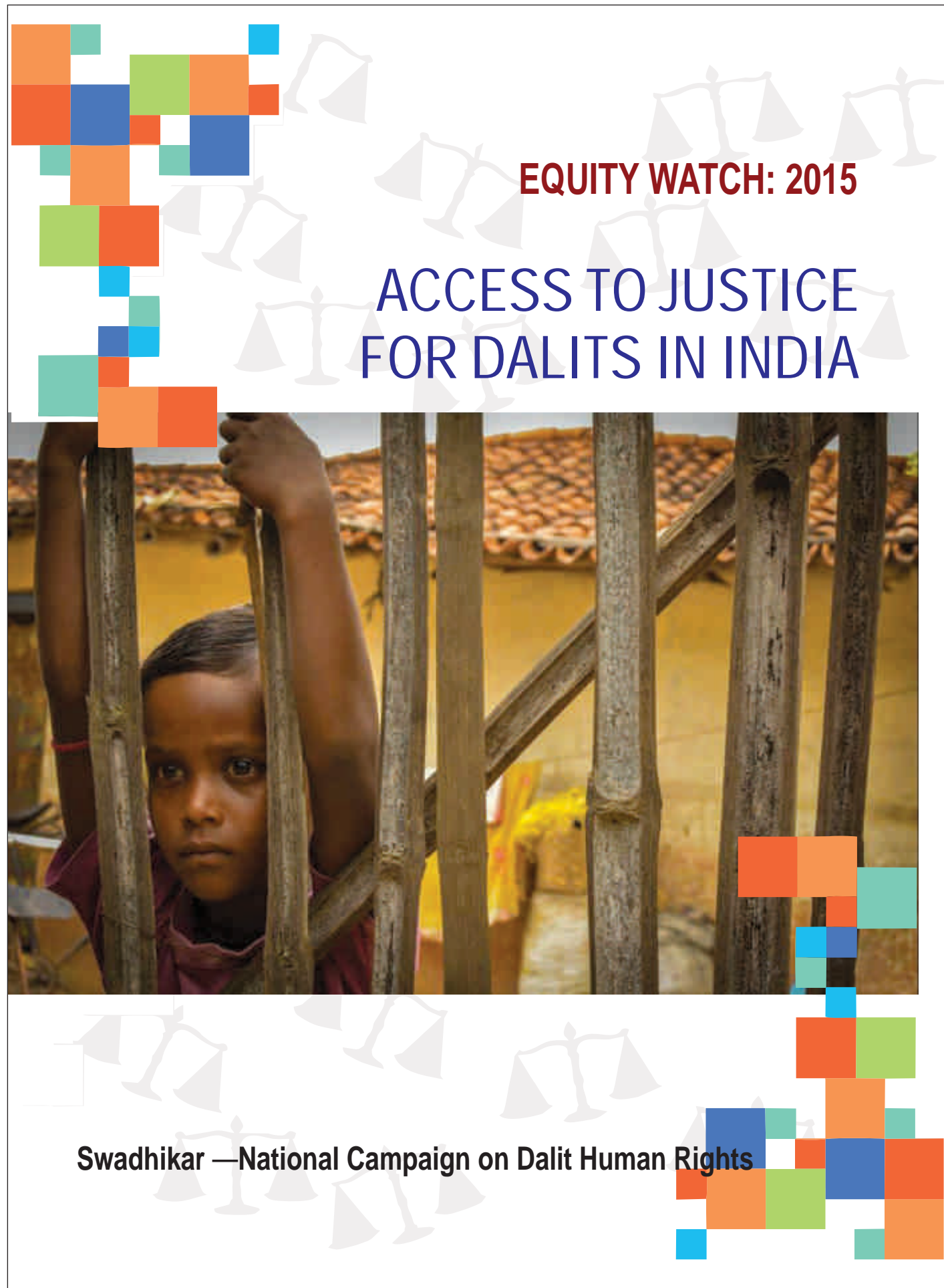




EQUITY WATCH 2015 ACCESS TO JUSTICE FOR DALITS IN INDIA



EQUITY WATCH, 2015

ACCESS TO JUSTICE FOR DALITS IN INDIA



**Swadhikar —National Dalit Movement for Justice
National Campaign for Dalit Human Rights (NCDHR)**

EQUITY WATCH 2015

ACCESS TO JUSTICE FOR DALITS IN INDIA



Swadhikar - National Campaign on Dalit Human Rights, 2015

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Glossary & Abbreviation

Atrocity	Non-legal term that, according to the Ministry of Home Affairs, Government of India, implies offences under the Indian Penal Code perpetrated against scheduled castes and scheduled tribes by those not belonging to either community, where caste consideration is in fact the root cause of the crime even though caste consciousness may not be the immediate motive
CBD	Caste based discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women 1979
Crore	10,000,000
CrPC	Criminal Procedure Code 1973
Dalit	Literally meaning 'broken people', a term employed by human rights activists to denote 'untouchables' or scheduled castes, the lowest group in the ritualised social hierarchy of the caste system, facing widespread discrimination on the basis of work and descent
Devadasi/ Jogini	Woman married to a temple deity, temple prostitute
Dominant caste/s	Social groups with ascribed ritual status, and economic and political power, exercising dominance over Dalits in particular. Invariably the term refers to every caste, except for scheduled castes and tribes, who are dominant vis-à-vis Dalits
FIR	First Information Report filed by police regarding an offence
ICCPR	International Covenant on Civil and Political Rights 1966
ICERD	Convention on the Elimination of All Forms of Racial Discrimination 1965
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966

IPC	Indian Penal Code 1860
Lakh	100,000
Lok Sabha	Council of the people, the Lower House of the Indian Parliament analogous to the House of Commons in the British Parliament
NCSC	National Commission for Scheduled Castes
NHRC	National Human Rights Commission
NGO	Non-governmental organization
Panchayat	Local governance institution
PCR Act	Protection of Civil Rights Act 1955
Rajya Sabha	Council of states, the Upper House of the Indian Parliament, analogous to the House of Lords in the British Parliament.
Reservations	Quotas for scheduled castes allowing for increased representation in education, government jobs and political bodies
Scheduled caste (SC)	Official terminology used to connote those communities listed by the Government of India as those castes characterized by extreme social, educational and economic backwardness arising out of the traditional practice of untouchability, for the purposes of accessing special development, protection and affirmative action schemes
SCSP	Scheduled Castes Sub Plan
UT	Union Territory

PREFACE

The increasing atrocities against SCs in the country have been alarming, and at the same time the accessing of justice for SCs have become difficult at every stage: At the time of lodging complaint, at the time of registration of FIR, at the time of arrest of the accused, when the police officials investigate the case, at the time of Charge sheet, at the time of trial in the Court and at the stage of Judgment.

Over the years from our experience, we have observed that due to increasing assertion by SCs on their Rights and entitlements have resulted in further increase in atrocities against them. Whenever they wanted to access legal services and natural resources (land, water, livelihood, etc), made claim to occupation of their choice, just and fair wages, participation in cultural life of the community, demanded their right to dignity and self respect, they have been subjugated to atrocities. These have ranged from verbal abuse, physical assault, mass attacks, socio and economic boycotts, torture, custodial violence, rape and gang rapes and even mass murders.

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

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

This report looks at the data on atrocities against SCs in recent years, the gaps in the enforcement authorities and the judiciary and in the process where civil society organizations can intervene among various recommendations. Hence, this report will help in creating a platform to engage with concerned officials (law enforcement and judiciary) as well as policy makers in proper implementation of the PoA Act.

I appreciate and acknowledge the efforts put in by Ms. Nalori Dhammei Chakma in writing,

compiling and reviewing this report. I sincerely acknowledge the support given by Ms. Jayshree P. Mangubhai (Senior Programme Officer-Policy and Advocacy, South Asia, Christian Aid) for editing this report and see the report comes to a finalization. The support given by Mr. Rahul Singh (National Programme Coordinator- National Dalit Movement for Justice) and Mr. Kamalchand Kispotta (Policy & Advocacy officer- National Dalit Movement for Justice) on this report is appreciated. A special thanks to Ms. Lee Macqueen Paul for editing the report and to Shikha Bhattacharjee for the support given on the Universal Periodic Review (UPR) chapter is highly appreciated.

Dr. V.A Ramesh Nathan

General Secretary

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EXECUTIVE SUMMARY

This report “Access to Justice for Dalits in India” analyses the trends in implementation of the PoA Act and Rules in terms of the functioning of existing law enforcement, judicial and administrative mechanisms, compliance with mandatory provisions of the law, and the gaps. Based on analysis of the latest data from 2011 to 2014, it proposes recommendations to the national and state governments, police and the judiciary towards the urgent need for enactment of the SC/ST (Prevention of Atrocities) Amendment Bill pending in the Parliament. These recommendations, if adopted, would not only aid in reducing the crime rate against SCs by preventing caste-based atrocities, but also help deliver justice in atrocity cases pending trial.

It has been 26 years since the Indian Parliament enacted the SC/ST (Prevention of Atrocities) Act 1989 (herein PoA Act), followed by the SC/ST (Prevention of Atrocities) Rules in 1995, to put an end to targeted caste and ethnicity based crimes against Dalits and Adivasis by non-Dalits and non-Adivasis. Prior to the PoA Act, the provisions of the Protection of Civil Rights Act 1955 (PCR Act) and the Indian Penal Code 1860 (IPC) existed, which were found to be inadequate in deterring crimes of this nature. The PoA Act introduced a new category of offences - “atrocities”, committed against a SC or ST by a person/s not belonging to a SC or ST community, and instituted special procedures to prosecute these offences, mandated the designation of special courts for speedily trying these cases, and imposed more stringent punishment on those found guilty of these crimes.

Despite these legal measures, crimes against SCs and STs have only increased with the passing time. Experiences show that violence is unleashed on Dalits by dominant caste persons/communities either to reinforce socio-economic and power inequalities or to suppress their assertion and claims to resources and opportunities for socio-economic development, such as land, fair minimum wages, education, and so on. Violence is used as a tool to subjugate them and crush any form of resistance to protect and assert their dignity because as per the caste system, they were meant to only serve the communities placed on the so-called higher rungs of the caste hierarchy.

Atrocities that were identified and recognized in the PoA Act in 1989 have not only grown in number over time, but with the neo-liberal scenario and rapidly changing economic landscape, caste induced vulnerabilities and marginalisation have escalated with new manifestations of caste hatred and atrocities against Dalits. These newer forms of atrocities and offences are related to assault on dignity; atrocities against women; access and ownership over land and housing; exercise of franchise; and ‘untouchability’ in the public sphere. These newer offences are brought in as offences in the PoA Act Amendment Bill 2014, which is pending in the Parliament.

Status of Atrocities against SCs

As per National Crime Records Bureau (NCRB) data, a total of 1,88,991 crimes against SCs were registered under different laws from

2011 to 2014. The year 2014 witnessed an increase by 19.4% from the previous year, in terms of crimes committed against SCs under the crime heads of 'Dacoity', 'rape', 'kidnapping & abduction' and 'hurt' in general, and 'SC/ST (Prevention of Atrocities) Act' specifically. Uttar Pradesh, sharing 20.5% of the SC population, accounted for 17.2% of the total such cases reported in the country, followed by Rajasthan (17.1%), Bihar (16.8%), Madhya Pradesh (8.8%) and Andhra Pradesh (8.7%).

Response of the Police

NCRB data revealed that of the total 188,991 crimes against SCs registered under different laws in 2014, 48.36% (91,411 cases) were registered under the IPC and other legal provisions, and 21.3% (40,300 cases) under the PoA Act. Of the 40,300 cases registered under the PoA Act, the rate of pendency in investigation of these cases was 25%. Consequently, charge sheets were filed for 72% of cases (29,327 cases).

The implications for not registering cases under appropriate sections of the PoA Act or registration under other laws are serious, and include lesser punishment for perpetrators by diluting the seriousness of the case; loss of appropriate compensation if case is registered under less serious sections; and investigation by police officers below the rank of Deputy Superintendent of Police (DSP). For instance, in the state of Rajasthan, it was observed that the investigation of an atrocity case was practically conducted by the Reader/Constable under the DSP. From the 14 cases examined in one district of Tamil Nadu (Villupuram), it was found that a majority of cases did not have the DSP as the Investigating Officer.

Information from CSO monitoring atrocity cases and DHRDs continue to reveal a number of ways in which police ensure the non-

registration of atrocity cases. These include neglect and disinterest towards SC/ST atrocity victims; discouraging SCs/STs from registering cases and instead encouraging compromises with the accused; threatening victims into silence or even inflicting violence on victims; refusing to register cases under the PoA Act to avoid punitive measures against the perpetrators of atrocities; foisting false cases against victims at the behest of the perpetrators of atrocities to push through a settlement; accepting bribes from the perpetrators to drop the victim's case; declaring the perpetrator of atrocities innocent without following due legal process; and delaying their arrival to the scene of atrocity, which contributes to weakening the evidence trail.

Response of the Judiciary

Till 2013, only 12 States/Union Territories (UTs) out of the total 36 states and 7 UTs have set up a total of 190 Exclusive Special Courts to try cases under the PoA Act. Even in these 12 states/UTs, the number of atrocity-prone districts continues to outstrip the number of available courts. According to NCRB data, at the end of 2014, 85.5% cases under SC/ST PoA Act of crimes against SCs were pending trial across the country. Convictions were awarded in only 28.4% of cases (4,716 cases) in 2014 that completed trial. The high pendency rate for cases under trial can be attributed to the inadequate number of Special Courts and Special Public Prosecutors (SPPs); delayed investigation and registration of cases; no day-to-day trial; and overburdened designated courts which also try non-atrocity cases as well. Moreover, a deep rooted caste bias and failure to recognise the importance of the POA Act as a social protection law prevents these atrocity cases from being treated on a priority basis. The phenomenon of high rates of acquittals in cases of crimes against SCs is also disturbing; 2014

ended with 71.6% acquittals of atrocity cases.

Status of Accountability and Mandatory Mechanisms

The various mandatory and accountability mechanisms to monitor the implementation of the POA Act and prevent atrocities, such as periodic reviews of cases and the performance of SPPs; reviews by the SC/ST Protection Cell, Nodal Officer and State and District Level Vigilance Monitoring Committees (SVMCs and DVMCs), etc. in most of the states are more widely flouted than adhered to. Even though SVMCs and DVMCs have been constituted in a number of states, for example, in the absence of regular meetings no follow up action emerges, let alone the plans of action mandated by the PoA Rules. Furthermore, victims and witnesses of atrocities are not informed about their rights and entitlements to travel and daily allowances to enable them to attend court hearings. The states are mandated by the PoA Act to declare atrocity prone areas in order for officials to take preventive measures to stop the occurrence of atrocities. However, according to the MSJE Annual Report 2013 on the Status of Implementation of the PoA Act, only ten states had identified 171 districts as atrocity-prone by 2013. Such is the appalling state of affairs and level of poor coordination between the enforcement authorities and the victims/witnesses. While according to the MSJE, SC/ST Protection Cells have been instituted and Nodal Officers and Special Officers appointed in most states/UTs, no information is publicly available about their functioning, which raises doubts about the level of outreach they have to SC and ST communities.

Financial Commitment to Ending Atrocities

Budget allocations and expenditures serve

as indications of the financial commitment to the effective implementation of laws such as the POA Act. The Special Central Assistance (SCA), initially introduced for implementing the PCR Act in FY 1974-75, was extended to cover the PoA Act in FY 1990-91. The amounts released by the Union Government to the State/UT Governments during the 11th Five Year Plan (2007- 2012) totalled Rs. 178 Crores. With the amount increasing during each financial year, however, allocations in the 12th Five Year Plan (2012 - 2017), though initially witnessing an increase for the FY 2012-13 to Rs. 100 crore, then saw a consistent downfall in allocations to Rs. 90 Crores from FY 2013-14 onwards. Moreover, a sample of SCA expenditures in the FY 2013-14, the latest year for which actual expenditure data is available, in three major states – Andhra Pradesh, Haryana and Madhya Pradesh – reveals consistently lesser amounts of SCA spent than budgeted. These trends of lessening allocations to the SCA, as well as expenditures lower than the available budgets for the SCA indicate a serious concern regarding the commitment to the issue of protection of SCs in the country. This is especially when seen in light of the data evidencing the inadequate number of Exclusive Special Courts and SPPs, inadequate relief and compensation paid to victims of atrocities, few awareness generation activities for SCs and STs on the PoA Act, and absence of effective, functioning accountability and mandatory mechanisms established across the country.

Why the POA Act Amendments Bill 2014 is so necessary

Adequate official data and official pronouncements on the implementation of the POA Act and Rules exist to showcase that the law is not matching up to the protection needs of Dalit and Adivasi citizens of the country.

This report highlights the most recent data and trends in this regard. India's commitment to specific international treaties (which are legally binding in nature) for ensuring the protection of civil and political rights of discriminated communities, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on Elimination of Racial Discrimination (CERD), is also undermined by weak implementation of this targeted legal instrument, the PoA Act.

Amidst the implementation and gaps assessment when it comes to ensuring access to justice for Dalits, Dalit rights organisations and constitutional bodies such as the NCSC have also demonstrated certain approaches and replicable models of interventions which promise justice to the victims of caste-based atrocities. These good practices are worth being emulated and implemented by the government and civil society.

Now that 26 years have passed since the PoA Act was enacted, reviews of the implementation of the Act and its Rules have showed a number of lacunae in the various provisions of the Act and Rules and within the Act itself. The amendments proposed in the Parliament seeks to benefit several issues which in past remained difficult for the majority of victims and witnesses, such as non-registration of cases; delays in investigation, arrests and delayed filing of charge-sheets; and delays in trial. It will also benefit Dalit victims now to register their complaints for newer forms of atrocities known to be occurring in recent years, which currently are not covered by the Act, including some of the IPC offences committed frequently. In the proposed Amendments public accountability provisions are outlined in greater detail and public servants if harassing the victims and witnesses can be penalized in the same special courts through administrative recommenda-

tions. Specifically the amendments will benefit in completion of the trial with Exclusive Special Courts and Exclusive Public Prosecutors within a period of 2 months. The amendments will benefit in improving conviction rate and low acquittal rate under the PoA Act.

The passing of the PoA Amendments Bill in both the houses of the Parliament will signal the political commitment of the Indian Government to ensuring the right to life and security of life of SC and ST communities.

Key Recommendations

The following recommendations to the Indian State, the judiciary, police and national institutions, if accepted, would greatly aid in ensuring a decrease in atrocities and increased access to justice by SC and ST victims of atrocities. Many of these recommendations find mention in the SC/ST (Prevention of Atrocities) Amendment Bill 2014.

- (i) Provide a **chapter on the rights of victims and witnesses**, which will include a range of rights, viz., the right to protection from intimidation and harassment; right to information on the status of investigation and charge sheet preparation; the right to information on relief and rehabilitation; entitlement to travel and maintenance allowances, to attend trial hearings; the right to a pre-trial visit to the court to become familiar with the legal process; the right to be informed in advance of the dates and places of trial; the right to an adequate briefing on the case and preparation for trial, including information on criminal justice procedures; the right to information about legal aid; the right to an experienced SPP, even a SPP of the victim's choice.
- (ii) Include a new **chapter on 'National Monitoring and Enforcement Authority' in the Act**, defining the roles and

responsibilities of this Authority in order to ensure effective coordination by State Governments and other state agencies as prescribed by the Act, and to ensure enforcement of the provisions of the Act.

(iii) **Better infrastructural facilities, including quality forensic labs,** should be introduced and good coordination established between the police and various evidentiary departments to facilitate the quick delivery of the required reports, including the charge sheet, which can be then filed within 30 days as per section 7(2) PoA Rules.

