability" based discrimination against Dalits has been rampant through all these years regardless of the gradual advancement of SCs and STs in education and economic status. Studies have revealed the prevalence of more than 150 forms of the most heinous and inhuman "Untouchability" practices. These prevent Dalits and Adivasis from accessing civil, political, economic and cultural rights in private and public spheres, state and religious institutions, labor and consumer markets as much as they are entitled to as per the laws and policies of the land.

For the entire nation, therefore, the need of the hour is to match words with action, Constitutional promises with compliance practices, thereby providing a safe and secure environment for SCs/STs. This is necessary for their advancement in life as citizens equal to all in rights and entitlements, and lesser to none in dignity.

1. Why SCs/STs Prevention of Atrocities Act (PoA)?

We have been noticing over the years Dalit and Adivasi communities increasingly and powerfully asserting their rights and entitlements. This has resulted in further increase of atrocities

against them. Whenever they wanted to access legal services and natural resources (land, water, livelihood, etc.), made claim to occupation of their choice, just and fair wages, participation in cultural life of the community, demanded their right to vote and to govern, voiced their right to dignity and self-respect, they have been subjugated to atrocities. These have ranged from verbal abuse, physical assault, mass attacks, social and economic boycotts, torture, custodial violence, rape and gang rapes and even mass murders. To cite a few of the major massacres against SCs and STs in the post-Independence era:

- *the assassination of the young, educated Dalit leader Emmanuel Sekaran in Tamil Nadu for defying the "Untouchability" based interdicts of dominant castes on SCs, resulting 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, Andhra Pradesh in 1969*
- *the killings of 10 STs by police in connection with a land dispute in Indravalli in Andhra Pradesh in 1978*
- *the massacres of SCs at Belchi in 1979 & at Pipra in Bihar in 1980*
- *the massacre following an SC bridegroom riding on horseback at Kafalta in Uttar Pradesh in 1980*
- *the killing of Bacchdas in Mandsaur district in Madhya Pradesh in 1982*
- *the police shootings that killed 15 STs at Banjhi in Sahibganj district in Bihar in 1985*

Such worsening situation prompted the Indian Parliament to consider the PCR Act 1955 and **the normal provisions of the Indian Penal Code as inadequate to check and deter crimes committed by dominant caste groups.** It necessitated Parliament, therefore, to enact **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act)** and **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995(POARules).**

2. What are the significant features of the Act?

The PoAAct was meant not only to prevent but also to eliminate atrocities against SCs and STs. With this in view, it defined

the term 'atrocities' as 'an offence punishable under Section 3' of the Act which lists a number of offences. **It formulated stringent measures for imposing heavy penalties on dominant caste perpetrators of atrocities as well as on** those public servants willfully neglecting their duties in implementing the PoA Act & Rules. In particular, this Act consists of the following significant features:

- It addresses **various offences/crimes** committed against SCs/STs in the areas of social disabilities, encroachment or appropriation of property, malicious information or suit, political rights violations and economic exploitation.
- It establishes **special procedures** to prosecute the offenders booked for these offences.
- It mandates (i) **investigation by Dy.S.P**; (ii) the designation of **special courts** and **special public prosecutors** for dealing with atrocities; (iii) the setting up of State and District Level **Vigilance Committees** and **Monitoring Committees, Special Officers, Nodal Officers.**
- It enjoins on the States and Union Territories to take specific **preventive and punitive measures** to protect Dalits and Adivasis.
- It makes provision for adequate **relief and rehabilitation measures** to the affected victims.

The Act is expansive in its scope in many respects: in the list of offences, in constituting organizational mechanisms, in identifying officers for performing specific responsibilities, in defining their specific duties, in framing penalties for offences committed, and in assuring relief and rehabilitation measures to the victim-survivors. It has, indeed, promised to address the issue of discrimination and atrocities faced by Dalits and Adivasis.

But has the PoA Act truly lived out its promise to the SCs and STs, fulfilled their long cherished hopes, satisfied their legitimate expectations, and established a governance system founded on equity and social justice?

