

# SECTION – I

## VIOLENCE: THE SOCIAL EDIFICE

Organised violence directed against members of identified groups/communities has been a distinct feature of the Indian society for quite sometime. Though violence does take place in the process of change in many societies, and particularly so when radical alterations take place in the existing social and power relations, it usually does not choose its victims on the basis of birth in a given social entity. In India, however, this is precisely what has defined the character of violence in relation to certain groups. The country has witnessed increase in both caste and communal violence since independence which the processes of modernization have not abated. Rather, in some respects, it has been intensified by them. While communal violence is a relatively recent phenomenon rooted in the events leading to partition, caste violence has a much longer history and a firmer anchorage. It also has the distinctiveness of being embedded in the social structure of the dominant community itself which lays down the norms of conduct between its more privileged groups and the subdued and subordinated segment. It is this age old caste relationship in Hindu Society which is getting disturbed by pressure of forces both from above and below. The frequency and intensity of violence is an offshoot of desperate attempts by the upper caste groups to protect their entrenched status against the process of disengagement and upward mobility among lower castes resulting from affirmative action of State Policy. The violence takes brutal forms and turns into acts of atrocities against a whole group of people, such as massacre, rape, burning of houses and through more subtle methods like social boycott, which are intended to block their access to basic necessities and services. This phenomenon has to be positioned in the larger perspective of State-Society dynamics in order to understand why it happens and how it can be checked.

The target of caste violence is largely the people belonging to the lowest rung in the hierarchy of Hindu social order, who are known as the 'untouchables', or Scheduled Castes bound to the rest of the caste society in immutable relationship of rights and obligations. The practice of "untouchability" characterises this relationship. The emergence of untouchability in the caste based social order has a complex history with little consensus or clarity on its origin<sup>1</sup>. While some have attributed it to the growth of agricultural civilization in the country and the emergence of agricultural castes, who

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<sup>1</sup>Naval, TR, Law of Prevention of Atrocities on Scheduled Castes and Scheduled Tribes (2000), p. 4-7

needed assured access to manual labour<sup>2</sup> for agricultural operations, others have traced its genesis to expansionist phase of Indian civilization which led to the conquest of indigenous inhabitants and their consequent enslavement by the Aryans. The 'shudras' in the social hierarchy towards the end of the Rig Vedic period represent these enslaved persons who were assigned inferior status, which was related to their birth in that community<sup>3</sup>. Whatever be the explanation of its origin, the institutional structures which governed social conduct in the society are subsumed under the nomenclature of 'Caste System', which broadly represents a vertical arrangement of social division of the Hindu population into four major groups, known as 'Varnas'. At the top of this arrangement are the Brahmana (priestly class), followed by 'Kshatriya' (the warrior class), and 'Vaishya' (trading and artisan class). 'Shudra' (labouring and service class) stood at the bottom of hierarchy<sup>4</sup>. The 'untouchables' were not a part of this Scheme. However, over a period of time, the exigencies of situation led to the addition of a Fifth group to this classification which was not given any 'caste status' as such, but nonetheless integrally linked to the social order and is referred to as 'untouchables' or 'outcasts'. The membership of this group was determined by birth and could not be changed by individual effort or social acceptance. These four 'Varnas' subsequently transformed/got divided into hundreds of sub-castes, known as 'jati', each 'jati' having its own norms of social conduct. The caste structure is characterised by six important features<sup>5</sup>:

1. Segmented division of Society,
2. Hierarchy,
3. Restrictions on feeding and social intercourse,
4. Lack of unrestricted choice of occupation,
5. Civil and religious disabilities and privileges of different sections, and
6. Restrictions on marriage

The segmentation of society into four groups represents a tightly divided arrangement, of both status and occupation which is linked to each other in a hierarchical relationship. Brahmins occupy the top slot in the hierarchical ladder and 'untouchables' the bottom. As the caste hierarchy operates around the concepts of 'purity' and 'pollution', 'untouchables' are considered as the most degraded because they perform polluting tasks. The restrictions on feeding and social intercourse incorporates code of conduct for each caste on what one can see and cannot see, what one can and cannot touch and what can or cannot be accepted by a person of one caste from a person of another caste. Restrictions on occupation are intended to prevent any destabilization of hierarchy<sup>6</sup>. Civil and religious disabilities mandate 'untouchables' to live at a distance from the main village, not to

<sup>2</sup>Krishnan, PS: Keynote address delivered at the National seminar on Implementation and Impact of SCs/STs (Prevention of Atrocities) Act, 1989 on the Scheduled Castes organised by Centre for Social System, School of Social Sciences, JNU, March 22-23, 2000.

<sup>3</sup>Naval, op. cit., p. 4

<sup>4</sup>Human rights Watch, Broken People, Caste Violence against India's untouchables, 1999; p. 25

<sup>5</sup>Ghurye, G.S. quoted in Bhopal Document - Chartering a New Course for Dalits for the 21<sup>st</sup> century, Government of Madhya Pradesh-March 2002, pp 16-17

<sup>6</sup>Bhopal Document, op. cit., p. 16

draw water from village well, enter the village temple, wear the sacred thread, acquire education or recite the religious texts. Untouchables are required to undertake the most polluting and degrading occupations, such as cleaning filth, including human excreta, flaying dead animals, digging graves, etc. The absolute restriction on marriages outside the caste and, in fact, even sub-castes ensures that there is no mobility from one group to another. Thus, the untouchables face total segregation in all matters, subjected to acute discrimination, do the most menial and degrading jobs and have no right to change their status. The transition from caste disabilities to commission of atrocities, has been traced to 3<sup>rd</sup> and 4<sup>th</sup> Century A.D. when varna system faced crisis of deviations from the prescribed social conduct and the need was felt for coercive measures to enforce caste discipline and boundaries. The King emerged as the Upholder of the system. Those who violated the system were subjected to secular punishment as well as performance of various rituals<sup>7</sup>. This is how physical violence by higher castes on the lower castes was sanctified. This situation continued for centuries. The persons of suppressed communities acquiesced in this arrangement, as there was no option for them to escape from it. Perhaps they may have been made to believe that life in the next birth may be better if discipline imposed by existing status is adhered to.

During the medieval period some saints, Kabir, Nanak, Ravidas were critical of existing social order and preached a religion of love, compassion and consideration and a more tolerant social arrangement. But there was no protest against the caste system and its social ramifications as such. The prevailing laws continued to support the caste system and the rulers upheld them. During the Muslim Rule in India, some people from the suppressed communities might have converted to Islam as a way out of their degraded status, but there is no evidence that the Muslim rulers ever tried to interfere with the Hindu caste system or reform it. Their strategy of governance may have prevented them from doing so. The British established the rule of law which was based on a concept of equality. The law applied to all persons irrespective of their position. This was a major departure from the pre-British judicial system where caste distinctions were not only recognized but also enforced and differential punishment was awarded, for the same offence, depending on the caste status of the offender. In any case, the suppressed castes neither had the courage nor resources to seek any relief under the new system. But even in the British period caste distinctions remained relevant in matters relating to Hindu Law. The general features of the legal system did not change the status of lower castes, as the overall British policy remained one of non-interference<sup>8</sup>. In matters such as entry to temples, ritual pollution and rights to exclusiveness, the Courts supported the customary laws of Hindus and their view was upheld even at the level of Privy Council. There was, however, some difference in the attitude of Courts towards secular public facilities such as streets and roads where such disabilities were not enforced. However, the Courts did not provide any support for removing caste disability in matters which came up before their consideration<sup>9</sup>.

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<sup>7</sup>Naval, op. cit., p. 10

<sup>8</sup>Naval, op. cit., p. 13

<sup>9</sup>Naval, op. cit., p. 15

On a social plane, the period witnessed many reform movements in Hindu Society, such as Brahma Samaj, Prarthana Samaj, Arya Samaj, Ramakrishna Mission, Theosophical Society, the Social Conference which attacked the caste system and some other features of Hindu social order. These movements, while supporting the four varnas, condemned the inhuman practice of untouchability. Later, during the freedom movement, Gandhiji contributed a great deal towards abolition of untouchability and later founded the All India Harijan Sangh for this purpose. In south, self-respect movement was launched against Brahminical tyranny. It was Dr. Ambedkar, who took up the fight against caste oppression more vigorously through the All India Depressed Classes Federation. Around 1909, the issue of untouchability acquired political significance when proposals were made for special legislative representation for untouchables. In 1917 the Congress passed anti-disabilities resolution. In the 1930s anti-disabilities bills were introduced in Central Legislative Assembly, Madras and Bombay Legislatures. In 1938, Madras Legislature passed the first comprehensive law to remove social disabilities making it an offence to discriminate against the untouchables. In fact, in the publicly supported facilities, such as roads, wells, transport vehicles, etc. as also in other secular institutions, such as restaurants, hotels, shops, the law also prohibited judicial enforcement of any customary right or disability. This was followed by similar legislations in other provinces. Later, initiative was also taken by Madras to facilitate temple entry for Scheduled Castes by making it a criminal offence for any person to prevent any Hindu from entering or worshipping at any temple. Similar Acts were passed in other provinces later<sup>10</sup>.

However, the British Government never took positive action to improve the condition of shudras and untouchables and to remove their disabilities. Apparently, the larger consideration of consolidating their rule prevented them from interfering with the customary practice associated with indigenous religions. Thus, at the time of independence, the traditional status of untouchables and caste disabilities, which prevented them from leading a life of dignity and self-respect continued to prevail. It was, therefore, left to the Constitution of India after independence to make the first comprehensive break with the past and to pronounce the policy of abolition of untouchability and declare total equality for the shudras and untouchables in Indian society. The Constitution also laid down means to achieve these objectives.

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<sup>10</sup>Naval, op. cit., p. 16

## SECTION – II

### COMMITMENT TO EQUALITY: STRATEGY AND APPROACH

The Scheme of the Constitution reflects a three-pronged strategy for changing the status of Scheduled Castes [and the Scheduled Tribes] based on the traditional social order. This consists of:

- (a) Protection: Legal/Regulatory measures for enforcing equality and removing disabilities; Providing strong punitive action against physical violence inflicted on them; Eliminating customary arrangements which deeply hurt their dignity and person; Preventing control over fruits of their labour and striking at concentration of economic assets and resources and setting up autonomous watchdog institutions to safeguard interests, rights and benefits guaranteed to them.
- (b) Compensatory discrimination: Enforcement of reservation provisions in public services, representative bodies and educational institutions.
- (c) Development: measures to bridge the wide gap between the Scheduled Castes and other communities in their economic conditions and social status, covering allocation of resources and distribution of benefits.

This strategy was subsequently operationalised in the State policy and the commitment to this policy has been a feature of Indian State ever since. The policy has been strengthened and revised and its ambit made wider from time to time.

As regards the protective arrangements, to begin with, the Constitution itself has provided an elaborate framework for eliminating those customs, practices, or institutional arrangements, including provisions in laws, if any, which tended to sanctify and reinforce untouchability practices and other discriminatory and degrading conditions imposed on these communities. Laws were made to operationalise these provisions. For example, **The Untouchability Practices Act, 1955** was enacted in pursuance of Article 17 of the Constitution. This was subsequently strengthened and amended in 1976 and rechristened as **Protection of Civil Rights Act** to make it more effective. Later, as a result of implementation of State policies, when there was spurt in physical violence against members of Scheduled Castes and Scheduled Tribes, leading to brutalities such as mass murder, rape, arson, grievous injuries, etc. enactment of a special law for their protection was resorted to known as **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989** to provide for strong punitive measures which could serve as a deterrence.

Additional laws were enacted from time to time to protect Scheduled Castes and Scheduled Tribes from sanctions of any customary laws and enforcement of degrading and humiliating practices imposed on them. **The Employment of Manual scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**, which eliminates the most degrading practice of manual scavenging of human excreta by members of Scheduled Castes, is the most important among them. The other practice sought to be stopped related to sexual exploitation of SC girls. Andhra Pradesh and Karnataka enacted **laws to eliminate practice of Devdasi system** which sanctified a customary practice of dedicating a young girl from the SC community to the local deity which virtually resulted in her sexual enslavement. Maharashtra already had a law enacted in 1934 on the subject.

Laws were also enacted to prevent employers from appropriating fruits of labour, denying freedom of choice and resorting to other forms of exploitation of persons employed by them, though their focus was not confined to members of these communities but extended to all those who came within their ambit irrespective of their caste or social background. These labour laws, in any case, have impact on Scheduled Castes more than any other group in society by virtue of their poor economic conditions and low social status. Prominent among them were the **Bonded Labour System (Abolition) Act, 1976, Minimum Wages Act, 1948, Equal Remuneration Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979.**

Laws were also enacted and arrangements made to strike at concentration of productive assets and economic resources in caste Hindus. In this category were included **Land Reforms laws** aimed at redistribution of land to SCs/STs and other rural poor and **debt relief legislations** for regulating credit transactions and checking usurious money lending.

The second part of this strategy relating to compensatory discrimination is reflected in making provisions for reservation of posts in public services through recruitment and promotion, reservation of seats in Legislative bodies at the Central, State and Panchayat Raj institutions and Municipal bodies, reservation of seats in admission to Educational and Professional Institutions, including relaxation of eligibility qualifications. This was done with a view to ensuring that members of these communities have their share in positions of power and decision making as also access to opportunities for higher education. It was felt that in open competition they may not be able to obtain their legitimate share because of their accumulated disabilities over centuries. These provisions had the intended objective of bridging the vast gap that existed between these groups and the rest of the society in these areas.

The third part of the strategy related to focused and comprehensive development of Scheduled Castes/Scheduled Tribes which was operationalised through allocation of funds and earmarking of benefits under various development programmes for members

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<sup>1</sup>National Commission for Scheduled Castes and Scheduled Tribes. Sixth Report 1999-2000 and 2000-2001, p. 30



of these communities in order that they improve their economic conditions as a route to upward mobility. This was sought to be achieved by creating a mechanism within the planning process through which a specified percentage of budgetary resources could be earmarked for the benefit of these communities. In respect of Scheduled Castes, this is known as the **Special Component Plan**, which laid down that the concerned agencies should prepare a separate plan for development of Scheduled Castes by allocating a percentage of resources, which is at least equivalent to the percentage of their population in the State and the Centre, as the case may be. These resources would be exclusively devoted to taking up programmes and activities which directly improved their economic conditions. This provision was further strengthened by allocation of certain resources directly by the Central Government known as **Special Central Assistance** to be used for this purpose in addition to the earmarked funds under the Special Component Plan<sup>1</sup>. As a corollary to this arrangement, the State policy also mandated that in various development programmes which have a beneficiary orientation, it should be ensured that the number of beneficiaries belonging to Scheduled Castes (as also Scheduled Tribes) should at least be equivalent to the percentage of their population so that implementing agencies do not produce any alibis or resort to manipulation to deprive these communities of their share of benefit. In certain programmes where the gaps between Scheduled Castes (the same applied to Scheduled Tribes) and the rest of the community is excessively large, special arrangements are made to bridge this gap by way of additional resources allocation and through special institutional arrangements. Some of the areas qualifying for this dispensation are extension of literacy, poverty alleviation, land allotment for housing and cultivation, etc.

With the elaborate arrangements to protect SCs, it was necessary to monitor whether benefits were reaching the targeted communities and safeguards were getting enforced. Therefore, laws were made to set up watchdog institutions to look after this task. Four such institutions have been set up. While the National Commission for SCs and STs has been set up under the Constitution itself, National Human Rights Commission, National Commission for Women and National Commission for Safai Karamcharis were creation of separate Acts, i.e. Protection of Human Rights Act, 1993, National Commission for Women Act, 1990 and National Commission for Safai Karamcharis Act, 1993 respectively. National Human Rights Commission and National Commission for Women cater to complaints of all sections of society irrespective of caste within their specified mandate.

It is evident from the foregoing that State clearly recognized that the violence, overt and covert, inflicted on the Scheduled Castes was rooted in the social structure and relations, which condemned them permanently to a life of indignity and social subordination. The three-pronged strategy referred to above would gradually help to eliminate conditions which lead to this violence and over a period of time promote equality in society. Thus, the elaborate constitutional framework and the meticulously crafted state policy flowing from it, refined over a period of time as experience was gathered, was a conscious attempt at social engineering. It also emerges unequivocally that in this process of altering social relations, State had a very crucial, rather decisive,

role to play. This role, without doubt, had to be exercised through a conscious and positive tilt in favour of these marginalized and disadvantaged communities whenever pitted against formidable high caste groups, since the former would be too powerless to take on the fight on their own for a long period of time. It was, therefore, hoped that institutions of the State-the Executive, the Legislature and the Judiciary would positively respond to the letter and spirit of the constitutional scheme as well as the State policy. Lest the Government apparatus acts in an indifferent or biased manner, special watchdog bodies were also created to ensure that commitment to this policy and institutional arrangements created for this purpose are not deviated from. Embedded in this strategy was also the cherished hope and idealistic vision that the larger Hindu society would also get transformed under the thrust of a liberal and humanistic polity and democratic process which would characterise its operations. In this manner, support base for this effort at social engineering would get widened leading to a positive change in the attitudinal and behavioural response of other communities towards these oppressed groups and their consequent mainstreaming of the latter as equal members of society.

In the sections of this paper which follow, it shall be examined whether the intended objectives of this three-pronged strategy were realized and whether the violence inflicted on Scheduled Castes, silently through disabilities, discriminations, biases and continuing untouchability practices, and overtly through physical assault in the form of heinous crimes like murder, rape, arson, etc., to enforce the caste based social order has been reduced and, if this has not happened, what went wrong with State policies and their implementation. We shall also examine in brief whether the inherent hope that the larger Hindu society would support these measures to rid of its obnoxious traditions and usher in a liberal, humanistic, and democratic society eager to catch up with the developed world was sustained and whether State-Civil society interface on this issue displayed the required harmony.



## SECTION – III

### SOCIAL JUSTICE: THE LEGAL INSTRUMENTS<sup>1</sup>

#### FOUNDATION: THE CONSTITUTIONAL SCHEME

The Constituent Assembly debates recognized that a section of people in Indian Society had been denied certain basic rights since ancient times and had therefore remained economically, socially and educationally backward. As a result, this had created widespread disparities between them and the rest of the society and a situation had emerged which underlined the need for special measures to uplift their status. This understanding is clearly reflected in the Constitution itself where a chapter under the title “Special provisions relating to certain classes” in Part-XVI has been incorporated. Special provisions have also been made for the Scheduled Castes and Scheduled Tribes in Part-X of the Constitution. The Constitution provides for protection and promotion of their social, economic, educational, cultural and political interests to remove the disparities and to bring them on par with other sections of the society. In addition, many articles in Parts III, IV, IX, IX- A, Fifth and Sixth Schedule of the Constitution reinforce these arrangements.

**Article 14** provide that States shall not deny any person **equality before law** or the equal protection of laws within the territory of India. **Article 15** operationalises the concept of equality in a manner which specifically touches upon the conditions of the Scheduled Castes and Scheduled Tribes. It says:

1. The State **shall not discriminate** against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to -
  - (a) access to shops, public restaurants, hotels and places of public entertainment; or
  - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3. Nothing in this article shall prevent the State from making any special provision for women and children.

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<sup>1</sup>Sixth Report of the National Commission for SCs/STs, op. cit., Chapter II, pp 8-17 may be seen for more details on the Constitutional provisions

4. Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The Constitution also contains provisions which **guarantee certain minimum rights** for all its citizens and also specifies duties which the State should discharge for social and economic development of backward classes, specially Scheduled Castes and Scheduled Tribes. The rights of the citizens are guaranteed under the Chapter on Fundamental Rights contained in Part-III of the Constitution. The duties of the State are included in the Chapter on Directive Principles of the State Policy.

**Article 46** under the Directive Principles of State Policy provides that “The State shall promote with special care, the **educational and economic interest of weaker sections** of the people and in particular of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”.

**Article 366 (24)** defines Scheduled Castes and **Article 341** identifies the process through which such groups will be identified. Similar provisions have been made for Scheduled Tribes in **Article 366(25)** and **Article 342** respectively.

The Constitution provides **various safeguards** to implement objectives enshrined in the preamble to the Constitution. These safeguards include social, economic, educational, cultural, political and service.

**Social safeguards** are contained in **Article 17, 23, 24** and **25(2)(b)** of the constitution. As per **Article 17, untouchability is abolished** and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability has been made an offence punishable in accordance with the law.” Two important legislations have been enacted to give effect to contents of this article. The **Protection of Civil Rights Act, 1955** has been enacted with the objective of providing punishment for preaching and practice of untouchability, in the enforcement of any disability arising therefrom and for matters connected therewith. **Article 25(2)(b)** provides that **Hindu religious Institutions** of a public character **shall be open** to all classes and sections of Hindus. The term “Hindu” includes persons professing Sikh, Jain, and Buddhist religions. This provision strikes against the opinion held by some sects of Hindus that members belonging to Scheduled Castes / Scheduled Tribes have no right to enter the temples. **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989** seeks to prevent the commission of offences against the members of Scheduled Castes and Scheduled Tribes.

**Article 23 prohibits traffic in human beings** and ‘begar’ and forced labour in any form and contravention of this provision has been made an offence punishable in accordance with law. In pursuance of this Article, **Bonded Labour System (Abolition) Act, 1976** has been enacted and a special programme for identification of bonded labourers, their liberation and rehabilitation has been in existence to operationalise its provisions. While this Act does not specifically mention Scheduled Castes and Scheduled Tribes, it is of special significance for them because majority of the bonded labour belongs to Scheduled Castes and Scheduled Tribes.

**Article 24** provides that **no child below the age of 14 years shall be employed** to work in any factory or mine or engaged in any hazardous employment. There are Central and State Laws to prevent child labour practices and providing relief to those engaged as child labour. The Central law is **The Child Labour (Prohibition and Regulation) Act, 1986**. A large number of child labourers engaged in hazardous employment belong to Scheduled Castes and Scheduled Tribes.

### **ECONOMIC SAFEGUARDS**

The provisions of **Articles 23, 24** [referred to above] **and 46** form part of economic safeguards for Scheduled Castes and the Scheduled Tribes. **Article 46** provides that State shall promote with special care the **educational and economic interests of weaker sections** of the people and, in particular, Scheduled Castes/Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. It is in pursuance of this Article that special programmes for extending educational opportunities to Scheduled Castes and Scheduled Tribes have been taken up. Institutional arrangements for their development, including earmarking of specific percentage of funds from the budget for various development activities in the form of a Special Component Plan for Scheduled Castes and Tribal Sub-plan for Scheduled Tribes have also been in operation for a long time.

### **EDUCATIONAL AND CULTURAL SAFEGUARDS**

**Article 15(4)** empowers the State to make **special provisions for advancement** of any socially and economically backward classes or citizens and for Scheduled Castes/Scheduled Tribes. This provision has enabled the State to reserve seats for Scheduled Castes/Scheduled Tribes in educational institutions including technical, engineering and medical colleges.

**Article 29(1)** provides that “Any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to conserve the same”.

**Article 350(a)** provides for adequate facilities for instructions in the mother tongue at the primary stage of education for children belonging to linguistic minority groups.

The above Articles have relevance for Scheduled Tribes as some of them have a distinct language/dialect.

### **POLITICAL SAFEGUARDS**

**Article 164(1)** provides that in the specific States there shall be a **Minister in charge** of tribal welfare who may, in addition be in charge of **welfare of Scheduled Castes, Backward Classes** or any other work.

**Article 330** provides for **reservation of seats** for Scheduled Castes/Scheduled Tribes in **Lok Sabha**.

**Article 332** provides for **reservation of seats** for Scheduled Castes/Scheduled Tribes in State **Vidhan Sabhas**.

**Under Article 243(D), reservation of seats in Village Panchayats**, Zila Parishads has been made for Scheduled Castes / Scheduled Tribes in proportion to their population at respective level in direct election. It has also been provided that the reserved seats for Scheduled Castes/Scheduled Tribes shall be allotted by rotation to different constituencies in Panchayat at each level.

Under **Article 243-T, reservation** of seats for Scheduled Castes / Scheduled Tribes in proportion to their population has been made **in municipal bodies** at each level. Out of these reserved seats for Scheduled Castes/Scheduled Tribes, at least 1/3<sup>rd</sup> has been reserved for SC/ST women.

**Articles 371, 371(b), 371(c), 371(f), 371(g) and 371(h)** deal with special provisions in respect of North Eastern States.

### **SERVICE SAFEGUARDS**

**Article 16**, which provides **equality of opportunity** for all citizens in matters relating to employment or appointment to any office under the State and prohibits any discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any or all of them, has made a very special provision which permits Parliament to make any **provision for reservation of appointments** or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. It is through this provision that reservations in appointments and promotions for Scheduled Castes and Scheduled Tribe and for OBCs in the matter of recruitment have been made.

Under **Article 16(4)(a)**, this benefit of **reservation in the matter of promotion** has been extended to Scheduled Castes and Scheduled Tribes to overrule the judgment of the Supreme Court.

**Article 16(4)(b)** has further made provisions to **permit backlog vacancies** as a separate category in any year for determining the ceiling of 50% reservation on total number of vacancies that year.

**Article 335** provides that the reservation provisions shall be made taking into consideration efficiency of administration. Through a specific amendment to the Constitution, the State has been **empowered to make any relaxation for qualifying mark** in any examination or lowering the standards of evaluation for enforcing reservation in matters of promotion to any class or classes of service or posts in connection with the affairs of the Union or of the State.

In addition to the protections referred to above, which deal with both Scheduled Castes and Scheduled Tribes, special safeguards have also been made for Scheduled Tribes.

**Article 244** provides for legislation for special problems for Scheduled areas and lays down provisions of the 5<sup>th</sup> Schedule in respect of administration and control of such

areas. Provisions have also been made for administration of tribal areas in the 6<sup>th</sup> Schedule.

5<sup>th</sup> Schedule to the Constitution, under **Article 244(1)** authorizes the Governor to direct that a particular law or notification passed by Parliament or Legislative Assembly shall not apply to the scheduled area or any part thereof or shall apply subject to certain exceptions and modifications. Governor is also authorized to make regulation for peace and good government in the scheduled areas of the State.

**Article 275(1)** provides that specific allocations may be made from the Consolidated Funds of India to give as grant-in aid for each such area for meeting the cost of schemes of development and for promoting the welfare of Scheduled Tribes in the State. Similar provision exists for such special grants for the 6<sup>th</sup> scheduled area.

**Article 338** of the Constitution provides for a National Commission for Scheduled Castes and Scheduled Tribes and specifies the functions it would discharge and the report it is required to present to the President.

## **A. FOR ENFORCING EQUALITY AND REMOVING DISABILITY**

### **1. Untouchability Offences Act, 1955**

Through **Article 17** of the Constitution, untouchability was abolished and its practice in any form had been abolished. Untouchability means the practices evolved as social restrictions in sharing food, access to public places, offering prayers and performing religious services, entry in temple and other public places and denial of access to drinking water sources, etc. Within 5 years of adoption of Constitution of India, the Untouchability (Offences) Act, 1955 was enacted by the Parliament. The Act contained a significant provision that where any of the forbidden practices “is committed in relation to a member of a Scheduled Caste” the Court shall presume, unless the contrary is proved, that such act was committed on the ground of “Untouchability”. This implied that the burden of the proof lies on the accused and not on the prosecution.

Soon after that Act came into force there was a general feeling of dissatisfaction with its impact as the legislation failed to serve the purpose for which it was enacted. The punishments awarded under the Act were also not adequate. Government of India, therefore, appointed a Committee in April 1965 under the Chairmanship of Shri Ilaya Perumal to study, inter-alia, problems of Untouchability vis-a-vis the working of the Untouchability (Offences) Act 1955 and to suggest changes therein. The Committee’s report was submitted in 1969<sup>2</sup>.

### **2. Protection of Civil Rights Act, 1955**

Based on the recommendations of the Committee, this Act was comprehensively amended in 1976 and its name was changed to “The Protection of Civil Rights Act, 1955”. The amended Act came into force from 19<sup>th</sup> November 1976. Under this Act, the preaching and practice of ‘Untouchability’ or the enforcement of any disability arising therefrom

<sup>2</sup>Naval, op. cit., p. 22 also Sixth Report, op. cit., p. 206

and for matters connected therewith, was made cognizable and non-compoundable offence and the terms of imprisonment were enhanced. The State Governments have been empowered to impose collective fines on the inhabitants of any area found committing and abetting the commission of untouchability offences. This Act, along with the Rules framed thereunder, lays down elaborate procedure for ensuring protection of the victims of such practices by providing for special courts, special prosecution, fixing period for investigation, etc.

## **B. FOR CREATING DETERRENCE AGAINST PHYSICAL VIOLENCE**

### **Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989**

The enforcement of Protection of Civil Rights Act, 1955 also brought to the fore limitations both of the law as well as its implementation in eliminating the practice of untouchability in view of its entrenched position in the psyche and behaviour of the caste Hindus and their resistance to change. Society as a whole never accepted the Protection of Civil Rights Act<sup>3</sup>. Meanwhile various atrocities against scheduled castes and scheduled tribes continued to be committed in different parts of the country. It was realized that even the amended Protection of Civil Rights Act, 1955 and normal provisions of IPC did not provide deterrence in preventing violence on scheduled castes and scheduled tribes especially offences committed on caste grounds<sup>4</sup>. Accordingly, Parliament passed another law called “**Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**”. The Rules under the Act were framed in 1995 to prevent commission of atrocities against members of the Schedules Castes and Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected there with or incidental thereto.

In the ‘Statement of Objects and Reasons’ appended to the Bill when it was moved in the Parliament, it was observed that despite various measures to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes, they still remained vulnerable. They are denied a number of civil rights and are subjected to various offences, indignities, humiliation and harassment. They have been, in several brutal instances, deprived of their life and property. Serious atrocities are committed against them for various historical, social and economic reasons<sup>5</sup>. The Act, for the first time, lays down the contours of ‘atrocities’ so as to cover all multiple ways through which members of scheduled castes and scheduled tribes have been for centuries humiliated, brutally oppressed, degraded, denied their economic and social rights and relegated to perform the most menial jobs.

The objectives of the Act very clearly emphasise the intention of the Government to deliver justice to these communities through affirmative action to enable them to live

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<sup>3</sup>Chaudhary, TK, the then IGP for PCR Cell, Maharashtra quoted in Human Rights Watch, Broken People, p. 183

<sup>4</sup>Statement of Objects and Reasons for Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Also see Naval, op. cit., p. 24

<sup>5</sup>Naval, op. cit., p. 24



in society with dignity and self-esteem and without fear or violence or suppression from the dominant castes. The Act provides for strong punishment and compensation to victims and also lays down preventive measures.

### **C. FOR ELIMINATION OF DEGRADING & HUMILIATING CUSTOMARY PRACTICES**

#### **1. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**

The most degrading of all occupations and forms of labour thrust upon untouchables by the caste based social order is that of manual scavenging. Members of communities who are engaged in manual scavenging are made to clear faeces from public and private latrines, using broom, tin plate and a basket and carry them to dumping grounds or disposal sites. Those working in private establishments and households are paid very low wages<sup>6</sup>. In cities, scavengers are lowered into filthy gutters in order to unclog them and are fully immersed in human waste without any protective gear. A number of them die as a result of carbon monoxide poisoning<sup>7</sup>.

The practice of manual scavenging has been prohibited by law under the **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**. The Act bars any person to engage in or employ or promote to be engaged in or employed any other person for manually carrying human excreta or construction of a dry latrine. The Act also empowers the State Governments to make one or more schemes for regulating conversion of dry latrines into water sealed latrines and rehabilitation of persons who were engaged in or employed for manual scavenging. The Act mandates a time bound phased programme for conversion of dry latrines into water sealed latrines, provision of technical or financial assistance for alternate low cost sanitation, construction and maintenance of community latrines, registration of manual scavengers and their rehabilitation. The Act makes violation of the law an offence punishable with imprisonment for a term which may extend to one year or with fine or with both<sup>8</sup>.

In pursuance of the Act, Ministry of Urban Development operates a scheme for conversion of dry latrines into water sealed latrines, in which some element of subsidy is provided by the Central Government. Ministry of Rural Development administers Rural Sanitation Programme for construction of sanitary latrines in rural areas for conversion of dry latrines into wet latrines and construction of village complex for women. Ministry of Social Justice & Empowerment has a centrally sponsored scheme, called the National Scheme for liberation and rehabilitation of scavengers. This Ministry, through another scheme, provides pre-matric scholarship to children of those engaged in unclean occupations<sup>9</sup>, which is intended to benefit children of scavengers primarily. Government of India has also set up a National Commission for

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<sup>6</sup>Human Rights Watch, Broken People, op. cit., p. 141

<sup>7</sup>Human Rights Watch, op. cit., p. 141

<sup>8</sup>Section 14 of the Act - See National Commission for Safai Karamcharis - A Hand Book - 2000, p. 2

<sup>9</sup>National Commission for Safai Karamcharis - A Hand Book, op. cit., pp 6-8

Safai Karamcharis under an Act of Parliament to monitor progress of the programme on elimination of manual scavenging and the rehabilitation of liberated scavengers.

## **2. Devdasi System Abolition Acts**

Devdasi means a female servant of God. This ancient system entails the ceremonial or ritual dedication or marriage of a girl, traditionally from Scheduled Caste community, who is yet to attain the age of puberty, to a deity or to a temple. Devdasis originally had only religious functions, but the practice subsequently degenerated into sexual abuse of these women by high priests and royal patrons and, later, by landed gentry and other powerful persons. Once dedicated, the Devdasi girl cannot marry and is forced to become a prostitute for caste Hindus and eventually auctioned to a brothel<sup>10</sup>. The practice is prevalent largely in Karnataka, Andhra Pradesh, Maharashtra and Orissa. There is no national legislation outlawing the practice of Devdasi system. However, Andhra Pradesh has enacted a law called “Andhra Pradesh Devdasi (Prohibition of Dedication) Act, 1988 which provides for rehabilitation of such women, Karnataka Government has also enacted the Karnataka Devdasi (Prohibition of Dedication) Act, 1992.

## **D. FOR PREVENTING CONTROL OVER FRUITS OF LABOUR**

### **Bonded Labour System (Abolition) Act, 1976**

Bonded Labour system refers to work in slave like conditions in order to repay a debt. The poor people largely belonging to Scheduled Castes and Scheduled Tribes incur debt for survival and meeting certain urgent and basic necessities of life for which they are charged exorbitant interest. Due to their illiteracy, lack of bargaining power and extremely low wages, creditors manage to create a situation where the debt is never liquidated and consequently the debtor has to render labour in lieu thereof. The Bonded Labour System (Abolition) Act, 1976 abolished all agreements and obligations, including customary sanctions which permit bonded labour system in various forms. The Act also released all such labourers from these obligations, cancelled their outstanding debts and prohibited creation of any new bondage agreement. The Act also mandatorily provided for economic rehabilitation of freed bonded labour by the State. Keeping a bonded labour is a violation of law and is punishable with sentence of 3 years imprisonment and a fine of Rs. 2,000/-. Ministry of Labour operates a centrally sponsored scheme for rehabilitation of released bonded labourers.

### **The Minimum Wages Act, 1948**

This Act provides for fixing of minimum rates of wages in different employments and appointment of Committees or Subcommittees for this purpose. The act also fixes the norms of hours of work, rest and overtime rates. The machinery for enforcement of the Act has also been provided for.

### **Equal Remuneration Act, 1976**

The Act mandates that there shall be no discrimination in the payment of wages to women workers performing same or similar nature of work as men.

<sup>10</sup>Quoted in Human Rights Watch, Broken People, op. cit., 151

**Child Labour (Prohibition and Regulation) Act, 1986**

The Act prohibits the engagement of children in certain employments and regulates the conditions of work of children in certain others. It outlines severe penalties for those violating its provisions. The Act also provides for a Child Labour Technical Advisory Committee to advise the Central Government on which occupations and industrial processes the employment of child labour should be prohibited.

Various other laws which prohibit the employment of child labour on grounds of safety, etc. include The Children (Pledging of Labour) Act, 1933, The Employment of Children Act, 1938, Factories Act, 1948, Plantation Labour Act, 1951, The Mines Act, 1952, The Merchant Shipping Act, 1958, The Motor Transport Workers Act, 1961, The Bidi Cigar Workers (Conditions of Employment) Act, 1966, The Shops and Commercial Establishment Acts, etc.

**Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

The Act, as the title suggests, lays down the conditions of employment of migrant labour to protect them from exploitation by contractors, middlemen and employers. It applies to establishments employing five or more than five migrant workmen and provides for issuance of license to contractors who supply migrant labour. It also fixes the responsibility of Principal Employer with regard to fulfillment of conditions pertaining to payment of wages and welfare measures by the contractor. Violation of the provisions of the Act has been made punishable.

**E. FOR CURBING UNEQUAL DISTRIBUTION OF ECONOMIC ASSETS****1. Land Reform Laws**

The Agrarian structure in the country prior to independence was characterised by high degree of concentration of land by a small section of society and the actual cultivators of land were acutely exploited by them. Land Reforms Policy, introduced in the country after independence, introduced a five fold programme to check this concentration of economic power. The policy abolished intermediaries from ownership of land and conferred this right on the tillers of the soil. It also abolished tenancy as a form of cultivation and mandated that the actual tiller of the soil should be its owner. A radical redistribution programme of land among the landless agricultural labour was undertaken by introducing ceiling on land holding and acquisition of surplus land for this purpose. Through the programme of consolidation of land holdings, arrangements were made under which small parcels of land could be exchanged for a compact contiguous plot through mutual adjustment in the village. Land records were also sought to be updated so that rights and interests of cultivators were safeguarded against manipulation. Land reforms laws were enacted and other regulatory arrangements were made giving effect to this policy by all States.

**2. Debt Relief Legislations**

Indebtedness is a chronic problem of all poor persons but it affects SCs/STs more severely. Indebtedness arises because of their poverty and therefore need to borrow for subsistence and to meet other emergent social expenditure like illness, marriage, etc.

Since no such credit is available from institutional sources, money is borrowed from private money lenders who charge exorbitant rates of interest. Due to their inability to pay back, the borrowers are enmeshed in a vicious cycle of debt-bondage.

Several States have enacted legislation to regulate money lending activity, impose limit on gross rate of interest and nullifying loans given by unlicensed money lenders, discharging debt incurred before a specified date, etc. Special features have been inserted in these legislations for the benefit of SCs and STs. These laws were enacted in the late 70's and early 80's. The provisions of these legislations have considerable relevance for SCs (also STs) as their enforcement can help them disengage from exploitative money transaction on this account relationship and use their meager income for their benefit.

## **F. FOR POSITIONING WATCHDOG ARRANGEMENTS**

### **1. National Commission for SCs and STs**

In view of their weak social position, it had been realized at the time of framing the Constitution itself, that safeguards provided for SCs/STs in its provisions and also other laws, regulatory arrangements and policy measures, may not get implemented due to apathy or bias of the implementing agencies or pressures mounted by vested interests in the civil society who stood to lose from them. Accordingly, the need was felt to have a standing body as a watchdog institution to continuously monitor whether the activities of the Government are in consonance with the declared intentions, designed legal & institutional arrangements and policy statements. A permanent institutional arrangement called the **Special Officer for SCs and STs** incorporated under **Article 338** of the Constitution served this purpose. Later, this arrangement was strengthened and in 1990 the Constitution was amended providing for a multi-member National Commission for SCs and STs with enhanced powers. The Commission is required to submit report annually to the Parliament. The first Constitutional Commission became operational on 12th March 1992.

### **2. National Human Rights Commission**

The Human Rights Act, 1993 seeks to provide regulatory framework for protection of rights related to life, liberty, equality, dignity of individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. **Section 3** of the Act **provides for constitution of National Human Rights Commission and Section 21** provides for constitution of **State Human Rights Commission**. In pursuance of Section 3, a **National Human Rights Commission is already in existence** since 12<sup>th</sup> October, 1993. It takes up the cases regarding human rights violations addressed to it and through its own initiative. As atrocities on SCs are violation of Human Rights, it intervenes in complaints relating to them also. The Commission is also required to submit a report annually which is laid on the table of both Houses of Parliament.

### **3. National Commission for Women**

Section 3 of National Commission for Women Act, 1990 provides for the constitution of National Commission for Women to investigate and examine all matters relating to safeguards provided for the women under the Constitution and various other laws. The First National Commission was constituted on 31<sup>st</sup> January, 1992. It takes up

complaints of women referred to it for redressal irrespective of caste. Accordingly, problems of SC women including those of physical violence against them are also dealt with by it. As other statutory Commissions, the Commission has to submit a report annually which is laid on the table of both the Houses of Parliament.

#### **4. National Commission for Safai Karamcharis**

This Commission was set up under the National Commission for Safai Karamcharis Act, 1993 on 12<sup>th</sup> August, 1994 for a period of three years. But its tenure has been extended from time to time. Unlike the other three Commissions, this Commission does not have a permanent status perhaps because it was set up to look after a specific programme of liberation and rehabilitation of scavengers and may be wound up after this programme is completed. This Commission also submits a report every year which is laid on the table of both Houses of Parliament.

#### **International Standards Applicable to India**

Various International Human Rights covenants and conventions applicable to India, include:

- (a) Universal Declaration of Human Rights 1948,
- (b) International Covenant on Civil and Political Rights 1966,
- (c) International Covenant on Economic, Social and Cultural Rights 1966,
- (d) International Convention on Elimination of all forms of Racial Discrimination 1965,
- (e) Convention on Elimination of all forms of Discrimination against Women 1979,
- (f) Convention on Rights of the Child 1989,
- (g) ILO Convention No. 29 - Forced Labour Convention 1930,
- (h) ILO Convention No. 111 - Discrimination (Employment and Occupation) Convention 1958,
- (i) ILO Convention No. 107 - Indigenous Peoples Convention 1957.

All the above have been signed and ratified by the Government of India. In addition, the Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984) has also been signed but not yet ratified. There is pressure on Government of India to ratify it since mechanisms have been provided against the practice of torture and Courts and National Human Rights Commission have also issued directions in this matter<sup>11</sup>. These international instruments lay down norms and standards for treatment of individuals and groups and protection of their rights. As a result of these conventions, Government of India is required to submit periodical reports to the concerned international organizations monitoring their enforcement. The concerned Committees of these organizations make observations or furnish comments on the reports submitted<sup>12</sup>.

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<sup>11</sup>Statement of the Chairman, NHRC recently while inaugurating a SAARC Conference on practice of torture.

<sup>12</sup>Sakshi, Dalit Human Rights Monitor-2000, Andhra Pradesh, p. 152

## SECTION – IV

### PROTECTION: THE MISSING DETERRENCE

In the last Section, reference was made to the elaborate framework of laws and regulatory arrangements which are intended to enforce the constitutional provisions and administer social justice to SCs. This Section will examine how far the declared intentions and objectives in these arrangements have materialized. In the course of this scrutiny, observations and comments would be offered on the status of their implementation and the social constraints which condition this effort. The impact of the entire strategy of protection in relation to atrocities against SCs would thus be assessed. In doing so the laws which respond to disability and violence against Scheduled Castes would be dealt with in detail while other laws and regulations would receive brief treatment.

#### **A. FOR ENFORCING EQUALITY AND REMOVING DISABILITY PROTECTION OF CIVIL RIGHTS ACT, 1955 – THE LAW<sup>1</sup>**

The Act deals with enforcement of any disability arising out of untouchability practices with the objective of punishing persons preaching and practising untouchability. Section 3 of the Act prohibits religious disabilities such as preventing persons from entering into a place of public worship, performing any religious service, bathing or using water of any sacred water body. **Section 4** prohibits social disabilities like preventing access to shops, restaurants, hotels, public conveyance and places, use of separate utensils, etc. **Section 15-A** mandates the State to ensure that rights accruing from abolition of untouchability are enjoyed by those who are victims of the practice and provides for a higher punishment if a person resorts to reprisals or revenge for having exercised any right on account of abolition of untouchability. There is also a provision for setting up Vigilance and Monitoring Committees-as provided for under **Section 16(8)**. The Protection of Civil Rights Rules were also framed and notified in 1977.

#### **PROTECTION OF CIVIL RIGHTS ACT, 1955 - THE STRUCTURE**

**Section 15 (2)** of the Act directs the state to take specified administrative measures for implementation, such as setting up of Special Courts for trial of offences, appointment

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<sup>1</sup>The Protection of Civil Rights Act, 1955, formerly known as Untouchability (Offences) Act, 1955 as amended in 1976



of officers for initiating or exercising supervision over prosecutions initiated under the Act, setting up of Committees for monitoring and guidance, etc.

It also makes arrangements for legal aid to the victims and preventive measures such as periodic survey on the working of the Act and identification of areas where disabilities arising out of practice of untouchability have been observed with a view to adopting suitable measures for their elimination.

The Central Government has been entrusted with the task of coordinating with the State Governments measures taken by them for implementation of the Act and is required to place on the table of both Houses of Parliament a report every year on the measures taken by itself and the State Governments.

### **ADMINISTRATIVE ARRANGEMENTS**

The following statement would show the administrative arrangements made and other measures taken by various State Governments in pursuance of the Act for its implementation.

The Statement would show that the State Governments have not taken the implementation of the Act very seriously. Punjab and West Bengal have not taken any administrative measures for implementation of the Act. West Bengal Government has claimed that untouchability is not practiced there. This itself would indicate the lack of their seriousness with regard to the implementation of the Act. Several major States, such as Assam, Bihar, Uttar Pradesh Rajasthan, etc. have not constituted special courts under the Act. Information about Andhra Pradesh, among major States, is not available. Madhya Pradesh has even wound up the special courts which it had set up because of small number of cases. None of the States, except Gujarat, Maharashtra and Rajasthan, have identified untouchability prone areas. The work in relation to Madhya Pradesh is in progress. Even an innocuous provision like incentives for inter-caste marriage has not been implemented in Rajasthan, Tamil Nadu, U.P. and Uttaranchal. In respect of Assam, requisite budgetary provision has not been made for the Scheme<sup>2</sup> and in respect of Bihar no information has been furnished. It will thus be evident that States in general have shown no keenness or enthusiasm to implement various provisions of the Act. The impression thus conveyed is that either the problem of untouchability does not exist or its incidence is so negligible that it is not worthy of much attention. This clearly shows the inability or perhaps the unwillingness of the State Government to come to grips with the practice of untouchability, particularly in its most subtle forms at various levels in society.

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<sup>2</sup>Sixth Report, op. cit., p. 60

**Measures taken by State Governments/Union Territory Administrations under Protection of Civil Rights Act, 1955 during the year 2000**

States/UTs	Committees	Admn. Machinery	Special Courts	Legal Aid	Untouch. prone areas	Inter-caste marriage	Publicity measures	Other Measures
Assam	✓	✓	No	✓	No		Budgt. provn but no sanction	✓
Bihar	✓	✓	No	✓				Spl. Police Station
Goa	✓	No	No	✓	No	✓		
Gujarat	✓	✓	✓	✓	21 dists	✓	✓	Assistance to victims
Haryana	✓	✓	✓	✓	No	✓		Award to Panchayats
Himachal Pradesh	✓	✓	No	✓	No	✓		
Jharkhand	✓	✓	✓	✓		✓		
Karnataka	✓	✓	✓	✓	✓	✓	✓	
Kerala	✓	✓	✓	✓			✓	Community feasts/ seminars
Madhya Pradesh	✓	✓	Sp. courts wound Up because of low No. of cases	✓	Work Under progress	✓	✓	Spl. Police Stations
Maharashtra	✓	✓	Under consideration	✓	20 dists	✓	✓	Exhibition, etc.,

States/UTs	Committees	Admn. Machinery	Special Courts	Legal Aid	Untouch. prone areas	Inter-caste marriage areas	Publicity measures	Other Measures
Orissa	✓	✓	✓	✓	No	✓	✓	
Punjab	No	No	No	✓	No	✓	✓	
Rajasthan	✓	✓		✓				
Tamil Nadu	✓	✓	✓	✓	194 VIII.		✓	Community feasts/ awareness Programmes
Tripura	✓	✓	Not reqd. under PCRA but 4 courts under POA	✓	No	Budgetary Provision But no intercaste marriage held		
UP	✓	✓		✓	No		✓	Awareness Programs
Uttaranchal	✓	✓	✓	✓	No			Awareness Programs
West Bengal	No	No	No	No	No	✓	✓	
Chandigarh	No	✓	✓	✓	No	✓	✓	
Dadar & Nagar Haveli	✓	✓	✓	✓	No	No		
Daman & Diu	No	No	No	✓	No	No	No	No
Delhi	No	No	✓	✓	No	No		
Pondicherry	✓	✓	No	✓	No	✓	✓	Awareness Programs

Source: Annual Report of the Ministry of SJ & E (Twentieth Report) on the PCR Act, 1955 for the year 2000

**VOLUME OF CASES**

With regard to the enforcement of the Act, the following statement contains details of the cases registered under the old and amended Acts from 1955 to 2000:

<b>Year</b>	<b>No. of cases Registered</b>	<b>Year</b>	<b>No. of cases Registered</b>
1955	180	1975	3528
1956	693	1976	5108
1957	491	1977	3425
1958	559	1978	4729
1959	481	1979	4911
1960	275	1980	4303
1961	489	1981	4085
1962	389	1982	4087
1963	393	1983	3949
1964	371	1984	3925
1965	366	1985	3332
1966	488	1991	2944
1967	353	1992	2900
1968	214	1993	2531
1969	329	1994	1731
1970	364	1995	1528
1971	526	1996	1417
1972	1515	1997	1216
1973	2456	1998	724
1974	1908	1999	678
		2000	666

*Source:* National Crimes Records Bureau, Crime in India

This statement shows that number of cases registered was very low right from the inception of the Act, but picked up only from the year 1972. There was, however, a substantial increase in the number of cases registered from 1976 when the old Act was comprehensively amended. However, the number of registered cases are showing a progressive decline over the years and their number has gone down considerably since 1998. Ordinarily, these statistical details may lead to the conclusion that the problem of untouchability is gradually disappearing.

But this inference is hardly tenable. The data about the status of prosecution for the year 2000 presented in the 20<sup>th</sup> Report laid by the Ministry of Social Justice and Empowerment on 23.4.2002 indicates that 62.37% of total number of cases registered have come from A.P. and second in order is Karnataka, which accounts for 11.45%. No cases were registered from such major States as Bihar, Gujarat, Kerala, Punjab,

U.P., Uttaranchal, Assam and West Bengal<sup>3</sup>. Can it be said that untouchability practices have ceased to exist? Obviously not. The investigation of cases dealt with by Police shows huge pendency. Of the total number of 2086 cases, 1216 (58.29%) are still pending with police and only 618 have been charge-sheeted (29.63%). The position in respect of pendency in Courts is even worse. 7,366 cases out of 9,949 cases, were pending with Courts. Only 271 (02.72%) cases have ended in conviction while as large as 2312 (23.24%) have ended in acquittal<sup>4</sup>. It is not difficult to see that people have lost faith in the enforcement of law and that is the reason why no registration is taking place. The large number of registered cases in A.P. and, to some extent, in Karnataka may be reflective of the level of enthusiasm in certain areas or the support extended by some NGOs/activist organizations before and after complaints are registered. Some critics have offered another explanation for low registration of cases. Since a more deterrent law, i.e. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted, it is likely that the prosecution authorities may not be registering cases under the Protection of Civil Rights Act. The vigilant complainants or the organizations backing them may also be preferring the Prevention of Atrocities Act, 1989 for registration. But this has to be established empirically. Prima facie, it does not appear convincing because even in respect of heinous crimes the police machinery in many States has been deliberately avoiding SCs and STs (Prevention of Atrocities) Act, 1989 and registering cases under IPC. In any case, the continuing atrocities on Scheduled Castes are sufficient indication, if one is needed, that caste based discrimination and disabilities still operate and violence is inflicted when they raise their voice against it and claim their constitutional rights to equality.

Thus, the declining number of cases under Protection of Civil Rights Act does not represent a marked reduction in the practice of untouchability. Rather, it is a reflection on the ineffectiveness of law - a conclusion which tallies with the view expressed by National Commission for Scheduled Castes/Scheduled Tribes in its Sixth Report<sup>5</sup>.

State Governments have also shown no seriousness in identifying untouchability prone areas and even where this has been done, there is no plan of action to eliminate this practice. There is very little publicity of the provisions of the Act, despite the claim made by most States that this has been done. No periodical surveys are carried out as required. The Administrative arrangements, most notably the setting up of Special Courts and appointment of Special Public Prosecutor for the operation of the Act do not exist in many States. Even if some States did not feel the need for setting up of special courts exclusively for Protection of Civil Rights Act cases, they could have allotted the trial of cases under this Act also to the special courts which are dealing with cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. There is virtually no monitoring of the implementation of the Act at any level. Vigilance and

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<sup>3</sup>Annual Report on the Protection of Civil Rights Act, 1955 for the year 2000 (Twentieth Report) pp 3-4

<sup>4</sup>Twentieth Report on PCR Act, op. cit., pp 6-7: Also Annexure I and II.

<sup>5</sup>Sixth Report, op. cit., p. 207

Monitoring Committees, as prescribed under the Act, have not been constituted and where such committees exist they hardly function. Meetings of these committees are not held regularly. The quality of prosecution is poor because the functionaries entrusted with the work lack both competence and motivation. Even the reports prepared by the Ministry of Social Justice and Empowerment and placed before Parliament contain merely factual information received from States about registration and disposal of cases; various administrative arrangements made for the function of the Act and funds spent, without any meaningful analysis of the performance of the States which could form the basis for making corrective interventions.

A number of studies have been carried out on the practice of untouchability and atrocities committed against SCs during the last 20 years or so. Four such studies covering States of Karnataka, Andhra Pradesh, Orissa and Gujarat referred to in a paper<sup>6</sup> bring out that the untouchability practices continue in various forms though there is some reduction in respect of some practices. These studies highlight barriers to drawal of water by SCs from public well in rural areas on a substantial scale, though less so in urban areas, widespread restrictions in access to village temples, village tea shops and particularly in relation to essential services such as those of washerman and barber in the village. In public service facilities like post offices, health and educational centres, however, the practice had declined. Social mixing and relations across caste barrier continued to be low. In Andhra Pradesh, restrictions were reported in respect of political activities like organizing meetings or taking independent position on political issues or contesting elections. There were no substantial restrictions in access to schools and hospitals. Subtle forms of untouchability were practiced in panchayats like separate arrangements of sitting and serving snacks in respect of SC members as reported in Gujarat. The practice of untouchability also declined in buying and selling of commodities in the market. The extent of untouchability has remained in tact in the sphere of house entry. Some States also provide evidence about economic discrimination in occupation, employment, wages and loan, etc. In Andhra Pradesh, the study reports that untouchables were abused and beaten when they wanted to change their traditional occupation. In Karnataka it was revealed that nearly 85% of SC respondents continued with their traditional occupation. Orissa showed that nearly 96% face discrimination in wage payment and some also face discrimination in the share of loan as well as the interest rates charged by the money lender<sup>7</sup>.

The study carried out by National Commission for Scheduled Castes and Scheduled Tribes, in respect of Seven States, corresponds to the findings referred to above in respect of restrictions in access to temples and other places of worship, drinking water, tea stalls and hotels, services of barber and washerman, participation in social ceremonies and sitting arrangement in village Chaupals and Gram Sabhas with variation in intensity in respect of these practices in different States. However, the Commission's study also reports discrimination in educational institutions and public

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<sup>6</sup>Thorat, Sukhdeo, *Oppression and Denial - Dalit Discrimination in the 1990s*, Economic and Political Weekly, Feb. 9, 2002, pp. 574-576

<sup>7</sup>Thorat, EPW, p. 576



health centres, mainly in Rajasthan and in respect of utensils for use of general public, use of public cremation and burial grounds and in the matter of construction/ acquiring accommodation of residential premises. The report, however, observes that untouchability in its acute form is mainly practised in rural areas and some rural pockets also have shown decline in its intensity due to awareness among SCs. The deep rooted caste system was largely responsible for continuation of these practices. The Commission has recommended several measures for vigorous enforcement of the Act<sup>8</sup>. These include wide publicity to the provisions of Protection of Civil Rights Act, review by Central Government about the availability of facilities like legal aid to complainants seeking legal action, proper selection of Public Prosecutors and their utilization for initiating and supervising prosecution, setting up of Special Courts, holding of meetings of monitoring committees periodically, reviewing of the enforcement of the Act by State Governments regularly, identification of untouchability prone areas on a time bound basis, preparation of a compendium of guidelines for implementation of the Act and expanding promotional activities like inter-caste marriages, etc. Central Government should also review the work done by NGOs in this field and seek their help and cooperation in enforcement of the Act.

It is surprising in this context that State Governments have also not involved Panchayati Raj institutions in the implementation of this Act. These institutions could play a key role in eliminating untouchability practices and providing necessary social support in the enforcement of the Protection of Civil Rights Act. Even the Central Government has taken no initiative in mobilizing Panchayat Raj Institutions for this work though it has massive leverage which could be effectively used for this purpose. The potential of grass root level democratic institutions remains untapped. National Commission for Scheduled Castes/Scheduled Tribes has also made a mention of it in its recommendations<sup>9</sup>.

The foregoing would suggest that amendment of the law in 1976 really made no difference to the effective enforcement of the Act. There is neither any political enthusiasm nor the commitment of the bureaucracy in this direction. The poor outcome of the complaints filed would have also dampened the enthusiasm of NGOs and social activists in pursuing this route to elimination of untouchability practice.

## **B. FOR CREATING DETERRENCE AGAINST PHYSICAL VIOLENCE**

### **Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Atrocities against Scheduled Castes – Law, Structure and Implementation**

#### ***The Law***

The term 'atrocities' has not been defined in the Act<sup>10</sup>. Though no conceptual definition has been attempted, S.2(l) (a) mentions that atrocity would mean all those offences

<sup>8</sup>National Commission on SCs and STs - A Report on the problem of Untouchability. Jan 1989

<sup>9</sup>Sixth Report, op. cit., pp 62-33

<sup>10</sup>The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: See Naval, op. cit., 37. However, National Commission for Scheduled Castes and Scheduled Tribes feels that the term atrocity has been defined for the first time in this Act. Sixth Report op. cit., p. 207. This is perhaps because various offences brought within the ambit of atrocities have been identified.

which are punishable under S.3. Thus the definition of 'atrocities' emerges by implication, i.e. actions covering various offences. But as per clarification of the Ministry of Home Affairs the term implies "**any offence under the Indian Penal Code committed against members of Scheduled Castes by non-scheduled caste persons.** Similarly, all offences under IPC committed by non-scheduled tribe against members of the Scheduled Tribes are atrocities. **Caste consideration as a motive is not necessary** to make such an offence in case of atrocity". It is further clarified that the term atrocity signifies "crimes which have ingredients of infliction of suffering in one form or the other 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 caste, 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"<sup>11</sup>.

<sup>11</sup>Quoted in Naval, op. cit., p. 38. Dr. T.R. Naval in his study. Law of Prevention of Atrocities on the Scheduled Castes and the Scheduled Tribes (2001) has tried to conceptualize different facets of atrocities in the following manner:

- a) **Personal aspects** which consists of physical suffering and mental pain, and a feeling of continued insecurity. 'The concerned person learns to define himself/herself as a victim which leads to lasting internalization of degradation and stigmatization and virtually of helplessness. This promotes passivity and acceptance of the status and giving up of resistance'.
- b) **Physical aspects** which are reflected in bodily pain and injuries of varying nature disabling him/her in carrying his/her normal activities.
- c) **Economic aspects** which cause financial loss, destruction of property and other ways of shattering economic position.
- d) **Educational aspects** which includes creation of conditions to prevent pursuit of knowledge
- e) **Social aspects** of atrocity implies actions which not merely affects an individual personally but also all members of his/her community and lead to a sense of humiliation for the whole community
- f) **Grave aspects** of atrocity are committed, when Police and enforcement machinery not only fail to protect them but commit atrocities themselves.

As a matter of fact, such classification is unreal because atrocities have impact on Scheduled Castes in such a manner that their whole life in all its facets is affected. Therefore, all aspects articulated above are inclusive. A personal suffering is also a cause of, and intended to be a sense of humiliation for the entire community, adversely affects him economically through diverse ways and prevent him or his children from pursuing education or other avenues of gaining upward mobility. Further, the causes of atrocities have been attributed to following factors:

- i) Caste system, endogamy and caste hatred,
- ii) Untouchability
- iii) Illiteracy
- iv) Poverty and economic dependence or backwardness
- v) Self assertion by Scheduled Castes
- vi) Ignorance of law and lack of political will.

Here again, the caste based social order has all the ingredients in which upper castes have hatred for Scheduled Castes, practise untouchability against them and the lower castes suffer from illiteracy, poverty economic dependence, low level of awareness and lack of self esteem. Therefore, any attempt to alter the social relations based on this order, whether by state action to uplift lower castes or for lower castes to assert their rights generates hostility and hatred among higher castes leading to commission of atrocities against them. Thus, it is the traditional socio-economic relations based on caste which has to be targeted for putting an end to atrocities and the action in this regard has to be so effective that it has the element of deterrence. The Scheduled Castes/Scheduled Tribes (POA) Act, 1989 was intended to achieve this objective.

The Act has the following main features<sup>12</sup>:

1. **Creation of new types of offences** - This Act enlarges the area of criminal liability and includes several acts of omission and commission, which were neither covered under the Indian Penal Code nor Protection of Civil Rights Act, 1955 as amended in 1976.
2. **Commission of offences only by specified persons** - The defining paradigm of this Act lies in the caste identification of both the offender and the victim. The offender must be a person other than member of Scheduled Castes/ Scheduled Tribes and the victim should be a member of Scheduled Castes/Scheduled Tribes.
3. **Protection from various kinds of atrocities** - The Act provides protection to Scheduled Castes/Scheduled Tribes from various atrocities, affecting social disabilities, property, malicious persecution, political rights and economic exploitation.
4. **Administrative measures** for enforcement of the Act - The Act makes arrangements for establishment of **Special Courts** to try offences under the Act to ensure speedy trial. It also makes provision for appointment of **Special Public Prosecutors** to conduct trial of offences under the Act in the Special Courts.
5. **Special features of the Act** - With a view to giving teeth to the provisions of the Act, Special Courts have been empowered to **extern potential offenders** from scheduled areas and tribal areas and **attachment of moveable or immovable property or both properties** belonging to a person accused of any offence under Section 3 to 6 of the Act in addition to awarding any punishment. The Act **prohibits grant of anticipatory bail** to the potential accused under the Act and places restrictions on grant of probation to the convict of an offence under the Act. Among the preventive measures are included Rules for cancellation of arms licence of potential accused of an offence under the Act and provision for grant of arms licence to Scheduled Castes/Scheduled Tribes as a means of self defence.
6. **Enhanced punishment for some offences** - The deterrent aspect of the Act, reflected in its most significant feature, is that it provides enhanced punishment for those offences under the IPC which are punishable with imprisonment for a term of 10 years or more.
7. **Enhanced minimum punishment for public servants** - A Public Servant as accused under the Act has been made liable to a higher minimum punishment and even neglect of duties has been made liable for punishment.
8. **Compensation for victims or their legal heirs** - Provision of minimum relief and compensation to victims of atrocities or their legal heirs has also been made. The norms of compensation are laid down in the Rules made under this

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<sup>12</sup>Naval, op. cit., pp 74-109. In these pages, detailed analysis has been provided of various provisions of the Act and Rules.

Act. This compensation shall be provided in addition to the minimum relief extended to the victim.<sup>13</sup>

### ***The Structure***

For the purpose of providing speedy trial, the Act mandates establishment of Special Courts to try the offences under this Act with the concurrence of the Chief Justices of the High Courts. The Act also lays down that the State Government shall specify a Public Prosecutor for conducting the cases in the Court. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 provide that an offence committed under the Act shall be investigated by a Police Officer, not below the rank of Deputy Superintendent of Police, who shall be so appointed after taking into account his experience and ability to investigate such cases. The Rules also provide that the State Government shall set up Scheduled Castes and Scheduled Tribes Protection Cell at the State Head Quarters under the charge of Director General of Police / Inspector General of Police for supervision in respect of action taken under the Act. There is provision in the Rules for nomination of a gazetted officer of the level of Secretary to the State Government for coordinating the functioning of District Magistrates and Superintendents of Police or other officers authorized by them for implementing the provisions of the Act. Included in the Rules is also a provision for appointment of a Special Officer, not below the rank of an Additional District Magistrate, at the district level to coordinate with various officers responsible for implementing the provisions of the Act. For enhancing accountability and greater political supervision, the Rules have made arrangement for the constitution of State level Vigilance and Monitoring Committee under the Chairmanship of the Chief Minister. To deliberate on the implementation of the provisions of the Act, relief and rehabilitation facilities provided to the victims, prosecution of the cases under the Act, the role of different officers and agencies and various reports received by the Government. Constitution of similar Vigilance and Monitoring Committees at the district level, has also been incorporated. State Government is required to submit to the Central Government a report every year about the measures taken for implementation of the Act.

### ***Administrative Arrangements***

The following statement would indicate the state-wise position regarding the structure and other institutional measures for implementation of the Act and its Rules.

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<sup>13</sup>Dr. Naval has classified Indian legislations for Crime Control into three models: (1) Constitutional provision, (2) Mild Crime Model (3) Hard Crime Model. Art 17, by abolition of untouchability made a formal and instrumental declaration, not a sociological statement. Protection of Civil Rights Act, 1955 represented a 'Mild Crime Model'. The Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 is based on a 'Hard Crime Model' for prevention of atrocities on Scheduled Castes, because so many new features were incorporated in the Act op. cit., pp 69-71

States/UT	Committees	Special Courts	Admn. Machinery	Nodal Officers Areas	Atrocity Prone Thanas	Spl. Police	Relief	Other Measures
Assam	Yes	Yes (18)	Yes	No	No	Negligible	Free legal aid	
Bihar	Yes	Yes	Yes	33 dist.	Yes (10)	Yes	Free legal aid	
Chhattisgarh	Yes	Yes (7)	Yes	No	Yes (8)	Yes	Spl. Cell in 8 dist.	
Goa	Yes	Yes	Yes	No	No	No	Free legal aid. Survey, untouchability week on 2nd Oct.	
Gujarat	Yes	Yes	Yes	11 dist	Yes	Yes	Free legal aid, Publicity of Act, Seminars, NGOs participation.	
Haryana	Yes	Yes	Yes	No	No	No	Free legal aid. Inter Caste Marriages, Awards to Panchayats	
Himachal Pradesh	Yes	Yes	Yes	No	No	Yes	Free legal aid, Survey	
Jharkhand	Yes	Yes (2)	Yes	Yes	Yes (1)	Yes	Free legal aid	
Karnataka	Yes	Yes	Yes	15 dist.	Yes	Yes	Free legal aid, NGOs participation.	
Kerala	Yes	Yes	Yes	Yes	Yes	Yes	Publicity of Acts., Community feasts, Seminars etc.,	
Madhya Pradesh	Yes (25)	Yes	Yes	42 dist.	Yes	Yes	Awareness camp, Awards etc.	
Maharashtra	Yes	Yes	Yes	10 dist.	Yes	Yes	Free legal aid, Workshops, NGOs participation, Survey.	
Meghalaya	Yes	Yes (7)	Yes					
Orissa	Yes	Yes	Yes	No	No	Yes	Free legal aid, NGOs participation.	

States/UT	Committees	Special Courts	Admn. Machinery	Nodal Officers Areas	Atrocities Prone Thanas	Spl. Police	Relief	Other measures
Punjab	Yes	Yes	Yes	No	No	No	Yes	Free legal aid, Survey
Rajasthan	Yes	Yes (17)	Yes		No	No	Yes	Free legal aid, NGOs Participation
Sikkim	No				No	No	Yes	Free legal aid, Periodic Surveys.
Tamil Nadu	Yes	Yes	Yes	Yes	427 villages	No	Yes	Free legal aid
Tripura	Yes	Yes			No	No	Yes	Free legal aid
U.P.	Yes	Yes (20)	Yes		20 dist.	No	Yes	Free legal aid
Uttaranchal	Yes	Yes (3)	Yes		No	No	Yes	Free legal aid
Andaman & Nicobar	No	Yes			No	No	No	Free legal aid
Chandigarh		Yes (1)			No	No	Yes	Free legal aid
Dadra & Nagar Haveli	Yes		Yes		No	No	No	Free legal aid, NGOs participation
Daman & Diu	Yes		Yes		No	No	No	Free legal aid
NCT Delhi	Under Consideration			Under Consideration	No	No	No	
Pondicherry	Yes		Yes	Yes	No	No	Yes	Free legal aid, Periodic Surveys

**Other States/UT:** Detailed write up is awaited from the State Government of Andhra Pradesh, Jharkhand and West Bengal. As no cases of atrocities against Scheduled Castes & Scheduled Tribes has been registered under the SC & ST (Prevention of Atrocities) Act, 1989, during the year 2000, the information therefore is 'Nil' in respect of under mentioned 4 states and UT: 1) Arunachal Pradesh; 2) Manipur; 3) Mizoram; 4) Nagaland; and 5) Lakshadweep.

**Source:** Annual Report on the SC and ST (Prevention of Atrocities) Act, 1989 for the year 2000, Seventh Report, Ministry of Social Justice and Empowerment, Government of India, New Delhi, 2002.



### ***Volume of Cases***

The total number of reported criminal cases of atrocities against Scheduled Castes under the IPC, Protection of Civil Rights Act and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in the last five years is as under:

1995	:	32,996
1996	:	31,440
1997	:	27,944
1998	:	25,638
1999	:	25,093
2000	:	—

*Source:* National Crime Records Bureau, Crime in India 1997, 1998, 1999

These figures show a gradual decline in the total number of reported cases of atrocities against scheduled castes.

Under-reporting of Atrocities Act cases is a very common phenomenon and therefore the decline in the number of registered cases does not provide a true picture of the incidence of atrocities. One NGO in Gujarat, in a study covered 11 atrocities-prone districts for four years, showed that 36% of atrocities cases were not registered under Atrocities Act and 84.4% of the cases where the Act was applied, the cases were registered under wrong provisions with a view to concealing actual and violent nature of the incidents. The study also documented that 121.2 hours lapsed between registration of murder cases and initiation of police action and for rape cases the gap between the incident and the reported action was 532.9 hours<sup>14</sup>.

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. The same NGO 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%<sup>15</sup>. 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. This can have adverse effect on their career. With a view to presenting lower crime rates in the district, under-reporting of information is done at the district headquarters, which gets further diluted at the State and National level.

### ***Nature of Crimes***

With a view to knowing the seriousness of atrocities, it may be relevant to see the incidence of heinous crimes against Scheduled Castes. The following statement gives out the serious cases registered under the three laws:

<sup>14</sup>Study carried out by NGO, Navsarjan, quoted in Human Rights Watch, op. cit., p. 194

<sup>15</sup>Human Rights Watch, op. cit., p. 195

These figures indicate that there has been a marginal decline every year under all heads of crime, except rape which shows a marginal increase<sup>16</sup>.

Year	Murder	Hurt	Rape	PCR	SC/ST (Prev)
1995	571	4544	873	1528	13925
1996	543	4585	949	1417	9620
1997	513	3860	1037	1216	8070
1998	516	3809	923	724	7443
1999	506	3241	1000	678	7301

Source: National Crime Records Bureau, Crime in India 1997-1999

### ***Geographical Distribution of Atrocities***

The geographical distribution of atrocities against Scheduled Castes may provide an idea of the areas / locations which are particularly prone to this type of violence. The break-up of crimes committed against Scheduled Castes in major States, as extracted below would provide this information.

Year	U.P.	Raj	Madhya Pradesh	Guj	AP	TN	Bihar	N.E. States	UTs	Other States	Total
1995	14205	5197	3979	1724	1764	1293	747	36	32	4019	32996
1996	10963	6623	4075	1764	1629	1812	810	14	24	3726	31440
1997	8500	5624	4269	1831	1880	1403	710	18	43	3666	27944
1998	6511	5586	4051	1884	1605	1562	785	2	21	3631	25638
1999	6122	5623	4667	1781	1749	883	820	22	31	3391	25089

Source: National Crime Records Bureau, Crime in India 1997-1999

The above figures indicate that the largest number of cases have been reported from U.P. every year. This is primarily because U.P. has the largest population of the Scheduled Castes as compared to other States. Besides U.P., Rajasthan, Madhya Pradesh, Gujarat, Andhra Pradesh, Tamil Nadu and Bihar are other States which have contributed substantially to the total crime against Schedules Castes.

### ***Volume of Crime Against Scheduled Castes (Cases Per One Lakh Population of Scheduled Castes)***

Other things being equal, the number of incidents of crime against Scheduled Castes in a particular State would naturally have relevance to the population of Scheduled Castes in that State. Ordinarily, larger the population of the Scheduled Castes in a State, more may be the number of cases of atrocities reported from that State. But this may not necessarily reflect the level of atrocities in the State. Therefore, a more rational way to appreciate the magnitude of atrocities in a particular State is to study

<sup>16</sup>Crime in India 1999, op. cit., p. 228

the volume of crime i.e. the number of cases reported per unit of population, e.g., one lakh population of Scheduled Castes. These figures are available for the year 1998 which are as under:

S.No	State/UT	SC Population (Census 1991) in lakhs	Cases of atrocities 1998	Cases per lakh of SC population per year	Rank
1.	Andhra Pradesh	105.92	1813	17.12	VI
2.	Bihar	125.72	785	6.24	XIII
3.	Gujarat	30.6	1884	61.57	II
4.	Haryana	32.51	159	4.9	XIV
5.	Himachal Prad.	13.50	59	4.4	XV
6.	J & K	6.41	17	2.65	XVI
7.	Karnataka	73.69	1148	15.58	VII
8.	Kerala	28.86	786	27.23	IV
9.	Madhya Pradesh	96.27	4051	42.08	III
10.	Maharashtra	87.58	683	7.8	XI
11.	Orissa	51.29	703	13.71	IX
12.	Punjab	57.43	23	0.4	XVIII
13.	Rajasthan	76.08	5585	73.41	I
14.	Sikkim	0.24	2	8.3	X
15.	Tamilnadu	107.35	1562	14.58	VIII
16.	UP	292.76	6511	22.24	V
17.	Delhi	17.95	11	0.61	XVII
18.	Pondicherry	1.37	10	7.30	XII

*Source:* Fifth Report of the National Commission on Scheduled Castes and Scheduled Tribes 1998-99, Vol. I. P. 155

These figures indicate that the **highest volume of crime against Scheduled Castes is in Rajasthan (73 cases per one lakh population) followed by Gujarat (62 cases per one lakh population) and Madhya Pradesh (42 cases per one lakh of population)**. Thus, the percentage of SC population in a State does not indicate the extent of atrocities committed against them. The vulnerability of Scheduled Castes to atrocities would depend upon a host of other factors, rigidity of caste based social relations and the relatively weak position of Scheduled Castes in it being the most important. The Seventh Report of the Ministry of Social Justice and Empowerment for the year 2000 provides information on the number of cases per lakh of population of both **SCs and STs** for the year 2000 and therefore, it does not seem comparable with the data we have for SCs separately in the Fifth Report of the National Commission. However, Rajasthan with 51.05 number of cases per one lakh of **SC & ST** population taken together still tops the list. If Chhattisgarh (40.64) and **M.P.** (18.01) are taken together, the situation in old **M.P.** comes second but the figures may be misleading because

population figures quoted in the Report for Chhattisgarh do not include STs. Since Chhattisgarh has substantial tribal population, number of cases per unit of SC/ST population may make difference in inter-se ranking. On the other hand, number of cases per unit of SC population for Chhattisgarh alone is very high. In any case, in the absence of separate figures for SCs alone, no reliable picture of inter-se ranking can be attempted<sup>17</sup>.

### ***Proneness of States to Specific Crimes***

By positioning incidence of specific heinous crimes in major atrocities prone States, the proneness of a State to serious cases of violence, as also to a specific type of atrocity, would be reflected which could then be sociologically investigated to understand the causal connections. The State-wise break-up of heinous crimes against Scheduled Castes is provided in the following tables:

#### **MURDER**

<b>Year</b>	<b>UP</b>	<b>Raj</b>	<b>M.P.</b>	<b>Guj.</b>	<b>AP</b>	<b>TN</b>	<b>Bihar</b>	<b>N.E.</b>	<b>UT</b>	<b>Other</b>	<b>Total</b>
1995	296	35	86	27	25	29	18	02	00	53	571
1996	330	47	50	22	21	15	19	01	01	38	543
1997	261	53	66	18	33	11	33	00	00	38	513
1998	259	49	67	21	35	30	12	00	00	43	516
1999	279	49	55	26	26	20	05	01	00	44	506

#### **HURT**

<b>Year</b>	<b>UP</b>	<b>Raj</b>	<b>M.P.</b>	<b>Guj</b>	<b>AP</b>	<b>TN</b>	<b>Bihar</b>	<b>N.E.</b>	<b>UT</b>	<b>Other</b>	<b>Total</b>
1995	1067	303	681	216	516	858	226	06	00	671	4544
1996	1060	184	687	206	318	1361	276	04	00	489	4585
1997	706	197	635	215	303	983	225	08	00	588	3860
1998	782	218	680	243	364	650	253	01	00	618	3809
1999	672	154	751	363	437	165	230	08	00	458	3241

#### **RAPE**

<b>Year</b>	<b>UP</b>	<b>Raj</b>	<b>M.P.</b>	<b>Guj</b>	<b>AP</b>	<b>TN</b>	<b>Bihar</b>	<b>N.E.</b>	<b>UT</b>	<b>Other</b>	<b>Total</b>
1996	321	94	224	15	64	06	13	01	00	135	873
1996	324			15	50	19	27	01	00	116	949
1997	302	158	315	21	59	09	20	02	00	1151	1037
1998	238	138	269	20	46	04	23	01	00	184	923
1999	276	146	305	28	61	12	22	03	00	147	1000

Source: National Crime Records Bureau, Crime in India 1997-1999

<sup>17</sup>Annual Report on the SCs and STs (Prevention of Atrocities) Act, 1989 for the year 2000 (Seventh Report) p. 7

The above figures show that even for heinous crimes, **UP is the highest contributor**, followed by Madhya Pradesh, Rajasthan, Andhra Pradesh, Tamilnadu and Gujarat.

But the data presented above also brings out the interesting point that the number of atrocities cases in a State in absolute terms may not reflect the level of vulnerability of Scheduled Castes. **Rajasthan and M.P. emerge as more atrocity-prone than U.P.** and therefore SCs are more vulnerable there as compared to U.P.