(iv) The **monitoring committees under the Act should be further strengthened** to function effectively with regard to their mandatory responsibilities of monitoring the investigation and prosecution of cases.

(v) **Make specific amendments to the clauses relating to enforcement authorities** by amending section 4 of the PoA Act on negligence of official duties by including the following nature of dereliction of duties: a) not reading out to the informant/s any oral complaint which has been reduced to writing by the Officer In-Charge of the police station before taking the signature of the informant/s; b) misleading the complainant to change the content of the complaint; c) not registering FIR at all; d) not registering FIR under the POA Act; e) not registering the FIR under appropriate sections of the Act; f) investigating officer not recording the statement of the victims or witnesses; g) investigating officer delays the investigation for more than 30 days; h) Impolite treatment by an officer or staff of the police station towards the complainant, informant and any social worker helping the victim in any manner.

(vi) For all cases filed under the PoA Act, ensure that the Investigating Officer is of a rank no less than the Deputy Superintendent of Police, in accordance with Rule 7(1) PoA Rules.

(vii) Sensitize and educate all state/UT police departments on the PoA Act, Human Rights Act 1993 and human rights standards set forth in ICERD, ICCPR, ICESCR and CEDAW.

(viii) **Strictly enforce the Advisories of the Ministry of Home Affairs for curbing crimes against SCs/STs, especially as regards to:** (a) Minimizing the delays in the investigation of cases of atrocities and improving the quality of police investigations; (b) Regular training programmes for law enforcement machinery at all levels and other functionaries of the criminal justice system (such as judges and SPPs) on the PoA Act and PCR Act, mandatory rules/measures for their effective enforcement, as well as sensitization on caste-based crimes against SCs/STs and the need for such social laws. (c) Mandatory disclosure of SVMC and DVMC meeting minutes within a stipulated timeframe on the state government's website.

(ix) **Recommendations to the National and State Governance Institutions:** (a) Ensure the regularity of annual reports by the National Commission for Scheduled Castes so that they can be tabled in the Houses of Parliament/ Assemblies on a regular basis and released in the public domain. (b) Ensure that the Central Government places each year on the table of each House of Parliament a report on the measures taken by the Union government and State/UT governments in implementing the Act, including an assessment of the functioning

of these measures, in accordance with section 21(4).

- (x) Budget Allocation & Expenditure for Enforcement of the Act:** (a) Ensure the provision of Special Central Assistance (SCA) in the Scheduled Caste Sub-Plan (SCSP), such as by legislating the SCSP into an Act, which defines clear entitlements for SCs/STs and has necessary redress mechanisms to ensure that all duty bearers implement the SCSP and SCA effectively. (b) The allocation of SCA from the Central

Government should be on the basis of the SC/ST population in that state and the rate of crimes in the previous year. (c) All state governments should constitute SCA Monitoring Committees, wherein SCs/STs should be invited to be the members of these Committees and to take active part in monitoring the SCA expenditure at the State, Department/Ministry and district levels, with necessary powers to intervene, wherever necessary.

INTRODUCTION

Article 17 of the Constitution of India banned the practice of “untouchability” in any form. In 1955, Parliament enacted the Untouchability Offences Act to criminalize the practice of “untouchability” and any form of social disability arising from it. This Act was amended and re-named the Protection of Civil Rights Act (PCR Act) in 1976. In the following years, however, the provisions of the PCR Act and Indian Penal Code (IPC) were found to be inadequate in deterring crimes against members of the scheduled castes (SCs) and scheduled tribes (STs).¹ As a result, the Indian Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 (herein referred to as PoA Act). The PoA Act introduced a new category of offences, i.e. “atrocities” committed against a SC or ST by a person/s not belonging to a SC or ST community, and instituted special procedures for prosecuting these offences. It mandated the designation of special courts for trying cases of atrocities and imposed more stringent punishment to those found guilty of caste-based atrocities. Rules to the PoA Act were framed in 1995. While the PoA Act was meant to address the violence and abuse faced by the SCs and STs in India, it has since proved inadequate in living up to this promise.

Problems related to access to justice in India are insidious and have affected the ability of the legal system to respond to caste-based crimes and injustices. Despite stringent provisions of the PoA Act meant to prevent caste based atrocities; offences against SCs have only

increased over the years. Victims and witnesses confront hurdles at every stage of the legal process, from registration, investigation and charge sheeting to the stage of trial. The high rate of pendency of cases and acquittal, and low rate of disposal of cases and conviction act as impediments to justice and call for responses at multiple levels of decision-making. In this regard, major areas of concern are:²

- (a) Certain forms of atrocities, though well documented, are not covered by the PoA Act.
- (b) Several offences under the IPC are also committed frequently against SCs and STs by non SCs and STs, on the ground that the victim was SC or ST. Such offences need to be brought into the ambit of the PoA Act.
- (c) Public accountability provisions under the PoA Act need to be outlined in greater detail and strengthened.
- (d) The following problems as regards implementation of the PoA Act need to be addressed:
 - *Procedural hurdles such as non-registration of cases*
 - *Procedural delays in investigation, arrests and filing charge-sheets*
 - *Delays in trial and low conviction rate*
 - *Procedural delays in providing relief and rehabilitation to victims, and*
 - *Inadequate rate of compensation.*

Realizing that a range of reforms, includ-

ing legal, judicial and institutional, needed to be instituted for dealing with delays and ensuring access to justice, in 2009 members of SC and ST communities, human rights organizations and movements, activists and experts from across the country formed themselves into the **National Coalition for Strengthening SC/ST Prevention of Atrocities Act (NCSPA)**. The Coalition prepared a Position Paper and drafted the necessary **amendments to the POA Act** based on recommendations gathered from consultations with national and state commissions, civil society organizations and experts, alongside the guidelines issued by the Ministry of Social Justice and Empowerment (henceforth, MSJE) and the Ministry of Home Affairs for better enforcement of the Act. Thereafter, the Coalition launched a nationwide campaign to advocate for necessary amendments to the PoA Act.

Intense advocacy and lobbying by the Coalition members over a five-year period saw results when the **Ordinance on PoA Amendments** was assented to by the President of India on 4 March 2014, under the rule of the United Progressive Alliance (UPA) Government. After the May 2014 elections and the formation of the new central government under the National Democratic Alliance (NDA), on 16 July 2014, the POA Amendments Bill was tabled again in Parliament and referred to the Parliamentary Standing Committee on Social Justice and Empowerment. As a result of consistent engagement of the Coalition with the Parliamentary Standing Committee, the Committee came out with its review report on the Amendment Bill and tabled the same in Parliament on 19 December 2014. The Standing Committee report provided the following major recommendations:

1. Setting up Exclusive Special Courts and Exclusive Special Public Prosecutors, and

day-to-day trial of atrocity cases

2. Cognizance of cases for trial by special courts
3. Insertion of new offences as identified
4. Addition of relevant IPC offences as punishable offences
5. Strengthening state accountability by defining the term ‘willful negligence’
6. Expanding the scope of presumption to minimize loopholes in the applicability of the Act, and
7. Inclusion of a new chapter on the “Rights of Victims and Witnesses”.

Additionally, the Standing Committee recommended two new amendments to the PoA Act:

1. Special Courts for women with women judges and women public prosecutors, for trial of cases of atrocities against SC or ST women.
2. Provisions to address false and malicious complaints under the POA Act, since the relevant provisions under the IPC were deemed insufficient.

Presently, the POA Amendments Bill has been passed in the Lok Sabha on 4th August 2015.

Scope of the report

While the PoA Act is for the protection of the civil and political rights of both SCs and STs, this report focuses on reviewing the Act in relation to Dalits (SCs), particularly because notions of “untouchability” and ensuing discrimination in all walks of life have historically accompanied caste identity. Moreover, the cases of atrocities under the PoA Act have been largely those of caste-based atrocities. Nevertheless, the issues associated with ethnicity-based violence are equally worrisome and re-

quire focused study with respect to especially the struggles of STs relating to the protection of ownership rights over land and other natural resources, in order to understand the performance of the PoA Act in their context.

The purpose and objectives of the report

The implementation of the PoA Act is assessed in order to highlight gaps and report good practices towards strengthening access to justice by SCs. The report aims to:

- (i) Promote a greater understanding of the functioning of Police and Judiciary in strengthening the intervention by civil society organisations (herein CSOs), national and state human rights institutions; and other concerned government bodies the implementation of the PoA Act;
- (ii) Provide an overall understanding of the existing national and international standards and mechanisms to protect the civil and political rights of Dalits;
- (iii) Analyze the process of accessing justice through the existing legal mechanisms;
- (iv) Evidence the gaps and status of functioning of these mechanisms, and specifically the lacunae in the implementation of the

POA Act; and

- (v) Develop concrete and practical recommendations for plugging the gaps and strengthening the mechanisms for easier access to justice by victims of caste atrocities.

The report is prepared through desk research and study of primary evidence in the form of case studies and responses to queries obtained under the Right to Information (RTI) Act. The secondary sources of data are largely drawn from (i) National Crime Records Bureau data, 2011 to 2013; (ii) Annual Reports of the MSJE; (iii) Newspaper reports; and (iv) Study done by CSOs.

The report is aimed at evidencing the justification for the enactment of the PoA Act Amendment Bill and accordingly provides the basis for:

- (i) Monitoring and assessing the State's performance in implementing the provisions of the POA Act and Rules.
- (ii) Analyzing the process of accessing justice through POA Act mechanisms
- (iii) Creating a platform to engage with the concerned government authorities (law enforcement and judiciary) and policy makers towards effective implementation of the PoA Act.

¹See PoA Act, Statement of Object and Reasons. The Constitutional terms for Dalits and Adivasis are Scheduled Castes (SC) and Scheduled Tribes (ST) respectively. Both set of terminologies will be used interchangeably in the report.

² See National Coalition for strengthening SC/ST (Prevention of Atrocities) Act, 2010. 20 years of the SC/ST (Prevention of Atrocities) Act: Report Card. New Delhi: NSCSPA; 2012. People's Report on implementation of the SC/ST (Prevention of Atrocities) Act: Report Card. New Delhi: NCSPA



THE WIDER CONTEXT: INDIA'S UNIVERSAL PERIODIC REVIEW

This chapter describes the wider context of Dalit rights in India today, in which caste based discrimination and violence against Dalits and access to justice must be located. India has completed two cycles of the Universal Periodic Review (UPR), a full review of the human rights record of all governments that are members of the United Nations (UN), in 2008 and 2012. Distinct from the treaty review processes, the UPR is an opportunity to reinforce the recommendations made to the government under these reviews by providing countries with recommendations on how to improve their human rights conditions. In particular, the UPR assess how and if members are respecting, protecting and fulfilling their human rights obligations.¹ As such, it is an important tool for periodically assessing progress in favour of Dalit rights in the country.

During India's 2012 review, 10 of 169 recommendations addressed Dalit rights and/or caste-based rights violations. These recommendations were made by a cross-regional group of states: the Czech Republic, Germany, Ghana, the Holy See, Japan, Norway, Thailand and the United States of America (USA). The Government of India, however, accepted only two recommendations focused on equality of treatment and instituting monitoring mechanisms to ensure that objectives of policy initiatives for vulnerable groups are met (Ghana 138.75). Canada, Chile, Denmark, Hungary, Italy, Lux-

embourg and Slovenia asked questions or made observations relating to caste in advance of the review or during interactive sessions. In total, 14 states made that recognized the challenges faced by Dalit communities.²

Thematic discussion of recommendations from India's 2012 UPR Process

I. Dalit Human Rights Defenders (DHRDs)

UPR recommendations

During India's 2012 UPR, the Czech Republic and Norway made recommendations addressing the rights of DHRDs:

- 138.43. Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic).
- 138.68. Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including

Dalits and Adivasis, and right to information activists (Norway).

Status of government action

India's National Human Rights Commission (NHRC) has established *Focal Point for Human Rights Defenders* aimed at providing human rights defenders with 24-hour crisis support. The NHRC has also taken action on cases of atrocities perpetrated against particular DHRDs. For instance, on December 12, 2014, as a follow up to a National People's Tribunal on attacks on DHRDs, the NHRC held a roundtable conference that resulted in registration of DHRD Chandrakant Gaikwad's case by the NHRC. The Commission requested a report on the case from the Superintendent of Police of Pune District within 15 days. There remains, however, a need to take active steps to ensure police accountability for protecting all DHRDs who face retaliation. In cases of abuse, measures are required to ensure access to justice for DHRDs and rehabilitative support for their families.

Situation of Dalit Human Rights Defenders

DHRDs remain at risk of retaliation for defending the rights of marginalized communities. The National Campaign for Dalit Human Rights (NCDHR), National Dalit Movement for Justice (NDMJ) have documented targeting of DHRDs on the basis of their caste, including assaults in public places, torture, illegal detention, harassment, forced disappearances, extra-judicial killings, illegal imprisonment, surveillance, targeting of family members, branding as Naxalites and anti-nationals and implication in false cases.³ In response to an appeal by DHRDs following the murder of fellow DHRD, Chandrakant Gaikwad, UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekagggya, explic-

itly addressed the position of DHRDs in India: "Dalit rights activists strive for the promotion and realization of Dalits' civil, political, economic, social and cultural rights. The range of human rights violation they suffer is appalling."

Recommendations

- Enact a law protecting Dalit and other human rights defenders, in full and meaningful consultation with civil society and in conformity with India's human rights obligations.
- Strengthen the capacity of National and State-level Commissions to protect DHRDs, through measures including but not limited to facilitating fast-track access to protection, access to justice and rehabilitative support for DHRDs and their families.
- Take immediate action to ensure that the Supreme Court judgment on police reform in *Prakash Singh and Others v. Union of India and Others* (2006) is fully implemented in line with international standards, particularly at the state level.

II. Implementation of protective laws and access to justice

UPR Recommendations

During India's 2012 UPR, Germany, the Holy See, Ireland, Thailand and the United States of America made recommendations addressing implementation of protective laws and access to justice for Dalit communities:

- 138.53. Enact comprehensive anti-discrimination legislation and ensure that there are adequate means of redress (Ireland).

- 138.47. Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons (Germany).
- 138.72. Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens (USA);
- 138.118. Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes (Holy See).
- 138.122. Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized, as well as increasing the use of alternative measures to pre-trial detention (Thailand).
- 138.71. Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training (Thailand).
- 138.73. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police

and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan).

Status of government action

Article 17 of India's Constitution abolishes untouchability and the Protection of Civil Rights Act, 1976 (PCR Act) and Rules, 1977 make the practice of untouchability a cognizable and non-compoundable offense warranting enhanced terms of imprisonment, prescribes appointment of prosecutors for these offenses and establishes Special Courts and Committees to assist state governments in implementing anti-untouchability measures. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act) defines criminal, economic, political and property-related offenses committed against Scheduled Castes (SCs) and Scheduled Tribes (STs) as atrocities and designates a system to bring atrocity cases under the jurisdiction of Special Courts. India has taken action to establish Special Courts aimed at streamlining access to justice for Dalit and Adivasi victims of atrocities in each state. At the time of writing, India had established such Special Courts in more than 40% of districts. There is no disaggregated information available regarding state-wise appointment of Special Public Prosecutors or as to the number of cases in with SC victims of atrocities were allowed to engage an advocate of their own choice as stipulated by the SC/ST Prevention of Atrocities Act.

Status of implementation of protective laws and access to justice

Despite these protections, atrocities against Dalit communities persist. In 2013, there were 46,114 cases registered under the POA Act. The number increased to 47,064 in 2014, according to the National Crime Records Bureau (NCRB).

A study in Andhra Pradesh, Jharkhand, Rajasthan, Tamil Nadu and Uttar Pradesh found that Dalit and Adivasi victims of atrocities face significant challenges at each stage of the process of accessing justice, including: barriers to registering complaints, delayed investigations, failure to arrest the accused, lack of understanding of rights and court processes, threats from the accused, pressure to compromise or adjourn cases prior to conclusion and humiliation during trial proceedings. According to India's National Legal Services Authority, in 2011, between April 1 and September 30, only 4% of recipients of legal aid services were from SC communities.⁴ Although the Legal Services Authority Act, 1987 directs Legal Services Authorities (LSAs) to work closely with government agencies and non-governmental organizations to promote legal services to the poor, LSAs are not currently coordinating action with SC Commissions.⁵ According to NCRB data, the percentage of pending cases has increased from 79.9 % in 2011 to 85.3% in 2014.

Recommendations

- Take immediate action to ensure establishment of police stations and Special Courts equipped to respond to crimes under the POA Act in every district in India.
- Direct states to set up sub-division level committees for review of implementation of the POA Act, including relief and rehabilitation of victims, which includes representatives from civil society organizations and Dalit communities.
- Encourage collaboration between LSAs

and SC Commissions at the state and national level to promote access to legal services for Dalit communities.

III. Affirmative action, enjoyment of economic and social rights and monitoring measures

UPR Recommendations

During India's 2012 UPR, Japan and Vietnam made recommendations pertaining to affirmative action and allocation of resources for the enjoyment of economic, social and cultural rights for Dalit communities:

- 138.73. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan).
- 138.130. Provide more resources for the enjoyment of economic and social rights, especially in favor of vulnerable groups like women, children, poor people and minorities (Viet Nam).
- 138.75. Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled tribes and minorities are well achieved (Ghana).
- 138.141. Continue consolidating its programmes and socio-economic measures essential to achieve poverty reduction and

social exclusion to the utmost wellbeing of its people (Venezuela (Bolivarian Republic of)).

Status of government action

The Indian Constitution prohibits discrimination in employment and commits to promoting the economic interests of SCs.⁶ In particular, Article 16(2) allows for 15% reservation for SCs to enable their participation in government services, educational institutions and political bodies. From this mandate, derives India's elaborate quota system for public jobs, places in publicly funded colleges and elected assemblies for communities marginalized on the basis of caste or tribal status.⁷ In addition, section 3(1) (v) PoA Act punishes discrimination in access to employment on the basis of caste, such as wrongfully dispossessing an SC person from their land. Section 4(I), (IV) and (viii) of the PCR Act prohibits interference with the right to access water and other public services on the basis of untouchability. India also has numerous state and national-level social welfare schemes in place, including programmes to provide financial assistance and access to housing, water and sanitation, livelihood development training, legal aid and scholarships.

Status of implementation

India's elaborate quota system has had some measurable impact upon employment of Dalit communities in civil servant positions. While in 1965, Dalits held just 1.6% of senior civil servant positions, this number rose to 11.5% since 2011—far closer to the 16% or so of India's general population represented by Dalit communities.⁸ Despite the presence of social welfare schemes aimed at alleviating poverty and facilitating access to resources, however, due to low literacy levels and systematic caste-based discrimination, Dalits face difficulties in accessing these schemes.

For instance, a 2013 survey of 480 women from Dalit communities who practice manual scavenging⁹ in the Indian states of Bihar, Uttar Pradesh, and Madhya Pradesh, undertaken by Jan Sahas Social Development Society, found: 75% of respondents did not have access to health services and only 4% of respondents were assisted to construct houses under the *Indira Awaas Yojana Scheme*. Despite provisions protecting the right to education for all children in India, in Uttar Pradesh and Bihar, children of 62% of respondents, and in Madhya Pradesh children of 51% of respondents did not go to school.

Recommendations

- Conduct a complete assessment and audit of all current schemes relevant to supporting access to social and economic rights with attention to overcoming existing barriers to access for Dalit communities.
- Ensure that all training programmes are gender sensitive and based upon up-to date market analysis so that training results in sustainable livelihoods, imparts marketable skills, and includes ongoing support to participants until they have secured jobs or established a functioning business.
- Coordinate action to advance social and economic rights for Dalit communities between all concerned ministries and government stakeholders, including but not limited to the Ministries of Social Justice and Empowerment, Drinking Water and Sanitation, Rural Development, Housing and Urban Poverty Alleviation, Urban Development, Women and Child Development and Labor.

