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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

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ATROCITIES

AUTHORED BY - MISS. DIPIKA SATISH GUPTA

LL.M. 2ND YEAR Sem-3, Roll No. 11

P.E. SOCIETY'S, MODERN LAW COLLEGE

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CERTIFICATE

It is certified that undersigned has prepared his Long Term Paper for LLM 2nd year Semester-3 on the topic-

“ATROCITIES”

In partial fulfilment LLM 2nd year course. The work is authentic and has not been submitted in partial or fulfilment of any course or degree at this university or any other university. The undersigned has prepared the Long Term Paper as prepared the term paper as per requisite format and pattern advised by the organization. The work is up to mark for evaluation for the standard of LLM course

Dipika Satish Gupta

ROLL NO. - 11

LLM 2nd Year Course 2023-2024

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SIGNATURE OF SUPERVISOR

PROF. PRAJAKTA MAA

ASSOCIATE PROFESSOR

DEPARTMENT OF LAWS

PES'S MODERN LAW COLLEGE

LIST OF CASES

1. Sasi Kumar Vs The Superintendent of Police, Villupuram and three others.
2. Sanjay Singh another Vs State of Chhattisgarh
3. State of Madhya Pradesh V. Ram Krisha Balothia
4. Pankaj D. Suthar Vs. State of Gujarath
5. Rajat Kumar Bandyopadhyay Vs State of West Bengal and others
6. Ram Babu Vs. State of Madhya Pradesh
7. Gorige Pentaiah V. State of Andhra Pradesh

CHAPTER 1

1.1 INTRODUCTION-

“Caste can not be abolished by inter caste dinners or stray instances of inter caste marriages.

Caste is a state of mind. It is a diseases of mind. The teachings of the Hindu religion are the root cause of this disease. We practice casteism and we observe Untouchability because we are enjoined to do so by the Hindu religion. A bitter thing can not be made sweet. The taste of anything can be changed but poison cannot be changed into nectar.” - Dr. B.R. Ambedkar Twenty years have passed since the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought by the Government of India. Although the Act aimed to provide protection and eliminate atrocities against the members of the Scheduled Castes and Scheduled Tribes, there has been no mitigation with annual average of Crimes registered against Scheduled Castes and Scheduled Tribes. Despite the right to non-discrimination on the basis of caste or race enshrined in Art. 15 of the Constitution of India, discrimination against SCs/STs is pervasive.

Though abolished and forbidden by the art. 17, the practice of ‘untouchability’ persists due to its systematic character. Hence the Indian Parliament enacted the Protection of Civil rights Act. Under this Act, untouchability, as a result of religious and social disabilities, was made punishable.

But the Act, not only deals with punishments for atrocities, but also prescribes comprehensive measures for protection, welfare and rehabilitation of the victims of the atrocities. For the effective implementation of the Act, the government has set up different administrative agencies, right from State level to district levels. They are the establishment of Vigilance and Monitoring Committees, Special Courts, Special Public Prosecutors etc. Now, it is right time to promote a progressive Act like 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by amending from some of the provisions of the Act which is very essential for achieving its objects and goals.

1.2 STATEMENT OF RESEARCH PROBLEM

Under this Act, government of state establishes special court, special officer for effective implementation of the provisions under this Act in actual the Government servant fails to perform duties under the Act. The low rate of conviction in atrocity cases and the release of offenders from the cases causing terror among the victims of atrocities. In order to protect the interests of the Scheduled Castes and Scheduled Tribes and to prevent atrocities against them there is a need to study the provisions of the Act and strengthen the provisions of the Act for the effective implementation of the Act. Now the statement of the research problem is to find out the defects in the Atrocities (Prevention) Act, in itself and in its implementation.

1.3 SIGNIFICANCE OF RESEARCH

Significance of this research is to thoroughly understand the structures and procedure of the SCs and STs (Prevention of Atrocities) Act 1989. It helps to find out the origin of the caste system, various reforms which taken by reformers. Research signifies the information of the necessity and important features of the Act and then proceeds to explain the criminal justice and administrative systems with focus on the roles and responsibilities of government officials, lawyers etc. It also covers the gaps in the implementation of the Act and possible intervention in criminal trials.

On these tentative conclusions a detailed study has been made to draw proper conclusions and to give clear picture in order to have a clear understanding on the real living conditions of Scheduled Castes and Scheduled Tribes and about the atrocities those are being committed against these people and to suggest measures to prevent atrocities against these people with the ambit of the law.

1.4 STATEMENT OF HYPOTHESIS

There are certain lacunas in the procedures regarding atrocity prevention Act. Due to this, in very few cases, today, the culprits are acquitted. The Indian constitution have introduced various safeguards & provided equal opportunities for the SCSTs in various fields of life. In spite of all the protective measures taken by the Government to protect the Scheduled Castes and Scheduled Tribes still atrocities are being committed against the Scheduled Castes and Scheduled Tribes.

1.5 RESEARCH QUESTIONS

1. What are the necessities of Prevention of Atrocities Act, 1989?
2. How judiciary interpreted the provisions of SCs & STs (Prevention of Atrocities) Act, 1989?
3. What is the history behind atrocities rights?
4. How the criminal justice systems perform the procedures provided by the Act?
5. Whether the POA Act effectively protects the rights of scheduled castes and scheduled tribes?
6. Whether there is any lacuna in the Act which leads to violation of victim's rights provided by the Act itself?

1.6 OBJECTIVES OF RESEARCH

1. One of the objectives of this research is to study & understand the reasons behind the atrocities on Scheduled Castes & Scheduled Tribes in India.
2. Another aim is to find out & understand the preventive measures taken in India, in order to prevent these atrocities.
3. One another aim of the study is to find out whether the preventive measures have become successful in preventing the atrocities or not. If not, what are the reasons behind them?
4. To suggest the remedies/better solutions for preventing the atrocities & for handling the atrocity cases more efficiently.
5. To study the procedural part regarding the atrocity prevention.
6. To find out ways to remove procedural lacunae in atrocity prevention.
7. To find out whether we have succeeded in bringing social equality, liberty & fraternity.

1.7 SCOPE OF RESEARCH

- To find out the main causes/reasons for the increasing atrocities against Scheduled castes and Scheduled Tribes.
- To analyze and understand the working of Exclusive Special Courts and Designated Special Courts.

This research concentrates mainly on finding the procedural lacunas & suggesting the remedies. Social causes are studied by many people.

1.8 Literature review

1. ATROCITY ACT : Published by- Dalit Adivasi Adhikari Aandolan, Maharashtra State :- This book mainly talk about the provisions of the act and the difficulties in the implementation on various stages.
2. ENSURING EFFECTIVE IMPLEMENTATION OF SCHEDULED CASTES AND SCHEDULED TRIBES 9PREVENTION OF ATROCITIES0 ACT 1989 AND RULES 1995 by Adv. Rahul Singh : Published by- National Dalit Movement for Justice :- This book mainly deals with the history and background of the POA Act as well as the gaps in its proper implementation.

1.9 RESEARCH METHODOLOGY

The research methodology used for the present research article is traditional Doctrinal research method as well as Non-doctrinal research method. As most of the information can be sought from the available literature and data collection by method of questionnaire. For Non-doctrinal research the researchers collected information from taking responses to the questionnaires to Advocates, Judges, NGOs, Police Officers and the Victims.

CHAPTER 2

2.0 HISTORY AND BACKGROUND OF ATROCITIES

According the Rig Veda, the oldest of the four Vedas, the distinction of the four Varnas dates back to the origins of the human race: According to Rig Veda, Samhita, X 90.12. "That is to say, at the time of creation, the Brahmin was born from mouth of his the Purusha (the Primeval man), the Kshatriya from his arms, the Vaishya from his thighs, and Shudra from feet. Nevertheless, in order to analyze justly the origin of Untouchability, it becomes imperative to examine the religious texts, travelers' accounts, etc., of the ancient times."

❖ Dharamsutras:

The Orthodox Brahmins refined the four-Varna system ideologically over a period of times. However, from the very beginning, the four-Varna system was filled with contradictions. Therefore, the Brahmins had to revise the basic principle to conform to the realities of daily life, resulting unavoidably in quite loose interpretations and relaxation of the rules. In the Dharam sutras, we can see much difficulties incurred by the Brahmins in defining the status of Shudra. Defining the duties of these four Varnas, Rig Veda mentions in Samhita XI.235. That, they were to support themselves and their families with the small compensations received for the services that they rendered. In Buddhist scriptures, people considered to be inferior to the Shudra are often referred as Chandalas, Nesadas, and Pukkusas. According to Gautam Dharamsutra, a son begotten by a Shudra and a woman of a superior caste is called a Patita (outcaste). The son of a Brahmin by Shudra woman is called Nishada by Buddhayana.¹

❖ During 1000-1600 CE

The period between 1000-1600CE witnessed a new era of protest against the practice of Untouchability. The untouchables who were deliberately degraded by the Brahmin forces had never accepted their position. At first their response to Untouchability came to the force in the form of the Bhakti cult. The high castes, especially the Brahmins had the monopoly over both the ways of salvation. The saints belonging to the Bhakti Cult stood up against the Vedantic philosophy. They believed in spiritual equality and Bhakti or devotion to God as one of the means to achieve salvation. However, Chokhamela and Kanaka the untouchable saints, were not allowed to enter the temple of Vithal at Pandharpur and the temple krishan at Udippi respectively.

❖ During 18th century:

Similarly in Bengal, the life a Ramakrishna Parmahamsa left an indelible mark. He used expressions such as “the devotees” have no caste. His famous disciple, Swami Vivekananda, established the Ramakrishna’s Mission in 1896. The mission translated Ramakrishna’s teachings into action by devoted services to the poor regardless of their caste or religion. In his views, “all members of society ought to have equality of opportunity. For inequality is the bane of human nature, the curse upon mankind, the root of all misery-this the source of all bondage, physical, mental and spiritual.”