The following statements give state-wise **incidence of crime committed against Scheduled Castes during 1999 and 2000**, which may throw light on the proneness of State to a particular type of atrocity:

## Incidence of Crime During 1999

S.No.	State/UT	Murder	Hurt	Rape	Kidnap & Abd.	Dacoity	Robbery	Arson	PCR Act	SC/ST (POA) Act	Other offences	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	Andhra Pradesh	26	437	61	2	3	6	8	266	522	418	1749
2.	Arunachal Pradesh	0	0	0	0	0	0	0	0	0	0	0
3.	Assam	0	4	2	0	0	0	0	1	0	0	7
4.	Bihar	5	230	22	1	2	0	13	0	276	271	820
5.	Goa	0	0	0	0	0	0	0	0	0	0	0
6.	Gujarat	26	363	28	15	8	23	17	9	415	877	1781
7.	Haryana	5	33	26	8	1	0	1	0	18	29	121
8.	Himachal Pradesh	2	2	4	0	0	0	0	6	21	19	54
9.	Jammu & Kashmir	0	1	2	0	0	0	0	1	0	9	13
10.	Karnataka	11	27	6	0	0	0	8	85	1131	9	1277
11.	Kerala	5	177	54	0	0	0	4	3	194	77	514
12.	Madhya Pradesh	55	751	305	36	2	16	56	26	433	2987	4667
13.	Maharashtra	7	67	40	6	1	4	10	135	160	175	605
14.	Manipur	0	0	0	0	0	0	0	0	0	0	0
15.	Meghalaya	1	0	0	0	0	0	0	0	0	0	1
16.	Mizoram	0	0	1	0	0	1	0	0	0	0	2
17.	Nagaland	0	0	0	0	0	0	0	0	0	0	0
18.	Orissa	10	145	8	4	0	3	3	3	263	333	772
19.	Punjab	5	9	7	2	0	0	0	1	6	9	39



S.No.	State/UT	Murder	Hurt	Rape	Kidnap & Abd.	Dacoity	Robbery	Arson	PCR Act	SC/ST (POA) Act	Other offences	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
20.	Rajasthan	49	154	146	10	0	3	67	19	887	4288	5623
21.	Sikkim	0	4	0	0	0	0	4	0	0	4	12
22.	Tamil Nadu	20	165	12	11	0	3	1	109	366	196	883
23.	Tripura	0	0	0	0	0	0	0	0	0	0	0
24.	UP	279	672	276	133	19	50	145	1	2597	1950	6122
25.	West Bengal	0	0	0	0	0	0	0	0	0	0	0
	<b>Total (STATES)</b>	<b>506</b>	<b>3241</b>	<b>1000</b>	<b>228</b>	<b>36</b>	<b>109</b>	<b>337</b>	<b>665</b>	<b>7289</b>	<b>11651</b>	<b>25062</b>
<b>Incidence of Crime against Scheduled Castes in respect of year 1999 upto the month of December</b>												
<b>UNION TERRITORIES</b>												
26.	A & N Islands	0	0	0	0	0	0	0	0	0	0	0
27.	Chandigarh	0	0	0	0	0	0	0	0	0	0	0
28.	D & N Haveli	0	0	0	0	0	0	0	0	0	0	0
29.	Daman & Diu	0	0	0	0	0	0	0	0	0	0	0
30.	Delhi	0	0	0	0	0	0	0	3	10	5	18
31.	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0
32.	Pondicherry	0	0	0	0	0	0	0	10	2	1	13
	<b>Total (UTs)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>12</b>	<b>6</b>	<b>31</b>
	<b>TOTAL (ALL INDIA)</b>	<b>506</b>	<b>3241</b>	<b>1000</b>	<b>228</b>	<b>36</b>	<b>109</b>	<b>337</b>	<b>678</b>	<b>7301</b>	<b>11657</b>	<b>25093</b>

Source: Sixth Report of the National Commission for Scheduled Castes and Scheduled Tribes (1999-2000 & 2000-2001, Ps. 228-229)



S.No.	State/UT	Murder	Hurt	Rape	Kidnap & Abd.	Dacoity	Robbery	Arson	PCR Act	SC/ST (POA) Act	Other offences	Total	Upto month
18.	Orissa	14	47	6	0	0	0	3	0	147	158	375	Jun.
19.	Punjab	0	4	8	2	0	0	0	0	13	3	30	Dec. (Sep)
20.	Rajasthan	48	153	128	13	1	3	49	0	454	4341	5190	Dec.
21.	Sikkim	0	0	1	0	0	0	0	0	0	14	15	Dec.
22.	Tamilnadu	12	654	17	1	0	1	0	103	418	90	1296	Dec.
23.	Tripura	0	0	0	0	0	0	0	0	0	0	0	Dec.
24.	UP	302	761	346	163	23	65	142	18	2683	2096	6599	Nov.
25.	West Bengal	0	0	0	0	0	0	0	0	0	0	0	Dec.
<b>Total (States)</b>		<b>486</b>	<b>3298</b>	<b>1034</b>	<b>242</b>	<b>37</b>	<b>93</b>	<b>260</b>	<b>650</b>	<b>6599</b>	<b>11007</b>	<b>23706</b>	
<b>UNION TERRITORIES</b>													
26.	A & N Islands	0	0	0	0	0	0	0	0	0	0	0	Dec.
27.	Chandigarh	0	0	0	0	0	0	0	0	0	0	0	Dec.
28.	D & N Haveli	0	0	0	0	0	0	0	0	0	0	0	Dec.
29.	Daman & Diu	0	0	0	0	0	0	0	0	1	0	1	Nov.
30.	Delhi	0	0	0	0	0	0	0	0	12	1	13	Dec.
31.	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	Dec.
32.	Pondicherry	0	0	0	0	0	0	0	17	4	1	21	Dec.
<b>Total (UTs)</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>17</b>	<b>17</b>	<b>2</b>	<b>35</b>	
<b>TOTAL (ALL INDIA)</b>		<b>486</b>	<b>3298</b>	<b>1034</b>	<b>242</b>	<b>37</b>	<b>93</b>	<b>260</b>	<b>667</b>	<b>6616</b>	<b>11009</b>	<b>23741</b>	

Source: Report of National Commission for Scheduled Castes/Scheduled Tribes (1999-2000 &amp; 2000-2001), Pp. 232-233

The two statements indicate the following:

1. In murder cases, U.P. tops the list, while rape cases are very high in M.P., Rajasthan and U.P.
2. Karnataka has registered the second largest number of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. But the serious offences in Karnataka are few which may perhaps reflect the seriousness with which cases under the Act are registered.
3. Only AP, Karnataka, Maharashtra and Tamilnadu have shown seriousness in registering cases under Protection of Civil Rights Act 1955.

The abstract of data relating to number of cases (category-wise) of atrocities against Scheduled Castes registered during 1999 and 2000 along with their percentage in the context of total volume of crime against them (in brackets) is given below, which shows **increase in number of rape cases**:

#### Atrocities Committed on Scheduled Castes

S.No.	Nature of Crime	Number of Cases of crimes during	
		1999	2000
1.	Murder	506 (2.01%)	486 (2.05%)
2.	Grievous Hurt	3241 (12.92%)	3298 (13.89%)
3.	Rape	1000 (3.98%)	1034 (4.36%)
4.	Arson	337 (1.35%)	260 (1.09%)
5.	Other Offences	20,009 (79.79%)	18,664 (78.61%)
	Total	25,093 (100.00%)	23,742 (100.00%)

Source: Report of National Commission on Scheduled Castes/Scheduled Tribes (1999-2000 & 2000-2001)

The National Commission for Scheduled Castes and Scheduled Tribes has also compared the data of crime against Scheduled Castes with the figures of crime against Scheduled Tribes and has come to the conclusion that the **incidence of crime and atrocities against Scheduled Castes is about 6 to 7 times more than the incidence of crime against Scheduled Tribes**, though the **population of Scheduled Castes is only twice that of Scheduled Tribes**. They also confirm our observation that **U.P., Rajasthan and Madhya Pradesh** have highest incidence of crime against Scheduled Castes and **account for 65.4% of the total cases of atrocities against them in the country** during the year 1999. This was the position in the preceding year also (1998) and remained so for the year 2000<sup>18</sup>. But these statistics do not bring out the facet of atrocities which are committed by the police machinery itself, since complaints are rarely entertained, let alone registered. As per experience of the Commission, Punjab ranks as the **worst in this regard**, because the superior hierarchy of the organization tends to be extremely protective of its members and even the interventions by National Commission for SCs and STs in extremely serious cases have failed to get any positive response<sup>19</sup>.

<sup>18</sup>Sixth Report, op. cit., p. 210

<sup>19</sup>Information gathered through discussion with officials

**Disposal of Cases**

The following statement shows State-wise details of cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, disposed of by the Police and the Courts and pendency of cases during 2000:

**Statement Showing Cases Registered by Police and their disposal under the SCs/  
STs (Prevention of Atrocities) Act, 1989 during the year 2000**

S.No.	State/UT	No. of cases regd. during 2000	No. of cases with police during 2000, incl. B/F	No. of cases closed after investigation	No. of cases charge sheeted in courts	No. of cases pending with police at the end of 2000
1.	Andhra Pr.	2711	2866	883	1429	554
2.	Bihar	568	1396	99	288	1009
3.	Chhattisgarh	873	933	21	761	151
4.	Goa	1	1	0	1	0
5.	Gujarat	1699	2098	109	1261	728
6.	Himachal Pr.	10	14	0	11	3
7.	Haryana	54	60	16	27	17
8.	Jharkhand	26	41	17	1	23
9.	Kerala	529	1025	230	322	473
10.	Karnataka	1254	1819	198	884	737
11.	Madhya Pr.	4122	4621	205	3516	900
12.	Maharashtra	793	950	75	700	175
13.	Orissa	1354	2464	294	1118	1052
14.	Punjab	34	41	8	14	19
15.	Rajasthan	6679	7692	4159	3057	476
16.	Tamil Nadu	996	1253	384	505	364
17.	Uttaranchal	112	131	41	90	0
18.	Uttar Pr.	8462	9476	1594	5609	2273
19.	West Bengal	14	59	0	0	59
20.	A & N Islands	1	2	1	1	1
21.	Chandigarh	1	1	0	0	1
22.	D & N Haveli	1	1	0	1	0
23.	Daman & Diu	1	1	0	0	1
24.	Delhi	15	19	1	10	8
25.	Lakshadweep	1	1	1	0	0
26.	Pondicherry	4	6	0	2	4
<b>Total</b>		<b>30,315</b>	<b>36,971</b>	<b>8,336</b>	<b>19,608</b>	<b>9,027</b>

Source: Seventh Report of Ministry of Social Justice and Empowerment of the year 2000, p. 64

Note: 1. The SC/ST (POA) Act, 1989 not applicable in J & K State  
2. Nil data reported by 8 States/UTs. viz. Arunachal Pr. Assam, Sikkim, Tripura, Manipur, Meghalaya, Mizoram and Nagaland.

The progress of investigation of cases by police analysed from the above data indicates that number of chargesheeted cases was 53.04% of the total no. of cases while 22.54% of cases were closed after investigation and number of cases pending with police at the end of the year constituted 24.42%<sup>20</sup>.

**Statement Showing Cases with Courts under the SCs and STs (Prevention of Atrocities) Act, 1989 and their disposal during the year 2000**

S.No.	State/UT	No. of cases in courts incl. B/F in 2000	No. of cases ended in conviction	No. of cases ended in acquittal	No. of cases pending with courts at the end of 2000
1.	Andhra Pr.	3067	30	947	2090
2.	Assam	6	0	0	6
3.	Bihar	5308	7	935	4366
4.	Chhattisgarh	1398	67	37	1294
5.	Goa	3	0	1	2
6.	Gujarat	13293	0	0	13293
7.	Haryana	69	3	12	54
8.	Himachal Pr.	33	0	9	24
9.	Kerala	1998	5	158	1835
10.	Karnataka	4844	6	504	4334
11.	Madhya Pr.	9711	239	1043	8429
12.	Maharashtra	9067	22	827	8218
13.	Orissa	6244	9	242	5993
14.	Punjab	35	0	1	34
15.	Rajasthan	8233	293	2109	5831
16.	Sikkim	1	0	1	0
17.	Tamil Nadu	1868	27	165	1676
18.	Uttaranchal	869	7	392	470
19.	Uttar Pr.	77354	526	2599	74229
20.	West Bengal	50	0	0	50
21.	A & N Islands	2	0	1	1
22.	D & N Haveli	7	0	0	7
23.	Daman & Diu	4	0	1	3
24.	Delhi	38	0	12	26
26.	Pondicherry	3	0	0	3
<b>Total</b>		<b>1,43,505</b>	<b>1,241</b>	<b>9,996</b>	<b>1,32,268</b>

Source: Seventh Report of Ministry of Social Justice and Empowerment for the year 2000, p. 64

- Note: 1. The SC and ST (Prevention of Atrocities) Act, 1989 not applicable in J & K State  
 2. Nil data reported by 8 States/UTs, viz Arunachal Pr., Tripura, Manipur, Meghalaya, Mizoram, Nagaland, Chandigarh and Lakshadweep.  
 3. The information is awaited from Stated Government of Jharkhand.

<sup>20</sup>Seventh Report of Ministry of SJ & E (2000), op.cit., p.8



From the above it is evident that only 7.83% of the total cases were disposed of during the year and only 11.04% of the disposed of cases ended up in conviction. 88.96% of cases ended in acquittal and 92.17% of cases were pending with courts. Number of cases pending before the courts in most of the major States is alarming. Ministry of Social Justice and Empowerment has expressed concern over low rates of conviction<sup>21</sup>.

The State-wise break up shown in these statements also reinforces our earlier conclusion that the **position** in respect of **Rajasthan is very critical** because the number of **cases closed after investigation is the largest** in that State and also **highest as a percentage of total number of cases registered**. This is true for the year 1999 as well as 2000. The **pendency of cases with Police** relative to the number of cases registered is **very large in States of Bihar, Andhra Pradesh and Kerala. West Bengal and Assam have not registered any cases** at all. Does it imply that no crime is being committed against Scheduled Castes in these States? Obviously, the enforcement of this Act is not taken seriously. Perhaps the cases are not being registered under the Act at all but are being booked under Indian Penal Code<sup>22</sup>. This is certainly true of West Bengal where State Government takes a view that caste based violence does not occur in their State in view of their leftist political ideology. Thus as a matter of policy the provisions of the Act are not applied to the incidents and therefore not enforced. Reasons for not registering cases under the Act in Assam are not known. It may be just apathy or bias. A large number of cases of atrocities go unregistered, mainly because of reluctance on the part of police officials to entertain complaints and also because of lack of awareness among the members of SCs about the provisions of the **SCs and STs (Protection of Civil Rights) Act, 1989** (as also the **Protection of Civil Rights Act, 1955**). In addition, there are delays in investigation, collusion with offenders and manipulation of witnesses and evidence all of which contribute to reduce the effectiveness of legislation on atrocities. In almost all the States the meetings of the Monitoring and Vigilance Committees at State level, which is an important mechanism for ensuring proper implementation of these laws, are not held regularly.

States have not taken much interest in identifying atrocities prone areas even though they have access to district based crime figures against the Scheduled Castes, in addition to various reports which their own field machinery generates. While the Ministry of Social Justice and Empowerment may continue to pursue with States the need to expeditiously complete this exercise, it is learnt that National Commission for SCs and STs have already identified such areas evidently on the basis of information they have received from States and statistics brought out by the National Crime Records Bureau. In this context, a study has been carried out by some researchers in respect of crime against women with a view to identifying regions (Districts) which are prone to such crimes. The Research Wing of the Commission may undertake a similar task

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<sup>21</sup>Seventh Report of Ministry of Social Justice and Empowerment (2000), op. cit.. p.8

<sup>22</sup>Information gathered from the Senior Research Officer, National Committee for SCs/STs

of studying the district based crime figures and map out atrocities prone areas (for SCs and STs separately) which could then be discussed with States and finalised. Interestingly, the study carried out in respect of crime against women has brought out that the crimes are **roughly centered at Madhya Pradesh** and spread in different directions with **M.P.** as the center and neighbouring districts of Maharashtra and Rajasthan adjoining it. This region accounts for **56% of all 'high crimes against women'** districts. Rest of the Districts outside this belt, but have 'high crime rates against women, are scattered in Jammu & Kashmir, Himachal Pradesh in north, Andhra Pradesh, Tamilnadu and Kerala in South and Sikkim and Mizoram in the East. Apart from these latter districts, there are strips of districts constituting crime belt, which also account for large incidence of crime against women-one is the stretch of contiguous districts of Maharashtra from Gadchiroli to Aurangabad and the other contiguous strip is from Banswara (Rajasthan) to Narasinhapur (M.P). Virtually **all districts of M.P.** have been identified into **high rate rape group** and several neighbouring districts in Rajasthan and Maharashtra also belong to this club. Together they constitute **over half of the high rape rate districts in India**<sup>23</sup>. If similar exercises were to be carried out in respect of crimes against scheduled castes, overall and major crime-wise, it is likely that broadly similar spatial concentration may emerge. It should, therefore, be possible to identify the regions where atrocities seem to get frequented so that, among other measures specific to the area, a regional strategy of curbing violence against scheduled castes could be worked out on the basis of sociological analysis of the factors giving rise to these atrocities.

It needs to be specially mentioned that in the case of *Gangula Ashok and others v/s State of Andhra Pradesh*, the **Supreme Court** has observed that **"No Special Court, being Court of Sessions, can obviate the interdict contained in Section 193 of the Code of Criminal Procedure (henceforth Code) as there is no provision in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 empowering the Special Courts to take cognizance of such offences as a Court of original jurisdiction. It can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Act.** A complaint or a charge sheet cannot straight away be lodged before the Special Court under the Act. Provisions of the Act of Criminal Procedure should be applicable to the extent, in the absence of any contrary provisions in the Special Act or any special provision including the jurisdiction or applicability of the Court". (Judgement dated January 28, 2000 in Criminal No. 94 of {arising out of SLP [Criminal] No. 3828})<sup>24</sup>. With this judgement, the objective of the Act stands defeated because the time taken in commitment proceedings would slow down the pace of disposal of the case and would **strike a deadly blow** on the morale of the victims, which would unquestionably affect the outcome of the proceedings. It would therefore not be unreasonable to infer that with this ruling the deterrence aspect of the Act would get further eroded and perpetrators of atrocities may get emboldened in their designs. The affected members

<sup>23</sup>Chandam Mukherjee & others, Crimes against Women in India, E.P.W. Oct. 27, 2001, pp 4070-4080

<sup>24</sup>Quoted in the Sixth Report of the Commission, op. cit., p. 219

of Scheduled Castes are likely to feel more frustrated than ever before. The Commission has therefore suggested an immediate amendment to the SCs and STs (Prevention of Atrocities) Act, 1989 to remove the lacunae that has arisen as a result of the Supreme Court judgement. Human Rights/Dalit Organisations and social activists have also suggested a number of other amendments to the Act to make it more effective, details of which has been given in Annexure VII to IX.

A large number of documents and reports prepared by various Human Rights organisations, inquiry commissions, open hearings, research bodies and investigative teams have highlighted acts of omissions and commissions of law enforcement agencies in respect of cases of atrocities and how SC (and ST) victims of atrocities have failed to get any justice. It is extremely sad that despite availability of this 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 findings of these bodies. To the best of our knowledge, National Commission for SCs and STs have also not done so. National Human Rights Commission is debarred from looking into such cases by virtue of Section 36(2) of the Protection of Human Rights Act, 1993, which lays down that "The Commission shall not enquire into any matter after the expiry of one year from the date on which alleged human rights violation has been committed". Most of the case reports become older than one year by the time attention of National bodies is drawn. It is extremely sad that enormous pains taken by Human Rights organisations and other bodies in producing investigative material has not produced any result in terms of action against the guilty officials or brought any relief to the victims. This has shaken the faith of the victims in the whole process of law. Many cases in this list of atrocities are those where excesses have been committed by members of law enforcement machinery themselves. If the faith of SCs in the fairness and impartiality of the system has to be restored and their sense of alienation has to be removed, it is necessary that some mechanism is evolved under which investigative and researched material brought out by non official agencies in respect of cases of atrocities is taken note of, pursued with concerned State/Central Agencies and taken to its logical conclusion of (a) fixing responsibility for omissions and commissions and following it up by initiating appropriate punitive action on that basis, (b) providing compensation to victims of atrocities, (c) issuing directions regarding corrective measures to be taken so that such occurrences are not repeated. There is no such mechanism in prevalence today.

### ***Central Government's Role in the Enforcement of the Act***

Central Government has the same role in the implementation of the SCs and STs (Prevention of Atrocities) Act, 1989 which has been outlined in the case of Protection of Civil Rights Act 1955. Ministry of Social Justice and Empowerment is the nodal Ministry for discharging the role under the Central Government. As per provisions of the Act, it is required to place every year a report on the implementation of the Act before the Parliament. This apparently has not happened as the **Seventh Report covering the year 2000 has not been placed before the Parliament**. Thus the

mandatory provision of submission of yearly report is not being adhered to. State Governments also share the blame in this regard for not supplying the required information in time to the Central Ministry for preparation of the report.

### ***Assistance for Implementation of the Central Acts***

A centrally sponsored scheme was introduced initially for implementation of the provision of Protection of Civil Rights Act, 1955 in the year 1974-75. The scheme was later extended to cover Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well, in the year 1990-91. Under this scheme 50% financial assistance is provided to the State Governments and 100% to Union Territory administrations. The Scheme provides assistance for strengthening the enforcement machinery and judicial administration, publicity and relief and rehabilitation of affected persons. The amount of central assistance released to the State Govts. and UTs during the 9<sup>th</sup> Five Year Plan is as follows:

1997-98	:	Rs. 16.47 crores
1998-99	:	Rs. 15.50 crores
1999-2000	:	Rs. 24.94 crores
2000-2001	:	Rs. 27.08 crores
2001-2002	:	Rs. 29.06 crores (as on 16.1.2002)

There has been substantial increase in provision of financial assistance, particularly during the last three years of the Plan<sup>25</sup>. The following statement indicates the funds released to State Govts. under the Scheme.

S.No.	State/UTs	1997-98	1998-99	1999-2000	2000-01	2001-02 (As on 17.2.2002)
1.	Andhra Pradesh	18.00	294.68	361.33	208.60	165.01
2.	Assam	–	–	–	2.00	
3.	Bihar	9.50	50.00	–	34.03	
4.	Goa	0.70	0.575	–	–	
5.	Gujarat	156.24	50.00	270.93	325.79	178.20
6.	Haryana	–	21.70	7.83	11.53	13.781
7.	Himachal Pradesh	1.00	1.81	–	4.88	
8.	Karnataka	15.50	136.68	170.70	150.44	174.585
9.	Kerala	2.50	2.00	10.00	41.95	44.15
10.	Madhya Pradesh	500.85	682.06	732.96	977.24	812.86
11.	Maharashtra	23.00	50.00	100.00	190.44	
12.	Orissa	–	3.60	4.00	0.57	0.97
13.	Punjab	10.70	20.64	25.00	18.38	33.10
14.	Rajasthan	16.00	50.00	50.00	150.00	317.38

Table Contd.....

<sup>25</sup>Sixth Report of the National Commission, op. cit., p. 213. The figures for 2001-2002 were gathered from the Commission's office.

Table Contd.....

S.No.	State/UTs	1997-98	1998-99	1999-2000	2000-01	2001-02 (As on 17.2.2002)
15.	Sikkim	–	0.25	1.00	–	
16.	Tamilnadu	14.550	100.00	50.00	89.08	409.96
17.	UP	844.51	50.00	636.24	448.19	700.00
18.	West Bengal	–	–	–	–	
19.	A & N. Islands	–	0.0929	–	–	
20.	Delhi	–	1.40	–	–	
21.	Dadra & N. Haveli	15.88	15.90	30.99	27.00	25.00
22.	Pondicherry	18.28	18.60	34.16	28.63	31.50
23.	Daman & Diu	–	–	9.01	–	
	<b>Total</b>	<b>1647.00</b>	<b>1550.00</b>	<b>2494.16</b>	<b>2708.75</b>	<b>2906.50</b>

Source: Sixth Report of the National Commission for Scheduled Castes and Scheduled Tribes (1999-2000 & 2000-2001), p. 214

The distribution of financial assistance to states brings out that:

- a) the **funds** released to states bear **no correspondence to volume of atrocity cases** therein.
- b) The drawal of assistance by some States is extremely low despite the sizeable percentage of SC population and also high incidence of cases of violence against SCs. 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.
- c) There is uneven distribution of assistance across years in various States, except for some States like Madhya Pradesh, Karnataka, 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 Acts.
- d) Some States are drawing disproportionately large amounts in certain years, such as UP, Tamilnadu, Rajasthan - reasons for which are not very clear. This, however, does show **uneven implementation** of the Acts across States and within the same State during different years. Madhya Pradesh is the only State which has been consistently asking for large amounts.
- e) The lower level of demand from States which have high percentage of SC population as well as high incidence of cases of atrocities can only be explained by lack of interest in implementation of the Act.

It is necessary that the ground level position in respect of implementation of the scheme State-wise with reference to the level of atrocities is examined in depth by



the Ministry of Social Justice and Empowerment and the problems arising in its implementation in different States are clearly brought out in the Annual Report submitted to the Parliament.

Being a centrally sponsored scheme, it is governed by the condition that 50% of the entitlement under it has to be contributed by the State Government, except for UTs which receive 100% central funds, over and above the committed liability to be borne by the State/UT Governments for various measures taken. The inability of some States to contribute this amount and match the share of Central Government may have stood in the way of receiving central share. Thus effective implementation of the Act becomes a hostage to budgetary constraints of the concerned State Governments, which may, in turn, also reflect the level of commitment towards dealing with this problem at the highest level. It has been mentioned in the report of National Commission of Scheduled Castes and Scheduled Tribes that the Government of Orissa does not provide economic relief to victims of atrocities as per scale laid down in **Rule 4** of the SCs & STs (Prevention of Atrocities) Act, 1989<sup>26</sup>. This may also be true in some other States, since the funds spent in the State under the Scheme on this item bear no relationship to the number of atrocities taking place in that State, which entitle the victims to a certain level of compensation. It has been seen that West Bengal does not register any cases under the Act, as a matter of policy, since it refuses to acknowledge that atrocities on Scheduled Castes are committed due to caste factor. Some other States have also not been registering cases under the Act, though no such official grounds are advanced. Assam appears to be one such case. In these States the SC victims do not receive any help despite the provisions of law. But victims of atrocities are deprived of their entitled compensation for other reasons also. For example, Punjab has refused to pay any compensation to the victims of atrocities on account of financial crisis. In some States the deprivation of this benefit is on account of enormous delay in deciding about payment of compensation which defeats the very purpose of the provision. As per experience of the Commission, Madhya Pradesh is one such State in this regard. The Commission has also information that in some States, compensation is cornered by officials and intermediaries through misuse of their power<sup>27</sup>. This, therefore, emerges as a very important area of intervention by the Central Government and the National Commissions which play a watchdog role. Should the victims of atrocities across the country be treated differently just because either the State, due to its ideological inclination or the State agencies out of apathy or bias do not register cases under the Act? It is extremely important that the National Human Rights Commission and National Commission for SCs and STs should jointly evolve an understanding that irrespective of whether cases are registered under the **SCs and STs (Prevention of Atrocities) Act, 1989** or not, if the atrocities are committed on Scheduled Castes the compensation entitlement, as per the Act and rules framed thereunder, should be provided to them. In case there are any legal

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<sup>26</sup>Sixth Report, National Commission for SCs/STs, op. cit., p. 215

<sup>27</sup>Information gathered through discussion with officials.



obstacles in doing so, the matter may be taken up by the Ministry of Social Justice and Empowerment and a decision of the Government arrived at in this regard most expeditiously. It should not be left to the State to decide whether compensation to the victims of atrocities be paid or not. Being a central law, it is the duty of Central Government to ensure that States are not allowed to defeat its objectives. The corrupt practices in disbursement of compensation should be eliminated in consultation with the States, so that entitled compensation is delivered to the victims.

It would thus be evident that even in respect of such a non-contentious matter as payment of compensation to the SC victims according to their entitlement, the subtle bias/ lack of sensitivity operates even at the highest level, both bureaucratic and political. Not only this, most States also do not provide other assistance/entitlements such as traveling allowance, maintenance expenses, daily allowance and reimbursement of medical expenditure to victims and witnesses, which is also required to be met from the funds under the Scheme. Overall, therefore, the legal framework of protection against atrocities is neither able to ensure punishment to the offenders nor payment of cash compensation and other relief to victims. This is what defines the impact of the law.

## **SECTION – V**

### **PROTECTION: THE ELUSIVE SUPPORT**

The strategy of protection to SCs against atrocities committed on them recognized that causes of violence lie in their socio-economic conditions which the caste system had imposed on them. These conditions related to the occupations assigned to them, control over their labour and subordination of their productive capacity, all of which ensured that SCs remain tied down to the caste Hindus and on terms set by them. This relationship itself represented a continuing violence, besides infringement of human rights, even when no physical assault or injury was caused. But overt violence was committed when there was reluctance to comply or protest against the socially mandated role or its terms. Criminal laws were, therefore, insufficient to render protection to SCs in such conditions unless adequate support was provided to remove the social and economic situations which produces multifaceted violence, both overt and covert. This was done through a wide array of social and economic legislations referred to in Section-III. The enforcement of criminal laws did not generate much hope for getting protection against acts of physical violence, as evidenced in the preceding section. It is now to be seen whether the support expected from the social and economic legislations to check such violence through elimination of degrading and humiliating practices and effecting improvement of their economic position in occupations employing them has materialized. This would be done by evaluating the performance in the implementation of these laws, first in respect of customary practices and, thereafter, in their capacity as workers. The customary practices to be covered in this context relate to (a) Manual scavenging (b) Devdasi system. Their role as worker would be discussed with reference to (a) Labour laws (b) Land Reforms laws and (c) Debt Redemption legislation

#### **A. FOR ELIMINATION OF DEGRADING AND HUMILIATING CUSTOMARY PRACTICES**

##### **1. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**

The Act administered by the Ministry of Urban Development prohibits any person from employing or permitting to be employed any other person for manually carrying human excreta or construct or maintain a dry latrine. The violation of the Act is punishable with imprisonment or fine or both. The Act applies in the first instance to the whole of States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to all UTs. In regard to remaining States, it shall apply when the concerned State

adopts by a resolution passed by its assembly under **Clause (I) of Article 252** of the Constitution. Even in the above States and UTs it shall come into force on such dates as notified by the Central Government. As per information furnished by the Ministry of Urban Employment and Poverty Alleviation<sup>1</sup>, State assemblies of Orissa, Punjab, Assam, Haryana, Bihar, Jharkhand, Chhattisgarh, Madhya Pradesh, Tamil Nadu, Gujarat and Uttar Pradesh have adopted it, while UTs of Andaman & Nicobar, Chandigarh, Dadra, Nagar Haveli, Daman & Diu, Lakshadweep, Pondicherry, States of Goa, Kerala, Gujarat, Manipur, Mizoram, Sikkim and Tripura have reported that they are scavenger free. Information maintained with National Human Rights Commission indicates that Himachal Pradesh has its own Municipal Act to attain the objective of elimination of manual scavenging and does not consider adoption of the Central Act necessary. The position about Delhi, Uttaranchal, Jammu & Kashmir and Nagaland is not clear. Ministry of Urban Employment and Poverty Alleviation implements a “Centrally sponsored Scheme of Urban Low Cast Sanitation for liberation of Scavengers”, and provides for conversion of existing dry latrines with low cost water seal pour latrines and construction of new sanitary units where none exists to prevent open defecation. This scheme has been in operation since 1980-81, under which subsidy from the Ministry and loan from HUDCO in a synchronized manner is provided, so that conversion/ construction of low cost sanitation units and liberation of scavengers is done on a whole town basis. The scheme is applicable to small and medium towns having a population not exceeding five lakhs as per 1981 census. There is another centrally sponsored scheme administered by the Ministry of Rural Development called ‘Rural Sanitation Programme’. It was launched in 1986 for construction of individual sanitary latrines for households below poverty line with 80% subsidy with the objective of improving the quality of life of rural people and to provide “privacy” to women<sup>2</sup>.

A centrally sponsored scheme of liberation of scavengers was introduced in 1980-81, by the Ministry of Home Affairs during the Sixth Plan with the twin objective of (a) converting all existing household community dry latrines into water borne latrines on the whole town basis in selected small/medium towns, and (b) rehabilitation of unemployed scavengers in alternative employment/occupations simultaneously. The scheme was later implemented by the Ministry of Welfare [now renamed as Ministry of Social Justice and Empowerment]. In view of the tardy implementation of the programme, Government of India introduced a ‘National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents’ with effect from March 1992. The components of the Scheme included identification of scavengers and their dependents, their aptitude for alternative trades, training and provision of subsidy, margin money loan and bank loan for taking up new occupation. In 1996, Government of India modified some of the parameters of the Scheme by introducing the concept of Sanitary Marts for Scavengers. The concept is based on model workshop of Ramakrishna Mission in Midnapore, West Bengal. Under the scheme the scavengers are trained to run the Marts and work in the production units. The main plank of the strategy is to create demand for latrines through these sanitary

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<sup>1</sup>Letter of the Ministry addressed to the National Commission for Safai Karamcharis dated 4.07.2001

<sup>2</sup>National Commission for Safai Karamcharis, A Hand Book - 2000, pp 8-9

marts and thereafter construct latrines or supply low cost equipment/material for this purpose. A Sanitary Mart is a stocking place where sanitary needs of common man could be met. It functions as a shop as well as Service Center. As a shop it supplies necessary materials for construction of latrines and toilets such as soap, toilet brush, bleaching powder, etc. As Service Centre, it provides commodities and services on the type of latrines that would be suitable according to location and financial capacity of the beneficiary. As a production centre, it manufactures materials and equipment used in this work<sup>3</sup>. In 2000, the Scheme was further revised to make it sustainable and attractive.

Ministry of Social Justice and Empowerment also administers another centrally sponsored scheme called pre-Matric scholarships for children of those engaged in unclean occupations. This scheme was launched in 1977-78 to extend scholarships to children of scavengers of dry latrines, tanners, flayers and sweepers, irrespective of religion, to pursue school education. In 1994, the Scheme was modified to remove its restrictive clauses.

In view of the unsatisfactory progress of the scheme to liberate manual scavengers and rehabilitate them in alternative occupations, the Central Government constituted a National Commission for Safai Karamcharis under a statute, namely The National Commission for Safai Karamcharis Act 1993. The Commission was constituted in August 1994 for a three-year period. Its term has been extended from time to time. The function of the Commission is to oversee the programmes relating to scavengers and make recommendations to the Central Government. The Commission has submitted four reports so far to the Government. In January 1997, a separate National Safai Karamcharis Finance and Development Corporation was also set up with an authorized capital of Rs. 200 crores to act as an apex institution for all round socio-economic upliftment of Safai Karamcharis and their dependents. Its main function is to promote self-employment by granting concessional finance and to extend loan to students belonging to Safai Karamcharis for pursuing professional education<sup>4</sup>.

The implementation of both the law and the scheme relating to abolition of manual scavenging has been unsatisfactory. The National Human Rights Commission, which is monitoring the implementation of the provisions of the Act as well as the Schemes, has expressed concern about it. As per information available with National Human Rights Commission, the number of manual scavengers so far identified is 6,76,009. As against this, so far only 1,51,930 have been trained and 3,94,638 have been rehabilitated. Thus even going by these figures, there is huge backlog of manual scavengers yet to be liberated and rehabilitated, even though 2<sup>nd</sup> October, 2002 was fixed as the time limit for its total implementation. These figures also show that more than 60% of the so-called rehabilitated scavengers have not received any training and, evidently, they have been pushed into alternative vocations without improving their skill base. There are no evaluation studies on whether the so-called rehabilitated scavengers have really left the vocation, taken to alternative employment and are able to eke out a satisfactory

<sup>3</sup>Hand Book of National Commission for Safai Karamcharis, op. cit., pp 2-6

<sup>4</sup>Hand Book of National Safai Karamcharis Commission, op. cit., pp 17-25

living. The undocumented information indicates that this may not be the reality. In fact, in many cases, where an identified scavenger has obtained financial assistance for rehabilitation, other members of the family continue to be engaged in this abhorrent practice.

National Commission for Safai Karamcharis in its reports submitted to the Government has pointed out problems relating to the design of the programme as well as the unsatisfactory state of its implementation<sup>5</sup>. It has specifically highlighted the faulty definition of the 'scavenger' adopted under the scheme, which has the effect of excluding a large number of manual scavengers. The survey of scavengers is old and the number identified on the basis of old survey does not correspond to the reality as the actual number is much larger. Also, Safai Karamcharis working in cantonments, railways and PSU colonies have not been included in the survey. The rehabilitation programme suffers from low amount of stipend for training, inadequate period of training, shortage of training institutions and lack of relevant and viable training programmes, low ceiling of financial assistance (made even lower by the banks through their arbitrary restrictions) the target oriented approach, non-viability of projects, under-utilization and mis-utilization of the funds allocated under the scheme, inactive and unhelpful attitude of the banks in advancing credit for the scheme, etc. The greatest problem with this programme is its fragmented nature as no single Ministry or Agency is responsible for total attack on the problem, i.e. existence of dry latrine system and manual scavenging. While the Ministry of Urban Development implements the Act which has eliminated the practice of manual scavenging and is responsible for conversion of dry latrines into water-pour flush latrines, the Ministry of Social Justice & Empowerment has the jurisdiction for rehabilitation of scavengers. Obviously, the two have to synchronize their activities in order to achieve the objective which does not take place. Achieving coordination between different Government agencies in respect of a programme or activity is always a problem. It is absolutely crucial to this programme.

The progress of the scheme for conversion of dry latrines into wet latrines, however, is even more unsatisfactory. This would be evident from the fact that as per information available with National Human Rights Commission, of the 54 lakhs of dry latrines to be converted as on 10.9.2001, only 14.16 lakhs have been converted and of the 3643 towns to be covered, only 1248 towns have so far been covered and there was a huge backlog of 2395 towns yet to be covered. Only 385 towns have been declared scavenger-free. This statistics may have undergone some change with the progress achieved during the past months, but is not likely to alter the picture very substantially. There is lack of desired seriousness in implementing the scheme as has been noted by the National Human Rights Commission in its report for 2000-2001 and even the available funds are not properly utilized. The reason for this perhaps lies in the unwillingness of the beneficiary families [house owners with dry latrines] to share the loan liability which is provided by HUDCO for conversion of dry latrines into wet latrines. The element of subsidy is

<sup>5</sup>First Report (1994-95), Second Report (1995-96), Third Report (1996-97 & 1997-98), Fourth Report (1998-99 & 1999-2000). Information so far available is that first two reports have been placed in the Parliament. - Hand Book of the Commission, op. cit., p. 25

available only for weaker sections (45%) with a loan component of 50% and beneficiary contribution of 5% and for low income groups (25%) with a loan contribution of 60% and beneficiary share of 15%. The middle and high income groups have no subsidy and have to contribute 25% while the remaining 75% has to come as loan. There is always reluctance on the part of people to make monetary contribution in respect of any contingency unless there is unavoidable pressure exerted on them. Therefore, the concerned family units owning dry latrines would be disinclined to contribute financially or to take loan to convert their dry latrines unless adequate pressure is built up on them by stopping servicing of their dry latrines. What is required in these circumstances is a strong action on the part of the municipal administration to force people to get their latrines converted within a specified time frame. This could be done even without a law or pending adoption of the law throughout the country if there is requisite will and determination to do so.

Another little known aspect is that those involved in manual scavenging do not have the real freedom to withdraw from the arrangement of servicing dry latrines on their own will as they are forcibly dragged to this work by those who have dry latrines in their houses. The law and order administrative machinery also does not provide protection and support to the scavengers against the illegal action of dry latrine keepers when the former refuse to attend to this work. Rather, pressure is exerted on scavengers to carry out the work as per the customary practice in view of the health hazard involved in not cleaning the dry latrines. This highlights the need for necessarily linking the scheme for rehabilitation of scavengers with the scheme of conversion of dry latrines into wet latrines. The two steps must be taken symbiotically. Conversion of dry latrines has to come first so that the cause itself is removed whose effect is the practice of manual scavenging. For this purpose it would be necessary that the whole area of a township is taken up as a unit simultaneously and in full steam rather than the scheme being allowed to be implemented piecemeal. The law and order administration must fully back the effort of Municipal administration in such a drive. Adequate publicity should be given to the programme in the identified area regarding the consequences which would follow if dry latrines are not converted into wet ones by a specified date. It would also be necessary to provide support and protection to the scavengers so that they are not forced to clean the dry latrines manually. This itself will create pressure on the house owners to comply.

The most unfortunate feature of manual scavenging is that it is largely done by women members of scavenger families. Evaluation report in respect of Rajasthan available with the Ministry of Social Justice and Empowerment indicated that 70% of scavengers are women. The percentage could even be larger. In fact, even in families of scavengers where men have liberated themselves from this work by seeking other jobs/vocations (some of them may be just sweepers without having to do manual scavenging), they still permit, rather encourage and coerce, their women members to continue to carry on this work for augmenting the income of the family. Thus, a degrading customary practice gets reinforced by pressure of poverty, gender insensitivity and intra-family inequity. This highlights the need to primarily focus on women scavengers and, for this purpose



an altogether different strategy would have to be adopted to make a dent on the problem. Instead of merely providing financial assistance and vocational training for an alternative vocation to them, there is greater need for conscientisation of the women involved in this practice. Though women scavengers seem to have internalized the inevitability of their role in the practice and the social sanction behind their work has made them immune from the feeling of degradation, they nonetheless feel deeply in their psyche the indignity involved in the work. The strategy, therefore, should focus on awakening this feeling in them and to build up pressure from their side to break away from the stranglehold of this arrangement. Since the scavenger society is highly male dominated, their cooperation is vital. The male members of the family should therefore form part of the overall strategy where the family is psychologically and economically prepared to give up this occupation.

Ideally, the proper strategy for achieving sustained though slow progress in the matter, should have been for (a) municipalities to concentrate on forcible conversion of dry latrines into wet latrines at their own cost (by taking bulk loan from HUDCO directly), to realise this loan from beneficiary households in installments like any other municipal taxes and to resort to some punitive action against refusal to co-operate, (b) the task of liberation of manual scavengers should have begun with the process of awareness creation among women and others engaged in this activity, confidence building measures accompanied by a modest monthly allowance at least equal to or even slightly more than what the scavengers earn through cash and kind from the household owners serviced by them over a period of 2 to 3 years so as to make a complete break from the past and in order to permit them, women particularly, to build up a feeling of self-reliance, economic independence and freedom from social pressure. During this period of 2 to 3 years these women (or the men as the case may be) would have been encouraged to identify for themselves a possible alternative vocation followed by the implementing agency arranging good quality training and thereafter assisting them in finding either wage employment or setting up a self-employment unit. This strategy would have at least ensured that the manual scavenging would be eliminated without causing any hardship to either the scavengers or the households which have dry latrines. But the Scheme is being continued on the virtually traditional lines and on the pattern of other centrally sponsored schemes. A radically new approach is, therefore, necessary.

Since manual scavenging is based on customary practices, its foundations have to be explored in the customary law of caste Hindu society. In this context, one noteworthy feature of manual scavenging is the JAJMANI system rooted in the Hindu social organization under which it operates. The scavenger family is tied down to a number of households for services to be rendered in exchange for returns in cash and kind (some food) and gifts on ceremonial occasions/festivities. This exchange arrangement is sanctioned by social custom and evokes greater compliance than even a legal provision. These Jajmani arrangements of rights and obligations are even reduced to recorded documents which are exchanged and even transferred almost like a deed of contract. Usually, an intermediary from the community operates the system almost like a labour contractor in respect of specified territorial units and scavenger households. There is some vested



interest within the scavenger community for perpetuating the system because it is an instrument of exercising social control and realizing monetary benefits almost like a Zamindari system. Therefore, it would be necessary to break the stranglehold of this arrangement so that individual families are not obliged by any customary relationship to engage in this work and are not coerced to do so by any intermediary having acquired interests in this regard. In fact, this practice could even be brought **within the ambit of the legal provisions of the Bonded Labour Abolition Act** to liberate the scavenger families, should such a need arise.

The rehabilitation process has first, however, to begin with the removal of unsanitary conditions in which scavengers live in their secluded colonies. This would involve commitment of substantial funds for providing clean drinking water, provision of sanitary latrines, underground sewage, filth disposal, pavement of streets, cleaning of drains, repair of houses, provision of street lighting, etc. The present scheme envisages provision of housing loan only. This may not be enough. More important than even a house is the sanitation in the colony itself. This can only be done by the local municipal body for which resources would need to be specifically allocated. The programmes under which these improvements can be undertaken would have to be integrated with the overall integrated scheme being advocated in this paper so as to have the necessary impact. This further underlines the need for taking up a whole colony as a unit of rehabilitation rather than an individual family and the rehabilitation project should involve all these aspects including access to schooling and health care in its conceptual frame though funds for these components of rehabilitation need not come from a single programme but be arranged through appropriate convergence of concerned programmes.

As a corollary to the approach outlined above, even in the limited area of income generating activities, group activities, particularly for women, would be far more relevant and effective as group approach would generate greater confidence in its numbers and promote organizational ability to break from the system. This incidentally would also achieve efficiency of investment in self-employment ventures and, in any case, is in line with the strategy now adopted in many poverty alleviation programmes of the Government.

Manual scavenging is largely concentrated in towns and cities though it is also practised in rural areas. There are greater difficulties in providing viable employment activities on a sustainable basis in urban areas unlike in the rural areas where beneficiaries could be allotted land for cultivation or assisted to take up land related activities like livestock rearing, fisheries, sericulture, etc. In the urban areas, beneficiaries in the past have been assisted to take up dairy, piggery, garment retailing, cycle/scooter repair, tailoring and cutting, etc. There are serious limitations to providing satisfactory rehabilitation in these vocations. Piggery activities create sanitary problems in urban slums and also friction with residents in the neighbourhood. Dairy activities also cannot be undertaken in such congested localities. Tailoring and cutting, cycle repair, garment shops and such other activities cannot provide sufficient income generation as such activities have low investment and are already saturated. There is also not adequate demand for these services to accommodate such a large number of scavengers as they

inevitably are in a segregated urban colony in a target town. Due to the stigma attached, no activity which involves handling of food items would succeed. The difficulty in finding suitable vocations for such scavengers is truly formidable and has been also highlighted by State Governments as well. Most towns in States which have manual scavenging would not have flourishing industries in the vicinity so as to provide scope for wage employment. Therefore, it would be desirable to identify activities where such people can be absorbed with assurance of a gainful employment first, before taking up skill development and project formulation. Usually, such intensive pre-survey is not done and too many beneficiaries are sponsored for training and later financing in a limited number of trades without reference to the level of market demand.

Even in respect of the scheme relating to scholarships for children of scavengers, etc., the implementation is indifferent. There is lack of enthusiasm in States to place their demand before the Central Government, get funds and extend the benefits to the children of those engaged in unclean occupations, even though the task involved is mere identification of such children and distribution of stipend. Perhaps reluctance to contribute 50% State share towards the Scheme is reflected in this lack of enthusiasm to implement the scheme vigorously.

It is, therefore, necessary that the entire scheme approach to the problem of manual scavenging is thoroughly reviewed and a radically altered approach is put in place with more integrated and comprehensive scheme being brought into operation if the problem of manual scavenging is to be eliminated. The schooling and stipendiary aspects for the children of scavengers may be appropriately integrated into the suggested new scheme. The entire programme for elimination of manual scavenging should be implemented by a single agency which should be responsible for all its aspects ranging from implementation of the Act to rehabilitation of the liberated scavengers and improving the quality of life in their colonies.

With regard to scavengers, there are other problems as well which the existing scheme does not take into account. The most important among them is the way scavengers are employed for cleaning sewers manually despite availability of modern technology. This reflects the lack of sensitivity and concern in the employers, i.e. the municipal bodies largely, for their life and health. "In cities scavengers are actually lowered into filthy gutters to unclog them. They are fully immersed in human waste without any protective gear. In Mumbai, children made to dive into manholes have died from carbon monoxide poisoning. In many communities in exchange for left over food, scavengers are also expected to remove dead animal carcasses. .... Their refusal to do so can result in physical abuse<sup>6</sup>....." It, therefore, lies within the powers of the Government to mandate that Municipalities should use modern technology for unclogging of sewers and cleaning of other bodies of human waste and provide protective gear to scavengers who come in contact with them. These provisions should be rigorously enforced and National Commission for Safai Karamcharis should monitor their compliance. The scavengers

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<sup>6</sup>Human Rights Watch, op. cit., pp 141-142. For details of State's apathy towards the problem, see pp 141-150 also.

employed by households, private establishments, NGOs, Cooperative Societies, Contractors, some of whom are on part-time basis and service, small Government establishments do not get minimum wages prescribed for unskilled worker by the competent authority. The level of remuneration of sanitation workers in private households is very low. It is, therefore, necessary to fix minimum wages for all categories of sanitation workers under Minimum Wages Act to reduce their economic exploitation. Until then, the wage level fixed for unskilled workers should be vigorously enforced. Also, the tendency to employ Safai Karamcharis on contract basis for sweeping and cleaning work is still continuing despite its clear prohibition with effect from 1<sup>st</sup> March, 1977, contained in Government of India's Notification dated 9<sup>th</sup> December, 1976 issued for this purpose. The practice is in vogue in many Public Sector undertakings and may have surfaced in some Government establishments as well in the wake of Economic Reforms Policy with its accent on privatization despite the Supreme Court judgement (9<sup>th</sup> May, 1995). This needs to be effectively curbed to extend to the involved scavengers some modicum of justice. Exposure to health risk being an ever threatening feature of their lives, a comprehensive study of health care problems of all category of sanitation workers and effective mechanisms for their health check up and treatment are extremely important for protecting them against serious illness and premature death. The scavenger community suffers from social problems as well; indebtedness, alcoholism being some of them. The degrading nature of their work and sub-human living environment only contribute to them. These aspects need to be tackled through a social reform programme managed by NGOs and should, in fact, be a part of the new scheme for rehabilitation recommended in this paper. With such a large agenda to pursue, it is not only natural but also necessary that the National Commission for Safai Karamcharis is appropriately strengthened and empowered to carry on with its work as the task ahead is still quite enormous and challenging. The conditions of scavengers and the task of sanitation handled by them needs to be closely monitored because the ground reality even after abolition of manual scavenging even in many big Government establishments is not very different from what it was earlier as the Commission has so pointedly brought out in its Second Report in respect of Railways.

## **2. Devdasi System Abolition Acts**

Tradition of divine prostitution wherein a woman is dedicated to a deity as a sacred body has been a part of customary practice in India for a long time, so much so that it has been claimed that there is no temple in any part of the country without a divine prostitute attached to it<sup>7</sup>. In fact, a few temples have more than one Devdasi attached to them. The origin of this institution lies in the fact that a few deities demanded "whole time devotees to serve them, both ritual and secular. The other reason is that devotees themselves offer women to a deity for service expecting something in return. However, the powerful section of society brought this custom into vogue to exploit the ritual and religious pretext since the divine prostitutes ultimately become the sex objects of dominant persons or groups. As per the study<sup>8</sup>, the practice continues even today but has become

<sup>7</sup>Singh, Nagendra Kr., Divine Prostitution (1997), Preface

<sup>8</sup>Singh, N.K., op. cit., Also see Human Rights Watch, op. cit., pp 150-152

more commercialized. The Devdasi System is also helped to continue due to the extreme poverty of scheduled caste families who, under compulsion of circumstances when even religious begging does not bring enough income to have sustenance, allow this practice as a means of getting some income or gifts. While the first effective step for abolishing this system was taken by the Princely family of Mysore in early part of the century, the practice of dedicating girls to temples was made punishable under the Hindu Religious and Charitable Endowment Act, 1927 of Mysore. In 1934, 'The Bombay Devdasi Protection Act' was passed which made unlawful any ceremony intended to dedicate or having effect of dedication of woman as a divine prostitute where such woman has not consented to the performance of such ceremony. In independent India, Karnataka and Andhra Pradesh have enacted separate laws for abolition of Devdasi System. Andhra Pradesh enacted a law, the Andhra Pradesh Devdasi (Prohibition of Dedication) Act, 1988 providing deterrent punishment to those who perform, promote, take part or abet in performance of any ceremony for dedication of a woman as a divine prostitute. As per official estimates 16624 Devdasis have so far been identified in the State of which 14339 have been rehabilitated<sup>9</sup>. Karnataka State enacted the law entitled 'Karnataka Devdasi (Prohibition of Dedication) Act, 1992' according to which dedication of women or girls to any deity or temple for object of worship is prohibited and violation of the Act is punishable. In Maharashtra, the 1934 Act continues to be in force. Governments of Andhra Pradesh, Karnataka and Maharashtra have undertaken rehabilitation programmes for welfare of liberated Devdasis.

However, implementation of law as well as rehabilitation of liberated Devdasis in various States have been unsatisfactory. The practice is far from dead; the dedication ceremonies have shifted from main temples to the house of priests or smaller temples with no publicity and fanfare<sup>10</sup>. The laws also have loopholes because of which it is difficult to take legal action against the offenders. Also, victims do not come forward to complain. It has been reported that not a single case has been booked under the Karnataka Devdasis Prohibition Act against priests despite many complaints and admonitions to that effect. Joint Women Programme, a voluntary social organization, has complained many times that girls belonging to low caste have continued to be dedicated by innocent and vulnerable parents with the connivance of priests<sup>11</sup>.

The rehabilitation programme suffers from adhocism and inadequacy. It does not provide adequate means of livelihood and skill development for this purpose. The financial assistance provided to Devdasis also carries an element of loan to be repaid. The rehabilitation projects for these women financed for taking up income generating activities have not been viable. Most Devdasis who have been covered by the rehabilitation programmes have not been provided access to a residential house, health care or

<sup>9</sup>A report of Public Hearing held at Tirupathi on August 18, 2001 on the Rehabilitation of Devdasis in AP, carried out by Council for Social Development, Hyderabad for the National Commission for Women. Also see National Campaign on Dalit Human Rights, Chennai hearing, op. cit., pp 196-201.

<sup>10</sup>Singo, op. cit., p. 215, 1997

<sup>11</sup>An exploratory study on Devdasi Rehabilitation Programme initiated by Karnataka Women's Development Corporation and SC/ST Corporation, Government of Karnataka in northern districts of Karnataka, carried out by Joint Women's Development Programme, Bangalore.

educational facility for their children. There is very little by way of awareness building and creation of self-confidence among the liberated Devdasis. In the public hearing held at Raichur town in Karnataka, organized by the Council for Social Development, Hyderabad<sup>12</sup>, the Devdasis complained of lack of response from Government for demands of various assistance, particularly relating to housing and health care and loan for maintenance of the family. Most of the Devdasis have neither land nor house. They work as wage labourers at very low wage rate (Rs. 20/- per day). The nutrition level among Devdasis and their children is very low and they suffer from various infections. STD cases are very common as they are forced into sexual activity. The programme of rehabilitation is implemented in a very fragmented manner as a single agency is not responsible for taking up an integrated project. Devdasis are also not aware of various facilities which they can avail of. Their children suffer from stigma in school because of which they drop out. It was confirmed that dedication of girls was still taking place and the number of Devdasis who have received some financial assistance is very small out of the total number identified and targeted. This is because of several complicated procedures and bureaucratic red tape in availing of assistance. It was also mentioned that many non-Devdasis are cornering the benefits of Devdasis under the Devdasi Rehabilitation programme. There is no coordinated effort among Government agencies in implementing the rehabilitation programmes. In the public hearing at Tirupathi<sup>13</sup>, it was stressed that greatest priority in the programme was to protect the girl child of Devdasi from the system and educating her children. Several inadequacies in the policy of rehabilitation and problems related to legal aspects were also identified. Even after their liberation from the practice, Devdasis are in some places pressurized by local people to dance in village level rituals and annual jatras under religious beliefs and fear induced in them that village goddess will punish villagers if they fail to perform. Despite the continued prevalence of practice in many areas, complaints have not been registered by either the victim or the public. The police does not have power to act suo moto under the Act. The existing law has loopholes and therefore needs to be reframed. Even from the villages where Devdasis were liberated and rehabilitated, girl children are still being pushed into the system and no responsibility is being fixed for such violations of law.

These two hearings plus the detailed report prepared by Joint Women Programme for the National Commission for Women bring out the following:

- A. The laws are defective and leave many loopholes in their effective enforcement. But the enforcement of even the existing laws is dismal as hardly any cases are registered and there are no reported convictions.
- B. As against the approximate number of Devdasis, a very small number has been identified for relief and rehabilitation.
- C. Rehabilitation programmes have been extremely unsatisfactory. They are inadequate to provide sustenance in relation to the needs of these women. They

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<sup>12</sup>Three Public Hearings, one each at Belgaum, Raichur and Tripura, held by Council for Social Development. The Public Hearing in Raichur was held on 15 Oct. 2001. The report was prepared by Dr. Vijay Kumar for all the three hearings.

<sup>13</sup>The Public Hearing at Tirupathi was held on Aug. 18, 2001



do not target the entire gamut of problems faced by the Devdasis. Different aspects of rehabilitation are being implemented by different agencies and there is no coordination among them. Devdasis feel harassed because of many procedural bottlenecks amid bureaucratic red tape in accessing these benefits. There is no programme to educate Devdasis both about the law as well as the range of benefits available. There is virtually no follow up on whether the rehabilitation programme has achieved the objective. There is also no attempt to integrate admissible benefits under different programmes in the projects formulated to rehabilitate the released Devdasis so as to produce convergent action. Support from non-governmental organizations in tackling their problems is also not available to most of them as the NGO coverage of Devdasis is too inadequate and in many areas non-existent. Children of Devdasis face stigma in getting admission to schools and in pursuing their studies. The rehabilitation programmes fail to create self confidence and self reliance through awareness generation and skill development. The extent of financial assistance provided is low which cannot assure even bare subsistence. There is no focussed action on preventing girl children of Devdasis from being pushed into the system. In short, there is lack of committed participation from all stake holders; Government, NGOs, revenue and police officials, development agencies. There is also no involvement of village panchayat in the programmes<sup>14</sup>.

The facts narrated above clearly point towards both the inadequacy of the legal provisions as well as the rehabilitation programme. Lack of political commitment to enforce even the existing law as well as the programme is also clearly evident. It, therefore, seems necessary that Central Government adopts a proactive approach in eliminating this practice and rehabilitating women released from this sexual bondage. The concerned State Governments should be pressurized to amend their existing laws comprehensively to remove various loopholes and make them stringent and also strengthen their machinery for rigorous enforcement. The cases of Devdasis being pushed into brothels need to be thoroughly investigated by a specially constituted team of police officers supported by social activists to break the nexus between traffickers and priests. They should launch a massive awareness campaign among the targeted families in the area identified for this purpose and carry out intensive survey to locate Devdasis and rehabilitate them. The rehabilitation programme for Devdasis should be thoroughly revamped so as to make it an integrated package covering their various needs from housing and health to poverty alleviation and confidence building. Bureaucratic hurdles would have to be removed and a single agency implementation structure put in place. The least Government should do is to spare liberated Devdasis the loan burden under the programme. The Devdasis should be organized and involved in the implementation of their own rehabilitation. National Commission for Women should monitor this programme on a regular basis.

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<sup>14</sup>All the four reports may be referred to. The report of Joint Women's Programme is more detailed. In the report of the Joint Women's Programme, it has been mentioned that the Programme implementation in Belgaum district was relatively better because of assistance of NGOs.

Devdasi system represents only one feature of sexual exploitation of Scheduled Caste women through religious and customary beliefs and practices. But across the country there are many other forms through which women belonging to Scheduled Castes and Scheduled Tribes are sexually exploited and are forced to lead a degraded existence. The worse aspect is that some of these practices may not even constitute violation of a specified law or regulatory arrangement and therefore, fail to attract penal action. The customary practices, therefore, continue to operate unhindered and unchallenged in view of the social sanction behind them. Recently, the case of a tribal girl who was ordered by the village community into prostitution as a result of violation of some customs was reported. The girl later committed suicide<sup>15</sup>. There are many other areas from where women are pushed into prostitution under customary arrangements. It is, therefore, necessary that the entire gamut of practices leading to sexual exploitation of Scheduled Caste/ Scheduled Tribe women is brought within the ambit of central law which may include not only the Devdasi system but also other customary and social arrangements which promote or sanctify them. Such a law should also incorporate an integrated programme of comprehensive rehabilitation of women liberated from such practices. National Commission of Women should take up a study of such practices across the country and prepare the draft of such a law.

## **B. PREVENTING CONTROL OVER FRUITS OF LABOUR**

### **1. Bonded Labour System (Abolition) Act, 1976**

Bonded Labour System under which a person works in slave-like conditions in order to pay of a debt was abolished in 1976, along with all agreements and obligations arising therefrom. It also mandated release of all labourers from bondage, cancelled their outstanding debts and ordered their economic rehabilitation by the State. The bonded labour arrangement was also made punishable if operated after the Act came into effect. This revolutionary piece of legislation which held out a great deal of hope for SCs and STs, who constitute overwhelming majority of persons working as bonded labourers, has also been poorly implemented. There is no confirmed statistics about the extent of bonded labourers in the country. One study has estimated 40 million such labourers among whom 15 million are children<sup>16</sup>. But the number of bonded labourers identified, released and rehabilitated is negligible. This is because bonded labour system operates under oppressive agrarian relations in rural areas in which land holding is concentrated in upper castes and creamy layers of intermediary castes, while those working as agricultural labourers belong to Scheduled Castes and Scheduled Tribes or in some cases very poor among the OBCs (Other Backward Classes). As per estimate of the Programme Evaluation Organization of the Planning Commission, 83.2% of the total number of bonded labourers belonged to SCs and STs<sup>17</sup>. Bonded Labour System operates unchallenged even after the enactment of the Act because the labour involved is too weak and vulnerable. The

<sup>15</sup>The Hindu, dated 20th August, 2002 "Auctioned girl commits suicide".

<sup>16</sup>Human Rights Watch, op. cit., p. 139; Also p. 9

<sup>17</sup>Special Report of National Commission for SCs said STs, Atrocities on SCs/STs. Causes and remedies op. cit., p. 14



resultant violence is therefore internalized. Friction arises however when the bonded labourer or members of his family demand minimum wages or better working conditions or protest against ill-treatment. Land-owners retaliate with violence against them. That is why bonded labour has been listed in S.3(vi) as one of the atrocities under SCs and STs (Prevention of Atrocities) Act, 1989. There is a strong resistance from the land owning communities who employ bonded labour to declare them as 'bonded' as it would deprive them of a source of cheap, assured and readily available labour. There is also lack of political will to enforce the law which is evident from the political pressure exerted on the implementing bureaucracy against identification of bonded labourers, as the political leadership in most States largely comes from land owning communities or has very close links with them. Various subterfuges have therefore been adopted in defining 'bonded labour' [notwithstanding the clear legal provisions] to ensure that the labour working with the land owner is not identified as 'bonded'. The attitude of the enforcement machinery also favours the employers rather than the labour as the personnel involved in the work also share the ideology of the employers. Therefore, in many cases where complaints have also been lodged by the bonded labourers themselves or by NGOs or social workers about their conditions which merit their identification as bonded labourers, the competent authority has not declared them 'bonded' and they continue to suffer the oppression of the system. In fact, the complainant labourers suffer reprisals from the employer(s) in such circumstances. The difficulty also arises because the bonded labourer being entirely dependent upon his employer for his day to day survival is reluctant to complain lest he may lose even this tenuous source of livelihood. Due to all these considerations few labourers muster courage to seek the help of the law. Even the NGOs and social activists who are engaged in this work, face great risk of threat and intimidation from the land owners if they try to identify bonded labour working under them. Many of them are also implicated in false cases. Unless there is an effective programme which provides to a bonded labourer alternative employment from the day he has been freed, he is vulnerable and therefore does not wish to approach the competent authority for his release and rehabilitation under the Act. Attempts by Government agencies to rehabilitate even the few bonded labours who have been identified and released has not been encouraging and does not create confidence in others to seek relief under the law. It is, therefore, not certain how many of the released Bonded labourers, claimed to have been rehabilitated, have relapsed into bondage. The rehabilitation programme undertaken in the case of released bonded labourers despite elaborate guidelines is neither timely, nor integrated and adequate. It also does not assure substantial alternative employment to the victim. The programme also suffers from bureaucratic red tape leading to undue delay in reaching the benefits to the affected persons. There have also been instances of erstwhile land owners appropriating the benefits given to a bonded labour after their identification and release in view of their social control over men. Considering the urgency and importance of expeditious prosecution of offenders, provision has been made under the Act for summary trial and conferment of powers of a Magistrate First Class on Executive Magistrates. But this extraordinary provision has also not been effectively utilized to punish the violators of the provisions of the Act. There is large pendency of cases with Executive Magistrates and in many

cases even the powers have not been conferred on them for trying these cases<sup>18</sup> and therefore the cases languish for years in the Courts.

More than 25 years have elapsed since the Act came into existence. The bonded labour system far from disappearing has acquired new forms. In the earlier times, the bonded labour system was confined largely to rural areas where a person functioned as an agricultural labourer attached to the farm of the land owner. The practice of bonded labour system has now extended to manufacturing and industry also, besides continuing in agriculture in rural areas. There are more acute cases of bonded labour system in brick kiln industry, carpet weaving, stone quarries, etc<sup>19</sup>. In fact, in the stone quarries, cases have been reported where the bonded labourers were chained and kept confined along with their families. Thus, even the modernization and globalization of economy does not assure that the control of those who own land and capital over the labour of others is going to relax. Documented studies have shown that labourers who migrate from one state to another to work on agricultural farms, etc. are virtually treated as slaves, transferred from one employer to another as a commodity. They are not allowed to leave employment and are kept confined to a place where no outsider can come in contact with them. Various labour laws are violated in their case since they neither get minimum wages nor benefit of any other labour legislation<sup>20</sup>. The operation of Bonded Labour System in occupations which employ child labour is the most pernicious of the emerging new forms. The conditions of work and the treatment meted out to child workers are much worse than those to which adult labourers are subjected to. Recently, under the aegis of National Human Rights Commission a girl child labour was detected in Andhra Pradesh who was kept in chains all twenty four hours by the employer. She had to attend calls of nature also in chains. This is the level of dehumanization and brutalization which recent forms of Bonded Labour System have acquired<sup>21</sup>.

National Human Rights Commission has been monitoring the implementation of Bonded Labour (Abolition) Act, 1976 under the Orders of the Supreme Court. Recently, the Commission had submitted a Status Report to the Supreme Court. From this report it emerges that there has been no countrywide survey to enable an authentic assessment of the magnitude of the problem. Though the Ministry of Labour has identified only 13 States with 172 districts as bonded labour prone, the bonded labour system virtually prevails in almost all the States and most UTs. High incidence of bonded labour in the

<sup>18</sup>Report on Atrocities on SCs and Tribes (1990), op. cit., pp 14-15

<sup>19</sup>Recommendations of Workshop on 'Inter-State Migrant Labour, Problems & Issues' Sept. 26-28, 1997, organized by Department of Sociology, Punjab University, Chandigarh in collaboration with Ministry of Labour, etc. pp 13-14.

<sup>20</sup>Proceedings of the Workshop on status of Inter-State Migrant Workmen in the North-West India, 22-23rd March, 2001, organised by Department of Sociology, Punjab University, Chandigarh. Third Technical Session 'Incidence and Magnitude of Bondage in Punjab and Remedial Measures', pp 32-44

<sup>21</sup>Letter dated 13.5.2002 from Shri K.R. Venugopal, Special Rapporteur, NHRC, addressed to the Chief Secretary of A.P. reg: release of two children, one 12 year old girl and the other 8 year old boy, in Budavarpet area of Kurnool District. These child labourers were bonded to the Beedi manufacturer [who also happens to be a Government servant working in the District Panchayat Office, Kurnool] who had given advance to their parents in return for which children have to work for their masters.

agricultural sector is quite well established in the States of Andhra Pradesh, Bihar, Karnataka, Maharashtra, Orissa, Punjab, Tamilnadu and Madhya Pradesh. Indebtedness of the rural populace is a major causal factor for getting trapped in bondage. In the non-agricultural sector, the practice of bonded labour is rampant in brick kilns, stone quarries, beedi manufacture, carpet weaving and construction projects and of bonded child labour in sericultural processing industry. Migrant bonded labour has emerged as an aggravated form of deprivation and exploitation of labour in States such as Bihar, Jharkand, Chhattisgarh, Tamilnadu, Madhya Pradesh, Orissa, Rajasthan, Punjab and Haryana. Failure of the State Governments to enforce the provision of Inter-State Migrant Workmen (Regulation of Employment and Service Conditions) Act, 1979, the Contract Labour (Regulation and Abolition) Act, 1970 and Minimum Wages Act, 1948 is the most important causal factor of bondage of migrant workers. State Governments usually refuse to acknowledge that bonded labour system exists in their jurisdiction. While some States like Karnataka and Himachal Pradesh outrightly deny its existence, other States acknowledge its existence but ignore them. Some States as a stratagem to avoid taking any action believe that after the enactment of Bonded Labour System (Abolition) Act, 1976, all bonded labourers have been freed and nothing more needs to be done. National Human Rights Commission's own experience in monitoring has revealed that only when the Chief Minister *was* told that State could face embarrassment in its relations with National Human Rights Commission and the Supreme Court that any worthwhile steps were taken for its implementation. The civil service has virtually abdicated its responsibility under the law to such an extent that unless the Chief Minister of a State clearly indicates what his political priorities are no justice gets done to the poor. The implementation of the Bonded Labour System (Abolition) Act, 1976 and other pro-poor laws are not on the political agenda of any Chief Minister today. This is the stark reality. Therefore, bringing implementation of this Act center stage in the political governance is the first step for checking atrocities on Scheduled Castes unleashed on account of debt bondage. While the Central and State Governments continue to publicize their commitment to the eradication of poverty, elimination of various forms of exploitation does not figure in their strategy for poverty alleviation though that should constitute its essence. They would like the soft option of distribution of funds for income generation. The enforcement machinery for bonded labour at the lower level usually gives the impression that it is not very clear about the definition of bonded labour despite the clarifications laid down in the Supreme Court judgement itself and the subsequent manual issued by the National Human Rights Commission. But, in essence, the problem is less about conceptual understanding and clarity than about what would constitute the correct action in terms of political signals they receive. The only efforts at identification of bonded labourers has come from voluntary organizations and social activists but even such NGOs and activists are frustrated because of non-cooperation from district administration who are found even helping the keepers of bonded labourers to arrange dispersal and disappearance of the bonded labourers detected in their custody.

The Act mandates that on the immediate release of a bonded labourer, the process of rehabilitation has to follow. This does not happen. Even where a bonded labourer is identified and released, the action is confined to physical freedom of the victim without

ensuring his freedom from debt and further exploitation. In some cases even the Certificate of Release from bonded debt does not get issued. Vigilance Committees provided for under the Act have not been constituted for years and where they were constituted they remained non-functional. Since the process of monitoring started by National Human Rights Commission, the single most notable achievement has been the reconstitution of these Committees in most southern States but even today such Committees have not been notified for all districts and sub-divisions and where constituted these Committees have remained dormant and are not holding meetings. In some cases, the term of non-official members has elapsed and replacements have not been notified. Social activists and NGOs are not receiving representation on these Committees. Neither at the State level nor District level any worthwhile monitoring by the Vigilance Committee is being done. Therefore, the single most important instrument provided for under the Act as an aid to the process of identification, release and rehabilitation is totally missing. Prosecution was intended to start immediately on identification and release of the bonded labourer, but this is the single area of most neglect in the State even where on a limited scale bonded labourers have been identified and released. There are very few cases of prosecution of keepers of bonded labourers. Even where the formality of registration of a case has been done, investigation is tardy, trials slow and convictions almost nil. It was noted in the report that the situation has not undergone any significant improvement since the Gandhi Peace Foundation and National Labour Institute (1977-80) Study, which had revealed that only 1.35% of reported cases were registered, 32% of culprits arrested and only 0.08% given prison sentences. The provision of summary trial available under Section 20(2) has rarely been used.

There has been some achievement since efforts by National Human Rights Commission were made in the implementation of the Act through its special rapporteur system. More than 1000 bonded labourers have been identified in the State of Karnataka and as many cases of suspected bonded labourers are being investigated into. In Tamilnadu, nearly 10,000 have been identified during the last five years. District Vigilance Committees have been constituted in most districts and sub-divisions of southern States. Nearly 3000 cases of bonded labour have been identified in Andhra Pradesh. But elsewhere in the **country, the response has been largely negative, even after strong exertion by the National Human Rights Commission.** The general feeling in National Human Rights Commission itself is that there **is a road block with regard to cases of fresh identification.** At the present moment efforts of their special rapporteurs are directed towards location of the already released bonded labourers and to see that they are rehabilitated. Thus, the State which had completely ignored the rehabilitation part of the bonded labourers released earlier have now started the exercise and are claiming central share for this purpose.

There is a centrally sponsored scheme for rehabilitation of bonded labour. There is a huge time lag between release and rehabilitation operations of this scheme with the result that the released bonded labourers have been forced to return to their erstwhile exploiters because of their inability to survive after release. In some cases they have been compelled to accept more cruel terms of employment imposed by the vindictive

ex-masters. The centrally sponsored scheme depends on the release of matching share (50%) by the State Government which is either not done or done late and inadequately. Delay in submission of Utilization Certificates by the District Magistrates to the State Governments and by the latter to the Central Government is responsible for slow progress in release of finance under the Scheme which in turn affects rehabilitation adversely. Further, despite talk of integration and convergence of poverty alleviation programmes with the scheme, this has not happened. The guidelines for rehabilitation for bonded labourers in land based projects envisaged allotment of land for cultivation as the foundation for a durable source of income generation. In a large number of cases of such released bonded labourers, such allotment has not been done. In a few cases where land based rehabilitation was attempted, the land allotted to the released bonded labourer was unfit for cultivation. Sufficient infrastructure or inputs were not provided for making this land cultivable. The non-land based segment of rehabilitation suffered from lack of credit for consumption and productive operations and for want of sustainable projects with backward and forward linkages. The Migrant bonded labourers have been caught in the jurisdictional trap. The States where bonded labour is identified do not cooperate with the parent States by way of helping to release of bonded labourers. At best, they issue the Release Certificate and send these labourers back to their home States, where they receive no attention. In the home State, the District Magistrates refuse to take cognizance of Release Certificates and take up rehabilitation of such labour. Sometimes details sent to the Home States contains vital discrepancies which makes the task of taking up rehabilitation difficult. But the greater difficulty that the implementation of the Act suffers from is that the role of NGOs/social activists has not been recognized in the Act. State Government's attitude towards them is usually one of hostility and largely one of non-cooperation. Considering the lack of interest of the official agencies in the whole process of identification, release and rehabilitation, institutionalization of the role of NGOs/social activists is very important if the implementation of the Act is to pick up momentum.

National Human Rights Commission also set up a group of experts to look into the existing law on bonded labour system with a view to identifying whether some of its provisions needed change in order to attack the problem comprehensively. This group has already given its recommendations and suggested a number of amendments which in turn have been submitted to the Supreme Court by the National Human Rights Commission, as part of its ongoing process of keeping the Hon'ble Apex Court informed of the action being taken in pursuance of their order. The expert group, apart from suggesting changes in the law, have also recommended some administrative measures for effective implementation of the Act. These suggestions include involving the Panchayati Raj institutions in the implementation of the Act, constitution of State level Standing Committee under the Chairmanship of the Chief Secretary, the need for intensified training to the officials engaged in this work. The group has also suggested an Action Plan for the National Human Rights Commission to effectively carry on its task relating to monitoring of the implementation of this Act.

The report of National Human Rights Commission to Supreme Court has been summarized above to show that while intense pressure built up by the Commission has



moved the State administration in some southern States, the results achieved are disproportionately low to the efforts made by the Commission's rapporteurs. In the rest of the country, the Commission finds that there is both political and bureaucratic non-cooperation (virtual road block) in the matter across the States despite such high profile interventions. Therefore, the crucial question faced by the Commission is how to generate the requisite political will for this work and to bring this task on the agenda of political governance. Bureaucratic action will follow once there is necessary political direction to implement the provisions of the Act. As per the strategy, National Human Rights Commission has identified certain pockets in the country where bonded labour system operates and intense pressure is being built upon District Administration to survey the bonded labourers there. Help of NGOs/social activists is also being taken to provide information on the incidence of bonded labour system. This strategy has to continue. Basically political will has to be generated for giving priority to this work and to take it up earnestly. It is hoped that the Commission would be able to do that through its intense and sustained interaction at the highest level in the State Governments.

The prosecution of offenders under the Act needs to be intensively monitored to create deterrence. National Human Rights Commission has been pursuing this aspect as well. Debt Relief and money lending regulation laws also need to be rigorously enforced. Alternative arrangements for consumption credit would have to be provided to meet the needs of subsistence and social obligations of the targeted group. Bonded labourers claimed to have been rehabilitated need to be surveyed to find out if they have relapsed into bondage due to tardy rehabilitation. Implementation of poverty alleviation programmes in the areas of bonded labour concentration would create strength and confidence in labourers trapped in bondage to complain and seek relief under the laws. Simultaneous and rigorous enforcement of other labour laws, particularly relating to Minimum Wages, Child Labour and Inter-State Migrant labour, in tandem with this Act, would help in attacking the pernicious practice of bonded labour system in its recent manifestations more effectively.