IV. Women's Rights

UPR Recommendations

During India's 2012 UPR, Chile and the Holy See addressed issues impacting Dalit women's rights in the following recommendations:

- 138.87. Continue to promote the rights of women in their choice of marriage and their equality of treatment independently of caste and tribe or other considerations (Holy See).
- 138.85. Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honor killings (Chile).

Status of government action

The SC/ST Prevention of Atrocities Act criminalizes two gender-specific caste-based atrocities: assault or use of force with intent to dishonour or outrage her modesty and sexual exploitation of SC women. The National Policy for the Empowerment of Women, 2001 recognizes that the underlying causes of gender inequality are related to social and economic structure and acknowledges that for vulnerable women, including SCs, access to education, health and productive resources remains inadequate. Despite these acknowledgements, however, the 2001 National policy only outlines a targeted strategy for SC women with regard to equal access to education. Similarly, while the SC Sub Plan and Gender Budget have special budgeting provisions for SCs and women, planning for SC women is not mandatory.

Status of implementation

Facing intersecting discrimination on the basis of gender, caste and class, Dalit women are particularly vulnerable to human rights violations and social, economic and political exclusion. According to the 2005-2006 National Family Health Survey, 41.7% of scheduled caste

women reported having faced physical violence since the age of 15 years from someone other than their current or last husband, as compared to 26.8% of other women. Regarding sexual violence, 11.0% of scheduled caste women reported facing sexual violence as compared to 7.8% of other women.¹⁰

In 2014, the NCRB reported 2233 registered rapes of SC women—an average of 6 rapes per day.¹¹ Moreover, the number of registered rapes of SC women has risen steadily over the years, from 1089 in 2003 to 2073 in 2013, marking a 47.5% increase over the past decade. One study of 500 Dalit women and girls who had experienced violence revealed that less than 1% of incidents of violence ended in convictions of the accused.¹² For 2014, the conviction rate for rapes of SC women stood at 34.9%, though this has to be understood against the backdrop of the high pendency rate of 81.6% for rape cases. The vulnerability of SC women is further exacerbated by their marital status. Widowed women face harassment, evictions, sexual exploitation and abuse from family members and other villagers.

Women and girls from SC communities are also particularly vulnerable to trafficking for sex work and domestic work.¹³ Overall, while according to the 2011 Census of India, SC women constitute 8.08% of the overall population, the NHRC has noted that they, along with ST women form the majority of women engaged in prostitution, making them even more susceptible to sexual violence and other forms of abuse.¹⁴

SC women are also vulnerable to specific forms of violence. Studies revealed that over 90% of *Devadasi/Jogini* women forced into ritualized prostitution are scheduled caste women.¹⁵ Official statistics also show that over 2,500 women have been killed on the suspicion of practicing witchcraft in the past 15 years.

All have been poor and most have been from marginalized scheduled caste and scheduled tribe communities and either owned property or rejected the sexual advances of dominant men in the community.¹⁶ The former UN High Commissioner for Human Rights, Navi Pillay, has noted that, “An estimated 90% of manual scavengers are Dalit women who face multiple vulnerabilities and discrimination based on their caste and gender, and who are often exposed to violence and exploitation.”¹⁷

Recommendations:

- Undertake planning and budgeting from a gender lens that includes the intersectional vulnerability faced by Dalit women.
- Facilitate engagement between the Ministries of Social Justice and Empowerment and Women and Child Development, at both central and state levels, to promote policies and implementation practices that address the specific needs of Dalit women.
- Take proactive measures to improve Dalit women’s legal literacy and ability to access justice, including through monitoring effective enforcement of the POA Act and providing quality free legal services to Dalit women.

V. Education, Human Rights Education and Training

UPR Recommendations

During India’s 2012 UPR, Ecuador, Japan and Mexico addressed education, human rights education and training in the following recommendations:

- 138.162. Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all the girls and boys in its country (Ecuador).

- 138.163. Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far (Japan).
- 138.164. Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities (Mexico).

Status of government action

Article 46 of the Constitution mandates the State to promote, with special care, the educational interests of SCs. Article 15 also mandates non-discrimination on the basis of caste, sex, religion, and other exclusionary categories. Consistent with these principles, the Right of Children to Free and Compulsory Education Act, 2009, protects the rights of all children aged 6-14 years old to free and compulsory elementary education. The Act also directs the government to take action to ensure that children from disadvantaged social groups are not discriminated against and prevented from pursuing and completing elementary education¹⁸

The *Sarva Shiksha Abhiyan* (SSA) Implementation Framework, based on the Right to Education Act, suggests interventions for inclusion of Dalit children, including establishing norms of behaviour for teachers and students; and timely detection of forms of discrimination practiced by either teachers or students. The Ministry of Human Resource Development has issued Guidelines against Discrimination in Elementary Education in 2012, which specify that all schools should not discriminate against a child belonging to a socially disadvantaged group in terms of admissions and shall prohibit all discrimination, harassment, victimiza-

tion and segregation of such students. India's 12th Five-Year Plan 2012-2017 acknowledges that Dalit children's dropout from education is higher than the national average recognizes exclusion as "the single most important challenge in universalizing elementary education." Accordingly, the Plan thus calls for a rights-based approach, sharper focus on disadvantaged social groups and emphasis on increasing access and enrolment and improving learning outcomes.¹⁹ The government also has in place pre-matric and post-matric scholarships for SC children, and government run hostels for SC children, all aimed at promoting their access to education.

Status of implementation

These measures have had some impact. Programmes to build schools and provide free midday meals for all students, irrespective of caste, have contributed to increasing attendance among Dalit students.²⁰ Enrolment ratios, however, drop significantly at the secondary and senior secondary levels and do not necessarily translate into attending school at any level.²¹

While quotas and special scholarships for Dalit and tribal groups in India were first established in the 1920s, designation of State funds to these programs have encouraged more Dalit and tribal students to pursue secondary schooling. According to a 2009 study on the

impact of such quotas, one-in-15 graduates and one-in-10 secondary school students were Dalits—well up from previous decades.²²

Despite the government focus on SC education, however, discrimination in schools remains a significant barrier to accessing education for Dalit children in India. A 2012 study from the Indian Government Ministry of Human Resource Development, capturing various forms of caste-based discrimination in schools in Andhra Pradesh, Assam, Bihar, Madhya Pradesh, Orissa and Rajasthan, found that SC children face discrimination in access to drinking water and midday meals, are made to do cleaning and other menial tasks and also face verbal abuse on the basis of their caste.²³ The India-level literacy rate for SC children, moreover, continues to be lower than that of other castes: overall 66.1% for SCs compared to 73% generally.

Recommendations

- Take immediate action to make school environments free from discrimination, including by requiring schools to display their commitment to "Discrimination-Free Schools" in prominent places and immediately rename schools with caste names.
- Develop and require rights-base curriculum to raise awareness among all students about human rights and non-discrimination.

¹ USHRN, UPR Fact Sheet and FAQ, available at http://www.ushrnetwork.org/sites/ushrnetwork.org/files/upr_fact_sheet_and_faq.pdf

² Caste-related statements at the Universal Periodic Review of India, access online on August 20, 2015: http://www.idsn.org/fileadmin/user_folder/pdf/New_files/India/2012/IndiaUPR2012_CasteStatements.pdf

³ Report on Dalit Human Rights Defenders by NCDHR-National Dalit Movement of Justice (NDMJ), Submitted to the Special Rapporteur on Situation of Human Rights Defenders, 15 January 2011. See <http://www.ncdhr.org.in/latestinterventions/Report%20UN%20SR%20HRD.doc>

⁴ India Current Affairs National Legal Services Authority: Performance cum achievements, 17 February 2012, accessed online on 15 July 2015: <http://indiacurrentaffairs.org/national-legal-services-authority-performance-%E2%80%93-cum-achievements/>

⁵ Multiple Action Research Group, 2012 Needs assessment study of selected legal services authorities, New Delhi, commissioned by the Government of India Department of Justice and United Nations Development Program.

⁶ Article 16(2), 46

⁷ Ashwini Deshpande and Thomas E. Weisskopf, “Does Affirmative Action Reduce Productivity? A Case Study of the Indian Railways,” *World Development*, Vol. 64, pp. 169-180 (2014), 169.

⁸ *The Economist*, Affirmative Action: Indian Reservations, June 29, 2013.

⁹ Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable. Their caste-designated occupation reinforces the social stigma that they are unclean or “untouchable”

and perpetuates widespread discrimination. Women usually clean dry toilets, men and women clean excrement from open defecation sites, gutters, and drains, and men clean sewers and septic tanks.

¹⁰ International Institute for Population Sciences and Macro International. 2007. National Family Health Survey (NFHS-3), 2005–06: India: Volume I. Mumbai: IIPS


¹¹ National Crimes Records Bureau 2014, Crimes in India 2013. Delhi: NCRB accessed online: <http://ncrb.gov.in/CD-CII2013/home.asp>.

¹² Irudayam, A., Mangubhai, J.P. and Lee, J.G., 2011. *Dalit Women Speak Out: Caste, Class and Gender Violence in India*. New Delhi: Zubaan, available at: http://idsn.org/uploads/media/Violence_against_Dalit_Woment.pdf

¹³ Special Rapporteur on violence against women, 2013. Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to India. UN Doc. A/HRC/26/38/Add.1. <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>

¹⁴ National Human Rights Commission, 2004. Report on Trafficking in Women and Children in India 2002-03 . New Delhi: NHRC: <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>

¹⁵ Black, Maggie, 2007. *Women in Ritual Slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*. London: Anti-Slavery International: http://www.antislavery.org/includes/documents/cm_docs/2009/w/women_in_ritual_slavery2007.pdf>.



¹⁶Paul, S., 2012. Witches of India: Women without Defence, available at: <https://worldpulse.com/node/50282>.

¹⁷ UN High Commissioner for Human Rights Navi Pillay, 2013 (31 Jan.). 'Pillay applauds Indian movement to eradicate 'manual scavenging', OHCHR News, available online: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E

¹⁸ Section 8(c)

²⁰ Affirmative Action: Indian Reservations, The Economist, June 29, 2013.

²¹ Government of India Ministry of Human Resource Development, Selected Educational Statistics 2010-11 (New Delhi: Government of India, 2012)

²² Affirmative Action: Indian Reservations, The Economist, June 29, 2013.

²³ Government of India Ministry of Human Resource Development, Inclusion and Exclusion of Students in the School and in the Classroom in Primary and Upper Primary Schools (New Delhi: Ministry of Human Resource Development, 2012).

NATURE AND EXTENT OF CASTE BASED ATROCITIES

For centuries Dalits have been at the receiving ends of various forms of exploitation and degrading practices of “untouchability”. Of late, the country has witnessed an increase in certain crimes against Dalits, which include forcing them to eat human excreta, physical assaults, grievous hurt, arson and mass killings, and individual and gang rape of Dalit women. This chapter analyses the data of the National Crime Record Bureau (herein NCRB) for the period 2011-2014 to point out the emerging trends as regards major crimes committed against Dalits.

1. Atrocities against SCs : Significant Trends

Extent of Crimes against SCs

Over the years, since the PoA Act and its Rules came into existence, the number of incidents of atrocities against Dalits has only increased. Although the NCRB provides data on the extent of atrocities committed against SCs, these data do not fully reflect the ground realities where a number of cases go unreported due to factors such as fear of reprisals from the dominant caste perpetrators.

Overall, the year 2014 witnessed an increase of 19.4% in total crimes committed against SCs over the previous year¹, while the year 2013 witnessed an increase of 17.1% in

total crimes committed against SCs over the previous year.²⁶ More specifically, an increase of 66.7%, 31.5%, 28.2%, 27.1% and 11.1% was reported under the crime heads ‘Dacoity’, ‘rape’, ‘kidnapping and abduction’, ‘hurt’ and ‘POA Act’ in 2013. Uttar Pradesh, sharing 20.5% of SC population, accounted for 17.2% (8075 cases) of total cases (total 47,064 cases) reported in the country, followed by Rajasthan at 17.1% (8,028 cases), Bihar at 16.8% (7,893 cases), Madhya Pradesh at 8.8% (4,151 cases) and Andhra Pradesh at 8.7% (4,114 cases).

The Maharashtra state government informed its Legislative Assembly that atrocities committed against SCs in the state rose in 2014 over 2013. Until January 2015, 664 atrocity cases against SCs were reported across Maharashtra. The conviction rate in the atrocity cases is merely 6.42%. In 2014, Beed district topped the list of districts in which most atrocity cases occurred, with 120 cases reported in 2014 against 102 in 2013, marking a rise by 18%.²

In terms of atrocities, in 2011, there were 11,342 cases registered under the PoA Act. The number increased to 12,576 in 2012, increased to 13,975 in 2013 and jumped to 47,064 in 2014. In 2014, Uttar Pradesh had the largest number with 8,066, Bihar followed with 7,874 cases in

2014; Rajasthan with 6,734 cases, Madhya Pradesh with 3294, Karnataka with 1,865 cases, Orissa with 1,657 cases; and Tamil Nadu with 1,486 cases.

Table 2.1: Incidents of major crime heads against SCs 2011-2014

S.No	Crime -head	2011	2012	2013	2014
1.	IPC	7,352	6,853	8,574	6,511
2.	Other legal provisions	14,958	14,164	16,797	152
3.	PCR Act	67	62	62	101
4.	SC/ST PoA Act	11,342	12,576	13,975	40,300
Total		33,719	33,655	39,408	47,064

(Source: National Crime Records Bureau, *Crimes in India 2011-2014*)

Table 2.1 shows that under various crime heads, the rate of atrocities against SCs have increased in 2014 more than they have decreased in the previous years.

While the registration of crimes against SCs under the PCR Act dropped and remained static for 2012 and 2013, registered crimes under the PoA Act rose substantially at the rate of 188% just in 2014. This trend, however, has to be seen in light of the even greater increase in cases of violence against SCs registered under other laws in all previous years, which grew at the rate of 18.6% during the period 2012-2013, but decreased by 99% only in 2014. This calls for further investigation as to how such a dramatic shift in data in this area can have occurred.

However, 2014 data shows that the registration of caste-based atrocity cases has increased substantially under the PoA Act as compared to the previous years.

Rising Violence against SC Women

According to NCRB 2014 data, out of a total of 47,064 registered crimes against SCs, a total of 2,388 cases (5.07%) were of rapes of SC women where for 155 cases (6%) the PoA Act was not invoked. This amounts to an average of 6 rapes per day.³ Moreover, the number

of registered rape cases of SCs women has markedly increased by 47.5% over the past decade (from 1089 cases in 2003 to 2073 cases in 2013). In addition, in 2014 there were 2,346 registered cases of sexual assault on SC women, 837 cases of sexual harassment, and 142 cases of assault with intent to disrobe a SC woman.

At the same time, SC women are also vulnerable to religious and ritual based violence and exploitation, such as the Devadasi system. Studies have revealed that over 90% of Devadasis/ Joginis (dedicated to idols/ temples) forced into ritualized prostitution are SC women.⁴ While SC women constitute 8.08% of the total population (Census 2011), the National Human Rights Commission (herein NHRC) noted that usually women and girls belonging to the most disadvantaged sections of society are found in prostitution, with nearly 50% of them from SCs and STs.⁵

Official statistics also show that over 2,500 women have been killed on the suspicion of practicing witchcraft in the past 15 years. All have been poor, mostly from marginalized communities such as SCs and STs, who had owned some property or rejected the sexual advances of dominant caste men in the community.⁶

All this data show that Dalit women, placed at the bottom of the social hierarchy, suffer both

systemic and structural discrimination and triple marginalisation, as Dalits, as poor class and as women, and are subjected to violence from dominant castes. The nature of violence against these women is accompanied by equally systemic patterns of impunity for the perpetrators. A study of 500 SC women and girls who had experienced caste violence revealed that less than 1% of incidents of violence ended in convictions of the accused.⁷

2. New forms of atrocities against SCs

The POA Act spells out 22 offences under sections 3(1) and (2) as atrocities, which include forcing to drink or eat any inedible or obnoxious substance; dumping excreta; parading naked; occupying or cultivating any SC's land; forcing or intimidating to vote or to vote to a particular candidate; instituting false, malicious or vexatious suit; insulting or intimidating to humiliate in any place within public view; exploiting a woman sexually; and mischief by fire or any explosive substance to cause damage to any SC's property; etc. However, numerous new forms of caste-based atrocities have been identified in contemporary India's perpetrated in both rural and urban regions. These forms are widespread and systemic in nature. The POA Amendments Bill introduced in the Lok Sabha in 2014 and pending before the Parliament has identified and included these additional forms of atrocities. These new forms of atrocities can be broadly categorized as below:

1. **Offences related to assault on dignity-** putting inedible or obnoxious substance into the mouth; garlanding with footwear, removing clothes, tonsuring of head, removing moustaches, painting face or body; compelling to dispose or carry human or animal carcasses, compelling to dig graves; manual scavenging; disrespecting any late persons held in high esteem to SCs/STs; attempting to promote feelings of enmity and hatred against SCs/STs; and imposing social or economic boycott
2. **--Offences related to atrocities against women-** non-consensual touching of SC/ST women or using words, acts or gestures of a sexual nature against them; causing physical harm on the allegation of practicing witchcraft; dedicating SC/ST women to a deity, idol, and object of worship, temple, or other religious institution as a devadasi or any other similar practice.
3. **Offences related to access and ownership over land and housing-** dumping sewage in premises, or at the entrance of the premises; denying access to irrigation facilities; destroying the crops or taking away the produce from SCs/STs.
4. **Offences related to exercising of franchise-** preventing SC/ST candidates from filing nominations to contest elections; forcing, intimidating or obstructing the SC or ST, who is a member or a Chairperson, or a holder of any other office of a panchayat under Part IX of the Constitution, or a municipality under Part IXA of the Constitution, from performing their normal duties and functions; after the election poll, causing hurt, assault, threatens to impose social and economic boycott or preventing from availing benefits of any public service; committing any offence under this Act against SCs/STs for having voted or not having voted for a particular candidate or for having voted in a manner provided by law.
5. **Offences related to untouchability in public sphere-** preventing SCs/STs from using common property resources, burial or cremation ground, using any river, stream,

spring, well, tank; preventing from mounting or riding bicycles or motor cycles or wearing footwear in public places or taking out wedding procession; entering any place of worship; entering any educational institution,

hospital, dispensary, primary health centre, shop; or practicing any profession or the carrying on of any occupation, trade or business or employment in any job, which other members of the public have a right to use or have access to.