3. Has the Act lived out its promise?

Despite the deterrence assured by the earlier PCR Act and the later SCs & STs [PoA] Act, the numerical increase in atrocities has

not stopped. Nor has the response from the different governance agencies in the country (police, district and state level monitoring committees, district and state level vigilance committees, public prosecutors, special courts, etc.) been satisfactory. The following recent official data attest to this:

- **Atrocity affected SC/ST population:** A rough estimate for 1995-2010 puts the numerical population of Dalits and Adivasis facing atrocities at around 1.5 cores and the number is increasing day by day at the annual rate of 2.8 per cent.
- **Top 10 Dalit atrocity prone States in 2010:** 10 States, namely, Uttar Pradesh, Rajasthan, Andhra Pradesh, Bihar, Madhya Pradesh, Karnataka, Orissa, Tamil Nadu, Maharashtra, and Gujarat cumulatively account for 93.3% of atrocities against SCs.
- **Registration of cases:** The police do not register many instances of atrocity. During the last 15 years(1995-2010), a total of only 5, 58, 103 cases (4, 71,717 **against SCs and 86,386 against STs**) were registered in police stations.
- **Non-Registration under PoA Act:** In 2010, only 11,682 (34.2%) out of 34,127 atrocity cases were registered under the PoA Act at all-India level. In Madhya Pradesh & Rajasthan over 95% of the cases were not registered under the PoA Act, and instead were registered under IPC and other legal provisions.
- **High pendency rate of cases:** With 1,01,251 crimes against SCs/STs (80%) pending for trial by 2010-end. This showed no significant improvement since 2001, when the trial pendency rate was 82.5 percent. By 2010-end, many states had more than 80% of pending cases of atrocities against SCs: Gujarat(90.9%), West Bengal (89.2%), Rajasthan(86.6%),Maharashtra(86.2%), Kerala (85.5%), Bihar (84.3%), Himachal Pradesh (82.9%), Delhi (81.7%), and Orissa (80.7%).
- **Closure of Cases under PoA Act:** In 2010, police closed 2,150 (13%) out of 16,601 cases of atrocities against SCs registered under PoA Act. As regards cases of atrocities against STs, 223 (13%) out of 1,714 registered cases were closed.

- **Low Conviction Rate:** In 2010, the conviction rate for SC/ST atrocity cases was abysmally low in the following states: Maharashtra (0.5%), Gujarat (0.9%), Karnataka (1.1), Orissa (1.5%), Bihar (1.7%), Andhra Pradesh (4.1%), Rajasthan (4.8%), Tamil nadu (5.2), and Madhya Pradesh (8%). The conviction rate in overall ranged from 0.5% to the 8%.

4. How have the enforcement authorities responded to atrocities?

Two decades of monitoring the implementation of the Act has provided us with vast experience regarding its low rate of benefits and high rate of failures, that is, the performance scale of the national and state governments plunges far more towards the debit than the credit side. **On the part of the Police and other concerned government officials, proper and positive response towards to the victims and witnesses of atrocities has often been lacking.** But what happens if and when the cases go to the **Judiciary? Do the** Public Prosecutors and Special Courts play the role expected of them? In most of the cases, the judgment is given in favour of the perpetrators either on technical grounds, or due to the Public Prosecutors deliberately failing to argue the case properly. What is the end result? Unfortunately, there is high acquittal and low conviction rate under the PoAAct.

5. What problems SCs/STs faced while trying to access justice?

The following are the problems faced by the Dalit and Adivasi Victims and witnesses at all the levels of the governance system while trying to access justice from them.

At the time of lodging complaint

Pressure on victims not to lodge the initial complaint

Victims threatened and intimidated not to speak about the incident

Police officials refuse to write the complaint of the victims

If police officials write the complaint, they do so in favor of the accused

Police officials do not behave with the victims in proper decorum

Higher officials do not visit the place of occurrence as mandated

No immediate relief and protection is given to the victims

Counter and false cases registered against the victims

At the time of registration of FIR

Dalits are discouraged to register FIRs

Victims are forced to compromise the case for money

Victims threatened into silence or even inflicted with violence

Police accepting bribes from perpetrators to drop victims' complaint

Police refusing to register cases specifically under PoAAct

Police not registered complaints under proper sections of the Act

Police not including necessary details in FIR (facts, figures, words, names of the accused, weapons used, list of other others accused and their details)

Police misleading victims by registering case in the Station Diary instead of in FIR

Police not issuing copy of FIR to victims

At the time of arrest of the accused

Not arresting the main accused immediately

Not arresting all the other accused

Police informing the accused before registering the case

Giving bail and anticipatory bail

Arresting Dalit victims in counter cases instead of the perpetrators of crime

When the Police officials investigates the case

Not investigating the case in time

Investigation is not being done by competent official as mandated

All the victims and witnesses are not investigated during the investigation

Investigation often carried out sitting in the dominant caste locality,

or calling Dalits to police station

Police officials not including all details narrated by victims and witnesses during investigation