¹ <https://in.search.yahoo.com/>

❖ In 19th Century:

When in 19th Century the British established their rule over most of India, their policy too was one of non-interference but there was a pressure on them to change the social order in India. Some of their policies had an impact on the social order. For example they established a nationwide legal system, which resulted in the movement of disputes from caste and village tribunals to the Government's Courts, which ²supported the norm of equality before the law. Therefore, the British Law, in principle, did not recognize the caste structure as far as criminal/commercial law was concerned.

❖ In 20th century:

By the early twentieth century, the communal quota began to be viewed as a step towards equality. Though the state of Mysore inaugurated the first regime of communal quota in 1918 the reservations were only for non-Brahmin 'backward castes'. Some relief was given by the 1919 reform. Of much greater importance is the fact that the voice of some untouchable leaders began to be heard around this time in political assemblies. The communal award of 1932 has to be seen in this context. It granted the demand of the In 1938, for the first time in British India, government intervened to secure the opening of temples when the Bombay and Madras legislatures passed temple entry Acts. Encouragement to the education of the untouchables increased and measures were taken to secure for them some posts in government service. Before independence, 27 Acts had been enacted by various legislatures to give more legal rights to those had till then experienced social and religious Disabilities.

2.1 Different names to denote 'Untouchables'

The term 'Harijan' was adopted by Mahatma Gandhi in 1933 as the winning entry in a national competition for a suitable name to replace the terms noted below. Gandhi's object was to invent a name which identified the relevant people without fixing them with an inferior status – 'Harijan' is translatable as 'People of God'. The word 'Dalit' is now fast supplanting the other generic names for persons descended from the old Untouchable castes. This is a word in the Marathi language of Western India, and is apparently derived from Sanskrit. In an 1831 dictionary the word is defined as 'ground' or 'broken or reduced to pieces generally' (Molesworth's Marathi-English Dictionary 1831). It was seemingly first used in the context of caste oppression by the

² <https://in.search.yahoo.com/>

great nineteenth-century reformer Phule.

The second category is a cluster of terms devised mainly in British bureaucratic contexts—above all the Census – from late in the nineteenth century to the 1930s. These terms included ‘Outcastes’, ‘Depressed Castes’ and ‘Exterior Castes’. The end point of this line of verbal/conceptual development is the term ‘Scheduled Castes’, now the official identifier of what we are calling the Untouchables. The so-called Schedule is a list of castes entitled to parliamentary seats, public employment and special educational benefits. This Schedule was originally promulgated by the British Government of India in 1936 but the term ‘Scheduled Castes’ only became widely used after Independence. A simply ritual basis for Untouchability is rendered problematical by the lack of identity between Untouchable status and employment in polluting occupations. Today, most Untouchables do not perform the work that is the polluting mark of their caste. So among Chamars, the largest Untouchable caste in India, only a small minority are employed in connection with their hereditary and polluting work with skins and leather. Chamars are above all agricultural labourers. Some important Untouchable Castes, including the Dusadhs of Bihar and the Mahars of Maharashtra, traditionally performed work that was mostly non-polluting. The Mahars had no specialized skills but were general village servants and messengers, though they did sometimes collect the skins of fallen animals. And the Dusadhs were field labourers and servants to individual high-caste families. It is scarcely plausible that 150 million people are all descended from people who were once employed in the comparatively small number of deeply polluting occupations

2.2 Violence and Atrocities against SCs and STs

The caste system has produced numerous rules about untouchability that govern everyday interactions between social groups in rural India. From not being allowed to use certain wells and handpumps to being forced to eat separately, rules regulate all aspects of life for Dalits and constantly reinforce their sense of subordination. In what must surely be a perversion of religion, acts of brutal inhumanity and profanity, such as forcing Dalits to eat excreta, rape and lynching, are justified by upper castes who invoke the Hindu scriptures to seek moral legitimacy. One of the reasons why Dalits are forced to suffer extreme humiliation and violence is the traditional caste belief, that regards Dalits as inauspicious. Not only their touch but even their shadow is treated as polluting. It is believed that Dalits cause drought and diseases. Reportage of violence done to Untouchables is a burning affair, as can be seen from the reports of the Commissioner

for Scheduled Castes and Scheduled Tribes. As the Constitutional authority charged with measuring the progress of the Scheduled Castes (Article 338), the Commissioner has been reporting on cases of violence and Atrocities against Scheduled Castes and Scheduled Tribes. The complaints received by the Commissioner of Scheduled Castes and Scheduled Tribes are going to be registered under the category called 'Cases of Atrocities and Harassment, a nomenclature which seemed to fit mounting concern about violence done to Scheduled Castes and Scheduled Tribes.

2.3 Reasons for practices of untouchability and Atrocities

The question, therefore, arises as to why this system prevails and what are the difficulties in the way of government to end the system. A study conducted by the National Commission for Scheduled Castes and Scheduled Tribes on 'Atrocities on Scheduled Castes and Scheduled Tribes: Causes and remedies pointed out various casual factors for Atrocities: land disputes; land alienation; bonded labour; indebtedness; non-payment of minimum wages; caste prejudice and practice of Untouchability; political factors on caste lines; refusal to perform traditional work such as digging burial pits, arranging cremations, removing carcasses of dead animals and beating drums, etc. The deep root for such Atrocities is traceable to the caste system, which encompasses a complete ordering of social groups on the basis of the so-called ritual purity.³

- i. Another difficulty is that 50 per cent of India's total population still lives in the villages. The villagers are not aware of the changes that are taking place in social and political system in the cities. They still live in the limited world of their own in which untouchables should be kept of and not to be touched.
- ii. Illiteracy is then another cause. The people, particularly those putting up in the rural areas are illiterate. They can't read wild criticism which has been advanced in retaining Untouchability by the enlightened world. They are guided by half literate or rather little literate people who interpret things in their own way and justify the retention of Untouchability.
- iii. Religious mindedness of the people is still another cause. Untouchability in India has made by Brahmin caste as a part of our religious system. It has been argued out that those who touch, mix or live with the untouchables will be offending Gods. Since vast majority in India believes in religion therefore, they do not wish to annoy their God

³ <https://in.search.yahoo.com/>

by mixing with the untouchables. Superstitions have in no way been less contributing to the retention of the system. In this way Untouchability still continues. It continues also because even 70 years after independence unfortunately the untouchables have not advanced considerably to the extent in social, economic and political life of the country on the one hand and educationally on the other. In case they came up in these fields the problem will be considerably solved. For this the Government will be course have to make serious efforts.

2.4 Ambedkar and Gandhiji on Untouchability

Both Gandhi and Ambedkar addressed themselves to the problem of the removal of Untouchability and the upliftment of the untouchables. Yet, they differed in their approaches and strategies so much that one criticized the other bitterly. Gandhiji believed that Untouchability was not an authentic part of Hinduism; the sooner Hindu understood this, the sooner Untouchability would disappear. He believed that Untouchability could be removed only when the majority Hindus realize that it was a crime against God and man and are ashamed of it. Ambedkar viewed Untouchability as an institutionalized expression of socio-religious oppression and exploitation by the dominant elements. He traced the roots of the problems in the structure of the Hindu Four-Varna system. He believed that the untouchable is a by-product of both the Varna system and the caste system, hence there will be untouchables as long as there are castes. At the end of his life, Ambedkar concluded that nothing can emancipate the outcaste except the destruction of the system. This statement of Dr. Ambedkar shows that he was very close to the views of Gandhi at this time. Much of nationalist press eulogized this change in attitude of Dr. Ambedkar. It clearly showed that time in his life, Dr. Ambedkar believed that the Scheduled Castes could remain within the fold of Hinduism and hope to receive fair treatment.

2.5 Untouchability in India Since 1950

At the transfer of power in 1950, it was widely accepted that discrimination on the basis of caste would have no place in independent India. Consequently, the Indian Constitution in its very preamble assures every citizen of social, economic and political justice and equality of status and opportunity. Article 17 forbids the practice of Untouchability in any form. Among the fundamental rights, Article 14 enunciates the right to equality; Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 25(2)(b) assures all classes and sections of Hindus access to Hindu religious institutions of a public character. The Directive

principles of State Policy, which serve as guidelines for the State in making laws, contain specific provisions, viz., Article 38, 39, 39A, which enjoin on the State, the duty to ensure the creation of a just social order and Article 42, which asks the State to promote with special care the educational and economic interests of the weaker sections especially the Scheduled Castes.

2.6 Untouchability in Contemporary India

Ever since India became independent, there have been a number of Amendments to the Constitution of India to improve the socio-economic and political status of India's backward classes in addition to the Scheduled Castes and Scheduled Tribes. In August 1989, V.P. Singh the then Prime Minister of India, announced to implement the recommendations of Mandal Commission which was set up in 1978 and submitted its report in 1980. V.P. Singh's decision led a wide-spread protest, especially by the members of upper castes. However, after the implementation of the Mandal Commission's recommendations the incidents of violence against low caste people have increased.

- **Social justice: Meaning of the term 'Social Justice':-** The term 'Social Justice' may be defined as the right of the weak, aged, destitute, poor, women, children and other under-privileged persons to the protection of the State against the ruthless competition of life. It gives the necessary adventitious aids to the under-privileged so that they may have the equal opportunity with the more advanced sections of the society in the race of life. According to former Chief Justice of India, K. Subba Rao, the word 'social justice' has two-fold meaning. He said: "The expression 'social justice' has a limited as well as a wider meaning. In its limited sense it means the rectification of injustice in the personal relations of the people. In its larger sense it seeks to remove the imbalances in the political, social and economic life of the people. Social Justice is to be understood in the latter sense. As the three activities are ⁴inter connected, there cannot be social justice even in its limited sense, unless the society progresses in all directions. In short, social justice helps to bring about a just society."

In short, it may be said that social justice means treating a human being as a human being. It includes equality of treatment, equal opportunity for betterment and equality of status.

