



THE STATUS OF IMPLEMENTATION AND NEED FOR AMENDMENTS IN PREVENTION OF ATROCITIES ACT, INDIA

IN THE CONTEXT OF 20 YEARS OF SC&ST (Prevention of Atrocities) ACT 1989

NATIONAL COALITION FOR STRENGTHENING SC&ST PREVENTIONS OF ATROCITIES ACT

(Adharshila, Alternative Forum for Dalit Liberation, AP Dalit Bahujan Shramik Union, All India Dalit Mahila Adhikar Manch, Ambedkar Lohiya Vichar Manch, Anhad, CBCI Commission for SC/ST/BC, Centre for Dalit Rights, Centre for Social Equity and Inclusion, Centre for Mountain Dalit Rights Himachal Pradesh, Centre for Social Justice, Centre for Social Justice & Development, CSRD-People Monitoring Committee, Cornerstone, Dalit Aarthik Adhikar Aandolan, Dalit Action Group, Dalit Dasta Virodhi Manch, Dalit Foundation, Dalit Movement for Human Rights and Dignity, Dalit Nyay Andolan, Dalit Samanway, Development Initiative, Dr. Ambedkar Agriculture Development and Research Institution, Dr. Ambedkar Excellence Education and Public Welfare Institution Samiti, Dynamic Action Group, Evidence, Human Rights Alert, Human Rights Forum for Dalit Liberation - Karnataka, Human Rights Forum for Dalit Liberation - TN, Human Rights Foundation, Human Rights Law Network, Indian Alliance for Child Rights, Indian Institute of Dalit Studies, Indraprastha Public Affairs Centre, Insaaf Dilao Committee, Jana Vikas – Orissa, Jan Sahas, Janvikas – Gujarat, Jeevika, Karnataka Dalit Mahila Vedike, Multiple Action Research Group, NCCI Commission on Dalits, Narigunjan, National Action Forum for Social Justice, National Campaign on Dalit Human Rights, National Confederation of Dalit Organizations, National Council of Dalit Christians, National Dalit Election Watch, National Dalit Forum, National Dalit Movement for Justice, National Federation for Dalit Land Rights Movement, National Federation for Dalit Women, Navsarjan Trust, People's Vigilance Committee on Human Rights, People's Action for Rural Awakening, People's Watch – Tamil Nadu, Praxis – Institute for Participatory Practices, SC/ST Employees Association (AP Bhawan), Safai Karmachari Andolan, SAKSHI – Human Rights Watch, Sasvika, Social Action For Advocacy & Research (SAFAR), Social Awareness Society for Youth, Society for Participatory Research in Asia (PRIA), SICHREM, VICALP, Working Group for Human Rights in India and UN, YUVA)



THE STATUS OF IMPLEMENTATION AND NEED FOR AMENDMENTS IN PREVENTION OF ATROCITIES ACT, INDIA

IN THE CONTEXT OF 20 YEARS OF SC&ST (Prevention of Atrocities) ACT 1989

NATIONAL COALITION FOR STRENGTHENING SC&ST PREVENTIONS OF ATROCITIES ACT

(Adharshila, Alternative Forum for Dalit Liberation, AP Dalit Bahujan Shramik Union, All India Dalit Mahila Adhikar Manch, Ambedkar Lohiya Vichar Manch, Anhad, CBCI Commission for SC/ST/BC, Centre for Dalit Rights, Centre for Social Equity and Inclusion, Centre for Mountain Dalit Rights Himachal Pradesh, Centre for Social Justice, Centre for Social Justice & Development, CSR-D-People Monitoring Committee, Cornerstone, Dalit Aarthik Adhikar Aandolan, Dalit Action Group, Dalit Dasta Virodhi Manch, Dalit Foundation, Dalit Movement for Human Rights and Dignity, Dalit Nyay Andolan, Dalit Samanway, Development Initiative, Dr. Ambedkar Agriculture Development and Research Institution, Dr. Ambedkar Excellence Education and Public Welfare Institution Samiti, Dynamic Action Group, Evidence, Human Rights Alert, Human Rights Forum for Dalit Liberation - Karnataka, Human Rights Forum for Dalit Liberation - TN, Human Rights Foundation, Human Rights Law Network, Indian Alliance for Child Rights, Indian Institute of Dalit Studies, Indraprastha Public Affairs Centre, Insaaf Dilao Committee, Jana Vikas – Orissa, Jan Sahas, Janvikas – Gujarat, Jeevika, Karnataka Dalit Mahila Vedike, Multiple Action Research Group, NCCI Commission on Dalits, Narigunjan, National Action Forum for Social Justice, National Campaign on Dalit Human Rights, National Confederation of Dalit Organizations, National Council of Dalit Christians, National Dalit Election Watch, National Dalit Forum, National Dalit Movement for Justice, National Federation for Dalit Land Rights Movement, National Federation for Dalit Women, Navsarjan Trust, People's Vigilance Committee on Human Rights, People's Action for Rural Awakening, People's Watch – Tamil Nadu, Praxis – Institute for Participatory Practices, SC/ST Employees Association (AP Bhawan), Safai Karmachari Andolan, SAKSHI – Human Rights Watch, Sasvika, Social Action For Advocacy & Research (SAFAR), Social Awareness Society for Youth, Society for Participatory Research in Asia (PRIA), SICHREM, VICALP, Working Group for Human Rights in India and UN, YUVA)

Secretariat

National Campaign on Dalit Human Rights (NCDHR)

*8/1, III Floor, South Patel Nagar, New Delhi – 110 008. India, Phone: 011-45009309; 25842251
Fax: 011-25843569*

Introduction

"The incident of assault and abuses is nothing but because he [the victim] belongs to SC and he is lower in the eye of [the] upper caste Reddy person accused. The offence is not only against [the victim] but against society and ultimately the Nation¹."

This quote expresses the very essence of the SC/ST Act. The caste system goes against the core values of the Indian Union as enshrined in its Constitution. Yet caste discrimination remains a widespread phenomenon throughout India. Over the past decades numerous legal instruments and policies have been brought into existence in order to improve the social position of SCs/STs. Unfortunately they have not been able to root-out caste discrimination. Every year, thousands of cases of caste based violence and injustice are reported across the country.

One of the instruments introduced for the protection of the position of SC/ST people is the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989. This Act was specifically enacted to prevent and to protect SCs/STs from atrocities committed on them by non-SCs/STs.

But the experience of victims and witnesses, activists and organizations clearly demonstrates that the implementation leaves much to be desired. Though the Act has made a small impact in curbing atrocities against SC/ST through deterrent punishment, remedial measures to be taken by the Authorities and also through rare provisions placing mandatory responsibility on the State Government to take measures for the effective implementation of the Act and spelling out illustratively some of the possible measures, its implementation has several deficiencies. National Commission for Scheduled Castes, NHRC, and Justice Punnaiah Commission critically examined deficiencies of the Act and have suggested various amendments to the Act. Human Rights organizations have also highlighted various gaps in the enforcement of the Act and Rules. Ministry of Social Justice and Empowerment and Ministry of Home Affairs have issued various advisories to State governments to fill the gaps in the enforcement.

On the occasion of 20th anniversary of the Act the organizations, activists and experts working for better enforcement of SC/ST (POA) Act felt the need to critically review its performance in the realization of its objectives and incorporate some judicious amendments to the SC/ST Act 1989 and Rules 1995 to make it more binding and strong.

National Campaign on Dalit Human Rights (NCDHR) initiated this process through its one of the movement – National Dalit Movement for Justice and organized preliminary discussion on 25th June 2009, at Indian Social Institute, Delhi. Organizations and activists from various states who participated in the discussion took the following decisions:

1. Have a small group of people to prepare a position paper and draft amendment bill under the guidance of Sri. PS Krishnan, IAS (retd)
2. Circulate the draft bill widely, get feedback and finalize it
3. Organize a National level event on 11th September, the day the Act received assent of the President of India
4. Strategize national level campaign and advocacy on the Act

A working group was formed² to prepare the draft amendments and the position paper. This was done accordingly. The paper is divided into four sections, section I gives a brief background and the features of the SC/ST (POA) Act. Section II examines the major lacunae and gaps in the implementation of the Act at various levels based on the reports of various commissions, reports of the concerned ministries, organizations and experts. Section III explains necessary amendments and justification and Section IV provides the amended and current version of the different clauses in a table.

¹ Sri N. Balayogi, Special Sessions Judge, Guntur .,Case Guntur 55/S/2003

² Working group - Mr. Ossie Fernandez, Mr. Narender, Mr. Nandagopal, Prof. Krishnadeva Rao, Ms. Vrinda Grover, Mr. Rameshnanadan and Dr. Sirivella Prasad

I

BACKGROUND AND FEATURE OF THE SC/ST ACT

Article 17 of the Constitution of India abolishes the age-old phenomenon of "untouchability". Article 17 is basically a "statement of principle" that needs to be made operational with the ostensible objective to remove humiliation and multifaceted harassments meted to the Dalits and to ensure their fundamental and socio economic, political and cultural rights. In order to effectively do so, nearly six years after the Constitution came into force the *Untouchability (Offences) Act, 1955* was drawn up. However, lacunae and loopholes impelled the government to project a major overhaul of this legal instrument. From 1976 onwards the Act was revamped as the Protection of Civil Rights Act. Despite various measures adopted to improve the socio-economic conditions of the SCs and STs they remain vulnerable and are subject to various offences, indignities and humiliations and harassments. When they assert their rights and against the practice of Untouchability against them the vested interest try to cow them down and terrorize them.

The normal provisions of the existing laws like, the Protection of Civil Rights Act 1955 and Indian Penal Code have been found inadequate to check these atrocities³ continuing the gross indignities and offences against Scheduled Castes and Tribes. Recognizing these, the Parliament passed 'Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act', 1989 & Rules, 1995. The statement of objects and reasons appended to the Bill while moving the same in the Parliament, reads "despite various measures to improve the socioeconomic conditions of SCs & STs, they remain vulnerable. They are denied a number of civil rights; they are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious atrocities are committed against them for various historical, social and economic reasons."

The preamble of the Act also states " to prevent the commission of offences of atrocities against the members of Scheduled 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 offenses and for matters connected therewith or incidental thereto." Thus objectives of the Act clearly emphasize the intention of the Government to deliver justice to these communities through proactive efforts to enable them to live in society with dignity and self-esteem and without fear or violence or suppression from the dominant castes.

The provisions of SC/ST Act and Rules can be divided into three different categories. The first category contains provisions of criminal law. It establishes criminal liability for a number of specifically defined atrocities, and extends the scope of certain categories of penalizations given in the Indian Penal Code (IPC). The second category contains provisions for relief and compensation for victims of atrocities. The third category contains provisions that establish special authorities for the implementation and monitoring of the Act. All in all, it covers a variety of issues related to atrocities against SC/ST people and their position in society.

The most important section of the part of the SC/ST Act related to criminal offences is section 3. It contains (a) 19 offences in their own right, (b) two derived offences and (c) one subsection that increases the punishment for certain offences under the IPC⁴. These protections can be broadly divided into protection from social disabilities⁵, personal atrocities⁶, atrocities affecting properties⁷, malicious prosecution, political disabilities and economic exploitation. The common denominator of

³ The Statement of the object and reasons for SC/ST(PoA)ACT 1989

⁴ Section 3(1) contains 15 subsections with an equal number of offences. Section 3(2) contains (a) four subsections with offences, (b) two subsections with derived offences (sections 3(2)(vi) and 3(2)(vii)) and (c) one subsection that increases the punishment on IPC offences (3(2)(v)). The derived offences are based on the offences given in the SC/ST Act. They only come in the picture provided that another offence under the SC/ST Act has been committed.

⁵ Protections are from denial of access to certain places and to use customary passage and to get water from any spring, reservoir or any other source.

⁶ Protections are from against forceful drinking or eating of inedible or obnoxious substance, against stripping, outrage of modesty, sexual exploitation, injury or annoyance.

⁷ Protection against atrocities affecting land, residential premises, existing properties

the offences is that criminal liability can only be established if the offence is committed by a person who is not a member of a Scheduled Caste or a Scheduled Tribe against a person who belongs to a Scheduled Caste or a Scheduled Tribe.

The Act has the following main features⁸:

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 granting of probation to the convict of an offence under the Act. Among the preventive measures are included Rules for cancellation of arms license of potential accused of an offence under the Act and provision for grant of arms license to Scheduled Castes/Scheduled Tribes as a means of self defense.
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 Act. This compensation shall be provided in addition to the minimum relief extended to the victim.

⁸ Atrocities against Scheduled Castes, KB Saxena, NHRC 2002

II

GAPS IN IMPLEMENTATION OF SC/ST POA ACT 1989 AND RULES 1995

This section is an attempt to analyze the nature and extent of enforcement of PoA Act and its Rules within the framework of above stated objective and spirit in enacting this special legislation. We have taken into considerations various reports of SC/ST Commission, NHRC report on Atrocities against Dalits, Punnaiah Commission report, reports of concerned ministries and reports/studies of various human rights organizations as well as judgments at various levels, to identify major lacunae in enforcement of the Act from registration of complaint to judgement.

1. **Under reporting of the cases under the Act and deterred from making complaints of atrocities:** Under reporting is a very common phenomenon. NHRC (National Human Rights Commission) in its report on Atrocities against Scheduled Castes 2002 observes that "even in respect of heinous crimes the police machinery in many States has been deliberately avoiding SCs and STs (Prevention of Atrocities) Act, 1989". The report further stated that "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"⁹. 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. 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"
2. **Not Registering cases under appropriate sections of the Act:** It was observed from the reports of various organizations, NHRC and other Commissions of various state governments of India that FIRs were registered without reference to proper sections of the Act of 1989¹⁰. As per NCRB reports, 67% of cases during 1992-2000 and 64.9% during 2001-2007 were not registered under SC and ST (PoA) Act. Out of registered cases, in 84.4 % cases wrong provisions were applied to conceal heinous, inhuman and violent nature of the atrocities¹¹. That in many cases where police do register a case under the Act, they purposely cite improper sections. For serious crimes such as murder, rape, destruction of property, dispossession of land, making foul drinking water sources, etc., police are only citing sec. 3(1)(x) from the Act, which relates to insulting or intimidating a SC/ST person with intent to humiliate him or her in public view¹². One of the reasons for police commonly citing this section is that this is the most minor offense under the Act and generally attracts the least punishment. In this way, they misuse the Act and allow the perpetrators, if convicted, to get away with lighter punishment.
3. **Delay in Filing Charge Sheet:** Charge sheets in atrocity cases are invariably filed late. Besides non-registration of cases despite merit, there were delays in investigation, collusion with offenders and manipulation of witnesses and evidence, all of which contributed to reduce the effectiveness of legislation on atrocities¹³. The State Police Department of Andhra

⁹ NHRC further reports that 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 conceal the actual and violent nature of the incidents. Victims are deterred from making complaints and as a result First Information Reports (FIR's) are rarely registered or registered late.

¹⁰ National Commission for Human Rights (2002), One man Commission on untouchability and Atrocities against Scheduled Castes and Tribes, Government of Andhra Pradesh (2001) as well as civil society organizations such as Sakshi Human Rights Watch - Andhra Pradesh (2000 & 2003), National Campaign on Dalit Human Rights, Centre for Dalit Rights Rajasthan, etc.

¹¹ NCRB reports (1992 to 2007)

¹² Sakshi's report shows that in the state of Andhra Pradesh it was found only 17.3 % of the cases under the Atrocities Act were registered under proper sections. Of the remaining 82.5 percent of cases, 28.1 percent were never even brought within the purview of the law due to police failure/ refusal to register cases, thereby neglecting their official duties and colluding with the perpetrators of atrocities.