Victims not provided with protection during and after investigation

Not informing victims and witnesses about the date and time of investigation officer's visits

In violation of the directives of POA Act, statements collected by lower level officials instead of the DSP who only signs the charge sheet

Recording statements without meeting concerned victims/witnesses in person

Delay in providing documents (post mortem certificate, wound certificate) to the victims

Completing investigation in counter cases faster than in PoA Act cases

When the Police file charge sheet

No corroboration between the statements collected and content of charge sheet

Intentionally deleting sections of SCs & STs [PoA] Act 1989 in charge sheet

Delay in getting legal opinion from prosecution department before finalizing charge sheet

No mechanism in judiciary to monitor filing of charge sheet

Charges framed at variance with information recorded in FIR as well as in victim's statements

Outsourcing the preparation of charge sheet

At the time of trial in the court

No Special Courts / PPs in all districts as mandated by the Act

Inordinate delay in trial

Certain witnesses are not involved on purpose at the time of trial

PPs not briefing, or not giving sufficient time for briefing, to victims and witnesses

No information given to victims/ witnesses about the date and time of trial

Victims and witnesses made to turn hostile

At the stage of Judgment

No appeal from Public Prosecutors in order to follow up of case of acquittals

It is clear that the government agencies and officials, especially the **police**, use all sorts of methods to deter the victims and witnesses from accessing justice. While protection to the victims and witnesses does not come forth promptly and adequately, the Committees and other Mechanisms mandated by the Act do not monitor effectively, or are not activated and used properly. Preventive and precautionary measures are not satisfactorily used. Undue delay and inadequacy in providing relief and rehabilitation to the victims put them in great suffering. In short, willful neglect of duties in implementing the law and collusion with the perpetrators characterizes police behaviour. Such has been the experience of Dalit and Adivasi victim-survivors and witnesses, and their families and community members. Dalit, Adivasi and other organizations and movements as well as field level activists, too, have faced similar problems in their work of accessing justice in support of the survivor-victims and witnesses.

It is in this context that a large number of Dalit, Adivasi and Human Rights organizations and activists came together in 2009 and formed a “**National Coalition for Strengthening of the POA Act**”. This Coalition is a network of around 150 partners from 19 States in India. They critically reviewed the performance of the central and state governments in implementing the Act and realizing its objectives during the past 20 years. The outcome of all their campaign efforts during the past two-and-a-half years was a set of specific and concrete proposals formulated in the light of their field experience and intended to amend the Act with a view to making it strong enough to abolish discrimination and end atrocities in the country.

6. What are the PROPOSED AMENDMENTS to POA ACT, 1989?

1. Proposal to include other offences in the amended POA Act

Innumerable forms of "Untouchability" based discriminatory offences are found even today in the villages and towns in India. Unfortunately, the present Act covers only some of them: obstructing Dalits and Adivasis from entering or cultivating their own land; parading them naked or painting their face and body to humiliate them; preventing them from taking water or visiting a place or entering a building; denying them access to public places;

forcing them to work as bonded labourers or do beggar work; forcing them to vacate their house or village; forcing them to eat or consume inedible or obnoxious substances like human excreta, urine, mud, etc.; obstructing them from voting; dumping waste or excreta in the premises of Dalits and Adivasis; malicious information or suit; inflicting harm or injury on them by physical assaults; burning their place of dwelling or worship; sexually assaulting Dalit and Adivasi women.

There are, however, many other forms of discrimination and atrocities not covered in the present POA Act, as for example, discrimination in educational institutions and in mid-day meal scheme, discrimination in access to public goods & services, discrimination in employment, discrimination in labour organization, discrimination in private and corporate sectors, etc. Moreover, commonly committed offences like hurt, grievous hurt, assault, rape, kidnapping and other offenses listed under IPC, punishable between 7 to 10 years, are not covered in the Act.

It is proposed now, therefore, to bring the following category of offences under the purview of the amended POA Act.

a) Offences which are systemic in nature and repeatedly committed across the country:

- (1) Tonsuring of head, moustache, or similar acts which are derogatory to the dignity of Dalits and Adivasis;
- (2) Garlanding with *chappals* with intention to degrade a person and disrespect him;
- (3) Denying access to irrigation facilities
- (4) Appropriating farm and non-farm produce;
- (5) Fabricating false evidence regarding ownership and use of land, roads, water source, etc;
- (6) Employing, or permitting employment, or failing to prevent the employment of Dalits or Adivasis as manual scavengers;
- (7) Dedicating Dalit and Adivasi women as *devadasi*;
- (8) Employing Dalits and Adivasis to remove human or animal dead bodies;
- (9) Forbidding children to go to schools/colleges and engage them, instead, in farm or other kinds of work in villages, towns and cities;
- (10) Refusing to pay just and equal wages;

