

## Issues Confronting in the Implementing SC/ST Atrocity Prevention Act

**Salini.R**

*Research Scholar*

*Department of Sociology & Social Work*

*Annamalai University*

*Chidambaram*

**&**

**Dr.PK Muthukumar**

*Associate Professor, Department of Sociology & Social Work*

*Annamalai University*

*Chidambaram*

### Introduction

Historically Indian society has a rigid, occupation-based, hierarchical caste system in which the relative place of a caste in the social hierarchy was determined largely by its traditional occupation. Those performing ‘unclean’ or ‘polluting’ tasks came to be regarded not merely as ‘low’ castes but also as ‘untouchables’. Scheduled caste and Scheduled tribe are the most marginalized sections of Indian society and are neglected in the socio-economic development. The Constitution of India abolished “untouchability” and provided several special safeguards for the Scheduled Castes (SCs), so as to ensure that they are able to attain equality with the rest of social groups in the shortest possible time. The Constitution contains several provisions in the nature of safeguards for the SCs and STs and two Acts specifically aim at curbing (i) untouchability and (ii) atrocities against SCs and STs.

There are lot of provision in the Constitution of India and to abolish untouchability, such as, Article 17 - the untouchability (offences) Act, 1955; later amended and renamed as “Protection of Civil Rights Act, 1955 in 1976 to extend punishment for the practice of untouchability; The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act) came into force with effect from 30.1.1990.

### Statement of the Problem

Many atrocities have been committed against them since time immemorial. The SC/ST Prevention of Atrocities Act protects them from discrimination and atrocities. However, the SC/ST act can never be called a successful legislation. Scheduled caste and Scheduled people still face discrimination. Crimes against SCs and STs can be broadly categorized under two types; crimes like murder, hurt, rape, kidnapping, abduction, dacoity, robbery, arson etc. which are covered under the India Penal Code (IPC) and some special crimes covered under Special Laws, namely, Protection of Civil Rights Act, 1955 and the

SCs and STs (Prevention of Atrocities) Act, 1989. The glance of the frequency of the different crimes over the years indicates a still a considerable number of cases and increase of specific types. On the other side, there is widespread concern over misuse of the provisions of the Act against innocent persons. Studies on the nature, frequency, reasons of crimes and details of investigation/prosecution, rehabilitation compensation and the implementation details of the act shows that, there are lot of misconnection in the implementation of the act, as it failed to address the issues, challenges and backwardness of SC/ST people

### **Methodology**

For collecting **primary data**, literature concerned with the act referred for collecting for **secondary data**, Researcher selected 13 out of 13 reported cases from Nooranad Police station, Alappuzha Districts, Kerala state, study conducted during December 2019. **Simple random sampling** was adopted to select Samples, each complainant constitute **unit** of study. Data collected with the help of **Interview Schedule**.

### **Objectives of the study**

1. To find out the challenges in the implementation of the act.
2. To analyse the amendments to compact with the limitations of the act
3. To suggest measures for effective implementation of the Act.

### **Research Question**

Challenges in the implementation of the act results in inefficiency of the act.

### **Review of literature**

- Study Report, Socio Economic and Educational Development Society (SEEDS) DDA, 2012 found that, the details of cases registered under the PCR Act,1955 and PoA Act, 1989 during the last 10 years at all India level shows that, cases recorded for both SCs and STs have declined over the years. The cases relating to PCR Act, 1955 are difficult to register and to be proved in the court of law. So, they are not getting registered properly by the authorities and most of the cases are being settled out of the police stations and court of law by the authorities on mutual consent by the victim/victims' families and the offenders. In the PCR Act, 1955, 95% of the cases relate to SCs and only a few cases relate to the STs.