¹³ A mere 4.9 percent of cases registered under the Act of 1989 and Rules of 1995 were actually charge sheeted. Only in 9.3% cases of the 4.9%, charge sheets are filed within the stipulated time of 30 days. Even if we take the Cr.P.C. time

Pradesh in response to the query raised by the Chief Justice of the High Court of AP on the PIL filed by Sakshi Human Rights Watch admitted that 14,452 cases were delayed and gave the following reasons for delay:

- a. 3,281 cases were not charge sheeted due to delay in getting approval, legal opinion and superior's order;
- b. 1,464 cases because of having 'more witnesses' in the case;
- c. 1,873 cases due to delay in obtaining caste certificates;
- d. 2,934 cases due to delay in the collection of Documents & evidence;
- e. 1,212 cases due to delay in receipt of Wound Certificates, Medical Certificates & Postmortem Report;
- f. 1,006 cases due to apprehension and absconding of the accused;
- g. 662 cases due to delay in tracing and examining the witnesses/ victim;
- h. 613 cases due to delay in busy schedule of officers/ work pressure;
- i. 169 cases due to the transfer of the officer;
- j. 78 cases because cases investigated by the CID/CBID;
- k. 48 cases because CD files were not available.

The High Court of Andhra Pradesh in an interim order on the Writ Petition observed – “the statistics furnished by the Director General of Police shows that 1 case registered under this Act is pending investigation for the last almost six years, 4 cases pending investigation for last five years, 18 cases are pending investigation for over four years, 31 cases are pending investigation for over three yeasts. 190 cases are pending investigation for almost two years and 805 cases are pending investigation for about one year.¹⁴” These facts are yet another admission to the gross negligence of the state machinery, especially the police. These acts of gross negligence have created a feeling that atrocities against SCs and STs can be committed with virtual impunity.

4. **Not arresting accused:** The accused are invariably not arrested and allowed to roam free. Based on the several representations presented to Justice K Punayaya Commission of Government of Andhra Pradesh, the Commission stated that the Sub-Inspectors or Circle-Inspectors did not arrest the assailants who committed the atrocities even though, the Sub-Inspectors or the Inspectors of Police, recorded FIRs and registered cases.
5. **Accused are invariably released on bail:** Various reports observed that the accused are invariably released on bail even in cases of serious crimes and have concluded that judicial delay and dilution of the scope and applicability of the Act of 1989 has resulted in denial of justice to the Scheduled Castes. The judicial trends observed by NHRC study are:
 - a) Technicalities often take priority over the intent of the Act and the merits of the case.
 - 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 grounds such as lust for sex, illicit intimacy in case of rape, political rivalry, enmity in case of murder, grievous hurt, etc.
 - c) Tendency to accept evidence only from non-Scheduled Castes/non-Scheduled Tribes people. The National Commission on SC's/ST's reported from its studies of fifty-sixty cases the judge invariably concluded that SC/ST people's evidence is not valid because they are an interested party.
 - d) Personal beliefs and prejudices determine appreciation of evidence, determination of guilt and award of judgment. These beliefs have the unmistakable print of social biases, both caste and gender.

limit of 90 days, charge sheets are filed in only 31% of cases. For about 28% of cases the investigation agency is taking more than 365 days (Affidavit of Public Interest Litigation in Supreme Court of India (2006) by NCDHR and others.

¹⁴ Writ Petition Filed by Sakshi-Human Rights Watch on the non-implementation of the SC/ST Prevention of Atrocities Act in AP High Court, WP No. 1019 of 2006).

6. **Filing false and counter cases against Dalit victims:** Police deters the victims by colluding with accused persons in filing false counter cases¹⁵. The counter reports are indiscriminately registered against the SCs and STs and based on the counter reports the police arrests the SCs and STs, while the police does not arrest on SC's & ST's complaint and in most cases not even entertains it.
7. **Compensation prescribed under the Act¹⁶ is invariably not paid:** The NHRC Report (2002) observes that "the breach of duties by Civil Administration is committed in the following Manner:
 - 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 and 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".

The NHRC report further observed that

"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".

8. **No access to legal aid:** Report of National Commission for Scheduled Castes and Scheduled Tribes has found that no such special legal assistance as envisaged by the Act of 1989 was extended to SC's and ST's even in one of the thousands of cases looked into by them¹⁷. On the other hand, the accused persons have recourse to good lawyers. A centrally sponsored financial assistance scheme was introduced, initially for effective implementation of the Protection of Civil Rights Act, 1955 in the year 1974-75. The scheme was later (1990-91) extended to cover

¹⁵ "Whenever the SC or ST victim of atrocity presents a report to the Sub-Inspector or Circle-Inspector in charge of Police Station and if he records F.I.R., and register a case, the Sub-Inspector or Circle-Inspector should arrest the assailant or assailants who committed the atrocity on the complaint-SC. But the Sub-Inspector or Circle-Inspector who recorded the F.I.R., and registered a case did not arrest the assailants except in rare cases. On the other hand, it is stated in their representations that those assailants against whom the SC-victims presented complaints lodge counter reports to the Police against SC-victims and the Sub-Inspectors or Circle-Inspectors register counter cases against the SCs (Victims) and arrest them. When a counter report is presented by the assailant who is the accused in the report presented by the SC-victim, it was filed obviously with the sole intention to counter blast the complaint filed by the SC-victim. As a result of the counter cases, the real SC victims of the atrocities are being arrested and subjected to criminal litigation as accused in the counter cases" (Justice Punnayya Commission, Government of Andhra Pradesh 2001).

¹⁶ Scheduled Castes and Scheduled Tribes Cell within the Social Welfare Department to look after the implementation of relief and rehabilitation measures under the SC/ST (PoA) Act and Rules. According to sec. 21(2)(iii) of the Act, the State should make provision for the economic and social rehabilitation of the victims of atrocities. A host of measures are then laid out in the Rules, including compensation measures – relief, rehabilitation - to be implemented by the district administration under rule 12(4). Immediate relief includes food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for the Dalit victims, while longer term relief is specified in the accompanying Schedule to the Rules in terms of compensation amounts varying according to the nature of the offence. Part payment of compensation is prescribed at either the initial stages of filing the FIR or the charge sheet, while final compensation is often only paid on the finalization of the case before the courts.

¹⁷ National SC/ST Commission Report 2000-01

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well¹⁸. But the NHRC report states that:

- a. The funds released to states bear no correspondence to the volume of atrocity cases committed or registered therein.
- b. The withdrawal of assistance by some States is extremely low despite the sizeable percentage of SC population and also high incidence of cases of violence against SC's.
- c. There is uneven distribution of assistance across years in various States, 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
- 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.

9. Investigation not done by the competent authorities: Investigations are invariably done in a shoddy fashion¹⁹ and are often not done by the Dy. SP but by the junior judicial officers rendering the trial illegal²⁰. An analysis of numerous cases carried by various organizations show that investigations are done by a police officer of lower rank than Deputy Superintendent of Police (DSP) or by a DSP who has not been explicitly appointed under this rule qualify under Rule 7, on this technical ground the case is vitiated and weakened.

10. Committees either yet to be formed or are dysfunctional – State level and district level vigilance and monitoring Committees are ineffective: Special officers, nodal officers are not appointed nor are available for discharging their duties.

11. Non-implementation of statutory provisions: As per the Act 1989 and Rules 1995 state governments should take measures to fulfil the following statutory provisions:

- a. **Rule 3:** Identification of atrocity prone areas and undertake preventive measure such as review of law and order situation, canceling arm licenses, providing arm licenses to Dalits for self protection, setting up vigilance committee etc.
- b. **Rule 8:** Setting up Special Cells to conduct survey of the identified areas, informing nodal officer and special officer on law and order situation of identified areas, making enquiries about the investigation and spot inspections, willful negligence of various authorities, reviewing the position of cases registered etc.
- c. **Rule 9:** Appointment of Nodal Officers
- d. **Rule 10:** Appointment of Special Officers
- e. **Rule 15 (1):** Contingency Plan for implementation of the provisions of the Act.
- f. **Rule 16 and Rule 17:** Vigilance and Monitoring Committees at state and district level to review the implementation of provisions of the Act.
- g. **Section 14:** Designated Special Courts and Exclusive Special Courts for speedy trial of offences under this Act

¹⁸ Under this scheme 50% financial assistance is provided by the Union Government to the State Governments and 100% to Union Territory administrations for meeting the expenses for financial assistance provided by them to Dalit victims of atrocities for the ultimate purpose of proper implementation of the aforesaid Act. Besides, the Scheme also provides assistance for strengthening the enforcement machinery and judicial administration, publicity and relief and rehabilitation of affected persons.

¹⁹ As per the NHRC report the progress of investigation of cases by police analyzed from the governmental data indicates that number of charge-sheeted cases was 53.04%, 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% and thus of total of 30,350 cases registered during 2000 as many as 8336 cases were closed after investigation without any trial and 9,027 cases were still pending investigation. According to another data of a total 1,43,505 cases in Courts for the year 2000, 1,32,268 cases were pending, 9996 were acquitted and 1241 ended in conviction.

²⁰ The provision (viz. Rule 7) under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, that "[a]n offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."

The following table shows the status of non-implementation of the provisions of SCs and STs (PoA) Act, 1989 and Rules 1995 by state governments.

Provisions	States implemented	States not implemented
Rule 3-Precautionary and Preventive Measures	11	23
Rule 8-SC/ST Protection Cell -	17	17
Rule 9-Nodal Officer	29	5
Rule 10-Special Officer	14	20
Rule 15 (1)-Contingency Plan by State Government	9	25
Rule 16-State Level Vigilance and Monitoring Committee	21	13
Rule 17- District Level Vigilance and Monitoring Committee	21	13
Section 14 Special Courts	9	25

Source: Reports of Ministry of Social Justice Empowerment

12. **Seeking Justice before the Law:** Finally, if Dalit victims are lucky enough to escape or overcome above hurdles they become part of the small percentage of cases that makes it to the court. Conviction rates in the court are less than one percent under the PoA Act. Though there is provision of establishing special Court under the PoA Act there is huge pendency of cases. The judicial trends observed by NHRC report are:
- 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.
 - 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.
 - 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.
 - Personal beliefs and prejudices determine appreciation of evidence, determination of guilt and award of judgment. 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 of evidence or the likelihood of guilt..... These biases are pervasive all the way to the top of the legal system. The few cases that manage to reach the Supreme Court still do not escape these deep-seated prejudices²¹".

21 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^{28B} could not have defiled himself by raping a lower caste woman". Other cases have also been referred to^{28C} by the same organization to illustrate the atmosphere of prejudice in courts which Dalit women face both as Dalits and as women.

III

Required Amendments and Justification

This section focuses on required amendments and justifications based on the above experience of the enforcement and recommendations given by various agencies and organizations including NCSC, NHRC (see Aneexure 1 for details of recommendations). The proposed amendments can broadly be divided into the following categories:

1. Gravity of offenses and punishments
2. New types offenses not defined in the Act
3. Limitation in appreciation of certain words
4. Scope of definitions given in the Act
5. Nature of willful negligence and its scope in the Act
6. Measure to realize Right to Speedy Trial
7. Rights of the victims and witnesses

3.1 Gravity of offenses and punishments

SC/ST (PoA) Act, for all the offences of atrocities under sections 3(1) has provided a minimum six months of punishment and maximum of 5 years of punishment. But, comparing the gravity of offences and the quantum of punishment for offences of atrocities under the Act, and the quantum of punishment under Indian Penal Code for similar offences shows wide variance. Therefore, the punishments under the Act need revision. For example

1. Under section 3(1)(xii) which reads as follows "being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed" the minimum punishment could be six months and maximum punishment would be 5 years under the aforesaid section . For the same offence under section 376 of IPC – Punishment for Rape, accused could be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable for fine.
2. Under Section 3(1)(vi) which reads "compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government" can be punished with minimum of six months but in IPC under section 374 – Unlawful compulsory labour the minimum punishment would be 1 Year with fine or both.
3. Under section 3(1) (vii) which reads as follows forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law can be punished with a minimum of 6 months, but under section 171 F of IPC – Punishment for undue influence or personation at an election the accused can be punished for minimum of one year.
4. Under Sec 3 (1) (i) forcing to eat or drink inedible or substance such as urine and shit is not less than the ingredients of section 328 of IPC which relates to causing hurt by means of poison, etc and wherein the punishment is 10 Years but under SC/ST Act the accused for the same offence may be punished for six months or any where between 5 Years.

Reasons for enhancement in punishment:

SC/ST (PoA) ACT 1989 is a special law enacted by the Parliament. While introducing the Bill, the Minister stated that Scheduled Castes and Scheduled Tribes are denied civil rights and are subjected to atrocities, which normal law has failed to prevent. This bill was introduced to remedy it. The Minister said, "The term 'atrocities' has not been defined so far. It is considered necessary that not only the term 'atrocities' should be defined but **stringent measures should be introduced to provide for higher punishment for committing such atrocities.**"

Social Legislation is not a document for fastidious dialects but a means of ordering the life of People. So, a crime has to be defined in the context of the nature of vulnerability of the communities in which it is committed and punishment has to be designed to suit the gravity of the offence to ensure the freedom of such people. The intention of the Legislature in the creation of a 'separate nature of offences or statutes' based on socio-economic, political and cultural conditions of the Scheduled Castes and Scheduled Tribes is based on the very principle of equality before law. If they are again discriminated against in this behalf it amounts to a violation of their fundamental rights.

The very spirit and the purpose of the difference in offences in the SC/ST Act and IPC is to determine the gravity of the offence and punishment designed to realize objective of the Act. Keeping this above objective and nature of offenses and its gravity there is a need to enhance punishment defined for Section 3(1). We have two ways of doing it; i) proposing punishment for each subsection of section 3 or ii) proposing amendment for enhancement of punishment for entire section but both should be within above said principles of nature and gravity offenses and objective of the Act.

Following the second option of providing enhanced punishment for entire section 3 we propose the following amendment:

Original text: "shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine".

Proposed Amendment: "shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine".

3.2. Limitation in appreciation of certain words

One of the greatest fallacies in reading the SC/ST (POA) Act 1989 lies in the over emphasis on establishing that the atrocity took place on the ground that the victim was SC/ST. This fallacy continues right from the registration of the complaint by the police and continues up to the Judiciary at the time of Judgement. There are various ways adopted in order to dilute the case of atrocity with the interpretation of the words "**Intent**", "**Intention**", "**on the ground**" and also the words like "**public view**" and "**public place**" at various levels by Enforcement authorities and Judiciary.

Under SC/ST(PoA) Act 1989 there are several offences wherein the words "Intent" and "Intention" or "on the ground" and also words public view and public place as in 3(1)(ii), 3(1)(x), 3(1)(xi), 3(2)(i), 3(2)(ii), 3(2)(iii), 3(2)(iv) and 3(2)(v). These words provide loopholes for accused to escape the Law. The enforcement officials also take advantage to support the accused in different ways. The following are some of methods used to dilute spirit of the Law at different levels by different agencies:

1. Police officials do not register the complaint of the victims immediately under SC/ST (PoA) Act 1989 by citing these words to their advantage. They inform the complainants that they can register the case under the Act only after verification that the victims belong to SC/ST and the atrocity has taken place on the ground of being SC/ST.
2. It is evident in several incidents that police demand the victims to produce caste certificates²² to show that the victim belongs to SC/ST.
3. Not registering the complaint on the pretext that it is not an act/crime that can be attributed to intentional insult or intimidation or intention to humiliate.
4. Police officials do not register the complaints under the Act saying that the accused did not abuse the victim by caste while committing the offense.

²² In a public interest litigation filed by Sakshi Human Right Watch, Andhra Pradesh, Police admitted that investigation of 1,873 cases delayed due to obtaining caste certificates;

5. While the police officials insist that victims produce caste certificates to show that the victim belongs to SC/ST, at the time of filing charge sheet they do not file it under SC/ST ACT 1989.
6. After conclusion of the investigation police do not file the Charge Sheet under SC/ST ACT saying that the act/crime attributed does not amount to intentional insult or intimidation.
7. Not filing the Charge Sheet under SC/ST ACT 1989 by saying that there was no intention to humiliate.
8. Not filing the Charge Sheet under SC/ST ACT 1989 as the act was not directed against the members of SC/ST.
9. Not filing the Charge Sheet under SC/ST ACT 1989 by saying that the accused not abused and called victim's caste while committing the offense.