- (11) Preventing Dalit and Adivasi candidates from filing nomination to contest elections or forcing to withdraw such nomination, or preventing them from proposing or seconding the nomination of a Dalit and Adivasi as a candidate in any election;
- (12) Obstructing a Dalit or Adivasi elected chairperson, or the holder of any other office of panchayat or municipality, from the normal functioning or exercise of his/her power in such ways as the following: by not handing over the charge, or by not allowing the elected person to enter the office, or by not allowing him/her to sit on the chair in the office, or by interfering in any other manner with his/her official responsibilities, duties and functions;
- (13) Filing counter cases against Dalit/Adivasi victims and witnesses relating to atrocity cases;
- (14) Inflicting caste related humiliation through words or acts in the nature of caste abuse or hate speech;
- (15) insulting the Dalits or Adivasis collectively, by any form of disrespect or disfigurement of community symbols or public spaces;
- (16) Hurting the modesty of Dalit/Adivasi woman by the removal of her clothes or garments, etc;
- (17) Obstructing the use of common property resources;
- (18) Imposing social or economic boycott;
- (19) Ransacking and destroying houses and household items, farm or non-farm produce, landed property etc.;
- (20) obstructing in any manner a Adivasi in enjoying the forest rights as defined under "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006";
- (21) Public servants, not being Dalits or Adivasis and while discharging their duties, committing such offences as custodial death, torture, rape, etc. against Dalits and Adivasis;
- (22) Abetting of offence against Dalits or Adivasis.

b) IPC offences attracting punishment up to seven years to be defined as atrocities under this Act

Presently, only the offences defined in IPC as attracting punishment of ten years or more and committed on Dalits or Adivasis are defined as offences falling under the POAAct.

This formulation has excluded a number of commonly committed offences such as hurt, grievous hurt, assault, rape, kidnapping etc. The exclusion of these crimes from the purview of the present Act creates loopholes for the perpetrators of crime to escape from the strong arm of the law.

It is now proposed, therefore, that all IPC offences attracting punishment from seven years up to ten years and committed against Dalits or Adivasis shall be defined as offences under this Act.

c) Discriminatory practices not included in the Act till now must be listed hereafter

Dalits and Adivasis are subjected to a wide range of "Untouchability" based discriminatory practices, as for example, social disabilities based on "Untouchability" , discrimination in education institutions and mid-day meal scheme, discrimination in access to public goods & services, discrimination in employment, discrimination in labour organization, discrimination in private corporate sector, etc. These must be stopped forthwith; otherwise, when the Dalits and Adivasis protest against such practices and simultaneously assert their rights, there is the likelihood of dominant castes committing atrocities against them.

Hence, ***an amendment to the Act will be required to do two things: (i) to define these discriminatory practices as civil offences requiring civil remedies, and (ii) to deal with such discriminatory practices separately in a new chapter on preventive measures.*** This chapter, therefore, will provide a legal framework for elimination of such discriminatory practices with the ultimate aim of preventing and eliminating atrocities.

2. Proposal to make punishments on par with IPC

Presently, for all the offences under Section 3(1), the Act provides punishment ranging from a minimum of six months to a maximum of 5 years. According to experienced activists, rights organizations and social advocates, both the minimum as well as the maximum quantum of punishment does not match with the gravity of atrocity offences. The minimum is too little for, and the maximum is too lenient on,

the perpetrators. In fact, when one compares the gravity of offences and the quantum of punishment for atrocity offences under the Act and for similar offences under the Indian Penal Code, one notices a wide variance between the two. This big gap strongly argues for a revision of the Act in relation to penalties. Hence, two amendments are proposed:

- (i) Provision of same quantum of punishment for such offences as prescribed in IPC;**
- (ii) Provision of new kinds of punishment (such as compulsory community service to be performed in public in Dalit localities, tendering public apology, etc.) for some of the offences for which one need not think of applying the usual form of punishment with imprisonment.**

3. Proposal to ensure right to speedy trial

Ensuring speedy justice is one of the objectives of the PoA Act. Accordingly, to realize this aim, the present Act mandates Designated Courts and Special Public Prosecutors at district level. But the level of compliance has been disappointing. In a large number of cases, the victims and witnesses have been denied of the benefit of speedy trial and justice. The judicial process had forced them to face various problems, mental depression and financial loss, low morale and loss of faith in governance systems. The following proposals are meant to remedy this negative situation.