## **2. Child Labour (Prohibition and Regulation) Act, 1986**

Incidence of child labour is a product of both poverty and low social status. Myron Weiner has however expressed the views that child labour in India prevails due to vested interests. It is illiteracy which is the cause for its perpetuation and various countries have sought to deal with the problem of child labour, by introduction of universal education through legal enforcement, which effectively removes children from labour force<sup>22</sup>. In fact, institution of child labour is an integral part of bonded labour system in rural areas where the entire family of the agricultural labourer who takes a loan becomes bonded to the creditor. Under the system, specific tasks are assigned to child labour. While the adult males and females work on the farm (female agricultural labour work both on the farm as well as in the household), the children of the family are usually engaged in grazing cattle of the farm owner and some specified agricultural activities. The female child labour is also engaged in various agricultural operations, like sowing,

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<sup>22</sup>The child and the States in India (1991) quoted in Jaiswal, P. Child Labour, op. cit., p. 62

weeding, harvesting, thrashing and picking work in cotton fields besides fetching fuel wood and water and looking after young siblings<sup>23</sup>. Even without linkages of bonded labour system, poor families from scheduled caste and scheduled tribe, agricultural labourers and some from backward classes are forced to send their children for grazing work so that they can have some food in return and, therefore, ease the pressure on the family to support them. The children so employed, therefore, waste their entire childhood in this manner since they can not go to schools and pursue any other activity. After they grow up, they get converted into full fledged agricultural labour. However, due to growing incidence of poverty and lack of alternative employment opportunities to support children, many families have been forced to send children outside the village to work in some industries and various other occupations. Many of these children are pledged by their parents either to the factory owners or their agents or middlemen in exchange for small loans. These mortgaged children become bonded over very small sums of money and continue to be in bondage even after both principal and interests have been paid back in full, due to manipulation of creditors and illiteracy of the parents of these children. A study conducted in the Sivakasi match factories of Tamilnadu quoted in the recent report of National Commission of Labour [P. 1010] refers to the statement of a woman that the child in the womb is pledged to the factory and consumption and maternity loans are obtained on the undertaking that the child born, girl or boy, would work for the factory. In urban areas, children are engaged in more diversified work ranging from hawking, rag picking to brick kilns, stone breaking and domestic work. Child labourers are also engaged in small enterprises of the informal sector, such as bidi rolling, carpet weaving, bangle manufacturing, plucking tea leaves and coffee beans in plantations, etc.<sup>24</sup>. Children are greatly sought after because they can be kept under complete control and would not protest against conditions of work and level of remuneration. Some industries like carpet weaving, match and fire works factories, etc. specifically seek child labour because of their nimble fingers. The exploitation of child labour is extremely acute. They are rarely paid any wages except for some food and are made to work for long hours without any rest. They are not provided any health care and many of them are physically abused<sup>25</sup>. Many children are subjected to physical torture routinely such as branding with hot iron when they make mistakes or ask for adequate food. Attempt to escape is retaliated with beating and other forms of physical violence<sup>26</sup>. Instances of child labour being pushed into drug and sexual trafficking are increasing. Their parents do not come to know of their real conditions. The distinct problems of the female child worker, often get ignored, in the consideration of child labour. While the girl child usually working at home is visible in rural areas, such girl child workers are 'invisible' in urban informal sector. Girl child workers are nearly half the total strength of child labour. In rural areas, girls accompany parents in agricultural operations. In urban informal sector, they are found in match industry (Sivakasi), gem polishing (Jaipur), lock working (Aligarh), brass industry (Moradabad), carpet industry

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<sup>23</sup> Jaiswal, Prachin, *Child Labour* (2000), p. 33

<sup>24</sup> Jaiswal, *op. cit.*, p. 34

<sup>25</sup> Jaiswal, *op. cit.*, pp 37-49

<sup>26</sup> Rehman, M.M. and others, *Child labour and Child Rights* (2002), p. 63



(Bhadohi), Coir industry (Kerala) and a large number of home based industries. Tribal girls are employed as domestic help on a large scale. Tragically, even the parents do not see girl child as a worker, thereby exacerbating gender inequities. Girl child worker faces sexual exploitation at work place<sup>27</sup>. There are instances of slightly grown-up girl children being sold away to brothels and even for sexual trafficking outside the country. Compensatory labour legislations do not cover girl child workers because they usually work in domestic and non-industrial sectors. Child Labour (Prohibition and Regulation) Act, 1986 also exempts child labour in family enterprises from the ban. This is a great handicap in improving their condition. With the changing economy, the condition of Scheduled Castes in rural areas is deteriorating. Employment opportunities are shrinking and therefore, the incidence of child labour is increasing as the children become bread winners of the family, besides looking after their own sustenance.

India has ratified six ILO conventions relating to child labour. The Constitution of India includes provisions to secure compulsory primary education (**Article 45**) as well as prohibition of child labour (**Article 24** and **Article 39**). The Courts in India have also demonstrated great deal of empathy against the practice of child labour. Government policy, in regard to child labour, is to ban employment of children below the age of 14 years in factories, mines and hazardous employment and to regulate working conditions of children in other employment. The Child Labour (Prohibition and Regulation) Act, 1986 seeks to achieve this objective. The Schedule to the Act lists Part-A and Part-B which include occupations and processes in which employment of children is prohibited. This Schedule is expanded from time to time. A total number of 13 occupations and 57 processes are covered by such prohibition. Section 5 of the Act provides for constitution of Child Labour Technical Advisory Committee which advises on the addition of occupations and processes to this Schedule.

According to 1981 census the estimated number of working children was 13.6 million which has come down to 11.28 million as per 1991 census. This is the figure which the Second National Commission on Labour has accepted. Two million of those are reportedly doing jobs that are detrimental to their health and safety [P. 1010]. However, as per the estimates of the 55<sup>th</sup> round of NSSO Survey (1999-2000), the number of working children in the country is estimated to be 10.4 million. The unofficial estimates, however, put the number to 100 million<sup>28</sup>. Whatever be the realistic number, NGOs have found that a large number of these children belong to Scheduled Castes<sup>29</sup>. With regard to geographical distribution of this number, Andhra Pradesh tops the list of States which have the largest number of working children. Other States with very large number of working children are Madhya Pradesh, Maharashtra, Uttar Pradesh and Bihar. More than 90% of child labour is located in rural areas and engaged in agriculture and allied occupations like animal husbandry, cultivation, forestry, fisheries, sericulture, etc. Ministry of Labour has claimed that the number of working children has come down both in

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<sup>27</sup>Jaiswal, op. cit., pp 46-48, p. 84, p. 22

<sup>28</sup>Jaiswal, op. cit., p. 29 has quoted estimates by various non-Government organizations. Also Sixth Report, op. cit., p. 39

<sup>29</sup>Sixth Report, op. cit., p. 39

absolute as well as in percentage terms. From 1981 when the number of working children was 13.6 million, it has come down to 11.28 million in 1991. In percentage terms, it has been reduced from 2% of the total population to 1.34% of the population during this period.

Government formulated a national policy on child labour in 1987. The major focus of this policy was to prepare a Legislative Action Plan, taking up general development programmes for benefiting children and initiate Project based Action Plan in areas of high concentration of child labour. In pursuance of this policy, National Child Labour projects were taken up initially in 12 States. Their number has now increased to 100 covering as many districts and nearly 1.81 lakh children. The major activity under these projects is establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend, health care to children withdrawn from employment. In 1994 a major policy announcement was made on 15<sup>th</sup> August for withdrawing child labour working in hazardous occupation and rehabilitating them through special schools. A high power body called the National Authority for Elimination of Child Labour was also set up for this purpose. This authority adopted a programme for securing convergence of services from various Ministries and Departments of the State and Central Governments which implement child related programmes by pooling resources and taking up programmes in a cost effective manner. During the 9<sup>th</sup> Five Year Plan, around 250 crores were allocated for child labour rehabilitation programmes. The national agenda for governance of the present government also incorporates the commitment to eliminate child labour.

The Supreme Court in its judgement dated 10.12.1996, in Writ Petition No. 465/1986, directed (a) completion of survey of children working in hazardous employment within a period of six months, (b) payment of compensation amounting to Rs, 20,000/- by the offending employer for every child employed in contravention of the provisions of the Act, (c) giving alternative employment to an adult member of the family in place of the child withdrawn from hazardous occupation and (d) payment of an amount of Rs 5,000/- for each child employed in hazardous employment by appropriate Government, payment of interest on the corpus of Rs. 25,000/- to the family of child withdrawn from work, (e) provision of education to the child and constitution of Child Labour Rehabilitation/Welfare Fund. Government was also required by the Court to intimate it about the compliance of this order. In another judgement relating to the case, *Bandhua Mukti Morcha Vs Union of India and others*, the Supreme Court in May 1997 directed Government of India to evolve in consultation with State Governments principles and policies for progressive elimination of employment of children below 14 years in all the employments consistent with the scheme laid down in the judgement of 1986. This judgement was given in the context of engagement of children in the carpet industry in the State of Uttar Pradesh. The implementation of the direction, therefore, is being monitored by the Ministry of Labour. An international programme on the elimination of child labour launched by ILO in December 1991 is also being implemented. Around 165 Action Programmes were taken up during this period under IPEC covering 90,500 children during 1992-2001. At present 11 projects are under implementation, some more are being

planned. The strategy for the 10th Plan is to carry out detailed survey to assess the number of child labourers in the districts, and to expand National Child Labour projects so as to cover all child labour endemic districts and to progressively move towards elimination of child labour from at least hazardous occupations. Ministry of Labour admits that the number of working children at present covered by special schools is miniscule of the total number of working children waiting to be released and rehabilitated and feels that other Ministries should share this burden in this regard<sup>30</sup>.

The report of the Ministry of Labour provides no information on how many children were released from hazardous occupations and the extent of corpus of Child Welfare Fund created in pursuance of the Supreme Court judgement. Since all National Child Labour Rehabilitation projects are being implemented with Central Government funds, the presumption is that the enforcement machinery has not been able to detect violations of the law on child labour in respect of establishments and, consequently, collection of fund from employers has not materialized. Instead, the employers have changed their strategy and shifted the burden of their production to the homes of such child labour as the NLI study has brought out<sup>31</sup>. This underlines the weakness of not only the enforcement machinery but the inadequacy of the law which does not apply to home based occupations. There is, therefore, nothing to celebrate about the number of working children having come down.

National Commission for SCs and STs has noted that despite the directions of Supreme Court in the two cases referred to above, no significant impact on the condition of child labour seems to be visible<sup>32</sup>. Of course, around 100 National rehabilitation projects are under implementation. But efforts made in pursuance of these directions are far too inadequate relative to the magnitude and complexity of the problem, which reflects the level of genuine political commitment. Apart from lack of political commitment, inadequate strength of the enforcement machinery and weaknesses of the existing law may have also contributed to this performance. The Second National Commission on Labour has also recognized that the 1986 Act has many lacunae and effectively covers only a small portion of children and even proposed an indicative law on child labour to replace the existing one [P. 1032]. Without an effective enforcement of the law and consequent release of child labour, the contemplated rehabilitation of such labour cannot take place. In fact, one NGO, Global March Against Child Labour, has found that the enforcement of existing laws which ban the use of children in hazardous activities has been very lax<sup>33</sup>. It is in public knowledge that a large number of children are employed

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<sup>30</sup>Ministry of Labour, Annual Report (2000-2001), pp 108-112

<sup>31</sup>A study carried out by NLI in respect of children in carpet/home-based industry in UP has found that not much has changed in the production and organization of this industry. Instead of children now coming to industrial locations for work, the strategy has changed and the industry itself has gone to the child labour market, thereby shifting a major part of weaving to their homes. While this may have reduced migration of children, but not their employment - NLI Research Studies 011/2000 by Ravi S. Srivastava & Nikhil Roy (2000), p. 88

<sup>32</sup>Sixth Report, op. cit., p. 39

<sup>33</sup>Jaiswal, op. cit., P. 84; Also Sixth Report, op. cit., p. 39. She has also drawn attention to many loopholes in the Law pp 83-85.

in glass manufacturing, fireworks industry, brick kilns, mines and in large number of dhabas, restaurants and as domestic help and the number of street children working as rag pickers, etc. is on the increase. Inhuman treatment meted out to these children is highlighted from time to time in media reports. Being the largest source of child labour, Scheduled Castes are the worst victims of poor enforcement of labour laws, besides facing caste prejudice<sup>34</sup>. Myron Weiner has in fact laid the blame for poor achievement in elimination of child labour on the vast gap between official rhetoric and the policy on child labour in India and the beliefs of the Indian middle class, including bureaucrats, social activists, trade unionists and academics which are rooted in the caste based Hindu social order. These ideas assign respective roles to upper and lower social strata and the function of education is seen as a means of maintaining differentiation among social classes. As per this social ideology, 'excessive' and 'inappropriate' education for the poor would disrupt existing social relations of hierarchical caste system. It is particularly hostile to attempts at raising social status through education by lower castes even through their own efforts<sup>35</sup>.

Following directions of the Supreme Court, the National Human Rights Commission has been overseeing the enforcement of laws relating to bonded labour and child labour in different parts of the country. It has concentrated its efforts principally in the carpet belt of Uttar Pradesh, silk reeling and twisting industry in Karnataka and road building and construction industry in Gujarat. 51 out of total 83 districts of UP have been declared child labour prone. U.P. Government has created a corpus of Rupees One crore for creating the Child Rehabilitation-cum-Welfare Fund in pursuance of the order of the Supreme Court. District Societies for abolition of child labour have been constituted in all these districts. During the year 1999-2000, 21 of these Societies have been registered and had received official grant of Rs. 5 lakhs each for Child Labour Rehabilitation-cum-Welfare Fund. U.P. Labour Department, on the advice of National Human Rights Commission, carried out two surveys to assess the incidence of child labour in the State and identified 10,778 child labour in hazardous occupations and 9,676 in non-hazardous occupations. It had launched prosecution in respect of 1,244 cases; 3875 children have been admitted to schools and employment was provided to 1,547 persons. Although recovery of the amount from employers has been affected by Stay Orders from Courts, non-formal education of children withdrawn from work has picked up in a big way. 370 National Child Labour rehabilitation projects had been taken up by the end of 1999-2000. 90 of these were in the four districts of carpet belt. The Commission also interacted with carpet manufacturers and exporters urging them to cooperate in the effort to eradicate child labour and substitute child labour with adult labour. A number of women were provided vocational training for this purpose. As per information available in the Commission these efforts have encouraged more and more families, whose children were engaged in child labour, to approach authorities for admission of their children to such schools. During the year 2000-2001, 1,361 child labourers were detected in U.P., 394 under hazardous and 967 in non-hazardous employment category. Of them, 1403 were from

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<sup>34</sup>Sixth Report, op. cit., p. 39

<sup>35</sup>Weiner quoted in Jaiswal, op. cit., pp 66-67

six districts of carpet belt. Rs. 20.42 lakhs was actually recovered towards contribution of employers for the Child Labour Rehabilitation-cum-Welfare Fund as per requirement contained in the Supreme Court directions. 370 schools have been sanctioned under National Child Labour Project for 11 child labour prone districts of U.P., of which 346 were operational and 19,807 children were receiving non-formal education with other supplementary benefits. These schools were being run by NGOs. The Commission has also been monitoring disposal of cases in U.P. under the Child Labour Act. During the year under report, the rate of disposal was considered poor but conviction rate had shown some improvement, as compared to previous years. The Commission also constituted a Committee to study child labour situation in the lock industry in Aligarh. The report has been sent to the State Government for their comments. The Commission has got an impact study carried out on the non-formal education under National Child Labour projects in areas where carpet weaving and manufacturing of glass bangles predominate. The report has been sent to the concerned authorities for action. The Commission has also been organizing Workshops in important towns of the districts which are child labour prone to create deeper awareness regarding the evils of child labour.

The foregoing would show that under the intense supervision and monitoring of National Human Rights Commission, some results have been achieved in detection of child labour, prosecution of offenders, taking up of rehabilitation projects and the response of the State Government as well as district level administration, at least in U.P., has been very positive. This would serve to highlight the point that the existing mechanism, if pushed from above and regularly and intensively supervised, is capable of delivering results. It is, however, to be seen whether similar success is achieved in other States. The experience relating to implementation of Bonded Labour Abolition Act has not been encouraging in this regard. It would, therefore, be desirable that National Human Rights Commission expands its activities in respect of widely known and identified occupations across the country which are considered child labour prone and replicate the U.P. model elsewhere with the help of special rapporteurs and, where necessary, other selected officials specially deployed for this purpose. National Human Rights Commission may also have meetings with concerned State Governments and direct them to undertake measures similar to those which were done in U.P.

Notwithstanding above efforts, girl child workers who are largely employed in home based occupations besides engaged in daily chores of the family are not receiving any attention. While the law excludes them from its ambit, even development programmes or special projects to wean them away from 'domestic'/home based work with suitable compensation for the parents, as an incentive, are not in evidence despite the fact that there are a number of schemes to benefit the girl child. There are no reported schemes focused on girl child workers either by Ministry of Labour or by the Department of Woman and Child Development. Even the Ministry of Social Justice and Empowerment which administers a scheme for low literacy pockets of SC girls has not brought in its ambit SC girl child worker though the scheme could be suitably modulated to cover them in a big way.



Ministry of Social Justice and Empowerment also finances NGOs for providing essential services to street children under a central sector scheme. The number of projects taken up is small in relation to the large number of working children on the streets. No effort has been made at any level, Government or non-Govt, to find out how many SC children have been covered by these projects and whether any NGO is specifically catering to them. It is also not known whether SC street children covered by any projects face any discrimination or caste prejudice. It is necessary to have a survey of SC street children to find out whether they suffer additional disabilities compared to other working children and whether they are getting any support or relief from any agency with a view to making specific interventions in their case. This segment of SC population more than any other requires priority and focused attention because the entire strategy of upliftment of SCs would be defeated if the children of the SCs, who would constitute its hope when grown up, experience such brutalization and a bleak future ahead. A major effort would be needed in protecting SC child labour.

The suggested area of State intervention would therefore lie in (1) Survey of SC child labour in different occupations, (2) vigorous inspection of hazardous occupations and processes followed by rescuing child labour and bringing them within the fold of rehabilitation projects, (3) Rigorous enforcement of labour laws in respect of non-hazardous occupations employing SC child labour along with necessary development interventions to improve the condition of child workers, (4) conceptualization of innovative schooling for SC child labour under Sarva Shiksha Abhiyan and launching projects in pursuance of it, (5) Designing and operating specific interventions for SC girl child labour engaged in home based industries, etc., (6) mobilizing NGOs for extending safe shelter and elementary services to SC street child labour, (7) Vigorous and sustained police action for checking trafficking of SC children with the help of local communities and NGOs/social activists, (8) Development intervention in endemic areas which supply SC child labour so as to remove compulsions of parents to push their children into work and (9) Massive sensitization programme among the general public against employment of child labour and their inhuman treatment. The suggested actions though recommended in respect of SC child labour could form part of the efforts directed at child labour in general.

### **3. Inter State Migrant Workmen (Regulation of Employment and Service Conditions) Act, 1979**

Due to unemployment and under-employment, large number of members of scheduled castes as also people of other communities migrate to distant places in the country (sometimes within the State itself) in search of employment. This process is accomplished through labour contractors who try to scout for labour from different locations and supply them to the employers who seek them. Many labourers also go out in search of work on their own through information obtained from people of the same village and other acquaintances. The migrant labour is employed in multifarious occupations ranging from agriculture and live stock farming, to building construction, brick making, stone quarrying, road construction, dam construction, etc. In respect of those who go through supply

contractors and also some of those who go directly, usually some advance money is given for use of the family in the village to meet its needs and for meeting the cost of travel to the work place. In return, they are tied down to the employer for a specific duration. Migrant labourers are acutely exploited. They are never paid the minimum wage. They do long hours of work and live in subhuman conditions. They are physically assaulted if they try to run away from their place of work. Compensation in the event of accident is virtually non-existent. Their women have to suffer sexual exploitation as well. Migrant labourers sometimes are transferred from one employer to another, almost like a commodity. In some occupations, they are confined to isolated places so that they do not come in contact with others who might complain about their condition. Those who work for a season, as for example those employed in agriculture, brick kilns, etc. usually wish to return home at a time when farm work in the village is available. But they are not allowed to go back home until they pay back the advances, which they do by borrowing more money and thus the vicious cycle of debt bondage continues to operate. During journeys to and from the place of work, migrant labour is exploited by ticket collectors, policemen and anti-social elements who extort money from them<sup>36</sup>. Central Government enacted a law in 1979 to regulate their employment and service conditions and to give them the benefits which labourers of other categories are entitled to. The Act is applicable to labourers who migrate from one State to another but it does not cover labourers who migrate from one place to another within a State.

The implementation of the Act is most dismal of all labour laws. This is because there is total non-cooperation from the States, which receive labour, to implement the law, as the National Human Rights Commission has also noted in its Annual Report for 2000-2001. This attitude of the State Governments who are recipients of migrant labour is intended to protect the interests of employers. The recipient States are beneficiaries of cheap labour and they do not want labour laws regulating their working conditions to be implemented lest their source of supply gets extinguished or the cost of labour to the employers increases. This is particularly the case with Punjab and Haryana State Governments where big farmers who employ these labourers enjoy a great deal of political clout. Recipient States have also not shown enthusiasm for granting permission to officers of the source States to inspection despite the direction of the Supreme Court in a case<sup>37</sup>. The State Government officials, even at the highest level, are not only indifferent but even hostile to implementation of the law and try to give the impression that migrant labour in their State is very happy and is well treated though documented studies from the same State have provided evidence to the contrary<sup>38</sup>.

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<sup>36</sup>Unprotected Migrant Labour in NCR Delhi - Workshop - Background note concerning, op. cit., Also see Recommendations of Workshop on Inter-State Migrant Labour (Sept. 26-28) 1997 organized by Punjab University, Department of Sociology-Genesis of the Problem, op. Cit., pp 5-16. Also Proceedings of the Workshop on the status of Inter-state Migrant workmen in North West India (22-23 March, 2001) organized by Department of Sociology, Punjab University - technical session, op. cit., pp 16-26

<sup>37</sup>Information gathered during the Workshop at Delhi (2002), op. cit.

<sup>38</sup>See for example the statement of Special Secretary, Labour Department in Punjab at the Chandigarh Workshop (2001), op. cit., p. 20 Workshop



The Act also suffers from serious legal loopholes, the most important being the definition of migrant labour itself which provide easy escape route for employers<sup>39</sup> and alibi for the un-cooperative recipient State Governments. Attention of the Central Government has been drawn to these loopholes<sup>40</sup> but it has not thought fit to amend the Act. The resistance of the recipient States has also stood in the way of amendments to the Act. The indifference of the Ministry of Labour would be evident from the fact that its Annual Report for 2000-2001 contains no worthwhile information regarding the status of implementation of the Act. The plight of migrant labour becomes worse when even their home State is also indifferent to their condition. Most of the States from where the labour migrates have shown no inclination even to maintain record of the movement of such labour and those of the supply contractors. Unable to provide alternative employment to them, they do not want to take any tough measures which restrict their wage earning opportunity. The problems become tragic when such migrant labourers are killed or disabled or suffer grievous injuries and their families are unable to get any relief and entitlement under the existing laws.

The implementation of the Act is also complicated by the fact that in case of many migrant labourers there is no fixed location where they are employed. They are moved from one place to another and even from one employer to another. The family members at home too do not know the whereabouts and destination of the persons migrating. Trade Unions have also expressed difficulty in organizing such labour. As the migrant labour passes through different layers of contractors, it is difficult to identify a 'Contractor' for licensing. The Employers and Contractors use various methods to circumvent the provisions of the Act. Conflict between migrant and local labour further add to their vulnerability and constrain attempts at organizing them<sup>41</sup>. SCs who constitute the largest percentage of landless and unorganized wage labour and face various forms of exploitation in the home State are also more adversely affected migrant labourers as well. But their plight does not end here. Not only are they exploited as migrant workmen, their families at home also suffer atrocities by the landowner-employers who are angry at their migration since the cheap labour would not be available to them when needed on their farms<sup>42</sup>. For reducing the vulnerability of migrant workers, AITUC, a major trade union organization has submitted a 10-point memorandum to the Prime Minister. This includes proposals for formulation of a National Policy on Migration, constitution of Social Security Board for Migrant Workers, amendments to the Act, enforcement of various international core conventions, coverage under group insurance scheme with Government paying premium, constitution of Special Courts for settlement of their disputes and provision of basic amenities, etc.<sup>43</sup>

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<sup>39</sup>Also, Smarika - Proceedings and Papers of the First State Conference on Inter-State Migrant Labour of Bihar organized at Shaikhpora on 16-17 June 2001 by Bihar Rajya Khat Mazdoor Union, pp 40-42. Also see Resource Kit for Delhi Seminar on Migrant Labour (Sept. 2002), pp 69-77.

<sup>40</sup>Extracted in Resource Kit at the Delhi Workshop on Migrant Labour (op. cit.) pp 82-25; Letter from Secretary, AITUC to Secretary, Ministry of Labour dated January 23, 2002

<sup>41</sup>Views exchanged during the Workshop on Migrant Labour in Delhi (Sept. 2002); Also see the Resource Kit.

<sup>42</sup>Resource Kit for Delhi Seminar on Migrant Labour (Sept. 2002), op. cit., pp 43-47

<sup>43</sup>Letter from Secretary, AITUC addressed to the Prime Minister on the occasion of Squatting by unorganized inter-State Migrant Workmen on Nov. 28, 2001.

Migrant labourers represent a classic case of trafficking in human beings and a new form of slavery. Media reports and documented studies have highlighted this aspect. National Human Rights Commission, as mentioned in the Annual Report for 2000-2001, took cognizance of one such report in respect of Punjab and got it investigated. The report substantiated the allegation of illegal trade in human beings and revealed that this trade has been flourishing with the knowledge and patronage of the Police and other authorities for the last 30 years. The possibility of sexual exploitation of women was also conceded. The Commission intervened in the matter and directed Ministry of Labour and Government of Punjab for corrective action. It is hoped that the Commission would prevail upon Government of India to amend the law and the concerned State Governments to rigorously implement the existing Act. National Human Rights Commission has to monitor the action taken on its directions so as to break the strong resistance of State Governments who are recipient of migrant labour. Besides exerting maximum pressure on State Governments to implement the Act, the following interventions may be needed to provide some modicum of support to the migrant labour.

- (a) Creation of reliable information system pertaining to vital aspects of Migrant Labour
- (b) Reducing vulnerabilities, both chronic and short-term, at the point of origin, which push people to distress migration, through development programmes
- (c) Most expeditious amendment of the Act to remove loopholes
- (d) Registration of labour with the help of TUs, NGOs, etc. and issuance of Identity Card to them at the place of origin
- (e) Helping migrant workers access basic minimum amenities such as PDS, drinking water, toilet facilities at place of work
- (f) Safe journey through Railways to prevent extortion and assault
- (g) Setting up of Welfare Boards and taking up Social Security Scheme on the pattern adopted by Kerala and Tamilnadu
- (h) Activating the enforcement machinery and constitution of Special Courts
- (i) Skill development of labour wishing to migrate voluntarily.

#### **4. Minimum Wages Act, 1948**

Minimum Wages Act provides the framework for determining the minimum wage admissible to a labourer and also the manner in which his wages and other working conditions can be regulated. The Act lays down procedure for fixing/revision of minimum rates of wages, overtime and rest. It also specifies modalities for enforcement of its provisions besides providing penalties for offences under the Act and Rules made therein. One of the important provisions of the Act is that the minimum rates of wages are not to be fixed under the Act in respect of any employment in a State if it employs less than 1000 workers. Under **Section 30** of the Minimum Wages Act, the appropriate Governments are empowered to frame rules for implementing the provisions of the Act. These rules prescribe operating modalities for various provisions. All State Governments and UTs and the Central Government have framed Minimum Wages Rules.

One of the difficulties in enforcement of minimum wages is that until a particular employment is notified as scheduled employment, minimum wages cannot be fixed, reviewed or revised in respect of that employment. Despite progressive coverage of scheduled employment there are several of them which have not yet been notified. The average number of scheduled employments in a State is in the range of 30-50 only. The difficulty in notifying an employment in the schedule is lack of survey at periodical intervals to establish that the particular employment has more than 1000 work force. These surveys have not been carried out by the State Governments for a long time. Central Trade Unions have been demanding that this artificial limitation of notifying an employment for fixing minimum wages on the basis of total work force of 1000 persons in a State should be removed and minimum rates of wages should be fixed for all industries and occupations. Even in respect of occupations covered by the Act, the level of wages fixed does not correspond to the objective norms and conditions which should be factored in their determinations. Even though the Act provides for two methods of fixing of minimum wages (a) Committee Method, and (b) Direct Notification, usually the State Governments resort to Committee method, which is a tripartite arrangement, in which decisions arrived at are through consensus. Pressures are exerted from employers largely to depress the level of wages to be fixed.

The Act permits the payment of wages either wholly or partly in kind if such payments have been customary and their continuance is necessary. This provision is particularly relevant in relation to agricultural labourers where payment in kind has been a general feature in many areas. The payment of wages in kind also acts to the disadvantage of labourers who are engaged in agriculture and since the Scheduled Castes are largely employed as agricultural labourers, they also suffer the disadvantages arising out of this provision in law. The provision for payment in kind, which had relevance for a largely non-monetised economy, is not particularly beneficial in the current situation.

Minimum Wages Act also seems to legitimize the employment of child labour by providing separate hours of work and, therefore, fixing of wages for children. This needs to be removed in order to operationalize the national policy on child labour.

The study on the working of the Minimum Wages Act, 1948 carried out by Labour Bureau, Chandigarh for the year 1993 and released in 1996 have pointed out the following problems in relation to the enforcement of this Act.

1. The amounts awarded by the authority under the Act are not deposited/dispensed by the employer for a long time. Employers have been showing a tendency to challenge in the High Courts the decisions made by the authority.
2. Due to addition of more employments to the Schedule of the Minimum Wages Act, the enforcement machinery has considerable difficulties in enforcing the provisions of the Act, both on account of inadequate strength, overloading of work as well as lack of mobility.
3. The penalty under **Section 22A** of the Act, which provides punishment with fine upto Rs. 500/- is extremely meagre and therefore has no impact on the defaulting

employers. In some cases, Courts impose such a low amount of fine as Rs. 50/- as a result of which employers are not deterred from committing violation of the Act.

4. The Labour enforcement machinery is not empowered to realize the claim amount and has to seek the intervention of the appropriate court for this purpose, which is dilatory and extremely demoralizing to the labourer.
5. Minimum rates of wages fixed by the appropriate Government are not revised timely and do not keep pace with the wages in a locality, which are at times higher than those fixed by the Government.

The study has concluded that the effective implementation of the Minimum Wages Act was seriously constrained, particularly in rural sectors, due to inadequacy of the enforcement staff, scattered nature and location of establishments, volatile nature of the units, lack of proper transport facility, absence of strong trade unionism in labour, illiteracy among employers and workers, etc. Inadequacy of the enforcement staff was seen to be the single most important factor which hampered implementation of the Minimum Wages Act. Some States had not even provided exclusive staff for this purpose<sup>44</sup>. This view has been contested by National Commission on Rural Labour which puts the blame on lack of commitment and motivation of the enforcement machinery. The Indian Labour Conference in its 30th Session in September 1992, however, felt that Labour Enforcement Machinery has been far from effective and desired that a greater role be played by workers organizations, NGOs instead of enlarging army of inspectors for this purpose.

### **5. Equal Remuneration Act, 1976**

The ILO Convention No. 100 of 1951 relating to Equal Remuneration for Men and Women was ratified by the Government of India in the year 1958 to give effect to the constitutional provisions and also to ensure the enforcement of ILO Convention No. 100. The Equal Remuneration Ordinance was promulgated in the year 1975. This Ordinance was subsequently replaced by Equal Remuneration Act, 1976. States and Union Territories have appointed competent authorities under the Act and have also set up Advisory Committees. As per information available from the Annual Report of the Ministry of Labour (2000-2001), the enforcement of the Act is very weak despite the fact that there is widespread violation of the Act in various employments. Available information in the report of the Ministry, though incomplete, shows that in the central sphere, of the inspections carried out, the violations detected are very large. The position in relation to the States' sphere shows a smaller number of violations detected against the number of inspections carried, which appears highly unrealistic, as the incidence of violations would even be larger. The assumption in respect of states would be further corroborated by the fact that violations rectified in relation to the violations detected in the State sphere are very low which position in relation to the central sphere is better<sup>45</sup>. Thus, the available information on the subject points to a very weak enforcement of the Act.

<sup>44</sup>Report on the working of the Minimum Wages Act, 1948 for the year 1993, Government of India, Ministry of Labour, Labour Bureau, Chandigarh/Shimla (1996)

<sup>45</sup>Annual Report of the Ministry of Labour (2000-2001), pp 100-101

Ministry of Labour has been advising the States and the Union Territories to improve the condition of the women workers.

Implementation of both these laws is extremely weak and have been so for a long time. An Evaluation Study conducted by Labour bureau, Ministry of Labour showed that agricultural workers were not receiving minimum wages in the surveyed States. The situation was similar in Forestry, Fisheries, Cottage Industries, Artisanry and in urban employment like vending and home based productions. The poor enforcement of these laws is on account of same factors as have been listed in the case of Bonded Labour System (Abolition) Act, 1976. Wage disputes are a major source of atrocities against SCs as in their case occupational vulnerability as agricultural labourers is compounded by social disability<sup>46</sup>. The unorganized labour is very weak and not in a position to assert. If such a labourer demands the minimum wage, he risks being thrown out of employment besides facing other hazards- something which he cannot afford due to lack of alternatives.

The employer has the advantage of getting other labourers to work on his terms due to excess supply of labour. Any attempt to seek the help of enforcement machinery results in retaliation of various kinds – even physical assault in some cases. The enforcement machinery is both inadequate and ill-equipped, and demotivated. It is also oriented towards the employer more than towards the labour as the political commitment to enforcement of these laws is lacking. Its approach is therefore to have the cases compromised even to the disadvantage of labour and at less than minimum wages rather than pursue effective enforcement of the law. The registration of cases is very low on this account. The smaller number of registered cases are also disposed of with delay.

Further, in few cases, where the labour courts have ruled in favour of labour and have declared the award, the labourer still does not get his wages as the employer does not deposit the award, resorts to various strategies including appeal in the High Court challenging the order with sole purpose of frustrating the labourer. This de-motivates the labour from seeking help of law to get justice. It is also seen that in case of agricultural labourers, landowners in the area gang up to ensure that those who choose to fight for minimum wages are not given work on the farm of any landowner of the village and even nearby villages, since all of them are united in keeping the wage level low and in fixing up 'assertive' labourers. It is clearly unequal power relations at work.

The same factors operate in respect of lower wage levels of women as compared to men. This is the reason why even today agricultural labourers in many areas work for such small amount as Rs. 15 or 25 or two to three Kg of rice per day, well below the minimum wage prescribed in their State and women are paid less than men<sup>47</sup>. Government has launched the rural employment programmes to strengthen the bargaining power of rural labour in general and agricultural labour in particular. But as pointed out in the Section on Development, the impact of such rural employment programmes

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<sup>46</sup> Atrocities on SCs & STs, Report of National Commission (1990), op. cit., p. 21.

<sup>47</sup> Human Rights Watch, op. cit.



has been very negligible since the total number of mandays generated under them has been very small. The share of SC labourers in this benefit would be even smaller. Therefore, agricultural labourers, or for that matter labourers engaged in other unorganized occupations, are totally left to the market forces, whether in rural or urban areas.

It would thus be seen that the extreme vulnerability of the labour, the inadequate and unresponsive enforcement machinery, the dominant social and economic position of the employer, the dilatory and ineffective adjudication process and lack of alternative employment opportunities and absence of support from Government have worked together to defeat the objectives of the laws. Of these factors, lack of alternative avenues of employment is, undoubtedly, the most important factor in the vulnerability of labour. SCs who constitute the largest percentage of wage labour in the unorganized sector are obviously most affected by these conditions. National Commission for SCs and STs has rightly suggested that monitoring and revision of wages should not be left to the Labour Departments of State Governments and the Labour Ministry of the Central Government.

The agencies of Government dealing with problems of SCs at the Centre and State level should be intensively involved in this exercise to ensure that revision is done timely and implementation is regularly monitored. It has also suggested inclusion of non-payment of minimum wages to SC/ST labour as an act of atrocity in Chapter II of the SCs/STs (Prevention of Atrocities) Act, 1989 with provision for higher penalties than those existing under the Minimum Wages Act. Also, occupations where SCs are employed in large number should be brought within the ambit of Minimum Wages Act. The Commission has emphasized the need for providing legal aid where demand for minimum wage results in atrocity against SCs and hence enforcement machinery also needs to be activated and strengthened<sup>48</sup>. These measures are supported.

What is most paramount, however, in this context is the demonstration of requisite political will by the State and Central Governments for enforcement of those labour laws by giving adequate importance and priority to the implementation of Labour Laws in the agenda of governance, as it was done in the 20-point programme of the former Prime Minister, Smt. Indira Gandhi. Also, vigorous implementation of such pro-poor laws should constitute an integral part of the strategy of poverty alleviation. The agencies dealing with SC Welfare should refashion their role as one of advocacy with other Government agencies, Ministry of RD in this case, to take up special projects for rural employment under on-going programmes in low wage pockets and areas of SC concentration to increase the staying capacity of SC agricultural labourers.

Needless to say that Ministry of Labour should also lend its support to this move as this measure would benefit other labourers in the unorganized sector as well. Once that happens, other steps such as strengthening of enforcement machinery with training and motivation, mobilizing TUs and NGOs to provide support to vulnerable SC labour to strengthen its bargaining power, etc. would achieve better results.

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<sup>48</sup>Atrocities on SCs & STs, Report of National Commission, op. cit., pp 22-23



## **C. CURBING UNEQUAL DISTRIBUTION OF ECONOMIC ASSETS AND RESOURCES**

### **1. Land Reforms Laws**

The implementation of Land Reforms in the country as a whole has been termed as largely a failure except for patches of success in respect of some measures and in a few States. The implementation of land reforms has been subverted by the absence of political will and bureaucratic commitment, loopholes in the laws, tremendous manipulative power of the landed classes, lack of organization among the poor and excessive interference of courts. Therefore, the intended benefits to the poor in general failed to materialize. Across the country, insecure and oral tenancies continue with little interest among States (with the exception of West Bengal) to bring them on record. Very little surplus land could be acquired from landowners for distribution. A sizeable area of surplus ceiling land is still locked in litigation and large sections of distributed ceiling land to poor are still characterized by problems of non-delivery of possession, encroachments and obstructions from erstwhile landowners, interventions from courts and various malpractices in the distribution of land itself. The land consolidation programme, confined to a few northern States in any case, has now virtually been given up due to resistance from smaller landowners who get a raw deal in the exchange of their plots. Land Records continue to be in a very bad shape and far from updated. States just do not have the financial resources to accomplish this task. As land revenue has ceased to be a source of States' tax income, there is no pressure for incurring expenditure on land records to improve its resource yielding capacity. Therefore, the redistributive strategy to change agrarian relations and break the caste and class nexus of big landowners has not succeeded. The landed classes, in fact, have grown stronger and have consolidated their economic power and political clout to resist any move to alter the existing distribution of land and productive assets. The only change that has come about in this context is that the power has shifted substantially from upper caste landowners to land owning backward castes. SCs continue to be victims of violence related to agrarian relations from the new set of backward class landowners as well.

In this pessimistic scenario, it is hardly likely that SCs would have received substantial benefits from the limited enforcement of laws and programmes related to land. But SCs suffered from additional disabilities, due to which the programmes themselves had very limited benefits to offer. In respect of the very first measure, i.e. the abolition of intermediary tenures, which was relatively the better implemented of all five programmes, SCs had virtually nothing to gain. Due to restrictions imposed on them by caste based social order, ownership of land was prohibited to SCs. Acute poverty in any case precluded possibility of building up independent productive assets. Therefore, there were hardly mentionable number of tenant cultivators in the uppermost rung of Zamindari system and its variants in different States who could benefit from abolition of intermediary tenures and gain ownership rights in respect of the land they were cultivating. Most of the SCs who were engaged in cultivation were oral and insecure tenants at the will of landowners with no proof or record of their cultivating status. For this reason, they also could not benefit much from laws on tenancy reforms which conferred ownership

rights on the tillers of land. They were also weak and vulnerable and assertion of rights as tenant or even mobilizing evidence to this effect would have resulted in instant eviction besides physical assault and entanglement in false cases. This is the situation which obtains even to this day in most States.

The revenue machinery would not record their cultivating status in land records in respect of specific plots they have been cultivating because of its nexus with the landowners and in many states even overt political directives against it. In the absence of this proof they continue to cultivate land of others on exploitative terms without getting any benefit of law. West Bengal is the only State which brought tenants/share croppers (Bargadars) on record and thereby giving them security from eviction as well as share in crop as per their legal entitlement. (But West Bengal has not gone beyond this to confer ownership rights on such tenants). SC Bargadars, whatever their number, would have therefore gained from this programme. Some SC tenants may have also benefited in a few other States where configuration of local circumstances helped them in this process.

The ceiling on land holdings offered the only realistic opportunity to a large number of SC landless persons to own some land and thus acquire dignity and status. This dream also remained substantially unrealized because of the poor implementation of ceiling laws for reasons mentioned above. However, from the limited surplus land that could be acquired, SCs did get some land. As the statement extracted in the Section on Development indicates, SCs got about 35% of the area distributed due to the priority accorded to SCs and STs in the distribution of such land as a matter of policy. The impact of this distribution on the status of SCs is, however, not large considering the magnitude of landlessness among them and the per capita area distributed to them being slightly less than an acre. SCs have also been distributed land which belonged to the Government or Panchayat or was donated under Bhoodan campaign in view of the priority assigned to them, along with STs, in all land distribution programmes. But the benefit which could accrue from all this redistribution has also been snatched away from a number of SC beneficiaries on account of non-delivery of possession over allotted land, forcible dispossession, litigation and alternative claims made by erstwhile landowners and other vested interests, etc. SCs affected by these problems have been going from pillar to post for resolution of these problems. But, as the open hearings on dalit issues tell us, the problems by and large continue to linger.

SCs have also lost out in land reforms in other ways. Some of them have tried to reclaim vacant/waste lands belonging to Government Panchayat or other public bodies and have been cultivating them for a long time. Under the existing instructions/rules of State Governments, such cultivating possessions are usually regularized and Pattas issued to them unless the land is reserved for a public purpose or is under common use. But due to apathy, negligence and even bias of revenue machinery, they have failed to get rights in respect of those lands. Sometimes the lands they have been cultivating are allotted to others while, at other times, powerful landowners manipulate to prevent such allotment. Thus they face ever present threat of eviction. There have been cases in U.P.

where SCs even after being given Asami Pattas were evicted from the lands they were cultivating and their Pattas were withdrawn as was revealed in an open hearing.

SCs also face restrictions on use of common lands imposed by caste Hindu/bigger landowners in respect of grazing of cattle, collection of fodder, right of way and easement and use of water sources, etc. This creates immense difficulties for them in livestock farming which is virtually the only economic activity they rely on in the absence of access to land and capital. These restrictions are not supported by any law or regulation but are simply expressions of social power of landowners and extreme vulnerability of SCs. Little support is available from State agencies against imposition of such unjust restrictions. In the village, for all practical purposes, the law is laid down by the powerful and land ownership is the source of that power.

SCs face problems not merely with regard to cultivable land but also in respect of a secure habitat as well. Many SCs do not have ownership of land on which their house, in most cases a mud hut with thatch roof, is located. Usually such residential premises are located on the land of landowners for whom they work as agricultural labourers. This makes their position very vulnerable as they can be evicted from the house if they do not comply with the demands of the land owner. Thus a bondage system comes to operate. There are laws in many States under which ownership of a land on which residential house of a landless person is located, even if it is private land, can be conferred on the occupant of the house. But these laws have not been regularly implemented while the population of SCs and therefore the number of residential units are increasing. Here also, the revenue functionaries whose duty it is to process such cases, as and when they observe them during field visits or when they are approached by occupants of houses, share the blame. The nexus with the landowner is the most obvious explanation for inaction in this regard.

Also, many such residential units are located on Government/public land as well. Ownership of land in respect of even such units has not been regularized by Government. The occupants in such cases are equally vulnerable as revenue functionaries can exploit them with the threat of eviction. In addition, there would be quite a few SCs who may not have even an insecure thatched hut to themselves. They may be sharing their residence with others or may be spending the night in a public building. The shortage of housing space for SCs is so acute in many areas that the practice of joint family of father and married sons sharing the same single room thatched hut, sometimes along with their livestock as well, is not uncommon in eastern India. There are programmes which provide for allotment of a minimum of land area for construction of a house to a landless/ resourceless poor person. But like other programmes, it is the revenue functionary who knows these provisions and can implement them if he has the will and interest to do so. The poor SC beneficiary may even be unaware of legal provisions/ administrative instructions to generate necessary pressure on him.

The consolidation programme, in any case, did not hold out much promise for SCs because they did not have much land even in fragmented patches in the first place. But the poor in general, and weaker sections in particular, have strongly resisted land

consolidation programmes because of their tilt in favour of bigger landowners who get a better plot in exchange of their fragmented ones and usually at the cost of weaker party. In fact, in Bihar, consolidation programme has been consciously and officially abandoned because of many such problems. Even in other northern States, there is little enthusiasm now for this programme though in the early years of Planned Development, these States (U.P. and Punjab) were the pioneers.

The programme for updating of land records has been seriously neglected and there is little chance that it would get the priority and importance it deserves, largely because of lack of resources to carry it out but also because land administration has receded in priority in the development agenda of the Government. Attention is getting diverted to computerization of land records which in the absence of updated land records does not provide any benefit. While all classes having rights and interests in land suffer in the absence of updated land records, SCs and other rural poor cultivators are major losers because they do not enjoy security in access to land which in turn affects adversely their access to institutional finance. They are, therefore, at the mercy of landowners as oral tenants with highly adverse terms of contract. Thus legal provisions aimed at loosening the shackles of oppressive agrarian structure and enabling cultivators of land to enjoy fruits of their hard labour remain out of their reach.

This, then, is the backdrop in which violence against SCs occurs when some of their members show any signs of seeking justice against unfair treatment. The agenda for reducing incidence of violence on this account would therefore have to concentrate on the following major tasks:

1. Delivery of possession to those who have already been allotted land
2. Removing encroachment of non-SCs from the lands owned by SCs
3. Regularizing their cultivating/possession of Government/Public lands by conferring ownership rights
4. Expeditious allotment of vacant surplus ceiling land, Government land, Bhoodan land and other public lands,
5. Focused efforts for getting ceiling land locked in litigation cleared from courts at the earliest, followed up with its distribution among SCs/STs and making ceiling laws more stringent so as to have more land available for distribution,
6. Conferment of ownership rights on SC occupants in respect of houses located on the land of landowners and public lands; Allotment of minimum land for landless/houseless SCs for construction of a house,
7. Recording the status of tenancy/share cropping in the land records,
8. Eliminating restrictions in use of common lands and other common property resources imposed by dominant sections of the village, etc.
9. Making SC owned land inalienable
10. Giving the benefit of irrigation and other inputs under poverty alleviation programmes to those SCs not yet covered by them to improve productivity of their land.

## 2. Debt Relief Legislation

The status of implementation of debt relief legislation is no better. In fact, it has been completely ignored as a component of the strategy of poverty alleviation. As the National Commission for SCs/STs has pointed out, the explanation perhaps lies in the change of focus of Government policy towards extension of credit to rural areas and credit schemes for weaker sections through institutional sources such as DRI (Differential Rate of Interest) and implementation of poverty alleviation programmes<sup>49</sup>. However, neither the legislation nor the credit schemes touch the root cause for which most of the borrowings take place by SCs and other rural poor. The All India Rural Credit Survey conducted in 1951-52 mentioned that 93% of borrowings of even cultivators came from non-institutional sources, like moneylenders, traders, commission agents, etc. Though the situation has changed since then and for production purposes substantial lending is now available through institutional agencies, mainly Commercial Banks and Cooperatives, a sizeable chunk of lending, even for rural cultivators, still comes from non-institutional agencies. But the rural non-cultivators, in which category Scheduled Castes would largely fall, overwhelmingly rely on non-institutional sources for their credit needs, since the institutional agencies do not lend for non-productive purposes. Even for production purposes, the percentage of lending to Scheduled Castes from institutional sources like commercial banks and cooperatives is much lower than their share of population. Even this share is now declining under pressure of economic reforms as mentioned in the Section on Development in this paper. Thus, the members of the Scheduled Castes are compelled to borrow from either the professional moneylender or the landowner-employer on whose farm they work. Usually, the landowner performs the double role of employer as well as moneylender. Institutional agencies even otherwise consider the poor in general and Scheduled Castes and Scheduled Tribes in particular, as high risk borrowers who cannot provide any collateral security. The recourse by SCs to moneylenders for credit at exorbitant rates of interest therefore is the only option. It is widely known that a large number of atrocities are related to the money transactions of SCs as borrower because of which they get entangled in the vicious circle of debt bondage.

Immediately after the enactment of debt relief legislations, a drive was launched to implement them all over the country. That was the period of emergency. However, the debt relief laws have remained in cold storage thereafter. While the institution of money lending continues without check and most such moneylenders are unlicensed, the provisions of law regulating these transactions have not been enforced. Thus the beneficial provisions of law, which could at least reduce debt burden of Scheduled Castes have not been made use of to reduce the incidents of atrocities against Scheduled Castes related to indebtedness. It is imperative, therefore, that the debt relief laws are rigorously enforced particularly in areas where atrocities have occurred on account of money transactions arising out of such debt<sup>50</sup>. It is also necessary that various non-governmental organizations and activists working for SCs should take note of provisions of this

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<sup>49</sup>National Commission for SCs/STs, Special Report on atrocities, op. cit., p. 19.

<sup>50</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 19.



legislation and follow it up by pressurising the Government for implementing them. They should also seek legal aid for fighting litigation on this account under the available legal aid schemes<sup>51</sup>. Ministry of Social Justice and Empowerment should also review the existing schemes of legal aid with a view to providing guidelines on how members of scheduled caste trapped in litigation or suffering violence can avail of legal aid to seek the benefit of various laws. Ministry of Rural Development should carry out a detailed review of debt relief legislations enacted by various States for framing National guidelines<sup>52</sup> for a model legislation and to identify areas of policy intervention in respect of this problem.

It is, however, conceded that the problem of indebtedness is not merely one of enforcement of law. If alternative sources of credit for consumption purposes are not available, the victims of indebtedness would not come forward to seek relief under the law because in doing so the available sources of credit, however exploitative, would get dried up. Institutional agencies have never shown any interest in extending consumption credit. Even the Cooperatives have fought shy of doing so. However, in the recent past, a new movement of self-help groups, of women particularly, has sprung up. These groups are organized around thrift and credit activity, to start with. The groups assume the responsibility of both lending as well as realization of the loan advanced to its members and also decide the rate of interest to be charged for the money lent. These groups use their saving as seed money for getting additional capital from banks for lending purposes. Considering the success rate of repayment of loan achieved in this arrangement and also the fact that this process does not involve any administrative cost to the lending agencies, a number of commercial banks have shown great deal of interest in such self-help groups and are willing to advance money to the groups for augmenting their corpus for lending. The interventions by Government should, therefore, focus on organizing self-help groups of women, and also separately for men if necessary in SC concentration areas for taking up thrift and credit activity and linking them up with local commercial lending institutions. Existing programmes which provide assistance for organizing such groups could be availed of. In addition, Grain Bank Scheme initiated for Scheduled Tribes by Ministry of Social Justice and Empowerment (now Tribal Affairs) should be taken up in villages of SC concentration so that one major reason of accessing consumption credit, i.e. subsistence during lean season, is taken care of. This should be supplemented by Annapurna Scheme of the Ministry of Rural Development applicable to senior citizens and not covered by National Social assistance programme so that the need for borrowing for subsistence is eliminated.

### **Struggle for Justice: Facilitating Mechanism — The Legal Aid**

In the existing strategy to combat atrocities committed by caste Hindus against the Scheduled Castes, the major instrument is action against persons responsible for inflicting this violence under various laws, both criminal as well as social, enacted for their benefit, while the contributory factors in giving rise to atrocities are attended to through

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<sup>51</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., pp 19.

<sup>52</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 20.



development measures to support their bargaining position. But Scheduled Castes, because of their weak economic and social position, often find it difficult to seek the benefit of provisions enacted for their protection under criminal laws but even more particularly under social legislation. 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 in the existing unjust situation and even illegal compromises. They 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<sup>53</sup>. The result is that legal provisions become ineffective in delivery of justice. Article 39A of the Constitution inserted in 1976, for the first time, made provision for free legal aid through suitable legislation or schemes. The Legal Services Authorities Act was passed in 1987 for constituting authorities to provide free and competent legal services to the weaker sections of the society, etc. The Act provides, inter-alia, that every Scheduled Caste or Schedule Tribe person who has to file or defend a case shall be entitled to free legal assistance. But the Act has not been brought into force. However, States have established Legal Aid Boards which give different types of legal assistance. A study made by the National Commission for Scheduled Castes and Scheduled Tribes, however, has found that no such special legal assistance was extended to SCs and STs even in one of the thousands of cases looked into by them<sup>54</sup>. The official approach is to leave the victim to the due process of law without the help of any lawyer. On the other hand, the accused persons have recourse to good lawyers. In cases of atrocities, where SCs are victims, the cases are conducted by public prosecutors, whose competence and performance has come in for critical mention in the relevant section of this paper. Under the existing arrangements, Legal aid is conceptually extended only if a member of SC or ST happens to be an accused. On account of this restrictive nature, SCs can not avail of legal assistance for registering complaints under Protection of Civil Rights Act, land related cases, debt relief laws, tenancy reforms, labour laws and various other matters where they are complainants<sup>55</sup>.

It has already been brought out in this paper that the implementation of laws relating to atrocities on Scheduled Castes is characterized by apathy, indifference and even bias and hostility on the part of enforcement machinery. This has resulted in very low rates of conviction, high rate of acquittal and huge pendency. Legal aid to Scheduled Caste victims in such cases would go a long way in enhancing the accountability of the existing prosecution machinery, strengthening the presentation of case and witnesses in the court and more effective delivery of justice. Extension of criminal legal aid, both as complainant and accused in case of SCs and STs, has been recommended by a Committee on Procedural Justice to the People (1973) headed by Justice V.R. Krishna

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<sup>53</sup>National Commission for SCs/STs - Special Report on Atrocities, op. cit., p. 38

<sup>54</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 38

<sup>55</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 38

Iyer and Dr. Madhav Menon, the then Director, National Law School of India<sup>56</sup>. National Commission for Scheduled Castes and Scheduled Tribes in their Special Report on atrocities have also argued that in the special situation where the SCs/STs and the bureaucracy become adversaries, assistance of voluntary agencies becomes necessary. Further, where SC victims confront powerful adversaries like landlords, moneylenders, contractors, it may be difficult to get justice unless legal aid is available through voluntary agencies. Thus criminal legal aid to SCs and STs should be available in the form of lawyers, services, witness expenses, copying fees and travel cost to police station and court. Even voluntary agencies taking up their cause through a public interest litigation should also be assisted by Legal Aid Boards<sup>57</sup>.

This calls 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 struggle they face in their lives.

### **FOR POSITIONING WATCHDOG ARRANGEMENTS**

The analysis of performance of social and economic legislation has shown that the support expected from these measures to control atrocities has failed to materialize. This conclusion, in fact, neatly fits into the picture that had emerged with regard to the performance in respect of criminal laws as there is an underlying connection between the two. The reasons why atrocities have not shown any credible reduction and SCs have not felt more confident about protection against physical assaults are not merely to be located in the performance of criminal justice administration but, more importantly, in the socio economic conditions which generate circumstances in which violence occurs and against which no significant improvement has been registered.

This was not entirely expected. It was foreseen by the framers of the Constitution itself that an effective mechanism would have to be created to watch whether the intended benefits of various laws and programmes are reaching SCs (also STs) since they would not have the strength to avail of them, given their weak and vulnerable position. The Constitution itself, therefore, created the first watchdog institution for safeguarding the rights of SCs/STs in the institution of the Special Officer. This was later converted into a National Commission. Subsequently, other watchdog institutions were created, each for looking into specific area of vulnerability, starting from National Human Rights Commission, followed up by National Commission for Women and National Commission for Safai Karamcharis. It is now to be seen whether these watchdog bodies have lived upto the expectations of the law makers as well as the aggrieved vulnerable groups (SCs in this case). If these institutions are able to deliver justice to SCs, which Government machinery in their direct interface could not do, their existence would generate hope that the system may at least respond to pressures exerted from outside. The capacity and effectiveness of these Commissions would, therefore, be examined,

<sup>56</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., pp 38-39

<sup>57</sup>National Commission for SCs/STs, Special Report on Atrocities, op. cit., pp 39-40

starting with the National Commission for SCs and STs, which is entirely committed to look after the interests of these groups, is the oldest of all Commissions and has a constitutional status.

### **1. National Commission for SCs and STs**

To ensure that provisions made for SCs and STs in the Constitution, laws and programmes are implemented sincerely, the Constitution provided for appointment of a Special Officer under Article 338 to investigate matters relating to the safeguards and report to the President. The office of Special Officer was subsequently designated as Commissioner for SCs and STs and came into being on 18.11.1950. Field units were also set up under it. In 1967, field offices were transferred to the newly created organization known as Director General, Backward Classes Welfare. In 1978, attempt was made to amend **Article 338** so as to set up a multi-member Commission.

As this could not materialize, a multi-member Commission was set up under an executive order in July, 1978. This was known as Commission for SCs and STs. This was renamed as National Commission for SCs and STs in 1987. The field units of erstwhile Commissioner for SCs and STs which had been transferred to Director-General, Backward Classes Welfare were placed under the control of multi-member Commission. In 1990, Article 338 was amended vide the Constitution (Sixty-fifth) Amendment Act, 1990 and the first National Commission for SCs and STs was set up in March 1992. The earlier offices were closed down. During 42 years of the existence of Commissioner for SCs and STs, 30 reports containing 5200 recommendations were submitted. During 14 years of multi-member Commission, 8 reports were submitted containing 1100 recommendations. It has also submitted a report on 'Atrocities on SCs and STs - Causes and Remedies' to the President in April 1990.

Present Commission is the 4<sup>th</sup> since it was given a constitutional status. The Commission was given enhanced powers and responsibility under Article 338 of the Constitution and it has been empowered to regulate its own procedure. It has also been given power of a Civil Court to ensure presence of respondents and protection of records. The Commission consists of a Chairperson, Vice-Chairperson and five members and is assisted by a Secretariat headed by a Secretary. It has 16 State Offices located in capital cities of various States.

The Commission investigates and monitors the implementation of safeguards provided to the SCs under various arrangements and in doing so covers a wide gamut of activities, which include implementation of laws, provisions relating to compensatory discrimination such as reservations in recruitment, promotion and admission to educational institutions, economic development including educational development and social integration of the community with the rest of the society.

The Commission is also required to submit a report every year to the President which is laid on the table of the Houses of Parliament after incorporating the action taken report. Besides submitting annual reports, some special reports are also submitted by the Commission covering specific problem areas affecting these communities. Among the

special reports submitted by the Commission, one related to SCs and STs (Prevention of Atrocities) Act, 1989 and Rules there under in the State of Uttar Pradesh and Madhya Pradesh. This Report was submitted along with the fifth Annual Report in February 2001.

National Commission for Scheduled Castes and Scheduled Tribes has recently submitted its sixth Report pertaining to year 1999-2000 and 2000-2001. This report is yet to be placed before the Parliament. Previous Reports have already been laid on the floor of the Houses of Parliament.

Recently, as a result of bifurcation of the Ministry of Social Justice and Empowerment and creation of a separate Ministry of Tribal Affairs, there is also a move to constitute a separate and exclusive Commission to look after the interests of Scheduled Tribes. Already, the Government has created a separate Corporation for providing financial assistance to identified scheduled tribe beneficiaries. This development would now leave the existing Commission with exclusive responsibility to look after the interests of Scheduled Castes.

The Commission sometime back organized a Workshop, addressed by the Prime Minister, for Members of Parliament belonging to SCs and STs in December 1999 for improving the effectiveness of laws and programmes for these communities, which was a welcome initiative. Its recommendations need to be followed up. Hon'ble President had taken initiative and constituted a Committee of Governors to suggest measures for improving effectiveness of various programmes for socio-economic development of SCs/STs. The Report of the Committee has also been presented to the Government. It is not known what its recommendations are as the information could not be accessed. It would be of interest to know if any radical measures have been suggested to create confidence among SCs and STs in the capacity of the 'System' to deliver justice to them. This Commission had also provided inputs to the National Commission for review of the Constitution. But it is not known if any of its suggestions were accepted in its report. The Commission also held a National Seminar with Collectors of certain selected Districts in August, 2001 to understand the difficulties at the implementation level. The Commission should formulate its views on the possible ways of improving delivery of programmes for SCs and incorporate them in the main report. The Commission has also launched a quarterly newsletter to focus attention on various issues.

The Commission suffers from a number of problems. One of them relates to the organization itself. The Investigating Wing of the Commission relating to investigation of cases had been non-functional as the post of Director-General incharge of that cell had been lying vacant for nearly ten years. In the absence of adequate supporting facilities, there was unwillingness on the part of eligible officers to occupy this position. It has been filled up very recently. However, the status of the post continues to be low and is a handicap in dealing with senior positions in police hierarchy of States. Further, the post does not carry any supporting staff which would make the incumbent virtually nonfunctional. The Commission also does not have any Law Wing and therefore is unable to examine in-house various legal matters which become particularly important in criminal cases and reservation matters. The Commission also does not have adequate

computer capacity for processing of large number of complaints that it receives every year.

The Commission also faces acute shortage of funds. It is supported by a non-plan budget which almost entirely consumed by establishment expenditure and leaves little for research, consultation and investigative activities. Even its Research Wing remains virtually unutilized in absence of fund for touring and collection of data and information. It looks up to the Ministry for allocation even for organizing seminars and meetings outside Delhi.

The Commission has also shown excessive preoccupation with reservation related complaints. This may be on account of the pressure exerted by the complainants who belong to the educated and vocal sections of the community and are able to pursue the matter. This has led to relative neglect of more important problems of poorer Scheduled Castes in States. The Commission is conscious of this problem.

But the Commission feels handicapped due to ineffectiveness in getting its recommendations implemented. While the Commission has given large number of recommendations in all its reports covering all three components of the strategy, i.e. protection, compensatory discrimination and development, there is no picture available on how many of these recommendations have been accepted or are being acted upon. But the Report itself gives the impression that Commission's recommendations do not generate the required pressure on the State and the Central governments and their agencies to act upon them. This is because the reports of the Commission are laid on the table of the Houses of Parliament with considerable delay - on an average of three years. The delay is on account of collecting comments from different government agencies Centre and State on the recommendation. As a result the reports are not accessible to MPs and other public institutions. The result is that by the time the report is laid in the Parliament it is already dated and worse still, there is no discussion on the report. Neither SC/ST MPs show any interest in calling for a discussion on the report nor the Minister, Social Justice and Empowerment presses for such a discussion. Thus the opportunity for getting valuable views of MPs is lost. That is why the Commission made a recommendation in the 4<sup>th</sup> report and reiterated in para 3 of 33 of the 5<sup>th</sup> report that its reports should be placed before each House of Parliament within 3 months of its submission to the President. Action taken report should be placed within six months.

In the matter of atrocities specifically, the Commission feels particularly powerless when on the basis of reports received from State agencies, responsibility is fixed for omission and commission on specific Government personnel but its directions that necessary disciplinary action may be initiated against the officials found guilty are stone walled. This is also frustrating for the victims because even after vindicating their case before a constitutional body, justice eludes them. It has therefore been suggested in its sixth report that adequate powers may be vested in the Commission to ensure that its recommendations are implemented. It would therefore not be wrong to say that even this mechanism created by the Constitution to safeguard the rights of SCs does not serve the purpose where it matters most.



The Commission should therefore prepare a detailed analysis on its various recommendations and their status of acceptance as a special report which should be placed before the Parliament and the Ministry should seek a discussion on it. Mechanism also needs to be developed by the Government to remove the feeling that recommendations of the Commission carry no value and are a mere academic exercise. This can be done without any extra powers but with some little effort, provided there is necessary political will to do so. Government (Minister incharge of the Nodal Ministry for SCs) can bring the Commission and the agency with which a specific recommendation is concerned together for detailed discussion and ensure that differences are ironed out and a consensus is reached. Routine bureaucratic comments on the recommendation as Action Taken Report should not become the manner of their disposal. The fact that such 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.

The Commission should, however, continue to explore ways in which it can generate necessary moral pressure on the issues it has highlighted and recommendations it has made in its reports. As a first step, it should make all its reports easily accessible to public by making them priced publications which can be bought from bookshops all over the country. It should keep in touch with legislators not only of the Central Parliament but also of State Legislature besides interacting with major political parties, media and NGOs to place the problems of Scheduled Castes before the nation.

## **2. National Commission for Safai Karamcharis**

National Commission for Safai Karamcharis was constituted in August 1994, through an Act of Parliament, namely National Commission for Safai Karamcharis Act, 1993 for a period of three years initially. It is not a permanent Commission but its tenure has been extended from time to time. It consists of a Chairperson, a Vice-Chairperson and five members all nominated by the Central Government. At least one member is a woman. The Commission is serviced by a Secretariat headed by a Secretary. Its function is to oversee the laws and programmes relating to Safai Karamcharis and particularly regarding abolition of manual scavenging and for improvement of conditions of those engaged in this activity. The Central Government is required to consult the National Commission on all policy matters affecting Safai Karamcharis. It can investigate into specific grievances of Safai Karamcharis and take suo moto action relating to their problems. The Commission is empowered to call for information with regard to Safai Karamcharis from the concerned governments or authorities. The Commission is required to prepare an annual report which is laid on the table of both Houses of Parliament. Where the matter in the report relates to State Government, a copy of such report is to be laid by the Governor of the concerned State before the Legislature of the State. The Commission has so far submitted four reports with a large number of recommendations.

Government of India has placed the first two reports on the table of Parliament. The comments of the Commission on the functioning of programmes relating to Safai Karamcharis have already been referred to. The Commission has however complained



about its status, lack of permanency and autonomy, non-conferment of powers on the lines of other Commissions and inadequate secretarial support and resources due to which it finds itself handicapped in discharging its responsibility. It has also a grievance that its jurisdiction has been confined to Public Establishments for the purpose of looking into complaints of scavengers and Private Establishments/Cooperatives/Establishments have been excluded. It has also made recommendations to amend the Act to remove this limitation<sup>58</sup>. It has also been complaining that power of a Civil Court is not vested in the Commission due to which difficulties crop up, such as obtaining information, production of documents, receiving evidence on affidavits and enforcing attendance of any person and examining him on oath, requisitioning public record in response to notices issued by it. Their added grievance is that since all other National Commissions have been vested with these powers, the Safai Karamcharis Commission is being discriminated against because it is dealing with a highly marginalized community<sup>59</sup>. It is also not known what action has been taken on various recommendations made by this Commission. Judging from the tenor of reports already placed before the Parliament, it does not appear that the Commission has been very effective in delivering justice to the scavengers.

### **3. National Human Rights Commission**

There is also in existence a National Human Rights Commission constituted under the Protection of Human Rights Act, 1993, which inter alia looks into the grievances relating to violation of human rights. National Human Rights Commission consists of a Chairperson, who should have been the Chief Justice of India and four other members, one who is or has been a Judge of the Supreme Court, one who is or has been the Chief Judge of a High Court and two knowledgeable persons in matters of human rights. Apart from this, Chairpersons of the National Commission of Minorities, the National Commission for SCs and STs and National Commission for Women are ex-officio members. Chief Executive Officer of National Human Rights Commission is the Secretary-General. The provisions regarding appointment etc. have ensured autonomy, independence and impartiality of the organization. The Commission is empowered to regulate its own procedure. The Commission, apart from enquiring into the complaints received by it can also inquire suo moto into violations of Human Rights or abetment thereof. It also has powers to visit a jail or any other institution. The Act provides for constitution of State Human Rights Commission and setting up of Human Rights Courts for speedy trial of offences arising out of human rights violation. The Commission has powers to issue directions for relief.

As various atrocities, discriminations and disabilities suffered by Scheduled Castes are also violations of human rights, National Human Rights Commission receives a large number of complaints from victims, as well as organizations and activists supporting them for redressal of grievances. These complaints are investigated largely through the State Governments and, in a few cases, directly by the Investigating Wing of the

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<sup>58</sup>Second Report of the National Commission for Safai Karamcharis (1995-96) - Chapters II and IV.

<sup>59</sup>Report 1995-96.

Commission. However, in view of the limited capacity available with the National Human Rights Commission to look into cases directly and increasing volume of complaints received by it, it is not able to provide the desired degree of satisfaction to the complainants. Since most of the complaints received by the Commission in relation to Scheduled Castes 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 the Scheduled Castes. National Human Rights Commission, however, works in close cooperation with important Civil and Human Rights Organizations and activists to get feedback about the ground level conditions. It has also been pursuing with States that they should set up their own Human Rights Commissions. Eleven States have set up such a Commission, though Himachal Pradesh State has decided to abolish it recently. It also takes help of experts and retired officials in discharge of its responsibilities.

But as the ambit of its jurisdiction is vast and the facets of human rights violations are varied and complex, the Commission's attention to problems of SCs would only be limited. The Commission has felt deeply concerned with problems of SCs and recognized caste based discrimination as an existing reality in the Golden Jubilee Year of the Republic (Annual Report 1999-2000). In the World Conference against Racism, Racial Discrimination and Xenophobia and Related Intolerance, it took a bold stand different from the Government of India and expressed the view that exchange of views on Human Rights matters, whether at National, Regional or International level, can contribute constructively to promotion of such rights. It has taken many initiatives both in the domain of civil liberties as well as socio-economic spheres which have potential for redressal of complaints of SCs and reducing the level of atrocities committed on them. It has been intensively monitoring the implementation of Bonded Labour System (Abolition) Act, 1976, Child Labour (Protection and Regulation) Act, 1986, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, on a regular basis besides intervening in a number of issues affecting them such as the Denotified Tribes, Devdasi system, trafficking in human beings, etc. Its Annual Reports mention these interventions along with specific cases of complaints from SCs it has handled.

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. SCs, therefore, repose a lot of faith in National Human Rights Commission because of its composition and stature of its members to render justice to them. Mechanisms need to be put in place which can sustain this faith. National Human Rights Commission's efforts to inculcate greater sense of accountability in State organizations through monitoring and directives, though welcome, are insufficient in achieving this objective. The Commission has taken up 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. Until that happens, mobilizing alternative mechanisms of enquiry [other than the State police machinery against which complaints have been filed], would be very crucial to ascertain the truth and fix responsibility for wrong done.

#### **4. National Commission for Women**

National Commission for Women was constituted in January 1992 in pursuance of the National Commission for Women Act, 1990. The Commission consists of a Chairperson, five Members and a Member Secretary all nominated by the Central Government. Of the five members one should be from SC and one from ST. The Commission is entrusted with the responsibility of investigating and examining all matters relating to safeguards provided for women and to recommend measures for their effective implementation, review the provisions in the Constitution and other laws affecting women and recommend amendments to meet any lacunae, inadequacies etc. It can look into complaints and take suo moto notice of matters relating to women's rights, inspect jails or remand houses where women are kept under custody. The Commission has the powers of a civil court while investigating cases. It can summon any person and examine him/her on oath, requisition documents and receive evidence. Section 16 of the Act makes it obligatory for Central Government to consult the Commission on all major policy matters affecting women.

Like all statutory Commissions it has to submit a report annually which is placed before the Parliament after incorporating the Action Taken Report. The Commission looks into the problems of women irrespective of caste or religion. Accordingly, the complaints regarding Scheduled Caste women are also entertained by them. But considering the wide canvas of their jurisdiction, which covers all women, the scheduled caste women and their problems would not command very substantial attention from them, more so when there is a separate Commission for SCs and STs. Nonetheless, the Annual Report of the Commission specifically incorporates activities of the Commission benefiting the Scheduled Castes and Scheduled Tribes. The Annual Report (1996-97), for example, contains recommendations of an Expert group it had set up for improving the socio-economic status of SC women. Based on this situational report, some general recommendations had been made<sup>60</sup>. These include:

1. Educational/Health facilities in areas of high concentration should be provided
2. Existing laws regarding crime against women should be made more stringent
3. Victim of rape should be provided with a permanent job
4. Legal awareness programme should be taken up
5. Land and inputs should be provided to women
6. Education of SC girls should be made compulsory upto middle level
7. There should be job reservation for SC women
8. Integrated package of development should be provided for scavenger women
9. A comprehensive well-knit programme of rehabilitation should be launched for Devdasis
10. Separate chapter should be devoted to SC women in the reports of the Commission for SCs and STs

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<sup>60</sup>Annual Report, National Commission for Women (1996-97), pp 73-74.

11. Under Special Component Plan separate provision should be made for SC women
12. Proper system of monitoring should be separately developed for SC women.

It is not known 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. The Commission complains of shortage of staff and subject matter specialists for discharging its duties. The Commission also has the same feeling about non-implementation of its recommendations as other Commissions do, though it has not been monitoring the follow up action as National Human Rights Commission has been doing. It feels the need for taking up the regular monitoring of action on the recommendations and for this purpose the proposal for bringing out a consolidated booklet on the recommendations made in various reports is also being considered.

Both National Human Rights Commission and National Commission for Women have felt handicapped due to limited capacity for dealing with the huge tasks assigned to them and the load of complaints received by them, particularly when they don't have field set up of their own. However, State Governments, have also set up their own Commissions for Human Rights, SCs and STs and Women. National Human Rights Commission has been pursuing the matter and 11 State Commissions for Human Rights have been set up. But UP and Bihar have not yet done so even though nearly 50% of complaints received by National Human Rights Commission for human rights violations are from UP alone. Most of the States have set up State Women Commissions but there are very few States which have Commissions for SCs/STs. The performance of these Commissions is not being referred to here. In respect of State Human Rights Commissions, National Human Rights Commission has recommended that a clear functional relationship be established between National Human Rights Commission and State HRCs through an amendment to the Protection of Human Rights Act, 1993 to achieve greater efficiency and accountability of Human Rights violations which the Government has not accepted yet. In any case, the potential and effectiveness of these Commissions in reducing the workload of National Commissions seem limited since the State Commissions suffer from inadequate administrative and financial resources even more than the National Commission does and may not also be bringing out their Annual Reports regularly to be placed before the State legislatures. They would therefore generate much less pressure on their State Governments, though perhaps a larger number of complaints may be getting attended to. In respect of atrocities on SCs, in any case, where omissions and commissions of police machinery are the focus of allegations, the political and bureaucratic attitude would be more responsive if the recommendations emanate from the National Human Rights Commission than from the State Commission This further underlines the need for strengthening the capacity of National Human Rights Commission to deliver justice to SCs.

## EFFECTIVENESS OF WATCHDOG INSTITUTIONS

In the light of the above, 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, though the intensity of feeling and its articulation is not the same in all Commissions. Overall, the grievance, whatever its degree, is directed against the State in respect of all of them. National Commission for SCs/STs feels that there is an urgent need to look into the issue and empower the Commission by giving more powers under the Constitution itself to ensure the implementation of its recommendations<sup>61</sup>. National Commission for Women also has complaints about its recommendations not being accepted though it has not expressed them as forthrightly as the National Commission for SCs and STs or pursued them as determinedly as National Human Rights Commission has done. It has, however, not sought any amendment to the Act for any substantial augmentation of powers. National Human Rights Commission has made several recommendations and has also been pursuing them with Government. These will be considered in some detail because they virtually concern the National Human Rights Commission's capability to deliver justice to SCs in respect of atrocities committed against them.

The prescribed drill on the reports of the statutory Commissions is that the nodal Ministry of the Commission circulates the recommendations of the Report to the concerned agencies of the Government whom they concern. The comments furnished by them are included in the Action Taken Report, which is placed before the Parliament indicating whether the recommendation is accepted or not accepted and, if accepted, what action is being taken. If no final decision has been taken on a particular recommendation, the comment inserted is that it is under consideration. With these comments on action taken, the report is placed before the Parliament. This explains why there is time lag between submission of the reports by the Commissions and their placement before the Parliament since quite sometime is taken in collecting comments of concerned government agencies. The time lag in case of National Commission for SCs and STs is as long as three years.

Usually, in respect of recommendations which are radically divergent from the existing processes/practices/approaches or decisions on the subject, the bureaucratic tendency is to deflect or reject it and some grounds are mentioned for doing so. Commissions, however, expect that during the discussion on the report, some MPs may raise the question of non-acceptance of important recommendations which the Minister concerned may have to answer and, if there is widespread support for the issue, non-acceptance may cause embarrassment. The matter may even be picked up by the Media or NGOs/public spirited citizens/pressure groups which may also build up public opinion for its acceptance. But the reality is that reports do not come up for discussion at all as the experience of National Commission for SCs and STs in respect of last few reports placed before the Parliament indicates. This is partly because by the time reports are submitted with ATRs they are dated and at times lose their contextual relevance. No

<sup>61</sup>Sixth Report, op. cit.



separate discussions are arranged on these reports. Reference to these reports also does not come up during discussions on the budgetary grants of the nodal Ministry as due to shortage of time and low priority, the budget is passed after guillotining. The discussion on the Ministries is not taken up. NCW would also be facing similar problem. It is not known whether National Human Rights Commission has fared better in this respect. Information is not available about specific recommendations made by different Commissions, which have not been accepted by the Government and the reasons assigned for such non-acceptance. While Government may have genuine difficulty in accepting some recommendations in view of their wider ramifications and other valid reasons, non-acceptance of recommendations on a large scale is disheartening and even frustrating to the Commission because its efforts seem wasted.

The Commissions, apart from dealing with larger issues, also deal with specific complaints of individuals and after consideration make their observations and directions on them which may or may not form part of their recommendations in the report submitted by them. In such cases, the complainant/complainants may feel cheated if the verdict given by the Commission is not honoured by Government agencies. The issue of non-acceptance of recommendations, however, 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. It is, therefore, suggested, as has been done in the specific context of the National Commission for SCs and STs, that in respect of recommendations not being accepted, the desired approach should be for the concerned Minister [dealing with the recommendation] or the State Governments, as the case may be, to have a free and frank discussion with the Chairman of the Commission so that area of maximum consensus is reached. Such a discussion should be facilitated/arranged by the nodal Ministry.

In the case of atrocities on SCs, most of the complaints are directed against the conduct of police personnel and security agencies. Effective redressal of these grievances would require systemic reforms besides interventions in specific cases to make the guilty officials accountable. Larger reforms are also necessary to obtain desired cooperation from State agencies. The absence of such cooperation affects the credibility of the Commission and would have the effect of emboldening the guilty officials into continuing with their offensive behaviour/action and others into believing that they can also get away with it. National Human Rights Commission, because of its focus, capacity and stature of its members has been primarily handling such complaints though National Commission for SCs and STs and National Commission for Women also look into some of them. In the course of its Annual Reports, National Human Rights Commission has made the following major recommendations to reduce Human Rights violations and establish accountability of personnel involved in them, which, if accepted, would also strengthen National Human Rights Commission in dealing with cases of atrocities against SCs.