Even Judiciary is not exempt from this kind of 'appreciation' of these words. The analysis on the Judgments pronounced by Special Courts²³ indicates that 39% of the cases were acquitted on the ground that the accused did not abuse by caste name while committing the offenses including rape. 11% of the cases were acquitted on the ground that the offences were not committed on the ground of the victim being SC/ST. It shows in more than 50% of the cases the accused escape the law based on the courts appreciations of the words "intent, intention, on the ground of". Similar trend can also be observed in Judgments pronounced by the various High Courts.

This shows that the Judiciary usually tries to establish the ground that the atrocity was committed on the ground of victim being SC/ST. What judges overlook is in this process is that the legislature has already clarified that the term Atrocity denotes an offence under the IPC committed against the SC,s and ST,s by persons belonging to caste other than the SCs and STs.

Following courts judgments are examples where these words were used to dilute the very spirit of the Act.

1. Insult or Intimidation, the words of abuse if not with reference to the community, the charges are set aside-

*"The complainant accused is an Executive Engineer in the M.P. Pollution Control Board. He was in the habit of harassing Sanjay Kumar Mehra, who was working as an Assistant Engineer. Mehra sent a complaint to the Minister for Tribal Welfare in Bhopal, and the same was sent to the Raipur District Collector, for necessary Action. The police investigated the case and it was revealed through the investigation that the applicant used the words "idiot" and "nonsense" against the complainant on 24-02-94. A case was registered u/s. 3(1) (x) SC/ST (PoA) Act. The present petition was filed by the accused. The Court observed that sec. 3(1) (x) SC/ST (PoA) Act is attracted only when the alleged insult or intimidation is with intent to humiliate a SC or ST member with reference to that particular community. The words "idiot" and "nonsense" which have no reference to the community and from these words it cannot be inferred that the insult or intimidation is with reference to the community to which the complainant belongs"*²⁴.

2. Case set aside saying the use of the caste name did not have the intention to insult or intimidate and is hence not an offence.

"The applicant -accused and his companions used ugly words against the victim. The other witness stated that two or three persons accompanying the accused had used the words" CHAMARIA" when they proceeded near the garage of the uncle of accused. Accused again started beating. The court held that what were those ugly words have not been specified. Unless the words uttered by the applicant have come in evidence, it can not be ascertained that those words amounted to insult or intimidate the witnesses. The court further stated that "Assuming that the applicant had used the words" CHAMARIA"

²³ Sakshi Human Rights Watch, 2005

²⁴ Ravindra Kumar Mishra vs. State of M.P., 1995 Cr.L.J.3060.

and addressed the complainant with the said words, it can not make out the offence punishable under section 3(1)(x) of the Act, is simply addressing a person by his caste with out any intention to insult or intimidate does not constitute the offence under the section" 25.

3. The offence was not committed with a view to cause injury, insult or annoyance to any member of SC/ST.

Brief Facts of Case: Kumari Sunitha was 12 years old, a resident of Riwasa. She went to the fields on 15-02-93, where, at about 11:00 a.m., the accused Naresh raped her. The victim cried for help and was heard by her father and rescued. A complaint was filed and after the doctor's examination disclosed that Sunitha was subjected to rape, police filed a case u/s. 376 IPC and 3(2)(v) SC/ST (POA) Act. The Additional Sessions Judge tried and convicted Naresh for the offence of rape u/s. 376 IPC r/w. 3(2)(v) SC/ST (PoA) Act, and sentenced him to life imprisonment with a fine of Rs. 1000/-. Against this Judgment an appeal was preferred. Judgment: The Court modified the Judgment of the Additional Sessions Judge and held that charges u/s. 3(2)(v) SC/ST(PoA) Act could be sustained as the offence was not committed with a view to cause injury, insult or annoyance to any member of a SC/ST. Rape sentencing under the IPC was sustained and the sentence reduced from life imprisonment to seven years imprisonment with a fine of Rs.1000/-²⁶.

4. It was not stated that accused had caused the crime with an animus that victim belongs to Scheduled Caste.

The victim was Menai, an Adivasi girl between the age of 14 to 16 years, hence a minor. The accused dominant caste, Ramachandran was working as security guard in Priyadarshini Estate. On 2-03-91 at about 1:00 p.m. the accused raped Menai at his residence and then threatened to kill her if she told of the rape to anyone. The victim told of the rape to her mother's sister. The matter was then brought to the notice of the Managing Director of the estate and finally a police complaint was given on 12-03-91. The case was tried by Sessions Court and a sentence of ten years rigorous imprisonment imposed u/s. 376 IPC, six months imprisonment u/s. 506 IPC and life imprisonment u/s. 3(2)(v) SC/ST (PoA) Act. The order of the trial court was challenged in the present criminal appeal.

The Court held that no evidence was adduced by the prosecution to show that the accused committed rape on victim on the ground that she is a member of a Scheduled Tribe. It is not enough if the victim is a member of a Scheduled Caste or a Scheduled Tribe. The offence must have been committed because the victim was a member of a Scheduled Tribe. The case for the offence contains an element of racial prejudice as per this observation, and the conviction u/s. 3(2)(v) SC/ST (PoA) Act was set aside and sentence u/s. 376 IPC was reduced to seven years²⁷.

On analysis, the common denominator of the offences defined in the Act is that criminal liability can only be established if the offence is committed by a person who is not a member of a Scheduled Caste or a Scheduled Tribe against a person who belongs to a Scheduled Caste or a Scheduled Tribe. This has two important aspects.

1. *It is not necessary that the perpetrator is positively aware of the SC/ST status of the victim:* In the first place, strictly speaking it is not necessary that the perpetrator at the time of the offence explicitly knows that his victim belongs to SC/ST. In other words: the knowledge of the perpetrator as far as it is related to the SC/ST status of the victim is not of any importance; the only thing that counts is whether or not the victim is a member of SC/ST, who comes from a discriminated community and who is entitled to get justice under SC/ST Act and right to protection under the Constitution of India.

²⁵ Pappu Singh V. State of U.P., 2002(2).

²⁶ Naresh v. State of Haryana , 1997 (2)Crimes 587.

²⁷ Rama Chandran Vs. State of Kerala ., 1996 (3)Crimes 169 .

2. *Caste related motive is not required*: In the second place (and perhaps of much more importance for the day-to-day practice) it is not necessary that the offence is committed against the victim because the victim belongs to SC/ST. In a society with caste prejudices and biases, in a village where 'x' knows that 'y' belongs to SC and attacks him or rapes her etc, it should be presumed that it was done only because the victim belonged to SC. Particular facts of each case also show that victims were attacked because they are SCs/STs. So, to insist on separate evidence to prove that 'on the ground' is not correct.

In other words: a caste-related motive is not required. The mere circumstance that the victim is SC/ST is sufficient. So the intention of the perpetrator as far as it is related to the status of the victim is not of any importance; the only thing that counts is whether or not the victim is a member of SC/ST

So Courts should not interpret the text "intention" "intent" to mean that there is a necessary *mens rea* requirement, a fairer reading would be that the subject section is meant to enhance punishment when the crime is committed against the Dalit.

Another aspect is that of the judiciary insisting on a narrow interpretation of the text by distinguishing between "in public view" versus "in a "public place". This extenuates upper caste offenders who insult and humiliate Dalits, undermines the very purpose of the Act and offends the Constitution.

Therefore there is a need to make the text clear in the above stated sections of the Act in order to ensure the realization of the Constitutional goals and purpose of the Act. Therefore we are recommended to delete the words "Intent" and "Intention" or "on the ground" from sections 3(1)(ii), 3(1)(x), 3(1)(xi), 3(2)(i), 3(2)(ii), 3(2)(iii), 3(2)(iv) and 3(2)(v) and also word "public view" and "public place" from section 3(1)(x).

3.3. Offences not defined in the Act and New Offences

Many traditional offences against SCs/ST continue and there are new manifestations of Untouchability²⁸ and discrimination and nature of offenses atrocities is changing.

It is evident from the experience of various organizations and activists that the new forms of Untouchability and Atrocities which are not clearly specified in the Act provides loopholes for perpetrators and police officials. Since these offences are not specified in the Act police do not register cases on them under SC/ST (POA) Act 1989. Following are some of the new offences or old offences not considered by the police under the Act which are increasing day to day.

1. Refusal to pay wages or contract wages- The main objective of proposing to add the offence under "refusal to pay wages or contract wages for the labour is to include this offence under the purview of the act which has not been included so far since this offence attracts the condemnation of Article 23 and the breach of article 23 is abated. Following are the some of the forms under this category which has increased in recent times.

- a) Dominant caste landlords not paying the wages after completion of the labour.
- b) Paying part wages and denying the actual wages.
- c) Physical Assault to the victims on demanding the wages.
- d) Not paying the wages on time and delaying it for long.
- e) Not giving money in the hands of SC/ST and keeping it on the floor
- f) Throwing money into hands of SC/ST.

²⁸ A study on untouchability done in Andhra Pradesh by Sakshi established that 62.3% of untouchability practices are emerged due to news development or policy interventions either by the government or market.

Case Briefs:

"Dalits labourers from Pindari village, Chiraiya P.S, in East Champaran District, were brutally beaten up for asking their remuneration from a landlord on 15.04.07. Two of the victims lost their eyesight".

"Dalits were tortured and trapped in a false case when they claimed their full wages at Cuddalore under Pondicherry union territory on 31.01.07".

"Dipak Kumar a daily laborer was murdered by landlord electric shock when he claimed for his wage in Bhopur District of Bihar on 26.02.07.

"The forest department Officers denied giving wages to 50 Dalit labourers at Chafel, PS Rajauli in Nawada District of Bihar on 01.06.07".

The State has ratified various international instruments which puts it under a duty to implement legislation which provides for fair payment of wages, safe working conditions and the opportunity for every person to choose his/her occupation and work towards promotion, and prohibits forced or compulsory labour²⁹. The ECRI guidelines also recommend the adoption of legislation prohibiting discrimination in access to employment, working conditions and remuneration³⁰.

2. Counter cases:

It is evident that there is an increase of false counter cases being filed against Dalit victims of atrocities. What this indicates is that a backlash is taking place against Dalits who have started to file cases of atrocities, dominant castes utilizing this method in a concerted effort to eventually make Act of 1989 dysfunctional³¹. The counter reports are indiscriminately registered against the SCs and STs and based on the counter reports the police arrests the SCs and STs, while the police do not arrest dominant caste perpetrators on SC's & ST's complaint and in most cases do not even entertain it.

The harassment caused through the counter cases is worse than the physical violence committed on the SCs and STs, as they are languishing in the jails due to counter cases. Since the counter cases are on increase and are not filed as private cases but as State cases i.e., as cases filed by the Police, it is the responsibility of the Government to save the SCs and STs from the harassments and disaster caused to them as a result of counter cases. The peculiar phenomenon in the counter cases is the self same victim of atrocity (i.e., the SC complainant) is being arrested as the accused in the counter case and languishes in the jail, for his financial incapacity to engage advocate and to move for bail.

The lofty object of the Act of 1989 is defeated by the strategy of filing counter cases in several ways.

- a) Filing counter cases is a common practice on the part of the dominant caste community against the victims of atrocities in order to pressurize them for a compromise.
- b) In collusion with the perpetrators the police officials also file counter FIRs against the victims.
- c) Police officials file grievous sections/offences in the counter FIRs against the victims of atrocities in order to put pressure for compromise.
- d) To dilute the incident before the trial and project that the crime did not take place on the initiative of the dominant caste alone but victims are also perpetrators.

Case Briefs:

"A Dalit was trapped into a false case of misappropriating money from the village temple at Chhatarpur Dhaba, Post-Santokhgarh, Tahsil & Dist. Una on 30.06.07"

²⁹ ICERD; ICCPR Article 8; ICESCR Article 7; C29 Forced Labour Convention; C105 Convention Concerning the Abolition of Forced Labour; C111 Discrimination (Employment and Occupation) Convention; C122 Employment Policy Convention.

³⁰ ECRI General Policy Recommendation No. 7, paragraph 7.

³¹ Justice Punnaiah Commission Report states that "it is surprising to note that the self same Sub-Inspectors or Inspectors of Police are showing over enthusiasm to arrest those SCs and STs who were the complainants (even before the Deputy Superintendent of Police takes up investigation), though the very same Police officers do not arrest the assailants of the SCs and STs on their complaints".

"Dalits were tortured and trapped in a counter case when they tried to claim their full wages at Cuddalore under Pondicherry union territory on 31.01.07".

"A Dalit woman was gang raped by non-Dalits and her husband was trapped in a false case and arrested by police on 06.06.07 in Bhadrak District of Orissa.

"Police field a counter case against a Dalit and tortured him on 08.06.07 in Muktsar on Punjab".

The State has ratified the International Covenant on Civil and Political Rights which stipulates that all persons have equal rights in the eyes of the law, nobody should be arbitrarily arrested, all persons should be clearly told of any allegations against them and be given a fair trial promptly³². The State is obliged to ensure its laws reflect these rights³³. The ECRI guidelines recommend the adoption of legislation providing protection against retaliatory measures for victims of racial offences and discrimination. It is recommended that this protection be extended to those who give evidence or assist in the proceedings.³⁴

3. Social Boycotts or economic boycotts or blackmails- Even the social boycotts or economic boycotts are a matter of great concern in the past as well as in recent times and are not clearly specified in the Act. Some of the practices are:

- a) imposes social restriction on communities to access shops, public restaurant, hotel or place of public entertainment;
- b) ordering shopkeepers not to sell any article to Dalits,
- c) prohibiting cattle to drink water or be bathed in the village pond,
- d) preventing the right to take water from the common panchayat pump
- e) preventing the right to use any utensils, and other articles kept in any public restaurant, hotel, dharmshala, sarai or musafirkhana;
- f) preventing the right to use or access any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat,
- g) preventing the right to burial or cremation ground,
- h) preventing the right to any sanitary convenience,
- i) preventing the right to any road, or passage, or any other place of public resort which other members of the public, or any section thereof, have a right to use or have access to.

The State has ratified the International Covenant of Social and Economic and Cultural Rights which obliges the State to pass laws to ensure that all persons have equal rights to enjoy cultural and social life³⁵. The ECRI guidelines recommend the adoption of legislation prohibiting discrimination through social boycott³⁶.

Economic boycott- Examples of economic boycott imposed by dominant castes on SC/ST

- a) refuses to deal with, work for wage, or do business with SC/ST
- b) abstain from social, professional or business relations with SC/ST
- c) restrict or stops giving them work
- d) stops SC/ST from going outside for work
- e) stops SC/ST from practicing any profession or the carrying on of any occupation in and near by villages
- f) Stop SC/ST from trade or business or employment in any job.

Case Briefs:

"Dominant Caste people imposed social boycott on the Dalits of Kittur village in Ramdurg Taluk in Belgaum District of Karnataka on 27.04.09".

³² ICERD; ICCPR Article 9, 14 and 26.

³³ ICCPR Article 2.

³⁴ ECRI General Policy Recommendation No. 7, paragraph 27,

³⁵ ICERD; ICCPR Article 2, 15.

³⁶ ECRI General Policy Recommendation No. 7, paragraph 7 & Recommendation No. 1, Section A.

"Dominant Caste people imposed social boycott on the Dalits of Singapur village, Tq. Sindhanur on 03.06.09 in Karnataka".

"The Dominant Caste people imposed Social boycott on Dalit families at Kachhawali talai village, Rajsamand District on 19.11.07".

The State has ratified various international instruments which puts it under a duty to implement legislation which provides for fair payment of wages, safe working conditions and the opportunity for every person to choose his/her occupation and work towards promotion, and prohibits forced or compulsory labour³⁷. The ECRI guidelines also recommend the adoption of legislation prohibiting discrimination through economic boycott including access to employment, providing safe working conditions and paying fair remuneration.³⁸

4. Voluntarily causing simple hurt and grievous hurt- It is commonly thought that caste abuse is a simple form of humiliation and untouchability. Many do not realize that these forms also involve simple and grievous hurt in most cases. Dominant caste attack, and inflict physical injuries to the scheduled castes and Scheduled Tribes during the process of insulting and humiliation, but these are not brought to book under the sC/ST POA as the Act does not have sections under simple hurt or grievous hurt and putting any person in fear of hurt. This is a welcome loophole used by the dominant castes to register the case under IPC and not under the SC/ST Act. Some of the examples of inflicting grievous hurt along with the offences of atrocities are as follows.