- a) Exclusive Special Courts and Exclusive Special Public Prosecutors:** Currently the Act ensures Designated Courts and Special Public Prosecutors to speed up the cases. But the experiences of the victims and witnesses in the court reveal the following: trials are not conducted on a day to day basis; the counter cases and false cases against the victims are not conducted in the same courts; all the witnesses are not called by the PP at the time of the trial; the PPs do not give proper information to the victims and witnesses about the time and place of trial and the status of the case, or do not give sufficient time to brief them, or do not brief them adequately. In addition to these, the PPs are kept busy with handling other cases unrelated to cases

falling under the Act. The negative outcome of all this is undue delays in the trial of atrocity cases and the consequent mental strain for the victims and witnesses and loss of confidence in the administrative and judicial system.

The proposal, therefore, is to provide for Special Courts and Special Public Prosecutors to exclusively try the offences falling under this Act with the specific objective of speedy and expeditious disposal of cases.

- b) **Expanding the powers of Special Court to directly deal with the atrocity cases:** The current practice is that the atrocity case first goes to the Magistrate Court before remitting to Special Court. This consumes a substantial time before the start of trial. The lacuna here, therefore, is that the Special Court becomes devoid of powers to directly deal with the offence.

To address this lacuna, it is proposed that the powers of the Special Court be specifically expanded to immediately and directly deal with the offences falling under the purview of this Act.

- c) **Time frame for Trial:** Currently the Act provides for a 30-day time-frame for completion of investigation only. *Now it is also proposed to introduce 120 days of time-frame for completion of trial in order to ensure speedy justice to the victims.*

4. Proposal to recognize rights of victims and witnesses

As of now, the Act & Rules recognize to some extent the rights and entitlements of victims and witnesses, as for example: a free copy of the recorded information [FIR]; immediate relief in cash or in kind; necessary protection to the witnesses; relief in respect of death/injury/or damage to property; entitlement of food/ water/ clothing/ shelter/ medical aid/ transport facilities/ daily allowance; maintenance expenses to the victim and his/her dependents and witnesses; etc.

But the following rights and entitlements are not available to the victims and witnesses: right to information about their rights at the time of making complaints and registering FIR;

right to protection from intimidation and harassment; right to information on status of investigation and charge sheet; rights proper to and at the time of medical examination; right to information regarding compensation; right to be informed in advance of the dates and place of investigation and trial; right to adequate briefing on the case and preparation for trial; right to information about getting legal aid; right to get experienced PPs, even PPs of their choice, appointed; right to obtain copies of documents such as charge sheets/medical documents/*panchnamas*; right to receive relief, compensation, traveling allowance, rehabilitation; right to periodic enhancement of such monetary assistance; etc.

A separate chapter, therefore, on the Rights of Victims and Witnesses is proposed to be included in the Act by covering the rights listed above.

5. Proposal to delete such words as 'intent', 'intention', 'willful', 'public place', 'on the ground' etc

Experience has shown that such terms as 'intent', 'intention', 'willful', 'public place', and "on the ground" contained in certain sections of the present Act have given the enforcement officials and judicial officers a leverage to help the accused escape the sanctions of the Act. For example, police officials do not register the victim's complaint immediately under the Act arguing that they could do so only after verifying that the atrocity had taken place 'on the ground' of the victim being Dalit or Adivasi. Similarly, either the police do not register the complaint on the pretext that it is not an act/crime that qualifies 'intentional' insult/intimidation or 'intentional' act to humiliate the victim; or, at later stage they do not file the charge sheet on similar reasoning. They do not even file the charge sheet under the Act by arguing that the accused would not have abused or would not have called the victim by caste name while committing the offense. Even lower Judiciary is not exempt from this kind of interpretation of these terms, and accordingly acquits the perpetrators on these grounds only. A similar trend is also observed in judgments pronounced by various High Courts.

It is proposed, therefore, to delete the terms 'intent', 'intention', willful', 'public place' and 'on the ground' etc

6. Proposal to list dereliction of duties by government officers

Section 4 of the present Act does not clearly define as to what constitutes '**willful negligence**' by public servants. The survivor-victims, activists and rights organizations speak of the police and government administration adopting several ways to neglect their duties. The police are found to dilute the spirit of the Act at every stage - from non-registration of case, failure to investigate according to due process of law, not filing charge sheet in court at stipulated time, not supplying relief and compensation to the victims, not providing protective and preventive measures etc. up till the judicial process. Since these aspects of negligence are not specifically mentioned in the Act, the enforcement officials easily find loopholes to escape from the duties imposed on them by the Act.