## **A. SYSTEMIC REFORMS**

### **1. Custodial Violence**

The Commission suggested specific substantive changes to Indian Laws in its 1995-96 Annual Report in order to help deter occurrence of custodial violence. It endorsed the recommendations made by Indian Law Commission (ILC) in its 113<sup>th</sup> Report (1985) that the Indian Evidence Act 1872 be amended to introduce rebuttable presumption against the police when persons in police custody sustain injury. The Commission endorsed the ILC recommendation that the Code of Criminal Procedure be amended to obviate the necessity of governmental sanction for the prosecution of a Police Officer where a prima facie case has been established through enquiry. The Commission further endorsed the recommendation of National Police Commission made in its 1979 report that there should be a mandated enquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt<sup>62</sup>.

### **2. Police Reforms**

In order to insulate the police from interference or improper pressure from political and other extraneous sources, National Human Rights Commission made recommendation in its 1994-95 Annual Report for adoption of special remedial measures set forth in the 2<sup>nd</sup> Report of the Police Reforms Commission in 1979. It reissued these recommendations in the Annual Report of 1995-96, which has specifically called for statutory tenure of Chiefs of Police in the States so as to remove the potential of political pressure affecting the functioning of the office and for a statutory State Security Commission in each State to act as a Superintending body for monitoring police conduct<sup>63</sup>.

### **3. Prison Reforms**

The Commission recommended creation of a high level committee in each State to review the cases of prisoners and ensure that none was detained unlawfully as well as improvement of the conditions of police lock-ups and sub-jails in 1994-95. The Commission recommended preparation of a new All India Jail Manual and also deemed it of critical importance that the antiquated Indian Prison Act 1894 be revised in 1993-1994. National Human Rights Commission also prepared a draft model Prison Bill to replace the present Indian Prison Act 1894 and this has been circulated to the States to elicit their views in 1997-98. The Commission is pursuing with the States to draft a new Prison Bill and Jail Manual incorporating the provisions of the draft Indian Prison Bill 1996 circulated by the Commission<sup>64</sup>.

## **B. INCREASING ACCOUNTABILITY OF POLICE FORCES**

### **1. Custodial Death, Rape and Torture:**

The Commission issued instructions that any incident of custodial death must be reported to it within 24 hours of occurrence. Such information should be followed by submission

<sup>62</sup>Judgement Reserved: The case of National Human Rights Commissions of India. South Asia Human Rights Documentation Centre (2001), p. 42

<sup>63</sup>Judgement Reserved - op. cit., pp 45-48

<sup>64</sup>Judgement Reserved - op. cit., pp 48-50

to the Commission of relevant post-mortem report. Magisterial Investigation Report and Videography Report on the post-mortem. These reports must be sent to the Commission within two months of the incident. It also clarified that post-mortem report and other related documents should be sent without waiting for the viscera report, which may be sent subsequently as soon as it is available. It has also circulated model autopsy form for the post-mortem report<sup>65</sup>.

## **2. Encounter Death**

The Commission framed guidelines in respect of procedures to be followed by the authorities dealing with deaths that occur in encounters involving police and circulated them in 1997. It urged that enquiries into encounter deaths be carried out by police officers known for their impartiality and integrity<sup>66</sup>.

## **3. Establishment of Human Rights Cell**

It has suggested that each State Government should establish a Cell within the office of the Director General of Police as an in-house mechanism to deal with increasing number of complaints of human rights violation by members of police force. It has also requested Chief Justices of High Courts and Chief Ministers of all States/UTs for issuing directions to District Judges to constitute in their respective jurisdictions a District Complaint Authority with the Principle District Judge as Chairman and Collector/Dy.Commissioner and S.P. as members<sup>67</sup>.

## **C. REFORM OF CRIMINAL JUSTICE SYSTEM**

It has made the following major recommendations<sup>68</sup> concerning changes in the CrPC and the substantive laws:

- (a) Process of progressive and massive decriminalization of offences recognized and made culpable as penal offences
- (b) Clause of compoundable offences under IPC and other laws should be widened
- (c) Experienced criminal lawyers be requested to work as part-time judges
- (d) System of 'plea bargaining' be introduced
- (e) Judicial remand should be self-limiting
- (f) Comprehensive training for judicial personnel and court administrators
- (g) Increase in Population: Judges ratio

## **D. General Enforcement**

The Commission suggested amendment to Section 13 of the Protection of Human Rights Act granting it the power to compel attendance of any person during inquiry. It recommended amendment to Section 18 in order to enhance its enforcement power

<sup>65</sup>Annual Report 2000-2001, pp 19-20

<sup>66</sup>Annual Report 2000-2001, pp 20-21

<sup>67</sup>Annual Report 2000-2001. p. 25

<sup>68</sup>Annual Report 2000-2001. pp 30-32

subsequent to inquiry by granting it the sole authority to impose compensatory relief and initiate proceedings against public servants when evidence of human rights violation or negligence in preventing such violence had been found. It recommended amendments to Section 36 to include a provision which would expressly bring future State Human Rights Commissions under the direct judicial oversight of National Human Rights Commission. It also recommended amendments broadening the definition of "human rights" and eliminating restriction that human rights be those enforceable in courts of India. It also recommended elimination of the provision which limited the definition of "international covenants" in order to allow flexibility as and when India enters into further international treaties. The Commission also recommended broadening the jurisdiction of Human Right Courts to be established under Protection of Human Rights Act for granting them temporary jurisdiction over normal criminal work<sup>69</sup>.

#### **D. INCREASING ACCOUNTABILITY AND TRANSPARENCY IN PROSECUTION OF HUMAN RIGHTS VIOLATIONS COMMITTED BY ARMED FORCES**

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 National Human Rights Commission 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<sup>70</sup>.

#### **E. INTERNATIONAL TREATY OBLIGATIONS**

1. 1984 UN Convention on Torture - National Human Rights Commission has been urging Government of India to accede to the 1984 UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment since its 2<sup>nd</sup> Annual Report for the year 1994-95.
2. CEDAW and other UN Treaties - National Human Rights Commission has been persistently urging the Government to effectuate obligation embodied in various international treaties to which it is a party. It has specifically recommended in 1994-95 to implement the obligation relating to the 1979 Convention on Elimination of all forms of Discrimination Against Women<sup>71</sup>.

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<sup>69</sup>Judgement Reserved : op. cit., pp 35-36

<sup>70</sup>Judgement Reserved, op. cit., pp 58-61. Also see, Annual Report 2000-2001, pp 10-18

<sup>71</sup>Judgement Reserved, op. cit., pp 62-65

On the substantive issues of systemic reforms and increasing accountability of State agencies in respect of human rights violations, no mentionable success has been achieved. While the Central Government has refused to accept the proposal to bring human rights violations of armed forces within the ambit of scrutiny of National Human Rights Commission<sup>72</sup>, recommendations to establish accountability of officials for custodial violence, encounter killings and prosecuting those found guilty have not been rejected outright. But the Central Government has deflected some of these recommendations by passing on the responsibility to the State Governments or linking them to request made to ILC for a comprehensive review of IPC and CrPC. This has serious implications for efforts to reduce atrocities against SCs. The recommendations on criminal justice administration, reforms in police and jail administration, etc. are either reported under consideration for years or not accepted<sup>73</sup>. The recommendation of National Human Rights Commission to establish a clear functional relationship with State HRCs has also not been conceded. In respect of international treaties also, there is no positive response from Government yet. For SCs who are victims of systemic abuse both under police and judicial custody lack of positive response from the State (Central/State Governments.) to the directions issued by the Commission directly affects its capability to deliver justice to them.

National Human Rights Commission has also not achieved much success in establishing accountability of the State agencies in respect of arbitrary arrests and extra-judicial killings through the mechanism of timely reports after proper inquiry. As per its report for 2000-2001, of the total 177 cases of death in police custody registered in 1999-2000, the Commission had not received full reports in respect of 165 cases. In respect of total 916 cases of deaths in judicial custody during the same period, reports were awaited in respect of 520 cases. The Commission however takes satisfaction from the fact that custodial deaths have gone down to 1037 in 2000-2001 from 1093 in 1999-2000 and deaths in police custody have decreased from 177 to 127 in the same period. But in respect of fake encounters, the National Human Rights Commission's intervention has shown little impact. As the letter from Committee of Concerned Citizens, Hyderabad has revealed, the Commission's directive for an inquiry into encounter deaths by State police officers does not inspire confidence since such extra-judicial killings have virtually become a part of unofficial State policy. The Commission itself feels disturbed by the complaints of fake encounter deaths it continues to receive from A.P. SCs/STs are amongst those who are the largest victims of State violence in insurgency affected areas. Even with regard to improvements in the condition of jails & lock-ups, the Reports on inspections carried out by Special Rapporteurs of the Commission have not yet been fully acted upon by the concerned State Governments.

It is not merely in the field of changes in law and institutional reforms that the attitude of the State is vital to the effectiveness of the Commissions. The State also touches upon the functioning of the Commissions in other ways, one of which and

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<sup>72</sup>Judgement Reserved, op. cit., p. 59

<sup>73</sup>Judgement Reserved, op. cit., pp 40-65

substantially important is the resources; financial and manpower assigned to them to discharge their role. Commissions have complained about lack of sufficient staff and financial allocation. These complaints vary in degree from Commission to Commission. National Commission for SCs and STs faces acute shortage of budgetary provision which constrains its activities. It does not have money left even for touring of its Field and Secretariat staff after meeting its establishment expenditure. It has to look to the Ministry of Social Justice and Empowerment even for such small matters as sponsoring Seminars and Research Studies. National Commission for Safai Karamcharis also has huge complaint in this regard.

The other Commissions also face problems of budgetary constraints. 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 relates to the machinery available to them to carry out independent investigations. All Commissions are most inadequately equipped in this regard considering the complaint load they handle and demand for direct investigation placed on them. Only a very small number of complaints can be directly looked into by Commissions through their own staff. National Commission for SCs and STs is better placed because it has field officers in sixteen places, mostly capitals of major States. But National Commission for SCs and STs did not have an investigation wing in operation till recently. Its position for a police officer was lying unfilled for a long time. Though an officer has now joined, but in the absence of any supporting staff, it is handicapped in taking up any direct investigation into complaints against police bias and has to rely upon only on State agencies. It also does not have a law wing. National Commission for Women does not have any investigation wing and also does not propose to have one, though earlier it had been thinking on these lines. National Human Rights Commission is slightly better placed in this respect than other Commissions and is in a position to examine complaints and take up a few investigations through its own staff at the headquarters. It has positioned senior retired officers as Special Rapporteurs to make up for the absence of field units, who engage supporting staff on contract basis. But its load of complaints is very large compared to its capacity. Also, it is assigned a lot of monitoring and investigation work by the Supreme Court which requires full time persons in headquarters to handle. It does not have them and, therefore, feels constrained by lack of adequate manpower. All Commissions therefore have to rely upon State Governments to inquire and investigate into complaints. This is not merely time taking as the reports are received after undue delay, but usually the version of the same agency against whom complaint is made comes as State's report.

In the absence of alternative method of investigation re-inquiry is ordered when reported version of the State does not satisfy the Commission. This process turns out to be dilatory and, even with delay, not entirely satisfactory to the Commission or the complainant. National Human Rights Commission had sought financial and administrative autonomy from the Government to overcome some of these problems by suggesting amendments to Protection of Human Rights Act. The Commission recommended amending Clause 11 of the Protection of Human Rights Act in order to enhance its administrative



autonomy. This pertains to the appointment of Director General and other investigating officers to the Commission, subject to the rules framed by the Central Government. The Commission's recommendation was that the appointment of administrative, technical and scientific staff should be on the basis of the judgement of the Commission. The Commission also sought amendment to Clause 32 in order that its budget is appropriated directly from Parliament as a separate line item, rather than as part of the budget appropriated to and allocated under discretion of Home Ministry. But the Government have not yet accepted either of these recommendations.

There is however another aspect which severely constrains intervention of National Human Rights Commission in relation to atrocities against SCs. **Clause 36** limits the powers of the Commission to entertain complaints and investigate them. **Clause 36(1)** bars the National Human Rights Commission from inquiring into any matter which is pending before a State Commission or any 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. But the complainants who usually approach several agencies in their desperation to get justice may find that this provision has precluded National Human Rights Commission from looking into the matter because some other Commission has already initiated the process. Even more crippling is the provision of **Clause 36(2)** which lays down that the Commission shall not inquire into any matter after the expiry of one year from the date on which the alleged incident has taken place. Added to this are regulations framed by National Human Rights Commission itself. **National Human Rights Commission Regulation 8(l)(a) to (e)** provides for dismissal of complaints. These include complaints regarding matters that are sub-judice **8(l)(b)**, complaints that are vague, anonymous or pseudonymous **8(l)(c)**, complaints that are frivolous **8(l)(d)** and complaints that are outside the preview of the Commission **8(l)(e)**. The impact of these limiting considerations lead to dismissal *in limine* of a very large percentage of complaints. One researcher has noted that in the year 1994-95 out of 5700 complaints as many as 2483, roughly 43% complaints, were dismissed *in limine*<sup>74</sup>. Under this procedure a petition can be dismissed without assigning reasons as the remedy can be sought elsewhere. Of all these limitations, clause **36(2)** is more crippling as it has been rightly noted, 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 and safeguards available and may have no one knowledgeable to help them. Also, the victims first try to approach local authorities for justice and in case of no response, represent to higher-level bodies. The intervening delays may be quite long in case of powerless SCs. Setting a time limit to registration of a complaint may virtually result in the offender getting away with his act. Unless the National Human Rights Commission agrees to use its discretionary power in relaxing time limit in serious cases of atrocities, most of the complaints from SCs, by the time they reach the Commission, would become time barred and therefore the last hope of

<sup>74</sup>Vinay Kumar. V., The Working of NHRC: A Perspective in Nirmal, C.J.(ed) Human Rights in India (2000) p. 226-227.



the victim may also be shattered. There is no indication that National Human Rights Commission has resorted to this arrangement or sought to eliminate this clause<sup>75</sup>. In the interest of such weaker sections as SCs/STs, it is extremely necessary to do so.

This matter assumes greater importance when it is observed that in respect of major cases of atrocities where reports of Enquiry Committees, Human Rights Organizations, well researched documents of NGOs, Observations made in Open Hearings presided over by eminent persons, including retired Justices of Supreme/High Courts, sufficient facts have been placed about the acts of omission and commission of enforcement agencies which have resulted in denial of justice and tremendous frustration and indignation among the victims. No State agency has taken note of them and initiated desired action to undo the wrongs done to SCs. If even the National Commissions, more specifically the National Human Rights Commission, declines to take up the issues raised therein on grounds of legal and regulatory limitations, it would produce further demoralization and loss of faith in the system among SCs and the efforts of the organizations which have produced the evidence would seem wasted. National Human Rights Commission may consider using its discretionary powers to take up such cases so that the guilty do not get away unpunished.

Notwithstanding the disappointments registered in effecting systemic reforms and enforcing accountability of State agencies towards human rights violations, National Human Rights Commission is, by and large, satisfied that its pressures have reduced their incidence. States also, by and large, comply with directions regarding award of financial compensation to victims/their kin for such violations. In social sphere interventions, National Human Rights Commission is, no doubt, pleased that District Administration and State Government in U.P. have been cooperating regarding elimination of child labour from carpet industry in four districts. Central Government has also accepted its recommendation to amend Government Servant Conduct rules against employment of children below 14 years as domestic help. National Human Rights Commission has also achieved, after a great deal of exertion, some breakthrough in activating the Government machinery in southern States in detection of bonded labour. But even in this sphere, where no contentious issues are involved and there is no direct pressure from its own police bureaucracy/security forces against outside scrutiny into their conduct, has not achieved much success with States in issues it has taken up for enforcement of social justice. It faces great deal of resistance - virtual road block - in regard to implementation of Bonded Labour Abolition Act from most States. The direction given regarding implementation of Inter-State Migrant Labour Act in Punjab has also not yet been acted upon. The deadline for elimination of Manual Scavenging is over. But substantial backlog of work still remains and the Commission is pursuing the matter. With regard to De-notified tribes, there has been no response from State Governments and the Commission has expressed anguish about it. There has also been no reported compliance to its directions with regard to the Devdasi rehabilitation either from the Central or the concerned State Governments.

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<sup>75</sup>Judgment Revised, op. cit., pp 135-136.

In the light of the above, the impact of National Human Rights Commission interventions on atrocities against SCs through positive action would continue to remain limited until the core issue of accountability of State agencies for violence inflicted violations of human rights and provisions of law is settled. Till then no substantial change in the behaviour of enforcement agencies is likely to register.

This completes the picture of protective arrangements, the most significant component of the triangular strategy for controlling atrocities against SCs. The picture that emerges from this analysis raises serious question marks on usefulness of law as an instrument of administering social change and delivering social justice. It also exposes the utter powerlessness of highly vulnerable groups such as SCs to invoke this instrument for changing terms of social engagement and discourse. It is now to be seen how the other two components of the strategy have fared in the struggle to achieve this goal.

## **SECTION - VI**

### **LOCATING RESPONSIBILITY: THE INDICTMENT OF STATE**

#### **FINDINGS OF NON-OFFICIAL BODIES**

Nothing brings out more succinctly and candidly the responsibility of State in relation to violence inflicted on SCs than the observations and findings of some important non-official bodies which have looked into the cases of atrocities either firsthand through open hearing or through meticulous collection of information. Four such reports are being presented in brief.

#### **National Public Hearing on Dalit Human Rights, Chennai, 18-19 April, 2000<sup>1</sup>**

The Jury consisting of three retired High Court Judges (Justices Punnaiah, Suresh and Amir Das), among others, in their observations have severely indicted the State for violation of Human Rights of SCs by its agents and instrumentations and even by non-State actors. It has also held that State is colluding with dominant castes in several areas across the country. State laws are subverted by the very authorities who are mandated to enforce them. The law enforcing machinery is the greatest abuser of human rights of Scheduled Castes. The document has been extremely critical of State for continuation of manual scavenging and Devdasi practice despite their abolition by law. State has also been held responsible for not taking effective measures to abolish Bonded Labour system and to rehabilitate released bonded labourers, and its failure to protect SCs against encroachment of their land by dominant castes and for not regularizing rights over lands cultivated by them. The police and civil authorities have been taken to task for denial of political rights to SCs in collusion with dominant castes which have prevented SCs from casting their votes, putting up their representatives for election and contesting elections under the banner of their own parties. They have also a tendency to dislodge their elected representatives by fabricating false complaints in collusion with officials and thus negating the process of free and fair elections. The jury advocated for a code of conduct for all State agencies, including judiciary<sup>1</sup>, with regard to ethics as in several cases State agencies accused of violation of human rights continue to be in office and appropriate legal and administrative action is not taken against them. The condition of SCs has been described by them as 'Hidden Apartheid'.

<sup>1</sup>National Campaign on Dalit Human Rights, National Public Hearing, April 18-19, 20(X), Chennai, Vol. I - Summary: Jury's interim observations and Recommendations, pp. 309-317

### **Public Hearing: Lucknow, October 5-6, 2001<sup>2</sup>**

The Jury consisting of Justice Suresh, Retd. Justice of Mumbai HC among others, have held the State accountable for not resolving the land rights of SCs who have been complaining of Pattas not having been given over the land promised to them and where Pattas having been given, possession has not been delivered while in some cases Asami Pattas distributed earlier have been cancelled by the district Collector without an explicit Government order. The Gram Sabha lands distributed to the SCs by the Revenue Department, is being taken away by the Forest Department. It also held the Civil Administration accountable for corrupt and fraudulent practices in distribution of loan under Government schemes as poor SCs do not get the entire amount of loan, balance being taken away by intermediaries. Sometimes loans are taken by others in their name and without their knowledge while at the time of recovery, they are arrested for failure to clear them. The jury noted that SCs are being subjected to various atrocities by all institutions, Panchayats, police, Revenue Administration and even functionaries of courts.

### **SAKSHI, Dalit Human Rights Monitor-2000 - A Report of Human Rights Watch, AP<sup>3</sup>**

In a well researched document on atrocities in AP, the report has blamed the Police and Revenue officials for their apathy at best and prejudice at worst in the matter of atrocities against SCs. The motivation to implement the SCs and STs (Prevention of Atrocities) Act, 1989 is lacking. It has also been critical of judiciary which has failed to sustain the confidence of SCs that it would deliver justice to them. The callous attitude of State agencies to incidents of social boycott has come in for very severe indictment.

### **Broken People - Report of Human Rights Watch, 1999**

A comprehensively researched report, after looking into recent violence on SCs in Bihar, Tamil Nadu, Maharashtra and various facets of atrocities, has highlighted through specific instances failure of State to check social violence by not implementing existing laws to eliminate manual scavenging, Devdasi system, bonded labour system. It has mobilized a great deal of evidence to highlight cases of police atrocities on SCs, such as sexual abuse of women to crush dissent, rape and torture in custody as a means of punishing their male representatives, raids of SC colonies to terrorize SCs as a group, collective penalisation of SCs for individual transgression, crushing even legitimate political activities, arbitrary detention, torture, extra-judicial executions, forced evictions and not protecting SCs against their de facto disenfranchisement during elections by political leaders of dominant castes. The report finds that the potential of SCs and STs (Prevention of Atrocities) Act, 1989 has not been tapped due to incompetence, corruption and bias of police machinery and failure of Government to punish guilty officials of police for their lapses.

<sup>2</sup>From Dalits of UP to Citizens of India: A Report of public hearing held at Lucknow on Oct. 5-6,2001 organized by Dynamic Action Group, IIP and PUCL (UP) and NGOs, pp. 40-45 -

<sup>3</sup>SAKSHI, op. cit., pp 14-20

The indictment of the State that emerges in the above findings is near total. All wings of the State share the blame in failing the people they are supposed to protect. While the largest blame may go to the Executive Wing which administers all laws and programmes, the role of police machinery is central to the failure in respect of criminal laws. The civil machinery also shares some blame for its callousness and attempts to cover up the actions of the police in relation to atrocities. But the dismal showing in social and economic legislation can be attributed almost entirely to the enforcement bureaucracy of Revenue, Labour and Development. Political leadership provides directions to both civil and police machinery; and controls their conduct and therefore is primarily responsible for the performance of bureaucracy which looks upto political signals for modulating its actions. The Judiciary is not without blame either. It has failed to deliver justice despite a strong law. The following analysis in respect of all three wings of the State on the implementation of the of Atrocities Act and social legislations referred to in this paper would bring out this aspect clearly.

## **SCs AND STs (PREVENTION OF ATROCITIES) ACT, 1989**

### **A. Role of State Agencies**

#### **A-I *Political Leaders***

Ever since the Act has come to be enforced, the Hindu political leadership has launched a vilification campaign against its use. This is particularly significant because all available information shows that nowhere in the country the Act has been vigorously enforced and given the biases at various levels it has virtually little impact on the level of atrocities against SCs. In Maharashtra the Shiv Sena, which represents the Brahminical ethos par excellence, made it an election issue in 1995 to recommend to the Central Government to repeal the Act. True to its promise, after coming into power, it began withdrawing over 1100 cases registered under the Act alleging that these cases were false and were registered out of personal bias<sup>4</sup>. State Government also declared that it would ask the Central Government to amend the Act to limit its “abuse”. The withdrawal of cases effectively sent the message to the police not to register the cases and ensured that it would not be taken seriously. One activist and head of NGO working for Scheduled Castes who had helped in registration of cases has stated that the State Government had in fact, issued instructions to officials not to implement certain provisions of the Atrocities Act particularly those related to physical abuse and land alienation<sup>5</sup>. When a Government in power takes such a position, its constitutional responsibility is severely compromised. This also ensured that no one would take the law seriously.

The Chief of Samajwadi Party, Mulayam Singh Yadav, openly and unabashedly spoke against the use of the Act and accused the then SC Chief Minister of U.P. of casteism in enforcing the Act. He has been consistently arguing against its use by the police machinery. In 1997, in U.P., BJP also called for repealing of legislation on the

<sup>4</sup>Human Rights Watch, Broken people, Op.cit., p. 196

<sup>5</sup>Human Rights Watch, Broken people, Op.cit., p. 198

ground that ruling party BSP has been instigating SCs to file cases against political opponents. West Bengal Government are not registering cases under the Act because of their conviction that violence against SCs is not guided by caste consideration. Very recently, one Rajasthan Cabinet Minister termed the registration of cases under the Act as a 'headache' for the police and sought to deal with the problem. These are only few instances where the expression of hostility has come out in the open. Many more political leaders may be covertly frustrating the use of its provisions in controlling the incidence of atrocities. This provides evidence, if required, that the political will to enforce the Act has been lacking. If the Act really gets implemented effectively, it would not be surprising to see more hostile statements coming out against the use of the Act from the political class.

## **A-II *The Executive: Police Machinery***

The problem starts with registration of the case itself. Police resort to various machinations to discourage Scheduled Castes/Scheduled Tribes from registering case, 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. The following is the range and pattern of **atrocities perpetrated by the police** itself based on investigation carried out by Human Rights Watch and documented in the book Broken People: "Caste Violence against India's Untouchables".

### **(a) *Police as Participants in Violence Against SCs***

#### *Custodial Torture and Death*

The most obvious form of State violence against SCs is in the treatment meted out to them in police custody in connection with criminal case, even petty cases of theft and minor offences. What usually happens is that subsequent to arrest, during interrogation injuries sustained by the arrested person are so serious that he dies. The custodial deaths are then covered up usually by showing that the detained person was attempting to run away from custody or died of natural causes<sup>6</sup>. Supreme Court guidelines in such cases are not followed. National Human Rights Commission is now monitoring such cases.

#### *Criminalisation of Social Activism*

This happens when SCs or their supporters/sympathizers protest against any wrong done by the State or private individual or group and seek redressal of wrong through rights guaranteed to them under the law and political system. As the protest is not relished by State agencies, the protesters are charged under serious IPC offences and even under those provisions of law which deal with offences relating to National Security. Provisions of CrPC are also used to detain SCs in order that they are prevented from organizing themselves or mobilizing the community on some issue. Even activists, social workers, NGOs who take up the cause of SCs face criminal action<sup>7</sup>.

<sup>6</sup>SAKSHI, op. cit., pp. 90-91: National Campaign on Dalit Human Rights, Chennai Hearing, op. cit., pp 73-76; Human Rights Watch, op. cit., pp 115-121

<sup>7</sup>Human Rights Watch, op. cit., pp 161-164



*Encounter Deaths*

This is a feature of areas affected by insurgency, naxalism or radical left movements, where members of such groups resort to violence for seeking a life of dignity and honour denied to them due to oppression of caste Hindus, land owners and other exploiters, which they have not been able to get through constitutional means. The police and security forces pick up young persons, particularly educated ones, from the supporters of these organizations, torture them to extract confession and then kill them while showing that these deaths took place as a result of self defence against the armed attack of the accused persons. Often bodies of persons killed in encounters are disposed of quietly to obliterate evidence which may in case of enquiry expose them<sup>8</sup>. There is caste differentiation in encounter killings also as upper caste persons picked up by police are not killed or manage to get a lighter treatment as a result of pressure from influential contact persons belonging to their caste<sup>9</sup>. Andhra Pradesh has emerged as a major area where such encounter deaths have taken place with regularity. While encounter deaths are also alleged from J&K, which is affected by terrorism, the case of Andhra, Jharkhand, MP, etc., are noteworthy in the context of this paper because SCs and STs are among the major victims of such deaths in these States. Committee of Concerned Citizens, a Human Rights Organisation in Hyderabad, has strongly protested to National Human Rights Commission against encounter killings in A.P. and has termed them as “fake” and part of undeclared State policy<sup>10</sup>. National Human Rights Commission has issued guidelines for carrying out enquiry into such cases by police officers of integrity.

*Violence as Expression of Class Bias*

In insurgency/naxalite affected areas, SCs/STs face dual violence, one of caste Hindu landlords (private militias) leading to gruesome atrocities on them, second from the State. The two operate with a certain degree of nexus but with different motivations and through different methods. 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. Bihar is a typical example of class and caste biased violence of police against SCs in such situations<sup>11</sup>.

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<sup>8</sup>Human Rights Watch, op. cit., pp 75

<sup>9</sup>National Campaign on Dalit Human Rights. Chennai Hearing, op. cit., 267-269

<sup>10</sup>Notes submitted by the Committee to Chairman, National Human Rights Commission, op. cit., pp 73-75

<sup>11</sup>Human Rights Watch, op. cit., pp 53-81, also 76,116,119

*Raids on Scheduled Caste Colonies*

Usually when inter-community clashes take place with SCs as one of the affected groups, police raid colonies of SCs on the pretext of seeking fire arms and militant leaders and unleash huge violence, including sexual harassment of women and looting/destroying property of SC households. The better off among SCs in the colonies are specifically targeted to break their morale and to undo the economic betterment achieved by them. Such raids have been documented in case of Tamil Nadu and Bihar<sup>12</sup>.

*Violence as a Means of Putting Pressure<sup>13</sup>*

In the colonies raided by police, sexual violence on SC women is inflicted as a stratagem to exert pressure on male folk to surrender or compel them to give false evidence, retract their complaint or compromise their position in the case or to silence them from raising protest against the treatment meted out to them<sup>14</sup> by the police.

*Violence as a Means of Crushing Ordinary Democratic Protests*

Instances exist when in peaceful and democratic protests carried out by SCs against the Government on some issues which have hurt them, excessive firing/force is resorted to disregarding national and international norms evidently with the objective of restraining them from undertaking such protests. Firing in such cases are unprovoked and motivated. Specific case of Ramabai killings in Maharashtra in 1997 as an example has been documented to establish this point<sup>15</sup>.

*Collective Penalisation of Individual Transgression*

It has also been observed that police or security forces in their search for a particular individual or accused person belonging to SC in connection with a case or incident, instead of confining themselves to the search of the household of that person, target the entire SC community in the colony with offensive behaviour, search and seizure, physical abuse and assaults. This is used as a pressure tactics to force that individual to surrender and as a penalization of the whole community for the action of an individual.

*Criminalization of Communities*

Certain communities, mostly SCs and STs, during British period were termed as 'criminal tribes' or 'habitual offenders' as they were perceived to be crime-prone for survival. The members of such communities were routinely picked up in connection with any crime committed in the area and were tortured to extract a confession. Separate laws were enacted to deal with them. Even though such communities were denotified by Government, they are still treated as born criminals by the police and the old mindset still operates in their behaviour - a telling example of criminalization of communities. On the initiative

<sup>12</sup>Human Rights Watch, op. cit., pp 102-112, also pp 73-81

<sup>13</sup>Human Rights Watch, op. cit., pp 75-80

<sup>14</sup>Human Rights Watch, op. cit., pp 124-125

<sup>15</sup>Human Rights Watch, op. cit., pp 127-137

taken by Denotified and Nomadic Rights Group headed by Smt. Mahashweta Devi<sup>16</sup> National Human Rights Commission has issued guidelines for their destigmatization and mainstreaming.

***(b) Police as Saboteurs of Justice: Registration of Cases and Follow-Up Action***

SAKSHI - in its report on Human Rights Watch - 2000 in respect of Andhra Pradesh has analyzed several cases of atrocities right from the commission of the offence to the stage of completion of the trial and has identified following methods used by police to deflect the objectives of the law<sup>17</sup>.

- (a) Not registering the case
- (b) Pressurising the victim complainant to seek compromise to help perpetrators,
- (c) Foisting of false cases against victims at the behest of perpetrators to pressure them to compromise
- (d) Refusing to register cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 so as to avoid strong punitive measures against the accused
- (e) Not citing proper Sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 so as to dilute the seriousness of the offence and help the perpetrators get a minor punishment, if convicted
- (f) Registering FIR but not arresting the accused; shielding public servants/ local political leaders from arrest
- (g) Against the specific stipulation of Rule 7(1), an officer of lower rank conducts the investigation and Dy. SP simply puts his signature on it
- (h) Delay in investigation and filing Charge Sheet
- (i) Granting of bail despite stringent provisions in the Act<sup>18</sup>.

**Consequences of Not Registering FIR Under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

Failure to register an offence under the above Act has the following implications:

- The perpetrators are punished with a lesser sentence
- Relief or compensation is not admissible to victims
- The perpetrators are likely to be released on bail
- Cases are investigated by an officer of Sub-Inspector or Inspector rank with less experience and sensitivity.

<sup>16</sup>Letter from Smt. Mahashweta Devi to Chairman of National Human Rights Commission dated 4.5.1998

<sup>17</sup>SAKSHI Dalit Human Rights Monitor -2000, AP, pp 100-104

<sup>18</sup>National Campaign on Dalit Human Rights, Chennai Hearing, op. cit. p. 314

## **Two Common Methods Police Use to Avoid Registering Cases Under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

### ***i) Registering FIR Under PCRA (Protection of Civil Rights Act), 1955***

This act attracts lenient punishment as compared to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and does not provide for compensation or relief to the victim. Offences under Protection of Civil Rights Act, 1955 relating to the practice of untouchability attracts a maximum of 6 months imprisonment and maximum fine of Rs. 500/-. In respect of offences not covered by Protection of Civil Rights Act, 1955 the FIR is registered under IPC whose provisions attract lesser punishment than those of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the same offence.

### ***ii) Requiring Explicit Mention of Abuse by Caste Name for All Atrocities***

Police are not registering many cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the ground that SC/ST victim/victims have not mentioned that they were abused by caste name. This is not even necessary and constitutes a distorted interpretation of the Act. Such a requirement is only provided for in Section 3(1) of the Act and in no other section.

#### *Social Roots of Police Behaviour: The Caste Bias*

This behaviour of the police reflects a deeply embedded caste bias even if not openly exposed. This is because

1. Most police and revenue officers belong to the dominant castes. This was the position, at least till recently. Though some lower caste officers are now coming up in these positions, but their number is still small and they may not be given crucial positions or may be circumscribed in their action under pressure from their controlling officers in the hierarchy.
2. Police personnel are not sensitized to take atrocities and discrimination cases against Scheduled Castes/Scheduled Tribes seriously.
3. Many officers at lower levels are not aware of the legal provisions of the Act.
4. Usually police officers are posted to the Protection of Civil Rights Act cells as a punishment. They are a frustrated lot and take no interest in the work.
5. The police see their primary duty as maintenance of law and order. Therefore, registration of cases resulting in increased crime rate goes against the officer in charge of police station and may even lead to punitive action<sup>19</sup>.
6. Police also view the Act as an obstacle to caste harmony since it makes Scheduled Castes more powerful and has an adverse effect on society. They even charge Scheduled Castes with filing cases for monetary gain<sup>20</sup>.

<sup>19</sup>Human Rights Watch, Broken People. op. cit., p. 195

<sup>20</sup>Human Rights Watch, Broken People. op. cit., p. 196

7. Police are under pressure from several quarters of the same dominant caste whose member/members have committed atrocities<sup>21</sup>.
8. Corruption also plays its part in enforcement. SCs are not in a position to bribe the police while the upper caste accused may be in a position to do so. Their version therefore gets reflected in the investigation<sup>22</sup>.

### **A-III Executive: The Civil Administration**

The apathy and bias is not confined to police personnel alone. It extends to other agencies of the Government and the District Civil Administration. This is established by the following behaviour:

#### ***Duties of the Civil Administration Under the SCs and STs (Prevention of Atrocities) Act and Rules Involve:***

- (i) Visiting the place of occurrence and conducting enquiry under Rule 61 for assessing the loss of life and damage to property and to draw up a list of persons entitled to relief
- (ii) Providing relief compensation and rehabilitation, as per norms contained in Rule 15 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules and preparing a model Contingency Plan consisting of a package of measures for this purpose.

#### ***Breach of Duty by the Administration***

Usually where atrocities get a lot of publicity, the local officials promptly provide compensation and relief to the Scheduled Castes victims to tide over the public concern. But their response to other incidents of violence is characterized by apathy, negligence and passivity. The breach of duties by Civil Administration is committed in the following manner<sup>23</sup>.

- (a) Not conducting an enquiry, thereby evading duty to give relief and compensation,
- (b) Making false promises to give compensation and delay in distributing cash compensation,
- (c) Not providing allowances, such as travel allowance relating to trial and investigation for witnesses, victims, maintenance expenses and daily allowance, medical expenses, etc.
- (d) Administration ignores social boycott of Scheduled Castes which leads to denial of employment and access to basic necessities like ration shop, refusal to buy or sell any goods in the village, etc., to pressure Scheduled Castes into submission and cause intense suffering to them, though no physical violence may take place in the process. The attitude of District Administration in such situations usually ranges from indifference to negligence.

<sup>21</sup>Human Rights Watch, Broken People, op. cit., pp 189-190

<sup>22</sup>Human Rights Watch, Broken People. op. cit., p. 188

<sup>23</sup>SAKSHI, Dalit Human Rights Monitor - 2000, AP pp 104-108

- (e) 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 Scheduled Castes. The meetings are not announced in advance or proper intimation not given to members. The reports prepared by implementing agencies quarterly, monthly and biennial, are not made available to concerned groups and individuals, who can comment upon the conduct of delivery agencies<sup>24</sup>.

Magistrates often provide a shield for police excesses by either failing to conduct a thorough enquiry into the incident or producing a report or declaring a decision that deliberately covers up abuses by police officials. Sometimes Executive Magistrates or Revenue officials are assigned the responsibility of enquiring into custodial deaths. They produce a report which denies police involvement and defends police version due to their institutional affiliation with the Executive wing of the Government<sup>25</sup>.

There are other sectors of Civil Administration also which lend a helping hand in atrocities against SCs through intellectual dishonesty in discharge of their duties. One category is the medical personnel who often knowingly help cover up cases of police torture by providing false reports in the examination of the detainee while he or she is still alive or by fabricating a post-mortem report. Medical personnel often under pressure give diluted version of injuries on the body of the victim to minimize the gravity of the offence. In rape cases, doctors, even lady doctors, with a view to helping the accused issue false certificate, deny evidence of sexual assault after examining the victim or packaging the medical examination report with vague/contradictory statements which create grave doubts about the validity of the complaint.

The other category is that of Public Prosecutors who help the accused by not carrying out scrutiny of papers before putting up challan in the court, not presenting the case of prosecution properly, concealing material facts from the court, pressurising the victim to compromise, colluding with the defence lawyer to spoil the case.

### **OTHER CIVIL INSTITUTIONS: JUDICIAL CUSTODY**

Torture and death in judicial custody is a case of institutional violence under State custody which accounts for the largest number of deaths - much more than in police custody. The Annual Report 2000-2001 of National Human Rights Commission indicates that of the 1037 cases reported of custodial deaths, 910 occurred in judicial custody. Bihar, U.P. and Maharashtra account for very large number of deaths in judicial custody. While all deaths may not be on account of custodial violence, but violence in judicial custody is a well known occurrence. SCs account for a sizeable number of such custodial deaths. Inmates of jail are beaten up by jail staff for various reasons. This becomes worse when jail staff nurses hostility against them<sup>26</sup>. SC inmates are routinely insulted, intimidated

<sup>24</sup>SAKSHI, Dalit Human Rights Monitor - 2000, AP, pp 110-111

<sup>25</sup>Judgement Reserved: The Case of National Human Rights Commission of India, SAHRDC (South Asia Human Rights Documentation Centre) 2001, pp 112-11

<sup>26</sup>National Commission on Dalit Human Rights, Chennai Hearing, op. cit., 96-99



and are forced to do menial work inside the jail and carry out various commands not only of the jail staff but sometimes of caste Hindu prisoners as well. SC prisoners do not have avenues of protest in the prison set up. If they complain to outside authorities, they are beaten up even more. Sometimes when an enquiry is made by an outside agency, jail staff is usually present before the enquiry authority and therefore SCs are afraid to speak up.

#### **A-IV Response of Judiciary**

After experiencing biased conduct of police officials and indifference of civil administration, victims pin their last hope on judiciary to deliver justice. This hope has also been belied, judged by the low rate of conviction under the Act. SAKSHI after examining four types of judicial interventions in Andhra Pradesh, involving both the trial court and the High Court, has concluded that judicial delay and dilution of the scope, applicability and meaning of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has resulted in denial of justice to the Scheduled Castes<sup>27</sup>. The judicial trends observed from this study are:

- (a) Technicalities often take priority over the intent of the Act and the merits of the case. In fact, the intent is lost sight of because of scrupulous pre-occupation with technicalities.
- (b) The prosecutions are quashed on the ground that the offence was not committed on account of victim being a SC or a ST but on other accounts such as lust for sex, illicit intimacy in case of rape, political rivalry, enmity in case of murder, grievous hurt, etc.
- (c) There is a tendency to accept evidence only from non-Scheduled Castes/non-Scheduled Tribes people. An official of the National Commission on SCs/STs reported that he had studied fifty-sixty cases wherein the judge invariably concluded that SC/ST evidence is not valid because they are an interested party. "To attribute a pattern to a community is a prejudice in and of itself. That itself is an atrocity. They do not give weightage to SC/ST evidence, but it is too much to expect evidence from a non-SC/ST when the victim is a Scheduled Caste. That is the dichotomy; if they did come forward, we would not need the Act<sup>28</sup>".
- (d) Personal beliefs and prejudices determine appreciation of evidence, determination of guilt and award of judgement. These beliefs have the unmistakable print of social biases, both caste and gender. "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 evidence or the likelihood of guilt..... These biases are pervasive all the way to the top of the legal system. The few cases that

<sup>27</sup>SAKSHI, Dalit Human Rights Monitor - 2000, AP, pp. 112-137. The Report of National Public hearing on Dalit Human Rights, Chennai has also commented that judiciary has not responded to violation of rights of SCs with adequate sensitivity and urgency. National Campaign on Dalit Human Rights, Hearing April 18-19, 2000 Chennai, Vol. 1, case papers: 'Summary, Jury's interim observations and recommendations', pp 309-317.

<sup>28</sup>Human Rights Watch, Broken People, op. cit., p. 192.

manage to reach the Supreme Court still do not escape these deep seated prejudices”<sup>28A</sup>. Nothing illustrates better than the following sentence quoted by Human Rights Watch from the Judgement of a case of rape against a SC woman. “Rape is usually committed by teenagers and since the accused are middle aged and therefore respectable, they could not have committed the crime. An *upper caste* man<sup>28B</sup> could not have defiled himself by raping a lower caste woman”. Other cases have also been referred to<sup>28C</sup> by the same organization to illustrate the atmosphere of prejudice in courts which Dalit women face both as Dalits and as women.

### ***The Report of the National Commission on Scheduled Castes and Scheduled Tribes***

Watchdog bodies are entrusted with the responsibility to oversee the functioning of laws and programmes for their target groups. National Commission for SCs and STs is a constitutional body exclusively devoted to scrutiny of performance of Government agencies in delivery of rights and entitlements to these groups. Protection being an important and in fact, overarching component of the strategy to improve the conditions of SCs, the Commission in its reports has therefore been commenting upon the implementation of the Act. In its Sixth Report (1999-2000 and 2000-2001) it has observed<sup>29</sup> that in most States:

1. Monitoring and Vigilance Committees at State & District levels have either not been constituted or its meetings are not held on a regular basis.
2. Annual Reports are not submitted by the Ministry of Social Justice and Empowerment as per law. The Second report pertaining to 1991-92 was laid in the Parliament in June 1998.
3. A large number of deserving cases are not registered under the SCs & STs (Prevention of Atrocities) Act, 1989 due to ignorance of law or under pressure from interested parties.
4. Appointment of Special Prosecutors is often influenced by political considerations.
5. Supreme Court judgement on the ineligibility of a Sessions Court to directly take cognizance of the case without committal proceedings by the Magistrate will further delay the disposal of the case and defeat the objectives of this Act.
6. States are not implementing relief and rehabilitation package.

It has suggested corrective measures to improve the effectiveness of the implementation of the Act.

<sup>28A</sup>Human Rights Watch, op. cit., p. 176

<sup>28B</sup>Human Rights Watch, op. cit., p. 176

<sup>28C</sup>Human Rights Watch, op. cit., pp 175-178

<sup>29</sup>Sixth Report, op. cit., 207-219

***Status of Implementation in U.P. and M.P.***

National Commission for SCs and STs also carried out a study on the status of implementation of SCs and STs (Prevention of Atrocities) Act, 1989 in Uttar Pradesh and Madhya Pradesh. In the U.P. study, which covered 10% of the districts and an analysis of 1311 cases of atrocities, it came across cases of late registration of FIR, delay in the visit of the investigating officer, accused not being arrested, cases of charge sheets having been submitted late and compensation, etc. not being paid in time. Of these, the most glaring inaction related to not arresting the accused persons which enabled them to surrender in the court and robbed the proceedings of its immediate deterrence effect. The other omission concerned the non-implementation of the mandatory provisions (a) regarding provision of legal aid, traveling and maintenance expenses to witnesses and victims, (b) economic and social rehabilitation of victims, (c) appointment of officers for initiating or exercising supervision over prosecution, (d) setting up of committees at appropriate level, (e) making periodical survey of the working of the Act and (f) identification of atrocities prone areas for taking preventive action. The Commission, therefore, in its Fifth Report (1998-1999), Vol. I. made special recommendations for implementation of the Act, the most important being<sup>30</sup>:

- (a) Taking departmental action against the guilty police official in case of non-registration of FIR on the basis of the complaint
- (b) Cause of atrocity to be investigated by an experienced DSP, even if he does not have territorial jurisdiction for normal day-to-day work
- (c) Special Public Prosecutors to be paid on a higher scale than the panel advocate
- (d) Special Enquiry Cell setup under Rule 8 to be given special powers to register FIRs, investigate and submit Charge Sheet/Final Report to the Special court, etc.
- (e) Implementation of mandatory provisions.

The **study on M.P.** focussed on disposal of cases and was carried out on a sample of 82 judgements delivered by judges of special courts. The following reasons for **overall high pendency** of cases have emerged from this study<sup>31</sup>:

- (a) Absence of investigating police officers in almost 60% of cases
- (b) Witnesses not appearing in the court on scheduled date and time in 10% of cases
- (c) Accused and victims not appearing in 30-40% of cases
- (d) Arguments taking substantial length of time in 10% of cases.

The study found that percentage of **acquittal of accused was 95.12%** of the cases and the reasons for acquittal were attributed to the following:

- (a) Delay in lodging FIR
- (b) Courts attributing FIRs to enmity

<sup>30</sup>National Commission for SCs/STs, Fifth Report 1998-99, Vol. I, pp 234-237

<sup>31</sup>Fifth Report, op. cit., pp 176-177

- (c) Contradictions in the statements of complainants and witnesses and no proper scrutiny of cases done by the prosecution before putting the challans in the court
- (d) Witnesses and complainants becoming hostile
- (e) Accused and victims compromising, sometimes outside the court and sometimes inside the court
- (f) Prosecution unable to prove charges.

The study also found that the **Special Public Prosecutors** appointed to handle such cases **were of very poor competence and experience**, the reason for which was meager amount of remuneration. They were also not provided any facility. Even the learned judges found these prosecutors frustrated. The study also found that monitoring at the State level and District level by the **Vigilance and Monitoring Committees had not at all been effective**. Among the recommendations made by the Commission<sup>32</sup>, the major ones were:

- (a) Chief Justice to depute a Judge of the High Court to review working of the Special Courts and judgement delivered by them, at least once a year
- (b) Strengthening of the Directorate of Prosecution for effective supervision of cases,
- (c) Selection of competent and committed Special Prosecutors
- (d) Responsibility to be fixed on District Superintendent of Police if the accused is acquitted on the grounds that relevant section of the Act was not included in the challan filed in the court
- (e) Effective conduct of the meetings of the State Vigilance and Monitoring Committees so as to give strict guidelines to District Level Committees for implementation of the Act and Rules.
- (f) FIR lodged under the Act should be recorded with due care.

Taking into account the trend of judgements and judicial interventions in cases coming up for trial in various courts, various amendments to the SCs and STs (Prevention of Atrocities) Act, 1989 and SCs and STs (Prevention of Atrocities) Rules, 1995 have been suggested to remove the handicaps emerging in its effective enforcement<sup>33</sup>, both by State Govts., the National Commission for SCs and STs as well as by NGOs and social activists working for SCs. All these proposals have been placed at Annexure VII to IX.

### ***Social and Economic Legislation***

The above analysis has laid bare the role of the three wings of the State in enforcement of criminal laws to evaluate why it has failed to check atrocities against SCs. This violence however is rooted in social and economic situation in which SCs are placed. Various social and economic laws were enacted to remove the causes of this violence

<sup>32</sup>Fifth Report, op. cit., pp 178-179

<sup>33</sup>SAKSHI Dalit Human Rights Monitor - 2000, AP, pp 142-143. Amendments have also been suggested by State Govts. which are under consideration of National Commission for SCs and STs. Some proposals have also come from social activists, etc.

as a supportive measure. The poor enforcement of these laws has already been referred to in the preceding section. It would now be examined with reference to these laws whether the role of State in their enforcement has been any different as compared to the criminal laws.

### **A. POLITICAL LEADERSHIP**

In respect of the social and economic legislation, the role of political leaders in their poor implementation is even more direct. On the land reforms front, the reasons for dismal performance has been squarely attributed to political leaders. Their lack of commitment to carry out radical land reforms was clearly reflected in enacting laws with considerable loopholes to permit evasion. No determined efforts were made to remove them. While mouthing radical statements to please the poor, they showed reluctance to hurt landed interests because most of them belonged to that class or beholden to them for political gains. They did not permit for the same reason truthful recording of oral tenancies in land records to implement land to the tiller policy. And yet when the poor launched political struggles to implement land reforms in various parts of the country the same political leadership has been instrumental in brutal suppression of these movements, often in collaboration with the landed classes.

The lack of will to implement Bonded Labour (Abolition) Act is directly attributed to the political leadership because bonded labourers are the mainstay of agricultural operations on the farms of big/medium size land owners and enforcement of the Act would imply that this source of cheap labour would not be available. Political leaders are either land owners themselves and, therefore, unwilling to forego this power or have close social and political links with them and share their interests and value system. Even the efforts of National Human Rights Commission to implement the Act under Supreme Court directions is facing this problem. The lack of interest in implementation of minimum wages for agricultural labourers or equal remuneration for male or female worker is also on account of the apathy of the political leadership. It, in fact, encourages enforcement machinery to pressurize the labourers to compromise on less than minimum wages to avoid litigation, harassment and loss of employment. Political leadership has shown no concern for the plight of migrant labourers. In the recipient States, it is directly responsible for virtually freezing the law on migrant labour in collusion with powerful land owners and other employers. In the home States, the political leadership has shown total apathy as it has not taken their case with the recipient States for enforcement of law and has also taken no steps to stop distress migration.

The same lack of sensitivity of the political leadership is evident in the increasing number of children being forced to join the labour force due to poverty. Even the most dehumanized and brutalized form of present day slavery, i.e. news of children being chained by the employer to get work out of them does not stir their conscience as the National Human Rights Commission's own experience of a case in A.P. has brought out. There were no credible efforts from the political leadership to ensure exemplary punishment to such employers, prevent children from being forced into work and encourage them to get enrolled in schools. In fact, a sizeable number of members of the political

and bureaucratic elite employ child labour as domestic help, who do not accord to this labour the humane treatment that they so lovingly bestow on their pets or domestic animals. The intervention to save children from brutalization came from the Apex court rather than from the political leaders who are elected on the rhetoric of social justice.

There is no case more glaring for lack of sensitivity and commitment of political leadership than the manual scavenging which still operates after 50 years of independence, despite the law enacted in 1993 to ban it, and despite pressures from Central Government and National Human Rights Commission to eliminate this practice and rehabilitate of scavengers by 2nd October, 2002. The same political apathy is discernible in the poor enforcement of Devdasi Abolition Acts and indifferent rehabilitation of liberated Devdasis. Political leaders who are inclined to exert even in small matters where their interests are involved are not moved by the plight of victims of these practices.

Political leadership is the fountainhead of political authority. It controls the bureaucracy which enforces all laws, whether criminal or social. Therefore, the failure of enforcement is directly relatable to political inclinations of the authority in power, since bureaucracy these days almost entirely looks upto political signals to act. It knows which action would please political bosses and which would not.

### **Executive: The Civil Bureaucracy**

In the case of social and economic legislation, the role of civil bureaucracy is paramount and that of police only supportive. Land reforms are implemented by revenue officers and labour laws are enforced by labour officials. The class bias of revenue functionaries has been commented upon adequately in the critique of land reforms implementation contained in various research documents. Largely coming from the same land owning castes/class, they were widely perceived to be biased in favour of the land owners and had been chiefly instrumental in failure of land reforms to achieve their objectives. Land owners have used the revenue machinery a great deal to evade land reforms by getting to know the loopholes in the provisions and the manner in which they can be subverted. Revenue officials are known to manipulate land records in various ways to help land owners. Non-delivery of possession to allottees of land is also on account of connivance of local revenue officials with a view of helping the landowners.

The weak implementation of labour laws is also on account of the bias of the labour law enforcement personnel in favour of the employers as against the labourers. In case of agricultural labourers or bonded labourers, this bias can be attributed to the fact that they are largely coming from the land owning caste background and, therefore, empathise with their concerns. This is reinforced by lack of political signals in favour of vigorous enforcement. In case of non-agricultural labourers, the tendency of the enforcement machinery to court employers for petty gains is also an important factor. The political signals also influence their action in a major way. The employers whether in the occupation of agriculture or in manufacturing have not encountered much of a problem in influencing political response in their favour to the demands of labour for enforcement of laws protecting their interests. Myron Weiner has in fact attributed the entire



phenomena of child labour not so much to poverty but to the value and belief system of the elite which allocates differential social roles to lower castes and is not in favour of their efforts at upgrading their status. This belief system would in fact be working in their subconscious while dealing with other categories of labour as well.

In respect of social legislation, such as those relating to manual scavenging and abolition of devdasi system, the civil officers share the entire blame because poor implementation of these laws is entirely due to apathy and lack of importance and priority they attach to this work. In this sphere of legislation there are no formidable vested interests resisting implementation nor is there any political interference affecting this work. It is simply the insensitivity which explains their lack of interest and efforts. This can only be explained in terms of their caste background also.

### **Executive – The Police Machinery**

The role of police machinery becomes crucial in implementation of these legislations when the vested interests try to use criminal laws to frustrate it or divert attention from it. In the case of labour legislation, the employers often register false criminal cases against workers to put pressure on them to back out of their demands or to agree to a compromise desired by them. The police in such cases are not neutral and often side with the employers. This helps the employer in breaking the morale of the labour. In case of land reforms, powerful land owners have used criminal cases to subvert the allotment of land to the poor and prevent them from acquiring possession over land allotted to them or to discourage an oral tenant from seeking the benefit of law to gain security. The role of police in such cases also has rarely been supportive and protective of the poor. Even minimal of police action in such cases is sufficient to demoralise the poor beneficiary who has no means to fight harassment.

In case of social legislation, the police could take initiative to implement laws to eliminate Devdasi system. But usually, the police take a back seat in such areas and wait for police action/support to be invoked by the civilian authorities in-charge of enforcement of the law by registering a complaint. However, this alibi cannot be advanced when it is widely known that SC girls are also being pushed into brothels by traffickers since the jurisdiction of criminal law is also attracted. But lack of sensitivity and concern and virtually non-existent pressure from above or below prevent them from taking initiative in this regard. Of course, civil officials in-charge of the programme share the major blame for not taking police help when it is required in the course of implementation of the programmes. In case, however, of manual scavenging the law itself does not involve the police and the duty is cast on the DM or the SDM. However, police help may become necessary when there is resistance from house owners or when pressure or force is exerted on scavengers to service their dry latrines against their will. Here too the civil officers are entirely responsible for not even invoking the law in support of the scavengers.

### **Judiciary**

The role of judiciary has been very critical in the land reform cases. Litigation has been used as an effective tool by landowners to subvert land reforms. Invoking court's intervention is the last resort of land owners when they find that revenue and police

officials are not siding with them and political support is also not forthcoming. Judiciary's interventions in land reform cases, by and large, have hurt the poor. This may be on account of the inability of the poor to present his case properly as he can not afford a good lawyer and the State lawyers may not match the competence and integrity of a better paid lawyer of the land owner. But in several cases the delivery of possession over the allotted land to SCs has been thwarted by injunctions from the Court which has resulted in the landowner continuing to occupy the land despite its acquisition. Huge area of surplus ceiling land locked in litigation for years has enabled land owners to enjoy the fruits of this land. The poor have thus been deprived of its distribution. Courts have shown no urgency and priority to clear such cases. Further, courts have not prevented powerful landowners from manipulating judicial process to frequently invoke their jurisdiction to thwart land reforms. Judgements of courts, both revenue and judicial, from lower to higher level have been known to help landowners defeat ceiling laws on minor technical/procedural grounds.

Labour courts also share the blame for poor enforcement of labour laws. Large pendency of cases, delay in disposal and attitudinal bias during adjudication have helped the employers frustrate the objectives of labour laws. Labour does not have the staying power. It has to earn a wage to survive from day-to-day. So, even the delay of a few days in disposal is sufficient to make him lose interest in pursuing the matter or force him to compromise. But even when Labour Courts have delivered orders in favour of the labourers, the employers quite often refuse to carry them out and labour courts do not have the power and machinery to enforce their orders. The process of recovery of wages is dilatory. Employers also use the tactics to go in appeal to the High Court where they succeed in obtaining injunction against the Labour Court's orders. This effectively tires out the worker. Some States have made provision for deposit of a portion of the Award before an appeal is taken up for disposal, but even such provisions afford no relief to the worker because this award money so deposited is not distributed to him. In this kind of unequal struggle, therefore, labour has no strength to fight out the legal battle. But the attitude of the Apex court has shown considerable empathy with labour in the implementation of Bonded Labour (Abolition) Act, and the elimination of child labour. Supreme Court has given a number of judgements to help the process of enforcement of laws concerning these categories of labour. It has even directed National Human Rights Commission to monitor their implementation. The enforcement machinery, despite this help from the Court judgements, has failed to respond as the experience of National Human Rights Commission with monitoring of this work has brought out. In this background, the signals for non-action would have to be located in the political wing of the Government which controls the enforcement machinery. While pressure from courts and National Human Rights Commission can help activate the process of enforcement, adequate political will and determination is required to see that laws, whether criminal or social, are implemented vigorously and sincerely. This is amply borne out of the experience of National Human Rights Commission itself.

## **B. THE SOCIAL AND POLITICAL DYNAMICS OF LAW ENFORCEMENT**

While the role of the State in implementation of laws for protection of SCs against violence has been brought in the preceding pages, it is necessary to emphasize that law operates in a given social and political environment. This environment reflects the relative position of various interests in society which influence governance. These interests are represented by political elements, the bureaucracy, civil society and the SCs themselves. Impinging on them are also other institutions of civil society such as the media, NGOs, etc. Analysed here are the attitudes and considerations which weigh with these forces and interests in the matter.

### **A. POLITICAL ENVIRONMENT: THE INDIFFERENCE**

The political environment is characterized by lack of sincerity and even outright indifference to the plight of SCs. This is signified in different ways. The most important reflection of it is represented by the meagre political space this subject occupies. The issues of atrocities, caste discrimination and under-development of SCs have not significantly figured in the manifestos of major political parties, and, in any case, not with any degree of clarity, focus and concretization of the action proposed. The plight of SCs does not serve as an attractive slogan of political mobilization either at the time of election or subsequently. The issues pertaining to SCs do not form sizable part of the questions asked in Central and State legislatures and discussions/debates held therein. Of course, when major incidents of atrocities against Scheduled Castes/Scheduled Tribes take place, voices are raised in the legislature and outside largely to embarrass the Government and at times to extract a commitment for specific measures to be taken to prevent such occurrences. But expression of concern for Scheduled Castes on such occasions remains shortlived. Outside of such instances, the larger political process is preoccupied with other problems. This may also be on account of the fact that the major political parties have very inadequate representation of Scheduled Castes in important decision making positions. Even the representation of the Scheduled Castes in Government in pursuance of the constitutional requirements and various other bodies and political formations is more symbolic than empowering in the real sense. Scheduled Castes, therefore, remain largely marginal to the political process and cannot use it for any effective advocacy of their agenda.

The failure to effectively deal with those who commit atrocities against Scheduled Castes has never figured as a key issue in the political future of a Government. No Governments have fallen or Ministers holding Home portfolio resigned on account of atrocities being committed against Scheduled Castes and Scheduled Tribes, or of failure to protect victims of such violence or for that matter other omissions and commissions adversely affecting Scheduled Castes. In fact, even routine discussions on reports submitted by watchdog bodies do not take place these days. If a discussion is forced on government in respect of a report of a Commission of Inquiry on specific incidents of violence, it does not invoke from the State the concern and response one would normally expect on a sensitive issue like atrocities. The available instruments, including those in the international fora have rarely generated the desired sense of accountability.

The atrocities on SCs and other related problems are not high on the agenda of governance of the concerned Governments, whether Central or State. This is corroborated by the manner in which Atrocities Act has been implemented. One obvious instance of political indifference relates to States which **do not register cases** of atrocities against Scheduled Castes under the SCs and STs (Prevention of Atrocities) Act, 1989 and only invoke IPC provisions when an offence is committed<sup>17</sup>. The other expression of lack of concern is by States who do not pay the **required compensation** to the victims for whatever reasons. But there is **no political outcry against such attitudes either within the legislature or outside it, whether at the level of Centre or States**. Even when incidents of atrocities occur on a continuing basis the poor enforcement of the Atrocities Act does **not attract the attention of Government** or opposition political parties. In respect of Government such incidents do not provide an occasion for serious review of the enforcement of Act. On the part of opposition, barring some expression of outrage and demand for discussion in the legislature, such incidents do not stir them into serious thinking on the failure of the system to provide protection to SCs and seeking an effective solution to it. In fact, there is not merely indifference and apathy to the enforcement of the Act but outright hostility against the Act itself at the political level in some States. Reference has already been made to the attitude of Shiv Sena Government in Maharashtra, Mulayam Singh Yadav Government in U.P. and recent statement of a Rajasthan Minister in this connection.

The political insensitivity to the atrocities on SCs is also reflected in the reluctance to discipline the bureaucracy involved in its implementation. No credible efforts have been made to change the attitude and behaviour of enforcement machinery. There is no evidence that the functionaries of police or civil administration have been expeditiously and decisively punished for their acts of omission and commission in dealing with atrocities and those among them who earn confidence of the victims by virtue of their timely, strong and required actions have been encouraged. In fact, the available evidence relating to conduct of the cases under the Act sends signal to perpetrators of atrocities that they can get away lightly with offences arising out of this Act, and to the enforcement machinery that laxity and even outright bias in dealing with matters arising out of this Act does not entail much cost. But the greatest reluctance to take action is in respect of enforcement personnel directly accused of committing excesses and downright abuse of law. There is a plethora of evidence in respect of custodial torture and killing of SCs, death of SC youth in 'encounters', assault and rape of SC women and looting away of their property. These excesses are condoned, or at best ignored to maintain the 'morale' of the forces. In rare cases when public outcry or outside intervention exposes the culpability of some officials, they are merely transferred or temporarily suspended to silence the critics and get over the immediate political embarrassment.

Further, there is little monitoring of the implementation of the Act at any level and virtually no follow up of specific cases so as to ensure that prosecution process is firmed up and perpetrators of atrocities are expeditiously punished. Even worse, there is

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<sup>17</sup> Information gathered from discussion with Senior Research Officer of National Commission on SCs/STs

inadequate attempt to provide necessary protection to the victims so that they are not harassed/intimidated by the accused persons and/or pressured to turn hostile or compromise their position in the case. Over the years, the political sensitivity on the issue has come down considerably. This would be evident from the fact that **the plethora of reports** which are generated in respect of major cases of atrocities by Human Rights organizations, NGOs, activist groups, Commissions of Inquiry including the Statutory Commission on Scheduled Castes and Scheduled Tribes do not create any ripples in the system let alone **decisively acted upon**. In fact, complaint of the National Commission on Scheduled Castes and Scheduled Tribes and National Commission for Safai Karamcharis is that their recommendations are not taken seriously. The discussion on the reports submitted by them in the Parliament does not take place as the placement of the report is delayed on account of ATR. The reports therefore do not lead to any soul searching and resultant corrective measures to improve performance. The directions of Commission including those of National Human Rights Commission meet with stiff resistance where punitive action against officials is involved.

The political apathy in respect of SCs and lack of will to act in their favour is not confined to the enforcement of Atrocities Act. It is widely reflected in the enforcement of social and economic legislation as well, as the preceding section has brought out. Thus the whole gamut of issues defined by social justice cry for focussed political attention and decisive political action.

## **B. BUREAUCRACY - THE WIDESPREAD BIAS**

The meticulously produced reports of various Scheduled Castes Activist Organizations and Human Rights bodies have laid bare the biases in the law enforcement machinery - the police, civil functionaries as well as judiciary but more specifically the police. These biases particularly operate at the cutting edge level where the cases of physical violence against Scheduled Castes and other forms of atrocities are dealt with and are reflected in various stages of the case. Ignoring the complaints of Scheduled Castes, 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 commission of the offence, are some of the expressions of these biases. The indifference, if not bias, is reflected even in such non-contentious matters as distribution of relief and providing rehabilitation. The lack of interest taken by district level officials and below in these matters is evident from the fact that Vigilance Committees at the district level are either not constituted or even when such committees have been notified, 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 Scheduled Castes to get meaningful feedback and obviously no serious follow up action emerges from the deliberations of such committees. The same lack of sincerity is observed in Vigilance and Monitoring Committees at the State level.



They provide no guidance to District Level Committees. All serious cases under the Act are supervised by the SP of the District because they are all specially reported cases and the first investigation is done by no less a person than a DSP. One would therefore expect a more competent investigation of such cases, superior in quality to those investigated under IPC. Yet the meticulous researches carried out by NGOs show a large number of omissions and commissions which have the effect of helping/favouring the accused and frustrating the victims. There are no in-house reviews of cases in the light of these reports and obviously no effective punishment is meted out to public functionaries who have failed to discharge their duties properly or when such apparent negligence or bias is brought out. There is also no initiative at various levels to review and monitor the status of the cases registered under the Act and, in particular, the conduct of the enforcement machinery in dealing with them during investigation and trial. While in similar cases, in respect of other communities, the interest of the victims may be pursued by their relatives or other important persons of the area, this rarely happens in the case of Scheduled Castes. They neither have the resources to do so nor command the necessary social support or political clout which enables others to take up their cases. Therefore, public functionaries do not feel pressured to be alert and reorient their mind-set and behaviour. There is also no scrutiny of performance in this regard and therefore no signals about the importance and priority of the work get conveyed from the highest political quarters [i.e. Chief Minister or a Home Minister].

The bias of enforcement bureaucracy in checking violence against SCs is equally reflected in administering social and economic laws. Here the civil bureaucracy is the culprit whose attitude and conduct influences the processes of implementation at all stages. In fact, the caste bias here is reinforced by class bias which makes SCs even more vulnerable.

### **C. SCs: THE GNAWING POWERLESSNESS**

Despite the protective and development measures including enabling provisions for participation in political processes, it is quite evident that when violence is inflicted upon Scheduled Castes and other forms of atrocities are committed against them, victims find themselves helpless to prevent such incidents from happening and equally powerless to get the accused persons dealt with effectively under the law after the incident has taken place. This powerlessness stems from their weak economic position on the one hand and indifference or even hostility of the other groups in the civil society on the other, which also explains their inability to mobilize political opinion in their favour and for effective action against the offenders. They are faced with an unfortunate and unenviable situation that they are dependent upon members of the same segment of society [and at times individuals] for their day to day survival, who are largely responsible for committing atrocities.

Their powerlessness is more striking in their inability to hold officials of the Government responsible for even their own acts of unprovoked violence against them. This is particularly evident in cases when police/security forces themselves have committed



excesses in the course of the discharge of their official responsibility, such as custodial torture/killing and encounter deaths, molestation and rape of women, destruction of property, physical assaults, etc. and denial of elementary democratic rights. Several documented studies have brought out how the officials involved in such incidents have received no punishment.

The inability of SCs to decisively influence political processes for pressurizing the State to implement effectively its policies and programmes for their protection and development is well known. But when they resort to alternative forms of political mobilization by joining radical movement to change iniquitous social relations, no doubt with violent underpinning, the role of the State is far from supportive. In fact, it is instrumental in crushing such movements with use of excessive force and State agents commit atrocities against SCs in the process of maintaining law and order. The plight of SCs is worse in such situations as they face wrath of both State as well as armed militias of their tormentors. Even in the face of retaliatory violence unleashed by the armed militias, State agents are soft on the violence of caste militias and particularly harsh on the defensive violence of SCs. Worse still, even from such a situation of desperation to which SCs are forced, States takes no signal or message. It still does not demonstrate political will, strength and vitality to implement its declared agenda of social and economic legislation, policies, programmes, in favour of SCs, so as to wean them away from violent forms of alternative political mobilisation. The powerlessness of SCs is therefore most glaring here as they fail to influence political attitudes even at a huge human cost. The State squarely ends up by being on the side of status quo.

#### **D. CIVIL SOCIETY: THE CONTINUING HOSTILITY**

It is no doubt primarily the duty of the State to prevent atrocities being committed against Scheduled Castes and to take effective, timely and decisive measures to punish offenders involved in such violence so as to send correct signals to such other persons as may have intended to pursue similar aggressive designs. But the larger civil society also has a role in checking such violence by demonstration of their support to Scheduled Caste victims and condemnation of accused persons including their social ostracization. Notwithstanding the fact that perpetrators of violence also come from same sections of civil society, it was expected that liberalizing and humanizing processes of democracy and development would create an environment in which large sections of caste Hindus would come to the rescue of SCs and isolate the few who carry out these offences. Such a response would have discouraged the perpetrators of atrocities and generate a sense of safety, harmony and confidence among the Scheduled Castes.

Unfortunately, this has not happened. One explanation may be that the caste Hindus continue to share (and it is true to a large extent) the age old biases against and hostility for the Scheduled Castes lest improvement in their status deprives them a source of cheap labour or threatens to equalize their social position leading to loss of social control over them. The other explanation could be that the liberal elements in

the Hindu society, small as they are, do not stand up or speak while those who subscribe to traditional feelings on caste system support the perpetrators of violence directly or indirectly. Either way it appears that the impact of elaborate constitutional measures, democratic process, liberalizing influence of development, education and awareness, have not helped in transforming civil society.

This explains why supportive role of the civil society in the matter is missing. On the other hand, there is plenty of evidence to show how civil society has systematically undermined the authority of the State in discharging its responsibility towards SCs. In fact, regretful as it is, the caste bias hostility is even among the younger generations of caste Hindus including the highly educated ones. They feel resentful of reservation provisions which curtails their monopoly over jobs and development measures which reduce dependence of Scheduled Castes on caste Hindus for survival. On the other hand, in some places, where development process has resulted in significant improvement in the condition of a small number of Scheduled Castes, hostility of the caste Hindus has increased because they are unable to digest loosening of traditional bonds of dependence as also their increasing self-assertion. It provides little satisfaction that the atrocities resulting from self-assertion of Scheduled Castes has at least altered the nature and balance of their social relations with caste Hindus because coping with the aftermath of such violence does not merely ruin the victims financially and emotionally but also break their morale. But attitudinal transformation of caste Hindus in civil society is an issue which is not on the political agenda of any political party.

#### **E. MEDIA: MARGINAL SPACE**

SCs and STs together constitute nearly 25% of the country's population and yet the media, both print and electronic, provides negligible space to their plight/problems. Just compare how much of attention is bestowed in the media to even political gossip and infighting, sleaze and corruption and even to art and culture and sports. Even in respect of social and economic problems, it is the policies of upper castes, economically better off sections and the elite which hog the headlines in various papers. The economic pages and business news totally ignore these categories altogether because in their perception they are not a significant factor in generating wealth. On the other hand, these communities and poor in general receive uncomplimentary attention when discussion is focused on population growth, backwardness, lack of entrepreneurship and productivity. No doubt when major incidents of violence take place, they have a news value and are highlighted and, for a while, followed up with some investigative stories. But there are no sustained campaigns on their problems, no 'researched' articles on issues which affect them and no conscious and systematic efforts to provide voice to them in their columns. The primary interests and outreach of the media is virtually bypassing them. And yet, the media could play a very significant role in raising consciousness of the civil society against the caste injustices, sensitizing the Government with investigated facts and findings, bringing out the gap between Government claim and ground realities in relation to the problems of SCs whether in respect of atrocity cases or development programmes.

## **F. NGOs: MARGINAL COVERAGE AND CAPACITY**

In view of glaring inadequacies in the enforcement of law on atrocities, the indifference of Government and biases in the attitude of public functionaries against Scheduled Castes, various Human Rights activists/organizations strongly suggest that NGOs should be utilized in mobilizing support for their protection. Involvement of such NGOs would act as a check on the biased behaviour of the enforcement machinery and would generate greater accountability at the political level. NGOs may also be in a better position to know how various processes are being manipulated to frustrate the enforcement of laws and Government policies. NGO involvement is likely to provide a voice to the Scheduled Castes and help articulate their case better which, on their own, they may be unable to do because of the varieties of handicaps they suffer from. NGOs can also network with similar organizations in other parts of the State and the country and build up common strategies for taking up the causes of Scheduled Castes at various levels.

NGOs can fill gaps which governmental efforts leave behind in implementing the law on atrocities by creating awareness among the Scheduled Castes, enhancing their self-confidence and morale, building up bridges between them and caste Hindus and in providing crucial feedback to the Government at various levels of administration about the behaviour and performance of Government officials handling the problem as well as the machinations of social elements behind such incidents. NGOs could, of course, play a very supportive role in reducing atrocities, by promptly taking up at appropriate levels incidents which have not been registered so as to get the legal process initiated, mobilizing evidence for prosecution, keeping a sharp eye on officials who maybe trying to dilute/spoil the case by shoddy or biased investigation, helping prepare documents relating to the incidents, their background and their ramifications. Their contribution would indeed be very valuable in garnering local support from liberal elements in society, keeping up the morale of the special prosecutor, and above all ensuring rehabilitation of the victims with the help of Government agencies.

The difficulty, however, is that there are not many **NGOs** with both empathy for SCs and good track record of competence and commitment. And, there are even less number of NGOs working in the field of law enforcement for providing necessary support to Scheduled Castes since this area of work requires dedicated law professionals with sufficient guts to withstand intimidatory tactics and threats of violence from perpetrators of atrocities or their henchmen. Most NGOs working for Scheduled Castes are in development work, such as housing, welfare, education, poverty alleviation, nutrition, etc. It is easier to operate in these softer areas, because funding is available from Government/Semi-Government organizations and international donors. These activities usually do not generate conflict between beneficiaries and the rest of society since contentious issues are avoided in their implementation. The development activities also, by and large, do not create any tension with the Government and its functionaries, particularly the police. NGOs willing to work in the field of law enforcement to check atrocities would have to reckon with hostility all around, ranging from the larger Hindu community to the police machinery, the District and State administration and also, at times, the courts. Besides, such NGOs should have at their disposal law professionals

well versed with intricacies of criminal justice administration to be really able to help Scheduled Castes.

In the Central and State Governments, there are no specific programmes which provide funding to NGOs engaged in helping Scheduled Castes in matters related to atrocities on a sustained basis. International funding for such work may be available on a small scale but is usually suspect in the eyes of the larger caste Hindus who accuse them of disturbing social peace and harmony and the bogey of national security is raised in this context. NGOs working in this field therefore need to be prepared for facing onslaughts from vested interests in society and Government such as intimidation and threats, implication in false cases and, at times, even physical assault. These are the reasons why so few NGOs are working in the country on this subject and even those few NGOs must have managed to mobilize appropriate support, professional and financial, for their survival on a continuing basis. At present, efforts of such NGOs are localised and highly scattered that make no impact on the enormity and complexity of the task to be attended to although some of them have been able to produce useful documents.

The dynamics of implementation of protective arrangements strikingly illustrate how different interests and forces are heavily loaded against SCs which circumscribe the efforts at administering social justice to them and their conspicuous lack of strength and ability to neutralize this formidable resistance at the current level of their social status. Thus the elaborate legislative architecture of protection in their favour does not present a viable and smoothly exercisable option to significantly alter the disabilities imposed on them by the caste based social order. Could the other two components of the triangular strategy help them realize this goal or at least strengthen their position in the struggle towards it? This question would be examined in the following sections.

## SECTION – VII

### COMPENSATORY DISCRIMINATION: THE DIMINISHING HOPE

The strategy of Compensatory Discrimination has been operationalized through the provision of reservations in recruitment and promotion to public services in pursuance of provisions made under **Article 16(4), 16(4A), 16(4B) and Article 335** in order to provide equitable share to SCs and STs in the administration of the country. As per instructions issued by the Central Government, at present, 15% reservation has been provided for Scheduled Castes in direct recruitment through open competition on All India basis and 16.66% in posts for which recruitment is otherwise than by open competition<sup>1</sup>. In States/UTs percentage of reservation varies according to proportion of SC/ST population there.

As per information available from the Sixth report of the National Commission for Scheduled Castes and Scheduled Tribes (1999-2000 and 2000-01)<sup>2</sup>, regarding representation of Scheduled Castes in services of Central Ministries/Departments, as on 1.1.1999, Scheduled Castes occupy 11.29% of the posts in Group 'A', 12.68% in Group 'B', 15.78% in Group 'C' and 19.99% in Group 'D' posts under the Central Government. The noteworthy aspect is that in Group 'D' posts, SCs occupy 65.57% **of the total posts of Safai Karmacharis (Sweepers)** and only 16.7% of total posts excluding those of sweepers, which shows that age old caste based occupational distribution gets reinforced in Government appointments as well. It would also be clear from this data that Scheduled Castes have not yet reached the ceiling of their entitled percentage in Group 'A' and Group 'B' posts. As regards representation of Scheduled Castes in the services of Central PSUs<sup>3</sup>, as on 1.1.1999, Scheduled Castes occupy 10.35% of total number of persons employed in Group 'A', 11.05% in Group 'B', 18.93% in Group 'C', and 22.51% in Group 'D', excluding Safai Karmacharis. Their total representation was 18% of total number of employees. Scheduled Castes occupy 73.15% of the total Safai Karmachari posts in Group 'D'. Evidently the representation pattern of SCs in Central Ministries /Departments is also reflected in Central PSUs where in Groups 'A' and 'B' posts, percentage of Scheduled Castes is still short of the ceiling prescribed for them.