- a) The accused not only abuse and humiliate or in cases of forcing them to drink obnoxious substances they also assault with hands and foot and inflict grievous injuries to them.
- b) The dominant caste accused while painting faces of SC/ST and parading them around the village also pour blows on their buttocks and thighs with the object of punishment.
- c) At the time of mass attacks on the scheduled caste and scheduled tribes, dominant caste community members are armed with sticks, axe etc and destroy the whole village while also beating the members of SC/ST.
- d) It is a common practice that when ever a poor daily wage SC/ST labour demands for his wages he is not only abused by caste name but also the accused will blow kicks on the body.
- e) It is well known and in many instances in cases of murder and grievous hurt the dominant caste will carry knife, axe, sharp weapon, arrow, revolver, gun, thick lathi etc and the injuries inflicted results in permanent disability, fracture, dislocation of the parts of the body.

Case Briefs:

"Dalit woman was beaten up and hurt grievously and made to drink urine as she denied harvesting crop in the field of dominant in Hosangabad of Madha Pradesh on 10.10.07".

"Half Dozen Dalit family at Sindhugard village, PS Mohanpur in Gaya District, Bihar was brutally beaten by local Police with false charge on 12.06.07".

"Dominant Cast people attacked Dalits for not beating the drums in festival in Khurda District of Orissa on 04.03.07".

"Non-Dalits attacked and injured Dalits for encroaching their entitled land in Bangalore District of Karnataka on 07.01.07".

"Dominant Caste people attacked and inflicted grievous hurt to Dalits when they attempted to enter the village temple in Mysore District of Karnataka on 02.02.07".

"Dominant Caste people attacked Dalits on the celebration day of Temple festival in Gulbarga District of Karnataka on 26.03.07 and inflicted physical injuries to the Dalits".

³⁷ ICERD; ICCPR Article 2 & 8; ICESCR Article 2& 7; C29 Forced Labour Convention; C105 Convention Concerning the Abolition of Forced Labour; C111 Discrimination (Employment and Occupation) Convention; C122 Employment Policy Convention.

³⁸ ECRI General Policy Recommendation No. 7, paragraph 7 and Recommendation No. 1, Section A,

5. Ransacking of house hold items and destruction of movable and immovable property-

It is a common practice with the dominant caste community to attack as a mob, in large numbers and ransack and destroy the properties of the SCs, and STs, but the perpetrators of the crime easily evade themselves under the IPC, and are either booked under the less grievous offences of SC/ST Act or not booked at all for these offences, as there are no specific sections in the Act. For example

- a) If an accused has committed an atrocity against the member of SC/ST, and the victim assert his rights , the whole dominant caste mob will come in retaliation and attack the Scheduled Caste settlement ransacking and destroying the properties of the SC,s and ST,s . For example the mass attack in cases of Gauhana in Haryana; Killa Jaffargadh in Jind, Haryana; Salwan in Haryana.
- b) Scheduled Caste and Scheduled tribes at the time of Elections are prevented to vote for a particular candidate. If they dare to do so and the dominants will come to know that the SC Community has not voted in favour of the candidate of their choice, they come as a mob, ransack the house hold items and destroy the properties belonging to the SC/ST.

Case Briefs:

"Dominant Caste people ransacked, destroyed and burnt the houses of Dalit at Salwaan village in Karnal District of Hararyana on 02.03.07".

"Dominant Caste people ransacked, destroyed and burnt the houses of Dalit at Salona village in Dewas District of Madhya Pradesh 15.10.08".

"Dominant Cast people attacked Dalits, ransacked and burnt houses on the suspension that the Dalits may vote for the opposition party in the Gram Panchayat Election in Beed District of Maharashtra on 23.012.07".

6. Abduction and Kidnapping

One of the major crimes against Dalits is to abduct or kidnap members of the SC/ST community. They are later subjected to other forms of atrocities in the course of abduction. Since the crime Abduction and Kidnapping is not defined in the SC/ST Act, it virtually impossible to book the accused under the Act and even to prove the necessary ingredients of the crime. During 1992-2000 NCRB reports 2259 cases of kidnapping agaist Dalits. In 2006 the figure was 208 and the figure has increased to 332 in 2007.

Following are the forms of abduction which are commonly committed against the Dalits.

- a) Dalits are abducted and murdered when they assert their rights or raise their voices against the atrocities committed on them.
- b) Dalits are secretly and wrongfully confined for Begar and forced labour.
- c) Dalit woman are abducted to compel her for marriage
- d) Dalits are abducted and subjected to grievous hurts.
- e) Kidnapping minors for putting pressures on Dalits for compromising the cases of atrocities.

Case Briefs:

"A Dalit woman Sawinder Kaur resident from Chatiwind Lehal, PO Akalgarh Dhapaian, PS Chogawana, Teh & Dist. Amritsar was kidnapped and taken to Amritsar by Sahib Singh (OBC) on 23.03.07 where she was allegedly raped for 19 days. However she managed to escape but when victim returned home perpetrator attacked her".

"A Dalit activist was kidnapped and murdered over land related dispute in West Champaran of Bihar".

"Dominant Caste people murdered a Dalit and kidnapped his daughter in Samalkha Town of Panipat District in Haryana".

"A minor Dalit girl was kidnapped and raped by upper caste youth in Sundargarh District of Orissa".

"A Dalit woman representative was kidnapped and assaulted by Dominant Cast people in Tonk of Rajasthan".

The State has ratified the Convention on the Elimination of All Forms of Discrimination against Women and is obliged to ensure that national legislation protects women against trafficking and forced marriages³⁹.

7. Disrespecting or disfiguring or damaging the statues of Dr.B.R. Ambedkar- Dr. Babasheb Ambedkar, the leader, the framer of the Indian Constitution, the father of Indian Republic, is also messiah of Depressed Classes. Dominant communities have taken the strategy of disfiguring, ruining and demolishing the statues of Babasaheb to show their hatred and anger towards the Dalit community. This is a means of not according equality to Dalits and maintaining them suppressed and oppressed forever. Various incidents of garlanding the statue with chappals, painting the statute with black paints, throwing excreta on the statute have been also reported. In recent years the demolition and ruining of the Baba sahib's statute has increased in number. Following are the recent trend of instances of disrespecting the figure of Dr. Babasheb Ambedkar.

"On 14.07.09: The statue of B.R. Ambedkar, installed in a private land at Maddiralapadu village near ongole, was removed stealthily near dalit colony on 3.5 cents of land belonging to the Neppalli Subbarayudu Trust in the village".

"On 09.07.09 a couple -Pappu Yadav and his wife Shakuntala allegedly damaged a picture of Babasaheb Ambedkar and assaulted the manager of Buddha Vihar in Waldhuni at Kalyan, Maharastra".

"On 24.01.09 at village – Baraee, PS-Kerakat, District – Jaunpur , UP , The non-dalit community broke the Statue of Ambadkar in Dalit area, when they came for a procession through the Dalit colony".

"On 25.01.09 a 4.5-foot tall statue of Ambedkar, outside Raipur village under Wazirpur police station, Sawai Madhopur , Rajasthan was desecrated by the villagers".

"On 22.01.09 Dominant caste people desecrated the Ambedkar Statue in Kopa village in Pratapgarh, U.P, 150-km from Lucknow".

"On 12.02.09 in a village in Uttar Pradesh's Jaunpur district some unidentified people desecrated a statue of Dalit icon Bhimrao Ambedkar. The statue was found damaged. Jaunpur is about 200 km from Lucknow".

"On 22.06.09 in village Gopalpur, in Rajnandgaon district, Chhattisgarh some unidentified people desecrated a statue of Bhimrao Ambedkar overnight".

"On 2008-10-08 in Banglore at Karnataka HAL police filed a case of desecration of Dr Ambedkar's statue in Beesalahalli. The statue, which was installed on the roadside, was demolished and the pieces found lying on the footpath".

8. Discrimination or harassment or insult or denying or limiting access to opportunities in any educational institutions –

The Indian government adopted many ordinary laws to deal with problems related to castes and disadvantaged groups in accessing education. But there are several incident of caste based discrimination, harassment and violence against the scheduled castes and tribes students in Educational Institutions including the incidents in AIIMS, Delhi /IIT, Chennai and many other colleges of higher Education in addition to caste based discrimination and violence in primary and Secondary

³⁹ ICERD; CEDAW Articles 2, 6, 15 & 16.

educational institutions. Discrimination, harassment may be manifested in a variety of forms, all of which are offensive and unacceptable. Caste based harassment and insult includes:

1. Addressing the Scheduled Castes and Scheduled Tribes Students by caste names by the dominant caste classmates.
2. Addressing verbal Abuse, derogatory name-calling, caste based remarks, caste based jokes to the SC/ST students by dominant caste students.
3. Teasing and insulting on the basis of caste.
4. Excessive corporal punishment to the students belonging to Scheduled Castes and Scheduled Tribes (beating) by teachers based on caste discrimination.
5. Physical assaults to Scheduled Castes and Scheduled Tribes Students by Dominant caste children's or teachers.
6. Forcing Dalit children's to sit on the back seats.
7. Not giving attention to the Scheduled Castes and Scheduled Tribes Students by the Teachers and giving special attention to non SC or ST children's.
8. Discrimination in sitting arrangements and discrimination in distribution of food in Mid Day Meals schemes.
9. Not providing Scholarships to the Scheduled Castes and Scheduled Tribes Students.
10. Locking of the hostel Rooms from outside,
11. Indirect pressure thereby forcing to leave the Educational Institute or Hostel,
12. Derogatory caste based or insulting graffiti and other written insults,
13. Denying use of any place meant for playing, Toiletries, canteen, etc on the basis of caste
14. Bringing castiest material such as posters, leaflets or magazines into the Educational Institutions to provoke SC/ST Community students,
15. Tearing out or, burning of the Scholarly Articles of the Dalit Scholars etc.,
16. Or making threats against or physically intimidating a person or group merely because he belongs to a Scheduled Caste or a Schedule Tribe.
17. Continuing to name schools as 'Harijan schools' when located in Dalit habitations

Following are some of the examples of discrimination and Harassment in educational institutions at all levels including Primary Education that came up in a Public hearing in Bihar.

Case Brief

"On 6th July 2006 Master Bajrangi Das, aged about 8years narrates one of the Scheduled Caste Child was brutally beaten when he touched the school water glass, abused and forced to clean teacher's shoes". Primary school Shiv Temple, Baliadeh, Jhajha, Jamui, Bihar.

"On 25th February 2007 Master Vikas Kumar, aged 8years was beaten by the teacher while using the toilet and was hit with a stick near the anal area, which started bleeding profusely and then he was locked in the toilet for three hours". Primary School, Korhar, Anandpur Camp, Bihta, Patna ,

"On 5th May , 2007 Ranjeet Paswan, aged 14 years was forced to sit in the last row, and was called as 'harijan' and other derogatory remarks by school teacher Ms. Madhubala Devi". Harijan Middle School, Sansarpur, khagaria, Bihar

"On 4th March 2007 on the way to the school , dominant caste boys (Non Dalit students of the school) namely Mantu, Dinesh, Bablu make fun of Dhananjay Kumar, 12 years , calling him Chamar, threw stones and spit on him". Utkarsh Middle School, Haldi Chapra Naika Tola, Maner, Patna

"In the year 2006 Dalit students of the AIIMS were subjected to various acts of humiliation, demoralization and insulting acts by the dominant class students belonging to general category . The Dalit students of the AIIMS institution were harassed in many ways by locking of their rooms, Dalits were not allowed to play in the Basket Ball Courts. During the ragging dalit students are forced to sit on the Floor, physical manhandling,

SC/ST students slapped 300 times a day, forcing the SC/ST students to shift their rooms , discrimination in exams by the teachers etc”.

The State has ratified the International Covenant on Economic, Social and Cultural Rights which obliges it to ensure domestic legislation grants every person a right to education⁴⁰. The ECRI guidelines recommend the adoption of legislation prohibiting discrimination through restricting access to education⁴¹. Discrimination is interpreted widely in the guidelines, putting educational institutions under an obligation to promote equality going as far as obliging the institution to recruit SC and ST members of staff and to treat any form of racial discrimination as an act punishable by suspension or expulsion.⁴²

So, we suggest the following changes in the Act to bring the above said offenses under the Act:

- **Proposing New sections:** New sections for the offenses such as Social and economic boycott and black mails, Voluntarily causing simple hurt and grievous hurt , Ransacking of house hold items and destruction of movable and immovable property, Kidnapping and abduction and abetting atrocities.
- **Adding new offences in existing sections:** Amendments in existing sections such as adding refusing to pay wages or contract wages , physical injuries at the time of voting, Disrespecting the statue of Dr. B.R. Ambedakar,

3.4. Scope of definitions given in the Act

While specifying castes as Scheduled Castes the President of India in proviso 3 of the Constitution (Scheduled Castes) Orders 1950 and subsequent orders, specified that except for four castes of Sikhs in Punjab and state of Pepsu "no person who professes a religion different from Hinduism shall be deemed to be a member of Scheduled Castes". All Scheduled Castes professing Sikhism and Buddhism were later brought in to the schedule (list) in 1956 and 1990 respectively by Parliamentary Act amending the proviso by adding Sikhism and Buddhism. Schedule Castes who or whose fore fathers have changed their religion to Christianity or Islam are not eligible for Constitutional protection and privileges available for Scheduled Castes including the protection under SC and ST (PoA) Act as well as earlier Untouchability Act.

This amendment is necessary because Schedule Castes who or whose forefathers have changed their religion to Christianity or Islam are subjected to atrocity not because they belong to Islam or Christianity but because they belong to a particular caste. The demand that Scheduled caste members who have converted to Christianity or Islam to be recognized under SC category should not be confused with this demand, the former being a much larger debate and currently in the Supreme court. Irrespective of what decision is taken in that matter and when it is taken, we propose an amendment for the limited purpose of this Act to cover those who have converted to Christianity or Islam under the SC/ST POA as they are subject to similar caste discrimination and violence based on their untouchable caste status.

Besides this, if a person or persons belonging to SC/ST castes listed as such in a particular state, migrates for the purpose of labour to another where the particular caste is not included in the list of scheduled caste the person/s should be recognized as SC/ST under this Act.

So we propose to insert the following words in Section 2 (1) (c) - "Scheduled Castes shall, in addition, only for the purpose of this Act also include members of the any of the castes in the schedule who or whose forefathers have changed their religion and the progeny of such members or who migrate to other states for the purpose of labour even when not included in the scheduled of the state".

⁴⁰ ICERD; ICESCR Articles 2 & 13

⁴¹ ECRI General Policy Recommendation No. 7, paragraph 7.

⁴² ECRI General Policy Recommendation No. 10..

3.5 Nature of willful negligence and its scope in the Act

A bare reading of the Section 4 shows that the offences, which are punishable under this section, are committed by officials neglecting their duties to be performed under the Act. The inference here is that legislature in its own wisdom has come out with punishment for the wilful negligence by the Public Servants under the Act.

But the major lacuna in the section is that "willful negligence" is not clearly defined. The question would be whether not conducting the investigation under the due processes, not filing the investigation report and Charge Sheet with in stipulated time, not providing relief and compensation to the victims and not implementing protective and preventive measures would attract punishments under section 4 or not?

The experience of the survivors, activists and organizations reveals that the police and administration adopt several ways to neglect their duties and dilute the sprit of the Act at every stage from registration of the case. Some of these problems are as follows:

At the Level of FIR and Investigation

1. Delay in filing the FIR.
2. Refusal in registering FIR by Police officials.
3. Writing the complaint in favour of the accused without giving necessary details and not reading out the complainants.
4. Cases not registered under proper sections⁴³.
5. Not including necessary details in the FIR (facts, figures, words/delete the names of the accused /weapons used /accused list, their details)
6. Misleading the victims by registering case in the SHD instead of registering in the FIR.
7. Not issuing copy of FIR to the victims as per SC/ST (POA) Rules 1995.
8. Not investigating the case in time.
9. All the victims, witnesses are not covered under investigation.
10. Investigation is often being carried out sitting in the dominant caste locality or calling them to the police station.
11. Police officials are not entering all the details narrated by the victims and witnesses in the statements.
12. Victims are not provided protection during and after investigation
13. Not informing the victims and witness about the date and time of IO's visit.
14. Delay in providing documents (post-mortem certificate, wound certificate) to the victims.