It is proposed, therefore, to clearly define the term 'willful negligence' at all levels, starting from the registration of complaint, and bring all aspects of dereliction of duty under this Act. The list below contains various possible acts of non-observance of law by the police and other government officials. These acts must be considered as 'willful negligence' under the Act. Conversely, they must be seen as duties enjoined on them as obligatory and, therefore, liable to invite prosecution and punishment under the Act.

- (1) not putting down accurately in writing by the Officer in-charge of the Police Station the information on atrocity provided by the Dalit/Adivasi victim-complainant;
- (2) not reading out to the informant or victim-complainant what has been recorded prior to getting his/her signature;
- (3) not registering the First Information Report under the Act and not registering it under appropriate sections of the Act;
- (4) not furnishing copy of the information to the informant or victim-complainant;
- (5) not recording the statement of the victims or witnesses;
- (6) delay in investigation for more than 30 days, unless the delay is satisfactorily explained and approved by the Court;
- (7) delaying the filing of charge sheet;

- (8) not providing immediate relief, protection, compensation and rehabilitation measures;
- (9) not correctly framing or translating documents or electronic records;
- (10) misguiding the complainant to change the content of the complaint;
- (11) not treating politely the complainant, or any social worker, or any person voluntarily helping the victim in any manner regarding the case in hand;
- (12) the police or the concerned officer not furnishing true, correct and adequate information on the case and within his/her purview and responsibility.
- (13) registering false case against victims/witnesses
- (14) arresting or confining victims/witnesses illegally;
- (15) intentionally supporting perpetrators to escape, thereby undermining investigation and prosecution;
- (16) intentionally or knowingly omitting to execute summons or warrant so as to help the accused to abscond.
- (17) Neglects any duties required to be performed under this Act and Rules

7. Proposal to establish a National Authority to monitor implementation of the Act

In the light of experiences of Dalit rights activists and their organizations, one notices lack of adequate and effective mechanism to monitor the implementation process of the Act and to keep vigilance on special officers mandated to implement it. Other official bodies authorized to monitor the execution of the Act - the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Human Rights Commission, National Commission for Safai Karmacharis, National Commission for Women and their State counterparts - are not autonomous to make them function efficiently. Hence, they are unable to effectively monitor the operation of the Act independent of the government and its various administrative bodies. Furthermore, the active involvement of civil society bodies as well as Dalit and Adivasi community is also lacking as regards effective and close monitoring and vigilance.

It is proposed, therefore, to establish a new and effective institution, that is, a National POA Authority that would monitor and ensure proper and effective implementation of the Act. Two reasons compel the setting up of this institution: first, the need for freedom from government interference and the need for easy access and interaction of civil society bodies and Dalit and Adivasi community representatives necessitate a separate institution that will uphold the principles of autonomy/independence, equity, justice and fairness; secondly, the institution could have a broad mandate to cover all possible incidents of discrimination based on caste and tribal identity. Existing institutions have not been able to comply with these requirements. A normative principle underlying the functioning of this National POA Authority will be its independence from the functioning of existing monitoring and vigilance committees as per the provisions of the current version of the Act.

8. Proposal to widen the scope of the definitions given in the Act

- a) Extension of the Act to those victims who for technical reasons are left out from the present POA Act:** Although the present POA Act is said to cover all SCs and STs, in reality its scope is limited in two respects as far as its population coverage is concerned:
- (i) At present all Dalits who, or whose forefathers, have changed their religious affiliation to Christianity or Islam, and are still subjected to the same kinds of atrocities, are not covered under the purview of this Act. It must be underlined here that the atrocities on them are inflicted not because they profess a particular religion, but because they belong to a particular caste or ethnic community.
 - (ii) If a person/s belonging to Dalit or Adivasi community is listed as such officially in a particular State, and then happens to migrate for the purpose of labour and livelihood to another State where his/her particular caste is not included in the list of Scheduled Castes/Tribes of that State, that person/s will not come under the purview of the present Act.

That these two categories of persons are deprived of their legitimate rights under the present POA Act only because one changes his/her religion and another migrates for labour/livelihood purposes is a clear anomaly requiring a just and fair legal remedy.