In the public sector banks and financial institutions, as on 1.1.2000, Scheduled Castes occupy 12.51% of the total number of jobs in the officer grade, while it was 14.80%

<sup>1</sup>Sixth Report, op. cit., p. 181

<sup>2</sup>Sixth Report, op. cit., p. 182

<sup>3</sup>Sixth Report, op. cit., p. 183

in the grade of clerks. It was 24.46% for subordinate staff, excluding Safai Karmacharis (sweepers), while in the category of Safai Karmacharis (sweepers) they occupy 15.97%<sup>4</sup>. This data will show that in the officers' grade, the representation of Scheduled Castes is still short of their prescribed percentage, while it is adequate in the category of subordinate staff. In the category of clerks, the representation of Scheduled Castes has come down from the position obtained on 1.1.1999 though it is nearing the prescribed levels.

The information regarding representation of Scheduled Castes in public sector insurance companies, as on 1.1.2000, shows that in Class I category their representation in the total strength was 15.38%, while in Class II category it was 12.40% and in Class III it was 17.24% and in Class IV it was 31.35%, including those of Safai Karmacharis (sweepers)<sup>5</sup>. Within the Insurance Companies, the position in some is better than in others. The surprising part is that in Class II posts, the representation of Scheduled Castes lags behind when compared to Class I.

As regards Railways and its offices, the percentage of SC employees, as on 31.3.1999<sup>6</sup>, was 14.32% of the total strength in Group 'A', 15.77% in Group 'B', 14.77% in Group 'C' and 15.77% in Group 'D', excluding Safai Karmacharis (sweepers), while it was 16.24% in Group 'D' including Safai Karmacharis (sweepers). Scheduled Castes occupy 70.37% of all Group 'D' posts of Safai Karmacharis (sweepers) testifying to the situation elsewhere in Government. The representation is slightly lagging behind in Group 'A' and 'C' posts.

Regarding representation of Scheduled Castes in teaching posts, in Central Universities<sup>7</sup>, the position in the category of **posts of Lecturer** (lowest level teaching jobs) was 39% in Assam University, 9.4% in Benaras Hindu University, nil in Aligarh Muslim University, 8.5% in JNU, nil in Jamia Milia, nil in Nagaland, 29.5% in Hyderabad University, 22.5% in Pondicherry University, 8.5% in Vishwa Bharati, 12.5% in Ambedkar University, 6.4% in Delhi University, nil in Nehu & Tezpur Universities. In the category of the **post of Reader, there was no representation of Scheduled Castes** in Assam, Aligarh, Ambedkar, Nehu & Tezpur Universities. It was 0.2% in BHU, 3% in JNU, 0.7% in Jamia Milia, 4.7% in Nagaland, 2.7% in Hyderabad, 4.2% in Pondicherry, 1.4% in Vishwa Bharati, 1% in Delhi University. In the category of **post of Professor, there was no representation of Scheduled Castes** in Aligarh, Jamia Milia, Nagaland, Pondicherry, Ambedkar, Nehu & Tezpur Universities. It was 5% in Assam, 0.2% in BHU, 1% in JNU, 1.39% in Hyderabad, 0.7% in Vishwa Bharati, 0.9% in Delhi Universities. This would show that policy of reservation was not being strictly followed in recruitment of faculty members in various Central Universities. The position in State Universities is not readily available. The UGC has declined to extend reservation to the post of Readers and Professors. In certain universities, which are enjoying 100% maintenance

<sup>4</sup>Sixth Report, op. cit., p. 185

<sup>5</sup>Sixth Report, op. cit., p. 186

<sup>6</sup>Sixth Report, op. cit., pp 192-194

<sup>7</sup>Sixth Report, op. cit., pp 196-198



grant, no representation was being given to Scheduled Castes/Scheduled Tribes. In the country's 256 universities and about 11000 colleges funded by UGC, there are about 3.42 lakh teaching positions but **SCs and STs comprise only 2%** and about 75000 teaching positions meant for these communities are vacant<sup>8</sup>. Despite the advice of the UGC, **the Universities are not following the instructions** of the Ministry in enforcing reservations<sup>9</sup>.

The above information would reveal that in higher level education, there is still a great deal of resistance to application of reservation provisions for the entry of Scheduled Castes and Scheduled Tribes and there is lack of political will in Government to enforce it. Also, wherever there is institutional autonomy and no centralized recruitment through open competition, the authorities at the helm of affairs disregard instructions and constitutional provisions. If Scheduled Castes/ Scheduled Tribes can get entry into All India services, PSUs and banks, which have a more severe competition, there seems no reason why they would be found ineligible for overwhelmingly large number of posts in universities, other than a general operating bias against them in their administration. This again shows how strong the caste based social order still is in institutions of teaching and higher learning almost at par with other Institutions/ Sectors where reservation is not yet accepted. Stronger political will would need to be demonstrated in enforcing reservation provisions. Government may devise some kind of a punitive mechanism (such as stoppage of grants, etc) for pressuring those agencies which are not complying with Government instructions on the subject.

As regards reservation in teaching posts in IITs, the National Commission on Scheduled Castes/Scheduled Tribes has reported that there were **only three** persons belonging to SC/ST communities and they have also been selected on the basis of merit and not on the basis of any reservation<sup>10</sup>. In IITs also reservation is being applied only for the post of Lecturers. There are lots of problems relating to enforcement of reservation provisions in the teaching sector, which the National Commission for Scheduled Castes and Scheduled Tribes has taken up with the concerned Ministry but with little success. Similarly, of the total teaching positions in Government aided private management schools, Scheduled Castes/Scheduled Tribes account for 9.91%, whereas in the Government run schools the teachers from these two sections comprise 17.64%. In unaided private schools, they are merely 7.07%. Thus institutions outside the State control display great degree of exclusion of Scheduled Castes and Scheduled Tribes<sup>11</sup>. It has also recommended the enactment of a central law on reservation so as to protect it from frequent interventions of Courts<sup>12</sup>. This proposal is supported because there is a very large area of autonomous institutions where reservation provisions are not being complied with.

One study has brought out that Scheduled Castes/Scheduled Tribes are totally out of media work force. Thus they are deprived of any opportunity to decisively influence

<sup>8</sup>The Bhopal document, op. cit., pp. 97-98

<sup>9</sup>Sixth Report, op. cit., p. 198

<sup>10</sup>Sixth Report, op. cit., p. 197

<sup>11</sup>Sixth Report, op. cit., p. 189

<sup>12</sup>The Bhopal Document, op. cit., p. 98

opinion making process. Similarly, there is nearly total exclusion of them from Films, Art and Culture<sup>13</sup>.

In the NGO sector, barring very little participation in southern States, Scheduled Castes/Scheduled Tribes are virtually unrepresented. While Government has issued directive to NGOs receiving funds from the Government that they should include Scheduled Castes/Scheduled Tribes in their governing body and in their work force, there is no such provision for NGOs which receive foreign funds. Similarly, thousands of registered societies which employ researchers and other staff on a large scale and may also receive funds from the Government, do not accept any obligation of practising affirmative action in recruitment to various positions. In the Corporate world, the major apex organizations, like CII or FICCI, do not have a single SC or ST member. In the trade and commerce, Scheduled Castes/Scheduled Tribes, if at all, may be owning petty businesses without any serious presence in the money market<sup>14</sup>.

The details of implementation of reservation provisions outlined above indicate the following:

- A. Wherever there is direct recruitment on the basis of competitive examinations, reservations have been enforced and representation of Scheduled Castes and Scheduled Tribes has been ensured. Scheduled Castes may not have reached their desired percentage in some categories, particularly Group 'A' posts, but, prima-facie, there is no evidence of any neglect. This is because procedural requirements do not allow recruitment process to begin unless reservation arrangements have been dovetailed therein. The problem is being experienced with regard to small cadres whose number is very large in Government and Government funded institutions and where implementation of reservation is unsatisfactory. In rest of the places, where recruitment takes place other than through centralized competitive examinations as in autonomous bodies, teaching institutions, etc. the position is extremely poor and there is no denying the fact that caste biases operate in a pronounced manner in disregarding Government instructions. Government have also been unable to enforce its own orders. A prescribed level of representation in teaching posts [even at the level of lecturer which the UGC has endorsed] would have afforded an opportunity for elimination of caste bias in younger generation because they would have themselves seen the lack of substance and truth in those biases. Scheduled caste persons in teaching positions would have also influenced generations of students who could have carried with them more liberal outlook in matters relating to caste based issues.
- B. There is backlog in various positions in Government pertaining to reserved vacancies. This backlog is specifically large in respect of higher level posts, i.e. under Group 'B' and Group 'A'. This shows that the Scheduled Castes still have a long way to go in occupying positions of decision making in various Government organizations. National Campaign on Dalit Human Rights in their memorandum

<sup>13</sup>Unniyal, BN, quoted in the Bhopal Document, op. cit., p. 98

<sup>14</sup>The Bhopal Document, op. cit., pp 98-99

to the Prime Minister has estimated this backlog at 10,00,000 in Union Government services alone though the break-up in terms of category of posts and their distributional pattern is not given. Ministry of Social Justice and Empowerment, Department of Personnel & Training and representatives of SCs/STs Commission should sit together and determine the extent of backlog and its spread in various organizations. The representative of Campaign should also be associated in this exercise so that there is no factual discrepancy between Government estimate and that of the NGO. The details of vacancies may be put on the website of the concerned Ministries. Thereafter, top priority should be given to drawing up a time bound programme to fill up these vacancies including launching of social recruitment drives. This programme may also identify handicaps which SCs suffer from in the matter of fulfilling eligibility qualifications prescribed for those posts and measures to remove them may be expeditiously introduced. Government needs to exert its authority to discipline those institutions which do not comply with reservation provisions. Similar exercise should be carried out by the State Governments in respect of reserved posts under them.

- C. The position in respect of representation of Scheduled Castes in scientific establishments is very poor. A large number of scientific and technical posts remain vacant as qualified candidates are not available. This may be attributed to lack of access for Scheduled Castes to good quality science education and consequent entry, in sufficient number, of members of these communities in science stream at School and College level<sup>15</sup>. As a result they are unable to fulfill eligibility criteria for getting admission to professional courses, which would qualify them to compete for scientific and technical positions. This is also true of legal profession where the representation remains low because of which Scheduled Castes have negligible positions in the higher level judiciary. There may also be some professional courses which are not covered by reservation provisions and therefore entry of Scheduled Castes to these positions would virtually remain barred on account of their inability to compete. Gaining entry in privately financed professional institutions would be even more difficult as members of Scheduled Castes cannot afford to pay exorbitant fee and bear other expenditure for pursuing these courses.

The nodal Ministry also needs to sit with different Ministries/ organizations which have large unfilled reserved positions in professional and technical disciplines and examine in depth why this position has persisted. A comprehensive programme to improve Science teaching at various levels for SCs and increasing the entry of SCs in technical courses may be drawn up to enable reserved seats in Science, Technology and other professional courses getting filled up. It may also identify institutions/services where SCs are poorly represented and which have not accepted reservations in their positions, such as Higher Judiciary, Defence, etc. and work out measures which may, over a period, produce sufficient number of bright professional SC candidates to compete for those positions. The representation of

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<sup>15</sup>The Bhopal Document, op. cit., p. 61, also p. 107

SC women against reserved posts being very low, the nodal Ministry should prepare a comprehensive plan of action to increase their representation and monitor the impact of measures under this plan.

- D. Reservation provision is facing a new threat with the ongoing efforts of disinvestment and privatisation of PSUs. After disinvestment of Government Share, the PSUs are not likely to enforce the provisions of reservation of posts. Thus, even the limited opportunities of secure jobs to educated SC youth are shrinking. There is at best need to ensure that such PSUs which are disinvested do not scrap reservation provisions.

What then is the overall impact of reservations? Despite the limitations enumerated above, the positive aspect of compensatory discrimination is that through its provisions slowly a small middle class is emerging among Scheduled Castes whose members are enabled to throw off their earlier caste based occupations and join the mainstream society in the process of upward mobility<sup>16</sup>. There is no denying that these beneficiaries of affirmative action do encounter some biases in the behaviour of their higher caste colleagues, bosses and even subordinates within the institutions/offices they are employed which generate in them considerable agony and stress. But the economic emancipation effected as a result of a secure job with opportunities for upward mobility and a non-oppressive environment at least ensures a future for them de-linked from their centuries old caste background.

However, reservations in Government jobs including PSUs, etc. have limited potential for absorption of aspiring scheduled caste youth. It has been estimated that the total number of jobs under the Centre, including PSUs, State Governments and Local Bodies is 1.9 crore. Even if the entire quota of 15% is filled up, it would benefit 29 lakh families only<sup>17</sup>. Considering attempts at reducing Government jobs through privatization and down-sizing, the number of vacancies in future is likely to be much less. In this background, the proposal for extending the right of reservation to private sector has been vigorously advocated by the National Campaign on Dalit Human Rights, an organization representing various NGOs working for the cause of Dalits. National Commission for SCs and STs has also supported the extension of reservation in private sector to all bodies established under any law such as Companies, Cooperative Societies, Registered Societies which may be taking institutional finance partly or wholly and should be extended to other private organizations also in stages<sup>18</sup>. But the constitutional sustainability of such a proposal is in doubt. That is why even in the peak period of commitment to reservation as a strategy of empowerment of SCs and STs Government did not consider introducing reservation of jobs in the private sector. Way back in 1978, a High Power Committee under the Chairmanship of Prime Minister looked into it and did not favour it. Ministry of Finance did not also support the suggestion to enforce reservation as a precondition to sanctioning financial assistance since banks could not legally bind borrowers and

<sup>16</sup>The Bhopal Document, op., cit., p. 59

<sup>17</sup>The Bhopal Document, op. cit., p. 57

<sup>18</sup>Sixth Report, op. cit., pp 194-195

enforce it. Ministry of Law was also not in favour of imposing this condition<sup>19</sup>. With the interventions of the Apex Court in restricting the scope and ambit of reservation from time to time, it seems highly improbable that the idea of reservation of jobs in the private sector employment would muster legal sanction. The private sector too is unlikely to accept it because

1. There is no accountability of private sector enterprises to Government or to public. They are accountable to their own shareholders.
2. There may be legal difficulties in sustaining such reservations.
3. There is no security of tenure for jobs in the private sector which believes in the principle of hire and fire and is even seeking relaxation in labour laws of the country to enforce it. In the efforts at cost cutting to be competitive, number of jobs are reduced. There is also no guarantee of the continuity of a business enterprise. It may be wound up or sold away or merged with another if it runs into losses.
4. Since the responsibility for profit and loss is borne by the enterprise, autonomy of operation is the key. Therefore, those who invest their capital would not countenance such restrictions on their autonomy.

This proposal, therefore, has no chance of getting materialised. Government, however, could engage the private sector in meaningful discussion on how to facilitate entry of marginalized communities such as SCs and STs in private sector employment, trade and commerce as a part of affirmative action strategy, based on the experience of the USA, South Africa, and some other countries as has been suggested in the Bhopal Document<sup>20</sup>. This may not assure jobs in the manner of reservations but would bring the vast private sector employment in the ambit of social obligation. Appropriate mechanisms can be created to monitor the progress and success of these efforts. But even such facilitation, if it is accepted and operationalized, would have to encounter the problem of lack of relevant skills in the members of the Scheduled Castes. This, therefore, is a problem which should be dealt with straightaway in all earnestness by the Government. On the larger question however, even taking into account possible absorption of some Scheduled Castes in the private sector, through appropriate skill development and advocacy for affirmative action, the number is not going to be very large. As per Labour Ministry's estimate, total employment under Private Sector is around 87 lakh. Even if 15% reservation for SCs were to be enforced, this would take care of only around 13 lakh persons among them and another 6.5 lakh among STs. Already, there are 63 lakh educated skilled unemployed SCs and STs waiting in search of jobs. Therefore, reservation as a tool of upliftment of the community does not offer hope for a vast majority SCs seeking secure employment.

Education has been crucial in shaping life of SCs and STs and taking them out of the morass of traditional caste based occupations. But so far educated SCs and STs have been joining Government/organized sector jobs as the entry was facilitated through

<sup>19</sup>Sixth Report, op. cit., p. 194

<sup>20</sup>The Bhopal Document, op. cit., pp 67-93, also p. 99



reservation and affirmative action policies. The potential for absorption in this sector of employment is going to be small in future. The existing employment trends also paint a bleak future for unskilled and less skilled labour. But there will be demand for skilled labour on account of technological development. To tap the potential in skilled positions, considerable skill development of SCs (as also STs) would have to be promoted. But here lies the major handicap as educational opportunities available to Scheduled Castes and Scheduled Tribes and qualifications they acquire through courses accessible to them provide very little assurance for absorption in skilled jobs. The current job market has no space for persons with matriculation or +2 level qualifications or even graduates and post-graduate degree in humanities. Job aspirants with Science stream may find some place. It is here that the prospects of SCs capturing that small space do not appear to be bright. The number of SCs and STs at the graduation stage in science stream are only 15.85% of the total SC and ST students [separate figures for SCs not readily available] and a mere 13.85% in commerce. The share of students receiving professional training is at the negligible level of 3.74%<sup>21</sup>. Precisely for this reason, the number of jobs even within the Government and the organized sector continue to remain vacant because suitable SC and ST candidates with recognized and eligible professional/technical qualifications are not available.

As per 1991 census, 62.59% Scheduled Castes and 70.4% Scheduled Tribes are illiterate and 79.88% SC and 86.72% ST school children drop out by middle level. While the situation has improved by 2001, still about half of SC and ST persons may be illiterate and as many SC and ST school children may be dropping out before completing middle level education. Even those who manage to complete their matriculation receive their education from schools of the Government, Municipalities and local bodies. The quality of instruction in these schools is, by and large, substandard as the schools are poorly equipped and teachers de-motivated. Only sons/daughters of higher level salaried Government servants/politicians and other persons occupying important positions may be getting their education in English medium schools. Thus the nature and quality of education is an important factor which would determine the future of SCs (as also STs). The current position in this regard does not provide much hope for them.

It is evident that SCs face a grave crisis. While the benefits from reservation are shrinking, SCs are not equipped to tap employment opportunities in the open market. This is likely to increase their frustration. It is important, therefore, that a comprehensive strategy for widening the employment opportunities for SCs is worked out which disengages them from traditional and degrading occupations and offers dignified livelihood. Such a strategy would have to consider each category of unemployed/underemployed SCs and suggest a package of measures to help them find jobs or income generating avenues. These categories should include educated unemployed rural and urban and among them SC youth with different levels of qualification (i.e. those qualified in technical and professional courses—degree/diploma/certificate), Degree holders in science and humanities, matriculates, school dropouts, uneducated unemployed, rural and urban

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<sup>21</sup>The Bhopal Document, op. cit., p. 61



and among them those with skills and experience and those as unskilled manual labour. This category should also take note of those engaged in traditional occupations, farm and off farm and non-traditional vocations.

Bhopal Document has referred to the experience of other countries, such as United States of America and South Africa which also have problems of inequality, discrimination, racism and have inherited a violent past<sup>22</sup>. Those societies are also multi-ethnic, multi-lingual, and multi-cultural. The American society subscribes to affirmative action in all fields ranging from Government sector to private sector, to arts, media, etc. in sharing national prosperity. The data furnished in the Bhopal Document clearly brings out that share of minorities in enterprise businesses, composition of employees in private industry and percentage share of persons from minorities in various professional positions in topmost Fortune 500 companies and even in teaching positions has grown substantially. All these institutions also swear by diversity advocacy.

The capital market has also registered a growth rate in black/ethnic owned businesses. The USA has attempted unique methods in efforts to bring in representation of minorities not only in Government but also in private sector and, in fact, every sphere of public life and economy. It would be interesting to study ways by which this has been done and how various private sector institutions have collaborated with Government in giving effect to it. South Africa, similarly, has provided a legal/regulatory framework against discrimination under their Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 and Employment Equity Act, 1998. It was perhaps in this context that the former President, K.R. Narayanan had also urged in his Republic Day address of January, 2002 to study this model in the context of the need for widening the opportunities of development for Scheduled Castes and Scheduled Tribes<sup>23</sup>. This exercise assumes greater significance in the context of New Economic Policy and process of Reforms which would lead to considerable reduction in Government/Semi-Government jobs [such as PSUs, Banks, Insurance Companies, etc.] As larger job opportunities would now occur in the private sector, efforts would have to concentrate on how Scheduled Castes can be equipped to compete for such jobs to get their due share in private sector.

Planning Commission should therefore study in depth the affirmative action policies and legal/administrative framework of their implementation in various countries which have adopted them. It should enter into a detailed dialogue with apex organizations of Private Sector, such as FICCI, CII, ASSOCHAM on how various models of affirmative action, policies such as those in operation in U.S.A. and other countries can be adopted to enable SCs and STs gain requisite share in industry, trade, commerce and other sectors. The policy and mechanisms evolved in these countries to operationalise the concept of affirmative action may also be discussed with representatives of SCs and those working for them with a view to determining their appropriate adaptation in our context before initiating the dialogue.

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<sup>22</sup>The Bhopal Document, *op. cit.*, pp 67-99

<sup>23</sup>National Campaign for Dalit Human Rights, Letter addressed to the Prime Minister and Chairman of National Human Rights Commission dated May 9, 2002.

Since the Tenth Five Year Plan has been finalized, Sectoral Components of this Plan would have grappled with some of these issues based on the deliberations in the Working Groups and Steering Committee discussions. However, it is not certain whether a coherent approach for exploring employment potential for SCs in the new economy has received adequate attention since it would involve multi-sectoral linkages and inter-ministerial consultations. Planning Commission may therefore be advised to set up a special task force for this purpose exclusively so that a comprehensive and integrated strategy of employment generation for SCs (also STs) could be worked out and operationalised.

This section had sought to answer the question whether compensatory discrimination has helped in reducing atrocities against SCs and has changed their life for the better. The material provided in this Section does answer this question in affirmative though its impact has been confined to a very small percentage of SCs. However, its potential for future is declining. Therefore, the wide range of development measures which touch upon a much larger section of SCs would have to be looked at to assess the overall impact of the strategy of social empowerment on their lives.

## SECTION – VIII

### QUALITY OF LIFE: THE LONG ROAD

The level of development in a society determines the quality of life enjoyed by its people. Development measures affect day-to-day life intimately and the degree of access of an individual/group to basic amenities and services reflects its relative status in society. Therefore, the constitutional commitment to usher in equality in social relations can at once be tested through the distributional aspects of development. This is more true in case of SCs than any other group for the simple reason that SCs under the oppressive stranglehold of caste based social order lead a sub-human existence. They are assigned most degrading tasks which involve physical contact with filth, organic wastes and anything polluting conceivable. In many places they lack access to safe drinking water sources, clean living environment, education and health facilities. The economic conditions in a large majority of them make it impossible to avail of avenues of decent living. It is combination of all these features which defines their highly unequal position and demoralized and submissive existence. Violence is therefore embedded in their daily life. This is the reason why accelerated development of SCs, with the objective of bridging the wide gap between them and the rest of the society constitutes the third and potentially more enduring instrument of the strategy to eliminate caste based inequalities and to check atrocities resulting from them. This section will examine what has been achieved in this direction so far and how far the impact of development provides a protective armour against violence. In this context, only the overall mechanism for accelerated development for SCs, specifically fashioned in their case, i.e. Special Component Plan, and a few focused programmes having relevance for them would be referred to. The limitation of space does not permit discussion here on the entire gamut of development programmes for SCs.

#### **Demographic Profile**

As per 1991 census, population of SC was 13.82 crore, which constituted 16.37% of the total population of the country. The decennial growth rate of Scheduled Castes (30.04%) in 1981-91 has been higher than the corresponding rate of total population (23.79%). According to 1991 census, the Scheduled Castes have a sex ratio of 922 females per 1000 males<sup>1</sup>, which was almost at par with the average that of total population (923)<sup>1(a)</sup>.

<sup>1</sup>Sixth Report of National Commission, op. cit., p. 18

<sup>1(a)</sup>National Campaign on Dalit Human Rights in their black paper have quoted UNDP Report 1997 to indicate that sex ratio for general population was 944 females for 1000 males. The Sixth Report of National Commission for SCs/STs does not indicate the reference point. Possibly the ratio may have deteriorated in the latest census.

Largest concentration of scheduled castes was in U.P. (2.92 crore). followed by West Bengal (1.60 crore), Bihar (1.26 crore), Tamil Nadu (1.07 crore), A.P. (1.05 crore), M.P. (0.96 crore) and Maharashtra (0.87 crore). In proportionate terms, Punjab has the largest concentration of Scheduled Castes (28.31%) of the total population, followed by Himachal Pradesh (25.34%), West Bengal (23.62%) and UP (21.05%)<sup>2</sup>. 81% of the Scheduled Caste population was living in rural areas. Only 19% lived in urban areas, as compared to 25.7% in case of the total population (1991 census).

### **Educational Profile**

The rate of literacy among Scheduled Castes, as per 1991 census, was 37.41% as compared to 57.69% for non-SC and ST communities. For Scheduled Tribes, it was even lower (29.6%). Female literacy among Scheduled Castes was 23.76% as compared to 44.82% in respect of non-Scheduled Castes and Scheduled Tribes, while for Scheduled Castes male it was 49.91% as against 69.53% for non-Scheduled Castes/Scheduled Tribes male. The position in respect of literacy levels among Scheduled Castes was particularly bad in the States of Bihar, Madhya Pradesh, Orissa, Rajasthan and U.P. Recent estimates of literacy have shown a significant increase for all categories of population. As per indications available from the 2001 census, the gaps between literacy rate of Scheduled Castes and Scheduled Tribes and non-SCs/STs are narrowing and the enrolment of SC and ST boys and girls as a percentage of total enrolment has also increased in almost all States<sup>3</sup>. There is also a significant improvement in the gross enrolment ratio of Scheduled Castes and Scheduled Tribes. However, these statistics are a poor comfort because there are very high dropout rates in children from SC and ST categories. The drop out rates of children among Scheduled Castes in 1990-91 were 49.35% at primary stage, 67.77% at middle stage and 77.65% at secondary stage. In the case of girls, the dropout rates are higher than the average at the primary level and very very high at middle and secondary stages<sup>4</sup>.

As regards higher education, Scheduled Castes constitute 8.37% of total number of students pursuing graduate courses, 8% of those pursuing post-graduate courses and 2.77% of those carrying out research<sup>5</sup>.

### **Economic Status**

Scheduled Castes are concentrated in States which have largest number of people living below poverty line. Out of 32 crores of persons below poverty line as estimated by the Planning Commission, U.P. accounts for more than 6 crores, followed by Bihar (4.93 crores), Maharashtra (3 crores), Madhya Pradesh (2.9 crores) and West Bengal (2.5 crores). Bihar has the largest percentage of Scheduled Castes (70.66%) living below poverty line, followed by U.P. (58.99%) and Maharashtra (51.64%)<sup>6</sup>.

<sup>2</sup>Sixth Report, op. cit., p. 18

<sup>3</sup>Sixth Report, op. cit., p. 152

<sup>4</sup>Sixth Report, op. cit., p. 177

<sup>5</sup>Sixth Report, op. cit., p. 153

<sup>6</sup>Sixth Report, op. cit., p. 18

Information contained in the following table shows that the percentage of Scheduled Castes below poverty line in rural areas was 49.04 as compared to 32.96% for other categories, while, for urban area, it was 42.35% for Scheduled Castes as compared to 23.91% in respect of other categories.

#### Details of People Below Poverty Line

Years Social Group	Proportion of poor households in the Social group to the total households		Proportion of a household category in all poor households		Proportion of a household category in all non-poor households	
	Rural	Urban	Rural	Urban	Rural	Urban
1987-88						
SC	55.22	47.07	24.72	17.63	16.30	9.17
Others	39.45	28.82	60.65	76.70	75.74	87.59
All India	44.86	31.62	100	100	100	100
1993-94						
SC	49.04	42.35	28.24	21.65	18.34	19.84
Others	32.96	23.91	56.74	73.87	72.14	86.10
All India	38.46	26.89	100	100	100	100

Source: "Counting the poor", Sarvekshana analytical report No. 1, Dept. of Statistics, Government of India, quoted in Sixth Report, op. cit., p. 19.

#### Occupational Categories

The incidence of poverty is directly relatable to their economic status reflected in occupations they pursue as would be evident from the information given below. As per 1991 census 49.06% of Scheduled Castes are agricultural labourers, compared to 19.66% belonging to other categories, which by itself is sufficient to establish the wide gap in economic status between the two as also of how the development process has affected them differentially.

#### Occupational Classification of Scheduled Castes

	1961			1991		
	Genl.	SC	ST	Genl.	SC	ST
Cultivators	52.78	37.76	68.18	39.74	25.44	54.50
Agri. Labourers	16.71	34.48	19.71	19.66	49.06	32.69
Household Industry	6.38	6.56	2.47	2.56	2.41	1.04
Other workers	24.13	21.20	9.64	38.04	23.08	11.76

Source: Quoted in National Commission for SCs & STs, Sixth Report, 1999-2000 & 2000-2001.

Not only this, the number of SCs as agricultural labourers was higher than that of Scheduled Tribes. This is largely because the Scheduled Castes have very poor access to land and even when they are recorded as cultivators, many of them cultivate land as tenants or share croppers and have very small area of land to operate. Their overwhelming status as agricultural labourers directly accounts for the higher level of poverty.

The more striking part of the information in the above table is the sizable decline in the percentage of cultivators among SCs between 1961 and 1991 census. This goes to show that access of SCs to land for cultivation, whether as owned land or operated land, has come down substantially. The increase in the percentage of SC agricultural labourers shows that many SCs who owned land earlier (and some many have cultivated land as tenants) have lost them - a single most depressing indicator of their worsening economic situation which directly mirrors their vulnerability.

### Occupational pattern of Scheduled Castes

Considering the fact that 25.44% Scheduled Castes have been classified as cultivators, and 49.06% Scheduled Castes as agricultural labourers in the statement above, nearly 75% of Scheduled Castes primarily depend on agriculture for employment. In view of the seasonal nature of agricultural operations they remain under-employed for most of the year [and in fact unemployed for varying periods], and wages paid to them are lower than the prescribed minimum wage rate. Their poor economic condition makes them vulnerable to various forms of exploitation, such as their compulsion to work as bonded labourers and send their children to work for just getting small food. A large number of them also migrate to distant places in search of work where they are subjected to even greater exploitation, particularly brutal in certain occupations like stone quarries and brick kilns.

As cultivators, Scheduled Castes own very small percentage of agricultural land as the following table would indicate:

Social Group	No. of Holdings (in lakh)			Area Operated (in lakh Hect)			Average land holding (In Hect)		
	1980-81	1985-86	1990-91	1980-81	1985-86	1990-91	1980-81	1985-86	1990-91
1	2	3	4	5	6	7	8	9	10
Scheduled Castes	100.52 (11.3)	120.41 (12.4)	134.22 (12.6)	115.22 (7.0)	126.39 (7.7)	131.73 (8.0)	1.15	1.05	0.98
Scheduled Tribes	68.54 (7.7)	76.48 (7.9)	86.70 (8.1)	167.04 (10.2)	172.34 (10.5)	179.09 (10.8)	2.44	2.25	2.07
Others	719.77 (81.00)	774.66 (79.7)	845.45 (79.3)	1355.71 (82.8)	1346.89 (81.8)	1344.25 (81.2)	1.88	1.74	1.59
All Social Groups	888.83 (100.00)	971.55 (100.00)	971.55 (100.00)	1637.97 (100.00)	1645.62 (100.00)	1655.07 (100.00)	1.84	1.69	1.55

Source: National Commission for SCs and STs, Sixth Report, op. cit., p. 23.

As per data available, in 1990-91 the share of Scheduled Castes in respect of total number of holdings in the country was 12.6% but they operated 8% of the area. The average size of their land holdings is 0.98 hectares. This is in contrast to 79.3% of the total number of holdings belonging to others, who operate 81.2% of the area with average size of 1.59 hectares.



## Impact of Land Reforms Programme on SCs

### A) Access to Agricultural Land

The following table indicates that of the 53.13 lakh acres of land distributed at the all-India level, 18.08 lakh acres were distributed to SCs covering around 18.49 lakh beneficiaries, which comes to 0.977 acre per beneficiary. But West Bengal alone accounted for about 20% of the total land distributed to SCs, followed by Uttar Pradesh.

**Distribution of Surplus Land to SCs as on September, 1996**

States	Total area and beneficiaries		Area distributed and no. of SC beneficiaries						
	Area distributed	Total No. of benef.	Area distributed	No. of benef.	% share in area	% share in no. of benef.	% share in all India area	%share in all India no.of benef.	Av. Area distributed
Andhra Pr.	594352	521563	226890	216537	38.17	41.51	12.55	121.71	10.4
Assam	479878	441804	45746	43406	9.53	9.82	2.53	2.34	1.05
Bihar	303217	372529	179161	229832	59.08	61.69	9.91	12.43	0.779
Gujarat	133999	31376	83247	14584	62.12	46.48	4.60	0.78	5.20
Haryana	87259	27392	37623	11753	43.11	42.90	2.08	0.63	3.20
Him. Pr.	3340	4400	2305	2934	69.01	66.68	0.12	0.15	0.785
J & K	45000	450000	0	0	0	0	0	0	0
Karnataka	117147	31415	71133	18953	60.72	60.33	3.93	1.02	3.75
Kerala	64283	145106	25197	62174	39.01	42.84	1.39	3.36	0.40
MP	185313	72131	49433	21528	26.67	29.84	2.73	1.16	2.29
Maharashtra	554870	14580	161715	41945	29.14	29.83	8.94	2.26	3.85
Orissa	154298	135219	49075	45561	31.80	33.69	2.71	2.46	1.077
Punjab	103487	28287	44015	11301	42.53	39.95	2.43	0.61	3.89
Rajasthan	452176	77899	145317	28453	32.13	36.52	8.03	1.53	5.10
Tamilnadu	162369	135269	62096	59729	38.24	44.15	3.43	3.23	1.03
UP	390501	346209	263815	236599	67.55	68.33	14.59	12.79	1.11
W. Bengal	965293	2151632	359519	800870	37.24	37.22	19.88	43.31	0.44
Total	5213328	5120859	1807575	1848833	34.67	36.10	100.00	100.00	0.97

*Source:* Report of the National Commission for SCs/STs, 1995-1996, extracted in Thorat, Social Security for SCs in unorganized sector in S.M. Dev & others, Social and Economic Security in India, 2001, p. 371 Delhi.

Despite distribution of the ceiling surplus and other land, the percentage of landless households among SCs has increased from 12.62% in 1982 to 13.34% in 1992, while the corresponding rate has remained constant at around 10% for non-SC and ST category<sup>7</sup>. Though the above figures may create the impression that at all India level around 87% of SC households owned some land in 1992, this may be misleading as nearly 60% are landless or near landless because less than 1/2 an acre of land owned by 47.50% (as per table below) may consist of patch of land to include residential backyard.

<sup>7</sup>Thorat, op. cit., p. 372

The following table would indicate the landless and the near landless together constitute 60% of SC households. This position was extremely high in Punjab, Kerala, Bihar and Tamil Nadu.

**Percentage of Landless and Near Landless Households among SCs (Percentage total rural households)**

State	1982					1992				
	Landless	Less than 1/2 acre	Bet 1/2 & 1 acre	Up to 1 acre	Landless & upto 1 acre	Landless	Less than 1/2 acre	Bet. 1/2 & 1 acre	Upto 1 acre	Land less & upto 1 acre
Andhra Pr.	13.58	44.34	7.95	52.29	65.87	12.49	49.95	9.91	59.86	72.35
Assam	5.02	36.98	17.27	54.25	59.27	5.52	37.10	7.94	45.04	50.56
Bihar	35.58	69.78	9.76	79.54	89.24	19.73	62.62	6.15	68.77	88.50
Gujarat	23.86	44.69	6.38	51.22	75.06	18.09	34.11	4.22	38.88	56.42
Haryana	10.09	87.52	0.97	88.49	98.58	7.95	73.10	3.63	76.73	84.68
Him. Pr.	6.01	34.71	9.96	44.67	50.73	7.09	22.67	5.37	28.04	35.13
J & K	0.66	41.56	3.58	45.14	45.80	4.00	34.37	7.91	42.28	46.28
Karnataka	14.52	38.41	8.51	46.92	61.44	10.69	32.60	2.67	35.27	45.96
Kerala	16.56	77.33	5.35	82.68	99.24	14.33	79.32	-	79.32	93.65
Madh. Prad.	18.11	24.21	2.55	26.76	44.87	20.53	19.04	3.17	22.21	42.74
Maharashtra	26.39	33.42	3.38	36.80	63.19	24.31	32.13	2.99	35.12	59.43
Orissa	7.2	47.78	6.70	54.18	61.38	11.19	49.82	9.78	59.60	70.79
Punjab	6.01	56.84	2.96	89.50	95.81	6.7	85.57	1.43	87.00	93.78
Rajasthan	12.91	18.10	2.40	20.50	33.41	76.11	29.10	6.18	35.28	43.04
Tamil Nadu	14.5	61.66	7.48	69.14	83.64	19.21	57.4	9.82	67.03	86.24
UP	7.18	40.88	18.33	59.21	66.39	6.15	45.98	16.08	62.06	68.21
W. Bengal	19.13	42.74	11.05	53.79	72.92	12.02	47.66	11.64	59.30	71.32
India	12.62	47.97	9.53	57.50	70.12	13.34	47.50	8.89	56.39	69.73

Source: NSS<sup>8</sup> Land Holding Survey, 1986 and 1992.

<sup>8</sup>Quoted in Thorat S., op. cit., p. 372

Thus SC's potential to pursue viable agriculture is constrained by lack of access to sufficient land and even to the extent of small land they possess, they lack access to capital and various inputs. Several Rural Development Programmes have been in operation to provide financial assistance for various inputs, such as IRDP, JRY, Million Wells Scheme to improve the productive capacity of small and marginal farmers and some SCs did get the benefit of these Schemes. However, at all India level, only 19.12% were self employed cultivator households out of SC households who owned some land, as per information available in 1991. This ratio did not change in the statistics available for 1997-98. As against this, the percentage of self-employed cultivators among non-SCs and STs was more than double in both periods. The position in respect of self employed non-farm households was also lower for SCs in 1992, as compared to other categories<sup>9</sup>. This clearly shows that the various schemes of poverty alleviation did not create substantial impact in improving the economic position of SCs. The gap in respect of self-employed households in urban areas is even wider between SCs and non-SCs. In 1993-94 while the SCs self-employed were 24%, the corresponding figure was 35.05% in respect of others in urban areas<sup>10</sup>.

As per 1991 census, percentage of agriculture labour among SCs was more than double that of non-SC households and this disparity has continued over the years since 1974-75. This further shows that the rural development programmes did not upgrade the status of those among SCs who had some land.

The studies on Andhra Pradesh and Karnataka clearly bring out the incidence of discrimination in occupation, employment wages, and land and in other economic spheres. Similar evidence from Orissa also corroborates discrimination in land and labour market<sup>11</sup>.

Since nearly 60% of agricultural labour households and 40% of wage labour households in the rural non-farm sector are below poverty line, the impact of wage employment programmes in improving the income level of SC families has been inadequate in magnitude and coverage. The position in urban areas is even worse. With the growing trend towards privatization and dependence on the market for jobs, capital and social services, the position of SCs is going to worsen. Therefore, it needs to be critically evaluated why Government sponsored poverty alleviation programmes have contributed so little to uplift SC families.

The land related matters have been the largest single factor responsible for atrocities against Scheduled Castes in rural areas. Members of the Scheduled Caste have been fighting for ownership rights over the land cultivated by them or seeking possession over the land already distributed to them by the Government. They have also been demanding allotment of land under the relevant Land Reforms programmes under which they have been assigned priority by the Government in distribution of land. However, the poor implementation of land reforms particularly in States where Scheduled Castes constitute a large percentage of population has deprived them of access to this asset to improve their economic position and reduce their vulnerability.

<sup>9</sup>Thorat., op. cit., p. 374

<sup>10</sup>Thorat, op. cit., p. 375

<sup>11</sup>Thorat, page 383

### ***Status of Self-employed SCs***

The disparity between SCs and non-SCs in various categories of self-employment is evident in the following table.

#### ***Occupational Pattern-Scheduled Caste and Other (in percentage)***

Occupational Category	1987-88		1993-94	
	SC	Other	SC	Other
<b>Rural</b>				
Self-employed in agriculture	18.90	43.3	19.12	42.42
Self-employed in non-agriculture	11.0	13.8	10.32	13.89
Self-employed (total)	29.8	57.1	29.49	56.31
Agricultural wage labour	51.7	23.2	50.6	22.37
Non-agricultural wage labour	11.4	09.7	10.22	6.67
Rural wage labour total	63.1	31.1	60.28	29.14
Others	06.9	11.5	9.67	14.62
<b>Urban</b>				
Self-employed	28.0	35.2	24.08	35.05
Regular wage/salaries	39.4	45.0	39.27	43.11
Casual labour	26.0	10.3	26.96	10.57
Other wage	08.5	09.2	9.67	11.25
All	100	100	100	100

SC = Scheduled Castes; Others = Non-SC/ST

*Source:* NSS Employment/Unemployment Survey, 1987-88 and 1993-94 CSO, Delhi, quoted in Thorat, S. Oppression and Denial, EPW Feb. 9, 2002, p. 576.

Only 1/5 of all SC households were self-employed cultivators, while the percentage was more than double in case of others. The percentage of those SCs engaged in non-farm self-employment activities was even lower presumably because of their low-access to capital. In urban areas, the gap in self-employed category between SCs and non-SCs was lower. The lesser number of self-employed SCs in agriculture can be attributed primarily to their lack of access to land, while in the non-farm sector it would be relatable to lack of access to capital and skills. The explanation for this lack of access would lie in caste based restrictions on owning land by SCs as well as the discrimination practised against SCs in respect of access to credit, technology and avenues of skill development and even attempts to change occupation. In both these areas the weakness of self-employment programmes like IRDP is evident. The high level of manual wage labour among SCs is the direct consequence of these disparities<sup>12</sup>.

### ***The Incidence of Unemployment***

The unemployment rate among SCs is much higher as compared to other workers and this position is true of the rate of underemployment as well as shown in the following table. This could easily be related to caste discrimination against hiring them<sup>13</sup>.

<sup>12</sup>Thorat, op. cit, p. 375

<sup>13</sup>Thorat, S. EPW., op. cit., p. 577

**Unemployment Rate (Percentage of Unemployed, Age 5 years and above)**

Category/ Year	Male				Female			
	Usual Principal Status	Usual Principal & subsidiary status	Current Weekly status	Current Daily status	Usual Principal Status	Usual Principal & subsidiary status	Current Weekly status	Current Weekly status
<b>Rural</b>								
<b>SC</b>								
1993-94	0.90	0.60	1.909	4.30	0.30	0.10	1.10	2.00
1977-78	1.23	0.00	2.93	6.73	2.56	0.00	1.90	4.09
<b>Others (Non-SC/ST)</b>								
1993-94	1.20	0.90	1.60	2.70	0.40	0.30	0.50	1.10
1977-78	1.57	0.00	2.15	3.90	1.53	0.00	0.97	0.97
<b>Urban</b>								
<b>SC</b>								
1993-94	2.60	2.40	3.30	4.90	1.00	0.90	1.20	1.70
1977-78	3.40	NA	NA	NA	3.40	NA	NA	NA
<b>Others (Non-SC/ST)</b>								
1993-94	2.40	2.10	2.70	3.30	1.11	1.10	1.30	1.40
1977-78	3.30	NA	NA	NA	2.60	NA	NA	NA

SC = Scheduled Castes; Others = Non-SC/ST

Source: NSS, Employment Survey, 1987-88 and 1993-94 CSO, Delhi, extracted in Thorat, S. EPW, p. 577

The consequence of higher incidence of wage labour and underemployment among SCs is increased levels of poverty evidenced in their low level of income and consumption. The following two tables eloquently bring out this position.

**Percentage of Persons Below Poverty Line**  
(Household type for scheduled caste and others)

Category	Rural											
	Self-employed Agri.		Self-employed in Non-agri.		Agri. labour		Non-Agri labour		Others		All	
Year	1987- 88	1993- 94	1987- 88	1993- 94	1987- 88	1993- 94	1987- 88	1993- 94	1987- 88	1993- 94	1987- 88	1993- 94
SC	41.21	27.71	41.6	38.19	59.77	60.00	46.49	41.44	29.98	29.00	50.07	48.14
Others	27.68	25.57	31.42	29.49	53.30	52.34	34.45	35.59	19.26	20.51	34.37	31.29

SC = Scheduled Castes; Others = Non-SC

Source: Based on Consumption Expenditure Survey, NSSO, 1987-88 and 1993-94. Extracted in Thorat, S. EPW op. cit., p. 577.

**Percentage of Persons Below Poverty Line**  
(Household type for scheduled caste and others)

Category	Urban									
	Self-employed Agri.		Self-employed in Non-agri.		Casual labour		Others		All	
Year	1987-88	1993-94	1987-88	1993-94	1987-88	1993-94	1987-88	1993-94	1987-88	1993-94
SC	61.48	54.60	43.69	35.28	73.45	69.48	56.84	45.00	56.84	49.90
Others	43.14	33.64	25.26	19.04	70.11	60.60	32.21	26.00	37.21	29.66

SC = Scheduled Castes; Others = Non-SC.

Source: Based on Consumption Expenditure Survey, NSSO, 1987-88 and 1993-94. Extracted in Thorat, S. EPW op. cit., p. 577.

In 1993-94, as against 48.14% of scheduled caste households below the poverty line live in rural areas, the percentage was 31.29% in the general population. In urban areas, corresponding percentage of 49.90% of SC households as compared to 29.66% in the other category indicates a wider gap. The incidence of poverty was evidently higher in the case of agricultural labourers and lower than those who were self employed in agriculture. Casual labour constitute the largest segment of urban poor among SCs, though the disparities with others is not as wide as it is in case of self employed, regular salaried and wage workers<sup>14</sup>. Overall, nearly half the SC population was below poverty line both in rural and urban areas. These figures reveal “that the SCs were at least 25 years behind other groups in terms of level of poverty”<sup>15</sup>.

Based on this macro analysis, the study has come to the conclusion that “it is thus beyond doubt that the historical impact of traditional caste based restrictions on the ownership of property, employment and occupation are still visible in significant measure, the access of formerly untouchables to income earning capital assets and employment is limited and their segregation into manual labour is overwhelmingly high. The two prime economic attributes of the caste system thus seem to be present in sizeable measure even today”<sup>16</sup>.

Not only has there been decline in their status as cultivators, the share in household industry as a source of occupation among Scheduled Castes reduced from 6.56% in 1961 to 2.41% in 1991. This significantly highlights the alienation of scheduled castes from production related activities, which may have constituted a source of economic security and enhanced their bargaining power. This deterioration in the nature of employment activity has not affected traditional occupations and Scheduled Castes continue to be engaged in works which are polluting such as scavenging, drum beating, skin and hide work, carrying carcasses. Precisely these occupations make them untouchables. No other community threatens to take over these occupations from them or compete with them.

<sup>14</sup>Thorat, S. EPW, op. cit., p. 577

<sup>15</sup>Thorat, S. EPW, op. cit., p. 577

<sup>16</sup>Thorat, EPW, op. cit., p. 577



This shows that while the share of traditionally degrading assignment of work to SCs continues, the share of status enhancing work has declined. Not surprisingly, therefore, even as a sequel to fulfillment of reservation quota, SCs occupy bulk of Group 'D' posts of Sweepers (Safai Karmacharis), which only proves that the baggage of traditional caste based occupations gets reinforced even in the changed milieu<sup>17</sup>.

### ***Human Development***

Apart from adverse economic mobility, lack of access to social services and amenities of modern living also profoundly influence the vulnerable status of the SCs as a community and is a factor in their confrontation with the larger caste based Hindu society. It may, therefore, be relevant to see how Scheduled Castes fare in the overall Human Development index which would inevitably reflect the impact of various development programmes on them, particularly in the social sector.

The following is the data regarding human development profile of Scheduled Castes/Scheduled Tribes in respect of selective indicators, which not merely depicts their poor income level, but also their access to various social services like education, health, water supply, public distribution, etc. Access to many of these services is directly relatable to disabilities arising out of their status which continues to operate despite legal provisions and administrative safeguards aimed at eliminating them.

#### ***Human Development Profile of Rural India, 1994 - Selected Indicators for Scheduled Castes/Scheduled Tribes***

Social Groups	Scheduled Castes	Scheduled Tribes	
Per Capita Income (Rs. p.a)	3,505	3,237	
Wage Earning Households*	31	47	
Adult Wage Earners as a % of total Adult Earners	55	58	
Population Below Poverty Line (%)	51	50	
Capability Poverty Measures (CPM)**	60	68	
Literacy Rate (7+yrs)	39	42	
Ever Enrolment Rate (6-14 yrs)	60	63	
Proportion of Total	Education	2.6	2.9
Household Income Spent on	Health	4.9	7.0
Household using facilities (%)	Electricity	30	31
	Piped water	17	23
	Public distribution system	38	32

\* Refers to households, which have reported more than 50% of their income as wages.

\*\* CPM is a simple average of percentage of birth unattended by trained health personnel, percentage of stunted children and female illiteracy rate.

Source: Abusaleh Shariff, India: Human Development Report, A Profile of Indian States in the 1990s, Oxford University Press, New Delhi 1999.

<sup>17</sup>Sixth Report, op. cit., Tables 8.2.1, 8.2.2, 8.2.4, 8.2.5 at pp 182, 193, 185 and 186

The poverty profile is further reinforced by the level of their ownership of other productive assets, which is indicated in the following table.

***Distribution of Households Owning Productive Assets (in %)***

Social Groups	Scheduled Castes	Scheduled Tribes
Tubewells	5.4	2.8
Generators	0.3	0.2
Thresher	0.8	0.6
Winnower	0.4	0.4
Bullock Cart	5.9	10.7
Tractor	1.0	1.3
Bio-gas Plant	0.6	1.0

*Source:* Abusaleh Shariff, India: Human Development Report, A Profile of Indian States in the 1990s, Oxford University Press, New Delhi 1999.

It is evident that lack of ownership of land and also lack of access to capital are responsible for the poor percentage of Scheduled Castes owning these productive assets.

The following table depicts ownership of a residential house and selected consumer durables among scheduled castes and amenities available in their households.

***Ownership of House and Selected Consumer Durables (in %)***

Consumer Durables	Scheduled Castes	Scheduled Tribes
House	96.5	95.00
Bicycles	48.1	3.2
Television	5.6	6.5
Radio/Transistor	29.4	27.1
Electric Fan	10.7	10.5
Motor Cycle/Scooter	1.2	3.3
Sewing Machines	5.9	2.9

***Amenities Available in Households***

Amenities	Scheduled Castes	Scheduled Tribes
Kutcha House	66.6	74.0
Separate Kitchen	30.1	34.4
Electric Connection	30.7	29.7
Protected Water Supply	72.8	61.6
Piped Water Supply	22.6	17.2
Toilet	8.3	12.2

*Source:* Abusaleh Shariff, India : Human Development Report, A Profile of Indian States in the 1990s, Oxford University Press, New Delhi 1999.

The data on ownership of a house in the first table when read with the status of the house in the second table would clarify that a thatch mud hut is what defines a residential house for overwhelming majority of them. The other indicators in the two tables would be sufficient to show that the SCs have a very low level of social existence. Though the source of this study does not provide comparable figures for these indicators in respect of the rest of the population, it is not difficult to visualize that there would be a very wide gap in respect of Scheduled Castes and other communities, as the following information furnished by National Campaign on Dalit Human Rights would corroborate<sup>18</sup>:

- 30.91% of Scheduled Castes households had electricity, as compared to 61.31% for non-Scheduled Castes households.
- 9.84% Scheduled Castes households had access to sanitation, as compared to 26.76% for non-Scheduled Castes households.
- More than 20% Scheduled Castes population does not have access to safe drinking water. Comparable percentage of others is much less.
- Monthly per capita expenditure (1987-88) was Rs. 133 for Scheduled Castes as compared to Rs. 169 for others in rural area and it was Rs. 185 for SCs as compared to Rs. 256 for others in urban area. This gap increased from the level existing in the year 1983-84.
- 57.5% of Scheduled Castes children under 4-years of age were reported undernourished in 1992.
- Infant mortality among the Scheduled Castes was 91 per 1000 live births in 1992-93, as compared to 79 for all categories in 1992 and 73 in 1993.
- The death rate among Scheduled Castes was 15.50% in rural area, as compared to 11.20% for others. It was 12.90% in urban areas as compared to 8.40% for non-Scheduled Castes.

Both the infant mortality and death, etc. related statistics indicate greater exposure to life threatening diseases, lack of access to health care, under-nourishment and low level of health consciousness.

Although the information collected above is neither up to date nor entirely comparable in respect of various parameters for the same period, still it is evident that the gaps between Scheduled Castes and rest of the population are quite large despite special earmarking of funds for Scheduled Castes in various development programmes. These gaps are not entirely due to lack of sufficient resources though entitlement in this regard has not been forthcoming but are also due to social constraints in delivery of benefits including resistance from and manipulation by them to corner facilities/benefits meant for SCs. Considering the shrinking budgetary support for social sector such as health, social security, nutrition, etc. and the attempts by the Government to withdraw State support from certain activities besides privatization of some others, the gap is likely

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<sup>18</sup>National Campaign on Dalit Human Rights, Black Paper, Also Letters from Divakar, N. National Convenor and others both dated May 9, 2002 addressed to Prime Minister and to Chairman, NHRC

to widen rather than reduce. Yet, there is no road map available to indicate the stage when this gap would disappear or become negligible. In fact, neither the Planning Commission nor the Ministry of Social Justice and Empowerment have given serious thought to this aspect. It is extremely important in this connection that Planning Commission prepares a Perspective Plan for bridging this gap with fixed yearly targets and adequate resources allocated for this purpose so that the progress achieved in that direction can be monitored. In fact, a Human Development Index for SCs (also STs) separately should be prepared expeditiously for this purpose as also recommended by National Commission for SCs and STs and State be also urged to do the same<sup>19</sup>.

### **Gender Equity**

Scheduled Castes Women constitute 16.3% of India's total female population and 47.96% of the total SC population. 81.45% of them live in rural areas while they constitute about 12% of the urban population<sup>20</sup>. The plight of Scheduled Castes women is evident from the fact that even the sex ratio of Scheduled Castes women per 1000 male is only 922 as compared to 944 for the general population<sup>21</sup>. This only shows that gender inequity operates even among those Scheduled Castes, where women are earning members at par with men. Further, the SC women are doubly vulnerable. Firstly, they have to share the economic burden of the family on equal terms with those of men and, in addition, the entire household burden as well. They get married early and have to experience frequent pregnancies. Economic independence of SC women has also not improved their social position, because women bear the brunt of lack of access of their entire community to basic services. They have to shoulder the responsibility of collecting fuel wood and water, and, at times, even edible articles from long distances which drains their energy. Their hardship is even more pronounced because a large number of SC households are women-headed due to either husband's desertion or his drunkenness. This places the entire burden of household running on their shoulders. The manifestations of inequity against women of all categories also apply in case of scheduled caste women. They are typically the last in the family to take food where men of the family and thereafter the children receive higher priority. Most of them have nutrient deficient food. They experience larger number of child births than upper caste women do. Their access to education and health facilities is poorer than the male members of their communities.

SC women also constitute a major workforce of the national economy. As per one study, nearly 89.5% of all adult SC women participate in some productive labour<sup>22</sup>. In urban areas, they also function as hawkers, scrap collectors, petty traders, etc. besides earning livelihood as wage labourers in domestic work, construction industry, earthwork, beedi/agarbathi manufacture, candle making, garment and embroidery work. All these

<sup>19</sup>Sixth Report, para 34.97, op. cit., p. 30

<sup>20</sup>Black Paper, op. cit.

<sup>21</sup>Black Paper, op. cit., This is as per UNDP Report 1997 (The latest report of National Commission for SCs/STs shows a deterioration in average sex ratio to 923 for the general population and therefore the ratio has virtually come at par between the two categories).

<sup>22</sup>Black Paper, op. cit.

employments are characterized by low wage, irregular work, absence of social security, vulnerability to sexual exploitation and dependency on middlemen and employer. Women labour, in general, irrespective of caste, is relatively underpaid and unrecognized and labelled as unskilled. These disabilities may be operating even more adversely against SC women. As per one study, nearly 31.6% of all children from Scheduled Castes communities are child workers<sup>23</sup>, SC girls constitute perhaps the largest segment of that child labour. While there is a general literacy gap between Scheduled Castes and members of general category, the gap is even wider between SC women and SC men. The position is much worse in BIMARU States [Bihar, Madhya Pradesh, Rajasthan, UP]. Inequity also operates in drop outs, where the percentage of SC girls is higher than that of SC boys at all levels<sup>24</sup>. The share of SC women in decision making positions is abysmally low, virtually non-existent. In some central services, there is no representation whatsoever, while in most others, the number is in single digit<sup>25</sup>.

SC women bear the brunt of atrocities against their community. The number of rapes committed against SC women has shown an increasing trend<sup>26</sup>. The mass rape is used by upper caste militias as a weapon to break the morale of the entire community. Rape is used as a political instrument and these women become the target of anger and wrath of the dominant castes. The women are singled out for other indignities like being paraded naked by upper caste people even for petty disputes<sup>27</sup>. Women are also subjected to most obnoxious practice of prostitution in the name of religion such as the Devdasi system where children between 6 to 8 years belonging mostly to families of untouchables are dedicated to God, cannot marry and are raped by temple priests and upper caste men and eventually auctioned off into urban brothels. In times of extreme hardship, such as natural calamities women are forced to sell their bodies for the family to survive. In certain communities under customary practices, women are sent for prostitution as integral part of social survival or auctioned like a commodity as a punishment for violating customary injunctions<sup>28</sup>. Under superstitious beliefs, certain mishaps in the family are attributed to witchcraft and women (usually SC/ST) are branded as witches engaged in this practice and publicly humiliated, grievously assaulted and at times brutally murdered. Traditional healers/customary religious chiefs also lend support to such a belief.

Women constitute a larger number of persons engaged in manual scavenging. In fact, when the entire family is engaged as scavengers, it is its women members who share the larger load of work. It has also been experienced that where benefits have been extended for elimination of manual scavenging to certain families of manual scavengers through development programmes specifically targeted at them, it is usually

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<sup>23</sup>Black Paper, op. cit.

<sup>24</sup>Sixth Report, op. cit., p. 177

<sup>25</sup>Black Paper, op. cit., 26 Sixth Report, op. cit.

<sup>27</sup>Black Paper, op. cit.

<sup>28</sup>Musahar, A Socio-economic Study carried out by A.N. Sinha, Institute of Social Studies (2002), p. 38. Compulsion of women to sell their bodies. For customary practices, see Arti Dhar 'Auctioned Girl commits suicide'; The Hindu, Aug. 20, 2002

the men of the family who take advantage of it, give up manual scavenging work and take to alternative occupations. But they continue to permit their women to do manual scavenging for enhancing income of the entire household. This is the worst example of gender inequity at the family level within the community<sup>29</sup>.

Though separate data is not available, there is no dearth of impressions that the benefits of various development programmes, such as distribution of land and other productive assets have, by and large, gone to SC males and, therefore, have not helped in improving the status of the scheduled caste women within the family as well as outside it. Where women have been targeted for poverty alleviation in the family, the level of investment in projects selected for them is far lower as compared to those for men. Of late, Government instructions have promoted coverage of women in land allotment both as exclusive and joint ownership with their spouses. But separate data on land and assets allotted to SC women is not readily available. In this background, SC women should emerge as a distinct focus of attention and targeting in any future strategy of development for this group. National Commission for SCs and STs should devote a separate chapter on SC (and ST) women in their report as recommended by the National Commission for Women<sup>30</sup>. Also the section of Planning and Development relating to SCs should have a distinct and comprehensive treatment on SC women. The Dept. of Woman and Child Development should prepare separate database in respect of SC (as also ST) women to enable measurement of progress achieved in improving their status.

### ***Development Strategy - Special Component Plan for Scheduled Castes***

Special Component Plan has been devised as a mechanism for ensuring that adequate resources are allocated for development of Scheduled Castes. This Plan was initiated since 6<sup>th</sup> Five Year Plan. Under this arrangement, all States which have sizeable SC population and Central Ministries are required to prepare a Special Component Plan for development of scheduled castes as a part of their Five Year and Annual Plans. They have to identify Schemes and Programmes already under implementation or which can be implemented to benefit Scheduled Castes on which funds allocated under SCP can be spent. The outlay for implementation of the programme for Scheduled Castes should be in proportion to the population of scheduled castes in the respective States. Most of the States have formulated their SCP but a large number of States have not made provision for SCP in proportion to their States' SC population. In some States, the outlay provided for SCP is only half in proportion to their SC population or considerably short of that percentage. Even the inadequate amount so allocated has not been utilized and large outlay for SCP remains unutilized in many States. The National Commission for SCs and STs in its Sixth report for years 1999-2000 and 2000-2001 have made the following comments with regard to this aspect:

“In the case of Punjab and Andhra Pradesh, there was drastic cut at the stage of utilization of outlay. Andhra Pradesh has an SC population of 14.87% and provided

<sup>29</sup>Personal experience of interaction with Scavengers at Mathura (U.P.)

<sup>30</sup>National Commission for Women, Annual Report (1996-97)



Rs. 544.27 crores for SCP during 1999-2000, which formed 9.93% of the outlay. The expenditure under SCP is only Rs. 189.42 crore against the provision of Rs. 544.27 crore. Thus a large outlay provided for SCP remained unutilized. In the next year SCP outlay has been reduced to Rs. 217.18 crore, which was 2.64% of State's total plan outlay of Rs. 8228.12 crore. In the case of Punjab, outlay provided for SCP for the year 1999-2000 was Rs. 304 crores which represented 11.34% in the State Plan Outlay of Rs. 2680 crores, which was less than half of the ratio of State's SC population. The State's SC population constitutes 28.37% of its total population. At the time of implementation of SCP this outlay has been further drastically reduced. As a result the expenditure during 1999-2000 was Rs. 173.11 crores only. This lack-lustre performance of Punjab in implementation of SCP, which has the highest proportion of SC population in the country and Andhra Pradesh which has a sizeable SC population (more than 1 crore as per 1991 census) shows that many States do not take development of Scheduled Castes with the seriousness it deserves. Similarly, large under-utilization of SCP outlay can be observed in the case of Assam, Bihar, Gujarat, Haryana, Kerala, Maharashtra, Rajasthan, Tamil Nadu, West Bengal and Delhi. In many States these cuts of SCP outlay are regular features: as a result the expenditure is substantially short of the outlays announced in the budget estimates. Figures in respect of some States can be seen from the following table:

(Rs. in Crores)

Year	Bihar		Punjab		Tamil Nadu		UP		West Bengal	
	Outlay	Exp.	Outlay	Exp.	Outlay	Exp.	Outlay	Exp.	Outlay	Exp.
1992-93	180.09	95.05	164.06	113.11	293.00	300.44	404.99	367.56	185.73	100.05
1993-94	104.00	94.74	195.00	105.88	563.61	335.28	456.91	388.92	237.13	229.54
1994-95	166.69	152.23	200.07	87.42	523.06	443.19	492.24	482.49	174.35	232.49
1995-96	470.91	110.34	227.68	90.50	618.25	483.30	809.28	538.66	278.14	124.44
1996-97	260.30	144.17	205.00	75.59	652.39	416.90	1420.00	930.00	146.85	115.17
1997-98	354.79	0.00	210.00	134.59	752.23	224.35	1484.00	1082.55	300.38	204.91
1998-99	627.97	0.00	220.00	57.80	825.53	713.27	2159.81	1349.23	235.30	174.69
1999-00	549.36	389.00	304.00	173.11	997.41	825.53	1261.35	1261.34	1414.14	1106.76
2000-01	386.13		312.00		985.54	897.41	1889.53		1564.04	

It may be seen that Punjab has regularly failed to implement the Special Component Plan decided at the beginning of the Plan. Bihar is also regular in its failure to fully implement the SCP. The reductions in the case of U.P., Tamil Nadu and West Bengal are also regular and quite substantial. It appears that high outlay for the SCP is announced at the time of presentation of budget to appease the SC population without any serious intention to implement the programmes. Thereafter, the implementation of the SCP is completely neglected resulting into picture as presented in the table above. Obviously there is no monitoring of SCP after announcement of SCP in the budget speech, Punjab has the dubious distinction of first providing outlay for SCP upto the

extent of only half of the amount required as per population percentage of the State (it provides outlay of around 10-11% of the State Plan Outlay as against the required level of about 28% as per population proportion) and then reducing this inadequate outlay by another more than 50% at the implementation stage<sup>31</sup>.

The Special Component Plans formulated by the States also suffer from serious constraints, such as the disinterestedness to work out a time-bound strategy for development of Scheduled Castes. This is reflected in lack of efforts to identify specific problems of Scheduled Castes related to each category of occupations they are employed in, potential for improvement within and outside those occupations, constraints in their development measures needed to meet them. This is compounded by inability to work out integrated programmes to alleviate poverty and time-bound programme coverage to provide them with civic amenities. That is why the huge gap persists between them and the rest of the population in essential parameters of development.

### ***Special Central Assistance to Special Component Plan for Scheduled Castes***

The main objective of Special Central Assistance to SCP is to supplement States' effort for speedy development of Scheduled Caste population by providing additional support to SC families to enhance their productivity and income. SCA can also be utilized for infrastructure development in blocks with 50% or more of Scheduled Caste population in a manner that contributes to the development of Scheduled Castes therein. SCA is a 100% grant-in-aid scheme. An amount of Rs. 1344 crores was released as SCA to States during the 8<sup>th</sup> Plan. Releases made under SCA during the 9<sup>th</sup> Plan represent an increase of around 21%<sup>32</sup> over the previous years. The information contained in the report of the Commission indicates that some States have not utilized the amount allocated to them and some had delayed in reporting the utilization which hampered further release of funds to them. This obviously slowed the pace of implementation of the programmes for development of Scheduled Castes. The under-utilization of SCA released by Government of India in a large number of States with substantial SC population represents a sad aspect of Government's commitment towards development of Scheduled Castes<sup>33</sup>.

### ***Special Component Plan by the Central Ministries***

Central Ministries are also expected to prepare Special Component Plan for development of Scheduled Castes at the time of formulation of their Five Year and Annual Plans and to ensure flow of at least 15% of total plan outlay for this purpose. But only fourteen Central Ministries/Departments are formulating SCP. Twenty seven Ministries/Departments have expressed their inability to do so because their activities cannot be divided community-wise and their schemes are not individual beneficiary oriented. The National Commission for SCs and STs in the preface to its Sixth report has commented on the ineffectiveness of the Ministry of Social Justice and Empowerment in coordinating these programmes for development of Scheduled Castes at the Government of India

<sup>31</sup>Sixth Report, op. cit., pp 29-30

<sup>32</sup>Sixth Report, op. cit., pp 31

<sup>33</sup>Sixth Report, op. cit., pp 31-32

level. The Social Welfare Departments at the level of State Governments also suffer from the same disability. Even the Tripartite Committees constituted by the Planning Commission at the Centre and State level to strengthen the mechanism of SCP have not yielded any visible improvement so far. The Commission has therefore suggested a fresh look at the entire institutional mechanism for formulation and implementation of development programmes for Scheduled Castes<sup>34</sup>.

### ***Institutional Finance for SC Development***

Finance is one of the critical constraints in the development of income generating programmes for scheduled castes. Public Sector Banks, National Scheduled Castes/ Finance and Development Corporation (NSFDC) at the Central level, Scheduled Castes Development Corporations at the State level and the Cooperative Societies are main agencies catering to the financial needs of the scheduled castes. NSFDC is a major instrument for focused lending to Scheduled Castes. It is extending concessional finance to Scheduled Castes below double the poverty line limits through the State channeling agencies to enable them to set up income generating self-employment ventures. As per information available, against a target of 200 crores for disbursement during 1999-2000, the achievement of the Corporation was only 100 crores. The target was reduced to 110 crores during 2000-2001. There was substantial shortfall in the utilization of the assistance from NSFDC in respect of Andhra Pradesh, Bihar, Haryana, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Punjab, Tamilnadu, UP and West Bengal. Further, out of the Rs. 117.48 crores disbursed by NSFDC during 2000-2001, Rs. 99.04 crores (84%) remained unutilized<sup>35</sup>. This clearly shows that even the meagre amount allocated for development of Scheduled Castes through the National Corporation does not get utilized, which in turn highlights as much the poor absorptive capacity of the delivery systems as it does the lack of concern and interest on the part of the State Governments.

In 1997, the Government of India set up a separate National Safai Karamcharis Finance & Development Corporation with the objective of promoting self-employment for economic rehabilitation of Safai Karamcharis. Besides providing training and extending loan to students from Safai Karamcharis for pursuing higher education, the Corporation distributed 21.83 crores to 17 States to benefit 3293 persons by March 2000. The programme suffers from a number of shortcomings including reluctance of banks to finance projects as pointed out by the National Safai Karamchari Commission in its reports<sup>36</sup>. This aspect has also been commented upon while evaluating the implementation of the central programme for liberation and rehabilitation of manual scavengers in Section V.

### ***Scheduled Caste Development Corporations***

These Corporations with equity participation of the Central and State Governments in the ratio of 49:51 were set up for identifying eligible scheduled caste families and to

<sup>34</sup>Sixth Report, op. cit., preface p. ii

<sup>35</sup>Sixth Report, op. cit., p. 32

<sup>36</sup>Second Report (1995-96) Four Reports have been submitted by the Commission from 1994 to 2000. The Fourth Report was submitted on 07.04.2002. However, only two reports have been placed before the Parliament.

provide them financial assistance and subsidy for income generating activities. The analysis made by the National Commission for SCs and STs in respect of the Scheduled Caste Development Corporations of Punjab, Haryana, Bihar, Karnataka, West Bengal and Assam showed large gaps between targets set and the loans sanctioned and disbursed. In some cases, there was diversion of funds towards administrative expenditure. Some States did not even release funds to the Corporation for carrying on activities<sup>37</sup>. Political apathy is clearly the explanation for the neglected state of implementation of such an important programme which constitute the mainstay of efforts for achieving improvement in economic conditions of poor SC households.

### ***Public Sector Banks***

Under priority sector guidelines, nationalized banks are required to provide at least 10% of their total finances to weaker sections, which include Scheduled Castes and Scheduled Tribes. As per information furnished by RBI as on the last Friday of March 2000, advances to Scheduled Castes and Scheduled Tribes constituted 7.54% of the total advances in the priority sector, 9.65% in the agricultural sector and 3.20% in the SSI Sector. It is evident that the amount loaned to SC and ST borrowers was less than 10% of the target. It also shows that the amount of loan advanced to SC and ST borrowers in the priority sector, agricultural advances and advances to SSI is on an average much smaller when compared to other sections of the borrowers<sup>38</sup> [There are no separate figures for SC borrowers). Reserve Bank of India have issued detailed guidelines to the banks to ensure adequate flow of credit to Scheduled Caste and Scheduled Tribe borrowers. However, following the recommendations of the Narasimham Committee (1991) reforms have been initiated in the banking sector with the main objective of improving the recovery of advances and profitability of the Banks. These reforms also include reduction of emphasis on the priority sector advances. Narasimham Committee had in fact recommended reduction from its present level of 40% to about 10% which was opposed by the Planning Commission in the 9<sup>th</sup> Plan. However, the lending pattern of Banks has changed in a manner that the picture of its lending to members of Scheduled Castes and Scheduled Tribes would present a pessimistic future<sup>39</sup>. At the end of March 1995, there were 57.74 lakhs SC and ST borrowers in agricultural sector, which came down to 43.88 lakhs by March 2000. In case of small-scale industry, the number of SC and ST borrowers came down from 9.15 lakhs in March 1995 to 5.54 lakhs in March 2000. In case of other priority sectors, the number of borrowers got reduced from 32.24 lakhs at the end March 1995 to 21.94 lakh borrowers by March 2000<sup>40</sup>. Further, a distinction was made earlier between direct and indirect advances to agricultural sector. This distinction has since been done away with as a result of which advances made to traders dealing in agricultural commodities and even the State Governments for infrastructure development in rural areas are also considered agricultural advance. Therefore, it is

<sup>37</sup>Sixth Report, op. cit., pp 33-34

<sup>38</sup>Sixth Report, op. cit., p. 35

<sup>39</sup>Sixth Report, op. cit., p. 37

<sup>40</sup>Sixth Report, op. cit., p. 37

difficult to identify the extent of actual resource flow to the beneficiaries of Scheduled Castes and Scheduled Tribes. In all likelihood, it would have come down substantially.

Public sector banks are also advancing loan for Prime Minister's Rozgar Yojana [PMRY] which has been in operation since October 1993 for providing self-employment to educated unemployed youth. The Scheme envisages reservation for Scheduled Castes/Scheduled Tribes upto 22.5% of the total number of beneficiaries. As per information available, 13.26% of total loan sanctioned both by public and private sector banks under the Scheme had gone to beneficiaries of Scheduled Castes/Scheduled Tribes, which accounted for 15.63% of the total amount sanctioned during 2000-2001. This had come down from the level of 17.17% of the total loans sanctioned and 16.10% of the total amount in 1999-2000. As against this, the disbursed amount accounted for 12.58% of the total amount<sup>41</sup> in 2000-2001, which had also got reduced from the level disbursed in 1999-2000. It is not clear what has been the share of Scheduled Castes in this combined figure. But it is evident that the share which has gone to Scheduled Castes and Scheduled Tribes is far below the specified percentage envisaged for them in the Scheme.

### ***Employment Generation Programmes***

Besides the overarching development mechanism for SCs known as the Special Component Plan and the self-employment programmes financed by Development Corporations, both Central and State, Central Government has also been administering a number of specific programmes for generating employment both for wage labourers as well as self-employed. Since SCs constitute the largest segment of agricultural labourers, wage employment programmes have great relevance for them. Government of India in the Ministry of Rural Development have been operating two major programmes for providing wage employment in rural areas:

- (a) Jawahar Rozgar Yojana, since 1.4.1989
- (b) Employment Assurance Scheme, since 1993

Both these programmes are targeted at landless agricultural labourers primarily. 22.5% of fund for JRY has been earmarked to be spent on SC and ST beneficiaries. However, as per concurrent evaluation of the programme (1993-94), only 11 days of wage employment per person was generated under JRY scheme<sup>42</sup> during the reference period of 30 days preceding the date of the survey. In some States, it was less than 10 days per month. What percentage of SC beneficiaries have shared this employment opportunity is not known. Even otherwise, the scheme is plagued by several malpractices as brought out in Evaluation Reports, which may have actually resulted in lesser days of employment having been generated and even lesser benefit in terms of wages having gone to SCs, since the percentage of non-poor beneficiaries was quite high in many States and the programme suffered from conflict whether to promote employment generation or asset creation<sup>43</sup>. The Scheme has been restructured as Jawahar Gram Samaridhi Yojana from

<sup>41</sup>Sixth Report, op. cit., p. 38

<sup>42</sup>Sixth Report, op. cit., p. 22, also Sharma, AN & Mamgain, R.P. "Employment Generation and Question of Employment Security in Dev", SM, op. cit., p. 277

<sup>43</sup>Sharma and Mamgain, op. cit., p. 277



1.4.1999 with the main objective of creating demand driven rural infrastructure and generation of employment has now become the secondary objective. Therefore, its impact on providing wage employment to poor in general and SCs in particular would reduce further.

In addition, Employment Assurance Scheme has also been in operation since 1993 to create wage employment in backward blocks during the period of acute shortage of employment for rural poor. As per CAG's Third Report of the year 1995, it provided 18 days and 16 days of employment during 1994-95 and 1995-96 respectively though the number of days of employment was higher in evaluation of the programme carried out by PEO of the Planning Commission. There is no disaggregated data on how many days of employment accrued to SCs. But the Scheme suffered from bogus reporting. It was also not restricted to backward areas characterized by chronic poverty and hunger during lean season<sup>44</sup>. In any case, as the Sixth Report of National Commission for SCs and STs has pointed out, the Scheme was not able to provide assured employment on a regular basis as envisaged. Ever since the Scheme was universalized, it could not be continued as a demand driven scheme due to shortage of funds and huge demand. It would thus be evident that these programmes do not make any appreciable contribution in terms of provision of employment to SC landless agricultural labourers<sup>45</sup>.

Besides wage employment, Central Govt. has also been operating a major programme for promotion of self employment known as IRDP for many years. There were three other sub-programmes which also catered to specific components of self-employment, such as DWCRA, TRYSEM and SITRA. While IRDP provided part subsidy and part loan for setting up self-employment ventures, DWCRA assisted women groups for taking up income generating activities. TRYSEM programme had the objective of providing training and skill development for promoting self-employment and SITRA was confined to providing tools and equipment to artisans for improving their productivity and income. Under IRDP 50% of the funds had been earmarked for SC and ST beneficiaries. Subsequently, in the remaining three programmes, DWCRA, TRYSEM and SITRA also this earmarking was enforced. While a substantial number of beneficiaries belonging to SCs have been covered under these programmes, in view of the enforcement of earmarked percentages, the Schemes suffered from number of inadequacies which have been highlighted in the various evaluation reports in respect of these programmes, both official and non-official. The most important of these was that a poor beneficiary without skill and experience stood no chance to improve his income. Also, indebtedness among beneficiaries increased which point to the non-viability of projects. Lack of integration with other development programmes and inability to forge backward and forward linkages characterised these projects. Sustainability of projects became a casualty in the rush to achieve targets<sup>46</sup>. These limitations severely eroded its potential to raise the economic status of SC youth (from 1.4.1999 all these programmes have been clubbed together and amalgamated with

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<sup>44</sup>Sharma & Mamgain, op. cit., pp 277-278

<sup>45</sup>Sixth Report, op. cit., p. 23

<sup>46</sup>Sharma & Mamgain, op. cit., pp 277-278



Swarna Jayanti Gram Swarna Rozgar Yojna)<sup>47</sup>. Reference has already been made to another self employment scheme called “**Prime Minister’s Rozgar Yojna (PMRY)**” and the schemes of financing self-employment activities by NSFDC, SC Development Corporations and the National Safai Karamcharis Finance and Development Corporation. Women Development Corporations of State Governments and Manila Kosh also finance income generating activities of women but the share of SC women in them is not readily available.