At the level of Charge Sheet

1. Delay in filing charge sheet⁴⁴
2. Delay in getting approval from higher authority
3. No corroboration between the statements collected and charge sheet
4. Deleting of sections of SC/ST POA Act in charge sheet
5. Depending on legal opinion to finalize
6. No mechanism in judiciary to monitor filing of charge sheet
7. Charges are framed without looking at the related corroboration (corroboration with charge sheet and FIR charges are framing).
8. Outsourcing preparation of charge sheet.

At the level of TA/DA and compensation

⁴³ NCRB Data 2007 reveals that 67.4% of the cases were not registered under SC/ST (PoA) Act 1989.

⁴⁴ The State Police Department of Andhra Pradesh in response to the query raised by the Chief Justice of the High Court of AP on the PIL filed by Sakshi Human Rights Watch admitted that 14,452 cases were delayed and 3,281 cases were not charge sheeted due to delay in getting approval, legal opinion and superior's order. The statistics furnished by the Director General of Police shows that 1 case registered under this Act [SC and ST (PoA)] is pending investigation for the last almost six years, 4 cases pending investigation for last five years, 18 cases are pending investigation for over four years, 31 cases are pending investigation for over three years. 190 cases are pending investigation for almost two years and 805 cases are pending investigation for last about one year.

1. Victims not paid TA/DA/Wage during investigation, trial.
2. Victims not paid medical expenses.
3. Victims Not paid compensation and immediate relief as per Rules 1995

Keeping the above experience as base the Ministry of Home and Ministry of Social Justice Empowerment issued several advisories between 2002 to 2006 for better enforcement of the Act and Rules.

"Suitable Departmental action may be initiated against a police officer in case he or she does not register the FIR. Further, in case the police officer does not belong to SC ST, appropriate action may be initiated under section four of the Act". [No. 11011/8/2006-PCR (Desk) – 14/03/06 MSJE; No. 24024/9/2004-SC/ST Cell-03/02/05, Ministry of Home

Hence there is need to set out actions which amount to negligence based on the advisories issues by the Ministry of Home and Ministry of Social Justice Empowerment and various methods that the officials adopting to dilute the spirit of the Act.

As the State has ratified the International Convention of Civil and Political Rights, it is obliged to pass legislation which makes all persons equal in the eyes of the law.⁴⁵ The ECRI guidelines recommend the adoption of legislation to prohibit discrimination in the activities of police and other law enforcement officials⁴⁶. Recommended legislation requires police to thoroughly investigate racial offences by fully taking the racial motivation into account and ensuring that the perpetrators are adequately punished⁴⁷.

Therefore we propose the following amendments to Section 4 of the Act:

"whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, including but not exhaustive of:

- 1. non-registration of FIR, not registering under appropriate sections,*
- 2. not investigating and filing charge sheet within stipulated period,*
- 3. filing counter FIRs,*
- 4. not providing relief, compensation and rehabilitation and*
- 5. non-implementation of other protective and preventive provisions or rules defined under the Act shall be punished for a term which shall not be less than two years*

and New sub section as 4(1): "abettors of offences are equally punishable, as provided under this Act".

3.6. Measure to realize Right to Speedy Trial

The Act makes arrangements for establishment of Special Courts under section 14 to try offences under the Act to ensure speedy trial which comes under Right to life (Article 21 of the Constitution). It also makes provision for appointment of Special Public Prosecutors under section 15 to conduct trial of offences under the Act in the Special Courts.

It is clear that the jurisdiction of the ordinary criminal courts constituted under the Code of Criminal Procedure has been taken away and Special Courts have been constituted. Section 14 read with Section 2(d) makes it clear that the special Court is to be manned by a Sessions Judge. Section 2(d) of the act defines the special Courts as a Court of Session specified as a Special Court in Section 14. Every sessions Court is not a special Court, but every Special Court shall be Court of Sessions by virtue of notification issued by the State Government. Further it is clearly provided in Section 14 of

⁴⁵ ICERD; ICCPR Article 2& 26.

⁴⁶ ECRI General Policy Recommendation No. 7, paragraph 7,

⁴⁷ ECRI General Policy Recommendation No. 11.

the Act that the special Courts are constituted for the purpose of speedy trial of the cases. Further the Special Courts has been given additional powers which Sessions Court does not enjoy.

But the extent and nature of enforcement of Section 14 and 15 as follows:

- a) **Non existence of Special Courts** -It has been found that Special Courts are not setup in 133 districts/divisions out of the 612 districts in India.
- b) **Existing Designated Courts over burdened-** The existing designated courts are already overburdened with the cases other than SC/ST Cases; hence the cases under the act are not given priority⁴⁸.
- c) **No power to take cognizance of the cases** - By virtue of Section 193 of Cr.P.C it imposes an interdict on all Courts of Sessions against taking cognizance of any offence as a Court of original Jurisdiction. It can take cognizance only if the case has been committed to it by a magistrate as provided in the Code. The inference is by the time the case reaches the Special Court it is delayed for a considerable time and the purpose of the speedy trial is vitiated.
- d) **No day to day trial** - Trial of the cases are not conducted on a day to day basis or speedy manner in the special courts.
- e) **Connected cases are not tried in the same court** – The counter cases filed in retaliation to the original complaint by the victim of atrocities are tried in different courts. Advocates inform the proceedings of the regular court to the special court and take the adjournments. Also the courts some times waits for the orders of the another courts which delay the trial. It is important for the actual facts of the case to be known the trial of counter cases shall be conducted in the same court.

Special Public Prosecutors: The Act has provided with the special public prosecutors under section 15 who merely is not a public office, but it is the public office of considerable significance, for the integrity and efficiency of the administration of criminal Justice. Any one appointed as Special Public Prosecutors must, in the interest of the SC/ST, should have a high degree of efficiency and knowledge of the law of crimes and the criminal procedure; he must have a sense of duty towards the SC/ST. As said earlier, if the position of both the victim and the accused are taken into consideration, then the “principle of speediness” should be applied to all stages of the legal handling of an atrocity case in the court.

But special public prosecutors have not been conducting cases under the act vigorously. “82% officials of different units of legal system and 88% law makers and opinion makers have opined that neither they have given nor caused to be given nor seen giving the victims of atrocities, services of senior advocate of their choice for conducting their cases at government expenses. 89% of them have neither attached nor caused to be attached the properties of an offender or forfeited or caused to be forfeited the properties of a convict of an offence of atrocity”, has also established that the attitude of the officials conducting the atrocity cases is not positive⁴⁹.

The experiences of the victims and organizations reveal that the following are the lacunas in realizations of sprit of section 15 of the Act:

- a) **Key Witnesses not involved** - At the time of trial certain witnesses are not called by the prosecutors.
- b) **No briefing to victims and witnesses by Public Prosecutors-** There is lack of briefing to the victims and witnesses by the Public Prosecutors
- c) **PP, s not giving time-** PP’s are not giving time to the victims.
- d) **Lack of communication with the victims** - Lack of communication with the victims/ witnesses about the date and time of trial.

⁴⁸ Data filed by Sakshi in their affidavit at HC of AP shows that in a period of 10 days the PoA Cases proportion trailed by three designated special courts was only 16.1% to the total cases trailed.

⁴⁹ [Page 378- Naval]

- e) **No sense of duty and efficiency in handling SC/ST(POA) Act 1989 cases-**Special Public Prosecutors are not efficient in dealing with the ingredients of the offences and other provisions of the Act.
- f) **Lack of Scheduled Caste and Scheduled Tribes advocates-** Special Courts does not have a fair proportion of the Scheduled Caste Prosecutors in the courts who have the sense of duty towards the rights of SC/ST.
- g) **Public Prosecutors already over burdened with the regular cases-** Public Prosecutors are overburdened with the regular cases, hence not giving priority to the cases under SC/ST (POA) Act 1989.
- h) **No provision of Assistant Public Prosecutors** – There is no provision of Assistant Public Prosecutors who can assist the Special Public Prosecutors before the hearing and minimize the unnecessary delay in trial.
- i) **PP,s reluctant in filing Appeals** – PP,s are reluctant in filing Appeals in under the SC/ST(POA) Act 1989.” A Public Prosecutor appointed by the State can file Appeals⁵⁰.

Therefore, there is need to strengthen the sections 14 and 15 of the Act for effective prosecution of the atrocity cases based on the above experiences of various stakeholders. This will put a check on the obstacle in attaining right to speedy trail and also to large numbers of PoA cases acquittals.

As the State has ratified the International Convention of Civil and Political Rights, it is obliged to pass legislation which makes all persons equal in the eyes of the law.⁵¹ The ECRI guidelines recommend the adoption of legislation providing victims of discrimination easily accessible judicial and/or administrative proceedings, and fast track procedures leading to interim decisions in urgent cases⁵².

In order to strengthen the above said sections the following changes need to be made to respective sections:

1. Need to “create” exclusive special courts in each district of the level of Sessions Court.
2. The Special Courts is empowered to take cognizance of offences under the Act and summary trial should be conducted on a day to day basis and completed within the period 90 days
3. Counter cases filed in retaliation to the original complaint by the victim of atrocities need to be tried in same court simultaneously.
4. Courts should ensure the protection of the victims, complainants and witnesses against all kinds of ill-treatment or intimidation and periodically review such protection services.
5. Special Procedures in appointment of Special Court Judges and prosecutors

3.7. Rights of the victims and witnesses

The rights of victims and witnesses barely feature under the existing criminal laws, including SC/ST (POA) Act 1989. Practically, victims and witnesses have been virtually silent in the legal process, and their role is nothing more than that of a prosecution witness. The legal provisions for victims and witnesses rights do exist in this regard. For example, right to registration of FIR, right to receive the legal documents, rights to Relief and Compensation, information on the status of the cases, protection etc. Post-Best Bakery case, a discussion has ensued on how rights and interests of victims and witnesses needs to be incorporated and institutionalized within the Indian legal system in order to ensure that the ends of justice are served.

It is a fact that the victims and relatives atrocities are reluctant to divulge any information concerning heinous offences, due to fear of victimization by and reprisals from the perpetrators. Given this state of affairs, crime detection (especially in heinous offences under SC/ST (POA) ACT 1989) and

⁵⁰ Mansoor v.State of M.P.,AIR 1971 SC 1977.

⁵¹ ICERD; ICCPR Article 2& 26.

⁵² ECRI General Policy Recommendation No. 7, paragraph 10,

crime prevention can become arduous jobs for the police. Undoubtedly, the role of witnesses in assisting police investigations and giving evidence in court is crucial to the success of criminal prosecutions.

The absence of Legal Provisions, protecting the rights and interests of victims and witnesses also contributes to a sense of powerlessness of victims. It shapes the public perception of the justice delivery system as serving the needs of perpetrators rather than victims. So, aid to victims, whether through financial compensation, counseling, or medical assistance, is essential as it indicates to victims that they have not been abandoned, and that there is concern about their plight.

The experiences of the victims and witnesses and organizations those involved in supporting them in accessing justice shows the following difficulties at different levels of criminal justice administrative system:

- a) Though there is a clear procedure both in CrPC and PoA about reducing atrocity information into writing and entering substance into a book victim are discouraged by the police at the level of registration of case by denial, delay or registering FIR under inappropriate sections. But it is a right of victim to get registered FIR under appropriate section/law.
- b) Victims and witnesses were not informed the dates of investigation, progress of the case at any level including release of accused, trial dates etc. It is a duty of the prosecution and investigation agency to inform the progress of the case to the victims at every level. Because lack of mechanisms to ensure this right victims are not able to follow their case.
- c) State, investigation and prosecution agency in particular have responsibility in ensuring right to protection to the victim and witnesses right from the complaint to the judgement.
- d) Victims and their agents are denied the documents such as FIR, charge sheet, medical examination, post mortem reports and other documents at every stage by the concerned officials. Sometime it is deliberately done in such ways that victims are away from the process of trial.
- e) It is right of victims to access to immediate assistance and to get relief, compensation and rehabilitation as victims of human rights violations.

The Malimath Committee in its recommendation also perceived that 'justice to victims' is one of the inseparable imperatives of the criminal justice system in India. It argues for the holistic justice to victims of crime by allowing them, as a matter of right, in criminal proceedings as well as to seek compensation for loss or injury and further stated that the absence of a law on witness protection has resulted in a growing trend of hostile witnesses.

In order to provide victims of crime with a meaningful role in the criminal justice system we proposed a new chapter to be included in the Act focusing rights of victims and witnesses. These victims' rights focus from complaint to judgment at every level from FIR, progress of the case, access to legal documents, protection, medical examination, right to compensation etc.

As India has ratified the International Convention of Civil and Political Rights, it is obliged to pass legislation which makes all persons equal in the eyes of the law.⁵³ The ECRI guidelines recommend the adoption of legislation which gives victims of discrimination a right to compensation for the damage caused by the discrimination⁵⁴. Furthermore, State Parties have been suggested to protect the rights of victims and witnesses at different levels of administration and justice through the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration calls for the protection of victims and witnesses' rights to information, treatment, restitution and compensation. The Declaration has been strengthened and extended by the passing of Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, the Serious Violations of International Humanitarian Law and the Guidelines for Child Victims and Witnesses.

Based on the above justifications we have proposed the following draft amendments in original text of the Act:

⁵³ ICERD; ICCPR Article 2& 26.

⁵⁴ ECRI General Policy Recommendation No. 7, paragraph 12,

DRAFT AMENDMENTS PROPOSED TO THE SCHEDULED CASTES AND SCHEDULED TRIBES PREVENTION OF ATROCITIES ACT 1989

(**Note***: Words shaded underlined 'Text original' column are the words proposed to be deleted; Words underlined 'Text after proposed amendments' column are the words proposed to be inserted)

1. Amendments proposed to enhance punishment

S.NO	Sections	Text Original	Text after proposed Amendment
1.	Section 3 (1)	shall be punishable with imprisonment for a term which shall not be less than <u>six months</u> but which may extend to <u>five years</u> and with fine.	shall be punishable with imprisonment for a term which shall not be less than <u>two years</u> but which may extend to <u>seven</u> years and with fine.