- **Measures to Promote Social Justice:-**

Indian 'Constitution is a document vibrant with a social and economic ideology geared to the

⁴ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1781362>

goal of socio-economic justice. To lay down the foundation of this document of social restructuring in 1947, there was no one better prepared for the job of constitution-crafting than Dr. Babasaheb Ambedkar. With his vast funds of knowledge of Constitutional Law and grassroots experience of country's complex socio-economic and political issues he set out his thinking about the nation's constitutional needs. As a consequence, the doctrine of Rule of Law, Part III and IV of the Constitution, that is, Fundamental Rights and Directive Principles of State Policy, an independent judiciary as an arm of social revolution, the charter of equality, liberty and justice: Social, economic and political to all, along with some constitutional safeguards to the downtrodden groups (SCs, STs, OBCs, minorities and women) form the core of social revolution. These constitutional convictions are as follows:

1. Articles 14,15,16 ensures equal protection of law, non-discrimination by the State on grounds of religion, caste, sex or place of birth particularly in matters relating to employment, absence of any disability or restriction among citizens in the matter of access to public places or use of places of public resort. Articles 15 and 16 commands the State to make special provisions through reservation or otherwise in favour of Scheduled Castes, Tribes, women, children as well as other backward classes of citizens.
2. Article 17 abolished Untouchability and made criminal prohibition of its practice in any form.
3. Articles 23 and 24 prescribes prohibition against exploitation and of traffic in human beings and forced labour.
4. Articles 25, 29 and 30 provides for equal entitlements of every person to freedom of conscience and the right to freely profess, practice and propagate ones religion, protection of interests of minorities and their right to establish and administer educational institutions.
5. Articles 38 directs the State to secure a social order for the promotion of welfare of the people by elimination of inequalities in status, facilities and opportunities including social order founded on justice: social, economic and political.
6. Article 39 lays down the State policy towards securing adequate means of livelihood for every citizen, equal pay for equal work to men and women and preventing concentration of wealth to the common detriment.
7. Article 39A assures equal justice under law and towards that end providing free legal aid to the poor.

8. Article 45 directs the State to provide free and compulsory education to all children within 10 years of the commencement of the Constitution.
9. Article 46 directs the State to promote educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and also commands the State to protect them from social injustice and all forms of exploitation. Article 335 directs the State to maintain the claims of SCs and STs to services and posts.
10. Along with the policy of reservation of job quota and in educational institutions for the Scheduled Castes and Scheduled Tribes, Articles 330, 332 and 334 provide reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the State.
11. Article 338 makes the provision for National Commission for the Scheduled Castes and Scheduled Tribes to advise on the socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate their progress under the Union and States.
12. Article 340 provides for the Commission to investigate the conditions of backward classes and to make recommendations as to the steps that should be taken by the State. Thus, along with the general constitutional guarantees, there are specific safeguards for the downtrodden groups. These provisions speak for the State's commitment and conviction to create a just, humanitarian social order, an egalitarian society premised on the constitutional spirit of liberty, coequality, fraternity and justice.⁵

Chap no.3 THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT

3.0 Necessity and objective

The basic objective and purpose of this more comprehensive and more punitive piece of legislation was sharply enunciated when the Bill was introduced in the Lok Sabha. Despite various measures to improve the Socio-Economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They have, in several brutal incidents, been deprived of their life and property. Because of the awareness created through spread of education, etc., when they assert their rights and resist practices of Untouchability against them or demand statutory minimum wages or refuses to do any bonded and forced labour, the vested interests try to cow them down and terrorize them when the Scheduled Castes and Scheduled Tribes try to

⁵ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1781362>

preserve their self-respect or honour of their women, they becomes irritants for the dominant and the mighty. “It is considered necessary that not only the term ‘atrocities’ should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect Scheduled castes and Scheduled Tribes from being victimized and, where atrocities are committed to provide adequate relief and assistance to rehabilitate them”. The objectives of the Act, therefore, very clearly emphasis the intention of the Indian State to deliver justice to Scheduled Caste and Scheduled Tribe Communities through affirmative action in order to enable them to live in Society with dignity and self-esteem and without fear, violence or Suppression from the dominant castes.

3.1 Some special features

When compared with “Protection of Civil Rights, 1955” The Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has some distinct features. They are:

1. Nature of offences: The ‘Act’ enlarges the area of criminal liability by identifying new types of offences, thereby including several acts of omission and Commission not covered under the Indian Penal Code or protection of Civil Rights Act. Protects Scheduled Castes and Scheduled Tribes from various kinds of atrocities relating to Social, disabilities, property, malicious persecution, political rights and economic exploitation.
2. Victims and perpetrators: This ‘Act’ for the first time categorically defines an atrocity crime by sole reference to caste identification of the offender should be non-Scheduled Caste on non- Scheduled Tribe member and the victim should be Scheduled Caste or Scheduled Tribe member.
3. Investigation Procedure under the Act: The ‘Act’ specifically ensures that investigation offers are police officers not below the rank of Deputy Superintendent of Police with experience and ability to investigates such cases. The ‘Act’ mandates the completion of police investigations within 30 days of occurrence of the atrocity. Prohibits grant of anticipatory bail to persons accused of offences under the Act.
4. Setting up of Special Courts for the trail of ‘atrocities’ cases: The ‘Act’ makes arrangements for setting up Special Courts and grants special powers to them to ensure speedy trails of atrocity cases, and for Special Public Prosecutors to conduct the cases.
5. Nature of punishment: Impose exemplary punishment at a scale much higher than under the IPC for atrocities on SCs/STs, except for the offence of rape. A public servant accused

under the Act also has been made liable to a higher minimum punishment, and importantly, neglect of official duties has been deemed punishable.

6. Relief & Rehabilitation Measures to the victims: Provides legally justiciable rights to the victims of atrocities by way of a scale of graded financial assistance and provision of relief and rehabilitation, apart from travel and maintenance allowances for victims and witnesses during investigation and trial, etc.
7. Setting up of National & State level Monitoring Mechanisms: Setting up SC/ST Protection Cell at the State Headquarters under the charge of Director/Inspector General of Police for supervision of various actions taken under the Act. Authorizing the National Commission for Scheduled Castes (NCSC) & National Commission for Scheduled Tribes (NCST):
 - (a) to investigate, monitor and evaluate the safeguards provided for SCs/STs;
 - (b) to inquire into specific complaints by SCs/STs of rights violations;
 - (c) to discharge such other functions in relation to the protection, welfare and development and advancement of SCs/STs.
8. Preventive Measures to be taken by: Implementing a range of preventive measures, including: preparing a model contingency plan; identifying atrocity prone areas; cancelling arms licences of potential offenders under the Act; granting arms licences to SCs/STs as a means of self defence; setting up awareness camps in atrocity prone areas to educate SCs/STs as a means of self defence; setting up awareness camps in atrocity prone areas to educate SCs & STs about their rights.

3.2 Definition of Atrocity and SCs and STs (Prevention of Atrocities) Act 1989-

The word 'Atrocity' is very vital concept in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 2(1)(a) of the 'Act' defines the expression 'atrocity' which is as follows: "atrocity" means an offence punishable under section 3. Meaning of the word 'Atrocity':- In Webster's Third International Dictionary, one of the meanings ascribed to the word 'atrocity' is "the quality of state of being atrocious", while the word 'atrocious' has been ascribed, inter alia, the following meaning:

1. "marked by or given to extreme wickedness;
2. marked by or given to extreme brutality or cruelty;
3. Outrageous; violating the bounds of common decency; uncivilized, barbaric;

4. extremely painful, marked by intense distress;
5. of such a kind as to fill the fright or dismay”.

If we consider the meaning of these words while interpreting section 3 of the Act, we would find that cash one of the acts contemplated by section 3 is atrocious and they aim at punishing the persons who are found guilty of the same.⁶

3.3 Definition of Scheduled castes and Scheduled Tribes

Section 2(1)(c) defines that “Scheduled Castes and Scheduled Tribes” shall the meaning assigned to them respectively under clause (24) and clause (25) of Article 366 of the constitution i.e., Article 366 clause (24) reads: In this constitution, under the context otherwise requires, the following expression have the meaning here by respectively assigned to them, that is to say: “Scheduled Castes” means such castes, races or tribes or part of or groups within such casts, races or tribes are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution. Article 366 Clause (25) reads “Scheduled Tribe” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution. Hon’ble Supreme Court in Bhaiyalal Vs Harikishan Singh¹ held that an enquiry whether the appellant there belonged to the Dohar Caste which was not recognized as a Scheduled Caste and his declaration that he belonged to the Chamar Caste which was a Scheduled Caste could not be permitted because of the provisions contained in Article 341. Court can come to a finding that any caste or any tribe is a Scheduled Caste or Scheduled Tribe. Scheduled Caste is a case as notified under Article 366 (24). A notification is issued by the President under Article 341, as a result of an elaborate enquiry. The object of Article 341 is to provide protection to the members of Scheduled Castes having regard to the economic and educational backwardness from which they suffer. Thus Scheduled Castes and Scheduled Tribes are not a Caste within the Ordinary meaning of caste.

3.4 Test to Determine the offence of Atrocity

Sections 3(1)(i) to 3(1)(xv) explain about ‘atrocities’. Following are the ‘atrocities’, committed by a person who does not belong to Scheduled Caste and Scheduled Tribe considered as punishable offences under Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act 1989;⁷

⁶ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1781362>

⁷ (1965) 2 SCR 877: (AIR 1965 SC 1557). 156

1. Forcing a member of Scheduled Castes and Scheduled Tribes to drink or eat obnoxious substances or dumping waste in the premises or neighbourhood with intention to cause insult or annoyance to him and forcibly removing clothes or parading naked a member of Scheduled Caste and Scheduled Tribe.
2. Forcing or compelling a Scheduled Caste and Scheduled Tribe to do beggar (forced labour) or bonded labour, wrongful occupation or cultivation of land belonging to Scheduled Castes and Scheduled Tribes, wrongful dispossession from land or interference with the enjoyment of rights over any land, premises or water and forcible causing of a Scheduled Caste and Scheduled Tribe to leave his house or village.
3. Preventing a Scheduled Caste and Scheduled Tribe person from voting or forcing him/her to vote for a particular candidate or vote in a manner prohibited by law.
4. Instituting a false suit or criminal proceeding against a Scheduled Caste and Scheduled Tribe person.
5. Giving false information to any public servant and thereby compelling him to use his power to cause injury, harm or harassment to a Scheduled Caste and Scheduled Tribe person.
6. Insulting or intimidating a Scheduled Caste and Scheduled Tribe person in public with the intention of humiliating that person.
7. Dishonoring or outraging the modesty of any woman belonging to a Scheduled Caste and Scheduled Tribe.
8. Polluting the water of a spring or reservoir ordinarily used by members of Scheduled Castes and Scheduled Tribes so as to make it unfit for use.
9. Using any custodial or dominant position to sexually exploit a woman belonging to Scheduled Castes and Scheduled Tribes.
10. Denying a Scheduled Caste and Scheduled Tribe person a customary right of passage to public resort or preventing him/her from using public places accessible to others.