Recent cases of atrocities against SCs:

- *The dominant Jat community in Rajasthan's Nagaur district mowed down three Dalits by tractors over a land dispute. "3 Dalits mowed down by tractors driven by Jat community,"* CNN-IBN. May 16, 2015. **Rajasthan:See:**<http://www.ibnlive.com/news/india/rajasthan-3-dalits-mowed-down-by-tractors-driven-by-jat-community-990969.html>
 - Dalit family bares it all after Greater Noida police fails to register their FIR <<(http://indiatoday.intoday.in/story/dalit-famly-bares-it-all-after-greater-noida-police-fails-to-register-their-fir/1/495155.html)>>
 - Caste Violence; Two Dalit children burnt alive in Faridabad revenge killing, mother critical <<(http://www.firstpost.com/india/ugly-face-of-caste-violence-despite-police-protection-dalit-children-burnt-alive-in-haryana-2476088.html)>>
 - Dalit Student thrashed by school teacher for touching mid-day meal utensils in Rajasthan <<(http://indiatoday.intoday.in/education/story/dalit-student-thrashed-in-rajasthan/1/490437.html)>>
 - 90-year old Dalit burnt alive for entering temple in Bundelkhand region in UP <<(http://indiatoday.intoday.in/story/90-year-old-dalit-burnt-alive-for-entering-temple-in-bundelkhand-region-of-up/1/489318.html)>>
 - *"Separate Water Source for Dalits in Madhya Pradesh Village. It's the Government's Solution".* NDTV. May 25, 2015. See:<http://www.ndtv.com/india-news/separate-water-source-for-dalits-in-madhya-pradesh-village-its-the-governments-solution-765783>)
 - *"Dalit man in Ahmednagar killed for ringtone praising Ambedkar",* Scroll. May 22, 2015. Caste Murder. See: <http://scroll.in/article/729270/dalit-man-in-ahmednagar-killed-for-ringtone-praising-ambedkar>); also see: *Dalits death triggers concern*". The Telegraph India. May 31 2015. http://www.telegraphindia.com/1150601/jsp/nation/story_23223.jsp#.VWv2eNKqqko)
 - *"Dalit women beaten up in Bihar on suspicion of witchcraft".* DNA India. 27 September 2014. See: <http://www.dnaindia.com/india/report-dalit-woman-beaten-up-in-bihar-on-suspicion-of-witchcraft-2021967>
- "Dalit girl gang-raped by four in Uttar Pradesh"* (Gazette Herald. May 31, 2015. See: <http://www.gazetteherald.com/dalit-girl-gang-raped-by-four-in-uttar-pradesh/128896/>)

1. Crime against Dalit Human Rights Defenders (DHRDs)

Assaults on DHRDs in public places, torture, illegal detention, harassment and misbe-

havior, there is no corresponding domestic legislation in India to safeguard the rights of human rights defenders.

Overall, despite the presence of the PoA Act, PCR Act and the provisions of the IPC,

“Dalits’ rights activists strive for the promotion and realization of Dalits’ civil, political, economic, social and cultural rights. The range of human rights violations they suffer is appalling.”

- UN Special Rapporteur on Situation of Human Rights Defenders, Margaret Sekaggya, at a UN side-event on 9 March 2012 in Geneva

havior, forced disappearances, extra-judicial killings, illegal imprisonment, surveillance and targeting of family members, branding as naxalites and anti-nationals, and implication in false cases – all these are found to be common strategies to oppress and suppress DHRDs and violate their rights.⁸

atrocities against SCs have only increased in the recent years. While on the one hand new overt and covert forms of discrimination and atrocities have surfaced, on the other hand, some traditional forms of discrimination and violence (e.g. non-entry of Dalits in the temples, violence for the shadow of Dalits falling on domi-

Case I: Murder of a DHRD, Chandrakant Gaikwad

Mr. Chandrakant Gaikwad, a Dalit human rights defender, was shot dead in Pune district of Maharashtra, by dominant caste men in 2013. As an active DHRD, Chandrakant supported victims of caste-based discrimination and atrocities to register cases against the perpetrators. During the course of his work, he filed an atrocity case against the accused for crimes against Dalits in Indapur block, Pune district in 2011. Chandrakant was also one of the witnesses in two other atrocity cases which were filed against the same accused in 2012. All these cases were registered under the PoA Act, leading to the arrest of the accused in January 2012. However, the accused secured bail six months later. Upon his release on bail, he conspired with others from his community to kill three DHRDs, including Chandrakant, who had together filed the cases against him. On 12 February 2013, when Chandrakant went to visit the co-DHRDs in Jamb district, the accused along with his supporters attacked the DHRDs, in the process killing Chandrakant on the spot.

According to the Special Rapporteur on the Situation of Human Rights Defenders, “The cost of working for the rights of Dalits, Adivasis and religious minorities has been risks to their lives and livelihood, and social ostracism. On the other hand, those collectivities striving for their rights have been victimized.”⁹ Unfortu-

nant castes, devadasi system, etc.) have deepened. Moreover, the official data do not reflect the ground realities; where studies show a number of cases of atrocities on SCs continue to go unreported.¹⁰ In such cases, where the registration of cases under the PoA Act and relevant sections still remains a challenge, victims are denied the protective and rehabilitative

measures enshrined under this law, as will be analysed in following chapters. Hence, the gaps in implementation and efficacy of the Act warrant amendments to the existing Act to address the rising incidents of caste-based atrocities through stricter penal measures. Further to this,

the provision to step up preventive action against atrocities, as stipulated in the PoA Act and Rules also require urgent action.

¹ National Crime Records Bureau, 2011-2013. New Delhi

² DNA Correspondent, 'Atrocities against Scheduled castes, tribes on the rise: CM Devendra Fadnavis', DNA India, 25.03.2015, <<http://www.dnaindia.com/mumbai/report-atrocities-against-scheduled-castes-tribes-on-the-rise-cm-devendra-fadnavis-2071700>>.

³ National Crimes Records Bureau 2015. *Crimes in India 2014*. Delhi: NCRB.

⁴ Black, Maggie, 2007. *Women in Ritual Slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*. London: Anti-Slavery International. <http://www.antislavery.org/includes/documents/cm_docs/2009/w/women_in_ritual_slavery2007.pdf>.

⁵ National Human Rights Commission, 2004. *Report on Trafficking in Women and Children in India 2002-03*. New Delhi: NHRC. <<http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>>, p. 18

⁶ Paul, S., 2012. 'Witches of India: Women without Defence'. <https://www.worldpulse.com/en/community/users/stella-paul/posts/19768>.

⁷ Irudayam, A., Mangubhai, J.P. and Lee, J.G., 2011. *Dalit Women Speak Out: Caste, Class and Gender Violence in India*. New Delhi: Zubaan.

⁸ Report on Dalit Human Rights Defenders by NCDHR-National Dalit Movement of Justice (NDMJ), Submitted to the Special Rapporteur on Situation of Human Rights Defenders, 15 January 2011.

⁹ Statement of the Special Rapporteur on Situation of Human Rights Defenders, 21 January 2011.

¹⁰ For example, see Irudayam, A., Mangubhai, J.P. and Lee, J.G., 2011. *Dalit Women Speak Out: Caste, Class and Gender Violence in India*. New Delhi: Zubaan, which showed that around 40% of incidents of violence against SC women, went unreported.

RESPONSE OF ENFORCEMENT AUTHORITIES: THE POLICE

1. Applicable National and International Standards

1.1 International Standards

India has ratified several human rights treaties of the United Nations, which are legally binding. Countries are required to report to the UN on the measures adopted nationally in order to meet these international obligations. Under these treaties or conventions, the State is obligated to protect the civil and political rights of the citizens. And it is in observance of these treaties that India has enacted specific laws to protect the civil and political rights of Dalits. International standards of particular concern are as below:

- International Covenant on Civil and Political Rights (ICCPR), Article 2(3) (a), holds that any person whose rights are violated should have an effective remedy even if the perpetrator acted in an official capacity.
- The Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXXI 2005, paragraph 10, holds that the States should take necessary steps to ensure that police services have adequate and accessible presence in neighborhoods and regions where persons discriminated against

because of their descent reside, so that complaints of such person can be expeditiously received.

- CERD General Recommendation XXXI 2005, paragraph 11 holds that complaints by victims of racist acts should be recorded immediately, investigations pursued without delay and in an effective, independent and impartial manner, and files kept relating to racist incidents.”
- CERD, General Recommendation XXXI 2005, paragraph 12, holds that any refusal by a police official to accept a complaint involving an act of racism shall lead to disciplinary or penal sanctions and those sanctions shall be increased if corruption is also involved.
- Article 1 of the Code of Conduct for Law Enforcement Officials 1979 states that Law enforcement officials should fulfill their legally mandated duty to serve the community and protect all against illegal Acts.

It is to be noted that on 17 September 1996, in the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD) on India's report, it was stated that the term “descent” mentioned in article 1 of the Convention did not solely refer to race, and therefore, affirmed that the situation of scheduled castes fell within the scope of the Convention.¹Therefore, all of the above com-

mitments under CERD, particularly, are equally applicable to protection of victims of caste discrimination and atrocities.

1.2 National Standards and Mechanisms

- The Constitution of India, Article 14, holds that all persons are equal before the law or the equal protection of the laws within the territory of India, and prohibits discrimination on grounds of religion, race, caste, sex or place of birth.”
- Section 4 of the PoA Act holds that any public servant, not being a SC or ST, who willfully neglects his duties to be performed under this Act, shall be punished.
- Rule 5 of the PoA Rules holds that every information relating to the commission of an offence under the Act shall be reduced to writing by the police and read over to the informant, and every such information, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.
- Rule 7 of the PoA Rules 1995 states that offences committed under this Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police (1), and the investigation shall be completed on top priority within thirty days and report submitted to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government (2).

2. Responses of law enforcement authorities at different stages of atrocity cases

2.1 Filing First Information Report (FIR)

Denial of registration of FIR under the PoA Act

The implications for not registering cases under the appropriate sections of the PoA Act or registering cases under other laws are serious and include lesser punishment for perpetrators by diluting seriousness of the case; loss of appropriate compensation if case is registered under less serious sections; and investigation by police officers below the rank of Deputy Superintendent of Police (DSP) and above. This encourages the police to neglect their duties in successive cases and provides the accused a ground to negotiate compromises often with the collusion of the police, thereby also increasing the chances of the accused being granted bail. Even in cases which may be registered with the efforts of the victims, a large number of cases fit to be registered under the PoA Act, are registered either under the provisions of the IPC or other laws.

A People's Report (2009-11) on the implementation of the POA Act and Rules revealed that the police discouraged SCs/STs from registering their cases to dilute the seriousness of the offence, and to shield the accused from arrest and prosecution. The various ways in which caste-based atrocities were denied FIR registration under the PoA Act included: (i) showing apathy, negligence and passivity towards SC/ST atrocity victims; (ii) discouraging SCs/STs from registering cases, and encouraging compromises between the victims and the accused; (iii) delaying arrival at the scene of atrocity; (iv) threatening victims into silence or even inflicting violence on victims; (v) foisting false cases against victims at the behest of accused to pressurize them for compromises; (vi) accepting bribes from the accused to drop the victim's

case; and (vii) declaring the accused innocent without following due process of law.²

CASE II: Torture and False implication of a DHRD, Poovarasan

28-year old DHRD, Poovarasan, was abducted from his house by five police officers in Tamil Nadu and brutally tortured and abused using derogatory caste names. Following the abuse, the police filed false charges against him. Unable to walk, the victim was taken to court in an ambulance, and the Police Inspector forced the ambulance with Poovarasan in it to drive off the court premises, while threatening him to remain

a SC accused.³

Table 3.1 presents comparative data with regard to the registration of cases under the PoA Act, PCR Act, IPC and other legal provisions on crimes against SCs for the three years of 2011, 2012 and 2013.

A total of 188,991 crimes against SCs were registered under different laws from 2011 to 2014. Of these cases, 48.3% (91,310) were registered under the IPC and other legal provisions, and 51% (97,535) under the PoA Act. In 2013, out of total 50,990 cases, only 40% (20,410) were registered under PoA Act, while

Table 3.1: Crimes committed against SCs during 2011-2014

S.No	Registration of Crimes under Acts	2011	2012	2013	2014
1.	PCR Act	119	101	95	101
2.	PoA Act	17,999	18,826	20,410	40300
3.	IPC and other legal provisions	27,811	26,081	30,755	6663
	Total	45,929	45,008	50,990	47,064

(National Crime Records Bureau, *Crimes in India, 2011-2014*)

silent about the assault. (See: *IDSN News*, 2/10/2014)

Research by Human Rights Watch identified that more than 60% of the victims of torture belonged to SCs and religious minorities. The ways in which police became an accomplice to atrocities against SCs included custodial torture and deaths, encounter deaths, raids in SC colonies after inter-caste clashes, violence against SC women, false arrest of SCs, violence to crush peaceful protests by SCs; and violence against entire SC colonies while searching out

in 2012, of the total 45,008 cases, 41.82% (18826) were under the PoA Act. Consistently, the majority of cases were booked under the IPC and other legal provisions. Only in 2014 have 40300 (85%) cases of crimes against SCs been registered under the PoA Act, out of a total of 47,064 cases.

While the table shows a marginal increase in the number of PoA cases in 2013, percentage wise, 2013 saw a fall in the registration of PoA cases as compared with 2012. On the other hand, the increase in registration under the IPC and other legal provisions was significant in

2013. Hence, the rate of increase of registration of cases under the PoA Act was only 1.8% in 2013. Therefore, these evidence and analysis reflect the potential violation of Rule 5 of PoA Rules, pertaining to the registration of FIR by the Police Officer in-charge of a police station under the POA Act.

2.2 Case Investigation

Rule 7 of the POA Rules mandates the investigation of cases of atrocities by police officers not below the rank of a DSP. However, in reality, due to the failure of the police to register cases under the PoA Act, and under its appropriate sections, the seriousness of the case is often compromised. This results in the appointment of an Investigating Officer below the rank of DSP, thereby undermining the objective of ensuring competent investigation of atrocity cases.

- In Rajasthan, it was observed that the investigation of an atrocity case was practically conducted by the Reader or the Constable under the DSP, and the investigation report was verified by the latter.⁴

- Similarly, from the 14 cases examined from the district of Villupuram in Tamil Nadu, based on victims' testimonies and field investigations by district level human rights defenders and activists, it was found that a majority of cases didn't have the DSP as their Investigating Officer. Only in cases of murder, sexual violence, mob attacks on Dalit settlements and the burning of Dalit homes was the Superintendent of Police (SP) or DSP directly involved in investigation. This involvement too, was limited to the time of the occurrence of the incidents, which is when they visit the scene of atrocity. With regard to other crimes, low-ranking officers were appointed as the investigating officer.⁵

Such a systemic lapse and inappropriate attitude of authorities toward the protection of SCs undermine the commitment of the state to address and arrest "untouchability" and ensure protection to SCs. Moreover, it indicates that a strong law alone cannot ensure access to justice, unless the enforcement authorities ensure proper implementation of the law in letter and spirit in a well informed and sensitive manner.

2.3. Pendency in investigation and charge sheeting

Crimes registered	Total No. of cases including pending cases	Cases withdraw	Investigation was refused	Investigation completed			Total	No of cases pending investigation
				Charge found false	Final Report submitted	Final Report submitted		
PCR Act	95	0	0	10	8	44	62	33
PoA Act	20410	0	2	2252	1417	9889	13558	6850
IPC	10608	0	3	1150	514	6243	7907	2698
Other Legal Provisions	20147	11	3	4439	1013	10094	15546	4587
Total	51260	11	8	7851	2952	26270	37073	14168

Investigation and charge sheeting are inter-related processes to allow the trial of cases in the courts. Delay in one will inadvertently prolong the other. Despite Rule 7 of the PoA Rules, which mandates submission of the investigation report by the investigating officer within 30 days to the SP for further action, the NCRB data in table 3.2 highlights a high rate of undue delay and pendency in investigation of cases and hence, charge sheeting.

The NCRB data for 2013 reveals that of 20,410 cases registered under the PoA Act, the rate of pendency in investigation was 33.56%. Considering the overall number of cases of atrocities against SCs registered under PCR Act, PoA Act, IPC and other legal provisions during 2013, 27.63% of cases (14,168) were pending investigation at the end of the year. Consequently, charge sheets were filed for only 48.45% cases (9,889) thereby pointing toward the breach of Rule 7 (30-day investigation) of the PoA Rules.

While, the latest NCRB data of 2014 shows that of the 40,300 cases registered under the PoA Act, the rate of pendency in investigation was 25% while the overall pendency rate (IPC, PCR, other legal provisions and PoA Act) was 24.4%.

This trend of pending investigations and delayed charge sheets in overall crimes against SCs can be corroborated with the 2013 NCRB data on some key states:

- Of the total 5,757 pending cases in **Andhra Pradesh** in 2013 (including cases from previous years), only 28.69% of cases (1,652) had been charge sheeted in the concerned courts. At the end of the year 2013, the pendency rate was 43.9%.
- In **Bihar**, of the total 9,174 pending cases (including cases from previous years),

50.22% of cases (4,608) had been charge sheeted, which means nearly half the total number of cases were still pending investigation or charge sheeting. The pendency rate at the end of the year 2013 was 34.9%.

- In **Gujarat**, of the total 1,309 pending cases (Including cases from last year), (84.79%) 1,110 cases wherein charge sheets were submitted. At the end of the year the pendency rate was 10.6.
- The pendency rate for case investigations was 25.3% for **Karnataka** in 2013. Of the total 3427 pending cases (including cases from previous years), charge sheets were pending in 37% of cases.

In Rangareddy district of Andhra Pradesh, the District Collector announced at a District Vigilance and Monitoring Committee (DVMC) meeting in early 2013 that a high number of SCs and STs who filed

In Rangareddy district of Andhra Pradesh, the District Collector announced at a District Vigilance and Monitoring Committee (DVMC) meeting in early 2013 that a high number of SCs and STs who filed cases under the PoA Act were being forced to flee their homes for the fear of pressure from the accused. The same could be corroborated with the frequent need of the district administration to revalidate the cheques for the initial relief amounts that had to be paid to the victims of atrocities, who move out of their villages and their whereabouts were not known. (*Staff Reporter, 2013 (9 Feb). "Dalits forced to flee after filing cases under prevention of Atrocities Act". The Hindu (Hyderabad edition)*)

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A study of the implementation of PoA Act in the state of Rajasthan identified the transfer of the investigating officers; delay in receipt of the medical certificate, collection of evidences, post-mortem reports, and non-arrest or delayed arrest of the accused as key grounds for the delayed investigation and filing of charge sheet in cases relating to SCs.⁶ However, there are other reasons which will be discussed in following chapters.

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In sum, the data analysis point to the fact

that the police book offences against SCs and STs under sections of the IPC instead of the PoA Act, which results in lesser punishment for the perpetrators. This is despite section 3(2) (v) of the POA Act, which increases the penalties for certain IPC crimes when filed under the POA Act. Failure to register cases under the PoA Act and to complete investigation and submit charge sheets within 30 days leads to delayed disposal of cases. This, in turn, defeats the purpose of law and denies time bound justice to the victims. It also lands them into insecurity and the fear of retaliatory attacks by the perpetrators, and places both financial and psychological burdens on them. The delay in filing charge sheets heightens the possibility for the accused to secure bail from the court even for the most serious of crimes. The likelihood of evidence being lost and/or altered and intimidation of victims by the perpetrators also increases greatly. Moreover, the procedural delays offer an advantageous position to the perpetrators to misappropriate the justice machinery to their advantage. This further causes risk to life and property of the DHRDs, who support the victims during the course of their case.

¹Appendix E: Committee on the Elimination of Racial Discrimination Concluding Observations on Caste, India 1/. 17 September 1996, CERD/C/304/Add.13. (D). Principal subjects of concern (14).

²*People's Report on implementation of the SC/ST (Prevention of Atrocities) Act, 1989 and Rules 1995: 20 09-2011*. New Delhi: National Coalition on Strengthening SC/ST (Prevention of Atrocities) Act, p. 20.

³News: "Urgent appeal: Brutal Police torture of Dalit human Rights defender- Perpetrators must be held accountable". International Dalit Solidarity Network. Retrieved from <<

⁴National Dalit Movement for Justice (NDMJ) & Centre for Dalit Rights (CDR), 2012. *Rajasthan Status report on Implementation of SC/ST (PoA) Act. 2011-2012*

⁵Murugappan&Jesi, 2014. "Justice Denied People Betrayed", Chennai; Social Awareness Society for Youths (SASY), Human Rights Advocacy and Research Foundation (HRF) & National Dalit Movement for Justice (NDMJ), p...202.