2. Amendments proposed for addition of New types of offenses

S.NO	Sections	Text Original	Text after proposed Amendment
1.	Ch.II, Sec. 3(1)(v)	<u>wrongfully</u> dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water	Dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water; <u>or prevents to take possession, use or enjoyment of the land or the produce; takes away the produce with out his or her consent in writing.</u>
2.	Ch.II, Sec. 3(1)(vi)	compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;	compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government on Scheduled Castes or Scheduled Tribes <u>or refuses to pay wages in accordance with the minimum wages prescribed by the government or contract wages for the labour, such contract wages not less than the minimum wages fixed by the Government</u>
3.	Ch.II, Sec. 3(1)(vii)	forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;	forces or intimidates or attacks or humiliates and mentally or physically assaults a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law <u>or after the poll causes injury, insult or commits any offence under this Act against a member of Scheduled Caste and Scheduled Tribe for voting or not voting to a particular candidate or for voting in a manner provided by law.</u>
4	Ch.II, Sec. 3(1)(viii)	institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;	institutes false, malicious or vexatious suit, or criminal or other legal proceedings, against a member of a Scheduled Caste or a Scheduled Tribe or files cases against the victims of atrocities or his/her relatives shortly before or after the offence of atrocity to force them to

S.NO	Sections	Text Original	Text after proposed Amendment
			desist them from making complaint or withdraw a complaint, or files cases against the witnesses or his/her relatives shortly before and after the offence of atrocity to prevent them from deposing evidence or to force them to depose false evidence in any case of atrocities.
5	Ch.II, Sec. 3(1)(xvi)	This subsection is Proposed to be added as a new subsection	causes hurt or grievous hurt or putting any member of a Scheduled Castes or a Scheduled Tribes, in addition to the any of the offences mentioned under Section 3 of the Act.
6	Ch.II, Sec. 3(1)(xvii)	This subsection is Proposed to be added as a new subsection	abducts, or kidnaps, or wrongfully restrains any member of Scheduled Castes or Scheduled Tribes;
7	Ch.II, Sec. 3(1)(xviii)	This subsection is Proposed to be added as a new subsection	discriminates against or humiliates any children or any other member of Scheduled Castes or Scheduled Tribes in anganwadis or mid day meals programme in schools or any other educational institutions;
8	Ch.II, Sec. 3(2)(i)	This subsection is Proposed to be added as a new subsection	<p>(a) Whoever commits rape against any woman, who is a member of a Scheduled Caste or a Scheduled Tribe, shall be punished with imprisonment for life or for a term not less than ten years and shall also liable to be fine.</p> <p>(b) whoever commits rape against any woman who is a member of a Scheduled Caste or Scheduled Tribe, when she is under eighteen years of age; or</p> <p>(c) whoever commits gang rape against any woman who is a member of a Scheduled Caste or Scheduled Tribe,</p> <p>(d) whoever commits mass rape against women belonging to a member of a Scheduled Caste or Scheduled Tribe by more than one persons,</p> <p>shall be punished with rigorous imprisonment for life</p> <p>Explanation 1: where a woman who is a member of a scheduled caste or scheduled Tribe is raped by one or more in a group of persons not belonging to the scheduled caste or scheduled tribes each of such persons shall be deemed to have committed gang rape within the meaning of this sub-section.</p> <p>Explanation 2: Where more than one woman who is a member of a scheduled caste or scheduled Tribe are raped by one or more in a group of persons not belonging to the</p>

S.NO	Sections	Text Original	Text after proposed Amendment
			scheduled caste or scheduled tribes, each of such person of the group which attacks shall be deemed to have committed mass rape/multiple rape within the meaning of this sub-section.
9	Ch.II, Sec. 3(2)(ii)	This subsection is Proposed to be added as a new subsection	<p>(a) Whoever commits murder or mutilates or murder thereof on the allegation of practicing witchcraft of a member of Scheduled Caste or Scheduled Tribe shall be punished with rigorous imprisonment for 10 years etc, in addition to IPC offences.</p> <p>(b) Whoever commits mass/multiple murder of members of Scheduled Caste or Scheduled Tribe shall be punishable with rigorous life imprisonment.</p> <p>Explanation 1: where more than one member of a scheduled caste or scheduled Tribe is murdered by one or more in a group of persons not being members of scheduled caste or scheduled tribes, in the course of an attack by such group against group of members of a scheduled caste or scheduled Tribe, each of such persons shall be deemed to have committed mass murder/multiple of members of Scheduled castes or Scheduled Tribes.</p>
10	Ch.II, Sec. 3(2)(iv) Renumber it as 3(2) (iii D)	commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;	commits mischief by fire or any explosive commits mischief by fire or any explosive substance thereby causing destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property or by a member of Scheduled Caste or a Scheduled Tribe or any form of disrespect or disfigurement or defilement or damage to the statues of Babasaheb Dr.B.R. Ambedkar shall be punishable with imprisonment for life and with fine
11	Ch.II, Sec.3 (2)(iv A)	This subsection is Proposed to be added as a new subsection	<p>imposes social or economic boycott or blackmail or abets or supports such boycott or blackmail of any person or a family or group of Scheduled Caste or a Scheduled Tribe; shall be punishable with imprisonment for life and with fine</p> <p>Explanation 1: When at any time a member of a Scheduled Caste or Scheduled Tribe or any group or family of a Scheduled Caste or a Scheduled Tribe is denied services available till that time, such as</p>

S.NO	Sections	Text Original	Text after proposed Amendment
			<p>hair-cutting, laundry services, sale of goods by shops by a group of persons not being a member of Scheduled Castes or Scheduled Tribes, each such person shall be deemed to have imposed social boycott against Scheduled Castes or Scheduled Tribes.</p> <p>Explanation 2: When at any time a member of a Scheduled Caste or Scheduled Tribe or any group or family of a Scheduled Caste or a Scheduled Tribe is denied wage employment available to them till that time by a group of persons not being a member of Scheduled Castes or Scheduled Tribes, each such person shall be deemed to have imposed economic boycott against Scheduled Castes or Scheduled Tribes.</p> <p>Explanation 3: Social Blackmail means threat to impose social boycott and when a group of persons not being members of Scheduled Castes or Scheduled Tribes threatens a member of a Scheduled Caste or a Scheduled Tribe or any group or family of a Scheduled Caste or Scheduled Tribe in order to prevent them from exercising any of their lawful rights or as a reprisal for exercising any of their lawful rights shall be deemed to have committed social blackmail.</p> <p>Explanation 4: Economic Blackmail means threat to impose economic boycott and when a group of persons not being members of Scheduled Castes or Scheduled Tribes threatens a member of a Scheduled Caste or a Scheduled Tribe or any group or family of a Scheduled Caste or Scheduled Tribe in order to prevent them from exercising any of their lawful rights or as a reprisal for exercising any of their lawful rights shall be deemed to have committed economic blackmail.</p>
12	Ch.II, Sec. 3 (2)(iv B)	This subsection is Proposed to be added as a new subsection	destroys livelihood systems, causes ransacking of household items, food grains , agricultural produce, destruction of movable or immovable property, of a member of Scheduled Castes or Scheduled Tribes and further, or persons aids or abets such commission of atrocities is said to commit the offence within the meaning of this sub-section,
13	Ch.II, Sec. 4(1)	This subsection is Proposed to be added as a new subsection under Section 4	Whoever abets any offence, if the act abetted is committed, shall be punished with the punishment provided for the offence.

3. Amendments proposed for Omission of certain words

S.NO	Sections	Text Original	Text after proposed Amendment
1	Ch.II, Sec. 3(1)(ii)	<u>acts with intent to cause injury, insult or annoyance</u> to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;	dumps excreta, waste matter, carcasses or any other obnoxious substance in the premises or neighbourhood of a member of a Scheduled Caste or a Scheduled Tribe or in or near the habitation of Scheduled Castes or Scheduled Tribes;
2	Ch.II, Sec.3(1) (iii)	<u>forcibly</u> removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to <u>human dignity</u> ;	removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him/ <u>her</u> naked or with painted face or body or commits any similar act which is derogatory;
3	Ch.II, Sec. 3(1)(iv)	<u>wrongfully</u> occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;	occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;
4	Ch.II, Sec. 3(1)(x)	<u>intentionally</u> insults or intimidates <u>with intent to</u> humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within <u>public view</u> ;	insults or intimidates or humiliates a member of a Scheduled Caste or a Scheduled Tribe in any place;
5	Ch.II, Sec. 3(1)(xi)	assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe <u>with intent to dishonour</u> or outrage her modesty;	assaults or uses force in any other manner to any woman belonging to a Scheduled Caste or a Scheduled Tribe or removes any part of her clothes to insult or outrage her modesty;
6	Ch.II, Sec. 3(1)(xii)	<u>being in a position to dominate the will of a woman belonging</u> to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;	
7	Ch.II, Sec. 3(1)(xiii)	corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled	corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes

S.NO	Sections	Text Original	Text after proposed Amendment
		Tribes <u>so as to render it less fit for the purpose for which it is ordinarily used;</u>	
8	Ch.II, Sec. 3(2)(i) Renumber it as 3(2)(iii A)	gives or fabricates false evidence <u>intending thereby to cause, or knowing it to be likely that he will thereby cause,</u> any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with <u>death;</u>	gives or fabricates false evidence which can cause any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with rigorous life imprisonment ;
9	Ch.II, Sec. 3(2)(ii) Renumber it as 3(2)(iii B)	gives or fabricates false <u>evidence intending thereby to cause, or knowing it to be likely that he will thereby cause,</u> any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;	gives or fabricates false evidence which can cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of such an offence in consequence of such false evidence, which is not capital but punishable with imprisonment for a term of seven years or upwards, the person who gives false and fabricated evidence shall be punishable with imprisonment for a term which shall not be less than 2 years but which may extend to 10 years and with fine;
10	Ch.II, Sec. 3(2)(iii) Renumber it as 3(2) (iii C)	commits mischief by fire or any explosive substance <u>intending to cause or knowing it to be likely that he will or knowing it to be likely that he will thereby cause</u> damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than	commits mischief by fire or any explosive substance and thereby causing damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine;

S.NO	Sections	Text Original	Text after proposed Amendment
		six months but which may extend to seven years and with fine;	

4. Amendments proposed for insertion of new words

S.NO	Sections	Text Original	Text after proposed Amendment
1	Ch.II, Sec. 3(2)(v)	commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property <u>on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member,</u> shall be punishable with imprisonment for life and with fine;	commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property <u>belonging to a member of a Scheduled Caste or a Scheduled Tribe</u> shall be punishable with imprisonment for life and with fine;
2	Ch.II, Sec. 3(2)(vii)	being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.	being a public servant, commits any offence under this section, <u>shall be immediately suspended after the time of registration of the First Information Report and such suspension shall remain in effect until the conclusion of the trial and no promotion, award or reward or any other benefit shall be given to the accused until the conclusion of the trial and</u> shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence
3	Ch.III Sec 10(1)	Where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove offence. beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order	Where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in article 244 of the Constitution, <u>or in any other area of any district</u> notified in this behalf it may, by order in writing, direct such person to remove offence. beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order

S.NO	Sections	Text Original	Text after proposed Amendment
4	Ch. V Sec 21 (2) (i)	the provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;	the provision for adequate facilities, including legal aid, <u>to the victims subjected to atrocities or any member of the family of Scheduled Caste or Scheduled Tribe</u> to enable them to avail themselves of justice;
5	Ch.II, Sec.8 ©	This subsection is Proposed to be added as a new subsection under Section 8	Where it is proved that the particular act has been committed which in the normal course will lead to consequence which is an offence under this Act, it shall be presumed that the offence was committed with intention or knowledge and the ingredient of intention or knowledge shall not be necessary to be proved in the matter of any offence under this Act

5. Amendment proposed to strengthen Section 4

S.NO	Sections	Text Original	Text after proposed Amendment
1	Ch.II, Sec. 4	Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, <u>willfully</u> neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less that six months but which may extend to one year.	Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, neglects his duties required to be performed by him under this Act including: <ol style="list-style-type: none"> 1. non-registration of FIR, not registering under appropriate sections, 2. delay in investigating and filing charge sheet, 3. Registration of counter FIR earlier to the victims' complaint and issue of FIR. 4. Failure to provide immediate relief, protection, compensation and rehabilitation 5. non-implementation of other protective and preventive provisions or rules defined under the Act shall be punished for a term which shall not be less than two years 6. Misleading the complainant to change the contents of the complainant to facilitate the culprits or reduce in writing the oral complaint in order to facilitate the culprit. 7. Negligence of investigating officer by not recording the statements of the victims / witnesses in his own hand writing at the scene of offence or making efforts to suppress the evidence. 8. Delay in investigation for more than (3) months unless otherwise satisfactorily explained to the court for the delay. 9. Failure to elicit the truth in counter case against the complainant's case and investigate the case on correct lines. 10. Failure to provide immediate relief, protection, compensation and rehabilitation to the victims / witnesses.

S.NO	Sections	Text Original	Text after proposed Amendment
			<p>11. Failure to take preventive measures defined under this Act shall be punished with punishment equivalent to the punishment intended to the culprit.</p> <p>12. Non performance or omission to do any act required under the Act shall be a misconduct disciplinary action taken against the delinquent under the relevant disciplinary rules and enquiry completed expeditiously imposing with mandatory punishment.</p> <p>shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.</p>

6. Scope of definitions given in the Act

S.NO	Sections	Text Original	Text after proposed Amendment
1	Ch.I,Sec. 2(1)(c)	<i>"Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution;</i>	Notwithstanding to definition of Scheduled Castes and Schedule Tribes and notified by the President in notification 341 and 342 for the purpose of Constitution respectively in clauses (24) and (25) of article 366 of the constitution; <u>"Scheduled Castes shall, include, only for the purpose of this Act also include members of the any of the castes in the schedule who profess a religion other than Hinduism, Sikhism, or Buddhism and the descendents of such members or who migrated to other states for the purpose of manual labour but not included in the scheduled of the state".</u>
2	2 (1) (g)	<i>This subsection is Proposed to be added as a new subsection</i>	'Victim' includes a person being a member of a Scheduled Castes or a Scheduled Tribes, against whom any offence of atrocities has been committed individually or collectively and members/survived members of their families
3	2 (1) (h)	<i>This subsection is Proposed to be added as a new subsection</i>	A 'witness' includes a person who is aware of or believed to be aware of any fact or facts or circumstances pertaining to an offence of atrocity and who believed to be likely to depose evidence before a special court or any other appropriate forums to provide testimony in the case or who could possibly be called to provide testimony in the case

7. Amendments proposed for Special Courts and Special Prosecutors

S.NO	Sections	Text Original	Text after proposed Amendment
------	----------	---------------	-------------------------------

S.NO	Sections	Text Original	Text after proposed Amendment
1	Ch.IV Sec.14	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, <u>specify for</u> each district a Court of Session to be a Special Court to try the offences under this Act.	<p>(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 for each district, a Court of Session to be the Special Court exclusively to try the offences under this Act in that district.</p> <p>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 National Commission for 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 and notify in the official gazette the particulars thereof.;</p> <p>(2) Notwithstanding the provisions of Chapter XIV of Cr.P.C, these Special Courts are empowered to and shall take cognizance of offences under this Act as a court of original jurisdiction without the cases having to be committed to it by a magistrate;</p> <p>(3) The Special Courts of session shall try only cases of Atrocities against Scheduled Castes and Scheduled Tribes and shall not be entrusted with any cases other than those under this Act;</p> <p>(4) The Special Courts shall try the offences under this Act on day-to-day basis, and complete the trial as quickly as possible within a period not exceeding 90 days;</p> <p>(5) The special courts judge shall submit quarterly report to the chief Justice the high court of strict compliance with the provision of this Act.</p> <p>(6) Whenever it is brought to the notice of the special court which is trying any offence of atrocity under this Act, by or on behalf of any victim(s) of an offence of atrocity, that any case has been filed against such victim(s) in the same or</p>

S.NO	Sections	Text Original	Text after proposed Amendment
			<p>another police station shortly before or after the offence of atrocity occurred, the special court shall call for records of such case(s) and try such cases jointly with the offence of atrocity, at one trial.</p> <p>(7) The Judges of the Special Courts of sessions shall be appointed taking into consideration their record of and reputation for upholding the rights of Scheduled Castes & Scheduled Tribes, especially the right of Scheduled Castes & Scheduled Tribes to protection against violence and "Untouchability".</p> <p>(8) The Special Courts and their judges shall be provided adequate supporting staff and facilities, which shall not be less than what is provided for other mainstream sessions courts and their judges; and shall not be prevented from functioning optimally by being starved or partly starved of the supporting staff and facilities required for the efficient discharge of the functions;</p> <p>(9) The performance of judges of special courts shall be a major factor while considering promotions or other carrier advancement and meritorious performance shall be given extra weightage in such promotion or carrier advancement and High Court may advice appropriate schemes for this purpose.</p> <p>(10) (a) Transfer of judges shall be planned in such a manner that the posts of judges in the special courts are never kept vacant.</p> <p>c) Vacancies in posts of judges of special courts arising on account of unexpected and unforeseeable contingencies shall be filled within <u>30 days after the occurrence of such vacancies.</u></p>
2	Ch.IV, Sec.15	For every Special Court, the State Government shall, by notification in the Official Gazette, <u>specify a</u>	(1) <u>For every Special Court, the State Government shall, by notification in the Official Gazette, appoint a Public Prosecutor or an Advocate who has</u>