3.5 PUNISHMENTS UNDER SCHEDULED CASTES AND SCHEDULED TRIBE (PREVENTION OF ATROCITIES) ACT, 1989

The Act provides for the following punishments –

- 1) in respect of offences u/s 3(1), the punishment may be an imprisonment for a term which shall not be less than six months but which may extend to five years and with fine,
- 2) in respect of offences u/s 3(2), the punishment varies with the nature of the offences that

have been committed -

- i. for the offence u/s 3(2)(i), the punishment is life imprisonment or death
- ii. offence u/s 3(2) (ii), the punishment is imprisonment for a term not less than six months but which may extend to seven years or upwards and with fine.⁸

The second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

❖ By invoking inherent powers u/s 482 Cr.P.C. the court is empowered to compound the offence under the Civil Rights Act & the Atrocities Act

In Rupabahi Bhalabhai Bharwad Vs. State of Gujarat and another the Gujarat High Court held that Undoubtedly, it is true that Section 320 of the Code is silent on the point of compromise so far as the offence under the Civil Rights Act and the Atrocities Act are concerned, as there is no subsequent amendment made to that effect. It is further equally true that both the Civil Rights Act and the Atrocities Act have not made any express provisions for compounding of the offences. It is under these circumstances that the question rise as to when the “Law” is silent on the point of compromise, whether the “Justice” is also required to maintain tight lips or something should be done by the court which they ultimately bring about peace and harmony between the two classes of the Society which is fundamental pre-requisite for the maintenance of the “Rule of Law”, “Justice” and the overall happy and peaceful society. One can quite understand that the grave and cold-blooded offences like murder, dacoity, rape, child-lifting or any such type of grave offences are not rightly made compoundable. One can as well also understand the cases where the Court feels that composition of the offences arrived at between the parties is not genuine and voluntary but has been brought about by some threats, inducements and coercions, the Court would be justified in refusing the same. When the aggrieved party approaches the Court praying for compounding of offences and the Court is satisfied that the same was honest, genuine, true and voluntary, and that the same will bring about harmony and peace in the area, setting at naught the caste-hatred and conflicts arising therefrom, then there is indeed no harm in accepting such compromise purshis. The courts of law aiming at justice is also supposed to prevent the situation where the things flare- up and the aggrieved person once again becoming victim of the alleged

⁸ 1997) 3 Rec Cri R 575

offence, approach the Court for redressal of his grievances. If the prevention is better than cure, such a compromise purshis is certainly more advisable and acceptable than to refuse the same on the technical ground that there is no express provision in the law for the same. Before accepting the composition, this Court has consulted its judicial conscience whether the composition in question would serve the individual and social interest or not, and after deeply pondering over the same, it has reached the considered opinion that it will serve both the purposes. Ordinarily, before accepting such compromise purshis, this Court would have directed the learned APP to handover a copy of the same to the Police Officer of the area concerned to find out a to whether the same was voluntary, genuine and truthful or not, as has been thought advisable and done by this Court in a reported decision in case of the State of Gujarat Vs. Rajput Bhikaji Kaluji and Ors.

However, by way of abundant caution and in order to rule out the possibility of the aggrieved SC and ST complainant is brow-beaten or coerced to enter into the compromise, it is desirable that such compromises should not be directly accepted without the previous permission of the Court which in turn before granting the same shall have to record satisfaction on the basis of directions given in the case of the State of Gujarat Vs. Rajput Bhikaji Kaluji & Ors. that the same was voluntary, true and genuine and not sham one. In fact a similar question also did arise before the Madras High Court in case of Dhanraj Vs. The State. In the said case, the question was whether the offences under Sections 6 and 7 of the Civil Rights Act were compoundable or not, wherein in para-4 it has been observed as under: “. A doubt was raised that the offence under the Protection of Civil Rights Act is not strictly compoundable one. I have carefully considered this contention and heard the learned counsel for the appellant as well as the learned Public Prosecutor. It is clear that the Protection of Civil Rights Act, 1955 is a special Act and S. 16 of the same lays down that it overrides other laws.”. The aforesaid observations of Madras High Court are ⁹required to be whole-heartedly endorsed and in that view of the matter, though there is no express provision is either of the aforesaid two act, viz., the Civil Rights Act and the Atrocities Act, regarding composition of the offences, still however, invoking inherent powers under section 482 of the Code, this Court declares that the Court is definitely empowered to compound the offence under the Civil Rights Act and the Atrocities Act; depending upon the facts and circumstances of that particular case. Thus, once the cordial relations are resorted between the parties and they have already started living peacefully together, no better justice could ever be done then by seeing that

⁹ 1998 (3) Crimes 279

compromise is accepted and things are rehabilitated in the said manner.

3.6 JUDICIAL INTERPRETATIONS AND THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

The object of the Act: The object of Act 33 of 89 is to prevent atrocities against members of Scheduled Caste and Scheduled Tribe and this has to be taken into account while interpreting the Act. Penal provisions are to be construed strictly

1. In *Arumugum Servai Vs State of Tamil Nadu*, Honourable Supreme Court of India by Markandey Katju and Gyan Sudha Misra JJ. Prounced that “Discrimination on the ground of caste is illegal and punishable. Similarly, honour killing is barbaric and illegal. In the modern age nobody’s feelings should be hurt. In particular in a country like India with so much diversity as held by Bombay High Court in *Kailas Vs. State of Maharashtra*. We must take care not to insult anyone’s feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong. In *Swaran Singh & Ors. Vs. State through Standing Counsel & Another*, this Court observed: Today the word ‘Chamar’ is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person ‘Chamar’ today is nowadays an abusive language and is highly offensive. In fact, the word ‘Chamar when used today is not normally used to denote a caste but to intentionally insult and humiliate someone. It may be mentioned that when we interpret section 3 (1)(x) of the Act we have to evident from the Statement of Objects and reasons of the Act
2. To constitute an offence under the ‘Act’ of 1989, Intention and knowledge for commission of offence on part of accused, were essential ingredients. In *M.L. Ohri & Others Vs Kanti Devi*, Justice Mahesh Grover, J of Punjab and Haryana High Court held that to constitute an offence under section 3 (1)(x) of The Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989, intention and knowledge for commission of offence are essential ingredients. The complaint against the petitioners has been initiated pursuant to the provision of Section 3(1)(x) of the Act which are reproduced herein for ready reference: “Section 3(1) (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste of a Scheduled Tribe in any place within public view, Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.” A perusal of the aforesaid provision of law makes it abundantly clear that intention and knowledge to commit the aforesaid offence

are essential ingredients of the offence. The Court is not expected to act mechanically and summon an accused and it necessarily has to apply its mind to the averments made in the complaint and reconcile them with the provisions of law and if the averments made in the complaint satisfy the essentials of law then necessarily summon the accused and not otherwise. When there is no averment in complaint that complainant belonged to Scheduled caste and that petitioners intentionally and knowing her to be a member of Scheduled Caste utter the words attributed to them so as to insult her. Thus, complaint liable to be quashed.

3. Under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, “When evidence did not show that accused was not a member of Scheduled Caste or that victim was intentionally insulted or intimidated by accused with intent to humiliate, conviction under SC and ST Act could not be sustained. In Ram Babu Vs. State of Madhya Pradesh , the Madhya Pradesh High Court held that, when the basic ingredients of the offence are missing in the complaint and the evidence that was produced by the prosecution, the conviction against the appellant for offence under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained. Reliance in support of this view is placed on a judgment of the Hon’ble Supreme Court in Gorige Pentaiah V. State of Andhra Pradesh⁹ . In view of the foregoing, this appeal is allowed. The impugned judgment of conviction and order on sentence passed by the trial court against the appellant is hereby set aside. The appellant is acquitted of the charge under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
4. To constitute an offence under the ‘Act’ of 1989 a part from intention and knowledge for commission of offence, the accused, had knowledge that complainant belonged to Scheduled Caste or Scheduled Tribe. This point of Law was held by Justice M.M.S. Bedi, of Punjab and Haryana High Court in Joginder Singh Vs State of Haryana and other¹⁰ . That is there must be specific averment in complaint that accused had knowledge that complainant belonged to Scheduled Caste or Scheduled Tribe.
5. Asking a member of Scheduled Caste Community whether he was suffering from depression or had any problem because he is a Scheduled Caste, does not in any way amount to either intentional insult or intimidation of a Scheduled Caste with an intent to humiliate him and it does not constitute any offence. This was held by Justice Ashim Kumar Roy of Calcutta High Court in Rajat Kumar Bandyopadhyay Vs State of West

Bengal and others. Merely calling a person as Idiot, nonsense which have no ¹⁰reference to the community and from those words it cannot be inferred that the intention or intimidation are with reference to the community to which the complaint belongs

Chap No. 4. GAPS IN IMPLEMENTATION OF STS &SCS (PREVENTION OF ATROCITIES) ACT 1989

This chapter identifies the major problems or gaps at each and every stage of the criminal trials of atrocity cases under this Act. These are interventions based on the available remedies under SCs and Sts (Prevention of Atrocities) Act 1989 and Rules 1995 and the Criminal Procedure Code. Hurdles exist at every stage of the process to attain justice after atrocities take place, including at the stage of registration of cases, intervention of cases, charges sheeting, and at the trial stage. Tremendous pressure is placed on the victims not to lodge their initial complaints of atrocities. They are often threatened and intimidated not to speak about the incident. Quite often police officials refuse to write the complaint of the victims or register the FIR, or to register cases under PoA Act. Even if the cases somehow registered under the PoA Act, often police will not register the case under the proper sections of the POA Act. Moreover, counter and false cases are increasingly registered against the victims at the behest of the dominant castes, sometimes in collusion with police officials. Police do not arrest the accused immediately. Cases are not investigated in time. Inquiries are not made with all the victims and witnesses during and after investigation. Most of the time, victims are not provided with protection during and after investigation of atrocity cases. It is also seen that the duration of investigation in counter cases is faster than in PoA Act cases. At the time of filing the charge sheet, often the statements are not corroborated with the contents of charge sheet. Sometimes, vital information is deliberately left out of the charge sheet in order to weaken the case in favour of the accused. In addition to issues of the non-appointment of judges or SPPs, or the poor competency of SPPs, the lack of speedy trials through special courts, delays in trials due to the accused, victims and witnesses not appearing for trial, victims and witnesses turning hostile during court proceedings due to fear or threats, arguments taking a substantial length of time, the courts being overburdened with cases, lengthy investigations, etc. all contribute to the denial of speedy justice to victims of atrocities.