Hence, ***it is proposed that offences committed against a person whose ancestors were members of Dalit and Adivasi community at any point of time in any State shall also fall under the Act.*** In particular, this proposal will cover (i) offences committed against SCs and STs who migrate to other States irrespective of the SC/ST Schedule in operation in those States; (ii) offences committed against those SCs/STs who or whose ancestors had converted themselves to Christianity or Islam and who continue to suffer caste based disabilities and atrocities as before and similar to those suffered by SCs/STs who had not changed their religious affiliation.

b) Addition of new definitions as per the proposed new amendments: In relation to all the amendments proposed above, it is proposed that such terms as the following must be defined in the amended Act: 'victim', 'witness', 'social and economic boycott', 'negligence of duties', "discrimination", etc.

*We want our own people,
people who will fight tooth and nail for our interest
and secure privilege for the under-privileged;
people who will undo the wrongs done to our people;
people who will voice our grievances fearlessly;
people who can think, lead and act;
people with principles and character...
We must send such people to Legislatures
who will be slaves to none but remain free to
their conscience and get our grievances redressed.*

-Dr. B. R. Ambedkar

**Dear Reader,
Now that you have read this important booklet,
don't you want to join this campaign?**

***“No more Untouchability!
End Atrocities!!
Chuwachat Athyachar Khatam Karo!!”***

WHAT YOU CAN DO?

Create public opinion against the shameful practice of "Untouchability" against SCs and make a call to abolish it!

Voice against the abhorrent crime of atrocities against SCs/STs and demand for its total end!

Put pressure on your MPs & MLAs, Central & State Govts and Political Parties to immediately amend the present PoA Act & Rules and include new provisions in order to make the Act & Rules strong and make its implementation effective!

You may be an MLA, MP or *Panchayati Raj* office bearer. You may be a village *mukhya* or elder of the community. You may be a journalist, artist, government official, or police official. You may be a shopkeeper, businessman, vegetable vendor. You may be a student, school teacher, college lecturer. You may be a farmer or labourer....

Whoever you are, your status is not so important as your interest in the human rights of Dalits and Adivasis, your commitment to their welfare as citizens of India, and your motivation to defend and protect their rights and entitlements ensured by the PoA Act & Rules.

1.1. In your village: What you can do - immediately

Identify every form of "Untouchability" practices committed against Dalits but are not covered under the present PoA Act.

Make copies and distribute this booklet to as many Dalit community members and others as possible.

Print handbills on this campaign's theme and distribute them to as many persons as possible; similarly, prepare posters and paste them in key places; make digital flexi boards and display them in crowded city centre's; print stickers and badges and distribute them to as many persons as possible; etc.

Engage the people of your village in frequent public debate/discussion in small groups and in large gatherings so as to create awareness of the importance of the Act, of the need to use this Act as and when required, and of the necessity of amending the Act so as to make it more relevant, more effective and more beneficial to all SCs/STs.

Organize rallies and dharnas with a strong demand to amend the PoA Act so as to make it comprehensive and strong, and to make it a powerful deterrent against caste-based and anti-ethnic law breakers.

Invite Dalit and women's organizations, Dalit and human rights activists, Dalit women and other women activists working in your village or your neighborhood or your district, and ask them to organize, and join in organizing, awareness camps on the PoA Act & Rules and on the necessity of amending the Act and Rules and making them updated.

Interact with Dalits of your village and write representations to the President of India /Prime Minister/Governor/Chief Minister/MPs/MLAs/concerned govt. officials calling them to make India a nation of zero atrocity against SCs/STs before 2020.

1.2. In your village: What you can do - now and in course of time

Interact regularly with the Dalit families/Dalit settlements/victims and survivors in your village and in neighborhood villages, and find out the prevalent "Untouchability" practices and caste discrimination in these villages.

Contact and interact with the victims and witnesses of atrocity cases in your village and in neighbourhood villages, organize them as a group, and interact with the enforcement officials regarding the needs, problems and interests of the victims and witnesses of atrocity cases. Ask the officials what action they will take to remedy the situation of rising number of atrocities and inadequate government response to abolish discrimination and end atrocities?

Engage the people of your village in frequent public debates/discussions in small groups and in large gatherings on the problems arising at the time of registering complaints, at the time of investigations, trial etc.

2.1. With your MLAs & MPs- immediately

Give him/her a few copies of this booklet and ask him to read it and discuss the content with his party members for the benefit of Dalits and others in his/her constituency.

Ask him/her to speak about the PoA Act and the required amendments in party forums so as to have them debated in Parliament/Legislative Assembly resulting in amendments in the Act.