S.NO	Sections	Text Original	Text after proposed Amendment
		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 of conducting cases in that Court.	<p>been in practice as an advocate for not less than seven years, <u>as a special public prosecutor, for the purpose exclusively of conducting cases under this Act in that Court;</u></p> <p>(2) <u>The State Government on recommendation of District magistrate shall prepare for each District a panel such number, as if it made in necessary, of eminent Advocates including advocates from Scheduled Castes and Scheduled Tribes where ever available, who has been in practice as an advocate for not less than seven years, on the basis of their record of and reputation for consistently upholding the Rights of Scheduled Castes and Scheduled Tribes especially their Right to Protection from violence and "Untouchability" and not taking up the cases against victims of atrocities and "Untouchability" for the purpose exclusively conducting trials in the Special Courts and shall remain in force for a period of three years and fresh panels shall be prepared in time before the expiry of three years so that there will be always a panel in force.</u></p> <p>(3) <u>Notwithstanding anything contained in sub-rule 15 (I), the District Magistrate shall, if deem necessary or if so desired by any victim of an atrocity, engage an eminent Senior Advocate of victim's choice for conducting cases in the Special Courts on such payment of fee as he/she may consider appropriate.</u></p> <p>(4) <u>For every Special Public Prosecutor appointed under sub section 1, State Government may appoint one or more Assistant Public Prosecutors or advocates, including advocates belonging to Scheduled Castes and Tribes, who has been in practice as an advocate for not less than seven years, on the basis of their record of and reputation for consistently upholding the Rights of Scheduled Castes and Scheduled Tribes especially their Right to Protection from violence and "Untouchability" and not taking up the cases against victims of atrocities and untouchability exclusively for the purpose of assisting Special Public Prosecutor for conducting cases under this Act in the Court.</u></p>

S.NO	Sections	Text Original	Text after proposed Amendment
			<p>(5) <u>provided that where a Special Public Prosecutor appointed under Sub Section (1) does not belongs to the Scheduled Caste or Scheduled Tribe, shall be appointed as Assistant Public Prosecutor under this sub section as Public Prosecutor so that junior Scheduled Caste or Scheduled Tribe advocates have a profession growth.</u></p> <p>(6) <u>The District Magistrate shall review at least twice in a calendar year, in the months of January and July, the performance of Special Public Prosecutors and Assistant Public Prosecutors and submit a report to the state government, and to the State level Vigilance and Monitoring Committee.</u></p> <p>(7) <u>On receipt of the report the convener shall examine and along with his comments circulated to the Chief Minister as Chairman of the Committee and other members and place it as an agenda in the next meeting of the committee.</u></p> <p>(8) <u>If the Chair/Director of State Protection Authority is satisfied or has reason to believe after consulting the District Magistrate or other wise that the Special Public Prosecutor so appointed has not conducted the case with due caution and case in a manner which will fulfill the purpose of the Act ,he or she may take such remedial action as he or she deems fit necessary and appropriate including removal of Special Public Prosecutor or Assistant Public Prosecutor and appointing another Special Public Prosecutor or Assistant Public Prosecutor</u></p> <p>(9) <u>Vacancies in Posts of Special Public Prosecutor or the Assistant Public Prosecutor arising on account of unexpected and unforeseeable contingencies shall be filled within 30 days after the occurrence of such vacancies.</u></p> <p>(10) The special public prosecutor shall in addition to the oral arrangement shall submit comprehensive written arguments to the court</p> <p>(11) The performance of special public prosecutor and assistant public prosecutor appointed under this Act shall be taken into the consideration for future assignments and higher assignments and</p>

S.NO	Sections	Text Original	Text after proposed Amendment
			meritorious service in taking all steps to successfully prosecute the cases and prevent delay by the measures of opposing adjournments sort by the defense and placing before the court in perspective the socio-economic background of each offense shall be given (12) extra weightage in considering for future assignments
3	Ch.II, Sec. 15 (A)	This subsection is Proposed to be added as a new subsection under Section 15 (A)	<u>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 case of offences under this Act</u>

8. New chapter on Rights of Victims and witnesses as II A

Sl. No	Sections	Text after proposed Amendment
1	Section	Mandatory registration of FIR: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 as amended time to time , whenever a complaint as defined in Amended Rule 5 (1) is received, the SHO/authorities shall register the First Information Report (FIR) as mandatory under appropriate sections of this Act as soon as receiving the complaint
1.1	Sub Section	Police/ authorities shall register First Information Report (FIR) as mandatory under appropriate sections of this Act in the cases of which the victims or deceased of atrocities or relatives even though approached the police or authorities belatedly due to fear.
1.2	Sub Section	A copy of the FIR as so recorded under rule 5 (1) shall be given forth with, free of cost, to the informant or victims or social worker/advocate supporting them immediately after the registration of FIR
2	Section	Investigation and inquiry: An officer authorized under the Act to investigate the crime shall be not below the rank of the deputy superintendent of Police having jurisdiction be appointed exclusively to investigate the offences under the Act or under the IPC offences and shall be responsible to complete the investigation on priority basis with in 30 days/90 days as the case may be and shall file the charge sheet after consulting the Spl.Public Prosecutor. The charge sheet so filed with in 90 days from the date of registering the crime.
3.	Section	Protection: It shall be the duty, responsibility and liability of the Investigating Officer to ensure protection of victim, complainant and witness against all forms of ill-treatment, violence, threat of violence or any other form of intimidation retaliation including protection of the privacy of the victims that may be caused pursuant to his/her complaint or investigation. Any such protection shall be made from the time of submission of the complaint upto the conclusion of the trial. Especially in the case of sexual abuse the investigating officer must ensure protection of privacy of victims and the consent of victims must be obtained before information on the atrocity is given to the media.
3.1	Sub Section	The Investigating Officer shall inform the Special Court about the protection provided to any victim, complainant or witnesses.
3.2	Sub Section	Victims and witnesses must be informed of their right to submit to or decline an interview by defense counsel, except when responding to lawful process, and, if the victim or witness decides to submit to an interview, the right to impose reasonable conditions on the conduct of the interview.

3.3	Sub Section	The special court shall issue directions for the effective protection of the victims, complainants and witnesses against any type of coercion or intimidation or social or economic boycott, as a consequence of or to prevent any complaint or any evidence given or likely to be given and to periodically review the protection provided to them so as to ensure that such protection is adequate and effective.
3.4	Sub Section	Wherever it is brought to the notice of Special Court that the victims/ witnesses are under threat or , fear , or prevented from making a complaint or deposing as a witness , the court may allow such victims/witnesses to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other appropriate means
4	Section	Medical Examination and reports: It shall be the duty and responsibility, liability of the concerned Executive Magistrate , Investigating Officer or SHO to take immediate steps after reporting the incident by the victim to take him or them to the nearest government hospital or reputed private hospital for medical examination etc. .
4.1	Sub Section	The proceedings of the post-mortem shall be video graphed and a family member of the victim or their representatives/Civil Society Organizations, Advocates shall have the right to remain present during the post-mortem.
4.2	Sub Section	The family members of the victim or their representatives, Civil Society Organizations, Advocates with regard to any dispute pertaining to post mortem shall have the right to appeal and their appeal shall be considered within 2 days in full conformity.
5	Section	Charge Sheet: A copy of the charge sheet filed along with enclosed documents shall be given free of cost to the victim or the first informative or authorized social worker or advocate assisting the victim.
5(1)	Sub Section	The investigation officer at the earliest have the statement of the victim, victims, direct witnesses recorded under section 164 of CrPC by the Judicial Magistrate. The same shall be treated as substantive evidence at the trial , not withstanding any provisions contained in CrPC or Indian Evidence Act, even with detracted or declared hostile.
5(2)	Sub Section	The district Magistrate shall also direct a District officer of Social welfare department and the sub divisional magistrate of Revenue Department to assist the investigating officer. The investigating officer shall invariably camp at the locality of the victims and record the statements of witnesses on the spot in his own hand writing.
5(3)	Sub Section	No person belonging to Scheduled Castes or Scheduled Tribes communities shall be taken to the police Station either for interrogation or for any other purpose except with a warrant issued by the Deputy Superintendent of Police or Magistrate. No police Officer below the rank of Deputy Superintended of Police shall interrogate him in the Police Station.
5(4)	Sub Section	No person belonging to Scheduled Castes or Scheduled Tribes communities shall be detained in the police station for more than 24 hours.
5(5)	Sub Section	The Magistrate shall issue a search warrant on the complaint of a relative or Advocate of the person illegally detained by the Police. The magistrate also shall take immediate measures to release him from the Police custody.
5(6)	Sub Section	The investigating officer shall send a detailed report of important cases within (10) days to the Social Welfare Department in Addition to the District Magistrate, Government and other Police Officers.
5(7)	Sub Section	During the course of investigation, the investigating officer shall provide to the victim copies of (1) F.I.R) (2) Inquest Report or Panchaname of any (3) Post Mortem Report or wound certificates (4) copies or statements of witnesses.
5(8)	Sub Section	Failure to provide immediate relief, protection, compensation and rehabilitation to the victims/ witnesses.

5(9)	Sub Section	Regional IG and the Superintendent of Police shall do quarterly review of the investigations, filing of the charge sheets, trial of the cases etc., . The minutes of the meeting shall be communicated to the investigating officer immediately for compliance who would follow the minutes so communicated and take further action. Any laps in this behalf shall be treated as misconduct.
5(10)	Sub Section	Any person other than a member of Scheduled Castes or Scheduled Tribes when misuses the Act or foist a false case against the Scheduled Castes or Scheduled Tribes victim, informant or witness shall be punished with rigorous imprisonment of not less than two years and a fine of rupees Fifty Thousand or more.
5(11)	Sub Section	Failure to take preventive measures defined under this Act shall be punished with punishment equivalent to the punishment intended to the culprit.
5(12)	Sub Section	Non- performance or omission to do any act required under the Act shall be misconduct. Disciplinary action taken under relevant disciplinary with mandatory punishment.
6	Section	Trial -Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system
6.1	Sub Section	Where the competent authority decides not to prosecute, the victim should be entitled to have the decision reviewed or should be able to bring a private prosecution.
6.2	Sub Section	Victims of atrocities should be informed of the date and place of the court proceedings concerning the atrocity whose effects they are suffering and should also be informed of any delay or adjournment. They should also duly inform of any rights they have to obtain restitution or compensation for the atrocity concerned, including how to obtain a copy of the judgment relating to the atrocity.
6.3	Sub Section	Court shall have separate waiting areas for victims and witnesses, in order to provide them privacy and protection from intimidation. Victims shall have the right to remain in the courtroom during all court proceedings (bail or bond hearings, preliminary hearings, trials, sentencing, etc.) that the defendant attends. Additionally, in any case involving a victim who is under the age of eighteen, the court may permit an adult chosen by the victim to remain in the courtroom as a support person for the victim.
6.4	Sub Section	Victims have a right to have their interest considered when the court is deciding to grant a request for a delay (continuance), to provide a written or oral victim impact statement concerning the economic, physical and psychological effect of the atrocity which shall be considered by the court at sentencing.
6.5	Sub Section	Victims shall be notified of the offender's eligibility for parole and to have input into the parole making decision. Further they shall be notified of a pardon application to the governor and to make a written statement regarding the pardon application.
7	Section	Relief, Compensation and Rehabilitation- Notwithstanding anything contained under Section 357A of the Code of Criminal Procedure, 1973 as amended from time to time , a victim of atrocity shall have the right to fair and adequate relief, compensation, and rehabilitation including victims of atrocities for physical or psychological harm suffered as a consequence of the atrocity. When such compensation is not fully available from the offender or other sources such as insurance, the State should provide it either to the victim or to his or her dependants, as the case may be.
7.1	Sub Section	The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate

		relief within 24 hours in cash or in kind or both to the victims of atrocity, their family members and dependants according to the scale as in the Schedule annexed to these Rules (Annexure-I read with Annexure-II). Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for human beings.
7.2	Sub Section	The relief provided to the victim of the atrocity or his/her dependant under sub-section 4.1 in respect of death, or rape, or mass rape or gang rape, or injury, or damage to, property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.
7.3	Sub Section	Investigation officer shall ensure to every victim of atrocity or his/her dependant and witnesses paid travel, daily allowance and daily maintenance expenses from his/her place of residence or place of stay to the place of investigation or hearing of trial of an offence under the Act as defined in Rules.
7.4	Sub Section	State Government shall ensure the victims of atrocities and their families full financial and other support to become economically self-reliant without their having to seek wage employment 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/ country of their choice at State cost including the cost of their food and maintenance
7.5	Sub Section	State Government shall forthwith given to every victim of rape and one of deceased family member of murder a permanent government/ quasi-government job of the highest level appropriate to their educational qualifications of their choice.
7.6	Sub Section	It shall be the duty, responsibility and liability of District Magistrate to submit a report of the relief, compensation and rehabilitation facilities provided to the victims to the Chair/Director of State Protection Authority copy to Social Welfare and Home Secretaries which shall also be forwarded to the Special Court. In case the Chair/Director of State Protection Authority or Special Court is satisfied that the payment of relief was not made as defined in the Act and Rules shall initiate proceedings as defined Section 4.
7.7	Sub Section	The State Government shall ensure that persons responsible for atrocities against Scheduled Caste and Scheduled Tribes should make fair restitution to the victims of their atrocities for any harm or loss suffered. Through restitution, the offender restores to the victim the rights that were breached.
7.8	Sub Section	Every victim of an atrocity has the right to Reparations involving, full restitution ordered to be paid by the offender to all identifiable victims. Restitution to the community rendered through service or money. Restorative compensation by the state to the victim. Recoveries for damages in civil actions as a supplement or alternative to criminal restitution.
7.9	Sub Section	As soon as atrocity takes place the Deputy collector/District Magistrate/ Deputy Commissioner shall forthwith launch works under NREGA for all members of Scheduled Caste and Scheduled Tribe against any member or members of which atrocity has taken place as one of the measures to prevent coercion of victims, complainants, witnesses and potential witnesses. The works undertaken shall be such as direct economic, educational or social benefit to the Scheduled Castes and Scheduled Tribes as the case may be such as common well/ bore well/ tube wells for their lands, construction of their buildings, and construction of link roads required by them. Improvement of internal roads and drainage and other necessary facilities construction of study centres for their children etc. The Deputy Collector/District Magistrate/ Deputy Commissioner shall also launch other programmes of development benefiting the Scheduled castes and scheduled tribes in the villages or town where atrocity took place, including schemes under Bharat Nirman and

		pradhan mantri gram sadak yojna
8	Section	Documents and Information - State Government shall ensure that victims have an enforceable right to information, and must be informed of this, from their first contact with law enforcement or other agencies.
8.1	Sub Section	Medical officer shall issue medical examination reports, Forensic Medical Examination Reports, Panchnamas, Post Mortem Reports, Video Tapes and any other medico Legal documents to the victims or their representatives and to the investigation officer within two days of examination.
8.2	Sub Section	For victims and witnesses, to be informed, in a timely manner: (1) at every stage of the proceeding including investigation, inquiry, medical examination by the investigation officer within five days of commencement and completion of these proceedings (2) by the Special Public Prosecutor on the filing of charges, bail, offender's release from custody preliminary hearing dates, trial dates, continuances and the final disposition of the case and trial of the case or hearing on miscellaneous petitions in relation to the case within five days of commencement and completion of these proceedings
8.3	Sub Section	The Investigation officer should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation including information on the outcome of the police investigation"
8.4	Sub Section	Victims shall be informed of financial assistance and social services available to them as victims of atrocities, including information on their possible right to file a claim for compensation from the State. (Atrocities victims compensation Fund) and on other available assistance and services.
8.5	Sub Section	Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with the rules prescribed under this act.