¹⁰ 1998 (3) Crimes 279

4.0 Complaint and Registration of FIR:

It is the duty of the Officer in charge of Police Station to write the information relating to atrocity offence and read over to the informant, and copy of report given to be the informant free of cost. Gaps in the implementation is at the stage of complaint, the complaint of the victims in only reduced to daily diary entry by the police and is not registered as a FIR. Complaint of the victim is not read over to him/her and explained as per Rule 5 PoA Rules. The complaint of women victim is not recorded by a women constable for offence committed under 326(A), 354, 354 A,B,C,D, 376 or 509 of IPC as per section 154 (1) of Cr.P.C. FIR not registered under the PoA Act 1989 and registered only under sections of IPC. Police officials not including necessary details in the FIR (facts of case, figures, words/deleted the names of the accused list, their details) as mentioned by the victims. Police officials not issuing free copy of FIR to the victims as per Rule 5(2) PoA Rules and section 154 (2) Cr.P.C. counter FIRs are registered by the police officials in connivance with the accused persons against the victims and witnesses.

❖ Section 438 of the Code not to apply to Persons committing an Offence under the 'Act' Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act. Whether Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, unexceptionally bars grant of anticipatory bail when the offence punishable under said Act is alleged in the Complaint? In the Pankaj D. Suthar Vs. State of Gujarat¹² case Gujarat High Court held that Section 18 of Scheduled Castes (Prevention of Atrocities) Act, 1989 does not absolutely bar grant of anticipatory bail when the offence punishable under said Act is alleged in the complaint. The court further observed that the Supreme Court in the case of State of Madhya Pradesh V. Ram Krishna Balothia¹³, has held that the offences which are enumerated under Section 3(1) of the Act arise out of the practice of "Untouchability". It is in this context that certain special provisions have been made in the Act, including Section 18. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offence, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. Referring to the statement of objects and reasons the Court held that the above statement graphically describes the social conditions which motivated the said legislation. In these circumstances, if anticipatory bail is not made available to persons who commit such

offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences. Also anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21 of the Constitution. The offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. Finally in another case on the same point of law the Chhattisgarh High Court in Sanjay Singh another Vs State of Chhattisgarh¹⁴ held that before refusing to grant anticipatory bail, the court is required to examine material collected by prosecution to see if prima facie sufficient material was there for commission of offence under the Act. Prosecution found not have collected any material against applicant to prima facie show that applicants had committed offence under section 3(1)(x) of the Act. This is a fit case of grant anticipatory bail in favour of applicants. Thus it is settled that when there is no prima facie material to establish the commission of atrocity, anticipatory bail u/s 438 of Cr. P.C. can be granted absolutely. Gap in implementation: Accused persons applying for the anticipatory bail and courts giving bail in violation of section 18 of PoA Act. Prosecutors do not argue the bail petition in a proper manner. Investigating officers does not oppose the bail petition of the accused.

❖ At the stage of Arrest of Accused:

Police officials not arresting the accused as required under the law. Police informing the accused persons before registering the case against them and informing them to apply for anticipatory bail.

❖ At the stage of medical examination:

Investigating officers not informing the victims of their rights regarding medical examination. Investigating officers not taking the victims for medical examination in government hospital. Medical examination of the victim of rape is not conducted or delayed for a considerable time.

❖ Investigation mechanisms:

Investigating Officer: According to Rule-7 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995, an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating

officer shall be appointed by the State Government in consultation with D.G.P., Superintendent of Police, after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. Any police officer not below the rank of Dy.S.P has duty to visit immediately to the place of occurrence to assess the extent of atrocity, loss of life, loss and damages to the property and submit a report forthwith to the state Government.

Executive magistrate and the SP/DSP shall-

- i. Draw a list of victims, their family members and dependents entitled for relief;
- ii. Prepare a detailed report of the extent of atrocity, loss and damages to the property of the victims;
- iii. Order for intensive police patrolling in the area;
- iv. Take effective and necessary steps to provide protection to the witnesses and other sympathizers of the victims;
- v. Provide immediate relief to the victims.

An offence shall be investigated by a police officer not below the rank of a Dy.S.P. the investigating officer shall be appointed by the State Government, director-general of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. The investigating officer shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of police who in turn will immediately forward the report to the Director General of Police of the state government. This point of law was discussed by Madras High Court in *A. Sasi Kumar Vs The Superintendent of Police, Villupuram and three others*¹⁵ held that “Investigation into offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has to be carried by Deputy Superintendent of Police. The Court further held that it is evident from Rule 7 of the said Rules that the Inspector of Police has no powers and has no jurisdiction to investigate the matter like this, which is one arising under the On the same point the Andhra Pradesh High Court in *D. Ramalinga Reddy D. Babu Vs State of Andhra Pradesh*¹⁶ held that under section 3 (1)(xi) of the Scheduled castes and Scheduled Tribes (PoA) Act, 1989: “The learned Senior Counsel appearing for the appellant submits that, since the prosecution was initiated under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the investigation should have been conducted

by an officer not below the rank of Deputy Superintendent of Police. These rules have been framed by the Central Government in exercise of rule making power conferred under section 23 of the Act. The Central Government has been authorized under Section 23(1) of the Act to make rules for carrying out the purpose of the Act. Since the purpose and objective sought to be attained by the Act is to minimize the offences against Scheduled Castes and Scheduled Tribes therefore it prescribes stringent sentences also. On the same point the Bombay High Court (Nagpur Bench) in Uttamlal D. Yernev Vs State of Maharashtra¹¹ held that under section 23 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Rule 07 of 'Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 'investigation shall be done by Deputy Superintendent of Police and this rule is a mandatory one. Therefore, only those officers who are not below the rank of Deputy Superintendent of Police and are specifically appointed by the State Government, or the Director General of Police or Superintendent of Police are competent for the purpose of investigating the cases under the Act. This order of appointment can either be specific or general. Gaps in the implementation:

- Spot inspection not done immediately and by the law enforcement officials as per rule 6 of PoA Rules.
- Investigation of atrocity cases is not being done by a police officer of the rank of Deputy Superintendent of Police or above.
- Investigating of the case is not done on time as per PoA Rules within 30 days. Investigation in the cases delayed without any substantive reasons being given.
- Investigations is closed on the ground that there are not sufficient grounds to proceed with the investigation. Information of completion of the investigation is not given to the victim.
- Despite appointment of the Investigating Officers of the rank of Dy.S.P., the statements of victims and witnesses are being collected by the lower police officials or the Dy.S.P is not visiting the victims for the investigation.
- Investigating is being carried out sitting in the dominant caste locality or by calling the victim to the police station. Statements are being collected by the lower police officials but the charge sheet is filed by competent authority. All the victims and witnesses are not covered in the investigation.
- Police officials are not entering all the details as narrated by the victims and witnesses in

¹¹ 1998 (3) Crimes 279

their statements under 161 Cr.P.C. Police officials are not recording the statements of witnesses under section 164 Cr.P.C before the nearest Judicial Magistrate.

- Police officials trying to avoid the process of Inquest after death of victim. Proper search and seizure of property related to case is not made by the police. Victims and witnesses are threatened by the accused and police to withdraw the case and not provided protection during the investigation.
- At the stage of filing Charge sheet: Charge sheet is not filed in 30 days as per Rule 7(2) PoA Rules. Delay in getting approval from higher authority for the charge sheet. Deleting of sections of SC/ST PoA Act in charge sheet.

4.1 Special Courts for the Trial of atrocity cases

Under Section 14 of SC & ST (PoA) Act 1989, the State Government is, for the purpose of providing for speedy trial, empowered to constitute a court of session to be a special court for each district to try the offense under this Act. The Court of Sessions (designated Court) is specified to conduct a trial and no other Court can conduct trial of the offence under the Act. However, the trial is valid only when it is on the committal of the case by the Court of Magistrate having jurisdiction. On this point of law a single Judge of this Court in Davinder Singh Sarpanch Vs. State of Punjab¹², has taken the view that the Judicial Magistrate has no jurisdiction to entertain the complaint under this Act whereas the Special Court constituted under section 14 of the Act can entertain the complaint and take cognizance and that it is not necessary that the case must be committed to the Special Court by Magistrate as in other Sessions cases. This Court has held accordingly after taking into consideration various provisions of the Act.

Now the rule position is that a Special Court is not empowered to take cognizance of a complaint without the case being committed to it. Gaps in the implementation

- Before the start of trial the accused persons and their relatives threatening the victim and witnesses for compromise or to withdraw the case.
- Police officials harassing the victims and witnesses in collusion with the accused persons to compromise or withdraw the case.
- At the Stage of Framing of Charges
- Charges are not framed under the PoA Act.