⁶National Dalit Movement for Justice (NDMJ) & Centre for Dalit Rights (CDR), 2012. *Rajasthan Status report on Implementation of SC/ST (PoA) Act. 2011-2012*, p. 12

RESPONSE OF THE JUDICIARY

1. Applicable National and International Standards

1.1. International Standards and Mechanisms

International standards under the treaties ratified by India and concerning the functioning of the judiciary are as below:

- The International Covenant on Civil and Political Rights (ICCPR), Article 26, holds that all persons are equal before the law and entitled without discrimination to equal protection of the law.
- International Convention on the Elimination of All Forms Racial Discrimination (ICERD), Article 5(a) calls for the right to equal treatment before the tribunals and all other organs administering justice.
- ICERD, Article 6 holds that the States should grant effective protection and remedies against acts of racial (caste) discrimination, and equal treatment before tribunals administering justice.
- CERD, General Recommendations XXXI 2005, paragraph 5, holds that the States should pursue national strategies aimed at promoting proper representation of racial/ethnic groups in the police and system of justice, and implement plans to eliminate

structural racial discrimination, including guidelines for prevention, investigation and prosecution of racist incidents.

- CERD, General Recommendations XXXI 2005, paragraphs 31-32, hold that the States should ensure lack of prejudice by judges, jury and other judicial personnel, including prejudices created by direct influence of pressure groups, ideologies and religions.
- Concluding Observations of the UN Committee on Economic, Social and Cultural Rights on India's report in 2008 suggested that India should strengthen procedures for prompt and impartial investigations and effective prosecutions of all allegations of violations under the POA Act. The State should also improve awareness-raising and training programmes regarding the treatment of caste-based crimes related to discriminatory attitudes and prejudices, for professionals engaged in the administration of justice.¹
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Article 6(e), states the needs of victims should be facilitated by avoiding unnecessary delay in the disposition of court cases and the execution of orders granting awards to victims.

1.2 National Standards and Mechanisms

Key national standards and mechanisms for the functioning of Indian judiciary are as below:

- The Constitution of India, Article 14, guarantees all persons equality before the law and entitlement without discrimination to equal protection under the law.
- An Advisory from the Ministry of Home Affairs states that the state governments should set up Exclusive Special Courts in all districts for trial of offences under the PoA Act; timely prosecution of cases under the Act by Special Public Prosecutors who are paid appropriate remuneration/fee so as to take up such cases effectively; and review factors responsible for high level of acquittals under the Act.²
- The Supreme Court of India upheld that speedy trial is a component of social justice in the matter of Babu Singh vs. State of Uttar Pradesh(1978) Cr.L.J.651, and that speedy trial is a fundamental right, in matter of Sheela Barse vs. Union of India(1986) Cr.L.J. 1736.
- PoA Act, Section 14, provides for the establishment of Special courts by the State Governments for the purpose of speedy trial of cases under the Act.)
- PoA Act, Section 15, provides that a Special Public Prosecutor (public prosecutor or advocate with not less than seven years of practice) be specified for every Special Court, by the State Government to conduct atrocity cases.
- PoA Rule 4(5) provides that the District Magistrate/Sub-Divisional Magistrate (Assistant Collector) or a victim may engage another Senior Advocate for conducting atrocity cases in the Special Courts if the performance of the appointed Special

Public Prosecutor proves unsatisfactory.

2. Status of implementation of PoA Act provisions regarding judicial processes

1.1 Inadequacies of Special Courts under PoA Act

Under section 14 of the PoA Act the State Government, for the purpose of providing speedy trial, with concurrence of the Chief Justice of High Court (by notification in the official Gazette), needs to specify for each dis-

The proposed additions in the PoA Amendment Bill:

The Bill specifies provisions for speedy trial (proposed Section 14(1)) through the establishment of Exclusive Special Courts with the power to take direct cognizance of offences under this Act and disposal of cases within a period of two months, on a day-to-day basis, from the date of filing of the charge sheet. It specifies the procedure and disposal of appeals in higher courts within three months after the judgment, sentence or order (proposed Section 14.A). Proposed Section 15 provides for the appointment of exclusive Special Public Prosecutors for every Exclusive Special Court.

tribut a Court of Session to be Special Court to try the offences under the Act. Under the current law, there is no specific provision that these courts should be exclusively for the trial of atrocity cases.

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posal of appeals in higher courts within three months after the judgment, sentence or order (proposed Section 14.A). Proposed Section 15 provides for the appointment of exclusive Special Public Prosecutors for every Exclusive Special Court.

Table 4.1: Exclusive Special Courts set up under PoA Act by State

S.No	State	No. of districts in the State	No of districts with Exclusive Courts	No. of identified atrocity prone districts/areas
1.	Andhra Pradesh	23	23	8
2.	Bihar	38	11	33
3.	Chhattisgarh	27	06	0
4.	Gujarat	33	26	11
5.	Karnataka	30	08	30
6.	Kerala	14	02	3
7.	Maharashtra	35	0	4
8.	Madhya Pradesh	52	43	8
9.	Odisha	30	0	16
10.	Rajasthan	33	25	36
11.	Tamil Nadu	32	04	150
12.	Uttar Pradesh	75	40	0
13.	Uttarakhand	13	02	0
Total		435	190	299

(Source: Annual Report 2013, Ministry of Social Justice & Empowerment, New Delhi)

Governments

Table 4.1 shows that only 12 states/ union territories (UTs) out of 36 states and 7 UTs have set up a total of 190 Exclusive Special Courts to try cases under the PoA Act. Even in these 12 states/UTs, the number of atrocity-prone districts continues to outstrip the number of available courts. For example, out of 32 districts in *Tamil Nadu*, the identified atrocity prone areas are 150 but there are only 4 Exclusive Special Courts. Similarly in *Bihar*, out of 38 districts, identified atrocity prone areas are 33 as against Exclusive Special Courts established in only half of the districts in the state. In *Uttarakhand*, there are only 2 Exclusive Special Courts set up over 13 districts. Only in *Andhra Pradesh*, the Exclusive Special Courts have been set up in all 23 districts of the state.

By contrast, Maharashtra has not established a single Exclusive Special Court. Other State Governments and Union Territory Administrations of Assam, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Odisha, Punjab, Rajasthan, Sikkim, Tripura, Uttar Pradesh, West Bengal, Andaman & Nicobar Islands, Chandigarh, Daman & Diu, NCT of Delhi and Puducherry have merely designated District Session Courts as Special Courts. This means that these courts try other cases in addition to atrocity cases, thereby countering the mandate for speedy trials under the POA Act.

Moreover, even where Exclusive Special Courts have been established, studies show that the Special Courts, whether designated or exclusive, are engaged in the trial of non-atrocity cases in addition to atrocity cases, which shouldn't be happening. In other words, Exclusive Special Courts are function as regular courts in reality and not exclusive courts. A study of annual judgments delivered by five

special courts in SC/ST atrocity cases in five states, for example, shows that both Designated and Exclusive Special Courts were capable of delivering a greater number of judgments. The number of cases tried and disposed by Designated Courts, however, is not always high since they also take on the non-SC/ST atrocity cases. This indicates that if the courts function as Exclusive Special Courts, trying exclusively the cases of atrocities against SCs and STs, they could attend to a larger number of such cases each year and accelerate the pace of trials to render justice to a greater number of victims.³

2.2.Pendency of cases with Special and Regular (Designated) Courts

Though there are a number of Special Courts established in the country, there is still high pendency in the trial of cases of crimes against SCs (Table 4.2). According to NCRB data, at the end of 2013, 86.9% of cases of crimes against SCs (39,582 cases) were pending trial across the country including cases carried forward from the previous years. The rate of pendency only escalated in the years following 2010. While not all these cases had been filed under the POA Act, a large number had been or should have been. Hence, the conclusion on the inadequacy of exclusive courts to try atrocities applies. This is despite the provision of Special Courts and the existence of Exclusive Special Courts (Table 4.1). These data again corroborate the inadequacy of the current number of Exclusive Special Courts to ensure speedy justice to victims of atrocities, and the trial of non-atrocity cases by existing designated and exclusive special courts at the cost of atrocity cases. The workload of judges, prosecutors, investigating officers and court administrative staff (especially where dealing with non-atrocity cases as well) and the delay in filing and adjudicating on atrocity cases, thus,

bear a high correlation.

Year(a)	No. of Cases for Trial including Pending cases at start of year	(b)No. of Cases Pending Trial at end of that year	Trial pendency rate (%)
2010	40,481	31,932	78.8
2011	40,435	32,788	81.0
2012	41,826	35,645	85.2
2013	45,531	39,582	86.9

Table 4.2: Cases of Crimes against SCs pending trial in Courts under the PoA Act

Source: National Crime Records Bureau, *Crimes in India 2010-2013*, New Delhi

Public Prosecutors (SPPs)

Section 15 of the PoA Act provides for the

2.3. Inadequate number of Special

Case 3: Insensitive justice delivery system

Dinesh was allotted agricultural land by the state government, which enabled him to transform from a landless labourer to a small cultivator. This change in Dinesh's status didn't go well with a dominant caste landowner who started threatening him of dispossessing him of his land holding and abusing him using caste names. Following all this, Dinesh filed a case with the Court, whereby the police were directed to register FIR and the DSP to investigate the case. According to Dinesh, his ordeal only started once his case entered the Special Court in 2011. He attended the court hearing several times in his case but was never briefed about the case and trial process by the designated SPP. The SPP allegedly did not inform him well about the court hearings. Nonetheless, Dinesh had to pay Rs. 100 to the SPP each time his case came up for hearing in the court.

Amidst all this, Dinesh received interim relief of Rs 6250 once the FIR was registered, but to date (2013), he estimated to have shelled out about Rs 25,000 to attend to the expenses involved (travel and other incidentals) in the trial of the case, besides payments to the SPP. Dinesh was not informed about his entitlement to travel and daily allowances under the PoA Act. *"I am being constantly pressurised by the accused to arrive at a compromise. He threatens to kill me if I don't do so... Even in the courtroom the accused threatens to kill me anytime"*, shared Dinesh. Despite having informed the SPP about these repeated threats, nothing was done to ensure protection to him. The same was deposed before the judge, but no directions were passed in this regard. Dinesh alleged that he being a Dalit gave him lesser advantage of being heard in the court as compared to the accused from the dominant caste. Continued harassment during the trial through aggressive questioning by the Defence Counsel and inaction of the SPP and the judge to address it exposed the insensitive and deep embedded casteist nature of the justice system. While he held little hope for justice, he was determined to see through the case to avoid its disposal without appropriate orders/justice.⁵

appointment of senior advocates with not less than seven years legal experience as Special Public Prosecutors (henceforth, SPP) for the purpose of conducting cases in the Special Courts. Accordingly, the States/UTs which have set up special courts have also appointed SPPs.

In practice, the majority of the states do not have panels of eminent senior advocates who can be called upon to act as SPPs in atrocity cases against SCs and STs. For instance, Gujarat has not created any panel in any district, but SPPs are assigned cases on an *ad hoc* basis.”⁴

The SPPs have the duty to remain impartial, refrain from manifesting any biases against either party in the case, and seek the truth of the matter. However, as illustrated by Case Study 3, victims and witnesses of atrocities described violation of their right to equality before the law and protection without discrimination under the law. The SPPs are found to derelict their duties and violate the rights of victims and witnesses in the following manner:⁶

- Caste bias against the SC victims leads them to believe they are bringing false cases to trial
- The SC victims and witnesses are not allowed to enter into their chambers while the accused and defense advocate are allowed to enter.
- Fee is charged from the victims for each court hearing despite drawing a fee/salary from the government.
- The SC victims and witnesses are denied briefing on their case (status) and court processes; and guidance on deposing before the court.
- Weak preparations and case arguments by

the SPPs are found to weaken the case (thereby breeding opportunity to continue extracting money from the victims upon each hearing) and prolong the trial.

- The victims and witnesses are coerced to compound the cases or turn hostile in the court.
- Give effect to acquittal of the perpetrators in the cases owing to the collusion with the defense counsel.
- Use of abusive and rough words with the victims and witnesses in the courtroom.
- The SPP does not appeal against acquittal judgments from the lower courts to the High Courts, even when there is a reasonable chance of overturning the lower court ruling.

2.4. Low Disposal and Conviction Rates, High Acquittals and Compromised Cases

2.4.1. High rate of trial pendency in cases of crimes against SCs

Table 4.3 shows 17,712 cases, or 13.9% of total criminal cases relating to SCs, were disposed off by the Courts in 2014. While 2013 shows that at the national level 18,100 cases, or 15.4% of total criminal cases relating to SCs, were disposed of by the courts in 2013. Nevertheless, 2013 ended with large 99,119 cases, or 84.1% of total cases, pending disposal by the courts. A glance at the numbers for the years 2012 and 2011 also reflects the same pattern of huge pendency of cases at the end of each year.

Table-4.3: Disposal, Convictions and Acquittals by Courts in cases of Crimes against SCs

S. No	Item	Number of Cases							
		Number				Percentage to total			
		2014	2013	2012	2011	2014	2013	2012	2011
1.	Total number of cases, including pending and brought forward cases	1,27,341	1,17,861	1,09,772	1,08,155	—	—	—	—
2.	Number of cases disposed of by Courts	7712	18,100	16,936	21,287	13.9	15.4	15.4	19.6
(a)	Number of cases ending in conviction	102	4,325	4,075	6,801	28.8	23.9	24	31.9
(b)	Number of cases ending in acquittal	126,10	13,775	12,861	14,486	71.1	76.1	75.9	68
3.	Number of cases compounded or withdrawn	970	642	1,117	478	5.47	3.55	6.5	2.24
4.	Number of cases pending with Courts at the end of the year	1,08,659	99,119	91,669	86,390	85.3	84.1	83.5	79.8

2.3.2. Low conviction rate in cases of crimes against SCs

Table 4.3 shows that convictions were awarded in 23.9% of total cases of crimes against SCs (4,325 cases) that completed trial in 2013. However, if the conviction rate is to be calculated of the total number of cases undergoing trial that year, the conviction rate was a mere 3.7%.

Taking just the cases tried under the POA Act, the NCRB data recorded a conviction rate on completed POA Act trials in 2013 of 16.9%. This can be contrasted with the reported conviction rate for all crimes registered under the IPC, which was much higher at 40.2%.

At the state level, the NCRB data on Crimes in India in 2013 revealed that the conviction rate for cases of atrocities against SCs alone ranged from 7.6% in Andhra Pradesh to 54.1% in Uttar Pradesh. This conviction rate does not take into account the number of cases with-

drawn from trial before judgement is pronounced, in which case the conviction rate would be even lower for SC atrocity cases.

- RTI responses received from district Special Courts in five states under one study – Andhra Pradesh, Rajasthan, Jharkhand, Tamil Nadu and Uttar Pradesh – shows that in none of the courts for which responses were received is the conviction rate higher than acquittal/discharge rate between 2010 to 2012. Moreover, in almost all the courts the conviction rate was almost the same low level of under 25 percent.⁷
- In Gujarat, out of 889 registered cases (185 cases of violence by non-Dalits and 704 cases of violence by Dalits), only 6 cases, or 0.7% of the total, resulted in a conviction of the accused. Also significant is the lack of even one conviction of a non-Dalit accused against a Dalit.⁸
- A study in Tamil Nadu revealed that of 94 cases of murder of Dalits that were pending trial, only three cases resulted in a conviction. Though 62 cases of sexual abuse against Dalit women had been reported from different towns/districts, no conviction resulted in any case.⁹ The reasons identified for high pendency of cases and low conviction rate are:
 - **Inadequate Special Courts:** remains an important reason of all, hence calls for Exclusive Special courts (proposed in Amendment Bill).
 - **Designated Courts overburdened:** The existing Special Courts or Designated Courts are overburdened with trial of cases other than SC/ST cases, which burden limited infrastructural facilities and human resource.

- **No power to take cognizance of cases:** Section 193 of the Code of Criminal Procedures (CrPC) imposes an interdict on all Courts of Sessions against taking cognizance of any offence as a court of original jurisdiction. Cognizance can be taken only if the case has been committed to the Court of Sessions by a Magistrate. This automatically delays the process of committing the case to the Special Court, thereby defeating the purpose of speedy trial.
- **No day-to-day trial:** The cases are not conducted in a speedy manner in the Special Courts, hence the Amendment Bill proposes both a time period and mandates a day-to-day trial.
- **Connected cases are not tried in the same court:** The counter cases filed by the accused in atrocity cases in retaliation to the original complaint by the victim of atrocities are often tried in different courts. Advocates therefore, inform the Special Court about the proceedings going on in the regular court and secure adjournments. Additionally, if there are other cases connected such as counter FIRs, etc., the special courts sometimes wait for the orders of other courts, which then delay the trial furthermore. Thus, it is important that all other connected cases are also tried in the same special court for the actual facts of the case to be made known in one court.

2.3.3. High acquittal in cases of atrocities against SCs

Table 4.3 reveals a disturbing trend of a high number of acquittals in 76.1% of the total cases (i.e. 13,755 of the total 18,100 cases) disposed of by the courts. Cases that had witnesses

turning hostile ended more in acquittals than others, as did the cases that faced the regular absence of witnesses. The victims themselves often recanted their statements out of fear of retaliatory attacks from the accused while out on bail or at the end of the trial. This is particularly the case since most atrocity cases result in acquittal.¹⁰ A study identified the key grounds for acquittal to be:¹¹

A. Procedural Grounds:

1. Investigation not conducted by the competent authority, i.e. DSP or higher ranking officer, but by officer ranking lower to a DSP (*Rule 7, PoARules*).
2. Filing of FIR is delayed.

B. Substantive Grounds:

1. Victims-witnesses denying the incident/statement/complaint during examination by the prosecution, which led to being declared hostile witnesses.
2. Statements of victims-witnesses were entirely different from the previous statements made before the police.
3. Witness' statements did not corroborate with statement of other witnesses in the case.
4. The evidence of the witnesses was not considered by the judges as the witnesses were related to the complainant. The ground taken by the Court was that some of the prosecution witnesses were interested witnesses as they belonged to the victim's family and, therefore, were not reliable.
5. Problems with regard to adequate evidence to prove insult/humiliation using abusive words in public view, or to prove

dominating the will of a SC/ST woman.

Trend of High Courts overturning convictions and sentences awarded by Lower Courts

The overturning of convictions and high sentences (including the death penalty or life imprisonment) in major cases of atrocities against Dalits, booked under the stringent provisions of the PoA Act, has become a clear pattern over the years. For example:

April 2014: High Court in Andhra Pradesh struck down conviction of 56 dominant castes for the massacre of eight Dalits in Tsundur village of Guntur district in 1991.

July 2013: High Court in Bihar overturned conviction and life sentence of 9 out of 10 dominant castes associated with the Ranvir Sena and accused of perpetrating the massacre of 32 Dalits in Miyapur village in June 2000.

March 2013: High Court in Bihar acquitted all 11 persons convicted in the Nagari Bazaar massacre case in which 10 Dalits were killed in Bhojpur district in 1998.

April 2012: High Court in Bihar acquitted all 23 dominant castes associated with the Ranvir Sena who were convicted for the murders of 21 Dalits at Bethni Tola in Bhojpur district in 1996, due to allegedly "defective evidence".