The common thread which comes out of these self employment programmes, whether operated directly by the Government or through Corporate agencies/ autonomous societies, is the difficulty in accessing bank credit by SC and ST beneficiaries. This problem has become even more acute ever since public sector banks have adopted various ways to restrict flow of credit to this sector after the economic reforms have been ushered in. The potential therefore for generating self-employment in view of this problem is greatly constrained. The difficulties also arise in starting worthwhile self-employment ventures in view of the poor skill base, lack of entrepreneurship in SCs, including the educated unemployed among them and poor projectisation leading to lack of sufficient number of viable projects for unskilled beneficiaries among them. The changing nature of economy with its global integration also restricts the potential for running small business enterprises.

In view of the above, unemployment continues to remain the area of major concern for the Scheduled Castes. The number of SC’s unemployed has reached 52 lakhs in the live registers of Employment Exchanges with increasing proportion of SCs educated upto secondary or higher level among unemployed persons<sup>48</sup>.

As regards cultivators, the second largest occupational category among SCs, reference has already been made to the poor implementation of land reforms in providing access to land to SCs for cultivation. The prospects of allotment of land in future are virtually negligible since land reforms implementation has disappeared from the political agenda of the Government and most major political parties. With a larger dose of foreign funding for development activities, increasing entry of multinationals in the globalized economy and determinants of economic policy being decided by the market forces, the traditional policy of land reforms is virtually being given up (without, of course, saying so). Relaxations are being made in provisions of Ceiling Laws, Tenancy Laws and in the matter of assignment of Government and Forest land to facilitate access of Corporate agencies for commercial use and management of land. In this background, there is little hope left for SCs to expect any major effort by Government for allocation of land to them. As for the small number of Scheduled Castes already owning land, they have been targeted for assistance under various programmes for a long time. These programmes range from assistance in terms of inputs such as seed and fertilizer, extension of technology for crop management under agricultural development programmes, creation of irrigation facilities under rural development programmes, land and water management

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<sup>47</sup>Sixth Report op. cit., p. 28

<sup>48</sup>Sixth Report, op. cit., p. 26

under watershed management programmes of different Government agencies, Central as well as State. The need for capital formation to a limited extent is being catered to under self-employment programmes, referred to above, under which SC youth, educated and uneducated, cultivators, artisans, those in other occupations including household industry and unskilled labourers are being provided financial assistance within their eligibility parameters. For cultivators particularly assistance is available under these programmes for digging wells, tanks, water channels, land development, input assistance, purchase of pump sets, etc. along with a component of training. It is difficult to provide ready figures of total number of cultivators covered under these programmes since separate data for SC beneficiaries by the programmes is not readily available. However, one thing is certain that the assistance given to SC beneficiaries has been far short of their need and has not taken into account multiple requirements for improving the production and productivity of their land. Usually programmes have catered to segmented requirements confined to a single or few inputs rather than an integrated package covering the whole gamut which would make the project viable. Therefore, the impact of these programmes on improving the economic conditions of SC cultivators assisted under them has been limited. Even so, there are still a large number of SC beneficiaries who have not received any assistance. In a number of cases, the actual assistance received is much less than what has been shown on record due to various corrupt practices (it has been vividly brought out in the public hearing at Lucknow)<sup>49</sup> thereby severely restricting the potential for improvement in income generation. These cultivators still constitute a potential category. If adequate assistance is provided to them as an integrated package, the resultant impact in terms of income generation is likely to change their life and enhance their bargaining position in society.

As SCs have been traditionally associated with some occupations, which most of them still practise in the absence of any better and viable alternative, there is need for adequate efforts to improve their condition through appropriate inputs for development of these traditional occupations. SCs in these traditional occupations are leather workers, weavers, fishermen, etc. The efforts for their development would require input of technology, access to credit and linkages with market, particularly in the context of changing economy. Though separate programmes are in operation to improve the condition of workers engaged in at least these three occupations, irrespective of their caste affiliation, there has been no focused attention on providing an integrated package for SC beneficiaries with back up of financial, technological and market linkages suited to their requirements. Besides, accessing these benefits may also be a problem. This is the reason why it has been observed that the share of household industry among SCs as a source of occupation has drastically declined in the last 30 years. In addition to the above three major occupations, SCs may be engaged in a large number of small localized occupations/activities both specific to some States and those which are practised across States which also need development attention to improve their income generating potential. It is, therefore, necessary to concentrate attention on different occupations

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<sup>49</sup>From the Dalits of UP to citizens of India - A Report of the public hearing held in Lucknow on October 5-6, 2001, brought out by Dynamic Action Group, U.P. and others (2002), pp 22-29

in which Scheduled Castes are engaged and prepare integrated package of assistance on a cluster basis to improve their economic conditions. This integrated package in respect of each such occupation practised by a large number of SCs should have components of skill upgradation, access to raw materials, adequate working capital, modernized tools and equipment and developing strong linkages with the market<sup>50</sup>. In respect of occupations absorbing a smaller number of SCs and also localized economic activities in which they are engaged project profile specific to occupation outlining the inputs and assistance required to increase viability would have to be prepared.

### ***Programmes of SC Welfare***

Other than providing self-employment activities, Central Government also caters to specifically focused educational promotion programmes for SC as its welfare component. These programmes are of a supportive nature and only touch upon specific target groups among SCs and do not cover general educational programmes which falls in the domain of concerned sectoral Ministry.

While the Ministry of Human Resource Development - the sector Ministry for spread of education is engaged in tackling the problem of low literacy levels through its programmes covering the whole country and this includes SCs, as they constitute a literacy deficient group. Ministry of Social Justice and Empowerment confines itself to special schemes which promote spread of education among Scheduled Castes largely through financial and supportive infrastructural assistance. The schemes of Ministry of Social Justice and Empowerment include provision of post-matric scholarship (pre-matric scholarships for children of those engaged in unclean occupations). Special schemes for low female literacy- pockets, book banks, girls & boys hostels, stipends for pursuing professional courses, overseas scholarships and coaching schemes for those competing for jobs, etc. Without going into individual schemes, it would suffice to say that these schemes are constrained in delivering requisite benefits to Scheduled Castes due to several factors. Important among them are:

- Not catering to state specific deficiencies due to their rigid structure and guidelines.
- Except for post-matric scholarship, overall allocations in other schemes are very small.
- Skewed distribution of funds across States.
- Non-provision of matching share by States constrains utilization of even limited central assistance by several States.
- Slow progress in some of them, such as hostel construction reducing demand placed for assistance.
- Indifferent implementation; lack of supervision and monitoring

National Commission for Schedules Castes and Scheduled Tribes has also found an urban bias in the planning and implementation of education programmes of weaker

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<sup>50</sup>Sixth Report, op. cit., pp 25-26

sections<sup>51</sup>. The uneven distribution of educational facilities for SCs in different States is responsible for pushing out large number of SC children of poorer families as labour from precisely those States and regions within them which are deficient in availability of such facilities. A comprehensive strategy would therefore have to be worked out for providing special school facilities suited to the requirements of children from poor SC families in order to check the flow of child labour from 'endemic areas'. This would also contribute to the implementation of Supreme Court directives on elimination of child labour. Ministry of Labour and National Human Rights Commission would have to shoulder major responsibility, both in administrative and financial terms, to undertake this effort. Going by the huge number of child labour in the country estimated by official agencies and even more alarming level estimated by unofficial agencies<sup>52</sup>, a strong thrust in this direction alone would help reduce atrocities on SCs.

### ***Impact of Economic Reforms on Scheduled Castes***

There are several facets of New Economic Policy which has impacted adversely on Scheduled Castes. One area of economic reforms is reduction in fiscal deficit by curtailing the budgetary support provided for subsidies on food grains and fertilizers, etc. This would of course affect scheduled caste cultivators as well as other farmers particularly those of small and marginal categories. But considering their already low economic status and negligible capacity for capital formation, it would impact them far more. They are also the chief beneficiaries of subsidized food grains through PDS. Though persons below poverty line have so far been protected from the impact of withdrawal of subsidy, SC's access to PDS is constrained by other factors such as lack of purchasing power, non-availability of ration card, inability of State agencies to lift food grains, etc.

At present, reservation policy for scheduled castes is applicable only to posts in the public sector undertakings besides those in Government. As part of economic reforms pursued by Government of India and State Governments steps are being taken for privatization of public sector enterprises through outright transfer, disinvestments of share and offloading of some jobs to contract agencies. Both Central and State Governments have also been downsizing their own establishments to reduce non-plan expenditure. In any case, the growth rate of employment in public sector has decreased from 12.7% in 1983 to 0.6% in 1997. These efforts would therefore have very significant impact on employment opportunities for Scheduled Castes and Scheduled Tribes. In fact, new economic policy would virtually wipe out the Government's Reservation policy from Commercial Undertakings because once the public sector enterprises are disinvested, the private sector owners would not be inclined to implement these provisions. Scheduled Castes would also be affected very adversely in private sector employment because of their poor education and skill base and their inability to stand in competition with other segments of population not to speak of encountering caste bias. There are also other changes taking place in the economy as a result of globalisation which adversely affect SCs. These include closure of industries, retrenchment of workers, displacement of

<sup>51</sup>Sixth Report, op. cit., p. 155

<sup>52</sup>Sixth Report, op. cit., p. 39

persons from their traditional occupations, loss/reduction in income as a result of competition from imported goods and even transfer of land from poorer farmers to better off farmers or Corporations. There is no reliable data on the extent of impact from these trends yet. Further, economic reforms would also affect access to subsidised services like health, which would also have impact on Scheduled Castes and Scheduled Tribes more than any other social category in view of their inability to access private health care due to income constraints. The declining of subsidies and privatization of some services in areas like drinking water, electricity and even education would also hit them hard. It is not surprising, therefore, that incidence of child labour is increasing among them.

### **CONSTRAINTS IN DEVELOPMENT OF SCs**

In the course of discussion on development of Scheduled Castes, a number of problem areas have emerged which constrain the pace of development and reach of programmes to them. These constraints, in brief, are as follows :

#### **1. Inadequate Investment of Public Resources**

This is reflected in

- a) substantial funds not being committed for development of Scheduled Castes as per the norms which Government itself had agreed to.
- b) Shrinking budgetary support to even existing and continuing schemes because of new economic policy and withdrawal of government from certain sectors.
- c) Financial stringency and other competitive commitments leading to inability of many States to meet their share in centrally sponsored schemes, thereby affecting drawl of their entitlement from Central Government.
- d) The resource crunch faced by most State Governments is affecting even maintenance of the existing institutions and programmes thereby affecting their quality and capacity to benefit SCs.

#### **2. Non-Utilization, Wrong Utilization and Diversion of Earmarked, Allocated or Committed Funds for Development of Scheduled Castes**

The Sixth Report of the National Commission for Scheduled Castes and Scheduled Tribes has cited some instances in this regard briefly referred to in this section. But there would be many more instances if SCP in programmes of each sector is intensively looked into.

#### **3. Deficiency in Planning**

The existing framework of development planning for Scheduled Castes is deficient. The major problem is that there is no attempt at planning for Scheduled Caste development as such. What is happening is that a percentage of funds is earmarked for SCs in programmes and schemes in different sectors which cover the general population. Thus the perspective of development in respect of the rest of the population is superimposed on SCs without taking into account specificity of their problems. This has resulted in the following inadequacies:

- a) Many priority needs of Scheduled Castes, not covered in existing programmes or schemes remain untouched.
- b) The traditional occupations of scheduled castes, which do not have large participation of workers and have workers from other communities also, do not get targeted for intervention.
- c) No effort is made to identify extremely vulnerable sections within SCs and specifically cater to their requirements.
- d) The constraints in access to certain social sector programmes particularly in health are not removed through developmental intervention.
- e) The scheduled caste women do not emerge as major focus in development strategy for the community and women headed households among them get no attention.
- f) There are no programmes for skill development of migrant labour to increase their employability.
- g) Child labour among SCs and particularly the girl child worker engaged in home based industry have not been given the attention they deserve.
- h) No programmes have been thought of which take up innovative schooling for such SC child workers.
- i) The existing central development programmes for employment creation particularly have failed to take note of disabilities of SC beneficiaries.

Such instances can be multiplied only to show the inappropriateness of planning mechanism and process as far as SCs are concerned. The nodal Ministry for Scheduled Castes also makes no attempt to conceptualise and articulate a separate paradigm of development for SCs. Its major contribution is to take up a few centrally sponsored schemes and to endorse the extension of general run of other programmes for SCs.

#### **4. Poor Project Preparation**

Self-employment programmes have suffered from very poor project preparation. Their failure has contributed to demoralization of beneficiaries and their indebtedness. The objective of effecting improvement in their economic condition has not been achieved. This is equally true of training programmes which have suffered from lack of relevance and quality.

#### **5. Absence of Monitoring**

The problem of lack of monitoring in development programmes as a whole is endemic and the failure of many programmes to reach the target groups is usually attributed to this deficiency. But there is no area where lack of monitoring is so conspicuous by its almost total absence as in the case of SC development. This is precisely the explanation why instances of non-utilization, wrong utilization, diversion of funds, non-delivery of benefits and even cornering of benefits by non-eligible persons keep on occurring all over the country. The existing structures for monitoring of development programmes at the State and District levels and below hardly devote any attention to monitoring programmes for SCs.



## **6. Unresponsive Delivery System**

The attitudinal problems of the personnel involved in implementation of programmes for SCs is an acute constraint in reaching benefits to them. The major problem lies in the fact that the implementing bureaucracy largely comes from upper caste background and has no empathy for the Scheduled Castes. It is worse, where it has caste bias and resentment against them. In general, it is unresponsive to their needs and situation. This is compounded by various corrupt practices. There also exists the problem of distance between the beneficiaries and the delivery agents due to which a large number of intermediaries emerge on the scene and try to bridge this distance. This obviously is done at the cost of scheduled castes.

## **7. Resistant Civil Society**

Civil society in general, particularly in rural areas, has been extremely hostile to earmarking of programmes and funds for Scheduled Castes. This hostility is given vent to openly. In the implementation of programmes, this hostility is reflected in manipulation to ensure that even the earmarked benefits do not reach Scheduled Castes. This happens when a drinking water facility meant for SC bustee is diverted to upper caste segment. The school is located in a manner that children of Scheduled Castes have to pass through upper caste bustees and therefore feel intimidated in accessing it due to taunting remarks. In the matter of distribution of irrigation water, scheduled castes who have their land at the tail end get a raw deal. Several restrictions are imposed on the use of common property resources by caste Hindus of the village. It is widely known that a number of upper caste people have falsely obtained Certificate of belonging to Scheduled Caste through a corrupt bureaucracy in order to corner jobs meant for SCs. Such instances can be multiplied. This manipulation gets accentuated when the implementing bureaucracy also shares their social background and bias because in that case the Scheduled Castes have no one to seek relief from.

## **8. Absence of Participation**

There is virtually no involvement of scheduled castes themselves in formulation of programmes or in their implementation, other than what their political representatives contribute to their role as legislators. The only structural consultation with representatives of Scheduled Caste is done at the time when a new Five Year Plan is to be prepared and some scheduled caste intellectuals/ leaders are associated in the working group for this purpose. SCs representatives are no doubt associated in some committees but they are marginal to the decision making process. By and large, however, the entire planning is done by others for them. Even the prioritization of schemes and programmes are decided by others, mostly non-SCs. There are also no institutional arrangements which give SCs a say in the management of welfare institutions entirely catering to their interests. The resultant mismanagement is rampant. But their minority position as also their subdued status prevents them from openly placing their grievances. Participatory structures have not been created where SCs themselves can freely deliberate on development issues concerning them. This is true at all levels. Madhya Pradesh has recently taken a major initiative to prepare a macro-level strategy for development of SCs and STs through its Bhopal declaration.

## 9. Lack of Awareness

Scheduled castes themselves are very weak and powerless by virtue of low status and position they occupy in society. This affects their capacity to articulate and assert. As a group also they are unable to exert any pressure on apparatus which deals with policies and programmes. But they also suffer from the handicap of lack of knowledge and awareness about programme themselves which affects the quality of their participation. This lack of knowledge is not merely confined to an ordinary SC villager, but also extends to SCs who are members of Panchayat or even educated youth. There are no major programmes which create this kind of awareness on a regular and continuing basis.

Given these constraints, a lot of ground would have to be covered to accelerate the pace of development for them and to improve its contents and delivery. This should include:

- a) To improve the flow of resources for SC development, a review of the entire strategy of Special Component Plan, its effectiveness and the outcome of efforts by tripartite committees in this regard,
- b) Earmarking of funds for Central schemes in the Annual Plan of the States to ensure State's share in those schemes. Enhancement of central share in the schemes to overcome financial difficulty of the States.
- c) Devising of stringent measures to ensure that earmarked funds for SCs are utilized and not diverted to any other purpose.
- d) Evolving a new paradigm of development for SCs on the pattern of Bhopal document by associating Dalit intellectuals, community leaders and all those intimately associated with them. 10<sup>th</sup> Plan document should reflect this paradigm.
- e) Norms for detailed monitoring may be developed to measure the impact of various programmes and structures of monitoring may be created at various levels to operationalise it.
- f) Capacity building, effective decentralization of powers to local bodies and orientation training of implementing agencies for enforcing greater accountability of Government personnel.
- g) Training of SC members of Panchayat for effectively discharging their role of Planning, Monitoring and Advocacy.
- h) Alternative mechanisms for obtaining quick feedback through NGOs and other non-official agencies, fixing responsibility for non/wrong delivery of programmes, encouraging village SC community to assert would prevent civil society from deflecting the programmes.
- i) Training social workers among the Scheduled Castes who could become focal points for village level mobilization and run information kiosks in the village for massive awareness creation for protection and development both.
- j) Creating institutional arrangements for involvement of SCs in the management of institutions which cater to their welfare.

- k) Creative way of involvement of SCs in conception, structuring and implementation of programmes meant for them.

### **Development and Atrocities**

While crafting the multi-pronged strategy of the upliftment of Scheduled Castes, it would be assumed by policy makers that development measures would exercise a profound influence in eliminating disability/discrimination and other conditions of Scheduled Castes which are responsible for caste violence against them. While this may actually have happened in many situations, there are no studies on whether departmental activities to benefit Scheduled Castes have led to a reduction in the cases of atrocities against them. This can only be measured/evaluated with reference to specific areas and groups through longitudinal studies. There is need therefore to get adequate feedback on the impact of development measures on untouchability related practices as well as the level of physical violence inflicted on scheduled castes particularly from atrocities prone areas identified on the basis of incidence of crime on Scheduled Castes. These researches could be carried out by ICSSR institutions as a part of their ongoing research activities and specifically through Ambedkar chairs set up by Ministry of Social Justice and Empowerment in some prestigious Universities/Research Centres to provide authentic feedback on such aspects. It is necessary in this context that the Ministry of Social Justice and Empowerment develops a mechanism of getting adequately researched feedback on impact of various development programmes on

- (a) Breaking of age-old discriminatory practices
- (b) Incidence of violence on SCs
- (c) Shifting balance in social and power relations
- (d) Self assertion by Scheduled Castes against acts of exploitation
- (e) Access to social services
- (f) Conditions of the most marginalized groups among Scheduled Castes
- (g) Pattern of upward mobility among SCs
- (h) Changing pattern of labour absorption and unemployment
- (i) Impact of migration on Status of SCs in their residential village.

This is only a suggestive list and may include many more subjects. The feedback gathered should be used as inputs for making changes in policies, programmes and schemes for SCs.

The preceding analysis of the development strategy for SCs and outcome of efforts for narrowing the gap between them and the rest of the society do not sustain the hope that level of atrocities against SCs is likely to get reduced through existing level of development efforts. Given this situation: Can something be done to sustain hope of the community in the capability of State to deliver on its promises? This question is addressed in the concluding section.

## **SECTION - IX**

### **SCRIPTED ROLES: THE STAKE HOLDERS: STATE CIVIL SOCIETY AND THE SCHEDULED CASTES**

The theatre of atrocities on Scheduled Castes involves three actors, i.e. State, Civil Society and the SCs whose performance contributes to the present situation which has been highlighted in this paper. This performance has enabled us to have a peep into their inter-relationship to see why the scripted role does not materialize. But the perception of role and its articulation are also changing which would have an impact on their relationship and consequently on their performance. Analysis of this dynamics may suggest the direction in which the situation is moving and how the script is to be rewritten.

This section therefore would be focusing on the respective roles of State, Civil Society and the victim community in respect of atrocities. The three, however, are not equal partners at all. The State was always envisaged to discharge the key role—operationalizing the constitutional scheme. The civil society was expected to perform a supportive role, i.e. to co-operate in this endeavour. SCs had to avail of the opportunity and determinedly struggle to catch up with the rest of society. The following narration would explore whether each of them have lived upto this role. First to be taken up in this context would be the State.

#### **A. THE STATE**

The task of the State was to deliver what is already provided for in the Constitution, laws and programmes. It had huge resources—financial, manpower and institutional—for this purpose. It also did not face any overt political opposition from rival political parties to this programme. But still the State has failed in this respect as the preceding write-up has indicated in several places. This failure has occurred on several fronts. These are:

- (a) Failure to effectively implement laws relating to atrocities against Scheduled Castes and Scheduled Tribes. This failure is reflected both in respect of preventing violence from taking place against SCs through various pre-emptive measures as well as in the inability to punish perpetrators of violence after the crime is committed. The failure on both these counts can be attributed to the attitude and behaviour pattern of its agents which has been described as apathy at best and connivance at worst. Very low rate of conviction, deliberate lapses in investigation

and trend of judicial pronouncements resulting in a large number of acquittals all erode the impact of law and negate the deterrence aspect of it. The recent Supreme Court judgement barring cases under the Atrocities Act being tried by Special Courts without being committed first by the Magistrate, as in other cases triable by Sessions Court, has struck a death blow to the enforcement of the Act. State has failed to respond to these developments to effectively demonstrate its will to check atrocities. Necessary evidence has been provided in this paper to sustain this conclusion.

- (b) While the failure in respect of (a) above is in the context of violence committed by caste Hindus against the Scheduled Castes, there is even greater **failure to act against its own agencies involved in the commission of violence**. These agencies are largely police and security forces and, in some cases, even civil organizations. This failure is more serious as it attracts the charge of direct complicity in the commission of offences. Here the State is not an outsider or arbiter which is the case when the violence is unleashed by caste Hindus and suffered by the Scheduled castes. Here the State itself is an actor and the difficulty arises because there is no objective/independent arbiter in the case of such violence whom the Scheduled Castes can approach when aggrieved. Of course there are statutory bodies like the various National Commissions, whose jurisdiction can be invoked. But as we have seen, these Commissions are ineffective in rendering justice to citizens where State personnel are involved in violence. Encounter killings and custodial violence are classic examples in this context where National Human Rights Commission's efforts to stem them have had little success. There are systemic problems which the National Human Rights Commission has sought to correct but with little success. Judiciary can also be approached if there are complaints against the executive, but this option is unreal for several reasons - lack of resources, dilatory judicial process, fear of reprisals are among the greatest constraints.
- (c) There is thus a **failure of State to strengthen the watchdog institutions** also. This failure is reflected in three aspects:
- (i) Unwillingness of the State to confer sufficient powers on these Watchdog bodies, to make them effective instruments of delivery of justice. **Section-V** has elaborately discussed lack of positive response from State to National Human Rights Commission's efforts focusing on systemic reforms in police and jail administration, increasing accountability of police forces and armed security agencies, improvements in criminal justice administration and in general enforcement of orders/directives.
  - (ii) Resisting administrative and financial autonomy and adequate capacity building in these organizations. References have been made to National Human Rights Commission, National Commission for Safai Karamcharis and National Commission for SCs and STs in this regard in **Section-V**.
  - (iii) Not honouring the recommendations. The loud complaint of National Commission for SCs and STs in this regard and less subdued one of National

Commission for Women and National Commission for Safai Karamcharis Commission have been referred to. The status of National Human Rights Commission recommendations has already been discussed in detail. The lack of positive response to the recommendations is not confined to punitive action against officials. Even social and economic interventions made by Commissions have faced a negative outcome generally. No mechanism has been created to sort out the differences between the Commissions and the concerned Government agencies for establishing harmonious relations and sustaining faith of target groups.

- (d) The **failure** of the State is reflected not merely in its inability to effectively implement laws dealing with violence against Scheduled Castes, but also to **implement a large number of labour and social welfare laws**. Social Welfare laws would have helped SCs disengage themselves from degrading and humiliating social practices which have the effect of long lasting, inflicting violence on them through institutionalized indignities. Labour laws would have given them control over their labour power and remuneration earned, while Land Reforms laws would have given them access to productive assets and economic independence. As **Section-V** has shown, these laws are implemented with even less commitment than the manner of implementation of criminal laws because of pressures of powerful interests and negligible interest shown by the elected representatives, the media and the civil society.
- (e) **Failure to implement programme which would facilitate assertion by Scheduled Castes against violence**. It was hoped that through various development programmes, such as land reforms, poverty alleviation, Special Component Plan, SCs would acquire necessary strength and confidence to demand their rights, assert their position and organize themselves to use available laws and institutions for their benefit. The **failure of the State to implement these programmes sincerely and vigorously** shows that Scheduled Castes lose out on this front as well. **Section-VIII** has elaborated on this aspect.
- (f) **Failure to mobilize SCs politically**. Above failures, it may be argued, lie in the domain of bureaucracy which the political executive is unable to control or fashion in terms of its political goals. But as we have seen, the lack of political commitment in favour of SCs is equally evident. The failure of the State is also manifest in **lack of vision and efforts to mobilize Scheduled Castes into a vibrant political community** so that they can throw up their own leadership, participate in political processes and institutions to negotiate for more equitable terms of accommodation. This failure has prevented SCs from exerting necessary political pressure on issues of interest to them both within the political institutions as well as in the larger civil society. Scheduled Castes have largely been treated by the State formations as a client group to be associated with its activities as a symbolic gesture rather than a community to be treated on equal terms, accommodated and engaged in participative political processes. Political parties and institutions have largely treated Scheduled Castes as marginal to their



activities. Despite their number, SCs nowhere occupy a place in the top leadership or decision making positions. Even when concessions are made as a matter of constitutional necessity or political compulsions, it is so done as a symbolic act rather than as a genuine desire to equalize opportunity for them. As a matter of fact, mainstream political parties have failed to provide avenues for assertion by Scheduled Castes within their hierarchy. When SCs have taken to alternative forms of mobilization, such as joining the radical left movements, the State has been particularly hostile and even repressive. Rather than reflecting on its failure which has led to alienation of these groups from mainstream political activities and making corrective interventions for meeting their aspirations, the response of the State in suppressing these movements has the ultimate effect of consolidating and strengthening the existing social relations and instruments of power. State, therefore, has failed not only to adequately mobilize Scheduled Castes themselves in mainstream politics but even to accept their mobilization in alternative political streams. It is, therefore, a reflection on the State's unwillingness to come to terms with the very concept of political equality for the Scheduled Castes.

- (g) The failure of the State is even worse in mobilization of the caste Hindus in favour of social democracy embedded in the Constitution and various laws and State policies. This had created ambivalence in its intentions and contradiction in its actions. While the State lays down political order which define rights of various persons and the manner in which the rights would be exercised, the civil society (i.e. caste Hindu groups) tries to undermine this authority of the State and continue to assert their traditionally privileged position which subjugates and demeans the Scheduled Castes<sup>2</sup>. The State has been unable to act tough against caste Hindus at the political level through its instruments of laws and policies but, worse, it has made no credible attempt to even mobilize them at a social level, i.e. by creating a leadership among them which is committed to the practice of '**social democracy**' as a sine qua non of political democracy<sup>3</sup>. In the circumstances, the civil society and the State are in a state of perpetual conflict in this regard. In fact, the civil society emerges as strategically more powerful in this struggle because it has been able to thwart the State in effectuation of its policies. The State has not been able to assert with determination and decisiveness against this disposition and the explanation for this probably lies in the character of the Indian State itself.

It would thus be evident that the picture of State, in relation to the entire concept and practice of social engineering attempted in the context of SCs, mirrors a wide gap between rhetoric and reality. Its statements, policy articulations and pronouncements are so distant from the actual ground level reality in relation to them and this gap does not seem to be narrowing appreciably. As noted with anguish by the National Human Rights Commission, even after 50 years of establishment of a new political order, the caste based discrimination is still alive<sup>4</sup>

<sup>2</sup>The Bhopal Document, op. cit., pp 29-30

<sup>3</sup>The Bhopal Document, op. cit., p. 31

<sup>4</sup>Annual Report 1999-2000, pp 10-16

(and, in some senses, getting reinforced) not only in the mindset of the people but also in their behaviour and action, both at a personal level as individuals as well as in their behaviour as State agents. The people who man the State in its various agencies and take decisions on its behalf are still largely the people who come from privileged classes of Hindu social order and their grounding in the ideology of caste system is very strong. Since they are the people entrusted with the task of translating the vision of equality and social justice through programmes and laws of the State into reality, the caste nexus and its ideological underpinnings are reflected in their thought and action, a little overtly in case of some and in a subtle manner in case of others. The State with its incapacity to act firmly and decisively in giving effect to its policies comes out as a prisoner of the very hierarchy of social structure which it seeks to dismantle.

- (h) The State is also very **weak and vulnerable to** pressures. Even where its agents do not act with an overt caste bias or motive, they are vulnerable to pressures from powerful lobbies and interests which have grounding in caste and therefore are unable to act independently and decisively. They are weak and vulnerable because the people who exert pressure on them are more powerful and can be instrumental in penalizing those who stand up to them. On the other hand, Scheduled Castes themselves are so weak that they have neither the capacity and skills to form strong lobbies to pressure the State in their favour nor have the clout to get caste Hindus penalized if they act against their interests. The fact that the laws and programmes are in their favour hardly matters.

The entire discourse on violence against Scheduled Castes typically boils down to the **inability** of the State **to provide direction to and exercise control over its own machinery**. The culpability of the State machinery in colluding with the caste Hindus in perpetration of violence and, sometimes, in committing violence itself has been brought out effectively in innumerable documents but the State lacks courage and strength, if not willingness, to act against those found guilty. The obvious conclusion one is forced to draw is that this is because the persons to be dealt with come from the same social background (caste hierarchy) as those who have to exercise control over them. But the same State does not demonstrate lack of will in acting tough against the Scheduled Castes or other poorer/weaker sections. When the caste Hindu landlords are threatened by alternative political mobilization of oppressed classes/castes, the State not only supports its law and order bureaucracy but nudges it to crush such mobilization through use of excessive force and even by suppressing democratic rights. In fact, it provides political sanction to the subversion of rule of law through such measures as encounter killings. In a democratic State bureaucratic formations function squarely under political authority so much so that bureaucracy entirely looks up to political masters to discharge even its legal and constitutional responsibility which has grown stronger over the years. The inability therefore to fashion bureaucracy against caste and class biased actions and to restrain them from acting beyond the authority conferred by law can only be interpreted as indifference and apathy of the political leadership towards the problems of Scheduled Castes. The same leadership can be real tough against bureaucracy when it acts against what are perceived to be 'their' interests. Injustices to SCs does not apparently figure any where in those interests.

## B. CIVIL SOCIETY

State comes out in rather unflattering terms in this entire discourse. How does the civil society fare? What have been its responses and expressions? What role has it played in this historical social struggle? From the material placed in this paper, the following formulations emerge as the dominant expressions of civil society.

- (1) Civil society is a distinct **beneficiary of caste based social order**. It has perpetuated the existing unequal social reactions and has frustrated attempts to democratize the society because through the customary arrangements the dominant castes are assured of
  - (a) Access to cheap and continued supply of labour.
  - (b) Social control over people who can continue to abide by their commands without any protests.
  - (c) Privileged position with regard to development resources. They can manipulate levers of the State not only to corner benefits to themselves quite disproportionate to their strength but even to deny to the Scheduled Castes what is due to them and at times even to appropriate benefits meant for them.
  - (d) Continued monopoly of power and leadership positions in political organizations and institutions which enables them to enjoy all the advantages which power confers on its holder and to deny equalization to groups which threaten their monopoly.
- (2) **Civil society also represents deep contradictions in social values**. People in civil society wish to enjoy all rights and privileges which a democratic liberal society has given them and with their education and awareness are very assertive about them and effectively resist any attempt to abridge or curtail them. The hypocrisy, however, lies in their denial of the same very rights and privileges to Scheduled Castes through perpetuation of traditional inequality. Thus their commitment to democracy, liberal values, humanism, is selective, i.e. for themselves. They are not interested in ushering in a liberal society and humane social order as such. In their short-sightedness, they do not realize that liberalization and democracy, like many other good things of life, cannot last long if enjoyed by a few and that the only condition for long-term sustainability of these rights and values would lie in allowing others also to enjoy them in equal measure.
- (3) **Civil society effectively undermines the authority of the State**. As mentioned earlier, the State through its constitution, various laws and regulatory arrangements and development programmes has established a political order which lays down the rights and entitlements of all citizens and also the institutional arrangements for their enjoyment. The civil society has undermined the authority of the State by obstructing the effectuation of this political order. By their attempts to perpetuate caste based inequalities, indignities and violence against Scheduled Castes, the dominant castes have made the State authority ineffective and its scheme of social

engineering fragile and in this process the entire structure of political order has become virtually incapacitated to deliver. This process of undermining the authority of the State is accomplished by the civil society through collusion with agents of the State who share their social background, ideology and values.

- (4) **The civil society also stoutly blocks alternative routes to social democracy.** The civil society has not only stood in the way of operationalising the values of the polity and policies and programmes introduced to give effect to them, it has also blocked alternative methods used by Scheduled Castes and other oppressed segments of society to gain social equality, power and access to development benefits which can assure them a dignified existence and enable them to relate with dominant social groups at a more respectable level. Civil society in collaboration with the State strikes against the Scheduled Castes heavily when they resort to alternative political mobilization through radical left movements to assert their rights. Civil society also manipulates political and social forces against SCs to defeat their intentions when they change their religion or disengage themselves from caste based occupations as a means to escape from their oppressive social existence. They have also restricted and, at times, frustrated attempts by non-State organizations like NGOs, social activists, charitable organizations to help Scheduled Castes gain some degree of social equality by carrying out adverse campaign against them and even unleashing violence on them in collusion with State agencies. In short, the dominant sections in civil society have left no doubt in expressing their disapproval of and hostility to attempts at providing support to Scheduled Castes for gaining social democracy.
- (5) **The civil society also reflects a deep-seated ambivalence between obscurantism and modernity.** The caste based Hindu society has demonstrated great deal of progressive and forward looking attitude in accepting science, development and modernization. By imbibing new ideas and technology and accessing opportunities resulting from them, it has strengthened and enhanced its own position and power. It has gained even much greater control over the State and economy than it had exercised earlier. But their liberal outlook in shaping their own lives is also accompanied by a retrograde and obscurantist side to it which is expressed in the form of untouchability practices, denial of equality to other communities, intolerance towards cultural expression of others and deep seated beliefs in outdated customs and religious traditions. This ambivalence between modernity and traditionalism has been neatly integrated in their personal and social lives because so far it has not threatened their monopoly of power and social status. Rather, the ambivalence has in fact helped them gain the best of both the worlds, modern and traditional and sustain their existing dominant position. But it also signifies that their faith in modernity itself is feeble and fragile because modernity cannot co-exist with denial of social equality to others nor it can seek to exercise control over bodies and lives of other people.

### C. SCHEDULED CASTES

No community, can remain immune to developments which have impact on their day-to-day life so vitally. Scheduled Castes also have been no mute spectators, despite their marginalized position, to the failure of State to deliver social justice and the Civil Society unyielding and resistant to their aspirations. It would be a misjudgement to think that Scheduled Castes have acquiesced in their weak existence and have shown no capacity to manoeuvre a better deal. A vibrant class of Dalit intellectuals/activists and a dynamic ideology of liberation is taking shape as they search for strategies and avenues of self-assertion. This could be seen in diverse responses to their situation over a period of time.

It has been observed in this paper that the existing level of political participation of Scheduled Castes has neither forged durable political coalitions to their advantage nor helped in orienting State action in their favour. The number of Scheduled Castes in power politics is not sufficiently large to influence the course of politics<sup>5</sup>. Also, members of Scheduled Castes in politics may be lacking in skills and organization to utilize their limited number for negotiating a more favourable position from the State. That is why there is increasing sense of frustration among the Scheduled Caste masses. This frustration is leading to a sense of alienation from the mainstream democratic political process in some regions. Leadership of major political parties has remained with the upper castes though in some places the balance is shifting in favour of the intermediate castes. It has rarely provided proper space for Scheduled Caste leaders to influence decisions in the party fora. SCs find that their path to upward mobility is blocked everywhere by machination of other communities. Even in rare cases where a Scheduled Caste leader has managed to get into the top slot in a State, such as the Chief Minister's post, he has never enjoyed the kind of autonomy which incumbents from other castes are able to snatch because he is usually catapulted into this position with the help of other castes and survives on their support. A Scheduled Caste Chief Minister therefore is extremely reluctant to take strong and decisive measures benefiting his community as it may displease the dominant communities supporting him and destabilize his own position. This dilemma also underlines the bitter truth that capture of political power also does not assure that radical change would take place in the lives of the Scheduled Castes vis-a-vis the rest of the society. That is why perhaps Scheduled Castes in some States were/are attracted to the radical left movements where perhaps they experience greater self-esteem and gain in confidence and strength to fight for their rights. The caste Hindu society, through its militias, brutally retaliated such initiatives of Scheduled Castes into politics and horrendous violence was unleashed on them through mass murders, rape and burning of houses<sup>6</sup>. This highlights the sad reality that the caste Hindu society was still very strong to protect its privileged position and would not countenance any threat, not even armed threat, to alter that position. In face of such violence too, the State failed them because effective action against perpetrators of atrocities did not follow. Rather the State machinery has come down heavily against

<sup>5</sup>The Bhopal Document, op. cit., p. 37; also Human Rights Watch. Broken People, op. cit., p. 3

<sup>6</sup>Human Rights Watch, Broken People, op. cit., pp 3-7; also pp. 53-70



radical left movements and, in particular, against Scheduled Caste sympathisers<sup>7</sup>. In the circumstances, the Scheduled Caste members of such movements became the prime targets of violence both of the State as well as the caste based militias. As internal organization of these political formations is not very transparent, it is not certain if these radical organizations also elevate SC members into leadership positions, even while using them for armed struggle. In any case, this route to change the balance of power and social relations extracts a heavy cost. It cannot therefore be said with certainty that it is perceived as the preferred route now by SCs. It may, however, be mentioned that the political mobilization on class lines of all poor irrespective of caste has had some positive outcomes too. By all indications, in areas under the political sway of these movements ('liberated' is their terminology) there have been some changes in social and economic relations though accompanied by increasing caste/class divide, mutual hostility and little social intercourse. More important, these movements have definitely led to the weakening of the State authority in areas where they are entrenched. Its police and civil bureaucracy cannot move into the area, which is the stronghold of these movements, freely. To this extent, members of bureaucracy are scared of and prevented from carrying on with their caste biases in official duty on traditional lines. State's writ virtually does not run in many such areas. Without accompanied by a posse of armed force, the officials cannot move in the area and the authority of the State cannot be enforced. But this political change has not translated into a positive stance of the State in favour of SCs and other weaker sections.

Scheduled Castes have also tried another route, i.e. through religious conversion<sup>8</sup>. Some have accepted Christianity while a large number of them changed over to Buddhism. A small number have also accepted Islam. But the experience has shown that the Scheduled Castes are unable to get rid of their status and hierarchy tied to Hinduism even in their new religion and the sense of equality has proved elusive. The caste based prejudices and inequalities have penetrated into hierarchy of other religions as well. Besides, even this peaceful form of disengagement from the caste Hindus socially is not relished by either the State or dominant Hindu castes. Extreme psychological pressure is exerted combined with intimidation and threat to dissuade them from resorting to this course. The State and caste Hindus want to freeze their status and identity as untouchables. Anti-conversion laws are a clear pointer in this direction. Conversion, therefore, also does not present an attractive option to seek peaceful disengagement from caste based social order.

Many Scheduled Castes, at an individual level, have resorted to concealing their caste identity particularly when they are living in areas where they are not known. This is reflected in their attempt not to mention their caste/ surname in social discourse or while seeking entitlements. Some have even adopted sanskritised surnames as a subterfuge. They find that assertion of caste identity becomes a liability even when they are competing on equal terms for various positions as has been so eloquently brought

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<sup>7</sup>Human Rights Watch, Broken People, op. cit., pp 73-80

<sup>8</sup>The Bhopal Document, op. cit., pp 37-38



out in the Bhopal Document<sup>9</sup>. At a more organized level, the Scheduled Castes have sought to migrate, both individually and in groups, to other areas primarily in search of work but to a great extent also in search of a more amiable social environment. In case of some, the migration is for a shorter period so that they can earn a livelihood to sustain the family and, if possible, to plough back their earnings to strengthen their economic position at home. There are also groups who try to migrate permanently, largely from rural to urban area both within the same State as well as to distant places to seek a more liberated social ambience where pronounced caste discrimination and disabilities do not stifle their daily lives.

A number of NGOs committed to the cause of Scheduled Castes are also working in some areas to change their lives and to help them disengage from caste based occupations and exploitative social relations<sup>10</sup>. The number of such NGOs which have competence, commitment and integrity are very few and are also unevenly distributed. Their impact even in the best of circumstances, therefore, can only be limited. Particularly in the North and Eastern India, the number of such NGOs is negligible. Scheduled Castes have also not been able to form their own organizations to overcome this inadequacy. Besides, the work of NGOs, if their objective is to protect Scheduled Castes against atrocities and to change their exploitative relations with the larger community, is really very difficult and even risky because people working in those NGOs also face the prospects of violence, intimidation, not to speak of adversarial mobilization directed against them. Many of them get implicated in false cases. Therefore, the task is not easy and only those NGOs which can get assured financial support and build up linkages with other political movements, organizations and sympathetic individuals in the Civil society manage to survive and carry on with their work. Such NGOs are very few in number. Most of the existing NGOs working for Scheduled Castes are engaged in executing development programmes which is a soft area of work and does not involve much conflict with dominant castes of the area. Therefore, even this option does not emerge as easily replicable for empowerment of Scheduled Castes on any appreciable scale in the foreseeable future. Scheduled Castes themselves would have to set up their own organizations and build up linkages with groups and individuals who share their view point for support as has been suggested earlier.

Scheduled Castes have also resorted to international mobilization for expressing their anguish and frustration and seeking interventions of international community and organizations in terms of its covenants. Though these attempts have been sporadically made in the past through non-governmental representation in various U.N. Committees, the recently held **World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance** held at Durban, South Africa provided the occasion for intensive mobilization by Scheduled Caste groups. There was a great controversy on whether caste related discrimination should be included in the agenda and represented at this conference. National Human Rights Commission in the country,

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<sup>9</sup>The Bhopal Document, op. cit., p. 11

<sup>10</sup>The Bhopal Document, op. cit., p. 39

which had also been invited to the Conference, did not accept Indian Government's stand that racism and caste system were different. The NGOs also maintained that caste system in the country was same as racial discrimination since human rights of people from traditionally disadvantaged castes were often being violated. National Human Rights Commission organized seminars and consultations with various Dalit and Adivasi groups to form an opinion before preparing the draft of statement for this conference. In the statement eventually made at the conference, National Human Rights Commission accepted that despite embarking on a programme of affirmative action, there are manifest inadequacies in the implementation which are deeply frustrating and painful to Scheduled Castes and Scheduled Tribes and felt that exchange of views on human rights matters at the international level can contribute constructively to the promotion and protection of such rights. It, therefore, took a view different from that of the Government of India that race and caste are not coterminous. It unequivocally stated that discrimination of any of the kinds contained in the Constitution of India, whether of race, caste or descent constitutes an unacceptable assault on the dignity and worth of human person. Such discrimination must, therefore, be eradicated as most other forms of discriminations covered by U.N. Treaties. It may thus be seen as a triumph of the organisations representing Dalits and Adivasis that National Human Rights Commission was persuaded to take a stand that discrimination on the basis of caste should also come within the purview of discussion of U.N. Treaties.

The foregoing would suggest that the efforts thus far by Scheduled Castes themselves as well as Non-Scheduled Caste individuals and organizations committed to them, do not have the strength and vitality to decisively challenge caste based social system and its treatment of the Scheduled Castes. In these circumstances, the cross-section of Scheduled Caste community which are educated, politically conscious, and competent have to come forward to lead the community. They have to forge alliances with forces in the civil society sympathetic to them, evolve well thought out strategy for self-assertion and initiate steps towards it at various levels. Grass root level is most significant and exciting in this regard. The canvass is manageable, and the mobilization is relatively easier. The suitability of the strategy can be tested in the short run. Conflicts and risks may be greater but so also the rewards if success is achieved. The process of learning could also come quicker. Other levels may call for building coalition of interests to enlarge the space for negotiating a better deal for the community which may have a longer time frame and demand more mature political skills. The arena of Panchayati Raj Institutions, despite many hurdles, provide for such political experimentation at the grass root level. But to play this role, the emerging elected leadership in the PRIs would need to be trained and groomed on how they can use their limited strength to their advantage, the kind of alliances they can forge locally and what could be their agenda and priorities in this arrangement. While this work of preparing SCs for leadership role is important, there are hardly any institutions available to equip them for this role. Liberal intellectuals, Scheduled Caste activists, Human Rights organizations, etc. who understand politics and society well have to come together to take up this challenge. The political leadership at the State or Central level, if it is genuinely concerned about the present status and plight of Scheduled Castes and deeply committed to the transformation of society in

terms of the constitutional provisions, should push such a programme with policy endorsement and back-up financial support.

Notwithstanding the depressing analysis regarding the position of SCs in this paper, the emerging situation, as it is evolving, may not however present an altogether negative picture. There may be some silver linings too. The political powerlessness of Scheduled Castes, strikingly visible at present, may turn out to be a transient phenomenon and not a static feature of the political scene. Several developments taking place in the country suggest that opportunities may emerge where national parties may be forced to court Scheduled Castes as a group and seek political alliances with them in competitive politics. The most important among them are - (a) highly fragmented polity and resulting coalitional political dispensation necessitating political accommodation of SCs, being a numerically large group; (b) changing character of politics whose major national parties are losing control over the traditional and assured vote banks and would therefore seek political alliances with large solid groups to bolster their bargaining power; (c) the painful effects of the changing economy unleashing a process of destabilization in existing occupational pattern leading to disengagement in social relations. Also a sizeable group of vocal intellectuals, activists, some young political leaders and professionals/bureaucrats is emerging from the community to articulate a political agenda for the community and may be in a position to lead at a suitable opportunity. It should be clear to any observer of Indian politics that upper caste leadership of major national parties cannot hope to retain political power for long without forging alliances with lower castes.

A striking example that this was already happening may be seen in the recent attempt by Shri Digvijay Singh, Chief Minister of Madhya Pradesh, to take an extraordinary initiative of organizing an All India Dalit Conference bringing together Dalit intellectuals and activists to work out a political agenda for the coming years. This Conference has already fructified into a cogent document of the strategies and plan of action for advancement of Scheduled Castes which is known as the **Bhopal Document**. It cannot be underestimated that it was a shrewd political move to influence a solid vote bank when elections are very near though it may have been also guided by the genuine desire to reach out to weaker sections. It is our assessment that similar pressures would get exerted on the leadership in other States and even at the Centre. Opportunities, therefore, for forging alliance would be forthcoming both before the elections are held and thereafter in the formation of Government. The example of Uttar Pradesh is already before the nation, where major national political parties were seeking to forge alliances with a party which represented Dalits and their interests. That this alliance has been forged ostensibly with a Dalit Chief Minister in the driver's seat even though not entirely stable shows that considerable space exists in the current political scenario for Dalits to manoeuvre a more favourable position. All this may not translate into concrete improvements in the condition of SCs but it opens up a pathway to slow political empowerment.

There is also another political development taking place with potential for destabilizing society. With growing communalization unleashed by right wing religious fundamentalism and the covert encouragement it receives from various quarters, it is

not only the minorities who feel anxious and threatened but Scheduled Castes as well. The Jhajjar case is a pointer in this connection. Scheduled Castes therefore have to guard against being manipulated into joining communal violence at the behest of dominant castes to serve their interests. For institutionalization of this communal divide may not succeed for long, since it is unlikely to change the existing oppressive social relations between dominant castes and the SCs. Both communalism and caste based oppression have to be fought together because both are rooted in the same social ideology. Communalization of society therefore presents, in an otherwise depressing situation, an opportunity for Scheduled Castes to see the potential for danger to their struggle and the need for throwing their lot with forces which are committed to establishing a democratic and secular society.

Mention has been made of various radical political movements which have challenged the biased State authority as well as caste based social relations. Despite the picture of fragmentation these movements sometimes present and the tremendous human cost being paid for this mode of political assertion, there are indications that a certain degree of confidence building in Scheduled Castes, albeit a slow one, may already be taking place. The caste hegemony in these areas may be weakening and hold of caste Hindus over land and other productive assets may also be declining in areas where these movements are well entrenched. In such areas, the Scheduled Castes also have opportunities for consolidating their position and fashioning their future. The changing economy with destabilization of existing pattern of labour allocation and introduction of higher technology in various spheres of activities may be triggering processes which would make it difficult for existing social relations to survive for long. Though newer forms of inequalities may emerge which may still find SCs at the bottom of the heap, at least in the foreseeable future, those determined by birth in caste based hierarchy are likely to face a stiff challenge.

There is yet another avenue emerging to influence decision on governance at least, although on a modest scale. As the beneficiaries of reservation in bureaucracy and technocracy would now be reaching decision making positions in the executive wing of the Government both Central and State, and from then on would continue to command a slice of the top slots, it should be possible to influence the processes of policy formulation for the benefit of the community in sectors which are crucial to them, building capacity, strengthening institutional arrangements for delivery of programmes and sharpening the mechanisms of accountability of agencies responsible for implementing programmes for SCs.

## **TOWARDS A CONCLUSION**

The tenor of this paper unequivocally brings out that the entire issue of curbing violence against SCs is not simply one of effectively administering criminal justice and punishing the offenders, but involves massive transformation of a society steeped in the social legacy of centuries. That this was understood by the framers of the Constitution itself, as also the subsequent managers of polity, is not in doubt. But what was not quite foreseen, at least not so vividly, was that the battle for this transformation would be

so hard and brutal, vested interests so entrenched and institutions of governance so fragile to deal with the forces involved. The failure of the State to accomplish what it set out to deliver, so forthrightly expressed in this paper, is not intended to convey the delegitimization of the role of the State itself. Far from questioning the centrality and primacy of its position in the processes leading to this transformation, State alone has the legitimacy, authority and the responsibility to carry out the tasks assigned to it by fashioning its institutions of governance, disciplining civil society and developing partnership with SCs. There is a strong stake for all the parties involved in the State to succeed in this mission. It is, of course, extraordinarily important for SCs because they obviously cannot win the battle with civil society without State being on their side. Their modes of alternative political mobilization can only create pressures, convey signals to the State to put its acts together. SCs obviously cannot fight it out on their own. The civil society cannot be oblivious to the impending convulsions if they don't respond to the growing national and international indignation at the treatment meted out to SCs despite a liberal Constitution and a democratic polity to protect their rights. It is also in their interest that the change comes about peacefully and with social grace rather than by force of law and authority. State also has the greatest stake in winning this battle of social democracy, otherwise its own legitimacy within the nation as well as outside would get eroded. Within the nation if alienated SCs do not get justice, alternative levers of power would emerge, greater violence would ensue and the task of governance would become more difficult. As discussion on caste based discrimination cannot be precluded from discussion in the international fora, failure would cause considerable embarrassment internationally particularly in the context of the moral high ground we are prone to project. Having thus positioned the State in order that it performs and delivers, what is required is that pressures are exerted on it from below, above and the sides to shake it up from its complacency and to build up in it a strong will to act as per the scripted role. All those interested in the emergence of a strong State for this purpose should therefore strive to help build its capacity and enhance its will through such pressures. The following section is a small attempt in this direction.

## SECTION - X

### CATCHING AT A STRAW: INITIATIVES FOR NATIONAL HUMAN RIGHTS COMMISSION

The functioning of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been looked into by several agencies in depth. A number of amendments to the Act and other supportive measures have been suggested for its effective implementation. The views of the following agencies are being referred to in the Annexures to this paper.

1. **National Commission for Scheduled Castes and Scheduled Tribes** - Their latest report for the year 1999-2000 and 2000-2001 contains some recommendations<sup>1</sup>, which are placed at **Annexure I**. The recommendations made in the report for the year 1998-99 are placed at **Annexure II**.
2. **'Broken People' - Caste violence against Indian Untouchables (1999)** - is a research document prepared by an International Organisation called **Human Rights Watch** containing recommendations<sup>2</sup> which may be seen at **Annexure III**.
3. **National Campaign on Dalit Human Rights** - in their document **Dalit Human Rights violations - Atrocities against Dalits in India**, Vol. I. which purports to be a report of their National Public Hearing held at Chennai on 18-19 April, 2000 have made observations/recommendations<sup>3</sup>. These have been summarized and attached as **Annexure IV**.
4. **SAKSHI - Human Rights Watch, Andhra Pradesh** - Their document "Scheduled Castes Human Rights Monitor 2000 (AP)" includes several recommendations<sup>4</sup>, which are available in **Annexure V**.
5. **Proposed Amendments to SCs and STs (Prevention of Atrocities) Act, 1989**. In addition to the general recommendations made for checking atrocities against SCs, some agencies have made specific suggestions to make the law more effective. These proposals have all been put together in **Annexures VI-VIII**.
6. **Bhopal Declaration** : A new paradigm of Development has been outlined by Dalit intellectuals in the first ever attempt at articulation of their perception made at

<sup>1</sup>Sixth Report, op. cit., pp

<sup>2</sup>Human Rights Watch, op. cit., pp 11-18

<sup>3</sup>National Campaign on Dalit Human Rights, op. cit., pp 309-317

<sup>4</sup>SAKSHI op. cit., pp 138-141



Bhopal. This has been referred to in the main body of this paper at several places. The Declaration emerging from this conclave as a Social Charter for Dalits has been documented as 'Bhopal Declaration' which has been included as **Annexure IX**.

In addition, recommendations made by various agencies regarding proposed amendments to the SCs and STs (Prevention of Atrocities) Act, 1989 have all been put together in **Annexure V**.

These recommendations cover by and large identical ground and suggest similar type of corrective actions. This shows that there are no perceptual differences in understanding what the problems are and how these should be addressed. Broadly, recommendations from these agencies can be summarized under the following heads:

- (i) **Sincere and effective implementation of the law**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (ii) **Capacity building within Government** through the following measures:
  - (a) Training of officials charged with implementation of Atrocities Act and their periodic re-training
  - (b) Posting of women police personnel in police stations located in atrocities prone areas for sensitive recording of complaints against SC women.
  - (c) Launching of massive awareness campaigns particularly for enforcing provisions of the Protection of Civil Rights Act, 1955.
  - (d) Proper selection of functionaries engaged in the implementation of the Act for ensuring their unbiased behaviour and handling of complaints with empathy for SCs.
- (iii) **Capacity building of Watchdog bodies**: Strengthening of statutory organizations set up as watchdog bodies for enforcement of human rights, and rights of Scheduled Castes, Scheduled Tribes and Safai Karamcharis and rights of women and children. This should include enhancement of their capacity to undertake investigation of complaints, devolution of resources, conferring powers to initiate prosecution against guilty and to operate branches in States.
- (iv) **Strict enforcement of Supreme Court's guidelines on treatment of persons in custody** and recommendations of National Police Commission, 1980 for mandatory enquiry in serious offences against Scheduled Castes.
- (v) **Convergence of regulatory and development programmes**: Effective implementation of social and labour legislation and development measures which have a direct bearing on the commission of atrocities against Scheduled Castes through concerted and convergent action. This should include, on the regulatory side, Minimum Wages Act; Land Reforms Laws; Bonded Labour System (Abolition) Act, 1976; Employment of Manual Scavengers and Construction of Dry Latrine (Prohibition) Act, 1993, Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh Devdasi (Prevention of Dedication) Act, 1988; Karnataka Devdasi (Prohibition of Dedication) Act, 1992; The Bombay Devdasi Protection Act, 1934; etc. On the development side, vigorous implementation of Special Component Plan

for poverty alleviation and improvement of infrastructure in their colonies, extension of education and health facilities and for empowerment of Scheduled Castes Panchayat members would need to be undertaken.

- (vi) **Information as a tool of influencing civil society:** Effective use of information as a tool for influencing social change may be promoted by bringing Government reports, statistics and policy documents on status of Scheduled Castes and atrocities committed on them in public domain, compilation and release of State and District level statistics concerning position of Scheduled Castes in various spheres and publication of reports of Commissions of Inquiry in respect of specific incidents of atrocities.
- (vii) **Code of conduct for state agencies:** Drawing up a Code of Conduct for State agencies including judiciary in dealing with complaints of atrocities against Scheduled Castes.
- (viii) **Overcome the handicap created by Supreme Court ruling:** Amendment to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the context of order passed by the Hon'ble Supreme Court in the *Ganguli Ashok Kumar Vs Andhra Pradesh* case to authorize special courts to take cognizance of cases filed before them without commitment of a Magistrate as required under Section 198 of IPC.
- (ix) **Right to separate settlement:** Separate settlement through physically shifting from their existing habitat where SC victims unequivocally feel that their protection cannot be ensured otherwise, except by totally disengaging themselves from the communities inflicting violence against them.
- (x) **Enhanced central share in schemes for SCs:** The centrally sponsored scheme for implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc., should provide higher percentage of assistance to States regarding compensation to be paid to the victims of atrocities so that the States' financial position does not constrain implementation of provisions relating to relief and rehabilitation.
- (xi) **Non-official monitoring agencies:** Setting up independent monitoring agencies to review cases of atrocities against Scheduled Castes, including activists working for them and to provide feedback to the State agencies including Vigilance Committees on the status of complaints of atrocities against Scheduled Castes.

It would be evident that these recommendations are non-contentious and merely suggest effective implementation of existing laws and programmes. Therefore, creating mechanisms for such implementation holds the key for ensuring protection of Scheduled Castes against caste based violence.

## THE PERSPECTIVE

What perspective has this paper brought to bear on the subject and what is the framework suggested therein to deal with it?

We had, in the beginning of this paper, spelt out the multi-pronged strategy of dealing with problems of discrimination and violence against Scheduled Castes. This

strategy had consisted of measures in three directions so as to achieve the objectives of liberating the Scheduled Castes from traditional stranglehold of subjugation and oppression. The major thrust was in the direction of creating an overall framework of rights which confers equality of status on them and removes all their disabilities which the customary relationship had imposed on them. This was provided by the Constitution. In pursuance of this constitutional scheme, various laws were enacted and programmes were undertaken to remove the specific disabilities so as to give concrete shape to this equalization policy. This was attempted through the Protection of Civil Rights Act on the one hand and through measures to eliminate manual scavenging, Devdasi system, bonded labour system, to regulate ways and working conditions as labourers and introduce land reforms, etc. on the other. After having realized that State policies of equalization and consequent assertion on the part of Scheduled Castes are increasing incidents of violence against them, additional legal provisions were made through the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to provide deterrence against perpetrators of atrocities and to create a sense of added protection for the victims. The pathway to the second direction consisted of measures which would have the effect of giving the Scheduled Castes important positions in governance and this was done through reservation in recruitment to jobs and promotion to posts under Government PSUs, etc., and of seats in the legislature and PRIs. Reservation was also provided for them in entry to various educational institutions and professional courses to enable them to compete for other positions in society. The measures taken for narrowing down the gap between them and the rest of the society in development so as to alleviate their poverty and improve their quality of life signified the third direction of the strategy.

The analysis made in this paper has brought out that the implementation of this strategy has not yielded substantial gain. It has not reduced violence/discrimination against Scheduled Castes to any appreciable degree. Considerable gap in the development status between SCs and others continues to exist despite mandating that a specified share of resources should be earmarked for this purpose and programme benefits accrue to them. Reservations, have, no doubt, helped a small section of Scheduled Castes in disengagement from traditional occupations and give them a sense of freedom and confidence. But even this entitlement has been denied to them by a number of Government funded autonomous institutions which have not implemented reservation provisions and some segments of services where principle of reservation has not been accepted. Therefore, the overall picture that emerges from the experience of nearly 50 years is that there is no significant change in the condition of a large majority of Scheduled Castes, though improvements have no doubt been registered in case of some and even a small middle class among them has emerged.

More important, however, is the indictment, based on evidence available both from Government as well as non-government sources, that the existing delivery mechanisms for laws, policies and programmes for SCs have not shown sincerity and understanding expected of them at various levels. SCs have encountered apathy, bias and even outright hostility. Since the State is the chief instrument for operationalizing the entire strategy for their emancipation enshrined in the constitution, the character of the State machinery

and the attitude and behaviour of its agents hold the key to achieve better results in future. This task cannot be offloaded to any agency outside the State. The question addressed, therefore, is how State personnel should be equipped to discharge this responsibility with empathy for SCs.

This paper also explored the other dimension of the problem, i.e. response of the civil society. Since the entire set of measures in all the three directions of the strategy impinge upon relationship of SCs with the rest of the civil society, the attitude and response of the civil society affects in a major way the ability of the State to deliver its promises and assurances. We have seen in this regard that the civil society, by and large, has continued to be hostile to the Scheduled Castes, more openly in rural areas but less demonstratively in urban areas. The caste Hindus carrying on with their traditional prejudices are still fighting to retain their customary privileged position in different forms and this undermines not only the policies and programmes of the Government for SCs, but the foundations of the polity based on the constitutional scheme itself.

The paper has also referred to the way in which Scheduled Caste communities have reacted to this situation, considering the failure of the State to decisively come to their support and the attempts of the civil society to frustrate various programmes introduced for their benefit. In this context, the Scheduled Castes' assertion by joining radical left political organizations or through religious conversion, etc. have failed to exert requisite pressures either on the Government to determinedly and forcefully pursue the agenda of social equalization and break the stranglehold of caste orientation, or on the civil society to accept the norms of liberal society and treat SCs as equal members of it. Rather the participation in armed struggle by SCs to change the existing social and economic relations has lead to retaliatory violence both by the armed militias and vigilant groups of the caste Hindus and the suppressive use of force by the security forces, often in tandem, which have increased atrocities against SCs even more. The issues addressed to deal with this development are how

- (i) The state can be committed to demonstrate stronger will, greater vigour, effectiveness and urgency in implementing its programmes and policies for SCs to remove the sense of alienation from them, and
- (ii) To break the resistance of civil society in this process of social transformation.

Taking into account these issues, a set of recommendations have been made in this section. These recommendations touch upon the role of all the three stake holders, i.e. The State, civil society and the SCs. Since the State constitutes the most crucial partner and critical to the success of any effort in this configuration, a large part of recommendations has obviously been focused on its direct role. This role, as this paper has brought out, is characterized by indifference of its agencies to the plight of SCs in respect of atrocities they face and bias against them vis-a-vis their tormentors who inflict this violence on them. The recommendations have tried to tackle the problem of apathy and passivity by activating various instruments already available within the system so

as to create greater will and determination to deliver results expected of them. This process of activation of the system has been suggested through measures, which include:

- (a) Reviewing/reiterating instructions, guidelines, policy articulations as a renewed reminder to State agencies about what they are expected to do under law, executive instructions, development programmes, so that expression of political will is reinforced and clear signals are available to them that the State really wants them to act sincerely and firmly.
- (b) Intensive training aimed at capacity building of key personnel engaged in implementing the laws and programmes so that lack of knowledge and skills is not presented as an alibi for lack of performance.
- (c) Arrangements for regular monitoring, with participation of SCs, structured at various levels within the Government for enhancing accountability of officials.
- (d) Setting up of alternative arrangements for exerting pressure on Government agencies to act by mobilizing NGO/Human Rights activists and even empowered individuals from the community itself as support structures, where the competent authority may not respond to the complaints of SCs or may distort them.

The bias reflected in the attitude and behaviour of officials and even political authorities is sought to be counteracted by a series of recommendations. Firstly, provision has been suggested for flow of information to the competent authority in the Government through alternative sources so that in the absence of correct information flowing from its own agencies, it can set in motion the process of enquiry and investigation. In this manner, behaviour of its personnel, if biased, would be exposed. Secondly, putting in place mechanisms for enquiry and investigation independent of official/authorized agencies have been given a great deal of importance so that allegations against Government officials can be verified to ascertain their truth and on that basis to proceed further. Thirdly, watchdog organizations are being assigned greater role by sharpening mechanisms which would make implementing Government agencies more accountable, such as intensive monitoring, alternative methods of looking into grievances, obtaining feedback from non-Government sources and institutional arrangements for inter-face with affected SCs and activists/organizations helping them. This would enable such organizations to scrutinise the behaviour and action of officials and thereby provide greater confidence and hope to the complainants and victims. These mechanisms would hopefully create pressure on the Government machinery to act as per provisions of law, lest they face punitive action if found guilty of acting in a biased manner. Therefore, the activating process has also extended to capacity building of watchdog organizations to undertake this enlarged role effectively. Fourthly, measures to mobilize non-governmental organizations have been recommended in a big way for providing assistance to SCs in registering complaints, creating pressure on the Government agencies to act, seeking intervention of watchdog organizations, wherever required, and helping victims of atrocities cope with trauma and generating confidence in them for dealing with the offenders subsequent to the incident.



As regards the civil society, the suggested approach has been to concentrate on sensitization process through multi-pronged long duration campaigns with a view to building a social climate in which the caste Hindus recognize the validity and propriety of measures for enforcing social equality, eliminating degrading customary practices and raising the level of the economic development of SCs for progress and well being of the entire nation including their own. This approach is sought to be supplemented by institutional arrangements for encouraging those who dedicate themselves to transform existing social relations from its caste orientation to those reflecting the norms of a genuinely liberal society. This has been suggested through a system of rewards so that good work done by some are replicated by others and in this manner a movement in that direction gets built up. The other aspect of the approach is to continue with rigorous enforcement of laws and vigorous implementation of supportive programmes so that the hardliners in civil society who continue with their atrocious behaviour towards SCs suffer punishment, face social isolation and do not get support from others. Another direction in which influence is being exerted on civil society is to use information, education and communication as instruments for mobilization of their opinion in favour of existing policies and programmes in correct perspective so as to counteract attempts at spreading disinformation and circulating distorted views about them. Considerable attention in the recommendations, however, has been devoted to measures which can help disengage Scheduled Castes from the existing relationship of a degrading and humiliating nature with the civil society, thereby breaking the nexus of degenerative forms of human subjugation and control and at the same time giving a signal to the civil society that it should desist from enforcing these relationships.

As for the SCs themselves, the major thrust in the suggested recommendations has been on building their capacity to look after their interests and problems themselves. These include becoming aware of rights and entitlements, using available channels/mechanisms to obtain relief/justice when faced with their violation, increasing level of participation at all levels, promoting organization to forge favourable alliances for their struggle and acquiring necessary skills to negotiate within the political processes for a more honourable deal. The other consideration has been to strengthen their bargaining power in the unequal economic relations they are confronted with, by seeking to reduce their vulnerability through focused execution of regulatory and development programmes in a convergent mode. These measures would help them assert rather than acquiesce in illegal and unjust compromises and thereby enable them to slowly move forward towards a more liberated existence. The mechanisms/arrangements which create support systems for them, both within and outside the Government constitute the third set of measures. Through them Scheduled Castes can access individuals, organizations/institutions helpful to them with their grievances or complaints when they find that the existing official agencies have failed to respond. These support structures would exert pressure on Government agencies to act and, where necessary, mobilize watchdog organizations for intervention.

Atrocities against Scheduled Castes is a multi-faceted phenomenon. The factors which contribute to the commission of atrocities lie in the whole spectrum of relationships



which bind SCs with the rest of society ranging from economic dimension rooted in control over land and labour to its social manifestation which imposes degrading and humiliating personal existence. Therefore, while the incidence of violence and practices of disability and discrimination per se are captured by the criminal laws, the economic factors contributing to these atrocities are neutralized by laws on labour, land reforms, transactions of credit etc. The degradation involved in social relationship is removed through laws specific to the activity/practice. Strict enforcement of laws covering these relationships is essential to reduce atrocities in the long run though the process of disengagement and assertion may sometimes increase them in the short run. Therefore, elaborate treatment has been given in the recommendations to laws/situations relating to each aspect of economic and social relationships to strengthen the position of SCs.

Atrocities on SCs have of late acquired new dimensions. While SCs have long been victims of violence and brutality by the upper echelons of Hindu social order, direct assault by State agencies of law and order on them, in the context of alternative processes of political mobilization resorted to by them, has emerged as a serious area of concern. When State itself resorts to violence against SCs not sanctioned by law, there is little protection available for them because the police and security forces become both the actors and the adjudicators of their action. Also, when their own personnel are involved there is inaction all along the hierarchy and at times even refusal to register complaints. That is why considerable space has been given to creating alternative arrangements, outside the police and security establishments largely, for complaints of SCs to be entertained and for moving appropriate level in Government agencies into action and, as a last resort, for watchdog institutions to take on the investigation themselves. This has been considered necessary to enforce greater accountability in the law and order machinery, primarily the Police, against unjustified action.

In the range of offences which constitute atrocities, women suffer the most because in their case violence against them is compounded with indignity and humiliation. While they face all forms of violence which are also inflicted on men, they are additionally subjected to sexual offences to break their own morale and the morale of their male folk and the community. Violence against them is used as a weapon of pressuring their men to surrender by the security forces in certain situations and as a retaliatory action by armed militias of adversaries to intimidate them or take revenge for what their men had done to them. They are therefore more vulnerable but less equipped than men to cope with the trauma resulting from it. That is why considerable attention has been devoted to confidence building measures and coping mechanism among SC women and setting up support structures for grievance redressal. But women are sometimes victims of the suspected violence from the community too which leave them with little protection because of social sanction. In such situations, while the community has to be targeted for action, the victim women need help and support from Government. Measures to cater to both these aspects have therefore been dovetailed in the suggested approach.

The impact of development on atrocities has not been researched. But programmes for positive discrimination and development are perceived to contribute to the equalization process for SCs in society. They are additionally intended to strengthen the bargaining

position of SCs in their inter-face with civil society, reduce their dependence on them and create pathways for upward mobility. They create conditions for a decent living. The tardy performance on these fronts does not create any violence per se (though violence may sometime result in specific situations where entitlements are vigorously sought by SCs but resisted or cornered by others or where in accessing community resources restrictions are imposed on them). But effective implementation of development programmes can contribute to reduction in violence against SCs in multifarious ways. The indifferent execution of development programmes and lack of empathy for SCs in the personnel who deliver them therefore is even more striking because there are no adversarial situations to thwart them. The blame has to be entirely shared by the Government and its agencies. By suggesting capacity building within the organization for monitoring and detection of lapses and creating mechanisms for enforcing greater accountability, this dimension has also been covered. Cultural dimensions of SC communities have been completely neglected in the entire discourse on the subject. Perhaps their 'outcast' status and total marginalization in the society to which they are integrated, virtually as 'non-persons', has denied them the capacity to create their culture. Therefore, the strengthening of that culture has also been brought within the domain of recommendations to help SCs overcome their feeling of inferiority imposed on them.

It would be seen from the long list of recommendations included in this paper that a number of them have been made earlier by other bodies. This has, by and large, been acknowledged in the main text, where a recommendation has been made by National Commission for SCs and STs or National Commission for Safai Karamcharis, as their views carry considerable significance in view of the primacy of their role as watchdog institutions for SCs and Safai Karamcharis respectively. There has been no access to information on whether Government have accepted these recommendations and where recommendation has not been accepted what considerations have weighed with the Government in taking that stand. However, endorsement of such recommendations in this paper underlines the significance of the measure/action included therein.

The recommendations made in this paper have, as far as possible, identified Ministries/ Departments of the Central Government besides the State Government which need to take a specified action. Ordinarily, the matter could be left to the concerned Ministry/ Department to formulate its response and decide on its own to act. But SCs have not yet reached a stage of empowerment to be able to exert pressure on them. Marginalized as they are both within society and the Government they need an advocate, a pusher. There is no escape for the Ministry of Social Justice and Empowerment, which at the central level has the nodal responsibility for matters relating to Scheduled Castes, from shouldering this responsibility, however onerous. It has to take up with the concerned Ministries/Departments cases of SCs in respect of suggested activities which fall in their jurisdiction. But even for the nodal Ministry to take on this role, SCs need an advocate as they do not enjoy such clout to even persuade or pressurize them. That role in our view would have to be discharged by a watch dog institution. Overall, therefore, it is the watchdog institutions that emerge in these recommendations as the main focus of

our effort for the simple reason that they hold the key to sustaining the hope of the Scheduled Castes. Disillusioned with Government and its agencies against whom most of their grievances are directed, SCs desperately need an independent organization outside the Government to look into their complaints so that some modicum of justice can be delivered. That is why watchdog institutions, and among them the National Human Rights Commission more than others in relation to atrocities, by virtue of its composition and stature, are sought to be mobilized to play a much greater role to this end than what they are able to do at present.

## **ROLE OF NATIONAL HUMAN RIGHTS COMMISSION**

National Human Rights Commission's recommendations and directions carry greater moral weight, both with the Government and the judicial bodies. It also has the capacity to mobilize widespread support on human rights issues from individuals and organizations in the country. Its pointed intervention, therefore, in checking atrocities on Scheduled Castes and eliminating discrimination and disabilities practiced against them could have greater impact in improving conditions of affected persons than those of other Commissions. But even outside the arena of criminal justice administration, the Commission can considerably influence the activities of organizations in Government both Central and State. It is with this expectation that wide ranging gamut of recommendations have been made. Once National Human Rights Commission is convinced that certain measures would contribute to reducing atrocities on SCs and help them lead a more dignified existence, it would certainly prevail upon the concerned Government agencies to act in that direction. The projection of the role of National Human Rights Commission in this context has been broadly conceptualized as follows:

### **1. As a Catalyst**

This role involves activating the system to discharge its mandated responsibilities, bringing to the notice of the Central and State Governments gaps and inadequacies in their action and steps needed to bridge them, as also pointing defaults in the existing conduct of its agencies which needed to be set right.

### **2. Capacity Building Role**

This role would be exercised by suggested strengthening of structures and institutional arrangements and enhancing capabilities of personnel and information system to increase efficiency and effectiveness. This capacity building role extends to both Governmental agencies as well as watchdog bodies.

### **3. Sharpening Mechanisms of Accountability**

This role is signified by putting in place arrangements for regular and purposeful monitoring of activities of the Central and State agencies under specified laws and programmes and creating alternative sources of gathering information and conducting enquiry and investigation so that responsibility of personnel in these agencies for omission and commission is expeditiously fixed and corrective/punitive action taken.

#### **4. Advocacy**

This role is discharged by persuasion and pressure on Government agencies to take up additional activities not currently undertaken, which would enhance delivery of benefits to the targeted groups and supplement existing efforts in this direction. This would include revising and expanding the ambit of existing programmes and even taking up new ones.

It has been indicated against each recommendation which of these four categories of role of National Human Rights Commission it would correspond to. This bracketing, however, is not hard and fast as some recommendations could fit in more than one category or anyone of the two categories.

#### **STRUCTURING AND SEQUENCING OF RECOMMENDATIONS**

Recommendations have brought together under broad heads which define the target and focus of action contemplated therein. These heads include Implementation of specific laws as well as programmes under the Strategic Component of Protection, Compensatory Discrimination and Development. Within each component, effort has been made to club recommendations subject-wise.

Considering the wide range of recommendations and their long list, a brief statement has also been placed on initiatives which National Human Rights Commission take straightaway.