¹² 2010 (1) Crimes 626 (Punjab & Haryana)

- Charges are not framed under the proper sections of the PoA Act.
- Special Public Prosecutor not arguing properly at the time of framing of charges so as ensure the relevant PoA Act sections are included.
- At the time of the framing of the charges, the victims, witness and victims are being threatened with physical violence.
- At the Stage of Evidence (Prosecution and Defence)
- Victims and witness are being threatened by the accused persons during the time of giving evidence; witness not appearing in court on the scheduled date due to fear, threats, etc. and no protection order is given by the Special Court.
- Absence of Investigating Police Officer during the evidence stage of trial, thus delaying the trial.
- Despite the special provision in the case of rape trials for In-Camera Proceedings, this provision is not taken by the Special Courts.
- Absence of accused on hearing date on the grounds of sickness or being out of situation thus resulting in delay in trial.
- Absence of defence advocate on the ground being engaged in another court.
- Advocate not prepared to cross-examine the witness or to argue the case.
- Trial adjourned due to tactics applied by the defence lawyer such as alleging the non-receipt of documents, etc.
- Long adjournments given in the cases by the Special Court and day-to-day trial is not conducted as per section 309 Cr.P.C., which delays the trial.
- Correct procedure with regard to the examination of the accused as per section 313 Cr.P.C is not followed.
- Special Public Prosecutor is not interested in recalling the important witness for further examination.
- Local inspection is not done by the judges despite provisions in the law for truthful appreciation of the evidence.
- At the Stage of Final Arguments
- Special Public Prosecutor not filling written arguments at the final stage of the case in order to strengthen the case further.

At the Stage of Judgment

- No appeal from Special Public Prosecutor or the District Magistrate/ Collector against

acquittal of the accused or acquittal under the PoA Act alone.

4.2 Appointment of Special Public Prosecutors under this Act

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in the Court. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995, R.4(5) provides for appointment of advocate of choice of victim of atrocity who is also in opinion of District Magistrate an eminent senior advocate. Appointment of senior advocate as Special Public Prosecutor for conducting trial at instance of victim. In Satki Devi V. Tikam Singh on this point the Court held that the State no doubt, is the prosecutor and the prosecution in all cases and trial in all cases is to be conducted in the Court of Session by Public Prosecutor or Special Public Prosecutor, as the case may be appointed by the Government but the SCs & STs (Prevention of Atrocities) Act is a special statute which overrides any other law for the time being in force, Plea was raised that, the District Magistrate is empowered to appoint an advocate to plead the case of complainant but he has no power to appoint Special Public Prosecutor, and that the power to appoint Special Public Prosecutor under S. 15 of the Act vests in the State Government which cannot be delegated. The Special Public Prosecutor appointed under Section 15 of the Act vests in the State Government which cannot be delegated. The Special Public Prosecutor appointed under Section 15 of the Act alone can conduct the case. It is true that sub- rule (5) does not lay down any qualification as to the minimum length of practice unlike S. 15 or sub-rule (1) of Rule 4 but, apparently, framers of the rule did not want to put any restriction on the choice of the victims of atrocity subject to the embargo that the person should be an 'eminent senior advocate' – a term used in sub-rule (1) of rule 4 as well. Thus, the advocate should be of the choice of victim of atrocity and also in the opinion of the District Magistrate/Sub-Divisional Magistrate, an eminent senior advocate. There is no conflict between sub-rule (5) of Rule 4 and section 15 of the Act.

Gaps in the implementation

At the stage of Appointment of Advocate of own choice or assisting the PP (at the start of trial, before the framing of charges in the Special Court)

- Special Public Prosecutor not presenting the prosecution case properly.
- SPP not asking questions to establish that the atrocity was caste related.

- SPP arguing that certain provisions of the PoA Act and Rules requiring investigation by senior police officers were directions and not mandatory, and pressuring the victim compromise the case.
 - SPP colluding with the defence lawyer to spoil the case.
 - SPP appointed to handle atrocity cases having very poor competence and experience.
 - Certain important witness not being examined at the time of trial by the SPP.
- SPPs not briefing or preparing victims and witnesses to deal with the court trial process.

4.3 State Government power to impose Collective Fine

The provision of Section 10-A of the Protection of Civil Rights Act 1955 (22 of 1955) shall so far as may be, apply for the purposes of imposition and realization of collective fine and for all other matters connected therewith under this Act.

In *Parambir Singh Gill Vs. Malkiat Kaur*¹³, the Punjab and Haryana High Court accepted the compromise deal between the parties and the Court further held that the object of the Act is to provide for prevention and punitive measures to protect the members of Scheduled Castes and Scheduled Tribes from being victimized and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them. Besides, it is a measure to preserve their self respect and honour. The fact that the matter has been compromised does assuage the feelings of the members of the Scheduled Castes and provides for protection of their self respect and honour. The compromise indeed is a measure to provide adequate relief and assistance to members of the Scheduled Castes for their rehabilitation and to live with dignity.

4.4 Travelling Allowance, Daily allowance, Maintenance expenses and Transport Facilities to the Victims of Atrocity, his Dependent and Witness:

- i. Every victim of atrocity or his/her dependent and witnesses shall be paid to and for rail fare by second class in express/mail/passenger train or actual bus or taxi fare from his/her place of residence or actual bus or taxi fare from his/her place or residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.
- ii. The district Magistrate or the Sub-Divisional magistrate or any other Executive

¹³ 2010 (1) Crimes 626

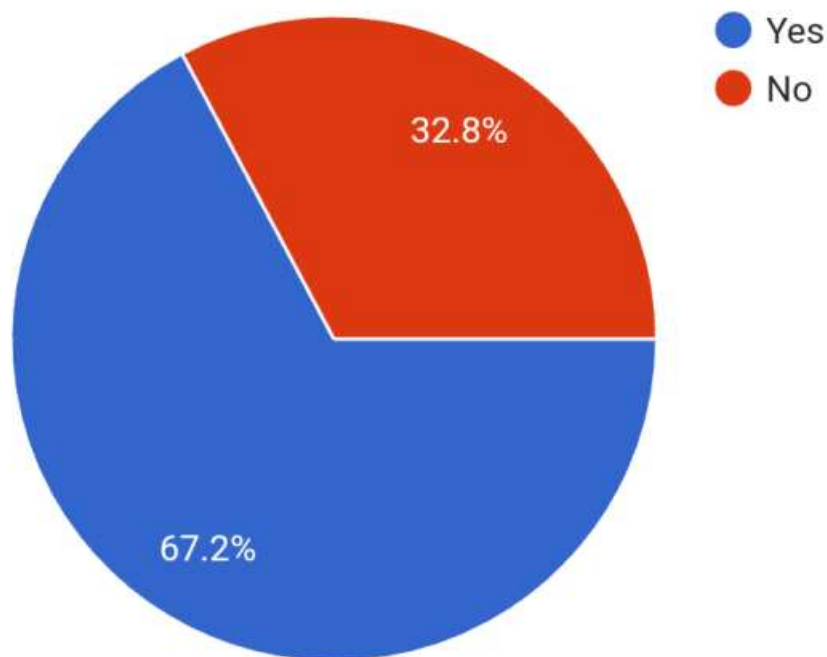
- Magistrate shall make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the investigation officer, Superintendent of Police/Deputy Superintendent of Police, District magistrate or any other Executive Magistrate.
- iii. Every women witness, the victim of atrocity or her dependent being a woman or a minor, a person more than sixty years of agenda person having 40 percent or more disability shall be entitled to be accompanied by an attendant of her/his choice. The attendant shall also be paid traveling and maintenance expenses as applicable to the witness or the victim of atrocity when called upon during hearing, investigation and trail of an offence under the Act.
 - iv. The witness, the victim of atrocity or his/her dependent and the attendant shall be paid daily maintenance expenses for the days he/she is away from the place of his/her residence or stay during investigation, hearing and trial of an offence, at such rates but not less than the minimum wages, as may be fixed by the State Government for the agricultural labourers.
 - v. In addition to daily maintenance expenses the witness, the victim of atrocity (or his/her dependent) and the attendant shall also be paid diet expenses at such as may be fixed by the State Government from time to time.
 - vi. The payment of traveling allowance, daily allowance, maintenance expenses and
 - vii. reimbursement of transport facilities shall be made immediately or nor later than three days by the District Magistrate or the Sub-Divisional magistrate or any other Executive Magistrate to the victims, their dependents/attendant and witnesses for the days they visit the investigating officer or in-charge police station or hospital authorities or Superintendent of Police, Deputy Superintendent of Police or District Magistrate or any other officer concerned or the Special Court.
 - viii. When an offence has been committed under Section 3 of the Act, the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall reimburse the payment of medicines; special medical consultation, blood transfusion, replacement of essential clothing, meals and fruits provided to the victim(s) of atrocity.
 - ix. Gaps in the implementation
 - Victims of atrocities are not paid compensation as per Rule 12 PoA Rules.
 - Even if paid compensation, the appropriate amount as per the PoA is Rules is not paid to the victims.

- Compensation is not paid at all the stages of the case as per the Rules.
- Report on the relief and rehabilitation provided to the victims is not submitted by the Investigating officer to the Special court.
- In case of murder, rape, gang rape, etc. the victims and their dependents are not provided employment, agricultural land, etc. as per PoA Rules.
- The children of the victims of atrocities are not provided with support for their education and maintainance as per the provisions of the PoA Rules.
- Special Courts not exercising their rights and invoking their powers to provide
- compensation under section 357 Cr.P.C at the time of imposing a sentence on the accused convicted of an atrocity.
- Victim of atrocity or her/his dependents and witnesses are not being paid the travelling allowance during the investigation and trial.
- Victim of atrocity or her/his dependents and witnesses are not being paid the daily
- maintainance expenses during their visits for the investigation and trial.
- Victim of atrocity or her/her dependents and witnesses are not being paid diet expenses in addition to daily maintenance expenses.
- The travelling expenses/ maintainance expenses and diet expenses that are paid are
- inadequate.
- Attendant who accompanies women witness, victim or her dependent (who is a woman or minor, or a person more than 60 years of age or a person having 40% disability) is not paid expenses.
- Travelling expenses/ maintainance expenses and diet expenses are not paid within three days of incurrance of the expenses as per the PoA Rules. In this chapter, an attempt was made to explain about very important aspects of Act i.e., investigation and trial of atrocity cases, constitution of Special Courts, their powers and procedural aspects, and lacunas in the implementation of the provisions.