For instance, in the state of Bihar, in recent years (2012-2014) all the major mass atrocities against Dalits adjudicated by the Patna High

Court have resulted in the acquittals of almost all the accused persons belonging to the outlawed caste outfit (the Ranvir Sena). The acquittals made by the High Court involved the reversal of convictions awarded by the trial courts in major atrocity cases booked under the PoA Act.¹² About 90% of cases registered under the PCR Act also ended in acquittal in the lower courts, which questions the fairness on the part of investigations, trial and judicial decisions. There is hardly any instance where state governments have filed any appeal before the High Courts against the decision of the lower courts in cases booked under the PCR Act.¹³

The low conviction rate and high acquittal rate in Courts raises a serious question of non-implementation of the PoA Act and the greater injustice that is being perpetuated against SC victims of atrocities within the criminal justice system. This is all compounded by the failure of state mechanisms to adequately monitor the prosecution of the atrocity cases beyond tracking the outcomes in terms of the numbers of acquittals versus convictions. Despite the judicial pronouncements on the right to speedy trial and the creation of Special Courts with Special Public Prosecutors to try atrocity cases, analysis shows the impact in terms of access to justice for SC can be termed minimalistic, and undermines the government's commitment to SC citizens in this regard.

Case 4: Laxmanpur Bathe, a perfect example of justice denied

On 1 December 1997, 58 Dalits and economically backward castes (EBCs), including 27 women and 16 children, were gunned down by around 100 members of the dominant caste outfit, the Ranvir Sena at Laxmanpur Bathe village in Jehanabad district of Bihar. The trigger for the massacre was that the landless Dalits and EBCs were working on the lands of the

dominant castes but earned less than the minimum wage. Furthermore, in 1995-96, they had been forcibly dispossessed by the dominant caste landowners of the 50 acres of government land that they had been cultivating. Therefore, the Dalits started demanding the government land back, as well as minimum wages, by refusing to work on the land of the dominant caste landowners. The massacre was, therefore, unleashed to teach them a lesson and reinforce the caste hierarchy. After a protracted judicial process of 13 years, in 2010, the District Additional Session's Court awarded death penalty to 16 of the accused and sentenced 10 others to life imprisonment (while acquitting 19). The accused lodged an appeal with the court, following which any sense of justice delivered was then crushed when, in October 2013, the High Court of Patna overturned the lower court's judgement, acquitting all 26 convicts. Based on the study findings, Dalit civil society organisations filed an appeal before the Supreme Court of India on behalf of the victim/survivors on 13 January 2014. This appeal has been combined with the state government's appeal over the High Court judgement, and both are now pending before the Supreme Court. Prominent members of civil society have also visited the village and ensured press coverage of the issue, in order to maintain pressure on the state government to pursue the appeal.

This also raises question on the number of Dalits representing in the country's justice machinery, as police and judges. A Public Interest Litigation (PIL) has been filed in the Supreme Court of India on July 2015, challenging the non-transparent and arbitrary methods of designating senior counsel by the Supreme Court. Furthermore, the petition submits that in the last 15 years, i.e. from 2000 onwards, only one Dalit has been designated judge by the Supreme

Court. Regionally, advocates from states like Uttar Pradesh, Chhattisgarh, Jharkhand or Bihar have not been designated at all.¹⁴ These are also the states, as seen, where atrocities against SCs have been reported to be high. If such is the national picture, then representation of Dalits at state and sub-state levels warrants serious inquiry.

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

proceedings.

National Commission for SCs, First Report 2004-05, New Delhi, 2006, para 6.16

What the above analysis shows clearly is that the enactment of a protective law alone cannot ensure access to justice. Concerted efforts at the level of the enforcement agencies and judiciary are required to recognize, inquire into and address the ways in which caste manifestations lead to failure of justice in cases of caste based violence and atrocities. The enabling environment for SC victims/survivors to approach and engage with the justice machinery; required infrastructure and intake of Dalit advocates as SPPs, and judges at various levels; and accountability checks for prevention and redress, together would effect in the delivery of justice to Dalits in the country.

¹UN Doc. E/C.12/IND/CO/5, paragraph 53.

²Ministry of Home Affairs. (2005). Advisory Letter D.O.No.24024/9/2004-SC/ST Cell, dated 03/02/2005.

³Mangubhai, Jayshree P. and Rahul Singh, 2014. Justice under Trial: Caste Discrimination in Access to Justice before Special Courts. New Delhi: National Dalit Movement for Justice-NCDHR, p. 41.

⁴Paleaz, Jenny. (Undated). *A legally Immune form of Discrimination: Report on socio-economic boycotts in Gujarat*. Ahmadabad: Navsarjan Trust

⁵Mangubhai, Jayshree and Rahul Singh. 2014. Justice under Trial. *Caste discrimination in access to justice before Special courts. National Dalit Movement for Justice*. New Delhi: National Dalit Movement for Justice-NCDHR, pp.82-83.

⁶Mangubhai, Jayshree and Rahul Singh. 2014. Justice under Trial. *Caste discrimination in access to justice before Special courts*. New Delhi: NDMJ-NCDHR, p.98.

²⁶ Mangubhai, Jayshree and Rahul Singh. 2014. Justice under Trial. *Caste discrimination in access to justice before Special courts*. New Delhi: NDMJ-NCDHR, pp. 58-61.

⁸Final Report. Gender violence and access to justice for the Dalit woman. December 2011. Pg. 10

⁹(Special Correspondent. (2013, April 10). 'Atrocities against Dalit peak in 2012: Study', *The Hindu*)

¹⁰People's report on implementation of SCs & STs (PoA) Act and Rules.2009-2011.National Coalition for strengthening SCs & STs (PoA) Act.

¹¹Jayshree Mangubhai & Rahul Singh. 2014. *Justice under Trial: Caste discrimination in access to Justice before Special Courts*. New Delhi: National Dalit Movement for Justice- NCDHR.

¹²Mitta, M. (2013, 15 Oct.). 'In 18 months, Patna HC frees almost all in 4 Dalit killings', *Times of India*.

¹³Chandra Pal. (Undated) .Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<planningcommission.nic.in/plans/state plan/scp.../82ACTIONPOINTS.doc>> , para.7

¹⁴<http://www.legallyindia.com/Bar-Bench-Litigation/jaising-vs-beauty-parade-senior-process>

ACCOUNTABILITY AND MANDATORY MECHANISMS

1. Applicable International and National Standards and Mechanisms

1.1 International Standards and Mechanisms

The international standards of accountability to which India has committed are:

- ICCPR, Article 2(3) holds that anyone whose rights are violated should have an effective remedy, and claim that remedy and have it enforced through competent judicial, administrative or legislative authorities.
- CERD, General Recommendation XXXI 2005, Paragraph 5(1), holds that the States should implement national strategies for eliminating structural racial discrimination which include: specific objectives and actions; indicators against which to measure progress; guidelines for prevention, investigation and prosecution of racist incidents; assessment of satisfaction among communities concerning their relations with the police and justice system.
- CERD, General Recommendation XXXI 2005, Paragraph 5(j), holds that the States should entrust an independent national

institution with the task of monitoring and measuring progress made under national plans of action against racial (and caste) discrimination, identifying undetected manifestations of racial discrimination and submitting recommendations and proposals for improvement.

- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Article. 21, holds that the State should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, promote policies and mechanisms for prevention of crimes, and make readily available appropriate rights and remedies for victims of such crimes.

1.2 National Standards and Mechanisms

- The Constitution of India, Article 39A, provides for the State to secure the operation of a legal system that promotes justice on the basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes so as to not deny any citizen by reason so as to not deny any citizen by reason of economic or other disability access to justice.

- The Constitution, Article 46, also provides for the protection SCs and STs from social injustice and all forms of exploitation in addition to the promotion of their educational and economic interests.
- The PoA Act, Sections 17 & 21, provide for necessary measures for the effective implementation of the Act by State governments, including:
 - d) appointment of officers for initiating or exercising supervision over prosecutions of offences;
 - e) setting up committees to assist the government in formulation or implementation of such measures;
 - f) periodic survey of the working of the Act's provisions to suggest measures for better implementation;
 - g) Identification of atrocity prone areas and adoption of preventive measures to ensure safety of the SCs and STs.

2. Rights of Victims and

Witnesses

Backed by Article 39 of the Constitution, under the PoA Act the State Governments are required to adopt measures including provisions of (i) adequate facilities like legal aid to enable victims to access justice; (ii) travelling and maintenance expenses for victims and witnesses during investigation and trial; and (iii) economic and social rehabilitation for victims (*section 21(2) SC/ST (PoA) Act*).

However, in reality, explicit information on their rights and entitlements are lacking in the existing PoA Act. These include mandatory provisions such as: information about their rights at the time of making complaints and registering FIR; right to protection from intimidation and harassment; right to information on status of investigation, charge sheet and medical examination; compensation and travel and daily allowance (TA/DA); briefing about the cases in order to prepare for the process of trial; free legal aid; and access to documents of their case; etc. The absence of these essential legal entitlements has denied victims and witnesses their role and chance to participate in the proceedings throughout the criminal trial

PoA Rules require State Governments to:-

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

process. Consequently, they are denied any say or hearing in matters of adjournment, bail, discharge, release, parole, conviction, acquittal or sentencing of the accused, or any connected proceedings or arguments.

It is these serious gaps that the proposed Amendment Bill, which is pending in the Parliament, provides for through its proposed provisions of protection, information with regard to rights in seeking redress, giving the victims a greater scope to participate in the proceedings with assistance from the NGOs and social worker.

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

Rule 11 of the PoA Rules provides for every victim of atrocity or his/her dependent and witnesses to be paid to and fro rail fare by second class or actual bus or taxi fare 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. It is the duty of the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate to make the necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses.

In spite of having the above provision to support the victims and witnesses, the gaps in non-implementation can be understood in light of a status report on the implementation of SC/ST (PoA) Act in the state of Rajasthan.¹ The report points to the lack of awareness among the Dalit victims about their entitlements and ignorance among the concerned authorities, coupled with apathy towards Dalits,

even if they are aware of the provision of entitlements some key reasons for the gaps in implementation of this provision. In practice, Dalit victims are summoned to the courts by the investigating officers without any information in writing, and in the absence of documentary proofs, they cannot claim reimbursement for travel and daily allowance. The State government has also failed to create awareness about these entitlements among the Dalit communities by, for example, explicitly publicising information in the premises of the police stations and courts and through other media.

4. Right to Legal Aid and Protection

Between 1 April and 30 September 2011, over 695,000 persons benefited from legal aid services in the country, of which only 4% beneficiaries were SCs.² In 2011, in 12 states/UTs, a total of 25,311 cases of atrocities were registered under the PoA Act, but only 7,738 SCs/STs benefitted from legal aid that year. Assuming that in each case an average of 1 victim per atrocity case benefitted from legal aid, this would mean that only 30% victims benefitted from legal aid services. In the other 22 states/UTs, no information was made available on the number of SC/ST victims provided with legal aid services.³

There is no proactive outreach to SCs for legal aid. Although the Legal Services Authorities Act 1987 directs State Legal Services Authorities (LSAs) to work closely with government agencies and NGOs to “promote the cause of legal services to the poor”, many state agencies, for example the Scheduled Caste Commissions, requiring legal aid have not been proactively approached by the LSAs.⁴

The government therefore is failing to provide adequate facilities, including legal aid to

the persons subjected to atrocities, to enable them to avail themselves of justice.

5.Declaration of atrocity prone areas

The PoA Act, under section 17, mandates preventive actions by the law and order machinery to avoid caste-based atrocities. On receipt of information of any potential atrocity, a District Magistrate, a sub-divisional Magistrate, or any police officer not below the rank of DSP may, declare such an area, to be prone to atrocities. State governments have identified a number of atrocity prone districts and areas, as seen in Table 5.1.

All States governments are mandated to identify atrocity-prone areas and thereafter prepare a plan of action for eliminating “untouchability” practices and reducing incidents of caste based violence. However, according to the MSJE, only ten states had identified 171 districts as atrocity prone areas by the year 2013 (Table 5.1). This reveals the poor state of affairs and low political will together with established systemic bias to have this provision implemented in only 10 states of the 36 states and 7 UTs in India, in more than two decades of the enactment of PoA Act. No common

Table 5.1: Government-Identified Atrocity Prone Districts

S.No.	State	No of Identified Atrocity Prone Districts in States	No. of cases under SC/ ST(PoA)Act for 2011-2013
1.	Andhra Pradesh	17	2935
2.	Bihar	33	13044
3.	Gujarat	11	621
4.	Karnataka	30	4045
5.	Kerala	1	199
6.	Madhya Pradesh	8	7
7.	Maharashtra	3	848
8.	Odisha	16	4984
9.	Rajasthan	18	325
10.	Tamil Nadu	34	3488
Total		171	30,496

Source: Annual Report, 2013. Ministry of Social Justice & Empowerment, New Delhi

criteria have been evolved to declare an area as prone or vulnerable to caste atrocities. As atrocities are not limited to only the identified districts, the absence of objective set of criteria makes the situation of SCs all the more precarious.

In 2010, for example, the dominant caste Jat community in village Mirchpur's of Hissar districts in Haryana burnt alive a 17-year old Dalit girl and her 60-year old father. They looted and set ablaze 18 Dalit houses. Despite this incident, the Haryana state government has not declared any district as containing atrocity prone areas. Such inaction points to the lack of will on the part of police and the administration at large in preventing caste atrocities on Dalits and outright disregard for Section 17 of the PoA Act.

6. Status of SC/ST Protection Cells

Rule 8 of the PoA Rules requires the State/UT Governments to set up a SC/ST Protection Cell at the state headquarters under the charge of the Director of Police or Inspector-General of Police. The Protection Cell is to be responsible for conducting surveys of the identified area, maintaining public order and tranquillity in the identified area, and keeping the nodal officer informed about the law and order situation in the identified area. Additionally, it is also responsible for making enquiries about the investigation and spot investigations of atrocity incidents conducted by various officers and submitting a monthly report to the State Government and Nodal officer apprising about the action taken on the cases.

According to the MSJE 2013 report on the status of implementation of the POA Act, SC/ST Protection Cells have been set up in 28 States/UTs, namely: Andhra Pradesh, Assam,

Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Manipur, Maharashtra, Nagaland, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttarakhand, Uttar Pradesh, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, NCT of Delhi and Puducherry⁵. But there is no information available on their substantive activities, progress and outcomes pertaining the mandate assigned to these cells.

7. Status of Nodal Officers & Special Officers

Rule 9 of the PoA Rules provides for appointment of nodal officers for coordinating the functioning of the District Magistrates and Superintendents of Police or other authorized officers. According to the MSJE 2013 report on the status of implementation of the POA Act, such officers have been appointed in 29 States/UTs, namely: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, NCT of Delhi and Puducherry. However, no data is available in the public domain to analyse how well these officers are performing in terms of their outreach to the SCs.

With no information about the quality of functioning of the protection cells and designated officers, it is impossible to gauge the effectiveness of these mechanisms, or to even check the vision and approach towards and with which they are driven.

8. Functioning of Vigilance and Monitoring Committees

8.1 State Level Vigilance and Monitoring Committee (SVMCs)

Rule 16 PoA Rules provides for the constitution of high power state-level vigilance and monitoring committee (SVMC) of not more than 25 members, chaired by the Chief Minister. The SVMCs should meet at least twice in a calendar year to review the implementation of the provisions of the Act; relief and rehabilitation facilities provided to the victims and other matters connected therewith; prosecution of cases; role of different officers/agencies responsible for implementing the provisions of the Act; and various reports received by the State Government.

According to the MSJE 2013 report on the status of implementation of the POA Act, SVMCs have been set up in 29 States/UTs, namely: Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, NCT of Delhi and Puducherry⁶.

However, from the RTI responses⁷ received from 10 states (Andhra Pradesh, Assam, Bihar, Gujarat, Kerala, Maharashtra, Rajasthan, Telangana, Uttar Pradesh and Rajasthan) with regard to the meetings of the SVMCs, these meetings were conducted only in the state of Uttar Pradesh (in February 2015). For the remaining states, either meetings were not conducted or information was not available on these meetings. The responses highlighted the

irregularity in convening the meetings at the state level.

The SVMC is also supposed to make its decisions public after having reviewed the implementation of the Act once in every six months. Unfortunately, however, no such information is publicly available. Hence, while the setting up of the SVMC was a good start, their functioning has not been visible and transparent, and their performance has been minimal at best.

8.2 District Level Vigilance and Monitoring Committee (DVMC)

According to Rule 17 of the PoA Rules, in each district the District Magistrate shall set up a district-level vigilance and monitoring committee (DVMC) to review on a quarterly basis the implementation of the provisions of the PoA Act; the relief and rehabilitation facilities provided to the victims and other matters connected therewith; the prosecution of cases under the Act; the role of different officers/agencies responsible for implementing the provisions of the Act, and the various reports received by the District Administration.

According to the MSJE on the status of implementation of the POA Act, Committees have been set up in 29 States/UTs, namely: Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, NCT of Delhi and Puducherry.⁸

With regard to the DVMC meetings, the Rule 17 on quarterly meetings is widely flouted. RTI responses received from 30 districts across 10 states of the country on the frequency of

DVMC meetings in the year 2013-14 confirm only the presence of DVMCs in the districts. However, no information was available regarding the presence of DVMCs in all districts of those states.

Another serious concern is that although DVMCs have been constituted in all or few districts in some states, meetings have not been held regularly. For example, RTI responses⁹ revealed the following trends:

- In Kurnool district of Andhra Pradesh, no review meeting took place in 2014 and the committee was not functional. A new committee was reconstituted with new members on 27th November 2014.
- In districts like Vizianagram and Guntur of Andhra Pradesh, no meeting was held in 2014.
- In many districts, RTI information was only available on the last DVMC meeting to have taken place in the district by the end of 2014, which shows that the meetings were not being conducted on a quarterly basis: e.g. the last meeting in Amravati district of Maharashtra was conducted only on 4 March 2014; the last meeting in Bhandara district of Maharashtra on 12 June 2014; the last meeting of Kolhapur district of Maharashtra on 30 August 2014; the last meeting in Kadapa district of Andhra Pradesh on 21 August 2014; the last meeting of Dholpur district of Rajasthan on 23 May 2014.
- In several districts like Samastipur of Bihar, Nandhubar of Maharashtra, Namakkal of Tamil Nadu, Jodhpur of Rajasthan and Palakkad of Kerala, no information was made publicly available on the DVMC meetings even taking place.

9 Scheduled Caste Commissions

The National Commission for SCs and STs was set up in 1990 as per Article 338 of the Constitution of India, and further bifurcated into a separate National Commission for Scheduled Caste (henceforth, NCSC) in 2003 on the passage of the 89th Constitutional (Amendment) Act. The overarching purposes of NCSC are to monitor the safeguards and protections provided to SC community as well as review of various welfare measures meant for SCs (Article 338(5)).

Mandates:

In terms of formal mandates, all Commissions for SCs (national and states) are expected to focus on two main functions: (I) monitor constitutional safeguards and (ii) enquire into complaints of violations of safeguards. The NCSC, however, is assigned two additional mandates: (I) to participate/advise in planning for socio-economic development of SC community; and (II) to make recommendations for effective implementation of the constitutional safeguards. However, the mandates of the Commissions for SCs are recommendatory in nature. After the fact findings and case reports submitted by civil society organisations to the Commissions, the members can only recommend or raise the issue. Presently, there are approximately 21,000 cases pending before the NCSC.¹⁰

Significantly, there is a backlog of reports by the Commission which have yet to be tabled before the Parliament. The Commission is supposed to produce annual reports but delays are occurring in tabling these reports in the Parliament. For example, the 2009 report was tabled only in 2014, after a gap of 4 years. The reports after 2009 (i.e. for 2010, 2011, 2012, 2013

and 2014) are not yet tabled and, therefore, not yet publicly available. These reports are significant as they provide independent evidence of the functioning of this key protective law, the POA Act and Rules, and therefore are required to be tabled in the Parliament.