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
ADMINISTRATION OF CRIMINAL LAWS : SCs/STs (POA) ACT, 1989/ PCR ACT, 1955						
GENERAL						
1.	<p><b>Preparation of a Manual</b> - A Manual on the implementation of Protection of Civil Rights Act, 1955 (as amended), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 may be prepared with the help of Human Rights organizations/ social activists and NGOs working with and for Scheduled Castes, specifying necessary steps for their effective implementation along with responsibility of concerned functionaries at various levels in dealing with their different provisions. This Manual may be translated by States into their regional language and made available to all the functionaries, police, civil &amp; judiciary, responsible for implementation of the Act. The Manual should be available with all police stations and other concerned agencies involved in the implementation of the Acts. National Human Rights Commission <b>may set up a group to prepare</b> this Manual and approve its contents.</p>	✓				National Human Rights Commission
2.	<p>Central Government may <b>issue a detailed circular</b> indicating the necessary steps to effectively implement the SCs and STs (Prevention of Atrocities) Act, 1989 and Rules, 1995 and attach with it a copy of the Manual approved by the National Human Rights Commission.</p>	✓				MHA National Human Rights Commission
3.	<p><b>Training of Officials - A 3-tier training programme</b> for police and civil functionaries engaged in the implementation of laws and regulatory measures, which have a bearing on atrocities committed on SCs, may be implemented. The first tier of training may be imparted by National Police Academy and Lal Bahadur Shastri National Academy of Administration to cover only trainers from each State. The second tier training may be organized by a State Training Institution identified for this purpose by each State Government to cover officers of level of DSPs,</p>	✓				National Human Rights Commission  State Governments

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	SDMs, ADMs, etc. The third tier of training would deal with other civil and police officers at the lower level. This training may be organized by the DMs and SPs of the concerned Districts. The design and syllabi of training for the three training courses may be approved by the National Human Rights Commission.					
3.1	<b>An Annual Workshop of DMs and SPs</b> on implementation of these laws may be organized in the State's Administrative Training Institute where the State Home and Social Welfare Secretaries and DGPs may interact with participants on the whole range of issues concerning the subject and specifically to identify problems experienced by them in investigation and trial of cases of atrocities, those experienced by victims and impact of measures undertaken to prevent recurrence of such incidents. Presiding officers of courts dealing with atrocities cases may be invited to these workshops to lecture on the shortcomings in investigation leading to acquittal. Based on this feedback, State Governments may take necessary corrective steps expeditiously to improve the administration of these laws.	✓				MHA National Human Rights Commission  State Governments
3.2	National Human Rights Commission may recommend to High Courts to organise <b>Seminars for Presiding Officers of Special Courts</b> as in-house training on the subject. Observations on infrastructural problems, conduct of cases, quality of investigation, etc. emerging from such training may be conveyed to the State Governments for effecting improvement.	✓				National Human Rights Commission
4.	States need to constitute <b>exclusive special courts</b> for dealing with atrocity cases in districts where volume of such cases is large. <b>Special public prosecutors</b> for this work may be selected on the basis of their <b>competence and commitment</b> and their level of remuneration should be adequate to sustain their interest in work. National Human Rights Commission may lay down norms for such selection to improve the level of motivation and performance.	✓				National Human Rights Commission  State Govern- ments



Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
5.	<p>State level and district level vigilance and <b>monitoring committees</b> may <b>meet regularly</b> as per prescribed provisions. Human rights organizations and activists working for and with Scheduled Castes may be involved in their deliberations as members/invitees. Their proceedings may be adequately publicized and also placed on the website of the State Governments. National Human Rights Commission may suggest that State Home Minister and SC Welfare Minister may jointly hold an Annual meeting of heads of District Vigilance Committees. This would activate their functioning and provide them necessary guidance.</p>	✓				<p>National Human Rights Commission</p> <p>State Governments</p>
5.1	<p>National Human Rights Commission may hold a <b>biennial</b> (once in two years) <b>meeting of Chiefs of State level vigilance and monitoring committees</b> to raise the level of discourse in their deliberations and build up adequate pressure on the State Governments to take these committees seriously. Points emerging from these meetings may be followed up to keep up the pressure.</p>	✓				<p>National Human Rights Commission</p>
6.	<p>Ministry of Home Affairs should <b>set up a cell to monitor implementation of Protection of Civil Rights Act, 1955 and SCs/STs (Prevention of Atrocities) Act, 1989.</b> Ministry of Social Justice and Empowerment should be associated in the process of monitoring. National Human Rights Commission may <b>prescribe</b> parameters for annual monitoring of the implementation of the Protection of Civil Rights Act, 1955 and SCs/STs (Prevention of Atrocities) Act, 1989, including the <b>format for submission of the report</b> by the nodal Ministry to the Parliament.</p>	✓				<p>MHA</p> <p>National Human Rights Commission</p> <p>Social Justice and Empowerment</p>
7.	<p>State Governments should expeditiously <b>identify atrocities prone areas and untouchability prone areas</b> as per provisions contained in the respective laws and thereafter <b>prepare Plan of Action</b> for</p>	✓				<p>National Human Rights Commission</p>

Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	eliminating untouchability practices and reducing incidence of violence against SCs through various regulatory and development measures. The norms for identification of such areas and framework of the Action Plan may be prescribed by the National Human Rights Commission in consultation with Human Rights organizations and NGOs/ activists working for the SCs. These norms may also be incorporated in the Manual.					State Governments
7.1	Meanwhile, on the basis of information available with the National Commission for SCs and STs, some atrocities prone areas and untouchability prone areas have already been identified. Until such time as fresh surveys are made on the basis of norms laid down by National Human Rights Commission, the <b>presently identified areas may be taken up</b> for preparing Plan of Action and seeking its approval from National Human Rights Commission.	✓				National Human Rights Commission NCSS
8.	State Governments may institute an Annual Award for the police station which emerges as the most responsive to the complaints of Scheduled Castes and has achieved significant success in taking preventive measures timely, registering all cases of violence and expeditious follow-up action on them.				✓	State Governments
9.	Central Government may institute an Award for the most responsive district to the complaints of Scheduled Castes among the atrocities prone states as a mechanism for encouraging behaviour change in public functionaries. Comprehensive norms may be laid down to qualify for the Award. Ministry of Social Justice and Empowerment may initiate action in this regard.				✓	Social Justice and Empowerment
10.	Rehabilitation - National Human Rights Commission may <b>monitor</b> provisions regarding payment of <b>compensation</b> to victims of atrocities and their rehabilitation.			✓		National Human Rights Commission
10.1	The Ministry of Social Justice and Empowerment may report the number of cases State-wise where compensation, as per norms, has					National Human Rights Commission

SI. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	not been paid to the victims. It should arrange to provide central share for such cases and ensure that Planning Commission earmarks funds for the States' share in their Annual Plan for this purpose. National Human Rights Commission may prescribe a time frame within which all such payments as per norms should be made.	✓				Social Justice and Empowerment Planning Commission
10.2	Ministry of Social Justice and Empowerment may consider revising the Scheme so as to enhance the share of central assistance in view of the difficult financial position of most States which is responsible for non-payment of compensation in many States.				✓	Social Justice and Empowerment
10.3	States may be directed by National Human Rights Commission to make the <b>District Magistrate</b> solely responsible for ensuring that the compensation money given to the victims is effectively utilized to provide <b>sustainable rehabilitation</b> . The parameters of such rehabilitation may be laid down in the Manual. State and District level Monitoring and Vigilance Committees may monitor the status of rehabilitation.		✓			National Human Rights Commission State Governments
10.4	Appropriate instructions may be issued by National Human Rights Commission that value of property destroyed in the course of atrocities committed against Scheduled Castes is included in the <b>compensation package</b> provided to them.				✓	National Human Rights Commission State Governments
10.5	Special rapporteurs may report to the National Human Rights Commission about the status of rehabilitation and morale of victims of atrocities in important cases.			✓		National Human Rights Commission
10.6	Chairperson of National Commission for SCs and STs is an ex-officio member of the National Human Rights Commission. In view of the deliberate policy of some State Governments and the pronounced bias of some enforcement agencies not to apply provisions of SCs/STs (Prevention of Atrocities) Act, 1989 to atrocities cases, with a view to dilute the offence of the					

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	accused persons and deprive the victims of compensation, National Human Rights Commission and NCSS may decide how the victims of atrocities can be provided compensation in such circumstances.				✓	National Human Rights Commission  NCSS
11.	The amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with a view to undoing the effect of the judgement of the Supreme Court in <i>Ganguli Ashok and others V/s State of Andhra Pradesh</i> may be taken up immediately for empowering special courts to take cognizance of offences under the Act as a court of original jurisdiction. National Human Rights Commission may direct Ministry of Social Justice and Empowerment to initiate action in this regard without further delay.				✓	National Human Rights Commission  NCSS
12.	With regard to various other amendments proposed by the State Governments, NGOs, National Commission for SCs/STs, etc., Ministry of Social Justice and Empowerment may consult experts and thereafter finalize the changes proposed to be introduced. But the amendment proposed on the jurisdiction of special courts should not wait for deliberations of this expert consultation and the decision taken by the Government on them.				✓	Social Justice and Empower- ment
13.	Involvement of competent NGOs with good track record and known commitment to the welfare of Scheduled Castes is necessary to counteract official apathy and bias in dealing with cases of atrocities, provide necessary feedback to the implementing agencies and extend support to the victims in registration of cases, pursuing prosecution at various stages and rehabilitation after the incident, besides intervening in time to prevent such violence. Ministry of Social Justice and Empowerment may identify such NGOs, one in each atrocities prone district, to start with, and provide necessary financial assistance under their existing schemes to				✓	Social Justice and Empower- ment

Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	discharge the responsibility envisaged for them.					
<b>ACCOMMODATING GENDER CONCERNS</b>						
14.	State Governments should train social workers, one male and one female, from the Scheduled Castes in each village of the atrocities prone areas to help victims of atrocities in taking up their complaints and in helping them to seek their rights and entitlements. These workers should set up an information kiosk in their village on a voluntary basis where all essential information which needs to be conveyed to SCs should be provided by the Government. These information kiosks should become centers for awareness creation among SCs in the area. These social workers should become the focal point of contact by official and non-official agencies who wish to communicate with SCs. These kiosks would be helped with information inputs only and no financial remuneration is intended to be provided to the social workers. The social workers willing to carry out this task voluntarily may be given identity card which would enable them to contact local officials without hassle. Since Ambedkar is an accepted icon for SCs across the country, these information kiosks could be named as Ambedkar Chetna Kendras. Ministry of Social Justice and Empowerment may meet the cost of this programme.	✓				Social Justice and Empowerment
15.	At least one women police functionary may be posted in each police station located in atrocities prone areas in the State. It should be endeavoured that, as far as possible, investigation into serious complaints of violence against SC women be carried out by the woman police officer and where this is not feasible, a woman police or civil functionary may accompany male police officer/officers during investigation.			✓		State Governments
16.	At the district level, <b>women police station</b> may be set up exclusively <b>manned by women</b> functionaries so that complaints of					

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	Scheduled Caste women, if not entertained elsewhere in the district, can be registered there. Where an exclusive police station for SCs has been set up at the District Headquarters, it could have a Women's Wing manned by women police functionaries to serve this purpose.		✓			State Govern- ments
17.	State Governments may notify <b>a lady officer from among the staff posted in each block</b> , such as the Social Welfare Officer or Women & Child Development Officer <b>to entertain complaints</b> regarding the ill-treatment of and violence committed against SC women not registered by the competent authority and officially pass it on to the concerned authority with a copy to the District Magistrate for taking up necessary investigation. This arrangement may be adequately publicized in SC habitations of the block.		✓			State Govern- ments
18.	<b>Self-help groups of SC women</b> should be formed in each village with sizeable SC population, in atrocities prone areas to start with and to other areas subsequently. These groups, apart from being mobilized for activities relating to thrift, credit and development may also be given <b>elementary legal training along with sessions on confidence building</b> which equips them with knowledge and strength to take up cases of violence and discriminations against SC women with Police/Civil functionaries and provide emotional support to the victims in situations of crisis. At least one or two women in each group may be <b>specifically</b> trained to draft complaints on behalf of the victims and despatch them to competent authorities and Human Rights organizations/activists, if any. Ministry of Social Justice and Empowerment may include this measure as a part of activities for administration of SCs/STs (Prevention of Atrocities) Act, 1989.		✓			State Govern- ments  Social Justice and Empower- ment
18.1	National Commission for SCs and STs have access to material which has mapped districts/regions which are prone to crime					



SI. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	<p>against women. The Commission may relate it to this data it has about crime against SC women and map districts and regions which are prone to crimes against SC women. This material may be provided to NCW and National Human Rights Commission. Since Chairmen of NCSS and NCW are also ex-officio members, the strategy to control atrocities on SC women may be evolved and National Human Rights Commission may issue comprehensive directions to State Governments in this regard.</p>	✓			✓	<p>NCW NCSS NHRC</p>
19.	<p>At the State level, <b>a Women’s Non-Government Organization may be funded</b> by the Ministry of Social Justice &amp; Empowerment under its existing schemes to function as an umbrella organization for District level NGOs, activists, social workers helping SCs, members of women self-help groups, provide guidance and support to them, impart training and take up, where necessary, gender related issues in respect of SCs with concerned Government agencies. This capacity building measure may be progressively extended to Districts which throw up a large number of atrocity cases against SC women/ children.</p>				✓	<p>Social Justice and Empowerment</p>
20.	<p>National Human Rights Commission with the help of State Governments and Human Rights organizations should <b>identify</b> at the level of <b>each district</b>, where atrocities against SC women occur, a <b>women’s organization</b> or its branch, a lawyer/ lawyers, human rights <b>activist/ activists</b> or welfare agency/ agencies, social worker, who <b>can be contacted by victims or members of her family in cases of complaints</b> regarding gender related violence where the competent authorities do not respond or have shown obvious bias in dealing with it. The identified agency may take up the matter with the competent authority if the complaint has not been registered or is not being investigated properly. It may also, where necessary, take</p>			✓		<p>National Human Rights Commission State Govern-</p>

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	up the matter with an appropriate State or a National Commission (Human Rights/ SC&ST/Women).					ments
<b>CUSTODIAL ATROCITIES</b>						
21.	National Human Rights Commission has issued instructions that it should be informed within 24 hours of occurrence of any custodial death or custodial rape. Therefore, these two atrocities in respect of SCs also would be getting monitored. It would be desirable to also <b>have a mechanism for obtaining such information from non-official sources</b> such as a Dalit human rights organization, PUCL or any other such agency in order that possible attempts to disclaim or camouflage a case of custodial violence do not succeed. Special Rapporteurs for the State may evolve a suitable arrangement with such organizations at the State level and pass on the information to National Human Rights Commission.			✓		National Human Rights Commission
22.	National Human Rights Commission may rigorously enforce its directions to States on 'encounter killings'. Where complaint is received regarding non-adherence of these directions, <b>National Human Rights Commission may take up investigation</b> , at least in <b>a sample of cases</b> . It may also organize open hearing in areas from where large encounter killings have been reported to sustain / restore people's faith in rule of law.			✓		National Human Rights Commission
23.	National Human Rights Commission with the help of State Governments and human rights organizations may <b>identify</b> at the level of <b>each district, a NGO</b> , human rights activist or an organization with empathy for SCs <b>which can be approached in case of custodial violence or any other atrocity</b> by the victim's family or well wisher for help in taking up the matter with the competent authority and informing the National/State Human Rights Commission so that process of enquiry is initiated expeditiously.			✓		National Human Rights Commission  State Governments

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
24.	State Governments reporting a large number of cases of violence in judicial custody may constitute <b>an ombudsman</b> (Committee) headed by a retired judicial officer, with an eminent lawyer, NGO representative/social activist working for Dalits, public-spirited citizen and retired civil/police officer with high reputation which may be utilized by National Human Rights Commission to look into cases of custodial atrocities where prima facie State's version does not satisfy.			✓		State Govern- ments  National Human Rights Commission
24.1	The Visitors Committee constituted for each jail and Special Rapporteurs visiting jails for inspection may specifically make discreet enquiries into conditions of SC Under Trials in jail, untouchability related practices and treatment meted out to them.			✓		State Governments NHRC
25.	In respect of Districts which have sizeable SC population, District Magistrate shall create a Cell in his office <b>headed by the District Social Welfare Officer</b> looking after the interests of SCs. The information about SCs in police and judicial custody should be maintained there. On demand made by human rights organizations/ social activists/ SC organizations, information in respect of SCs in custody may be provided to enable them to take up the matter in appropriate fora for seeking relief admissible under the law.			✓		State Govern- ments  National Human Rights Commission
CONFIDENCE BUILDING MEASURES						
26.	Since National Human Rights Commission does not have adequate staff strength to take up this responsibility on the scale expected of it by the victims, it may maintain a panel of persons who may include lawyers, human rights activists, retired civil/ police/ judicial officers, academics, social welfare professionals, eminent persons with high reputation and, subject to their willingness, utilize them for carrying out enquiries/investigations and getting reports in respect of serious complaints of atrocities on SCs where, prima-facie, State Govt's version does not satisfy.			✓		National Human Rights Commission

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
27.	National Human Rights Commission may undertake a <b>visit to at least one major atrocities prone State</b> in a year for a <b>comprehensive review</b> of implementation of the laws and programmes for prevention of atrocities against SCs and STs. This visit may be preceded by a thorough scrutiny of the performance of the State to be carried out by the officials of the Commission and its special rapporteur stationed there. During this visit, opportunity may be provided to NGOs, activists, social workers, lawyers, etc. to relate their experiences in this regard. The Commission may convey its observations and suggestions to the Chief Minister after the meeting. Action taken on the suggestions by the State Government may be monitored.			✓		National Human Rights Commission
28.	National Human Rights Commission may organize open <b>hearing</b> on violence against SCs, two in a year, if feasible, or at least one in a year, where the victims of major atrocities can present their experiences and grievances in seeking justice from Government agencies and Human Rights bodies/Non-governmental organizations/social workers and activists may apprise the Commission of difficulties encountered by them in taking up their complaints. In the interaction with the State Government subsequent to the hearing, the Commission may convey its observations and advice on various actions to be taken for effective enforcement of law, sustaining confidence of victims and, where required, looking into the conduct of officials coming in for adverse reference during the hearing. The follow up action on the hearings may be monitored.			✓		National Human Rights Commission
29.	Annual interactive sessions may be organized by National Human Rights Commission with representatives of Media, both electronic and print which may cover, among others, the following aspects:  a) Highlighting important cases of violence and discrimination against SCs (also STs) where the enforcement machinery has failed to act as per provisions of law.					

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>b) Status of prosecution and rehabilitation of victims in major cases of atrocities,</p> <p>c) Apathy/ bias of public functionaries in delivery of entitled benefits to SCs/STs under regulatory and development programmes,</p> <p>d) Publicizing positive steps taken by the Government/ Local officials which helped in reducing violence, and delivering entitled benefits to SCs/STs.</p> <p>e) Profile of untouchability related practices and changes occurring in respect of them,</p> <p>f) Feedback in respect of elimination of manual scavenging,</p> <p>g) Inaction in respect of complaints relating to land rights, bonded labour/ child labour system, etc.</p> <p>h) Social and customary practices which deeply hurt the human dignity but do not attract legal action.</p> <p>This would help the Commission in focusing its interventions in problem areas.</p>			✓		National Human Rights Commission
30.	<p>All relevant information on SCs relating to atrocities, reservation, development, including findings of Enquiry Reports, if any, should be placed on the website of the Ministry of Social Justice and Empowerment for greater transparency and wide accessibility. The material to be placed on the website of the State should include, in addition to the above, findings of inquiry ordered in respect of specific incidents, proceedings of State level Vigilance and Monitoring Committees, etc. A non-official group of persons interested in problems of SCs may be constituted at the State and Central level to regularly report on the material placed on the website, its shortcomings, what additional material can be brought on it, etc. It would be desirable for National Human Rights Commission to institutionalize this arrangement for ensuring greater transparency of information relating to SCs.</p>			✓		National Human Rights Commission  State Governments

Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
31.	National Commission for SCs/STs does not get cooperation of State Governments in proceeding against its officials found guilty of omissions and commissions. National Human Rights Commission, NCM and NCW may also have experienced similar handicap. The four Commissions should come to an understanding on how pressure could be exerted in such cases where serious human rights violations are involved. As Chairpersons of NCSS, NCM and NCW are ex-officio members of National Human Rights Commission, National Human Rights Commission may take initiative in evolving such an understanding and method of pursuing it.			✓		National Human Rights Commission
32.	A large number of reports and documents prepared by human rights organisations, Dalit NGOs, Inquiry Commissions, research bodies and open hearings have collected evidence to show that SC victims of serious atrocities have failed to get any justice. There is no known mechanism to ensure that these reports/documents are followed up, guilty officials identified and proceeded against and prosecution of offenders tightened by removing the lacunae pointed out in these documents. Apparently, no institution takes notice of them as a matter of mandated responsibility. This demoralizes the victims and generates loss of faith in the system to deliver justice. The organisations and individuals who have accomplished investigation also feel frustrated that their efforts are wasted. The concerned Governments hardly show any response unless pressured by a competent organization. As many of these cases are old by the time these documents appear, National Human Rights Commission is tied down by limitation imposed by Clause 36(2) and regulations framed by it. National Commission for SCs and STs not constrained by such limitation, may take note of all such cases which no other Commission is looking into and process			✓		NCSS



Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	<p>them for further action with a view to fixing responsibility of officials found guilty and proceeding against them and lightening the prosecution of offenders by removing lacunae observed therein. It may also ask its field units to prepare a status report on the current condition of the victims of these atrocities. Non-cooperation from the concerned State Governments may also be highlighted. These cases should form part of special report. These cases may be raised in the meeting with SC/ST MPs which the Commission has been advised to organize as well as in the interface with SC/ST MLAs of the concerned States which the Commission has been advised to undertake.</p> <p>National Human Rights Commission may network with Human Rights/Dalit organizations in order that such serious cases are taken cognizance of by it within the period of limitation.</p>					
33.	<p><b>Special rapporteurs</b> located in each State, in addition to the existing work entrusted to them may be utilized for <b>gathering feedback</b> on the current state of social relations and its impact on victim community in villages/nearby areas where major incidents of atrocities have occurred, progress made in preparation of action plan in relation to atrocities prone areas and its subsequent execution, rehabilitation of victims of atrocities, and the overall profile of implementation of SCs and STs (Prevention of Atrocities) Act, 1989 in the State and such other relevant information which may enable the Commission to measure improvement registered in reducing the level of atrocities and discrimination.</p>			✓		National Human Rights Commission
34.	<p>Where SC inhabitants of a locality/village feel traumatized by continuing harassment and violence from neighbouring social groups of other castes and legal action/administrative measures fail to generate requisite confidence and security in them and are forced to put up a demand for shifting</p>			✓		National Human Rights Commission

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	of their settlement to a safe location, the State Government should be duly bound to make such an arrangement in consultation with victim communities.					
34.1	There is urgent need for a Memorandum of Understanding between the National Human Rights Commission and the National Commission for SCs/STs and National Commission for Women for dealing with cases received by them, need for sharing available facilities and expertise for mutual benefit. While National Commission for SCs/STs would immensely benefit from the expertise of the Legal Wing and guidance of senior level police officials available with National Human Rights Commission in respect of atrocities on SCs/STs, National Human Rights Commission could avail of the Research Wing available with the National Commission for SCs/STs for analysis of some data or carrying out some investigations. A similar MOU could also be developed with National Commission for Women in respect of cases of atrocities on Scheduled Caste Women.		✓			National Human Rights Commission  NCSS
<b>CAPACITY BUILDING (NATIONAL COMMISSION FOR SCs/STs)</b>						
35.	It is extremely necessary to have a <b>strong investigation and law wing</b> in the National Commission for Scheduled Castes and Scheduled Tribes. Considering the level at which the Commission would be required to interact with the State Governments the existing arrangement for investigation headed by a DIG rank officer needs to be upgraded and supporting staff and facilities should be provided. Also, a Law Officer with appropriate staff should be available to the Commission for advice on legal matters. Ministry of Social Justice and Empowerment should take expeditious action in the matter.				✓	National Human Rights Commission  State Govern- ments
36.	National Commission for SCs/STs faces acute scarcity of sufficient funds to undertake field investigations and even to					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	utilize its Research Wing optimally for carrying out various studies. Its entire budget provision is virtually consumed by establishment expenditure leaving little fund for investigations, consultations, studies, services of expert and even tours of its headquarters and field personnel. It is extremely necessary that the Commission's budgetary support is adequately enhanced to facilitate these tasks and utilizing services of outside experts for carrying out field enquiry, etc.			✓		Social Justice and Empowerment
37.	It is extremely essential to remove the grievance of the National Commission for SCs/STs that its recommendations are not implemented. The Ministry of Social Justice and Empowerment may arrange, under the Chairmanship of its Minister, a series of meetings between the Chairman of the National Commission for SCs/STs and the Ministers in-charge of the Ministries concerning which major recommendations have been made by the Commission and which have not been accepted or carried out. This would enable both sides to appreciate each other's points of view and help in arriving at a consensus on what action could be taken in respect of the recommendations.		✓			Social Justice and Empowerment
38.	The Commission should also have adequate computer capacity for data storage, analysis, retrieval to process directly received complaints on atrocities. This facility may also be utilised <b>for storing and analyzing the data</b> on atrocities relating to Scheduled Castes flowing to the three Commissions which could be followed up with analytical studies on problems, incidents, programmes and assessment of area specific shortcomings in the enforcement of laws and programmes and suggestions for corrective interventions.			✓		Social Justice and Empowerment
39.	Initiative taken by the National Commission for Scheduled Castes and Scheduled Tribes of organizing a meeting with SC and ST Members of Parliament is welcome. This process of <b>interaction with MPs should</b>			✓		NCSS

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p><b>continue</b> and such meetings may be organized at least once in two years to apprise them of critical issues affecting the communities which they could raise in appropriate fora. It is also suggested that the National Commission for SCs and STs should likewise <b>take initiative of meeting MLAs from SC and ST communities</b> in various States both for the purpose of advocating specific measures for SC welfare as well as to gather feedback from them on their experience of raising issues among SCs. This would benefit the legislators as well as the Commission.</p>					
40.	<p>National Commission for SCs and STs should <b>visit at least one State every year</b> for a comprehensive review of all programmes concerning Scheduled Castes during which they should have a separate session with NGOs, social activists and other non-officials who have interest in or been working for the Scheduled Castes. In this review, the session with State Government officials may be preceded by a thorough scrutiny of various regulatory and development programmes implemented by the State in respect of SCs. This scrutiny may be undertaken by a team of experts from the Commission and, where necessary, inputs from a local research institution be taken. The observations emerging from this review may be communicated to the Chief Minister and follow-up action on it may be monitored.</p>			✓		NCSS
41.	<p>National Commission for Scheduled Castes and Scheduled Tribes should organize <b>annual meeting with non-governmental organizations</b> working for the Scheduled Castes so that NGOs working for the SCs may be able to apprise the Commission of their experience and problems.</p>			✓		NCSS
42.	<p>National Commission for SCs and STs may consider bringing out <b>special reports on selected problem areas concerning SCs</b> which would throw light on them comprehensively including State-wise picture</p>				✓	NCSS

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>on the subject. Some of the suggested themes for such special reports may include <b>Dalit women - sexual violence; Elected SC panchayat members; residential/ashram schools for SC children; SC migrant labour; SC Girl Child Labour; SCs engaged in specific traditional occupations; self financed employment ventures</b> taken up by SCs, <b>patterns of upward mobility among SCs.</b></p>					
43.	<p>All reports of the Commission should be priced and made easily accessible to the general public. The Commission may also consider getting its earlier reports printed so that they are available in public domain. A <b>separate book</b> may be prepared containing <b>major recommendations of the Commission</b> contained in its various reports, <b>with annotated information</b> on which of them have been acted upon and which are unimplemented but still relevant.</p>			✓		NCSS/ Social Justice and Empower- ment
CAPACITY BUILDING (NATIONAL COMMISSION FOR SAFAI KARAMCHARIS)						
44.	<p>The National Commission for Safai Karamcharis needs to be adequately equipped to carry out its functions by removing restrictions in its jurisdiction, providing it sufficient financial resources, arranging research inputs, facilitating its visits to towns with high concentration of scavenger population and specific establishments located there, holding of meetings and conferences and helping it with data collection from States and Establishments. Ministry of Social Justice and Empowerment may arrange to provide such assistance expeditiously.</p>		✓			Social Justice and Empower- ment
44.1	<p>The status of National Commission for Safai Karamcharis should be brought on par with National Commission for Human Rights and National Commission for Women to remove the feeling of discrimination from them.</p>		✓			Social Justice and Empower- ment
45.	<p>The Commission for Safai Karamcharis should also organize open hearing in at least two major towns every year where</p>		✓			NCSS

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>scavengers, NGOs working for them, Development administrators implementing programmes for them and researchers, social activists fully conversant with their conditions can present issues and problems. A local research organisation/NGOs could be mobilised to prepare a profile of manual scavenging and its facets for this hearing and provide it with necessary secretarial support. The information gathered through these hearings would be valuable as inputs in making recommendations and suggesting policy interventions.</p> <p><b>Targetting Civil Society</b></p> <p>46. A massive <b>public awareness campaign</b> for elimination of untouchability practices may be launched by the Ministry of Social Justice and Empowerment in consultation with leaders of SC communities, social activists, legal experts, educationists, human rights organisations, leading NGOs, media representatives, etc. There should be a 10 year perspective plan for this campaign which should also include mechanism for measuring social change resulting from its impact so that corrective interventions can be put in place timely. A prestigious <b>National Award</b> may be announced which may be conferred on an individual or Organization which has done outstanding work in removing untouchability, promoting social integration and empowering SCs at the grass root level.</p> <p>47. Village and Block level <b>Panchayats should be actively involved</b> in programmes relating to elimination of untouchability, protection of SCs against atrocities and removal of discrimination against them, implementation of labour laws and extension of development programmes for SCs, etc. Intensive training may be provided to the elected members for this purpose. Elected members belonging to SCs should be specifically oriented to provide emotional support and counselling to victims of atrocities and for advocacy of their problems.</p>					<p>✓ Social Justice and Empowerment</p> <p>✓ Social Justice and Empowerment Rural Development</p>



SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>Ministry of Social Justice and Empowerment may take up the matter with the Ministry of Rural Development to start this work at the earliest. Until such a programme is finalised Ministry of Social Justice and Empowerment could start on an experimental basis training of elected SC members of Panchayat in some atrocities prone areas.</p>					
48.	<p>Ministry of Rural Development may <b>ins- titute Award</b>, by way of providing additional funds, to a <b>Panchayat</b> in each State which has shown best performance in:</p> <p>a) facilitating registration of complaints of atrocities against SCs and STs under the law,</p> <p>b) mobilizing general support against such incidents and isolating the perpetrators of atrocities,</p> <p>c) delivery of necessary relief and rehabi- litation to victims of atrocities by the competent authority,</p> <p>d) helping victims of atrocities establish contact with Human Rights organi- zations/ workers, social activists, sym- pathetic non-government organizations for obtaining support, counseling and legal assistance,</p> <p>e) supporting programmes which reduce atrocities such as land reforms, minimum wages, elimination of bonded labour system, manual scavenging, child labour, etc.</p> <p>f) taking up development schemes for them beyond the earmarked percentage,</p> <p>g) establishing complementarity with NGOs for the benefit of SCs,</p> <p>h) Mobilizing liberal sections of civil society against caste oppression. Ministry of Social Justice and Empowerment could also consider taking this initiative as a part of its responsibility regarding administration of Protection of Civil Rights Act and SCs and STs (Prevention of Atrocities) Act.</p>			✓		Rural Development

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
49.	<p>Ministry of Human Resources Development should <b>introduce necessary changes in the school curricula/ teaching practices</b> with a view to changing the prevailing values and behaviour pattern based on caste system as a long-term measure for inducing social change.</p> <p>IMPLEMENTATION OF SOCIAL LEGISLATION [EMPLOYMENT OF MANUAL SCAVENGERS AND CONSTRUCTION OF DRY LATRINES (PROHIBITION) ACT, 1993</p> <p>MANUAL SCAVENGING</p>				✓	<p>HRD Social Justice and Empower- ment</p>
50.	<p>The current approach to elimination of manual scavenging as evidenced in its programmes suffers from inadequate comprehension of the complex nature of the practice and ignores the difficulties in the design and structures of implementation. Considering the slow pace of progress and limited achievement, <b>both the law and the programmes</b> may be reviewed. A <b>radically altered approach</b> to deal with the problem needs to be introduced which takes into account, inter-alia, (a) Jajmani character of the practice, (b) gender inequities in the vocation, (c) force exerted on scavengers, (d) degraded environment of scavenger colonies, (e) inadequate pressure for conversion of dry latrines into wet ones, (f) fragmented responsibility for delivery of results, (g) weak enforcement of law, (h) Need for psychological transformation, (i) official insensitivity, etc. Some problems have also been brought out in the reports of the National Commission of Safai Karamcharis. A comprehensive and integrated scheme should be designed to cover all these aspects and a single agency be entrusted with the task of implementation of both the law and the scheme. National Human Rights Commission may request <b>Planning Commission to undertake this task</b> expeditiously as two Ministries of Central Govt. are at present concerned with the programme.</p>				✓	<p>National Human Rights Commission  Planning Commission</p>

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
50.1	The preamble and provision as to the extended applicability of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 should be amended to make it automatically applicable to the entire country by linking it with Entry 24 of the Concurrent List of the Constitution with regard to legislative competence, instead of Entry 6 of the State List as was done in 1993. While doing so, appropriate prior and effective arrangements may be made to ensure that existing Safai Karamcharis do not suffer loss of employment or income.				✓	MUD National Human Rights Commission  Social Justice and Empower- ment
50.2	Every child of the families of existing Safai Karamcharis anywhere should be admitted to Government residential schools/hostels and in case of their non-availability in certain locations be provided with an adequate scholarship under the existing centrally sponsored scheme for children of families engaged in unclean occupations. This scheme should be expanded so that adequate number of residential schools and hostels are set up for this purpose. The entire expenditure on this scheme should be centrally funded so that financial position of States does not come in the way of its implementation.				✓	Social Justice and Empower- ment
51.	National Human Rights Commission may direct Ministry of Urban Development to ensure that Municipal bodies provide protective equipment and devices to those handling filth, garbage, solid waste, medical waste and dead animals and cleaning dry latrines, open drains, cesspools, septic tanks, etc. It may also introduce mechanical devices for such operations as unclogging sewers, etc., where such technology is available.				✓	National Human Rights Commission MUD
51.1	It should also work out a scheme of social security for those who are exposed to severe health hazards and risk of death in the course of sanitation work including rehabilitation package for those who lose life or suffer disability resulting from this work. While working out such measures, representatives				✓	National Human Rights Commission MUD

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	of scavengers/sanitation workers may also be involved.					
51.2	All Municipalities should be mandated to promote Cooperative Group Housing Society for Safai Karamcharis employed by them with a view to providing clean living environment for them. They should put in place an effective mechanism to redress grievances of Safai Karamcharis regarding irregular payment of salaries, non-payment of retirement benefits, etc. The educated sons/daughters of deceased Safai Karamcharis employed on compassionate grounds should be deployed on jobs commensurate with their qualification [Safai supervision for example] rather than on safai work to remove resentment and frustration in them and break caste-occupation nexus.				✓	MUD
52.	Scavenging and sanitation workers engaged in households, private establishments, and other places, whether on a full time or part time basis, other than those appointed to regular posts in Government establishments or otherwise covered by a wage structure, should be brought within the ambit of Minimum Wages Act, so as to eliminate their acute exploitation. Ministry of Social Justice and Empowerment may take up with the Ministry of Labour on a top priority basis.	✓				Social Justice and Empower- ment  Labour
52.1	All scavengers who are privately employed should be liberated from engagement in this occupation by appropriately bringing them within the ambit of rehabilitation programme under the existing scheme.	✓				Social Justice and Empower- ment
53.	Ministry of Social Justice and Empowerment, with the help of Ministry of Labour, should collect information on Government/Semi Government establishments which are engaging contractors for sanitation work against the provisions of law and Supreme Court judgement and should intervene to ensure that contract system is discontinued. It should also watch out for attempts being made by many Government establishments	✓				Social Justice and Empower- ment  Labour

SI. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	to privatize sanitation work in the wake of economic reforms and make timely intervention to protect the interests of Safai Karamcharis. Wherever employment of contract labour is unavoidable and has been legally permitted in certain establishments, it should be ensured that provisions of law relating to contract labour are rigorously enforced.					
54.	Ministry of Health and Family Welfare should get a comprehensive study carried out by its Institute of Occupational Health regarding health status of scavengers and sanitation workers employed in different establishments in the country and various health hazards they are occupationally exposed to. The study should also suggest measures which all establishments employing them should implement mandatorily to protect them from serious health risks. Ministry of Social Justice and Empowerment should render whatever assistance necessary for this study to be carried out most expeditiously.		✓			Health Social Justice and Empowerment
55.	Scavenger community is afflicted with serious problems of alcoholism, chronic indebtedness, etc. which worsen their already degraded condition. Manual scavengers are largely concentrated in identified towns in 5-6 major States. Ministry of Social Justice and Empowerment should take up a programme of social awareness and transformation in their community through NGOs with good track record and adequate empathy and commitment for the beneficiary group. Such a programme should get integrally linked to the existing scheme for rehabilitation of liberated scavengers, wherever it is being implemented. Scavengers in each such town should be encouraged to form a registered society which could be promoted over a period of time into a NGO and trained to look after their own problems.				✓	Social Justice and Empowerment
55.1	With a view to breaking the caste-occupation nexus in deployment of group 'D' staff in Government/PSU, etc. establishments, a					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	programme should be operated by all such establishments which provides incentives/facilities to them for upgrading their skills thereby enabling them to shift to other jobs in the organization. The expenditure incurred on this arrangement should be an integral part of its establishment component. In respect of smaller and resource deficient establishments, as an interim measure, Ministry of Social Justice and Empowerment may provide assistance by expanding the scope of its present scheme relating to manual scavengers.			✓		National Human Rights Commission  Department of Personnel & Training  Social Justice and Empower- ment
<b>DIVINE PROSTITUTION: DEVDASI SYSTEM ABOLITION ACTS</b>						
56.	Existing State Laws on abolition of Devdasi system in Maharashtra, Andhra Pradesh and Karnataka are inadequate and suffer from loopholes, <b>Central Government</b> may therefore consider <b>enacting a comprehensive law</b> to abolish the system of divine prostitution known as “Devdasi System” or by other names in different States and regions. Such a law may also bring within its ambit other customary practices leading to sexual exploitation of SC and ST women, enactment of this law may be preceded by meticulous collection of customary practices leading to <b>sexual</b> exploitation of women across the country to facilitate their incorporation within it. The National Commission for Women may take this work.				✓	NCW DWCD
57.	Until such time a Central Law is in position, National Human Rights Commission may direct that the concerned <b>State Governments</b> of Maharashtra, Andhra Pradesh and Karnataka may <b>amend their existing law</b> , remove loopholes, make it more stringent and activate the enforcement machinery to implement it effectively.				✓	National Human Rights Commission  State Governments
58.	The concerned State Governments may, through the coordinated efforts of their Departments of Scheduled Castes Welfare, Woman & Child Development, Rural Development, etc. <b>launch a massive</b>	✓				State Governments



SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p><b>awareness programme</b>, particularly directed at the vulnerable communities regarding the abolition of divine prostitution system and availability of programmes for rehabilitation of liberated Devdasis. The programme should provide information on whom the women affected by the system, potential victims and their guardians should approach for seeking intervention of the Government. The temple priests should be targeted in this campaign for conveying the message that they incur criminal liability in encouraging or conniving at this practice. NGOs and social activists should be actively involved in this campaign.</p>					
59.	<p><b>Intensive survey</b> should be carried out by the concerned State Governments. in their respective areas <b>to identify 'Devdasis'</b> who have not yet been liberated from the practice as also those who have abandoned this practice but have not yet been brought within the ambit of rehabilitation. This task may be accomplished with the help of NGOs, Village Panchayats, women activists and social workers. The rehabilitation of such Devdasis may be taken up most expeditiously and completed within a specified time frame. The National Commission of Women may monitor this.</p>	✓				State Governments
60.	<p>The pattern and contents of the rehabilitation programme for Devdasis may be completely overhauled so as to incorporate the following :</p> <p>An <b>integrated package</b> which includes inputs of poverty alleviation, housing, health, nutrition for children, drinking water, education, PDS, Social security, etc., through appropriate convergence of existing programmes.</p> <p><b>Confidence building measures</b></p> <p>Special efforts aimed at <b>saving the girl child</b> of Devdasis from falling into this practice and removal of stigma from their children in schools.</p> <p>The liberated Devdasis should <b>not</b> be <b>subjected to loan burden</b> in the pattern of rehabilitation worked out for them.</p>				✓	State Governments

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>There should be a <b>single window delivery</b> of various admissible benefits to remove bureaucratic red tape and other hassles.</p> <p>The entire programme implementation should be entrusted to a single organization with a full time functionary at the State level executing it.</p>					
61.	<p>The liberated Devdasis may be <b>organized</b> into a <b>Society</b> at the District level. The Society may be associated with the entire programme concerning Devdasis and some components of programmes may be entrusted to it for implementation as well. An apex level organization at the State level headed by Secretary, Woman and Child Development may coordinate the work of District level societies. This society should also liaise with Government agencies to sort out problems of their members and also ensure that ineligible persons do not corner benefits meant for genuine Devdasis.</p>				✓	State Governments
62.	<p>A Police Task Force should be set up in each concerned State Government to investigate complaints of trafficking in women and children. This Task Force should thoroughly <b>investigate</b> cases where <b>Devdasis</b> and/or their daughters have been <b>pushed into brothels</b>. It should build up information on agents, middlemen, religious priests and powerful local people who are still promoting this practice with a view to pursuing effective legal action against them. The inputs received from this investigation may be utilized for the Awareness Campaign suggested earlier. There should be regular consultation among the members of the Task Force in different States. Department of Women &amp; Child Development should coordinate and monitor this work with the help of Ministry of Home Affairs, where necessary.</p>	✓				State Governments DWCD

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p><b>Implementation of Economic Legislation: Checking exploitative terms of work:</b></p> <p><b>LABOUR LAWS</b></p> <p><b>General</b></p>					
63.	<p>Enforcement of <b>various labour laws</b>, such as those relating to bonded labour system, minimum wages, equal remuneration, child labour, inter-state migrant labour, which have a bearing on the violence committed against the Scheduled Castes <b>needs</b> to be assigned high priority. The performance should also be <b>intensively monitored</b> at the Central, State and District levels. Ministry of Social Justice and Empowerment should associate itself with such monitoring at the central level, if it is already being done by Ministry of Labour, particularly in respect of atrocities prone States. State Secretaries in charge of SC welfare should do likewise in respect of atrocities prone districts/areas in their States.</p>	✓				<p>Labour</p> <p>Social Justice and Empowerment</p> <p>State Governments</p>
64.	<p><b>Liberal availability of legal aid to SCs</b> under existing schemes is crucial in their efforts to seek justice under regulatory measures, particularly social and economic legislation enacted for their benefit. Ministry of Social Justice and Empowerment may expeditiously <b>review the reasons for very poor access of SCs</b> to legal aid and identify steps necessary to promote access and availability of this aid for seeking various entitlements under social and economic legislation.</p>				✓	<p>Social Justice and Empowerment</p>
65.	<p>The <b>machinery for enforcement</b> of above labour laws needs to <b>be strengthened</b> for intensive coverage and activated through training and appropriate capacity building, particularly in respect of atrocities prone districts. Trade Unions, NGOs, social activists should be involved for organizing labour and helping them avail of benefits of these laws. Legal aid should be mobilized in needy cases for this purpose. Ministry of Social Justice and Empowerment should lake initiative to push up these measures with State Governments/ Ministry of Labour.</p>	✓				<p>State Governments</p> <p>Labour</p> <p>Social Justice and Empowerment</p>

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
66.	<p>States may <b>identify endemic areas which supply</b> child labour from SC families. These areas are also likely to have high incidence of bonded labour system and would also be pushing a large number of unorganised labour outside the State on migration. Such pockets would most certainly have low wage levels. As these features are linked to high levels of poverty and exploitation, these areas are most likely to be prone to higher incidence of violence against SCs as well. <b>An integrated</b> programme of enforcement of labour laws, employment generation and poverty alleviation may be drawn up for such areas in which Village &amp; Block Panchayats may be actively involved. Ministry of Social Justice and Empowerment may liaise with Ministry of RD and State Governments in preparation of Projects for such an integrated programme and allocation of funds for them. It should monitor the impact of these measures on the incidence of violence against SCs.</p>				✓	Social Justice and Empower- ment
MINIMUM WAGES ACT, 1948 AND EQUAL REMUNERATION ACT, 1976						
67.	<p>The <b>occupations</b> which employ large number of SC labour, but have not yet been <b>brought within the ambit</b> of Minimum Wages Act may be included in the Schedule to provide protection to them with regard to wages and working conditions. Ministry of Social Justice and Empowerment may pursue this matter with Ministry of Labour and State Governments. Necessary survey of such occupations may be carried out for this purpose if no information exists on the strength of such labour.</p>				✓	State Governments  Labour  Social Justice and Empower- ment
68.	<p><b>Cases</b> of violence against SCs resulting from <b>non-payment of minimum wages</b> should be <b>brought within the ambit</b> of S.3 of the SCs and STs (Prevention of Atrocities) Act, 1989 and should merit higher punishment than what is admissible under the Minimum Wages Act. Ministry of Social Justice and Empowerment may process this proposal</p>				✓	Social Justice and Empower- ment

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	along with proposed amendments suggested by other agencies.					
69.	<p><b>Employment generation programmes may be specifically concentrated</b> in low wage pockets of rural labour so as to strengthen their bargaining position in the struggle for enforcement of minimum wages and equal remuneration among male and female workers. Ministry of Social Justice and Empowerment may identify such pockets in rural areas where SC predominate as agricultural labourers and liaise with the Ministry of RD in operationalising this suggestion.</p>				✓	<p>Rural Development Social Justice and Empowerment</p>
<p>BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976</p>						
70.	<p>The work relating to identification of bonded labour, their release and rehabilitation should be <b>allotted high priority in</b> the duties assigned to the District Magistrates and political signal to this effect should be clearly conveyed to them, National Human Rights Commission is already engaged in this exercise and is monitoring the implementation of this Act under the directions of the Supreme Court. It is also taking assistance of NGOs, social activists, welfare agencies in identifying individual cases of bonded labour so that their release and rehabilitation can be taken up.</p>	✓				<p>National Human Rights Commission</p>
71.	<p><b>National Human Rights Commission may collect information</b> through the large number of human rights organizations, NGOs/social activists it is in touch with <b>about pockets / occupations where bonded labour system prevails</b> so that it could pressure State agencies to launch an intensive campaign for identification of bonded labourers. It has already made a beginning with some pockets in UP, Karnataka and Gujarat. Similar pockets may be identified in other States for exerting pressure on concerned State Governments and District Magistrates to release and rehabilitate bonded labourers trapped in these areas.</p>		✓			<p>National Human Rights Commission</p>

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
72.	Ministry of Labour, in consultation with Ministry of Social Justice and Empowerment and Tribal Affairs should sponsor a study on State-wise status profile of released and rehabilitated bonded labourers and those released but not rehabilitated within a specified time frame so that rehabilitation of bonded labourers released earlier, but not yet been assisted and those who have relapsed into bondage due to unsatisfactory rehabilitation efforts may be taken up on priority with the help of National Human Rights Commission which is already pursuing this aspect. Necessary inputs for more effective implementation of the programme in future could also be provided on the basis of this study.				✓	Labour Social Justice and Empower- ment Tribal Affairs National Human Rights Commission
73.	The <b>prosecution of offenders</b> under the Act has <b>suffered</b> a great deal of neglect and needs to be invigorated by <b>intensive monitoring</b> regarding registration of cases, empowerment of Executive Magistrates for conducting trial and disposal of cases. National Human Rights Commission is already monitoring this aspect in the identified pockets of three States. But this monitoring may be extended to all the States for identifying districts with poor performance in this regard. Monitoring of performance by National Human Rights Commission would exert pressure on the District Magistrate to show progress.			✓		National Human Rights Commission
74.	The <b>debt relief legislation</b> passed by most State Governments which provides for registration of money lenders, limitations on gross interest to be charged, nullification of loans by unlicensed money lenders <b>are not being implemented</b> for many years. Ministry of Rural Development should get an <b>All India Review of debt relief legislation</b> carried out in order to provide national guidelines for their implementation. It could also prepare a draft model law for adoption by States so as to achieve some uniformity in the country.		✓			Rural Development



SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
75.	Ministry of Social Justice and Empowerment in consultation with Ministry of Rural Development should launch a programme to <b>organize self-help groups in each village</b> among the SCs (if necessary for men & women separately) for thrift and credit and link them with existing financial institutions, both commercial and cooperative, for improving the availability of credit for consumption purposes which no financial institution at present is catering to.				✓	Social Justice and Empower- ment  Rural Develop- ment
75.1	Ministry of Social Justice and Empowerment may launch or persuade Ministry of Rural Development to introduce a scheme for establishing Grain Banks in SC villages on the pattern adopted for STs which may provide food grains to needy SCs on loan during lean season which they may pay back from wages earned by them when employment is available.				✓	Social Justice and Empower- ment
CHILD LABOUR (PROHIBITION & REGULATION) ACT, 1986						
76.	There should be special targeting of endemic areas which supply child labour from SC families under compulsion of poverty. Programmes for poverty alleviation and employment generation combined with other development schemes for welfare of SCs may be implemented there in a convergent mode and focused manner to plug supply of child labour therefrom. Ministry of Social Justice and Empowerment should initiate action to implement this proposal with the help of Ministry of Rural Development.				✓	Social Justice and Empower- ment  Rural Development
77.	National Human Rights Commission may direct Ministry of Labour to sponsor a comprehensive survey of child labour in the country. Meanwhile, Ministry of Social Justice and Empowerment may identify areas where SC child labour is employed in hazardous occupations and assist National Human Rights Commission in vigorous enforcement of the Act to get labour released and rehabilitation projects started by the concerned State	✓				National Human Rights Commission  Labour  State Governments

Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	<p>Governments /Ministry of Labour in line with SC guidelines. It should also seek, if necessary, higher allocation under Special Component Plan of the Ministry of Labour for taking up sufficient number of such projects. It could also seek augmentation of its own resources to share the responsibility of Ministry of Labour.</p>					
78.	<p>Where SC children are employed in occupations permitted by Law, Ministry of Social Justice and Empowerment apart from liaising with Ministry of HRD for <b>extending Sarva Shiksha Abhiyan</b> to cover such children through innovative schooling programme suitable to the situation of the child labour of the area, take up with State Governments and Ministry of Labour for vigorous enforcement of the Act. It may mobilize NGOs working in these areas to extend certain services to SC children such as protection against abuse, counseling, elementary health care, supply of protective gear, non-formal education, emergency help in case of accident, etc. Necessary financial assistance may be provided to such NGOs for this additional work. These NGOs should also be asked to seek help of labour enforcement agencies in regulating the working conditions of such child labour according to law.</p>				✓	<p>Social Justice and Empowerment HRD Labour</p>
79.	<p>Ministry of Social Justice and Empowerment should liaise with the Ministry of HRD, and failing which <b>on</b> its own, <b>launch innovative schooling programme for SC boys/girls</b> such as shepherd schools (Charwaha Vidyalayas) which can be implemented in harmony with their existing employment pattern permitted by law and with suitable adjustments of the time schedule and venue of their work. For this purpose, it may identify occupations and their work pattern and design innovative schooling system for them with the help of experts and NGOs. Ministry of HRD may dovetail such</p>				✓	<p>Social Justice and Empowerment HRD</p>

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	innovative schools in their programme, Some <b>experimental projects</b> may be taken up by the Ministry of Social Justice and Empowerment under its ongoing schemes to provide a lead in this direction.					
80.	States which contribute most to SC child labour have very few residential schools for SC children per unit of SC population. These States should be targeted by Ministry of Social Justice and Empowerment to <b>set up Residential Schools in the locations/ areas which send large number of SC children</b> to work. These residential schools should also cater to SC children rescued from bondage, degrading occupations and other forms of acute exploitation. Ministry of Social Justice and Empowerment should provide financial assistance and incentives to States for this purpose.			✓		Social Justice and Empower- ment
81.	Ministry of Social Justice and Empowerment administer programmes for street children, irrespective of caste, through NGOs. Other agencies also administer programmes for them. The coverage of street children in these programmes, however, is very limited. It is also not known how many of those covered are SCs. <b>NGOs working for SCs</b> , funded by Ministry of Social Justice and Empowerment in big cities, <b>should be additionally mobilized</b> to expand their activities <b>to cover SC street children</b> by providing certain minimum facilities/ services, such as (a) safe shelter and protection from urban predators (b) drinking water, toilet facilities (c) elementary health care (d) literacy (e) recreation and (f) if feasible, some vocational training, etc. at timings convenient to them.				✓	Social Justice and Empower- ment
82.	Ministry of Social Justice and Empowerment in cooperation with Ministry of Labour should <b>identify areas where SC girl children</b> are <b>employed</b> in home based industries, agriculture and allied occupations. Such girl children are not covered under the existing				✓	Social Justice and Empower- ment  Labour

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>law on child labour. Ministry of Social Justice and Empowerment should prepare innovative projects for their rehabilitation and implement them under its ongoing scheme for low literacy pockets of the girl child by suitably expanding its objectives. Under such projects, welfare schemes for the girl child implemented by other Ministries may also be dovetailed. These projects should also focus on ways to correct gender based inequities in treatment of child labour within the family and outside.</p>					
83.	<p><b>Ministry of Social Justice and Empowerment</b> should network with Dalit activists, SC welfare organizations, social workers and NGOs working for women and children to <b>identify</b> persons and agencies involved in <b>sexual abuse, drug pedaling and trafficking of children</b>. While liaising with law enforcement agencies for criminal action against them and for rescuing the victims, it should <b>launch awareness programme among SC families</b> in areas which supply child labour for conveying the risks in sending their children to work. Information kiosks managed by social workers suggested in this paper may cover such areas also.</p>				✓	Social Justice and Empowerment
84.	<p>Massive <b>sensitization</b> programme should be carried out by the Ministry of Labour <b>against employment of child labour and their ill-treatment directed at</b> not only the industry, trade and business, but even the higher and middle class families which are increasingly employing children as domestic help and whose record of treatment of such labour does not do them credit.</p>				✓	Labour
	<p>INTER-STATE MIGRANT WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) ACT, 1979</p>					
85.	<p>The Act virtually remains unimplemented due to apathy, if not hostility of States which receive huge supply of migrant labour. <b>Political will, therefore, has to be generated</b> in these States for its</p>					

Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	<p>implementation by <b>building up enough pressure on them.</b> National Human Rights Commission may take up the matter with the Ministry of Labour and State Governments in this regard. A small beginning has been made by National Human Rights Commission with regard to Punjab State. As there are large pockets of both child and bonded labourers among the migrant labourers, specific information on such pockets may be collected through non-official channels. Thereafter pressure should be mounted on enforcement of the Act and other labour laws and for release and rehabilitation of such labour. This task may be accomplished and monitored through Special Rapporteurs and Bonded Labour Cell in the Commission.</p>			✓		<p>Social Justice and Empowerment National Human Rights Commission</p>
86.	<p>Ministry of Social Justice and Empowerment in cooperation with Ministry of Labour may identify occupations where SC migrant labourers are employed as bonded Labour or child labour and assist National Human Rights Commission in their intensive inspection for their identification, release and rehabilitation by the State Governments.</p>	✓				<p>National Human Rights Commission Labour State Governments</p>
87.	<p>The loopholes in the existing law are so serious and glaring that employers can violate it with impunity. Proposals for amendments to remove such loopholes are already available with Labour Ministry. A detailed memorandum by a TU Organisation has recently been submitted to the Prime Minister on the need for taking various institutional measures along with making amendments in the law. These proposals need to be taken up most expeditiously. National Human Rights Commission may take up this matter with the Ministry of Labour.</p>		✓			<p>National Human Rights Commission Labour</p>
88.	<p>A labour catchment area development programme may be initiated to target those areas which push a large number of</p>					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	labourers to other States in search of work. Appropriate package of development measures may be implemented to remove conditions which force labourers from these areas to migrate. Ministry of Social Justice and Empowerment with the help of Ministry of Labour may identify such areas from where SC labour migrates, get projects prepared and pro-actively work to get them included in the Special Component Plan of the concerned State Governments and sectoral programmes of concerned Ministries for implementation.	✓				Social Justice and Empower- ment  Labour  State Governments
89.	Migrant Labour Welfare Boards may be set up in each State to provide guidance and counselling to migrant labour about the potential areas of employment as well as to document information about their working conditions and problems they encounter. These Boards may also register migrant labour and issue identity cards to them to enable them to access various benefits. National Human Rights Commission may take up the matter with the Ministry of Labour.				✓	National Human Rights Commission  Labour
90.	Skill Development programme may be undertaken for labourers who wish to migrate in search of better prospects voluntarily. Ministry of Social Justice and Empowerment may identify such skills for SC migrants area-wise and ensure that programmes for their development are included in the Annual Plans of the concerned State Governments and the concerned Ministries. It may also take up such programmes within its existing schemes, where feasible.				✓	Social Justice and Empower- ment  Rural Development
91.	Panchayats may be made nodal agencies for recording information about migration of labour from their area and all the relevant details concerning them. This arrangement may be officially authorized by the concerned State Governments. Ministry of Labour may take up the matter with		✓			Rural Development  Labour



SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
92.	<p>Ministry of Rural Development to operationalise this arrangement by issuing necessary guidelines to State Governments.</p> <p>During the peak season of migration, <b>railways</b> should <b>provide additional coaches</b> and even <b>additional trains</b> from areas where labour usually migrates to destinations where such labour is employed. Strong measures for checking corrupt practices of railway staff/ Railway Protection Force and other anti-social elements regarding extortion of money and other harassment during journey may be introduced in consultation with Trade Unions. National Human Rights Commission may take up the matter with Ministers of Labour &amp; Railways.</p>				✓	National Human Rights Commission  Railways
93.	<p>At the place of destination, <b>Trade Unions, non-governmental organisations</b> and social activists may be involved in identifying migrant labour, maintaining their records, <b>creating awareness</b> among them and <b>taking up their problems</b> with the concerned State agencies. States which send large number of migrant labour may open offices in States which employ such labour to render necessary assistance to them as permitted by the Supreme Court. All India level Trade Union Organisations which have presence both in the recipient State as well as the State from where labourers migrate, would be very effective in providing minimum necessary assistance to such labourers. With a view to avoiding conflict between local labour and migrant labour in the same occupations, issues where interests of local and migrant labour converge, such as access to Public Distribution System, drinking water, housing, minimum wages, health care and toilet facilities, etc. may be taken up on priority. National Human Rights Commission may take up the matter with Ministry of Labour.</p>				✓	National Human Rights Commission  Labour
94.	<p>Ministry of Social Justice and Empowerment, in cooperation with Department of</p>					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	Women and Child Development and State Governments may identify NGOs <b>working for women</b> in areas where women migrant workers are employed and mobilize them to provide necessary <b>support to women migrant labourers who are increasingly becoming victims of sexual exploitation</b> by employers and/or their agents, in registering their complaints, rescuing them and in getting necessary compensation. Ministry of Social Justice and Empowerment may additionally mobilize NGOs working for SCs in such areas and nearby to extend their services to SC women workers modalities of which may be worked out. Appropriate financial assistance may be provided to such NGOs for this purpose.				✓	Social Justice and Empower- ment  WCD

#### IMPLEMENTATION OF ECONOMIC LEGISLATION: BREAKING CONCENTRATION OF ECONOMIC POWER

##### LAND REFORMS :

95. State Level Vigilance and Monitoring Committees constituted under the SCs and STs (Prevention of Atrocities) Act, 1989 and Rules (1995) may **get information collected on:**
- a) SCs who have been issued pattas but possession has not been delivered to them or SCs who have been dispossessed after delivery of possession,
  - b) SCs who have been cultivating lands in respect of which no pattas have been issued to them,
  - c) Ceiling, Bhoodan, Government land which are undistributed and/or encroached by non-eligible persons,
  - d) SCs who have no homestead of their own and those who have their homestead on the lands of landowners or Government,
  - e) SC landowners who have been dispossessed from their owned land illegally,
  - f) SCs who are being discriminated against in respect of use of common land or water sources,

✓

National  
Human  
Rights  
Commission  
  
NCSS

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>g) SCs who are cultivating lands of others as insecure tenants,</p> <p>h) SCs who have land but have not been assisted under any Government programmes,</p> <p>i) SCs who have been defrauded in the payment of bank loans,</p> <p>j) Any other cases of SC pertaining to their rights and interests in land.</p> <p>This work may be carried out by a team constituted by the Committee in which representatives of SCs may be associated. <b>National Commission</b> for SCs and STs <b>may monitor</b> this work at the Central level and prepare State-wise profile of such case. National Human Rights Commission may also write to the CMs for this purpose.</p>					
96.	<p>Where SC beneficiaries have been distributed land under any programme but they have not been given formal possession of it, <b>possession may be delivered to</b> them in respect of such land and entry to this effect may be made in relevant revenue records. Contentious cases should be sorted out within a time frame and those which are pending in courts should be expeditiously fought out at the State's cost.</p>	✓				<p>Rural Development State Governments</p>
97.	<p>Where SCs are cultivating land which belongs to the Government/ Gram Sabha/ Panchayat, etc., for which they have not got ownership rights, such ownership may be conferred on them in accordance with the provisions of law, rules or the Government instructions pertaining to such lands in the concerned State.</p>	✓				<p>Rural Development State Governments</p>
98.	<p>Where SCs are working as insecure tenants or share croppers their status may be entered in the revenue records to facilitate security of tenure and protection against arbitrary eviction in accordance with provisions contained in the relevant Land Reform laws of the State.</p>	✓				<p>Rural Development State Governments</p>
99.	<p>Government land, Bhoodan land and surplus ceiling land available for distri-</p>					

Sl. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	but not yet allotted may be distributed to eligible SCs (also STs as per priorities laid down in respective States) so that they are helped to disengage themselves from their traditional degrading occupations.	✓				Rural Development State Governments
100.	Top priority should be given to get expeditious court decisions on huge area of surplus ceiling land which is locked in litigation so that it is available for distribution to SCs and other poor.	✓				Rural Development State Governments
101.	In cases where non-Scheduled Caste persons have encroached upon the land which are owned/ cultivated by members of SCs, action may be taken to restore these lands to them. In case of litigation, either the State Government should fight out the case or provide legal aid to the affected SCs.	✓				Rural Development State Governments
102.	States may also make provisions in their Land Reforms Laws which prohibits alienation of land owned by SCs to Non-SCs for this purpose.				✓	Rural Development State Governments
103.	States may take adequate steps to ensure that SCs are enabled to enjoy equal rights on community land and other common property resources and that their rights of grazing or rights of way, etc. are not restricted.	✓				Rural Development State Governments
104.	Where SCs are residing in houses constructed on the land of other persons or on Government land in rural areas, they may be provided ownership rights in respect of those lands as per provisions existing for this purpose in the laws/instructions/guidelines of concerned State.	✓				Rural Development State Governments
105.	In case of SCs who have no land for residential houses in rural areas, if no vacant Government land in the area is available for allotment to them, land may be acquired for this purpose and minimum land for construction of a house may be allotted to them in order to provide security of a habitat to such persons. Benefit of House Construction Schemes may be made available to such allottees.				✓	Rural Development State Governments

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
106.	Those SCs who have land but have not yet been assisted under Poverty Alleviation Programmes and Development Financing Schemes to improve its productive capacity for enhanced income generation may be covered by these schemes expeditiously. Ministry of Social Justice and Empowerment may collect State-wise information on such cases and liaise with Ministry of Rural Development etc. to monitor the progress of coverage under various poverty alleviation programmes. Those eligible to get assistance under the development financing schemes of the National SC Finance and Development Corporation would be easier to cover as the Corporation functions under the administrative control of the Ministry.				✓	Rural Development  Social Justice and Empower- ment
107.	District Magistrates may carry out investigation into complaints relating to payment of bank loan to SCs under various Development/Poverty Alleviation programmes, such as under payment, non-payment and fraudulent drawal of loan amount in their name by others, etc. While appropriate punitive action may be taken for proceeding against the guilty officials intermediaries and perpetrators of fraud, protection may be given to affected victims of these malpractices against harassment.	✓				Rural Development  State Governments
108.	Action on recommendations 104-120 has to be taken by concerned State Governments. National Commission on SCs and STs may monitor the progress rigorously. Ministry of Social Justice and Empowerment should participate in this monitoring exercise and provide whatever assistance necessary for this purpose.			✓		NCSS  Social Justice and Empower- ment
VIOLATION OF HUMAN RIGHTS: SOCIAL STIGMATISATION DE-NOTIFIED TRIBES (DNTs)						
109.	National Human Rights Commission has already made a number of recommendations to concerned State Governments for dealing with the denotified tribes in pursuance of					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	the representation made by Smt. Mahashweta Devi. But States have not reported any positive action so far. While the Commission is pursuing the matter, Ministry of Social Justice and Empowerment may hold an All India Conference of States on the DNTs so that a comprehensive Plan of Development can be proposed and included in the Tenth Plan. NGOs working with DNTs may also be invited to this conference.				✓	NCSS
110.	A person with leadership potential from each bustee of De-notified Tribes may be trained as a social worker, issued an identity card, permitted access to civil & police officers so that cases of harassment can be reported to them and their specific problems can be looked into. Ministry of Social Justice and Empowerment may sponsor this programme.			✓		Social Justice and Empower- ment
111.	Social Welfare Departments of State Governments may make institutional arrangements within their organisation to look after the needs and problems of DNTs, the way Government of Maharashtra has done. Ministry of Social Justice and Empowerment may pursue the matter with concerned State Governments. Ministry of Social Justice and Empowerment like-wise should create a cell to coordinate this work as a nodal agency at the central level.		✓			State Governments  Social Justice and Empower- ment
112.	At least one NGO in each major State may be funded by the Ministry of Social Justice & Empowerment [in case of DNTs notified as SCs/OBCs] / Ministry of Tribal Affairs [in case of DNTs notified as STs] for liaising with State agencies, providing necessary support to members of DNTs and acting as an umbrella organization for social workers from villages of DNTs and mobilize necessary legal assistance for DNTs in distress. DNTs in the State may be encouraged to organize themselves as a society to take up their common problems with the various Government agencies.		✓			State Governments  Tribal Affairs



SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
113.	Local <b>Panchayats</b> , in whose jurisdiction DNTs reside, <b>may be sensitized</b> about the need for their development and rehabilitation needs and, in particular, about changing peoples' attitude towards them. Training programmes contemplated in National Human Rights Commission recommendations may cover this aspect also. Ministry of Social Justice and Empowerment may pursue the matter with the State Governments.		✓			State Governments  Social Justice and Empower- ment
114.	Ministries of Social Justice and Empowerment / Tribal Affairs may sponsor <b>research studies</b> on various problems relating to DNTs (of specific tribes/ communities, where necessary) to obtain valuable insights and necessary inputs concerning them for undertaking policy interventions on their upliftment, destigmatization and mainstreaming.		✓			State Governments  Tribal Affairs
VIOLATION OF HUMAN RIGHTS: SUPERSTITION AS SOCIAL VIOLENCE WOMEN VICTIMS OF WITCH HUNTING						
115.	Central Government may enact a law or prepare draft of a model law, which may be adopted by States, to deal with practices leading to branding of women as witches and their brutal treatment, make provision for criminal action against persons accused of encouraging and promoting these practices and participating in them and rehabilitation of victim women. The Law enacted by the Bihar Government on the subject a few years ago may be studied in this context. Department of Women and Child Development may take initiative in the matter and take assistance from National Commission for Women for preparing such a legislation and a programme for rehabilitation of victim women. Ministry of Social Justice and Empowerment may lend their active support to them.				✓	WCD  Social Justice and Empower- ment  NCW

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
116.	The Women and Child Development Department of the concerned State Governments may identify areas where these practices of branding certain women as witches are prevalent as well as underlying causes responsible for them and draw up a programme to curb them, sensitize the population prone to such beliefs and rehabilitate the victim women. The village Panchayats may be actively involved in sensitization campaign and its elected women members may be trained for this purpose. Specific villages from where such cases are reported should be specifically targeted for social mobilisation through local NGOs.				✓	WCD
117.	The areas from where such practices are reported may be specially targeted for improved access to health care since superstitions about causes of ill health are a major contributory factor to these practices. The local traditional healers may also be involved in the process of such improvement so that they can be weaned away from sanctifying such superstitions, Department of Woman and Child Development may take up the matter with Ministry of Health and Family Welfare to concretize this suggestion.	✓				WCD HEALTH
118.	Anganwadi workers in the village may be trained to gather necessary information in time regarding tension simmering in the village which could lead to branding of women as witches and assault on them and convey it to their supervisory officers so that timely preventive action can be taken to allay the superstition, prevent the mishap and proceed against vested interests who may be involved in promoting this practice.	✓				WCD
	COMPENSATORY DISCRIMINATION: REGULATORY ARRANGEMENT RESERVATION SYSTEM					
119.	<b>Central Government</b> may <b>enact</b> expeditiously <b>a comprehensive law on reservation</b> so as to systematize policies,					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	remove ambiguities and obviate frequent interventions of the Apex Court. This would also help in holding those agencies accountable who are not adhering to reservation provisions. Department of Personnel & Training being the nodal agency for this subject, should initiate this task. Ministry of Social Justice and Empowerment should pursue the matter. It should inter-alia provide for Tribunals to adjudicate reservation matters, one in each State capital. Appeals to this Tribunal should only be to the Supreme Court. The Tribunals should have jurisdiction in respect of reservation in appointments and posts not only in Government but in all institutions to which reservation is applicable and is made applicable from time to time. The Act should contain a penal provision for willful or negligent failure to implement reservation provisions.				✓	Department of Personnel & Training  Social Justice and Empowerment
119.1	With a view to avoiding any adverse effect on existing reservations for SCs and STs in the ongoing process of privatization of PSUs, etc. Government should enter into MOU with the new owner/management that these reservations would continue in the privatized public sector. Department of Personnel & Training should process the matter for taking a decision.				✓	Department of Personnel & Training  Social Justice and Empowerment  NHRC
120.	Ministry of Social Justice and Empowerment, Department of Personnel & Training and representative of National Commission for SCs and STs should sit together and determine the extent of backlog of reserved vacancies in various categories and its spread in various Ministries and organizations. Since an NGO representing Dalit interests has estimated backlog of such vacancies at 10,00,000, it may be consulted while undertaking this exercise so that there is no controversy on facts in the matter. The details of vacancies in different Government/ Semi-Government agencies along with the category of posts	✓				Department of Personnel & Training  Social Justice and Empowerment  National Human Rights Commission  NCSS

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	may be put on the website of concerned Ministries and also of the Department of Personnel & Training.					
121.	Similar exercise should be carried out by the State Governments in respect of the reserved posts under them and their PSUs, etc. where reservation is applicable.	✓				State Governments DOPT
122.	A time schedule for filling up the backlog of vacancies may be prepared. The recruitment process to these vacancies may be regularly monitored by the Department of Personnel & Training/Ministry of Social Justice and Empowerment jointly.	✓				DOPT Social Justice and Empowerment
123.	Government may devise a stronger and more effective mechanism for pressuring those agencies which are not complying with Reservation provisions so that necessary political will is displayed in enforcing them. Department of Personnel & Training may take action in this regard. Ministry of Social Justice and Empowerment may pursue the matter with Department of Personnel & Training.	✓				Department of Personnel & Training Social Justice and Empowerment
124.	Posts may be identified which remain unfilled because qualified persons belonging to reserved categories are not available. Ministry of Social Justice and Empowerment should sit with the concerned Ministries / organizations in whose jurisdiction these posts lie to work out measures by which qualified SC candidates could be available in a reasonable period of time. Action plan to implement these measures in a specified time frame may be prepared by the Ministry of Social Justice and Empowerment and its implementation may also be monitored by them.		✓			Social Justice and Empowerment
125.	Ministry of Social Justice and Empowerment should work out a comprehensive strategy for increasing the entry of SCs into the Science stream of education at various					

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	levels so that reserved seats for them in Science, Technology and other professional courses can be filled up. It should for this purpose liaise with Ministry of HRD and State Governments for improving science teaching in schools of areas with SC concentration. It should also take up a major programme of building up science talent in SC youth in the Tenth Plan. This would increase entry of SCs in technical/professional courses and facilitate their absorption against reserved technical posts in Government/ Semi-Government institutions/ PSUs, etc. while opening up employment opportunities for professional jobs in the private sector.		✓			Social Justice and Empower- ment  HRD
126.	Ministry of Social Justice and Empowerment may identify institutions/ services where SCs are poorly represented and which have not accepted the policy of reservation in their positions such as higher level Judiciary, Defence Forces, etc. It should work out measures which may, over time, produce sufficient number of bright and qualified SC candidates for getting into those positions through open competition.				✓	Social Justice and Empower- ment
127.	Ministry of Social Justice and Empowerment in consultation with Department of Personnel & Training should draw up a comprehensive Plan of Action to improve representation of SC women in services and monitor the impact of measures it initiates under this Plan.	✓				Social Justice and Empower- ment  DOPT

IMPLEMENTATION OF PROGRAMMES: IMPROVING QUALITY OF LIFE

DEVELOPMENT PLANNING

128.	Planning Commission should identify the gap in the access to basic services such as health, education, drinking water, sanitation, nutrition, housing, etc. between SCs and the general population and prepare a comprehensive plan for bridging this gap by setting up yearly targets in various sectors/ sub-sectors and ensuring allocation				✓	Planning Commission  Social Justice and Empower- ment
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SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>of resources for meeting them. It should also prepare a National SC Human Development index bringing out State-wise position of SCs in respect of various social parameters and commend this to be done by all State Governments as well. Ministry of Social Justice and Empowerment should monitor the performance under each programme and at the end of each year produce a report of the extent to which this gap has been reduced.</p> <p>This information should be incorporated in its Annual Reports to the Parliament.</p>					
128.1	<p>On the basis of data available with the Planning Commission about the level of poverty among SCs in the country and the vast gap that is existing in the alleviation of this poverty compared to the other categories of poor, a perspective plan for accelerated efforts in reducing this gap may be prepared fixing year-wise targets of coverage backed by financial resources so that progress achieved in this direction can be monitored and necessary corrective interventions can be introduced if the desired progress is not being achieved. This SCP of poverty alleviation would of course be initially linked to the general programme of poverty alleviation for all categories of poor. Planning Commission, as a part of this exercise, may also look into the qualitative dimensions of the entire gamut of the programme in so far as SCs are concerned so that more positive results may be achieved from the investment and efforts made.</p>				✓	Planning Commission
129.	<p>Planning Commission should develop mechanism to ensure that State's share for centrally sponsored schemes <b>which benefit Scheduled Castes</b> is specifically earmarked at the time of approval of Annual Plan of each State and that such earmarked funds are not diverted for other purposes.</p>				✓	Planning Commission
130.	<p><b>Under-utilization, diversion and mis-utilization</b> of funds allocated for SC</p>					



SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	development under SCP and Sectoral Schemes in various States is emerging as a matter of serious concern. Planning Commission should collect details of these features state-wise and <b>arrange discussion with defaulting States</b> and work out strong measures to stop diversion and misutilization of funds and promote their full and proper utilization. It should <b>devise effective mechanisms</b> such as punitive financial consequences which create adequate pressure on State Governments against repetition of these practices. <b>National Commission</b> for SCs and STs may <b>visit defaulting States</b> for discussion to accelerate the pressure. Ministry of Social Justice and Empowerment may monitor the impact of these measures with the help of competent research organisations.				✓	Planning Commission State Governments NCSS Social Justice and Empowerment
131.	Planning Commission may undertake a detailed <b>review of the impact of revised lending policies</b> of commercial banks, <b>towards extension of credit</b> to SCs and STs, resulting from pursuit of economic reforms and may effectively intervene with Ministry of Finance to ensure that availability of credit to SCs and STs gets enhanced and not reduced. Ministry of Social Justice and Empowerment may also pursue this matter.				✓	Planning Commission Social Justice and Empowerment Finance
132.	The strategy of <b>Special Component Plan</b> needs to be reviewed in depth with a view to considering whether an alternative instrument to achieve the objective for which it was introduced would be more effective. Meanwhile, the <b>Standing Tripartite Committee set up</b> by the Planning Commission <b>may scrutinize the Annual Plans and Programmes</b> of Ministries to satisfy itself that there are no programmes which these Ministries can implement exclusively for the benefit of the SCs. Where this is so, the <b>Tripartite Committee may earmark funds under SCP</b> and place them at the disposal of the Ministry of Social				✓	Planning Commission

Sl. No	RECOMMENDATIONS	Activa- ting the system	Capa- city bui- lding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	Justice and Empowerment for taking up development programmes for SCs which no sectoral Ministries are covering.					
133.	Planning Commission may also <b>review the results</b> obtained from the <b>Tripartite Committees constituted at the State level</b> so that further conditionalities/guidelines in mechanism of allocation of funds and their utilization for development of SCs can be introduced. It should ensure for this purpose that State level Tripartite Committees expeditiously complete their deliberations.				✓	Planning Commission
134.	Countrywide <b>impact study of the Special Component Plan</b> may be carried out by competent research organisations to provide credible feedback about the usefulness of the existing instruments for development of SCs. Ministry of Social Justice and Empowerment may take up this matter with the Planning Commission.		✓			Social Justice and Empowerment Planning Commission
135.	Ministry of Social Justice and Empowerment, with the assistance of Planning Commission, may <b>develop norms for detailed monitoring of impact</b> of various sectoral development programmes which have the objective of benefitting Scheduled Castes so that requisite database is generated for effective review of development policies in relation to Scheduled Castes. These norms may be conveyed to State Governments. Rigorous monitoring may be carried out at the Central, State and District levels based on these norms. The picture emerging from this monitoring exercise may be incorporated in the Annual Report of the Ministry.				✓	Social Justice and Empowerment Planning Commission
136.	Planning Commission should set up a Special <b>Task Force</b> to work out the strategy <b>on</b> how the <b>employment of Scheduled Castes</b> can be promoted in the changing economy. A comprehensive Plan of Action incorporating this strategy may be prepared covering, inter-alia, different categories of				✓	Social Justice and Empowerment Planning Commission

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	unemployed SCs such as school dropouts, educated SCs with technical degree/ diploma & certificate qualifications, educated SCs without any exposure to technical education but with degrees in Humanities, SCs without any formal qualifications, SC women engaged in home based industries and those who wish to continue with traditional occupations, etc. Ministry of Social Justice and Empowerment should pursue this matter.					
137.	While finalizing details of the 10 <sup>th</sup> Five Year Plan for SCs, Planning Commission may <b>take note of Bhopal Declaration</b> and similarly <b>work out at the national level, through a process of intensive consultation with SC intellectuals and leaders, a new paradigm of development</b> for Scheduled Castes consistent with their needs and aspirations. Ministry of Social Justice and Empowerment may actively join Planning Commission in this exercise.				✓	Social Justice and Empowerment  Planning Commission
138.	Planning Commission may <b>study affirmative action policies practised in the United States of America, South Africa</b> and some other countries, which have succeeded in enlarging the representation of minorities and other weaker sections in trade, commerce and industry to which a reference has been made in the Bhopal Document, and prepare policy proposal which generates comprehensive national commitment on this issue and recommend measures which can promote desired representation of SCs in various sectors. Intensive dialogue with sectoral interests/ groups in these sectors would be required for this purpose. This should be taken up on priority basis.				✓	Planning Commission  Social Justice and Empowerment
139.	Ministry of Social Justice and Empowerment may <b>identify</b> with the help of State Governments extremely <b>vulnerable groups within the Scheduled Castes</b> in each State who are unable to receive their				✓	Planning Commission

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	adequate share of benefits for development flowing to SCs and devise mechanisms <b>for better distributional reach</b> of programmes to them.					
140.	In view of their extreme vulnerability, more focused <b>attention</b> needs to be directed towards development needs of <b>SC women</b> and particularly of the women headed households therein. This approach would have favourable impact on the status of SC children also. Measures for improving representation of SC women in governance should get integrally linked to this overall strategy of <b>reducing gender inequities in the SC communities</b> . Tenth Five Year Plan should have separate treatment on the subject and Ministry of Social Justice and Empowerment should restructure and revamp its own programmes and also seek convergence of protection and development programmes for women in general to achieve this objective.				✓	Social Justice and Empower- ment  Planning Commission
141.	ICSSR institutions, other competent research organizations and more specifically Ambedkar Chairs set up in prestigious Universities/Centres may be mobilized by the Ministry of SJ&E for providing authentic feedback, through <b>in-depth research, on impact of development measures</b> in elimination of untouchability practices as well as reduction of physical violence inflicted on the Scheduled Castes. The feedback from these studies may be used for improving the implementation of the Protection of Civil Rights Act, 1955 and SCs and STs (Prevention of Atrocities) Act, 1989.		✓			Social Justice and Empower- ment
142.	Preparation of a sound and viable Project is an extremely weak area in the development planning for SCs. This is particularly evident in activities relating to self-employment and training. Ministry of Social Justice and Empowerment may take up with Ministry of Rural Development the need for expert consultation on the subject		✓			Social Justice and Empower- ment  Rural Development

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
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and to create institutional arrangement in each State for preparation of viable and sustainable income generating projects for SCs since largest number of such projects are taken up under poverty alleviation programmes. Such initiative may also be taken up with other concerned Ministries/ Agencies, where necessary. Ministry of Social Justice and Empowerment may direct NSCDFs also to set up such a facility. This should be followed up by comprehensive training of officials who are administering self-employment programmes for them. Ministry of Social Justice and Empowerment should also undertake, in cooperation with Ministry of Rural Development, an indepth and critical review of training and skill development programmes funded by Government to assess their relevance, quality, adequacy, employment generation potential, etc. In this context it should develop in consultation with experts, norms for assessing the capability of training institutions and agencies imparting training to SCs and evaluation of projects taken up for them.