Chap no. 5 DATA COLLECTION AND ANALYSIS

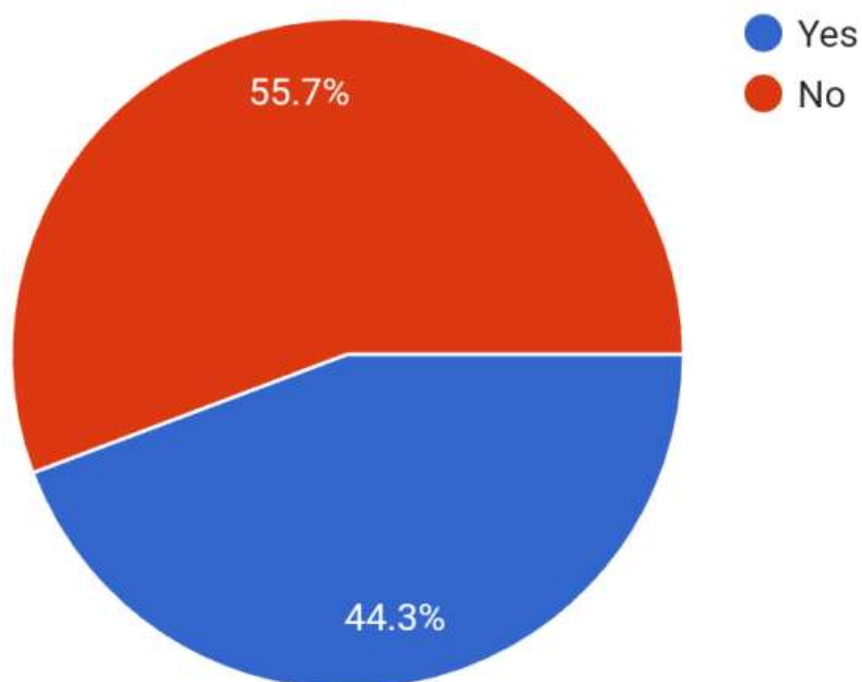
Is the existing Law sufficient to protect the Scheduled Castes and Tribes against caste-wise abuse ?

61 responses



Does the police avoid registration of FIR under the POA Act and treat it as a regular crime ?

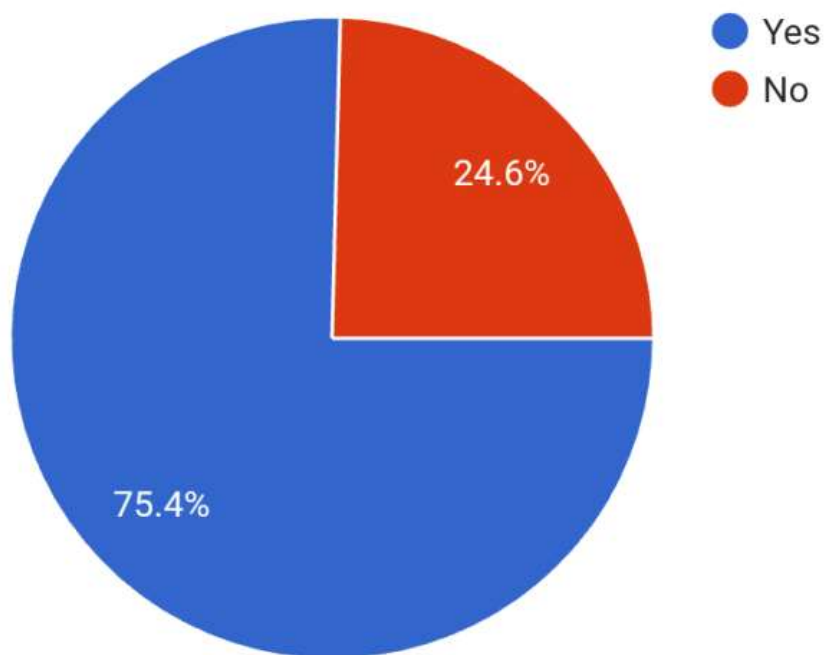
61 responses



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Are there any chances of compromise/settlement between the parties ?

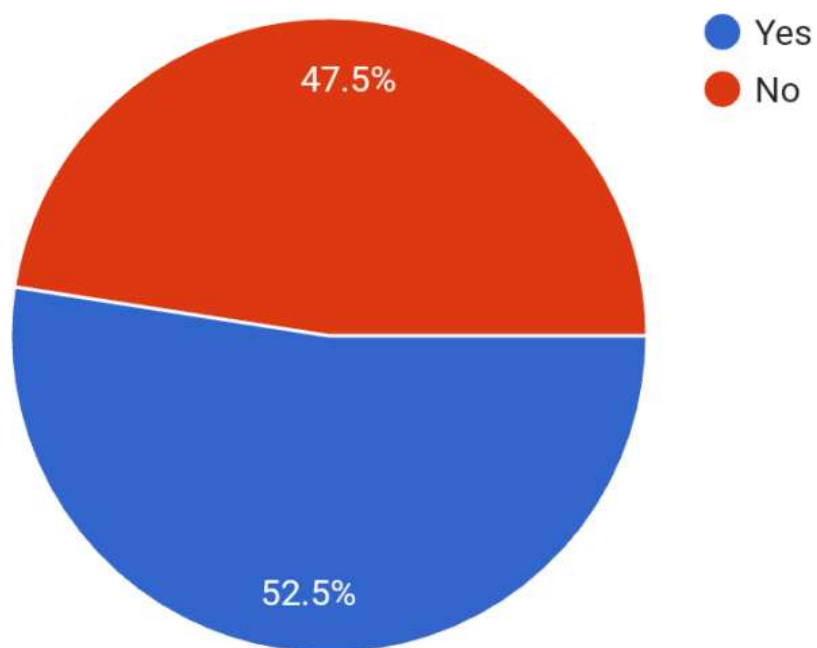
61 responses



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Whether correct and appropriate Sections are applied by the police officer while registering an FIR ?

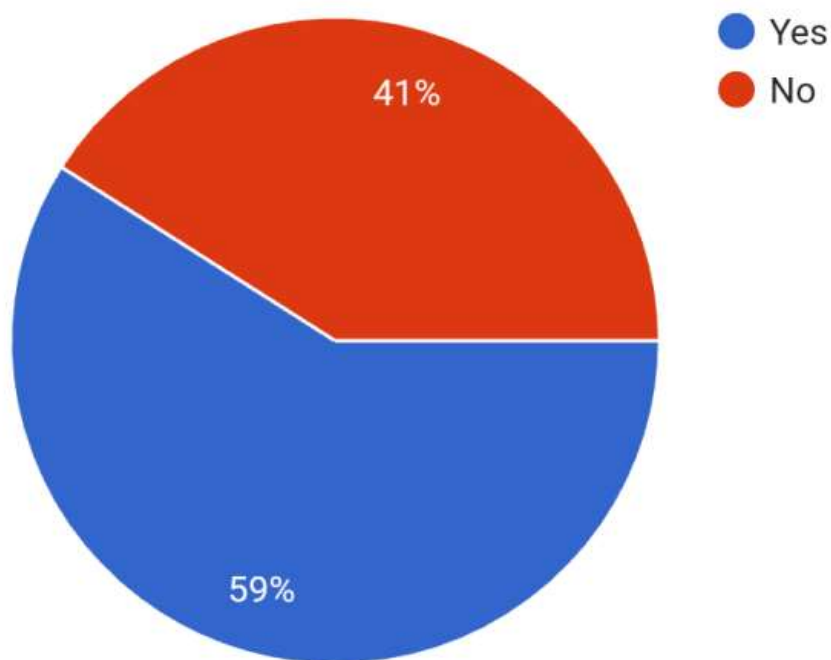
61 responses



IJLRA

Whether sufficient medical treatment is provided to the victims ?

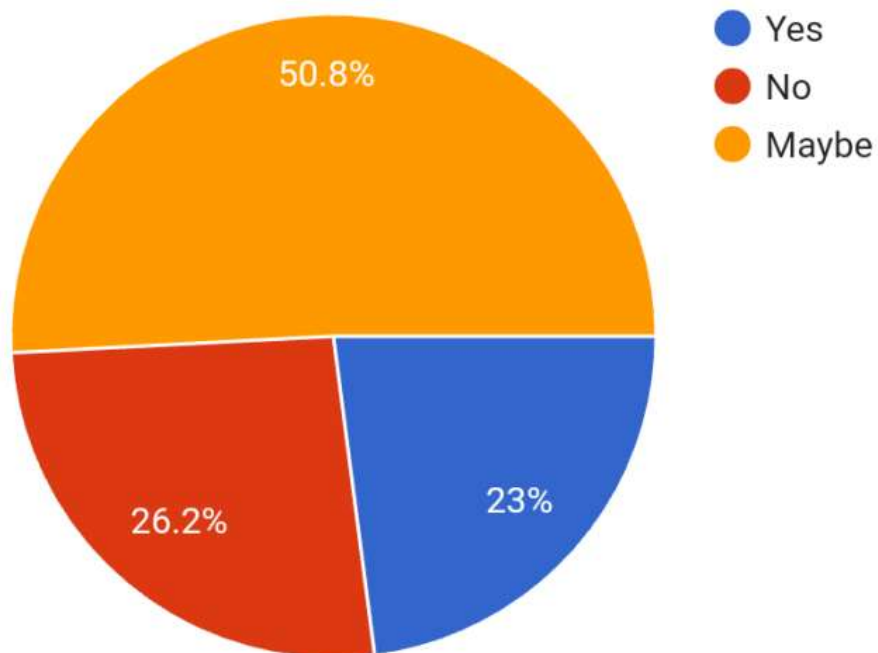
61 responses



IJLRA

Are the provided interim measures adequate for the victims ?