- The study also found, some new areas of crime against Sc and ST, they are mentioned neither in the time of introduction of the act nor in the later amendments. Author mentioned 15 types of crime against SC/ST people.
- Causes for delay within the criminal justice system the low conviction rate is one of the main problem and the reasons are, (i) Lack of proper evidence (ii) slag in the production of witness by the police, (iii) Due to the hostile of the witness and (iv) long gap between the dates of offence to the date of evidence. In particular they relate to Delay caused by Judges, Delay caused by Lawyers, Delay caused by Court administrative staff, Delay caused by witnesses, Delay caused by the accused, Delay due to transfer of case, Delays in Investigation and Administrative Delay
- Reasons for high rate of acquittals in atrocity cases are 1. Hostile witnesses, Preconception of misuse of the Act, Police inaction, and Lack of designated Courts
- Problems and Challenges in the implementation of PCR Act, and POA Act, 1989 such as, a) Rule 8 of the SCs and STs PoA Rules, 1995 requires the State Government shall set up Scheduled Caste & Scheduled Tribes Protection Cell at the State Head Quarter under the charge of Director of General of Police/Inspector General of Police, b) No effective and timely monitoring of atrocity cases of the state, c) lack of awareness generation programmes, d) The land disputes and landlessness are the two major problems leading to the atrocities against the SCs and STs, e) less representation of SCs and STs in bureaucratic system f) less developed material and non-material infrastructure, g) failure of poverty eradication by the Central and State governments and NGOS's, h) getting late in police verification, i) The offences under the POA act are Non-bail able and non-compoundable, but, in a majority of such cases the accused/offenders, is given the bail by the courts and the offences are also made compoundable, j) The important provisions like, special courts, mobile courts, collective fine, Experiment, periodical surveys, awareness comps, visits by officials to the atrocity prone areas and identification of new such areas are the most neglected provisions of implementations, this has further diluted the letter and spirit of POA Act the incomplete and half hearted implementation of POA Act' has resulted into increase in number of atrocities against SC/STs, k) It should be empowered to supervise, monitor and direct the other subordinate enforcing agencies to be more alert responsive, persistent and consistent about atrocity cases.

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## Findings of the study

### Constitutional Efforts to compact with the limitations of the act

#### 1. SC and STs (Prevention of Atrocities) Amendment Act – 2015

- Addition of following new category of offences to the existing 19 punishable offences. In addition to the 19 offences listed in the Act, following new offences proposed. To cite a few: tonsuring of head, moustache, or similar acts which are derogatory to the dignity of Dalits and Adivasis; garlanding with chappals; denying access to irrigation facilities or forest rights ; dispose or carry human or animal carcasses, or to dig graves; using or permitting manual scavenging; dedicating Dalit women as devadasi; abusing in caste name; perpetrating witchcraft atrocities; imposing social or economic boycott; preventing Dalit and Adivasi candidates filing of nomination to contest elections; hurting the modesty of Dalit/Adivasi woman by removing her garments; forcing to leave house, village or residence; defiling objects sacred to SCs and STs; touching a women or uses words, acts or gestures of a sexual nature against women.
- Addition to IPC offences attracting committed against Dalits or Adivasis as punishable offences under the POA Act. Presently, only those offences listed in IPC as attracting punishment of 10 years or more and committed on Salits and Adivasis are accepted as offences falling under the POA Act. A number of commonly committed offences (hurt, grievous hurt, intimidation, kidnapping etc.) are excluded from the Act. This provides loopholes for the perpetrators of crime to escape from being punished for these commonly committed crimes. Therefore, a schedule of list of IPC offences is provided in the amended act.
- Establishment of Exclusive Special Courts and Special Public Prosecutors to exclusively try the offences falling under the POA Act to enable speedy and expeditious disposal of cases. Presently Special Courts and Public Prosecutors also deal with other cases besides atrocity cases. Consequently, cases are kept pending for long time. Thus victims are denied justice or speedy justice. Establishment of an Exclusive Special Courts for one or more districts and Exclusive Special Courts for one or more districts and Exclusive public prosecutor is proposed.
- Power of Exclusive Courts to take cognizance of offence and completion of trial in 2 months. Courts so established or specified shall have power to directly take

cognizance of offences under this act and the trial shall, as far as possible, be completed within a period of two months from the date of filling of the charge sheet