IMPLEMENTING CONSULTATIVE DEMOCRACY: EMPOWERMENT THROUGH DECISION MAKING

PARTICIPATION: STRUCTURES

- 143. SCs at all levels should be involved in activities relating to their protection and development. Necessary structures may be created where none exists and already existing ones may be activated to facilitate this process. A four-tier arrangement is suggested as a new structure for participatory planning by the community covering all aspects from protection and development:
  1. At the village level, all members of SCs in a village should constitute SC **Gram Sabha**. This Gram Sabha should discuss the problems of SCs in the village and prepare a plan of action for protection and development. A local SC educated

✓ Social  
Justice and  
Empower-  
ment  
  
Planning  
Commission

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
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youth or anybody with empathy for them may assist SC Gram Sabha in this exercise. Elected SC member/members from the village and educated SC youth of the village may also be associated.

2. Likewise at the Panchayat level, all elected SC members and a representative each from SC Gram Sabha should get together and prepare Panchayat level Protection and Development Plan for SCs. Any serving/retired SC official or in his absence any educated SC person may assist in this exercise.
3. At the Block level, all elected SC members of panchayats should constitute a group and prepare SC Development Plan of the Block with the assistance of some serving/retired SC official or in their absence any educated member of SC. Similar exercise shall be carried out at the district levels.

In the course of the preparation of these plans, SC intellectuals, retired officials, professionals, present/former MLAs/MPs, prominent SC citizens of the area and virtually any SC, if interested, may join this exercise. NGOs and non-SCs deeply committed to the cause of SCs should also be welcome.

These Action Plans would become Social Charter for all those involved in the advocacy work for SCs. Officials/ non-officials involved in working for SCs should try to get components of this plan positioned in the relevant programmes/projects at different levels depending upon the availability of resources and facilities.

Planning Commission may be approached to provide funds for encouraging this process of community planning in SC areas as an innovative attempt at



SI. No	RECOMMENDATIONS	Activating the system	Capacity building	Enhance Accountability	Advocacy	Jurisdiction for action
	<p>participation. Ministry of Social Justice and Empowerment may take up the matter with them.</p>					
143.1	<p>The participatory consultative body outlined above for preparing Special Component Plan at different administrative levels would also nominate a team of public spirited members from the area at each level to carry out community audit of programmes claimed to have been implemented by different agencies under SCP or any other sectoral programme in their jurisdiction to assess whether intended objectives have been achieved. It would furnish a written report to the competent official in charge of this programme for taking necessary action. Person/Persons who are knowledgeable about such programmes and have empathy for SCs would be most welcome to assist the team in this task.</p>				✓	<p>Planning Commission Social Justice and Empowerment</p>
144.	<p>Ministry of Social Justice and Empowerment should encourage SCs to form their NGOs. It should identify SC inhabited areas which are NGO deficient and take up a programme of training and capacity building of SCs with leadership potential. These persons may be encouraged to take up work of community mobilization, social assistance and interest articulation, which should lead to the registration of a non-government organization at an appropriate time. Depending upon the quality of work done and interest sustained, Ministry of Social Justice and Empowerment may consider financing such NGOs. Such training programmes should be carried out by extremely competent and committed NGOs.</p>				✓	<p>Social Justice and Empowerment</p>
145.	<p>Ministry of Social Justice and Empowerment should identify a Research and Training Organization, one in each State which could be entrusted with the task of training SC members of various committees, members of representative institutions. Cooperatives and other public bodies, SC</p>				✓	<p>Social Justice and Empowerment</p>

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>social workers and activists and all those SCs who are keen to raise issues concerning SCs in various fora. This organization may conduct short duration programme for such persons as a capacity and confidence building measure. The organization should also be equipped to provide brief literature on issues relevant to SCs locally as notes, which can be used by SC leaders/social workers/others in their advocacy role. It should also maintain effective liaison with MLAs/MLCs of SC community and provide intellectual inputs to them for raising issues concerning SCs in the legislature. It may also offer training and inputs to SC leaders of PRIs and to NGOs which work for the SCs.</p>					
146.	<p>Unlike the STs, the cultural profile of SC communities has been totally ignored in the strategy drawn up for their protection and development. Ministry of Social Justice and Empowerment should <b>introduce a programme</b> in the Tenth Plan <b>which rejuvenates community organizations</b> among SCs, taps their potential for coping with violence and discrimination from caste Hindus and effectively harnesses their cultural strengths and traditional knowledge for their collective development. This programme may be implemented by NGOs which have deep understanding of SCs and are competent as well as committed to undertake this task.</p>				✓	Social Justice and Empowerment
147.	<p>Ministry of Social Justice and Empowerment may set up a Standing non-political advisory Group consisting of SC intellectuals, retired officials, social activists and those with long experience of work for and with SCs which can be accessed for advice by Government agencies from time to time in matters relating to protection and development of SCs. This group should have regional representation also. The views of the group should be actively sought in formulation of programmes for SCs and the</p>		✓			Social Justice and Empowerment

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	<p>manner of their implementation. States may also be advised to set up such a group at the State level as State Government of Madhya Pradesh has done in pursuance of the Bhopal Declaration.</p>					
147.1	<p>Every Institution providing services to members of Scheduled Castes should have a management structure which has adequate representation of the community as well as those who actively work and have empathy for them. A.P. Government have adopted the structure of a registered society for SC/ST residential schools which could be adopted by other States.</p> <p>NGOs working for SCs and funded by Government must have in their Management/Governing/Executive Committee representatives of the community. Each Ministry of Government should ensure that this arrangement has been made while releasing funds to them. MHA should likewise ensure this in respect of Donor funded NGOs.</p>				✓	Social Justice and Empowerment
148.	<p>With a view to promoting effective participation of SCs in political institutions, processes and decision making bodies, it would be desirable to <b>evolve fora for individuals, agencies, organizations</b> already engaged in this task in a modest way <b>to come together for experience sharing</b>, learning from strengths and limitations of their efforts and gaining insights about strategies which work favourably in different social situations. While this may be happening on a small scale through efforts of some organizations, Ministry of Social Justice and Empowerment could encourage this process further by providing such a fora in different States/regions from time to lime. Where NGOs, Academic/Research Institutions, activists agencies, etc. [but not political parties or religious outfits] wish to take initiative for undertaking such an exercise, Ministry of Social Justice and Empowerment, under its</p>				✓	Social Justice and Empowerment

SI. No	RECOMMENDATIONS	Activa- ting the system	Capa- city buil- ding	Enhance Account- ability	Advo- cacy	Juris- diction for action
	existing Scheme, could provide some financial assistance and information inputs to them to facilitate their effort. Official participation in such programmes should be avoided to permit free and frank exchange of views. These interactions would entirely focus on these non-official bodies accelerating their efforts, networking with one another and developing institutional resources for accomplishing this task effectively. Government should have a great stake in the success of these deliberations.					
149.	Macro-economic policies being introduced in the wake of globalization have resulted in shrinkage of employment and income of traditional producers of various goods which has adversely affected SCs as also other categories of poor. Mechanisms may be expeditiously introduced to identify such groups, provide for effective consultation with the authentic representatives of traditional producer communities and experts/social activists who have empathy with and knowledge about them before such decisions are taken and dovetail safeguards against damage to their interests.				✓	National Human Rights Commission  Planning Commission  Ministry of Finance
150.	National Human Rights Commission may set up a cell to monitor / follow- up various interventions already made and are proposed to be made in protecting the rights and interests of SCs. It may also direct that Ministry of Social Justice and Empowerment should strengthen its capacity to discharge the nodal role in respect of SCs. Similar capacity building would seem necessary in respect of State departments looking after interests of SCs.				✓	National Human Rights Commission

The following initiatives can be taken up immediately :

SI.No	Recommendations	Ref. To Recommendation No.
<b>NATIONAL HUMAN RIGHTS COMMISSION</b>		
1.	Set up a group for preparation of a Manual on the implementation of SCs/STs (Prevention of Atrocities) Act, 1989 and Protection of Civil Rights Act, 1955	1
2.	Write to the Chief Ministers of State Govts. about setting up of a 3-tier Training programme for Police and Civil functionaries and holding of an Annual Workshop for DMs and SPs.	3 3.1
3.	Write to the High Courts about the need for in-house training of Presiding Officers of Special Courts	3.2
4.	Lay down norms for appointment of Public Prosecutors for implementation of the Act so as to ensure their competence and commitment.	4
5.	Write to the State Governments about:	
	• Need for constituting exclusive Special Courts	4
	• Agenda to be covered by the Monitoring Committee	5
	• Representations to be given to non-officials on the Committee	5
	• Home Minister and SC Welfare Minister jointly holding Annual Meeting of the District level Vigilance Committee	5
6.	Hold one meeting of Chiefs of the State level Vigilance and Monitoring Committees	5.1
7.	Write to the Home Ministry	
	• To set up a Cell to monitor implementation of the laws and prescribe parameters for annual monitoring	6
	• Lay down model Action Plan for atrocities prone areas	7
8.	• Obtain information about the number of SCs who are victims of atrocities but not covered by compensation as per their entitlements	10.1
	• Issue directions to the concerned State Governments and the Ministry of Social Justice and Empowerment to make this payment within a time frame	10.1
	• Request Planning Commission that requisite budget provision may be made in the Annual Plan of the concerned State Governments for this purpose.	10.1
9.	• Lay down parameters of 'sustainable rehabilitation' for victims of atrocities	10.3

	• Make District Magistrates responsible for carrying out this rehabilitation	10.3
	• Request Special Rapporteurs to report about the morale of the victims of atrocities in some very important cases of atrocities	10.5
10.	Hold an interactive session with media on the subject	29
11.	Maintain a panel of persons for carrying out the enquiries and investigations	26
12.	Write to CMs on land reform cases needing attention	95
MINISTRY OF RURAL DEVELOPMENT		
13.	Review implementation of laws on Debt Relief legislation	74
14.	Initiate comprehensive training programmes for elected members of Panchayat	47
DEPARTMENT OF PERSONNEL & TRAINING		
15.	Determine the extent of backlog of reserved vacancies and draw up a programme for filling them.	120
MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT		
16.	Expeditious amendment to the SCs/STs (Prevention of Atrocities) Act, 1989 to undo the Supreme Court judgement for empowering Special Courts to take cognizance of the offences under the Act.	11
17.	Initiate training of social workers from among SCs in atrocity prone areas	14
18.	Organize self-help groups and initiate legal training for women members	18
19.	One NGO in every State as an umbrella organization for atrocities cases	13
20.	Focus its scheme on literacy pockets for SC girls to include SC girl child workers	82
21.	Develop norms for monitoring	135
PLANNING COMMISSION		
22.	Set up a group on revision of approach and programme structure for manual scavengers	50
23.	Prepare: <ul style="list-style-type: none"> <li>• A National SC Human Development Index</li> <li>• Specific Action Plan to reduce the gap in access to basic services for SCs</li> </ul>	128
24.	Devise a mechanism to stop under-utilization, diversion and misutilization of funds for SC development	130
25.	Earmarking of funds for centrally sponsored schemes	129



26.	Set up a Special Task Force for	
	• Increasing employability of SCs	136
	• Studying affirmative action policies in private sector	138

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**REPORT ON  
PREVENTION OF ATROCITIES  
AGAINST SCHEDULED CASTES**

**REPORT ON  
PREVENTION OF ATROCITIES  
AGAINST SCHEDULED CASTES**

POLICY AND PERFORMANCE

SUGGESTED INTERVENTIONS  
AND  
INITIATIVES FOR NHRC

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## **Preface**

National Human Rights Commission had asked a Status Report to be prepared on atrocities committed on Scheduled Castes and the initiatives which NHRC could take to check them. Accordingly, this report has been prepared.

It was not envisaged that the report would become this long. When the issues began to be examined, the length of the report could not be avoided despite the brief space given to them. Atrocities on Scheduled Castes being a multifaceted social problem, some reference to its different manifestations had to be made.

While preparing this report we have copiously drawn upon the reports of National Commission for Scheduled Castes and Scheduled Tribes and some of the researched documents prepared by Human Rights Organisations and Dalit NGOs. As a matter of deliberate design, academic orientation has been avoided and the perspective of implementing agency has been kept in view. Some repetition has crept in due entirely to the manner of the treatment of the subject and its sequencing in the structure of the report.

The report contains a large number of recommendations, quite a few of which may have already been suggested by different agencies earlier. No information was available whether or not those recommendations have been accepted. A separate Statement has also been placed at the end on what can be done by National Human Rights Commission as a part of its initiative in the immediate future.

While working on this document great difficulty was experienced in accessing factual material, not confidential in nature, from Government agencies despite the very kind help that Ms. S. Jalaja, Jt. Secretary, NHRC extended in obtaining it. The report, therefore, made use of only material which could be accessed or gathered during discussions with officials.

Secretarial resources provided by Director, IAMR, is gratefully acknowledged. Mr. Kailasam has persevered with frequent revisions in the draft.

Delay in submission of the report and errors which might have crept in despite editing carried out are regretted.

NEW DELHI

**K.B. SAXENA**

NOVEMBER 25, 2002



## **Foreword**

**Justice A.S. Anand**

Chairperson

(Former Chief Justice of India)

Deeply concerned about the historical injustices faced by certain sections of the society, the founding fathers of our Constitution enshrined the ideals of Justice - social, economic and political - in the Preamble of the Constitution, and included far-reaching protective provisions under the Chapter on Fundamental Rights. The Universal Declaration of Human Rights, 1948 and the subsequent international covenants on human rights sought to make non-discrimination a cornerstone of international human rights system.

At the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, the National Human Rights Commission opined that it was not the “nomenclature” of the form of discrimination that must engage our attention, but the fact of its persistence. The Commission observed that the Constitution of India, in Article 15, expressly prohibits discrimination on grounds both of “race” and “caste” and that constitutional guarantees had to be vigorously implemented. The Commission held the view that the instruments of governance in the country, and the energetic and committed non-governmental sector of society that existed, could unitedly triumph over historical injustices that had hurt the weakest sections of our country, particularly the Dalits and the Adivasis. The Commission concluded that this was, above all, a national responsibility and a moral imperative that can and must be honoured.

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 persons belonging to the Scheduled Castes in general and the Dalits in particular suffer even today, more than half a century after India proclaimed itself to be a Republic, is a matter of shame.

For the National Human Rights Commission, the protection of human rights is essential for defence of democracy itself - a democracy that is inclusive in character and caring in respect of its most vulnerable citizens. The Commission holds the view that



human rights must be made the focal point for good governance. The Commission has been quite vocal and outspoken in defence of human rights particularly of the vulnerable sections of the society. The Commission draws inspiration in its work for defence of human rights from Mahatma Gandhi's very potent observation:

'It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow beings.'

The National Human Rights Commission, being deeply concerned about the atrocities against persons belonging to Scheduled Castes, requested Shri K.B. Saxena, IAS (Retd.) to carry out a study in this regard and suggest appropriate recommendations. Shri K.B. Saxena, accordingly, undertook the study and has submitted his comprehensive and detailed report. With a view to monitor the implementation of the recommendations contained in that report, a Dalit Cell has been set up in the Commission and placed under the charge of a Member. The Commission proposes to have this Report printed in different languages, with a view to disseminate it widely and thereby sensitize the Civil Servants, NGOs and other key stakeholders regarding the protection of the rights of Scheduled Castes.



**(A.S. Anand)**

## **Glossary**

SC	-	Scheduled Caste
ST	-	Scheduled Tribe
PCR Act	-	Protection of Civil Rights Act
POA	-	Prevention of Atrocities
NHRC	-	National Human Rights Commission
SJ & E	-	Social Justice & Empowerment
NCM	-	National Commission for Minorities
NCW	-	National Commission for Women
NCSS	-	National Commission for Scheduled Castes & Scheduled Tribes
RD	-	Rural Development
MUD	-	Ministry of Urban Development
PRI	-	Panchayat Raj Institutions
PSU	-	Public Sector Undertaking
HRD	-	Human Resource Development
DOPT	-	Department of Personnel & Training
SCP	-	Special Component Plan
MHA	-	Ministry of Home Affairs
WCD	-	Women & Child Development
DWCD	-	Department of Women & Child Development
TU	-	Trade Union
NSCDFC	-	National Scheduled Castes Development & Finance Corporation



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## **ANNEXURE - I**

### **RECOMMENDATIONS MADE BY NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES, SIXTH REPORT 1999-2000 & 2000-2001**

#### **PROTECTION OF CIVIL RIGHTS ACT, 1955**

- I. The Central Government and the State Government, should ensure wide publicity of the Protection of Civil Rights Act so as to improve the awareness about the provisions of the Act among the Scheduled Castes as also non-Scheduled Castes. Publicity and related activities both of the Central and State Governments should be carefully reviewed, to make them impact-oriented and capable of reaching effectively the far-flung and remote habitations.
- II. The Central Government should review the kind of facilities, including legal aid being provided by the State Governments to the victims of Untouchability and issue guidelines to ensure proper implementation of this provision of the Protection of Civil Rights Act. Further the nature and extent of facilities should periodically be evaluated so that these become purposive instruments for combating the practice of untouchability.
- III. The Central Government should impress upon the State Governments to ensure that the officers appointed under this provision are utilized for initiating and exercising supervision over prosecution of all cases registered under the provision of the Act. The State Governments also need to ensure that special public prosecutors are appointed or earmarked to deal exclusively with the cases under the Protection of Civil Rights Act in States, where there is no such arrangement. These public prosecutors should be carefully selected and trained and brought under a scheme of reward and admonition for the success or otherwise of their labour.
- IV. The Central Government should take up the issue of setting up of special courts with the concerned State Governments which have not yet set up such Special Courts. Further the performance of the special courts should be carefully and critically watched in terms of timely disposal of cases.
- V. The Central Government should request the State Governments to ensure periodical holding of meetings of monitoring committees so as to make them functional and effective.
- VI. The Central Government should draw the attention of the State Governments towards this matter and request them to ensure that the working of the provisions



of this Act are periodically evaluated and measures adopted for better implementation of the provisions of the Protection of Civil Rights Act.

- VII. The Central Government should request the States to complete identification of Untouchability-prone areas on a time-bound basis. So far as the States which have been able to identify such areas the Central Government should call upon them to give preference to such areas while implementing schemes under the special component plan.
- VIII. The Central Government should, instead of merely collecting the information received from the State Governments in its annual report, get such information critically examined and follow up action taken simultaneously.
- IX. A compendium of guidelines should be prepared and issued to the state Government/ UT Administration on matters relating to removal of Untouchability and should also be circulated to the other concerned authorities also.
- X. The Central Government should critically evaluate the impact of the scheme of liberation of scavengers on removal of Untouchability.
- XI. The State Governments should give wide publicity to the scheme of inter-caste marriages through mass media in order to encourage large number of youths for inter-caste marriages.
- XII. The Gram Panchayats can play a very significant role in eradicating the evil of untouchability. The State Governments should evolve schemes for providing healthy competition at the Village/Gram Sabha level for eradication of this evil.
- XIII. The Central Government should review the impact of work being done by voluntary organization and should enlist their support in this matter. There is also a need to draw up a long-term phased programme for eradication of Untouchability at the national level in consultation with the State Governments and the voluntary organizations. In order to bring about a feeling of healthy competition among the social workers, the State Governments should also consider launching a scheme of giving rewards and commendation certificates to select social workers for their outstanding contributions towards eradication of Untouchability.
- XIV. The Government of India should continuously monitor the programmes of Harijan Thanas and Special Courts in terms of the concrete results that they have produced so far.
- XV. The All India Radio stations and Doordarshan Kendras should highlight and give wide publicity to the purpose for which the National Commission for Scheduled Castes and Scheduled Tribes was constituted and its activities for improving the awareness among the general public in the country about the role of the Commission.

## **SCs/STs (PREVENTION OF ATROCITIES) ACT, 1989**

### **I. Preventive And Precautionary Action And Measures**

As is evident from the name of the Act itself, the focus of the SCs & STs (Prevention of Atrocities) Act is on prevention; a number of steps and measures have been provided for in the Act and the Rules, which include setting up of Committees at various levels

for monitoring and review of cases, identification of atrocity prone areas, externment of potential criminals and better policing and vigilance in atrocity prone areas. It is, however, observed that in most of the States, either the Committees have not been formed or wherever such committees have been formed, its meetings are not held on regular basis. Such meetings, which have SC/ST elected representatives and the officers concerned with implementation of these Acts, provide the forum and opportunity to work out the preventive strategies and to discuss specific issues relating to effective implementation of the provisions of these Acts. **All the State/UT governments should be instructed to constitute Vigilance and Monitoring Committees at the State and District levels and to take urgent measures to ensure their effective functioning.**

## **II. Annual Report to the Parliament**

The Act requires submission of Annual Reports to the Parliament by the Ministry of Social Justice and Empowerment. This Provision is not being implemented strictly and the second Report pertaining to 1991-92 was laid in the Parliament in June 1998. **Strict implementation of this provision will ensure better coordination in implementation of the provisions of the Act**

## **III. Centrally Sponsored Scheme for Implementation of these Acts**

The Ministry of Social Justice and Empowerment operates this scheme for strengthening of administrative, investigative and judicial machinery and for publicity and rehabilitative measures. The scheme provides for contribution of 50% share by the State Government, which most of the State Governments find difficult to allocate because of their poor financial position. **Therefore, it is desirable to increase the central share to at least 75% so as to ensure better utilization of this scheme for improving criminal justice system.**

## **IV. Level of Investigation Officers**

The SCs & STs (Prevention of Atrocities) Rules, 1995 provide that investigation in atrocity cases will be done by a police officer not below the rank of Deputy Superintendent of Police. During the Conference of Home Secretaries and senior police officers held in December 1996, the consensus was that in view of dearth of Deputy Superintendent of Police level officers in most of the States, it is difficult to entrust the investigation to only Deputy Superintendent of Police level officers. **The Commission had, therefore, submitted a proposal to the Ministry of Social Justice and Empowerment for amending the Rules so that the Inspectors are also empowered to carry out the investigations. An early decision on this issue is required.**

## **V. Registration and Investigation**

A large number of cases which deserve to be registered under Protection of Civil Rights Act or the SCs & STs (Prevention of Atrocities) Act are not actually registered under these Acts, either due to ignorance of law or under pressure from the interested parties. Investigations in even those limited number of cases is often earned out in a slipshod manner and with considerable delay. It is necessary to improve the awareness about

the provisions of these Acts among the Police Officers and the people in general. **The Vigilance and Monitoring Committees at District and State level should meet frequently as prescribed under the Rules and take necessary measures for ensuring timely registration and prompt and proper investigations in atrocity cases.**

#### **VI. Prosecution and Trial of Cases**

It has been observed that appointment of prosecutors is often influenced by political considerations. The remuneration paid to the prosecutors is generally too low to attract competent and capable lawyers. **It is, therefore, necessary that remuneration to the public prosecutors be reasonably enhanced and they should be provided basic minimum facilities necessary for effective functioning.** Despite setting up of Special Courts, the disposal of cases is generally very poor and the pendency is rising. For criminal justice system in atrocity case to be effective, punishment must be prompt and sufficient to deter the potential offender. **The various Committees at District and State levels should review the pendency regularly, examine the cause of overwhelmingly large proportion of acquittals and take urgent corrective measures to improve the rate of convictions.**

#### **VII. Problem Relating to Committal Proceedings**

In their judgement dated January 28, 2000 the Apex Court has held that a Special Court set up under the SCs & STs (Prevention of Atrocities) Act is essentially a Court of Sessions and it can take cognizance of the offence only when the case is committed to it by the Judicial Magistrate in accordance with Section 193 of Cr.PC. since there is no specific provision in the SCs & STs (Prevention of Atrocities) Act especially empowering the Special Courts to take cognizance of the offences without the accused being committed to it for trial. It is understood that Special Courts have been given such powers under certain Acts, such as Narcotics, Drugs and Psychotropic substances Act. If committal proceedings are to be followed it will further delay the disposal of the case and the objective of setting up the Special Courts to take cognizance of offences under this Act without committal proceedings under Section 193 of Cr.PC.

#### **VIII. Relief and Rehabilitation**

The SCs & STs (Prevention of Atrocities) Rules, 1995 prescribe standardized norms for relief and rehabilitation to the victims of the atrocities or their families. The Central Government operates a centrally sponsored scheme under which matching share is provided to the State Governments for meeting the cost of such relief and rehabilitation. While most of the States have started implementing this provision, there are a few States who are yet to start payment of rehabilitation package. The provision also seeks to meet the cost of traveling and maintenance of the victims and witnesses to enable them to attend the courts, etc. **To facilitate effective implementation of the provisions of the Act, this provision needs to be enforced strictly.**

#### **IX. Selection and Sensitization of Officials in Key Positions**

Various reports have shown that the cases of atrocities on SCs and 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. The Special Development Programmes for SCs and STs particularly the policy of reservations in educational courses and in services, is also becoming a source of animosity for other communities and due to increasing education and awareness, the SCs and STs have also started asserting their rights. In any conflict between SCs/STs and other communities the former are at a great disadvantage both socially and economically. They look upto the administration, police and the judiciary to give them protection and justice. **It is, therefore, important that persons at key position, particularly those concerned with their safeguards and development, are chosen with due care, properly sensitized and given all necessary support.**

#### **NOTE**

The Commission has made some recommendations in the earlier reports which have not been extracted here.

## ANNEXURE - II

### CRIMES AND ATROCITIES ON SCHEDULED CASTES & SCHEDULED TRIBES

#### RECOMMENDATIONS MADE BY THE COMMISSION FOR SCs/STs IN THE FIFTH REPORT, (1998-99)

1. Incidences of atrocities on STs were highest in Madhya Pradesh (1547) followed by Rajasthan (1132) during 1998. States like Andhra Pradesh (359), Bihar (144), Gujarat (406), Kerala, (138), Maharashtra (153), Orissa (282) and Uttar Pradesh (110), Karnataka (71), Sikkim (33) and Tamil Nadu (31) have also reported the incidence of atrocities against STs. It may also be observed that the incidences of crimes against Scheduled Tribes are increasing in Andhra Pradesh, Gujarat and Orissa. The Government of these States may take effective steps to check and control atrocities on members of STs by non-STs people.
2. Training programme may be conducted by every State Government for police personnel to sensitize them regarding implementation of the provisions of SCs & STs (Prevention of Atrocities) Act, 1989 and the Protection of Civil Rights Act, 1955 either through its Police Training Institutions or otherwise.
3. The Central Government should ensure that report on the measures taken for implementation of the SCs & STs (Prevention of Atrocities) Act, 1989 and Protection of Civil Rights Act, 1955 are obtained from the States /UTs in time to place the consolidated annual report in the Parliament every year as per provisions contained in these Acts. The State Government, where atrocities on SCs and STs are rampant may take effective steps to check and control atrocities on members of SCs & STs by non-SC/ST people.
4. A person who has been convicted under the provisions of SCs & STs (POA) Act, 1989 should not be permitted to seek election at any level.
5. An Awareness Programme should be conducted through Non-governmental Organizations about the provisions of SCs & STs (Prevention of Atrocities) Act, 1989, Protection of Civil Rights Act, 1955 and the economic relief to be provided to the victims of atrocities as per scale laid down in the SCs & STs (Prevention of Atrocities) Rules, 1995. The Government should consider organizing seminars of the NGOs for eliciting their help in Awareness Programme.

6. In case the office-incharge of concerned police station does not register FIR on the basis of complaint but the FIR is registered at the instance of Superintendent of Police or Special Enquiry Cell or Hon'ble Court and the chargesheet is submitted before the court, appropriate action under the Act or departmental action as the case may be, should be taken against the officer incharge of police station for not registering the case in time.
7. The case of atrocity should be investigated by an experienced Deputy Superintendent of Police, even if, he is not having territorial jurisdiction for normal day-to-day work.
8. The Deputy Superintendent of Police (Investigating Officer) should complete the investigation and submit chargesheet/final report within 30 days to Court under intimation to District Superintendent of Police.
9. The Special Public Prosecutors should be paid the fee on a high scale than the panel advocates as provided in the Rules 1995.
10. Necessary arrangements for providing traveling and maintenance expenses, reimbursement of the payment of medicines, special medical consultation fee, blood transfusion, etc. should immediately be made to the victims of atrocity.
11. In all cases of atrocities, immediate relief, rehabilitation and compensation should be provided keeping in view the mandate of the Parliament.
12. The State Government should implement the mandatory provisions relating to exercising supervision over prosecution, setting up of committees periodic survey for better implementation of the provisions of act, identification of atrocity prone areas, precautionary and preventive measures, setting up of awareness centers and organization of workshop, involvement of non-governmental organizations, etc.
13. The Special Enquiry Cell set up under the provision of Rule 8 of the Rules 1995 should be given special powers to register the FIR, investigate and submit chargesheet/final report before the Special Court. The cell should be provided at least primary requirements like sufficient stationery, typewriter, telephone and vehicles, etc.
14. The State Government should prepare contingency plan as required under Rule 15 to check atrocity on the members of Scheduled Castes and Scheduled Tribes.
15. State Governments should invariably provide regular and effective training to the Police Officers, Special Public Prosecutors and the District Administration.
16. For better performance of the Special Courts, and to improve the rate of conviction, as per the Rule, the Chief Justice of M.P. High Court should depute a Justice of the High Court to review the working of the Special Courts and Judgements delivered by these Courts, at least once in a year. The judicial review would ultimately highlight all those legal and administrative aspects/facts responsible for acquittal of accused, weak prosecution and the quality of judgements.
17. The Special Courts should issue timely summons taking the assistance of the police administration to ensure that parties attend the court in time.



18. The Office of the Director, Prosecution should be strengthened for effective supervision of prosecution in accordance with Rule 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.
19. The institution of Special Public Prosecutor should be strengthened. The problems and constraints of special public prosecutors should be redressed. The remuneration/fees of the special prosecutors should be suitably enhanced to attract experienced, disciplined, committed and knowledgeable advocates. The panel of advocates should be prepared as per the rules and communicated to the Special Judge. Another step to strengthen and make the prosecution capable of discharging the job will be to appoint Asstt. Public Prosecutors (APP) as the Special Public Prosecutor to deal with the atrocity cases in the Special Courts.
20. Responsibility should be fixed on the District Superintendent of Police and Director Prosecution if the accused is acquitted on the ground that relevant section of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and that of IPCF have not been included in Challan filed in the court.
21. The State level Vigilance & Monitoring Committee should hold the meetings of the committee at least twice in a year and give strict guidelines to the District Vigilance & Monitoring Committee to galvanise the machinery responsible for the implementation of the Act and the Rules.
22. The FIR lodged in the Police Station under the Act should be recorded with due care. Because when FIR is put up in the Court giving all necessary details, so as to expedite the process of prosecution and improve the rate of convictions.

## ANNEXURE - III

### RECOMMENDATIONS MADE BY HUMAN RIGHTS WATCH, NEW YORK, 1999

#### (Broken People: Caste Violence Against India's 'Untouchables')

#### **B. RECOMMENDATIONS TO THE GOVERNMENT OF INDIA**

The Indian Government should fully implement the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. In particular it should:

- II. Ensure that States constitute and oversee State and District level Vigilance and Monitoring Committees, as required by Rules 16 and 17 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, for the purpose of properly implementing the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter the Atrocities Rules and the Atrocities Act]. This effort should ensure that a sufficient number of investigators (including appropriate representation of Dalit men and women) are included in the committees to guarantee full implementation of the act. Given the number of potential cases, the government should enlist lawyers, social workers, medical personnel, teachers, civil servants, and others involved in Dalit issues as investigators. Non-governmental organization (NGO) representatives should also be consulted in the recruitment of investigators. Committees should submit their reports to district collectors to pursue prosecution. In turn, collectors should report on actions taken during committee meetings. Reports published by the committee should be made public, and in-depth training should be provided to district officials charged with enforcing the act.
- III. Ensure that States establish special courts in every revenue district and appoint special public prosecutors to try cases arising under the Atrocities Act.
- IV. Ensure strict implementation of the Atrocities Act, as regards victims of violent abuse and other "atrocities". Each police station should have a Scheduled Caste/Scheduled Tribe atrocities cell to handle investigations of abuses and alleged violations of the Atrocities Act. Each revenue district should also have a special deputy superintendent of police charged with investigating atrocities under the Act. In keeping with the Atrocities Rules, police who refuse to register cases under the Act should be punished accordingly. For full implementation of the Act, these

cells should be statutorily empowered to receive and address complaints of violations under the Act and complaints of official misconduct. They should also be able to file “first information reports” (FIRs), the first step in prosecution of a criminal charge, when abuses are committed against Dalits. The cells should work closely with the Vigilance and Monitoring Committees established under the Atrocities Rules to ensure full enforcement.

- V. Ensure immediate and full compensation by the District Administration to victims of atrocities as per the Atrocities Rules. The value of property destroyed and crops damaged should be included in the compensation schedule. The Committees appointed by the Government under the rules to estimate loss should include NGOs in addition to Government officials. In accordance with Rule 11 the District Administration should also ensure that victims’ trial expenses are paid.
- VI. Provide training to district officials charged with enforcing the Atrocities Act and ensure that a copy of the Act (translated into the local language) and accompanying rules are easily available and prominently posted in all local level police stations and available in all courts trying cases under the Act.
- VII. Statutorily empower the National Commission for Scheduled Castes and Scheduled Tribes to oversee implementation of the Atrocities Act in all States. Strengthen the capacity of the National Commission for Scheduled Castes and Scheduled Tribes to operate legal cells and open branch offices in all States with enough financial resources and powers to initiate prosecution of cases. As recommended by the Commission, amend Article 338 of the Constitution to empower the Commission to issue directions for corrective action and implement its findings.
- VIII. Strengthen the capacity of the National Human Rights Commission and the National Commission for Women to operate branch offices in all States with enough financial resources and powers to initiate prosecution of cases. Amend the Protection of Human Rights Act, 1993 so that National and State Human Rights Commissions are not automatically exempted from enquiring into matters already pending before a State Commission or any other Commission duly constituted under any law.
- IX. Establish a civilian review board or civilian ombudsman committee comprising judges and lawyers to monitor police stations and ensure that Supreme Court guidelines on treatment of persons in custody, as established in *D.K. Basu v. State of West Bengal*, are strictly enforced. NGO input should also be solicited. Ensure that complaints against law enforcement personnel are promptly and thoroughly investigated by adequately trained investigatory staff. The agency should have the power to subpoena documents, summon witnesses, and enter the premises of police stations, lock-ups, and detention centers to conduct thorough investigations.
- X. Implement the recommendations made by the National Police Commission in 1980, specially those that call for a mandatory judicial inquiry in cases of alleged rape, death, or grievous injury of people in police custody and the establishment of investigative bodies whose members should include civilians as well as police and judicial authorities.

- XI. Ensure that each police station has adequate female police personnel, consistent with recommendations made by the National Commission for Scheduled Castes and Scheduled Tribes. Female police should record complaints submitted by women. Each police station should also have adequate scheduled caste and scheduled tribe personnel and enough financial resources to carry out investigations.
- XII. Ensure strict implementation of the bonded labour-related provisions of the Atrocities Act. As Dalits constitute the majority of bonded labourers, the government should ensure that states and districts establish and oversee bonded labour vigilance committees, as required by the Bonded Labour (System) Abolition Act, 1976. The government should ensure that a sufficient number of investigators can be included in the committee to guarantee implementation of the Act. Lawyers, social workers, teachers, civil servants, and others with ties to bonded labourers and their families should be enlisted as investigators. Non-governmental organization representatives should be consulted in the recruitment of investigators. The government should provide in-depth training to district officials charged with enforcing the Bonded Labour (System) Abolition Act, 1976, as directed by the Supreme Court in *Neeraja Chaudhary v State of Madhya Pradesh*, 1984.
- XIII. Ensure appropriate implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, including prosecution of officials responsible for the perpetuation of the practice and non-rehabilitation of affected scavenger communities, the majority of which are Dalits. The government should ensure that states and districts constitute and oversee vigilance and monitoring committees with adequate representation of NGOs, Women, and Members of Scavenger communities. State Governments should also train district officials charged with enforcing the Act.
- XIV. Implement measures designed to ensure that States are in compliance with Article 45 of the Constitution, which mandates free and compulsory education for all children upto the age of fourteen. Primary education is the first step in breaking the cycle of discrimination and caste-based employment.
- XV. Incorporate education on relevant legislation for Dalits and women into school curricula (including education on the Atrocities Act and the Protection of Human Rights Act, 1993).
- XVI. Launch a nationwide public awareness campaign regarding the prohibition of “untouchability,” “atrocities” and other forms discrimination and violence against Dalits. This campaign should explain in simple terms what actions are legally prohibited, what recourse is available to Dalits and their families, and what the procedures are for filing an FIR. It should also include a program of public service announcements in all states aimed at sensitizing the population on Dalit issues and creating awareness of Dalit rights.
- XVII. Make available to the public government studies on issues affecting Dalits. Specially, the government should release the white paper on reservations and the white paper on land reform. The first outlines the extent to which constitutional reservations have been implemented at the State and Central level since

independence. In particular, attention should be given to implementation of reservations in all ministries, in the Secretariats of the Prime Minister and President, and in the police and judiciary. The second outlines the externment to which tenancy acts and acts that establish ceilings on single landowners' holdings have been implemented in all states.

XVIII. Ensure that adequate financial resources are allocated to the proper functioning of the newly constituted government bodies under the 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution. These amendments provide that in every *panchayat* (Village council) and every municipality, seats shall be reserved for Scheduled Caste and Scheduled Tribe members in proportion to their representation in the population. Among the seats reserved for the scheduled castes and scheduled tribes, not less than one third shall be reserved for women belonging to those castes or tribes. The government should work with intergovernmental and non-governmental organizations to provide appropriate training to elected members of rural and urban bodies, including gender and caste sensitivity training. Women should take part in legal literacy workshops, and all those appointed to reserved panchayat positions should be provided legal protection to ensure that they are able to perform their duties.

## **B. RECOMMENDATIONS TO ALL STATE GOVERNMENTS**

- I. Ensure full implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, including the appointment of special courts, special prosecutors, and vigilance and monitoring committees. Provide training in proper procedures under the Act to judges and prosecutors charged with trying atrocities cases.
- II. Ensure ratification and implementation of the Bonded Labour (System) Abolition Act, 1976 and ratify and implement the Employment of Manual Scavengers and Constructions of Dry Latrines (Prohibition) Act, 1993.
- III. Implement measures designed to ensure that States are in compliance with Article 46 of the Constitution, which directs states to promote with special care the educational and economic interests of the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of economic exploitation.
- IV. Study and publicize the extent to which land and wage reforms have been implemented in the State. In particular, State governments should determine industry compliance with minimum and living wage standards, particularly those industries that employ a majority of Dalits, as well as the status of land reforms, land ceiling laws, and distribution of surplus land. The study should also review proof ownership in land records, the extent of encroachment on Scheduled Caste Scheduled Tribe lands. NGO participation should be ensured in the investigations.
- V. Take immediate steps to prevent further violence, social boycotts, and other forms of discrimination against Dalits and to investigate and punish those responsible for attacks and acts of discrimination in affected districts. Any officials or members

of the police who fail to respond to repeated calls for protection from villagers, or fail to prosecute acts of violence or discrimination should also be prosecuted.

- VI. Take decisive steps to ensure police agents use deadly force only as a last resort to protect life. Police agents should act in accordance with guidelines established in relevant state police manuals that meet international standards on use of force. The United Nations Basic Principles on the Use of Force or Firearms by Law Enforcement Officials emphasize that the use of force and firearms should be in consonance with respect for human rights and that deadly force should not be used against persons unless “strictly unavoidable in order to protect life”.
- VII. Take decisive steps to ensure that police do not conduct raids on villages or engage in arbitrary and unlawful destruction and seizure of property in response to caste clashes. Police involved in such activities should be promptly investigated by an independent judicial body and prosecuted accordingly.
- VIII. Ensure that investigations of complaints of violence against women include women investigators. Amend the Criminal Procedure Code so that rape victims are not restricted to approaching government hospitals for medical examinations and can instead be examined by any registered practitioner for the purposes of gathering evidence.
- IX. Establish independent monitoring agencies to review cases of Dalits and Dalit activists detained under detention laws. All cases found to be without merit, or in violation of proper detention procedures, should be withdrawn.
- X. Compile and release State-level statistics on the number of atrocities committed against Dalits, the number of cases registered under the Atrocities Act, and the extent to which reservations have been implemented in the State. States should ensure that all NGOs and citizens have access to this information.
- XI. Investigate the process of recruitment of police officers in the State to ensure that requirements of reservations for scheduled castes and scheduled tribes are met and that monetary bribes are not part of the police and judicial recruitment process. Prosecute and punish those found to have engaged in bribes or extortion while registering cases or conducting raids.
- XII. Ensure speedy review and publication of findings by Commissions of Inquiry appointed by the state to investigate abuses against Dalits.



## ANNEXURE - IV

### NATIONAL PUBLIC HEARING ON DALIT HUMAN RIGHTS VIOLATIONS (18-19 APRIL 2000, CHENNAI)

#### Recommendations of the Jury

##### GENERAL

1. The ignorance of and indifference to the SC/ST (Prevention of Atrocities) Act, 1989 and other such laws requires radical steps to sensitize the law enforcement officers, in particular the police and the bureaucracy, about the urgency and importance of the provisions of this Act. Prosecution should be proceeded immediately against those who ignore the law. Efforts must be taken immediately to redress this lack of information and awareness.
2. Needless to say, social organizations must also step up their efforts to create more awareness among Dalits about these laws. As part of civil society and given the noble aim of service to society for which they have committed themselves, it is incumbent on them to enlighten and generate awareness among Dalits regarding the existence and knowledge of such legislations.
3. A Code of Conduct for all state agencies, including the judiciary, with regard to ethics in order to deal with cases of such gross violations of human rights against Dalits must be urgently formulated and implemented. This is in conformity with the SC/ST (Prevention of Atrocities) Act, 1989 and the special provisions in the Constitution abolishing such gross violations of Dalits human rights.
4. There is a great necessity for the State to educate not only Dalits, but also all sections of civil society including the caste Hindus, in order to safeguard the land-related rights of Dalits.
5. The dominant castes which commit such atrocities should be made to pay a price by the State by way of attachment of their properties to the State or the same to be allotted to Dalits themselves so that such massacres do not occur elsewhere and at any time.
6. The Jury feels that since the caste system and untouchability are themselves causing these kind of tensions, deprivations and violence, it is important that both the Central and State Governments take up a massive campaign against the caste system and untouchability as a social practice unbecoming of a civilized society. This must be taken up as a national priority issue on a war footing.

7. Land reforms must be implemented. The surplus land should be given to Dalits on a joint ownership basis with women having equal ownership rights.

## **SPECIFIC**

### **1. Kumher Massacre**

It should be placed before the Government of Rajasthan that the Report of the Inquiry conducted by Justice Lodha Commission be made public. Our suggestion is that in such cases of mass atrocities as in this incident, 75% of the compensation should be given before the judgement and the rest to be paid after the judgement.

### **2. Tsundur Killings**

As prayed by the victims, the case should be tried in the Court where they feel free to depose.

### **3. Murder of Dalit in Kerala**

The parents are not satisfied with the version of the police. The investigation should be entrusted to CBCID as per the wish of the parents. The State must pay compensation. The matter must be brought to the attention of the National SC/ST Commission.

### **4. Three Dalits Poisoned in Rajasthan**

The investigation of the case should be entrusted to the CBCID as the role of local police in the investigation is questionable.

## **ANNEXURE - V**

### **SCHEDULED CASTES HUMAN RIGHTS MONITOR-2000, ANDHRA PRADESH SAKSHI, HUMAN RIGHTS WATCH, A.P.**

#### **Recommendations**

##### **TO POLICE**

1. Sensitize all police departments on the SC/ST (Prevention of Atrocities) Act, Human Rights Act, and the international standards of human rights set by CERD, UDHR, ICCPR, and ICESCR. In particular, educate police personnel to the origins of these Acts (SC/ST Act and HRA), being sure to address such issues as the necessity of the acts, their purpose, mechanisms and how they are intended to address the rights of Dalits.
2. Recruit Dalits into all levels of the police force, but especially at the decision making levels.
3. All complaints given by Dalits should be registered as an FIR, by forbidding discretionary powers to the officer responsible for registering complaints.
4. All offences against Dalits by non-Dalits should be registered under the SC/ST (Prevention of Atrocities) Act.
5. Prompt disciplinary and legal action under Section 4 SC/ST (Prevention of Atrocities) Act should be taken against police who refuse to register cases under the Act as they are directed to do under Rule 5(1).
6. All cases registered under Protection of Civil Rights Act to be r/w. SC/ST (Prevention of Atrocities) Act.
7. In cases under SC/ST (Prevention of Atrocities) Act, ensure investigating officer is no less than DSP, pursuant to Rule 7(1).
8. Take legal and departmental disciplinary action against police officials who willfully neglect to discharge their duties required under the SC/ST Act (sec.4 SC/ST Act).
9. Ensure charge sheets are filed within three months for FIRs filed under the SC/ST (Prevention of Atrocities) Act. If not, take disciplinary action against investigating officer.

10. Constitute citizen's police monitoring committees with majority Dalit representation.
11. Arrange interactions and visits with Dalits to expose and sensitize police to Dalit life and culture.
12. Ensure the District Superintendent promptly visits place of occurrence of atrocity and fulfills his responsibilities under Rule 12(1), (2) & (3), particularly:
  - Ensuring FIR is registered under the Act and effective measures for apprehending the accused are taken.
  - Deploy police force in the area and take other preventive measures against further occurrence of atrocities.
13. In each district appoint a special SP or Deputy SP, depending on the intensity, frequency and distribution of atrocities in the district, to be specially in-charge of investigating atrocities under the Act.
14. For each district, these special SPs and Deputy SPs should also be empowered to receive and address complaints of violations and complaints of official misconduct under the Act.
15. Display the Act on billboards or on wall posters in all the police stations, especially in the rural areas.

#### **TO EXECUTIVE**

1. Ensure compensation is paid promptly to victims upon registration of FIR, filing of chargesheet and conviction, according to the scale as in the schedule annexed to the SC/ST Rules.
2. Ensure that District Magistrate (District Collector) visits each place of occurrence of atrocity and provides immediate relief in the form of cash or in kind for food, water, medical, clothing, shelter, medical aid, transport facilities and other essential items [Rule 12(1) & (4)].
3. Ensure that a comprehensive rehabilitation package is provided for victims and the affected community. This should include:
  - Allotment of land and house sites [Rule 15(l)(b)]
  - Provisions for providing stone/brick masonry house [Rule 15(1)(h)]
  - Government employment [Rule 15(l)(d)]
  - Pension for widows and children of victims [Rule 15(l)(e)] Socio-economic development programmes for the victims and to the immediate community [Rule 15(l)(g)]
  - Provision of adequate drinking water facility, electricity, health care facilities, link roads and burial/cremation ground [Rule 15(l)(i)].
4. Revenue officials should recognize social boycotts as a grave form of economic and social violence and a violation of livelihood rights, and, therefore, an atrocity under the SC/ST (Prevention of Atrocities) Act. The District Collector (DC) should

visit the village promptly and provide compensation, relief and a comprehensive rehabilitation packages such as described above to the victims. As social boycotts are effective due to the dependence of the Dalit community on the dominant caste community for employment top priority must be given to providing socio-economic development programmes to the victims.

5. Launch official "Campaign against Untouchability" in the same manner and on the same scale as the Pulse Polio Campaign. This would be promoted with massive publicity with frequent advertisements, announcements on the T.V. and radio, articles in Telugu newspapers and magazines, posters, and roadside billboards.
6. Ensure the effective functioning of the state level high-powered vigilance and monitoring committee with the Chief Minister as its head under the SC/ST (Prevention of Atrocities) Act. This committee should:
  - Meet at least twice a year in January and July, to review the prevailing Human Rights violations against Dalits and the implementation of the SC ST (Prevention of Atrocities) Act & Rules - (Rule 16).
  - Conduct biannual meetings with leading representatives from Dalit movements, human rights organizations, and lawyers with proven human rights track records, in order to strategise ways to ensure effective functioning and monitoring of SC/ST (Prevention of Atrocities) Act.
  - Must submit and make public its report biannually.
7. Ensure the constitution and functioning of district-level vigilance and monitoring committee under SC/ST (Prevention of Atrocities) Act - (Rule 17). This committee must also submit and make public its report quarterly.
8. Reconstitute the district level vigilance and monitoring committees. Ensure adequate representation of committed human rights activists, journalists, lawyers, NGO representatives and members of the Dalit community. Dalit members of the committee should be enlisted from men and women, lawyers, civil servants, social workers, medical personnel, and teachers. Dalit organizations, human rights organizations and NGOs should be consulted in the enlistment of committee members.
9. Ensure effective functioning of SC/ST Protection Cell and that it submits a monthly report for public viewing (Rule 8).
10. Ensure effective functioning of the nodal officer. Specially ensure that data on the position of cases registered under the Act, compensation and relief given to victims, and the law and order situation is regularly given to Nodal Officer for his/her review. Ensure that the Nodal Officer gives a quarterly report for public viewing (Rule 9).
11. Appoint special public prosecutors with proven human rights records to try-cases under SC/ST (Prevention of Atrocities) Act.
12. Ensure that the costs of the prosecution for cases under the SC/ST (Prevention of Atrocities) Act are borne by the State Government.
13. Ensure that costs of attending investigation, hearing and trial as well as the

protection, travel, board and lodging expenses for victims and witnesses are paid and paid promptly (Rule 11).

14. Cancel all arms licenses for non-Dalits in those areas listed as atrocity prone areas, but provide arms licenses to Dalits in those same areas.
15. Evolve collaborative mechanisms with NGOs and human rights organizations that would build awareness on the SC/ST (Prevention of Atrocities) Act among Dalits and officials.
16. Protect and support the work of human rights defenders.
17. Introduce into the curriculum at schools and colleges lessons on the SC/ST (Prevention of Atrocities) Act & Rules, Protection of Human Rights Act, and relevant acts regarding women's rights. Also include lessons on the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, International Convention on Civil & Political Rights, Convention on the Elimination of All Forms of Racial Discrimination, and Convention on the Elimination of Discrimination Against Women.
18. Ensure effective implementation of employment of Manual Scavenging and Construction of Dry Latrines (Prohibition) Act, 1993. Include prosecution of the officials responsible for failing to implement this Act.
19. Ensure adequate financial resources in the state budget are allocated for 1) relief and rehabilitation measures, 2) functioning of the special courts; 3) investigation of offences by the police; and 4) compensation, relief and rehabilitation packages.

## **TO JUDICIARY**

1. Recognize that those judgements that acquit the accused of charges under the SC/ST (Prevention of Atrocities) Act on the ground that the offence was not committed 'on the ground that' or 'for the reason that' the victim is a Dalit, are legally unsound. Mens rea in such cases is presumed by the law and need not be proved specifically, because the intent is built into social attitudes and is not a matter of personal intent. As stated by Justice Ramaswamy in State of Karnataka Vs Appa Babu Ingale, 1955 supp.(4) SCC 469, mens rea is not essential in social legislation.
2. Constitute an extra-judicial body with adequate powers to monitor and enforce the implementation of the SC/ST (Prevention of Atrocities) Act by judiciary.
3. As recommended by the National Commission for SC/ST, there should be an exclusive court in each district for trial of cases under the SC/ST (Prevention of Atrocities) Act, as the regular courts which are presently being designated as Special Courts are already overburdened with other cases the atrocity cases must be tried by the Special Courts and they should not be sent to lower courts for trial.

## **TO CENTRAL GOVERNMENT**

1. Though the National Commission for SC/ST monitors the implementation of the SC/ST (Prevention of Atrocities) Act & Rules and the Protection of Civil Rights



Act, it presently only has the powers of a civil court. This means that while it can call on any one for evidence to make sure laws are being enforced, it can not enforce its findings and give directions for corrective action. Therefore, amend Article 338 of the Constitution so as to give powers to the Commission to enforce its findings, issue directions for corrective action, and ensure that action is taken against erring public servants who deliberately violate the Constitutional and legal safeguards intended to protect SCs and STs.

2. Ensure that the reports of the National Commission for SC/ST are submitted for discussion before Parliament during the session following its release, and that the government submits its Action Taken Report within one year. Amend the Article 338 to make this mandatory.
3. Government of India should consider the proposed amendments to the Constitution and the SC/ST (Prevention of Atrocities) Act 1989, SC/ST (Prevention of Atrocities) Rules 1995 at the earliest.
4. We recommend that the National Commission for SC/ST, National Human Rights Commission, as well as the UN General Assembly recognize caste as an institution that is a source of gross human rights violations. Therefore, it must be treated on par with the existence and operation of racism and apartheid.
5. Implement the recommendations of the 49<sup>th</sup> session of the Convention on the Elimination of Racial Discrimination (CERD). In particular, the government should implement CERD's recommendation that
  - "special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the SCs and STs, and in the cases where such acts have been omitted, to conduct a thorough investigation, to punish those found responsible and provide just and adequate reparation to the victims".
  - "As per the convention's recommendations. CERD's findings should be available to the public in local languages".
6. Submit reports on the present situation of discrimination and violence against Dalits to CERD as has been requested by CERD.
7. Invite the United Nations Special Rapporteur on Racism to visit India.

## ANNEXURE - VI

### AMENDMENTS PROPOSED BY THE NATIONAL COMMISSION FOR SCs AND STs TO THE SC/ST (PREVENTION OF ATROCITIES) ACT, 1989 AND SC&ST (PREVENTION OF ATROCITIES) RULES, 1995

**(A) AMENDMENTS PROPOSED TO THE SC & ST (PREVENTION OF  
ATROCITIES) ACT, 1989**

<b>Original Provisions In The Act</b>	<b>Proposed Amendments</b>
3(1)(VI) - Compels or entices a member of a SC or ST to do 'beggar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government.	Add the words in the end, 'refused to pay wages or contract wages for the labour'
3(1)(xii) being in a position to dominate the will of a woman belonging to a SC or ST and uses that position to exploit her sexually to which she would not have otherwise agreed	Delete entire sec.3(1)(xii) and renumber secs. 3(1)(xiii), (xiv) and (xv) as secs. 3(1)(xii), 3(1)(xiii), and 3(1)(xiv)
New secs. 3(1)(xv) (xvi) and 3(2)(i) and (iii) to be incorporated	3(1)(xv)- Blackmails SC/ST persons - Boycotts or supports the boycott of SC/ST persons 3(2)Whoever (i) being in a position to dominate the will of a woman belonging to a SC or ST and uses that position to exploit her sexually and to which she would not otherwise have agreed, shall be punishable with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life and shall also be liable to fine.

Sec.4 - Whoever, being a public servant but not being a member of a SC or ST, willfully neglects his duties required to be performed by him under this Act, shall be punished for a term which shall not be less than six months but which may extend to one year.

Delete the words 'but not being a member of a SC or ST' and replace the words 'six months but which may extend to one year' with 'two years'.

Sec.4)1) to be added

Abettors of offences are equally punishable, as provided under this Act.

Sec.14 - For the purpose of providing speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court by notification in the official Gazette, specify for each district a Court of Session to be a special court to try the offences under this Act.

Replace the words 'specify' with the word 'create' and the words 'Court of Session to be a special Court' with the words 'Special Court of the level of Sessions Court'.

Sec.24 to be added

All offences under this Act are cognizable and subject to summary trial.

**(B) AMENDMENTS PROPOSED IN THE SC & ST (PREVENTION OF ATROCITIES) RULES, 1995**

Rule 7(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit a report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

At the end add: 'and trials be completed within three months'.

Rule 7(3) - new section to be added

It is observed that in some of the States specified Courts are the Courts of Sessions and therefore the trial of offences takes place through committal proceedings in lower courts which is detrimental for speedy trials. Henceforth, the trial may take place in the Special Court itself.

Rule 7(4)

Renumber the old sec. 7(3) as sec. 7(4).

## ANNEXURE – VII

### RECOMMENDATIONS FOR AMENDMENTS MADE BY DR. K. PUNNAIAH COMMISSION OF INQUIRY

#### **SCs and STs (PREVENTION OF ATROCITIES) ACT, 1989**

##### **Section 3(X)**

Delete the words “with intent to humiliate” as not necessary, since the expression intentionally insults or intimidates contain the necessary “mens rea”. The amended clause (X) of Section 3 may be read as follows:

“Intentionally insults or intimidates a member of Scheduled Castes or Scheduled Tribe in any place within public view”.

##### **Section 3 (XI)**

Delete the expression “With intent to dishonour or outrage her modesty” As assaults or uses force to any woman or man itself in an offence under Section 323 and 352 I.P.C. The expression “with the intent to dishonour or outrage her modesty” is superfluous and unnecessary. The amended clause (XI) of Section 3 should be read as follows:

“Assaults or uses force to any woman belonging to Scheduled Caste or Scheduled Tribe”.

##### **Section 3. Sub-Section (2), Clause (iii)**

Delete the expressions “intending to cause or knowing it to be likely that he will thereby cause damage” as this expression is superfluous and unnecessary since “whoever commits mischief by fire or any explosive substance, he intends to cause damage to any property or he knows it to be likely that he will thereby cause damage to any property”. The amended clause should be read as follows:

“Whoever commits mischief by fire or any explosive substance to any property belonging to a member of a Scheduled Caste or Scheduled Tribe, shall be punishable with...”

##### **Section 3. Sub-Section (2) Clause (iv)**

Delete the expressions, “intending to cause or knowing it to be likely is superfluous and unnecessary as whoever commits mischief by fire or any explosive substance, he will thereby likely to cause destruction of any building...” The amended clause should be read as follows:

“Whoever commits mischief by fire or any explosive substance he will, thereby, cause destruction of any building which is ordinarily used as...”

Amend sub section (2) of Section 3, to include

“Any form or disrespect or disfigure or defilement or damage to the statues of Babasaheb Dr.B.R. Ambedkar as insulting the SC community as well as an insult to the Nation and be punishable with rigorous imprisonment for a term of 3 years.”

## **AMENDMENT TO SCs & STs (PREVENTION OF ATROCITIES) RULES, 1995**

### **1. Level of Investigating Officers**

Some States viz. Andhra Pradesh, Madhya Pradesh, Maharashtra, Orissa and Uttar Pradesh have raised an issue to amend Rule 7(1) of the SCs & STs (Prevention of Atrocities) Rules, 1995 so as to provide for to appoint an Inspector of Police instead of Deputy Superintendent of Police as Investigating Officer in the cases of atrocities against SCs/STs. Such a view has been largely held on account of non-availability of as much number of Deputy Superintendent of Police, as required to investigate such cases. This issue was earlier considered and the Ministry of Home Affairs which was consulted, opined in August, 1998 that framers of law have provided for investigating officer of higher rank in the case of atrocities against SCs/STs and this might have been done, keeping in view the sensitivity of cases to be investigated by an officer, who has higher sense of responsibility, objectivity, more responsiveness, sense of ability and justice to perceive the implication of the case. The Ministry of Home Affairs accordingly opposed the proposal to provide for investigation by an officer of the rank of Inspector of Police.

### **2. Mode of Payment of Compensation to Victims of Atrocities**

The Government of Karnataka has requested that the rate and mode of payment of compensation differs from case to case. For instance, in case of death, only 75% of the compensation is paid after post-mortem and the remaining 25% is paid after conviction by the lower court. In some other cases, the ratio of compensation paid initially varies from 25% to 50% when the charge sheet is sent to the court and the balance is paid after the conclusion of the trial or conviction in the lower court. Since the disposal of atrocity cases admitted in the court takes years together resulting in denial of full benefit of compensation to the SC/ST victims of atrocities. As such suitable amendment to the SCs and the STs (Prevention of Atrocities) Rules, 1995 regarding mode of payment of compensation to victims of atrocity be considered.

3. Some State Governments like Madhya Pradesh and Maharashtra have suggested that relief can be given to women victims of atrocity on account of outraging their modesty, without medical examination.
4. Government of Andhra Pradesh has suggested for amending the SCs & STs (Prevention of Atrocities) Rules, 1995 regarding payment of relief to the victims, it has been pointed out that the Government of India may amend the Annexure of the Rules in such a way that the District Magistrate have discretion to sanction immediate cash relief to the victims without insisting for filing of charge sheet.

5. Based on the experience in implementation of the Central Acts and Rules framed thereunder, the nodal officers may like to suggest further modifications in the Acts and the Rules.



## **ANNEXURE – VIII**

### **RECOMMENDATIONS FOR AMENDMENTS MADE BY P.S. KRISHNAN, FORMER MEMBER SECRETARY, NATIONAL COMMISSION FOR BACKWARD CLASSES**

(Ref: Discussion Paper For Consultation On SAARC Social  
Charter: India Input 20-21 November 2002, India  
International Centre Annexe, New Delhi)

#### **I. AMENDMENTS TO SECTION 14**

“Special Court”

- (1) For the purpose of providing for speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, establish in each district a Court of Session to be a Special Court exclusively to try the offences under this Act.

Provided that in respect of districts where there are no atrocities against Scheduled Castes and Scheduled Tribes at all the Government may, with the concurrence of the National Commission for Scheduled Castes and Scheduled Tribes, either exempt such district or districts from this provision or combine such district(s) with any other neighbouring district(s) for the purpose of establishing exclusive special courts:

- (2) The special courts set up under this provision shall not be the same as any of the existing courts of session.
- (3) The exclusive Special Courts shall try offences under this Act on day-to-day basis;

#### **II. AMENDMENTS TO SECTION 15**

##### **Special Public Prosecutor**

- (1) For every special court, the State Government shall by notification in the Official Gazette, appoint a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor, for the purpose exclusively of conducting cases under this Act in that Court;

### **Special Investigating Officer**

- (2) For every Special Court, the State Government shall, by notification in the official gazette, appoint a Police Officer as Investigating Officer exclusively for the purpose of investigation in respect of cases of offences under this Act;

### **III. ADDITION OF NEW SECTION 15(A)**

1. The Judges of the exclusive Special Courts of Session and the Special Investigating Officers and Special Public Prosecutors shall be appointed from panels prepared on the basis of their record of and reputation for upholding the Rights of Scheduled Castes and Scheduled Tribes especially their Rights to Protection from violence.
2. The exclusive Special Courts, and their judges, Special Public Prosecutors and Special Investigating Officers shall be provided with adequate staff and facilities, so that the discharge of their functions is not impeded.
3. The posts of Judges, Special Investigating Officers and Special Public Prosecutors shall never be kept vacant.

**IV.** Pending the above amendments in S.14 and 15 and insertion of new S.15 (A), the improvements proposed in them can be and should be implemented by executive action.

**V. Amendment to Section 3(2)** so as to include the following crimes against SCs and STs as Atrocities and to make them punishable with imprisonment for at term of not less than six months but which may extend upto seven years with fine:

- Social boycott
- Economic boycott
- Social blackmail
- Economic blackmail

**VI. Further amendment to Section 3(2):** Recognizing the fact that the absence of provisions for death sentence, as exists in S.302 of the Indian Penal Code is a serious lacuna and recognizing the reality that massacres of SC & ST and mass rapes and gang rapes of SC & ST women do occur in order to terrorize and cow down the whole community when they assert their lawful rights regarding land, wages, civil rights or equal human dignity,

Sub section (2) of Section 3 should be amended to provide for death sentence for murder in addition to imprisonment, and for mandatory death sentence for multiple murders or massacres, multiple or mass rapes and gang rapes.

**VII. Amendment to Section 10 :** S. 10 should be amended by adding the words: "or in any other area of any district" after the following existing words: "...in any area included in Scheduled Areas or Tribal Areas as referred to in Article 244 of the Constitution..."

**VIII. Amendment to S. 3(2) (V) :** Recognizing the fact that certain words give scope for rigid misinterpretation, making conviction in genuine cases more difficult, the

words “against a person or property on the ground that such person is a member of a SC or a ST or such property belongs to such member” in S.3(2)(v), should be substituted by the words “against a person or property belonging to a member of a SC or a ST”.

- IX. Addition of a Provision:** In order to minimize escape of actual criminals of/from conviction, Prevention of Atrocities should be amended incorporating a provision that notwithstanding the provisions in the Evidence Act, in case of contradictions between the Statement and FIR on the one hand and evidence given to the court, the Court shall assume that the evidence in the court is the correct version and the case be considered accordingly.
- X. Amendment to SCs and STs (Prevention of Atrocities) Rules : Rule 21 (2)** under (iii) the following four sub-paras may be added:
- i) The victims of atrocities and their families should be provided with full financial and other support to become economically self-reliant without their having to seek wage employment from their very oppressors and classes of oppressors and the State shall immediately take over the education of the children of such victims/ such families in the best schools and colleges of their choice available in the State/ in this country up to the level of the choice of such children/families fully at State cost including the cost of their food and maintenance.
  - ii) In case of collective attacks on Scheduled Castes or Scheduled Tribes in any village or urban locality, the State should immediately provide full financial and other support and take all steps to make all SC and ST families of that village or urban locality economically self-reliant without any of their members having to seek wage employment from any individual and take over the education of all SC and ST children of such village/urban locality in the same manner and to the same extent as mentioned in para 10,. (1) above.
  - iii) Every SC and ST victim of rape should be forthwith given a permanent government/ quasi-government job of the highest level appropriate to her educational qualifications in the Ministry/ Department/ PSU/ Public Financial Institution/ other public sector organisation of her choice and at least of the Group D/ Class-IV level if she has no educational qualification at all. If there is no vacancy, a supernumerary post should be deemed to have been created forthwith for her appointment. The District Collectors/ Heads of the Departments/Heads of PSU/ Heads of Public Financial Institutions/ of other Public Sector organisations should be authorized and mandatorily required to make such appointments with effect from the date of the Atrocity. The State should also take over the responsibility of arranging her marriage if she is unmarried or divorced or widowed at the time of rape.
  - iv) 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 Prevention of Atrocities is incorporated therein or not.

But initially they can and should be implemented without waiting for the issue of such rules.

- XI.** As an effective preventive punitive measure, a special wing of the Rapid Action Force should be constituted to deal exclusively with Atrocities against SCs and STs and similar wings/forces should be constituted in each state.
- XII.** A special scheme should be drawn up to effectively prevent any form of disrespect to the statues of Dr. Babasaheb Ambedkar, as disfigurement of statues and other acts of disrespect is resorted to by some people as a form of collective atrocity against SC and ST apart from being an insult to the nation and thereafter this should be suitably incorporated in the Prevention of Atrocities Act.
- XIII.** This is one of the few Acts which contains a rare provision placing mandatorily on the State Government the responsibility to take such measures as may be necessary for the effective implementation of the Act and spelling out illustratively some of the possible measures and similarly placing a responsibility on the Central Government to coordinate the measures taken by the State Governments. The implementation of this Act and the rules and the various guidelines and effective curbing of atrocities should be one of the specific items to be taken into account in the context of grant or denial of Social Justice Clearance at the time of promotion of officers.
- XIV.** In view of the fact that in some parts of the country, particularly in the south, converts to Christianity from specific SCs are subjected to crimes and atrocities exactly as their Hindu counter parts are (difference of religion making no difference in this regard) and the fact that trials in such cases get bogged down on the issue whether such cases are Atrocities since the victims are not SC on account of conversion. Clause ( c ) of section 2 of the Act should be amended by adding the following words at the end of it “and converts to Christianity from Scheduled Castes”. An explanatory note may be added that this is only for the purpose of this Act and not for any other purpose since the question whether SC converts to Christianity should be included in Scheduled Castes or not by amending the relevant provision in Presidential Orders is a different issue to be dealt with separately by the Government of India and the Parliament.
- XV.** In view of the fact that the main perpetrators of an atrocity sometimes co-opt a few SCs with them, taking advantage of local differences among the SCs, and sometimes they promote and engineer crimes but get them executed by some members of Scheduled Castes, the Act should be suitably amended to bring such crimes and atrocities within the purview of the definition of atrocities under the Act.
- XVI.** In view of the fact that in some cases of atrocities while most of the victims are Scheduled Castes or Scheduled Tribes there may also be a few non-Scheduled Castes/Scheduled Tribe people among the victims the Act should be amended to bring such atrocities and crimes within its purview.

## ANNEXURE – IX

### THE BHOPAL DECLARATION

Adopted Unanimously By The Bhopal Conference: Chartering A New Course For Dalits For The 21<sup>st</sup> Century Held At Bhopal, Madhya Pradesh, India, 12-13 January 2002

**We**, intellectuals and activists assembled at the Bhopal Conference, 12-13 January 2002, to deliberate the issues concerning the welfare of and justice to the 250 million Dalits (Scheduled Castes and Scheduled Tribes), and

**Declaring** our belief in Babasaheb Dr. B.R. Ambedkar's ideal of Social Democracy and his prophecy that, "A democratic form of Government presupposes a democratic form of society. The formal framework of democracy is of no value and would indeed be a misfit if there was no social democracy",

**Endorsing** the ideals of civil society enshrined in the Constitution of India, particularly its Preamble that declares the Indian State's commitment to Justice, Liberty, Equality and Fraternity,

**Recognizing** that the tenets established by the Universal Declaration of Human Rights and various other charters of the United Nations which our nation has acceded to also emphasize the same principles,

**Acknowledging** the role of tribal communities, particularly tribal women, to the protection and conservation of the country's rich biodiversity and natural resources as well as its culture and civilization,

**Acknowledging** also the need to ensure that SCs and STs are given due representation in all bodies of decision making,

**Recalling** the struggles that Babasaheb had waged for the emancipation of his people and the historic rights he had won for them,

**Mindful** of the fact that even after 54 years of independence, the Dalit community is denied of its basic human rights and is also at the receiving end of the most brutal and oppressive forms of discrimination and exclusion,

**Reaffirming** that concerted action by society as a whole especially coordination among the political leadership, officials and grassroots activists is necessary for the overall development of the most oppressed of India,

**Bearing in mind** the responsibility to take forward our struggle at this critical juncture in spite of the fact that most political formations are reluctant to pursue any policy favourable to the Dalits,

**Recognizing** that the social consensus over the Dalit cause - reluctantly agreed upon at the time of independence has by and large broken down,

**Convinced** that informed and democratic discourse at all levels is essential to renegotiate a new consensus over redeeming the pledges of the founding fathers of the Republic to do justice to Dalits,

**Convinced** also that the national psyche and public discourse in the country accepts uncritically the rigid hierarchy and discrimination caused by caste and thereby denies that caste is a major source of prejudice and brutal violence,

**Emphasizing** that Babasaheb's stress on struggle through democratic and constitutional means is relevant today,

**Regretting** that the post-Ambedkar Dalit intelligentsia has failed both in earning forward his emancipatory movement as well as making a dent in the country's intellectual life,

**Recognizing** the need for Dalits to make common cause with other liberation and human rights movements in and outside the country,

**Conscious** of the hurdles that caste-Hindu society — and its tentacles in government, media, voluntary sector, etc., - is likely to hurl at any serious movement that challenges the entrenched system of discrimination and exclusion,

**Noting** that women - especially Dalit women - represent the most oppressed sections of our society, and that they face multiple forms of discrimination, including caste-based, religious and patriarchal ideology and practices,

**Welcoming** the winds of change the world over that are conducive to inclusion, Equal Opportunity, Diversity, Democratization and Civil Society, and against discrimination, stereotype, stigma, exclusion and caste society,

**Hoping** that this country will no longer remain an exception to the global norm of Progress, Equality, Justice, Peace and Social Harmony, and

We hereby **solemnly proclaim** that while we rededicate ourselves to work in unison to achieve basic rights of Dalits, we are convinced that unless the following issues are resolved no amount of activism on our part and proactive measures from the State can liberate the community from the scourges of untouchability and exploitation

**We therefore demand .....**



**21-POINT ACTION AGENDA FOR THE 21<sup>ST</sup> CENTURY**

1. Ensure that each Dalit family will own enough cultivable land for socio-economic well being. The government should pursue all possible measures including the distribution of surplus land, government revenue lands and temple lands within a specific time-frame. If need be, the government should purchase cultivable land and distribute it among Dalits.
2. Enact legislation and enforce it stringently to enable Dalits have an equitable share in the appropriation and use of the rural and urban common property resources. The law must be amended to ensure that lengthy litigation, with the ulterior motive of denying Dalits of legal redressal, is not resorted to.
3. Enact legislation and enforce the right of Dalit agricultural labourers to living wages, to gender parity in wages, to job security, to better working conditions and welfare measures, and ensure punitive measures against offenders.
4. Appoint Statutory Committees at the national and State level to identify within specified time-frame all the Dalit lands occupied by non-Dalits, to assess the quantum of compensation to be paid by non-Dalits for their illegal utilization of lands, to identify the original owners and their nearest kith and kin for restoring these lands back to them, to expedite legal proceedings in courts specially appointed for this purpose against the illegal occupants and to ensure punitive measures against them.
5. Ensure the restoration of the alienated lands to the tribals, restore their rights over forest and forest-produce, provide them with compensation and rehabilitation measures, extend resources and capacity building measures for gainful utilization of their lands and forests and make those Dalits displaced due to construction of dams/ developmental projects and mining as shareholders of such enterprises.
6. Democratise Capital so as to ensure proportionate share for SCs and STs. Make budgetary allocation for SCs and STs to enable them enter the market economy with adequate investment resources, and develop their capacities and skills for such market enterprises.
7. Enforce with stringent measures the Bonded Labour System (Abolition) Act, 1976 and abolish forthwith child labour to ensure freedom with dignity for all Dalits, and accordingly make suitable amendments in the appropriate legislations.
8. Amend Art. 21 of the Constitution of India so as to include the following rights for all citizens, with special emphasis on SCs and STs and on the basis of two criteria; namely, low-economic income and without religious discrimination; the rights to a standard of living adequate for the health and well-being of women and men equally, including food, safe drinking water, clothing, housing, public health and medical care, social security and social services; the right to living-wage and the right to own 5 acres of cultivable land or to gainful employment.
9. Implement compulsory, free and high quality education for all Dalits immediately, make allocation of funds proportionate to the number and level of the illiterates, ensure compensation to those families which forfeit their income from child-

labour increase the number and amount of scholarships, and provide better infrastructural facilities in SC and ST schools and offer market-oriented vocational and technical education.

10. Make the reservation quota applicable in all the public and private educational institutions from primary to technical and professional levels. Every SC/ST child with low income-base must be given quality free-education at the State's expense. And every English medium school must implement Diversity in Admissions.
11. Recognize SC and ST women as a distinct category among women and accordingly make segregated data on Dalit women available in census reports, action taken reports and progress reports, evolve national and state-level perspective plans for mainstreaming SC and ST women in developmental programmes, market enterprises, financial allocation, reservation facilities in education, employment and health facilities, and mandate the National and State Commissions for SCs and STs and for Women to study and report specifically the status of SC and ST women in their annual reports.
12. Implement effectively in letter and spirit the SC and ST (Prevention of Atrocities) Act, 1989 & Rules, 1995, especially with regard to atrocities against Dalit women, and accordingly prosecute the dominant caste leaders and their minions who stoke the fire of caste clashes and the police officials acting in connivance with them. In cases of atrocities against SCs/STs, a system of collective punishment has to be evolved as oppressors enjoy community's support and protection and escape the law.
13. Ensure Diversity or SCs/STs' due representation in all public institutions of India, whether universities or academic or autonomous or registered bodies. Those institutions, which do not abide by the principle of Affirmative Action, must lose recognition and State funding. All private industry/corporate houses must accept and implement Diversity in workforce immediately.
14. Ensure that in all state and national budgets allocations are made as per the proportion of SC and ST population and penal action taken against unutilisation or diversion of funds meant for these sections.
15. Every government and private organization must implement Supplier Diversity from socially disadvantaged businesses and Dealership Diversity in all goods and services.
16. The State must assume sole responsibility in protecting the SCs and STs. The State must identify those atrocity prone areas and deploy forces. In addition, provide arms licences to the SCs & STs as stipulated in the Atrocities Act for self-defence purposes, make the setting up of Dalit self-defence groups from village onwards mandatory and specially train Dalit women to handle weapons in self-defence against the perpetrators of crimes and atrocities.
17. Eliminate the humiliating practice of manual scavenging on an urgent footing through effective rehabilitation, alternative and sustainable employment measures and development programmes, and prosecute violators of the Employment of

Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, especially the gross violators -Railways, Defence, Urban Local Bodies and others.

18. Make it statutory for Parliament and State assemblies to debate on the annual reports of the national- and State-level Commissions for SCs/STs and Safai Karamcharis within the following year, and ensure that these annual reports and the action-taken reports are made public. And ensure that the action is taken under clear statutory stipulations.
19. Make affirmative action mandatory in all private institutions, including industries and corporate sector, which receive State patronage in any form - from land at concessional rate to tax benefits, etc, and also develop the capacities and skills of Dalits to help them meet the demands of these different sectors.
20. Implement the policy of reservation to SCs/STs at all levels of Judiciary and defence forces. And make transparent appointment process in Judiciary by doing away with the nomination system.
21. Bring out a Truth Paper in two years on the status of reservation during the past 25 years and place it before Parliament and State Assemblies for debate, and on a war-footing fill immediately all the backlog posts meant for Dalits and that, too, only with Dalit candidates.