Initiate a dialogue with the MLAs and MPs of your constituencies and ask them:

- *to speak at important events outside the Assemblies/Parliament concerning the issue of atrocities and the need for strong and effective implementation of the PoA Act.*
- *to raise questions in the State Legislative Assembly/Parliament on the status of enforcement of the PoA Act and on the proposed amendments to the Act;*
- *to pledge their support to the campaign on the proposed amendments through their active participation in the campaign;*
- *to write to the local media on people's behalf regarding the proposed amendments.*

Keeping the issue of atrocities and implementation of the Act in mind, ask your MLAs/MPs to write to the concerned department or officials, send letters to the appropriate Cabinet Minister or make personal appointment with the Cabinet Minister to discuss and convince him/her regarding the critical issue of introducing amendments to the Act in Parliament.

2.2. With your MLAs & MPs - now and in course of time

Write representations to your MLAs whenever you come across incidents of atrocity against Dalit or Adivasis within their constituencies.

Ask your MLAs/MPs to also lead fact-finding delegations in order to examine and report atrocities of human rights against Dalits and Adivasis in their constituencies.

3. With Political Parties(with you having membership or not)

Ask the leaders of political parties to make the “Amendments under the PoA Act” a national agenda and a priority within their Political Parties. Ask them to individually use their powers and privileges to advocate for amendments in the Act through their party forums, Legislative Assemblies, and Parliament.

Ask them, if they are the Ruling Party, to make their State/Central Cabinet discuss this issue of amendments and bring them to discussion in the State Legislatures/Parliament.

Ask them, if they are in the Opposition Party, to raise this issue of amendments in the State Legislatures/Parliament.

Ask them to give their views recorded in the print and electronic media.

Ask them to write lead articles in their party newspapers/ journals, and in the national and regional dailies/journals.

4.1. With the Enforcement Officials- immediately

Elicit the support of the enforcement authorities concerned with SCs & STs (PoA) Act 1989 for establishing partnership and for cooperating with village leaders and civil society organizations committed to Dalit & Adivasi rights regarding the proper and effective implementation of the POA Act & Rules.

Ask them to discuss with the political authorities in governance the urgent need of the proposed amendments in the light of the experiences and the problems faced by the Dalit/Adivasi victims and witnesses and their respective communities at all levels.

4.2. With the Enforcement Officials - now and in course of time

Meet the enforcement officials, together with Dalit/Adivasi representations, and ask the DM/Dy. S.P/S.P/S.S.P to regularly keep an eye on atrocity incidents and visit the place of occurrence immediately to assess the extent of atrocity, loss of life, loss and damage to property and livelihood, and do registration and proper investigation of the cases.

Ask them to submit regularly their mandatory reports to the respective State Government.

5.1. With Print and Electronic Media (national and regional)– immediately

Cultivate influential contacts with journalists and provide them with the latest and useful data on atrocities and pass on to them the proposed amendments to the POA Act for publication.

Arrange press conferences whenever public events are organized regarding the proposed amendments to the PoA Act.

Look for well-known academicians who can write lead articles in the regional and national dailies regarding the PoA Act and the proposed amendments, and provide them with necessary data and documents to make their work easy and productive.

Approach media agencies with suggestions to make documentary films on the problems which SC/ST victim-survivors had faced while asserting their rights at the time of filing complaints/FIR/trial etc, and thereby highlight the gaps in the SCs & STs (PoA) Act 1989 requiring legislative amendments.

5.2. With Print and Electronic Media – now and in course of time

Provide journalists regularly with credible data and incidents of atrocities to be published as news coverage and articles in the regional and national media

Make arrangements to take the journalists to the scene of atrocity crimes immediately and encourage the victims and witnesses to speak to them fearlessly and forthrightly.

Cultivate good relationship with media agencies and write topical articles related to atrocities against Dalits/Adivasis, right to life and security, POA Act, etc.

Write regularly in the 'Letters to the Editor' column expressing your opinions on issues related to Dalit/Adivasi rights.

For contact regarding information and campaign activities at national level, approach:

**National Coalition for Strengthening SCs & STs (PoA) Act
Secretariat: National Dalit Movement for Justice (NDMJ)**

8/1 3rd Floor, South Patel Nagar, New Delhi – 8

Tel: 011-45009309; Tele Fax: 011-25842251 & 25843589:

Web site: www.ncdhr.org.in

Why this National Campaign?

- *Scheduled Castes (SCs) and Scheduled Tribes (STs) are the worst affected in terms of atrocities covered under the SC/ST (PoA) 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.

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