The latest report of the NCSC that has been tabled before Parliament pertains to the years 2007-2009.¹¹ In this report, the Commission reviewed the implementation of the POA Act across selected states in 2008-09 and found the following, indicative of trends which continue to prevail today across the different states in the country:

- **Haryana:** State Government was asked to be more alert to the rising cases of atrocities on SCs and to make special efforts to combat the menace of atrocities. The Commission also stressed the need to identify such where the problem was comparatively more serious and declare such areas as atrocity prone areas.
- **Kerala:** Police were not fully aware of the provisions of the PoA Act and therefore a large number of atrocity cases were ending in acquittals. Also a number of cases were being compromised due to the retraction from the prosecution side witnesses presumably happening with the connivance of the Police Department. Further, the Commission expressed its concern on the low conviction rate of atrocity cases and the fact that increasing cases of crimes against SCs were being booked under the IPA and not the POA Act.
- **Punjab:** A large number of cases registered under the PoA Act were closed without assigning any reasons by the police and a large number of cases remained pending for investigation for long periods. The rate of acquittal was very high in cases disposed

of by the courts, which showed the attitude of the prosecution was wanting. The SVMC had not been constituted and therefore no monitoring at the required level was taking place.

- **Himachal Pradesh:** The SVMC was defunct and no meetings had taken place for the last 2-3 years. Although atrocities were on the increase, the Government had not initiated any measures to put a stop to the atrocities. The conviction rate was too low and many times compromises were reached out of the Court, which was not desirable.
- **Odisha:** The rate of conviction in POA Act cases was very negligible although the acquittal rate was very high. Upto then end of 2008, the number of pending cases was 6,389 (98.8%). The reasons for slow disposal of the cases could not be answered by the DGP. Data provided also showed that at least 888 SC victims had not been provided monetary relief within the time limit prescribed under the PoA Act. The reasons for the same could not be cleared by the police.

More recently, the NCSC chair P.L. Punia indicted the [Punjab] administration over the increasing cases of atrocities on Dalits... He said that Punjab had highest percentage population of Dalits and maximum atrocities were also taking place in the state... Those who were committing excesses on Dalits were roaming free in the state.¹²

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In sum, the implementation status of the PoA Act mandatory mechanisms for monitoring and ensuring accountability, based on the above analysis, gives a grim picture. Despite the existence of various mandatory and accountability mechanisms such as periodic reviews of atrocity cases, reviews of the performance of SPPs, reviews by the SC/ST Protection Cell and Nodal Officer and State and District Level Vigilance Monitoring Committees, etc., in most of

the states these mechanisms are more widely flouted than implemented. Even though various committees under the law have been constituted, no regular meetings are held and no serious follow up action emerges from the deliberations of the meetings, on the position of the cases, and reviews. Despite the rising number of crimes against SCs and atrocities registered under the PoA Act, many of the states have not identified atrocity prone areas. The negligence in implementing the mandatory mechanisms and ensuring protection of rights of the victims and witnesses, points to the lack of political will and deep rooted systemic bias. The process of rendering justice to victims of caste atrocities needs to open up engagement with non-governmental organisations to effect just implementing and monitoring the PoA Act and Rules.

¹ National Dalit Movement for Justice (NDMJ) & Centre for Dalit Rights (CDR).

Status Report on Implementation of SCs & STs (PoA) Act 1989 and Rules 1995 Rajasthan 2011-12, p. 14.

²India Current Affairs (2012, 17 Feb.). National Legal Services Authority: Performance-Cum-Achievements. Retrieved 05.25.2015 from <<

³NDMJ. 2014. Benchmarking the Draft UN principles and Guidelines on the elimination of caste discrimination based on work and descent: India report. Swadhikar-National Campaign on Dalit Human Rights, p. 39.

⁴Multiple Action Research Group, 2012. Ne

eds Assessment Study of Selected 1\Legal Services Authorities. New Delhi: Department of Justice, Government of India & UNDP.

⁵Annual report 2013, Ministry of social justice and empowerment. U/s 21 (4) of scheduled caste and scheduled tribe (PoA) Act, 1989

⁶Annual Report 2013. Ministry of Social Justice & Empowerment

⁷RTI Act responses received from State Governments by National Movement for Justice (NDMJ), New Delhi during 2013-2014. Only for UP was the RTI response up to February 2015.

⁸Annual Report 2013. U/s 21 (4) of Scheduled Castes and Scheduled Tribes (PoA) Act, 1989. Ministry of Social Justice & Empowerment, New Delhi.pg.9

⁹RTI responses were received from 4 districts of Andhra Pradesh, 6 districts from Bihar, 2 districts from Tamil Nadu, 1 district from Kerala, 6 districts from Maharashtra, 7 districts from Rajasthan, 3 districts from Telangana and one district from Uttar Pradesh.

¹⁰Dr. P.L. Punia, Chairman, NCSC, 19th May 2015 National Public Hearing, Identity based Discrimination/Violence against Children in School Education. Constitution Club of India. Delhi.

¹¹ National Commission for Scheduled Castes, Fourth Report: May 2007-May 2009.

¹²Times of India, Chandigarh. (2015, May 26). 'NCSC chief attacks Punjab Govt .over atrocities on Dalits '. Retrieved on 1st June 2015 from <<http://timesofindia.indiatimes.com/city/chandigarh/NCSC-chief-attacks-Punjab-govt-over-a-trocity-on-dalits/articleshow/47424072.cms>>.

BUDGET ALLOCATION FOR PROTECTION

1. Applicable International and National Standards

1.1. International Standards

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

1.2. National Standards

- As per Rule 14 POA Rules, the government shall make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocities. Budgetary allocation is important for effective implementation of the Act in order to meet fiscal requirements for compensation to victims of atrocities, legal aid, medical aid, relief, shelter, awareness campaigns, district and state monitoring committee meetings and functioning of special courts.

2. Constitutional Mechanism for budget allocation to implement PoA Act

The Ministry of Social Justice and Empowerment (MSJE) is entrusted with the overall task

of empowering and providing physical and financial security to SCs against all types of exploitation and oppression. Accordingly, the Ministry is responsible for monitoring the implementation of the PCR Act and PoA Act. For this, financial resources are provided through the Special Central Assistance (herein SCA) to the State Governments on a 50:50 budget sharing basis, and to the Union Territory Administrations on 100% basis wherein the Central Government contributes 100% of budget allocation. The SCA, initially introduced for implementing the PCR Act in 1974-75, was extended to cover the PoA Act in 1990-91.

To ensure the effective implementation of the PoA Act (besides the PCR Act) by the respective State/UT Governments, the SCA is to be used for the following purposes:

- (i) Monitoring the functioning and strengthening of the SC/ST Protection Cell and Special Police Stations, inclusive of conducting periodic surveys, identification of untouchability/atrocity prone areas, etc.
- (ii) Setting up and functioning of Exclusive Special Courts, including appointment of officers for initiating or exercising supervision over prosecution, setting up of vigilance and monitoring committees and Special Courts, etc.

- (iii) Relief and rehabilitation to atrocity victims, including minimum wages to the victims/dependents of atrocities on FIR investigation, reimbursement of the payment of medicines, special medical consultation fee, legal aid etc.

3. Budget of the Government of India

12th Five Year Plan (2012-17), though initially increasing in FY 2012-13 (Rs. 100 crore), witnessed a consistent downfall with Rs. 90 Crores allocated from FY 2013-14 onwards. The commitment to implement the PoA Act can be understood from the inadequacy of allocations made compared with the rising cases of caste atrocities and crimes against SCs.

Significantly, the insufficient allocation of funds also affects the available infrastructural

Table 6.1. Allocations for Special Central Assistance for PCR and POA Acts

11 th Five Year Plan		12 th Five Year Plan	
Year	Amount	Year	Amount
2007-2008	Rs. 39.00 Crores	2012-2013	Rs 100.00 Crores
2008-2009	Rs. 39.00 Crores	2013- 2014	Rs. 90 Crores
2009-2010	Rs. 42.00 Crores	2014-2015	Rs. 90 Crores
2010-2011	Rs. 58.00 Crores	2015- 2016	Rs 90.75 Crores
2011-2012	Rs.69.00 Crores	2016-2017	-
Total	Rs. 178 Crores	Total	Rs. 379.75 Crores

(Sources: 11th FYP: NCSPA, Report Card on 20 Years of POA Act, p.46 & 12th FYP: Government of India, Union budget of India: 2011-2016)

Table 6.1 shows that the amount released by the Central Government to the State/UT Governments under the SCA during the 11th Five Year Plan (2007-2012) totalled Rs. 178 Crores. The allocations increased from FY 2009-10 onwards. However, allocations in the

facilities, which in turn has implication across speedy trial of cases. The irregularity and delayed allocation of financial resources to witnesses (as provisioned under the Act to enable their appearance for the court hearings) impedes their attendance in the courts.¹

Table: 6.2: Status of funds allocated for relief and rehabilitation of SC victims of atrocities under POA Act (Figures in Crores)

States	2013-2014			2014-15			2015-16	
	Budget Estimate	Revised Estimate	Actual /Spent	Budget Estimate	Revised Estimate	Actual /spent	Budget Estimate	
Andhra Pradesh	8.21	8.21	2.45	4.96	0.22	—	0.22	—
Haryana	3.00	3.00	2.20	3.00	3.00	—	3.25	—
Madhya Pradesh	12.60	20.60	17.10	17.50	21.00	—	27.40	—

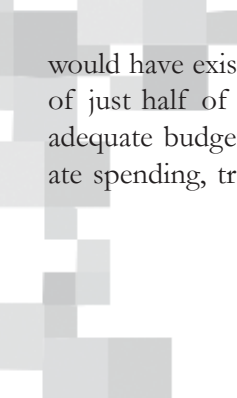
(Source: Government of India, Union Budget of India 2013-2015, New Delhi)

Table 6.2 provides examples from three states on budget allocations and expenditures under the SCA. The budget estimates are those produced at the start of the financial year, while the revised estimates are done mid-way through the financial year. Actual represents the amount spent, which is available only after a two-year period. On a positive note, except for the FY 2014-15 in Andhra Pradesh, the revised estimates have not seen a decrease in the allocation for the SCA. In fact, Madhya Pradesh has raised its allocations in its revised estimates in both FY 2013-14 and FY 2014-15.

However, the gap between the revised estimates and actual expenditure seen in FY 2013-14 raises serious concerns. In 2013-14, the budget allocated to Andhra Pradesh was Rs. 8.21 Crores but the actual amount spent was just Rs. 2.45 Crores. The amount unspent was Rs. 5.76 Crores. In Haryana in FY 2013-14, the budget allocated was Rs. 3crores but the amount spent was Rs. 2.20 Crores. For Madhya Pradesh, the budget allocated was Rs. 20.60 Crores in FY 2013-14, but the amount spent was 17.10 Crores. Thus, the data for three states reveals

that there is a significant shortfall in expenditure under the SCA to ensure the effective implementation of the POA Act. Further, the absence of information on the utilisation of unspent funds, whether those funds were carried forward or not to the next financial year, leaves a gap in the budget tracking and monitoring to ensure funds are not misused.

The budget allocations and manner of expenditure are a means of determining the commitment of the country towards serious issues such as atrocities against SCs, and consistent reduction in the allocation exposes the current low commitment to the issue of effective protection of SCs in the country. If only adequate budget existed and was spent appropriately, there could be Exclusive Special Courts set up across the country instead of in only 11 States; adequate relief and compensation paid to the victims; awareness generation activities for SCs and STs on the PoA Act; various commissions and committees would not have indicated to lack of knowledge of the Act for non-registration of cases; and SC/ST Protection Cells



would have existed across the country instead of just half of the states. Therefore, besides adequate budgetary allocations and appropriate spending, transparency and public disclo-

sure of the utilisation of funds are also required for accountable and effective implementation of the PoA Act.

GOOD PRACTICES IN ENSURING ACCESS TO JUSTICE

This chapter lays out examples of interventions which have succeeded in generating positive changes in the lives of Dalit women, men and children through facilitating their access to justice following atrocities, hence contributing to the eradication of caste based discrimination.

Example 1: NCSC Interventions regarding Police atrocities against SC Kuravan community in Tamil Nadu

Case brief: The SC Kuravan community has an estimated population of 100,000 in Tamil Nadu. They were notified as “Habitual Offenders” by the British under the Criminal Tribes Act 1871, which gave sweeping powers to the local governments to declare certain “tribes, gangs or classes” as being “addicted to the systematic commission of non-bailable offences”. While this law has been subsequently repealed on Independence, the stigmatisation and prejudices against the community remain. Hence, they are vulnerable to false charges of crimes and physical torture by the police, considered still as “habitual offenders” to be picked up if any crime happens in an area. The entire community, therefore, lives in fear of detention and arrest, owing to which they flee their homes

and hide in forest areas, leading absconder-like life with dignity at stake.²

Taking cognisance of the case, a Dalit former parliamentarian and NCSC Member used her statutory powers to summon the D.G.P of Tamil Nadu on 24 September 2014. A number of Kuruvan victims from multiple cases were also invited to depose before the Commission. Directions were then issued to the Home Secretary and the D.G.P. for immediate detailed inquiry into the matter in the light of the general practice of police atrocities against the Kuruvan community and to submit a report to the NCSC. Moreover, the D.G.P was directed to provide immediate security and protection to the victims who had deposed before the Commission. The NCSC went one step further and also ordered an independent inquiry by a Committee, which included members of CSOs and legal advisors, to inquire into all the pending cases against Kuruvans across multiple districts in Tamil Nadu, and to suggest action against the police officials found engaged in dereliction of their duties. The Committee submitted their report with extensive findings and recommendations to the NCSC on 18th May 2015. On 9th July, based on the report, recommendations were given by the NCSC to the Chief Secretary of Tamil Nadu. CSO National Dalit Movement for Justice has filed an RTI to follow up on implementation of these recommendations.

Good practices by the NCSC:

- This is perhaps the first time that the NCSC has inquired into an issue of systematic human rights violations occurring against a SC community rather than viewing the cases on a one-to-one basis. This case shows the understanding that caste discrimination is not an issue of individual rights, but one that is systemic and socially rooted, thereby demanding solutions that address social group discrimination and biases.
- Directions issued to the Home Secretary and D.G.P for immediate detailed inquiry into the matter within a stipulated time.
- Immediate security and protective measures ordered for the victims who deposed before the Commission against any threats and intimidations by police officials.
- Letter written to the state's Chief Minister regarding protection and rehabilitation of Kuravan community, taking effective steps to redress their grievances attaching the represented case details submitted by CSO National Dalit Movement for Justice-NCDHR.
- Constitution of facilitation team consisting of various CSOs to prepare the survivors with their documents, case updates, evidences and above all, selection of the cases to be presented before the Inquiry Committee. The facilitation team visited the districts of Thanjavur, Madurai, and Villupuram covering around 29 petitioners/victims and recorded their statements regarding the police atrocities and collected the related documents available with the community.

Example 2: Coordinated Interventions in Mirchpur's Massacre case, Haryana

Case brief: On the night of 19 April 2010, 10 to 15 young dominant caste Jats, who were drunk, drove into the SC Balmiki hamlet on motorbikes, creating a nuisance. At Karan Singh's house, his pet dog barked at them. One of the Jat youth hurled a brick at the dog, which was objected to by Karan Singh's nephew. The Jat men then got violent with him, and sensing that situation could get out of hand, Karan Singh intervened and offered to apologise since the Jats threatened more trouble. VirBhan, a Balmiki elder and Karan Singh went to apologise to the Jats but were beaten up and humiliated in return. VirBhan had to be hospitalized. Soon, word spread that the Jats sought to teach the Balmikis a lesson they would not forget. The Balmikis immediately sought to lodge a complaint at the local Police Station at Narnaund, Hissar district, but the Station House Officer (SHO) refused to take action. Then on 21 June 2010, a Jat mob burnt alive 17-year-old Balmiki girl Suman and her 60-year-old father Tara Chand, and proceeded to also loot and set fire to 18 Balmiki houses.

Learning of the incident, the National Dalit Movement for Justice (NDMJ)-NCDHR immediately organized a fact-finding visit to the village. Based on the findings, a press conference was organised in New Delhi, which helped disseminate the facts of the atrocity through the print media. NDMJ along with advocates and others then supported the victim/survivors and witnesses throughout the trial, including getting the case transferred to Rohini Court in Delhi from Hisar Court in Haryana in order to better protect the victim/survivors and witnesses. On 24 September, 2011 a total of 15 people were convicted in the case. However,

the Court acquitted 82 out of 97 accused in the case saying the allegations levelled against them were not proved beyond reasonable doubt.

Subsequently, with support from the Human Rights Law Network, a Public Interest Litigation (PIL)³ was filed before the High Court and subsequently on being rejected, a Writ Petition filed before the Supreme Court. The Writ Petition demanded appropriate measures for accommodation; relief and rehabilitation; and protection of the victims. CSOs also assisted the Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes with details of the case prior to their visit to the field for investigation in response to the writ petition. Parliamentarians were also met with and briefed about the case to hold them accountable to their constituencies (Hissar). These processes went on concurrently in order to build pressure on the authorities.

Currently, the case is listed for hearing before the Supreme Court and Dalit CSOs and DHRDs remain in touch with the victim/survivors and advocates to follow up on the case. The State Commission appointed Inquiry report dated 24.09.2014 has been taken on record and the state government accepted to implement its recommendations. One indirect impact of the follow up of this case in the Supreme Court has been to make the State Government active in terms of following up on the Commission's recommendations. For example, one of the recommendations relates to a discrimination-free environment in all universities and a circular to this effect has been issued in 2015.

Good practices elements that can be replicated for justice in cases of caste violence:

- NDMJ consistently followed the trial process and proceeding till the final judgment was secured.
- The advocates of victim's choice were identified and appointed as the Special Public Prosecutors through direct interventions by NDMJ.
- Secured protection for victims and witnesses from the court for the entire trial period through support of the advocates. NDMJ with the support of the advocates guided the victims and witnessed on deposing before the courts at the stage of evidence.
- NDMJ and advocates also supported the witnesses to understand the court process and how to depose their evidence before the court. During the whole trial this support was extended, including personally appearing with victims and witnesses to give them confidence and sense of security.
- A DHRD, with support of the local lawyers, supported the victims and witnesses to voice about the issues and demands before the Commission of Inquiry. Dalit CSOs are following up on this process to ensure the Commission's recommendations are implemented.

Example 3: Murder of a DHRD, Chandrakant Gaikwad (see Case I)

Mr. Chandrakant Gaikwad, a DHRD, was shot dead in Indrapur block of Pune district, Maharashtra, by a dominant caste man and his supporters on 12 February 2013. As an active DHRD, Chandrakant had supported the victims of caste-based discrimination and atrocities in getting cases registered against the accused for perpetrating crimes against Dalits in 2011. Chandrakant was also one of the witnesses in two other atrocity cases, which were filed under the PoA Act against the same accused in 2012. In retaliation, the accused con-

spired to kill the three DHRDs who had supported the initiation of the criminal cases against him.

Taking note of the incident and as a witness to the murder, DHRD Vaibhav Gite has followed the case intently at every stage. He has supported Chandrakant's family to ensure appropriate relief and rehabilitation measures for them, and to ensure the police impartially investigated the case.