9. New chapter on National / State Protection and Monitoring Authority as II B

Ch. II B	This Chapter is proposed to be added as a new Chapter	<u>National and State Protection and Monitoring Authority</u> : Central and State Governments shall constitute high power rights protection authority to ensure for the enforcement of the Act.
----------	---	--

IV

CONCLUSION

The intention of this paper explicitly brings out that the entire issue of reducing violence against SCs is not simply one of effectively administering and implementing the Act, but involves massive change and transformation of SC/ST Act with the perspective of victims and witnesses rights, with the social reality in mind, sheered in the social legacy of India. Delay in trial of atrocities amounts to an encouragement for the commission of more atrocities with virtual impunity. Punishment with deterrent rapidity should follow each and every one of the crimes under this Act which are intended to cow down a social category of people subjected since long, and still being subjected, to exploitation, deprivation and humiliating discriminations, and which crimes are resorted to whenever, with rising awareness of their rights, they raise just demands regarding land, wages, women's dignity etc.

On the verge of 20th year of the Act there is a need felt to **critically review the performance of the Act**. On the other side, apart from the existing provisions there is a need to understand the **changing nature of discrimination and to recognize the victims and witnesses rights** from the stage of complaint upto the level of Judiciary for speedy trial as a right of victims and witnesses.

This set of amendments is suggested for **speeding up trials** to the point where atrocities against Scheduled Castes and Scheduled Tribes are promptly visited by punishment with deterrent rapidity; **this set of amendments along with the amendment already proposed by the concerned Ministries and Commissions are essential and indispensable.**

Thus, having positioned and placing this paper before you all, organizations and experts, **to deliver your valuable suggestions for the amendments** under the SC/ST (POA) Act, so that judicious amendments in the Act can be brought to make it more binding and strong. This is critical to address for strengthening Act and Rules for which , we need **to build up a strong strategy for launching a Campaign at the National Level** and **advocacy strategies** for the judicious amendments under the SC/ST (POA) ACT.

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
Recommendation related to Offences not covered by the Act					
<p>1. 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 up to seven years with fine:</p> <ol style="list-style-type: none"> 1. Social boycott 2. Economic boycott 3. Social blackmail 4. Economic blackmail <p>2. Amendment to 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.</p>	<p>1. Delete entire Sec 3(l)(xii) and incorporate it under Section 3(2) as under ;</p> <p>(i)-Whoever 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.</p> <p>(ii) – is convicted of mass rape and mass murder of SC/ST persons shall be punishable with life imprisonment which may extend to death sentence.</p> <p>(iii)- commits offences u/s 339 to 337 under I.P.C against SC/ST persons shall be punishable with twice the fine and punishment provided under the I.P.C.</p> <p>2. Renumber the following Sections as</p> <ul style="list-style-type: none"> • 3(l) (xiii) as 3(l)(xii) • 3(1) (xiv) as 3(l) (xiii) • 3(1) (xv) as Secs. 3(1) (xiv) <p>3. Add new Sections</p> <ul style="list-style-type: none"> • 3(l)(xv)- Blackmails SC/ST persons • 3(l)(xvi)- Boycotts or supports the boycott of 			<p>1. Amend Section 3(1) (x) - Delete the words "with intent to humiliate". 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".</p> <p>2. Amend 3(1)(xi)- Delete the words "with the intent to dishonour or outrage her modesty", The amended clause should be read as follows: "Assaults or uses force to any woman belonging to Scheduled Caste or Scheduled Tribe".</p> <p>3. Amend Sec 3(2)(iii)- Delete the expressions "intending to cause or knowing it to be likely that he will thereby cause damage" The amended clause should be read as</p>	<p>1. Death Sentence proposed by SC Commission under the new sub section 3(2) (ii) – (See SC Commission recommendation in 3rd Column.)</p> <p>2. Mandatory death sentence under section 3(2) proposed by - P.S.Krishnan (see Column 2 of recommendations by NCDHR/PCAD). Section 4 - Inclusion of all officers for liability for Punishment. – (See Column 2</p>

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
	<p>SC/ST persons</p> <p>4. Amend Sec 4 - 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'. The amended clause should be read as follows:</p> <p>"Whoever, being a public servant 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 two years".</p>			<p>follows:</p> <p>"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..."</p> <p>4. Amend Sec 3(2)(iv)-Delete the expressions, "intending to cause or knowing it to be likely" The amended clause should be read as follows:</p> <p>"Whoever commits mischief by fire or any explosive substance he will, thereby, cause destruction of any building which is ordinarily used as..."</p> <p>5. 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</p>	<p>of amendments by SC Commission)</p>

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
				Nation and be punishable with rigorous imprisonment for a term of 3 years"	
Recommendations to ensure registration of Case					
<p>1. Amend Sec 3(2) (v) - 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".</p> <p>2. Amend Sec 3(1(viii)) -add the word counter cases filed against the victim and read the sub section as follows; "institutes false or <i>counter cases</i>, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe"</p> <p>Addition of New Chapter - AS Chapter III: Victims and Witnesses Rights</p> <ul style="list-style-type: none"> Your right if you report a crime to the police 	<p>1. In case the office-in charge 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 charge sheet is submitted before the court, appropriate action under the Act or departmental action as the case may be, should be taken against the officer in charge of police station for not registering the case in time. (National SC/ST Commission Report 1998-99)</p> <p>Amend Sec - 4</p> <p>1. Sub Sec. (1) in Section 4 to be added-Abettors of offences are equally punishable, as provided under this Act. The amended section to read as follows.</p> <p>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. (1)- Abettors of offences are equally punishable, as provided under this Act.</p>	<p>1. State Governments may notify a lady officer from among the staff posted in each block, such as the Social Welfare Officer or Women & Child Development Officer to entertain complaints 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 (NHRC 2002).</p> <p>1. Registering FIR Under PCRA (Protection of Civil Rights Act), 1955</p> <p>"This act attracts lenient punishment as</p>	<p>1. [to ensure that] complaints are duly registered by police authorities [No. 11020/1/98-PCR - 26/03/02]</p> <p>2. Ensuring that meticulously documented FIR is invariably registered by the police station [No. 11012/3/2004.PC R (Desk) - 28/12/04]</p> <p>3. Suitable Departmental action may be initiated against a police officer in case he or she does not register the FIR. Further, in case the police officer does not belong to SC ST, appropriate action may be initiated under section four of the Act [No. 11011/8/2006-PCR (Desk) - 14/03/06]</p> <p>4. The time</p>	<p>Amend Section 3(1) (x) - Delete the words "with intent to humiliate". 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".</p> <p>Setting up of Special Police Stations for Dalits</p>	<p>Setting up of Special Police Stations for Dalits</p>

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>(Mandatory Registration of the complaint and Right to information report within a maximum time of 24 hours).</p> <ul style="list-style-type: none"> • Speedy investigation • Filing of Charge Sheet in time • Right to Speedy trial in Special Courts- Direct communication to the victim. • Choice of Public Prosecutor. • Right to Protection of victims and witnesses- • Right to Compensation , Relief and Rehabilitation and Reparation • Access to all legal documents – FIR , Medical Reports , Post Mortem Report, Charge Sheet, • Right to know the progress of the case – Trial dates , final disposition of the case, • Right to Appeal to the monitoring bodies /authorities • Right to privacy from Media. 		<p>compared to SC/ ST(PoA) 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 SC/ ST (PoA) Act, 1989 for the same offence.”</p> <p>[Report by K.B .Saxena , Page No.118]</p> <p>2. Requiring Explicit Mention of</p>	<p>factor is vital in the lodging of an FIR and inordinate delay may prove detrimental both for effective investigation and prosecution [D.O No. 11012/2/2002-PCR (Desk) 19/09/02]</p> <p>5. It may be ensured that while registering FIR, the concerned Police Officer should not insist for production of the caste certificate by the victim of an offence of atrocity [No. 11011/8/2006-PCR (Desk) – 14/03/06]</p> <p>6. Ensuring that FIR is invariably registered by the Police Station wherever and whenever a complaint of atrocity is received by it. Further, the FIR should be meticulously documented.</p> <p>[Ministry of Home Affairs- No.24024/9/2004 -SC/ST Cell –</p>		

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
		<p align="center">Abuse by Caste Name for All Atrocities</p> <p>“Police are not registering many cases under the SC/ST (PoA) 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”.</p>	03/02/05]		

Recommendations on delay in investigation and filing charge sheet

<p>1. Delete the words “Appointed by..... “in Rule 7(1) of the Rules 1995 . The new amended Rule to read as follows Rule 7(1) - an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy</p>	<p>1. Amend Rule 7 (2) - At the end add: ‘and trials be completed within three months’ and read as follows. “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</p>		<p>1. The time factor is vital in the lodging of an FIR and inordinate delay may prove detrimental both for effective investigation and prosecution [D.O No.</p>	<p>1. Rule 7(1) - To include Inspector of Police and officer of the above rank for the investigation 2. Special Investigation cells may be created for the speedy trial.</p>	<p>1. Rule 7(1) - To include Inspector of Police and officer of the above rank for the investigation- (Punnaih Commission</p>
--	--	--	--	--	--

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>Superintendent of Police. The investigating officer shall be appointed by the State Government/ Director-General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.</p> <p>2. Delete the words "Appointed by....." in Rule 7(2) of the Rules 1995 and forward the report with in 7 days to the DGP.</p> <p>"The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and forward the report with in 7 days to the Director-General of Police of the State Government."</p> <p>3. Amend Rule 12 (3) and specify the time limit in Rule 12(3)</p> <p>Rule 12. Measures to be taken by the District Administration-</p> <p>(3) The Superintendent of Police, after spot inspection, shall immediately appoint an investigating officer and deploy such police force in the area and take such</p>	<p>report to the SP who in turn will immediately forward the report to the DGP and trials be completed within three months.</p> <p>3. 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. (SC/ST Commission Report 1998-99)</p> <p>1. Legal opinion, higher officials' approval are not needed in all cases. If needed, time limit must be there, the persons involved must be held responsible accountable for the delay.</p> <p>2. Delay in getting approval from higher authority.</p> <p>3. No corroboration between the statements collected and charge sheet</p> <p>4. Deleting of Sections of SC/ST POA Act in charge sheet</p> <p>5. Depending on legal opinion to finalize</p> <p>6. No mechanism in judiciary to monitor filing of charge sheet</p> <p>7. Charges are framed without looking at the related corroboration (corroboration with charge sheet and FIR charges are framing)</p> <p>8. Outsourcing preparation of charge sheet</p>		<p>11012/2/2002 -PCR (Desk) 19/09/02]</p> <p>2. Suitable Departmental action may be initiated against a police officer in case he or she does not register the FIR. Further, in case the police officer does not belong to SC ST, appropriate action may be initiated under section four of the Act [No. 11011/8/2006 -PCR (Desk) - 14/03/06]</p> <p>3. You are kindly requested [to ensure that] complaints are duly registered by police authorities [No. 11020/1/98-PCR - 26/03/02]</p>		<p>)</p> <p>2. Special Investigation cells may be created for the speedy trial.(Punnaih Commission)</p>

Annexure 1: Recommendations by Commissions /Organizations					
NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
other preventive measures as he may deem proper and necessary.					
Recommendation to ensure speedy trial					
<p>Addition Proposed as Section.14 A. - Cognizance of the offence by Special Courts -“(1) Subject to the provisions of this Chapter, any Exclusive Special Court empowered in this behalf to inquire into and try, may take cognizance of any offence –</p> <p>a. upon receiving a complaint of facts which constitutes such offences;</p> <p>b. upon a police report of such facts;</p> <p>c. upon information received from any person other than a police officer, or upon his knowledge, that such offence has been committed.</p> <p>Addition of new Section 15(A)-</p> <p>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.</p> <p>2. The exclusive Special Courts, and their judges,</p>	<p>1. Amend Section 14- 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’ as follows.</p> <p>Sec. 14. – Special Court .- 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, create for each district a Court of Session to be a special court to try the offences under this Act.</p> <p>2. Sec.24 to be added-All offences under this Act are cognizable and subject to summary trial.</p> <p>3. Amend Rule 7(2) - At the end add: ‘and trials be completed within three months’ and read as follows.</p> <p>“Rule 7(2) The investigating officer so appointed under sub-rule (1) shall complete the</p>	<p>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 Ganguli Ashok and others V/s State of Andhra Pradesh 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- (NHRC 2002).</p>			

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>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.</p> <p>3. The posts of Judges, Special Investigating Officers and Special Public Prosecutors shall never be kept vacant. 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.</p> <p>Add Sub Rule 5 under Rule 15 - Victim to have a prosecutor of his own choice.</p> <p>Addition of New Section - Trial to be completed with in 90 Days on top priority basis.</p>	<p>investigation on top priority within thirty days and submit a report to the SP who in turn will immediately forward the report to the DGP and trials be completed within three months</p>				
Recommendations for amendment based on Grounds of Acquittals					

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>1. Amendment to S. 3(2)(V) : 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" and read as follows</p> <p>"commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property belonging to a member of a Scheduled Caste or a Scheduled Tribe shall be punishable with imprisonment for life and with fine"</p> <p>2. Amendment Sec 3(1)(x) - Delete the words " with in public View " and read as follows</p> <p>"insults or intimidates humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place"</p>				<p>1. Amend Section 3(1)(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"".</p> <p>2. Amend 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".</p> <p>3. Amend Section 3.</p>	

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
				<p>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:</p> <p>"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..."</p> <p>4. Amend 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</p>	

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
				<p>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."</p>	
Recommendations to strengthen Monitoring mechanisms in the Act					

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>1. Amend Section 21 (3) - and bring a National Level Monitoring Body which is to be headed by Home Ministry.</p> <p>2. Amend Rule 9 -</p> <p>a) and appoint a exclusive Nodal officer accountable to state vigilance monitoring committees</p> <p>b) bring Special Cells and Special Officers under the purview of Nodal Officers.</p> <p>c) Review under Rule 7(3) to be exclusively reviewed by Nodal Officers</p> <p>3. Setting up a Separate State and National Level Authority for Protection - Consisting of different members from Media, NGOs etc.</p>					
Recommendations on Relief and Rehabilitation					

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>Amendment to Rule 21 (2) under (iii) the following four sub-paras may be added:</p> <p>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.</p> <p>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</p>				<ol style="list-style-type: none"> 1. 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. 2. 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. 3. 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 	

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
<p>village/urban locality in the same manner and to the same extent as mentioned in Para 10,. (1) above.</p> <p>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 organization 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 organizations should be authorized and mandaterily required making 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.</p> <p>iv) Monetary compensation</p>				<p>immediate cash relief to the victims without insisting for filing of charge sheet.</p>	

Annexure 1: Recommendations by Commissions /Organizations

NCDHR/Sakshi/PCAD/ other Orgs and Experts	SC Commission	NHRC	Advisories	Punnaih Commission	Debatable Matters
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.					



The Coalition explicitly brings out that the entire issue of reducing violence against SCs and STs is not simply one of effectively administering and implementing the Act, but involves massive change and transformation of SC/ST Act with the perspective of victims and witnesses rights, with the social reality in mind, sheered in the social legacy of India. Delay in trial of atrocities amounts to an encouragement for the commission of more atrocities with virtual impunity. Punishment with deterrent rapidity should follow each and every one of the crimes under this Act which are intended to cow down a social category of people subjected since long, and still being subjected, to exploitation, deprivation and humiliating discriminations, and which crimes are resorted to whenever, with rising awareness of their rights, they raise just demands regarding land, wages, women's dignity etc.

On the verge of 20th year of the Act there is a need **felt** to **critically review the performance of the Act**. On the other side, apart from the existing provisions there is a need to understand the **changing nature of discrimination and to recognize the victims and witnesses rights** from the stage of complaint upto the level of Judiciary for speedy trial as a right of victims and witnesses.

This set of amendments is suggested for **speeding up trials** to the point where atrocities against Scheduled Castes and Scheduled Tribes are promptly visited by punishment with deterrent rapidity; **this set of amendments along with the amendment already proposed by the concerned Ministries and Commissions are essential and indispensable.**

Thus, having positioned and placing this paper before you all, organizations and experts, **to deliver your valuable suggestions for the amendments** under the SC/ST (POA) Act, so that judicious amendments in the Act can be brought to make it more binding and strong. This is critical to address for strengthening Act and Rules for which , we need **to build up a strong strategy for launching a Campaign at the National Level and advocacy strategies** for the judicious amendments under the SC/ST (POA) ACT.