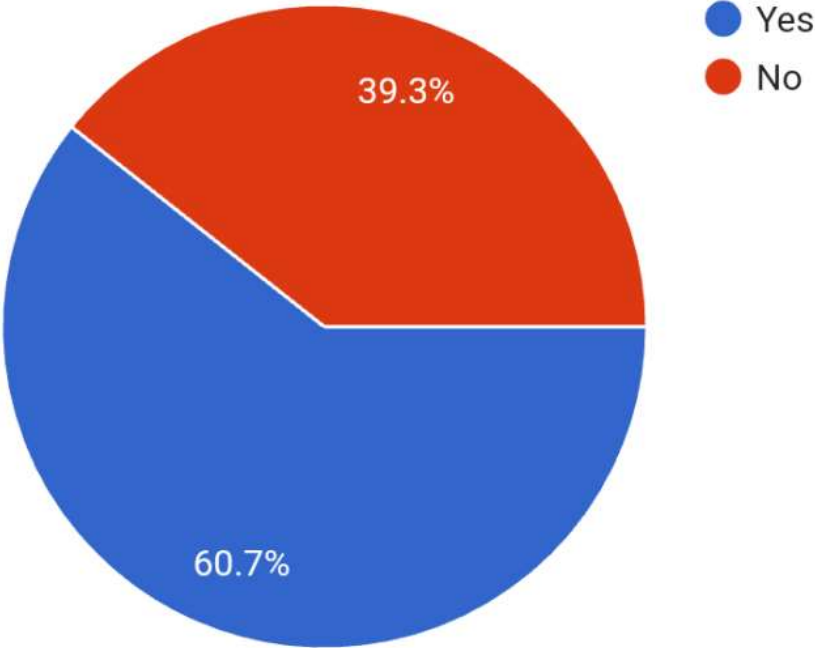
61 responses



IJLRA

Whether timely sufficient legal aid facility is provided to the victims ?

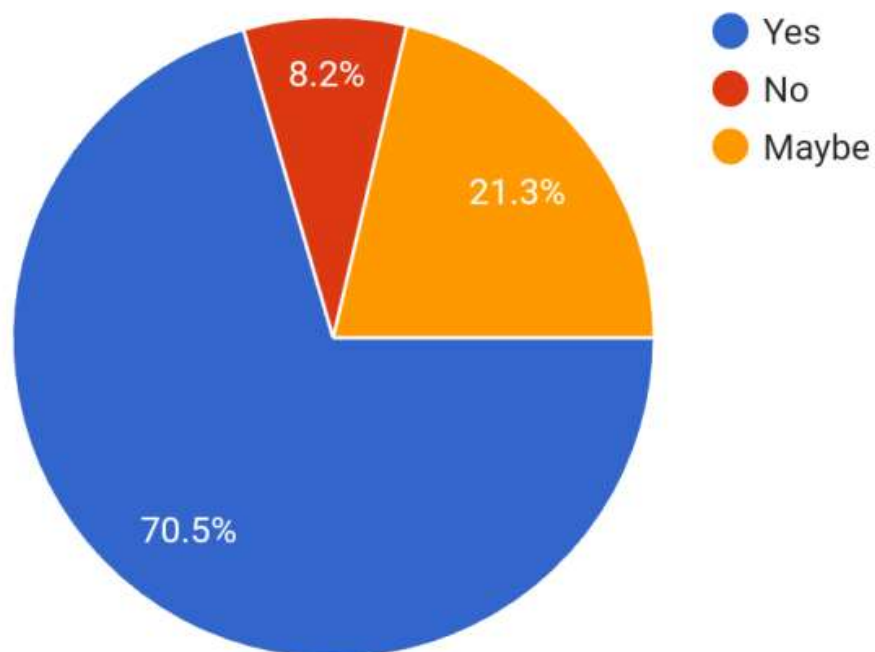
61 responses



IJLRA

Whether the compulsory appointment of Special Public Prosecutors is effective and needful for the victims

61 responses



5.1 DATA ANALYSIS-

1. Advocates and Judges:-

The researchers had provided questionnaires to various advocates and eminent judges for this research. We received 52 responses for the same. While analyzing these responses we came across various opinions which are very crucial for this research.

The intention of the researchers was to conduct a field study. We collected the responses of these respondents as they are the carriers of justice and come across these cases on a daily basis. Also advocates are the intermediaries between the accused and the victims and thus their role is very important in any dispute or offence.

2. NGOs :-

The researchers had provided questionnaires to police officers for this research. We have received 5 responses for the same. The intention of the researchers was to conduct a field study. We collected the responses of these respondents as they act for the victims benefit. These NGOs help the victims of atrocities in various manners like filling of suit, their education, etc. Thus, they act as the spokesperson of the Scheduled Castes and Tribes. After going through all the responses we found that:

- a) Yes, the provisions of existing law is sufficient to protect the Scheduled Castes and Tribes against caste-wise abuse but there are still some loopholes in it and its proper implementation;
- b) The Police officers many a times avoid to register the offences under the SC/ST [Prevention of Atrocities] Act;
- c) Most of the times police officers do not invoke correct and appropriate sections in the FIR;
- d) Yes, there are more than 75% of compromises which may be a result of the threatening of the victims by the accused and his relatives or even by police officials;
- e) Yes, the accused is granted anticipatory bail in violation of Section 18 of the POA Act;
- f) Yes, the victim is not always informed about his right regarding medical examination;
- g) The compensation paid is not sufficient and appropriate according to POA Rules;
- h) Yes, the victims of atrocities are provided legal aid but still it is sometimes insufficient.

3. Police Officers :-

The researchers had provided questionnaires to police officers for this research. They have received 4 responses for the same. According to them everything is going in accordance with law. The intention of the researchers was to conduct a field study. They collected responses from these respondents as they are the first persons approached by the victims in case of any offence. They are the protectors of the Law and should take necessary primary steps in accordance with the law. After going through all the responses we found that:

- a) They denied that they do not register the offence under POA Act and invoke wrong sections while registering an FIR;
- b) According to them many a times compromise takes place between the two parties and thus, they do not rush to register an FIR;
- c) They agreed that medical examination is provided to the victims whenever it is needed;
- d) According to them many a times there are instances of verbal abuse only against the SC/STs;
- e) They claim that the accused does not get the benefits of anticipatory bail ;
- f) They even have witnessed misuse of the POA Act by the SC/STs.

4. Victims:-

The researchers had provided questionnaires to the actual victims for this research. They received 19 responses for the same. While analyzing these responses they came across the real condition of the victims.

The intention of the researchers was to conduct field study. Researchers provided the questionnaires to these respondents as they are the main subjects of the study.

After going through all the responses we found that:

- a) Yes, delay is caused at the primary stage of filling of FIR by the Police Officer.
- b) Many a times instead of FIR just a note in Station Daily Diary is made by the Police.
- c) If FIR is recorded then, many a times its free copy is not given to the victim.
- d) Most of the times there is a delay in the investigation process.
- e) A very few times accused is arrested instantly.
- f) The victim is threatened to change his statement.
- g) No police protection is provided immediately after applying for it.
- h) The amount of travel expenses and daily allowances is insufficient for the victims.

Chap no. 6 CONCLUSION AND SUGGESTIONS

In view of the above findings, the study forwards the following conclusions and suggestions for the growing problem of custodial violence.

- a) The Scheduled Castes and Tribes [Prevention of Atrocities] Act, 1989 and Rules are sufficient to protect the Scheduled Castes and Tribes against caste-wise abuse and discrimination but there exists some loopholes in its proper implementation;
- b) Many a times the offences of atrocities remain unregistered due to various reasons such as - denial or delay by the police officials, lack of knowledge of the victims, lack of proper mechanism, threatening and exploitation by the offender, etc.;
- c) The registered FIRs lack various material facts such as proper correct sections, giving a copy to victim etc.;
- d) The Police Protection is not provided within accurate time and as a result the victims are threatened and forced to change their statements, withdraw their case or make a compromise;
- e) The victims are not informed about their right to get medically examined;
- f) There is no immediate action against the accused and many a times he derives the benefits of anticipatory bail which is violative of the POA Act;
- g) The procedure of investigation is carried in a very slow pace;
- h) Even though Legal aid and daily expenses and travel expenses are given to the victim they are not in accordance with POA Rules and are insufficient for the victims and the dependents;
- i) Additional District Court and Sessions Court are sometimes designated as Special Courts under POA Act and thus due to heavy workload on these Courts the cases are disposed on time;
- j) Aside from all these there are some instances of misuse of the POA Act by the SC/STs and thus some provision must be made even to avoid such misuse.
- k) Cases of atrocities against SC/STs must be dealt with in a fixed period of time as well as there should be a fixed time limit for the investigation of the offence and filling of chargesheet;
- l) Strict action should be taken against the police officials who do not register an FIR and try to induce by various means the victim to withdraw the complaint;
- m) Such action should also be taken against the accused who tries to threaten the victims and

- the witnesses or lure them with money;
- n) Security to the victim and witness shall be compulsorily provided;
 - o) Medical examination of the Victim must be done compulsorily;
 - p) Adequate legal aid, travel expenses and daily expenses must be paid to the victims timely;
 - q) Anticipatory bail of the accused must be provided only when it is utmost important for the accused by the Courts;
 - r) And more of all the SC/ST members me educated about their rights and the offences of atroci

CHAPTER 7

CONCLUSION AND SUGGESTIONS

Judiciary is an independent organ that acts as the protector of the Constitution. Judicial review is an important feature in India as it keeps the actions of legislature and executive in check. Without judicial review, no organ of the government could function properly. Constitution is the supreme law of the land and the judiciary being the protector of the same shall make sure that no other organs go against it.

CHAPTER 8 BIBILOGRAPHY

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