Recognising the need to highlight the issue of protection for human rights defenders, a public consultation was organised by NDMJ in Baramati district of Maharashtra in October 2013, together with local network organizations, to discuss over the issue of targeted attacks on DHRDs by the dominant caste perpetrators. As a result, the issue of protections to the DHRDs was highlighted and attracted significant media attention. Chandrakant's case was also intimated to the UN Special Rapporteur on the Situation of Human Rights Defenders, seeking immediate intervention. Subsequently, a National Peoples' Tribunal (NPT) in New Delhi on December 2014 was used to expose the inaction of the authorities, which attracted further media attention to the case. A Round Table Conference organized with the NCSC and NHRC soon after the Tribunal resulted in the registration of the case by the NCSC. The NCSC has sought a report from the Superintendent of Police of Pune district. Based on the report received, the NCSC has issues recommendations to ensure access to justice for Chandrakant.

Currently, the case is pending trial before the Baramati sessions Court, Pune (Designated Special Court). Advocate Vijay Sawant is appointed as SPP on the request of the deceased Chandrakant's wife.

Good practices elements that can

be replicated to secure protection of DHRDs:

- Rapid and immediate interventions within 2-3 hours of the incident were organized in the case, which built the momentum among the Dalit community to demand justice for Chandrakant.
- Rigorous stage by stage follow up of the case was done by the national and local Dalit CSOs and DHRDs to ensure any gaps in investigation and the judicial process by concerned police government officials were filled.
- A hunger strike by DHRD Vaibhav Gite and 25 Dalit activists resulted in government officials promising to give employment to the widowed wife. She was appointed in Dr. Baba Sahib Ambedkar Girls Hostel in Baramati on 4th October, 2014.
- Involving the UN Special Rapporteur on the Situation of Human Rights Defenders and informing her on the situation of DHRDs, thereby seeking international accountability together with national interventions.
- The mass support from Dalit CSOs and DHRDs strengthened the victim's family members together with the two DHRD colleagues of Chandrakant's in fighting for justice.

Example 4- Monitoring the functioning of Special Courts through Legal Clinics

In order to strengthen the justice delivery process in the special courts, NDMJ initiated an innovative model of Legal Clinics in 2012as


part of a process of monitoring the functioning of the Special Courts trying atrocity cases. The Legal Clinics are organized at the district level where by a pool of committed advocates are linked with the local CSOs and DHRDs for facilitation of the legal process in specific cases. Cases tried under the PoA Act are identified based on the fact findings and follow up done by the CSOs with the victims and witnesses, and in linkage with the advocates. This allows for interventions not only in individual cases of atrocities, but also to develop joint petitions - e.g. on protection of victims and witnesses – which can target the criminal justice system itself to ensure better functioning. Other cases where fact findings are not conducted are also identified for interventions based on personal interactions with the victims and witnesses and gaps in their cases or problems they are facing during the trials.

Good practices elements that can be replicated for supporting atrocity victims throughout judicial process:

- Legal clinics that strengthen the relationship between victims/witnesses, advocates and local CSOs are a critical factor in taking monitoring of atrocity cases to the next level, in terms of ensuring handholding support throughout the judicial process right up to the court judgment. The clinics play an important role in infusing confidence among atrocity victims and witnesses, and enable CSOs to deepen their interventions on access to justice issues. The success of this model has led the victims and witnesses to spread information about the clinics throughout district and adjoining districts.

- Legal clinics are also a medium for young Dalit and Adivasi lawyers, as well as other lawyers interested in working with these communities, to become oriented on and build their understanding of the provisions of the PoA Act and related criminal legal practices, and at the same time, increase their capacities to act for SC/ST rights within the broader justice system.
- The legal clinics area potential sustainable model for reforms in the justice system, by providing assistance to the victims and witnesses of atrocities in terms of properly understanding the problems they are facing, coming out with some kind of strategies for the follow up of the cases, and providing an advocate of their own choice and support through DHRDs. These clinics, together with State and District Legal Authorities if activated to work in the area of POA Act, could go a long way through training advocates in the field of Dalit and Adivasi rights.

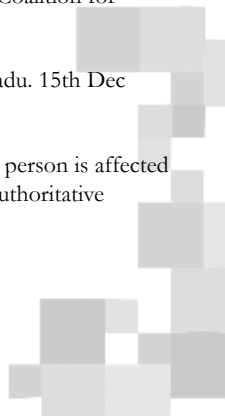
While there are very few documented good practices by state or non-state actors, the above key identified examples of interventions offer insights into both the complicated caste-ridden justice framework, and also offer possibilities and innovations for replication and up-scaling to ensure justice to victims of atrocities. Moreover, what is unique about these intervention practices, approaches and models is that they are designed by Dalits themselves, which further establishes the effectiveness of engaging Dalit persons in the matters of caste atrocities and violence, be it through representation in the government/justice system or via engagement with Dalit rights organisations/CSOs.



¹ Peoples report on implementation of SCs & STs (PoA) Act 1989 and Rules 1995: 2009-2011. National Coalition for Strengthening PoA Act, p.33.

² Study report on alleged cases of Police atrocities against Kuruvan Community in the State of Tamil Nadu. 15th Dec 2014- 13 January 2015. National Commission for Scheduled Caste (NCSC)

³ PIL is litigation for the wider protection of the public interest, while Writ petitions are filed whenever a person is affected by a ny illegal act or omission of Public Officials or of any Public office, for issue of appropriate Writ (authoritative direction).



CHAPTER 8

RECOMMENDATIONS

Over the years, the involvement of various state mechanisms has not produced expected results in preventing and addressing caste-based atrocities. This is the major finding of this report, based on analysis of current trends in addressing violence against Dalits/SCs. The poor performance of the enforcement machinery in implementing the PoA Act and Rules call for an urgent enactment of the PoA Act Amendment Bill 2014 in the Parliament. The Amendment Bill has passed in the Lok Sabha on 4th August 2015, which further needs to be passed in the Rajya Sabha. If passed at the earliest, it would provide ample scope in terms of atrocity forms criminalised under the law and procedures to strengthen implementation of this protective law. It would also send a clear message to Dalit and Adivasi citizens of the country that the state is serious about enforcing measures to ensure the complete eradication of atrocities and protection of these communities right to life and security of life.

The following recommendations to the Indian State, the judiciary, police and national institutions, if accepted, would greatly aid in ensuring a decrease in incidences of atrocities and increased access to justice by SC and ST victims of atrocities.

1.Strengthen the PoA Act with amendments in the law by:

- (i) Establishing Exclusive Special Courts and Exclusive Special Public Prosecutors in the districts to exclusively try atrocity cases under the PoA Act.
- (ii) Introducing a timeframe of 120 days for the completion of trial from the date of taking cognisance of the offence in order to ensure speedy justice to the victims.
- (iii) Providing a chapter on the rights of victims and witnesses, which will include a range of rights and entitlements, viz., the right to protection from intimidation and harassment; right to information on the status of investigation and charge sheet preparation; the right to information on relief and rehabilitation; entitlement to travel and maintenance allowances, to attend trial hearings; the right to a pre-trial visit to the court to become familiar with the legal process; the right to be informed in advance of the dates and places of trial; the right to an adequate briefing on the case and preparation for trial, including information on criminal justice procedures; the right to information about legal aid; the right to an experienced SPP, even a SPP of the victim's choice.
- (iv) Eliminating words such as “intent”, “intention”, “intentionally”, “willful”, “public place” and “on the ground”, which enable law enforcement officials and judicial officers to provide leeway to the accused to

escape the sanctions of the PoA Act.

- (v) Include a new chapter on 'National Monitoring and Enforcement Authority' in the Act, defining the roles and responsibilities of this Authority in order to ensure effective coordination by State Governments and other state agencies as prescribed by the Act, and to ensure enforcement of the provisions of the Act.

2. Amend the PoA Rules to include:

- (i) A sub-rule, in line with Rule 13, that the selection of officials and staff of the Special Courts should be based on the right aptitude and understanding of the problems of SCs/STs, and that adequate representation of SCs/STs should be ensured in the judiciary and panel of public prosecutors.
- (ii) In every trial conducted under the Act, the district magistrate should assign a member of the panel to assist the Special Public Prosecutor in conducting the trial.
- (iii) A new Rule on the powers and responsibilities of Special Courts, including that the Court shall inform and explain the rights of the victim as provided under the Act; assess the need or requirement of protection and security for the victims or witnesses, and periodically review the status of victim/witnesses protection and security; obtain a report from the Investigating Officer about the status of fulfillment of the obligations pertaining to relief, compensation and rehabilitation, travelling and maintenance allowances, and review periodically the status of the same.
- (iv) A facilitator, along the lines of the Protection Officers under the Domestic Violence (Prevention) Act 2005, should be appointed to aid SC/ST victims from the time of reporting cases to the police up to the conclusion of court proceedings. The facilitator should serve as an intermediary between the victims and the criminal justice system, by reporting issues of security for victims and witnesses and connecting the victims and witnesses to the SPPs.
- (v) Adjournments should not be given frequently and should be avoided by the Special Courts as much as possible. Adjournments should be monitored on a regular basis and clear explanations placed in the court records as to the reasons for such adjournments.
- (vi) A mechanism should be in place before the trial of the case, so as to involve victim, family member or witness to see and experience the layout of the court. This should be arranged with the support of Public Prosecutor or an appointed facilitator, who has the responsibility of the case.
- (vii) Better infrastructural facilities, including quality forensic labs, should be introduced and good coordination established between the police and various evidentiary departments to facilitate the quick delivery of the required reports, including the charge sheet, which can be then filed within 30 days as per section 7(2) PoA Rules.
- (viii) The Public Prosecutor should ensure that the witnesses' memory is refreshed regarding the contents of his/her prior testimony by showing him/her the records for her/his case prior to the commencement of the deposition.
- (ix) Either the audio-recording of victim and witness' statements in atrocity cases or else the recording of such statements before the Magistrates should be made mandatory, in order to ensure that the statements re-

corded are accurate and in order to strengthen cases even where witnesses turn hostile in the court.

- (x) In order to facilitate the ascertainment of the truth, the presiding Special Court judge should exercise control over the cross-examination of witnesses. This includes the mandate to decline questions that are inappropriate, unfair, misleading, needless, and repetitive or expressed in language that is too complicated for the witness to understand.¹
- (xi) Witness protection orders, in the form of (i) injunctions against the accused having contact with victim and witnesses, (ii) pre-trial detention order or no-contract bail conditions, or (iii) protection by police should be made available in all atrocity cases under trial.
- (xii) The various committees created under the Act and the National Commissions for SCs and STs respectively, should monitor the trial process in the Special Courts in terms of the obstacles faced by the victim and witnesses. In addition, they should also follow up on the cases of acquittal and conviction, in order to see where cases should be taken on appeal. Irrespective of the court's decision, atrocity prone areas should be visited and the further impact of the atrocity against the Dalit community ascertained so that immediate action is taken to restore peace and order.
- (xiii) The monitoring committees envisaged under the Act should be further strengthened to function effectively with regard to their mandatory responsibilities of monitoring the investigation and prosecution of cases. Moreover, the task of monitoring cases should not be limited to filing reports on the numbers of convictions and acquittals, instead, the committees should adopt

a more analytical and proactive stance that ensures the objectives of this protective legislation are achieved.

- (xiv) Civil society organisations working for the rights of SCs should be allowed to work with police officers, public prosecutors and victims to facilitate the smooth execution of the cases. They should be allowed to follow up the execution order passed by the Special Courts and monitor their implementation.

3. Make specific amendments to the clauses relating to enforcement authorities by:

- (i) Amending section 4 of the PoA Act on negligence of official duties by including the following nature of dereliction of duties:
 - a) not reading out to the informant/s any oral complaint which has been reduced to writing by the Officer In-Charge of the police station before taking the signature of the informant/s;
 - b) misleading the complainant to change the content of the complaint;
 - c) not registering FIR at all;
 - d) not registering FIR under the POA Act;
 - e) not registering the FIR under appropriate sections of the Act;
 - f) investigating officer not recording the statement of the victims or witnesses;
 - g) investigating officer delays the investigation for more than 30 days; and
 - h) Impolite treatment by an officer or staff of the police station towards the complainant, informant and any social worker helping the victim in any manner.
- (ii) Take immediate legal and departmental dis-

disciplinary action against police officials who neglect their duties under section 4 of the Act.

- (iii) Monitor to ensure that the Superintendent of Police promptly visits the place of occurrence of an atrocity and fulfils his responsibilities under *Rule 12(1), (2) & (3) SC/ST (PoA) Rules*, particularly:
 - a) Ensuring a FIR is registered under the Act and effective measures are taken for apprehending the accused.
 - b) Deploying police force in the area and taking other preventative measures to prevent the further occurrence of atrocities.
- (iv) For all cases filed under the PoA Act, ensure that the Investigating Officer is of a rank no less than the Deputy Superintendent of Police, in accordance with Rule 7(1) PoA Rules.
- (v) In each district, appoint more Deputy Superintendent of Police, depending on the intensity, frequency and spread of atrocities in the district, which would be specifically in-charge of investigating atrocities under the Act.
- (vi) Make it mandatory that a police officer cannot arrest any complainant, victim, witness or any other person helping the victim for interrogation or for any other purpose without an order from a Magistrate and without a warrant.
- (vii) Sensitize and educate all state/UT police departments on the PoA Act, Human Rights Act 1993 and human rights standards set forth in ICERD, ICCPR, ICESCR and CEDAW.
- (viii) Conduct regular orientation trainings for police officers on the PoA Act and Rules.

4. Strictly enforce the Advisories of the Ministry of Home Affairs for curbing crimes against SCs/STs, especially as regards:

- (i) Minimizing the delays in the investigation of cases of atrocities and improving the quality of police investigations;
- (ii) Regular training programmes for law enforcement machinery at all levels and other functionaries of the criminal justice system (such as judges and SPPs) on the PoA Act and PCR Act, mandatory rules/measures for their effective enforcement, as well as sensitization on caste-based crimes against SCs/STs and the need for such social laws.
- (iii) Including discussions on the reasons for delays in atrocity trials in the regular DVMC meetings and monthly meetings of the District Magistrate, Superintendent of Police and Special Public Prosecutor.
- (iv) The Superintendent of Police ensuring the timely attendance and protection of all prosecution witnesses, including Investigating Officers and officials witnesses.²
- (v) Mandatory disclosure of SVMC and DVMC meeting minutes within a stipulated timeframe on the state government's website.

5. Recommendations to the National and State Governance Institutions:

- (i) Ensure the regularity of annual reports by the National Commission for Scheduled Castes so that they can be tabled in the Houses of Parliament/ Assemblies on a regular basis and released in the public do-

main.

- (ii) Ensure that the Central Government places each year on the table of each House of Parliament a report on the measures taken by the Union government and State/UT governments in implementing the Act, including an assessment of the functioning of these measures, in accordance with *section 21(4) PoA Act*.

6. Budget Allocation & Expenditure for Enforcement of the Act

- (i) Ensure the provision of Special Central Assistance (SCA) in the Scheduled Caste Sub-Plan (SCSP), such as by legislating the

SCSP into an Act, which defines clear entitlements for SCs/STs and has necessary redress mechanisms to ensure that all duty bearers implement the SCSP and SCA effectively.

- (ii) The allocation of SCA from the Central Government should be on the basis of the SC/ST population in that state and the rate of crimes in the previous year.
- (iii) All state governments should constitute SCA Monitoring Committees, wherein SCs/STs should be invited to be the members of these Committees and to take active part in monitoring the SCA expenditure at the State, Department/Ministry and district levels, with necessary powers to intervene, wherever necessary.

¹See Majlis Legal Centre, 2013. *Guidelines for Functioning of Special Courts: Protocols for Maharashtra*. Mumbai: Majlis Legal Centre.

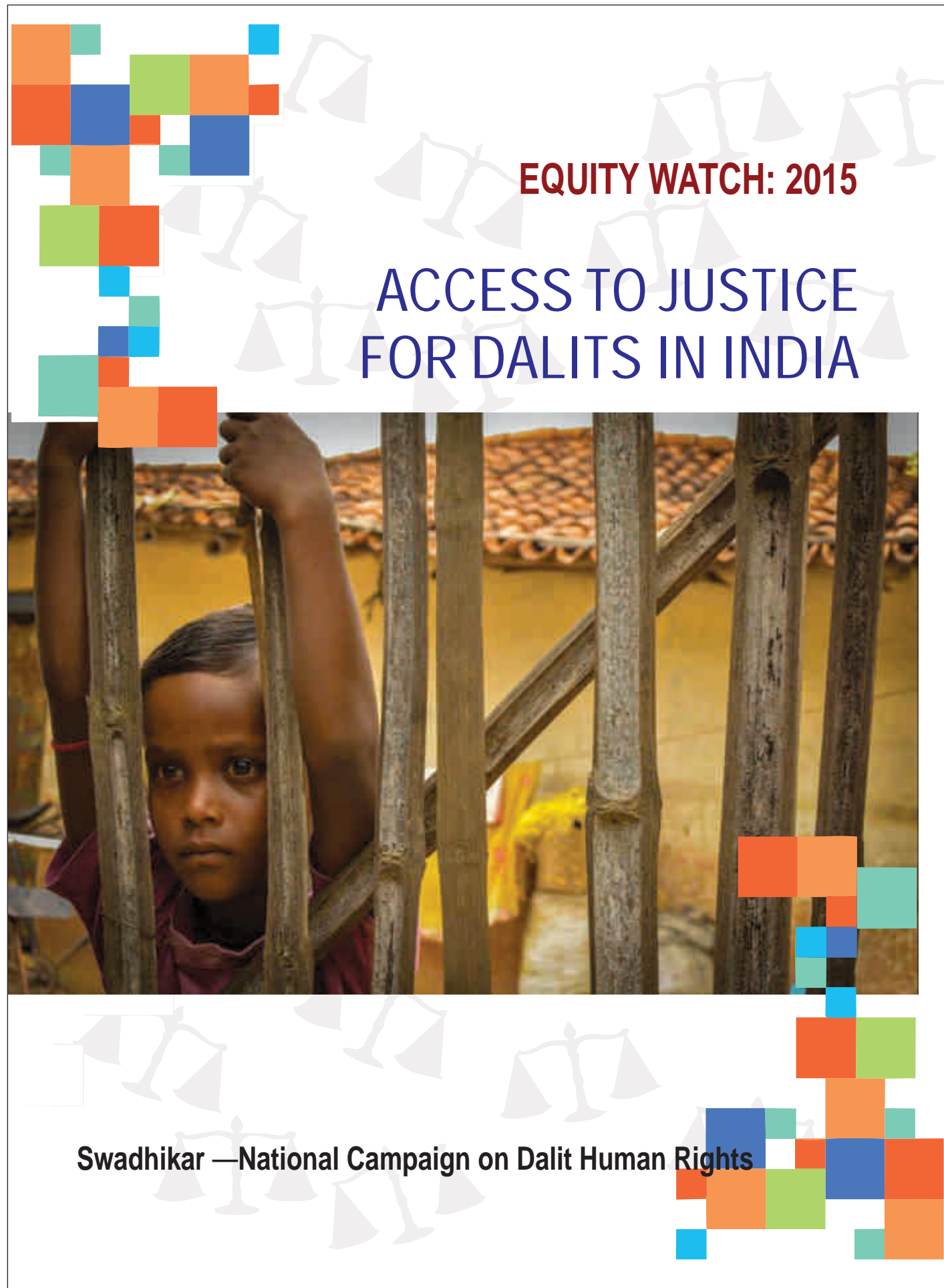
²Ministry of Home Affairs, 2010. 'Advisory on Measures needed to Curb Crimes against SCs/STs'. F.No. 15011/48/2009-SC/ST-W, dated 01.04.2010.





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