- Addition of chapter on the 'Rights of Victims and Witnesses'. As of now, the Act recognizes a few rights of the victims and witnesses. This is insufficient. Therefore, many other essential rights are covered so as to impose duty and responsibility upon the State for making arrangements for the protection of victims, their dependants and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence
- Defining clearly the term 'wilful negligence' of public servants at all levels, starting from the registration of complaint, and covering aspects of dereliction of duty under this Act. Section 4 of the present Act does not clearly define that constitutes 'wilful negligence' of public servants. Hence, 'wilful negligence' is defines by listing specific transgression of law: for example, police officers not putting down accurately in writing the victim's complaint; not getting their signature; not registering FIR under the Act; nor registering it under appropriate sections of the Act; ect.
- Addition of presumption to the offences – If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.

## **2. SC and STs (Prevention of Atrocities) Amendment Act – 2018**

- The Supreme Court on Tuesday recalled its direction in the March 20, 2018 verdict which had virtually diluted provisions of arrest under the SC/ST Act. The apex court further said the Constitution provides for protection of SC/ST people under Article 15 but they still face social abuse and discrimination. Dealing with the misuse of provisions of SC/ST Act and lodging of false cases, the bench said it is not due to the caste system but due to human failure.
- The directions passed on provision of arrest and conducting a preliminary probe before any case is lodged is uncalled for and the court should not have exercised its plenary powers, said the bench.
- Indicating that it would pass certain directions to "bring in equality" as per provisions of the law, the top court had said people belonging to scheduled castes and scheduled tribes are subjected to "discrimination" and "untouchability" even after over 70 years of Independence.

- Taking a serious view of the manual scavenging situation and deaths of SC/ST people engaged in such work, the top court had said nowhere in the world people are sent to "gas chambers to die".
- It also took critical view of the basis of the 2018 verdict, by which the two-judge bench had directed that a preliminary enquiry may be conducted by a DSP-rank officer to find out whether the allegations qualify for a case under the SC/ST Act and whether the allegations are frivolous or motivated.
- On September 13, the top court had referred to a three-judge bench the Centre's plea, which was filed nearly 18 months ago, seeking review of its judgment which had virtually diluted the provisions of arrest under the SC/ST Act.
- The apex court's March 20, 2018, verdict had led to a massive outcry and protests by different SC/ST organisations across India after which Parliament passed the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, to neutralise the effects of the judgment.
- In the verdict, the apex court had taken note of the rampant misuse of the stringent SC/ST Act against government servants and private individuals and said there would be no immediate arrest on any complaint filed under the law.
- It had said on "several occasions", innocent citizens were being termed as accused and public servants deterred from performing their duties, which was never the intention of the legislature while enacting the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.
- The apex court had said that there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act, if no prima facie case is made out or where the complaint is found to be prima facie malafide.
- It had said that in view of the acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the Senior Superintendent of Police (SSP).

### Challenges and Response of complainants

Challenges identified	Positive Response in %
Protection Cell at the State Head Quarter under the charge of Director of General of Police/Inspector General of Police,	0
No effective and timely monitoring of atrocity cases of the state	0
lack of awareness generation programmes	100

<b>The important provisions like, special courts, mobile courts, visits by officials to the atrocity prone areas and identification of new such areas</b>	<b>100</b>
<b>getting late in police verification,</b>	<b>76.92</b>
<b>supervise, monitor and direct the other subordinate enforcing agencies</b>	<b>69.23</b>
<b>less representation of SCs and STs in bureaucratic system</b>	<b>69.23</b>
<b>failure of poverty eradication by the Central and State governments and NGOS's</b>	<b>69.23</b>
<b>The land disputes and landlessness</b>	<b>53.8</b>
<b>Other problems</b>	<b>53.8</b>
<b>Low rate of conviction</b>	<b>38.46</b>
<b>No strict provisions for recommending the offences under the section of Non-bailable and non-compoundable</b>	<b>30.76</b>

Table above shows the challenges of the PoA Act 1989 and the Positive response of the complainants towards each item. And it shows that, 100% of respondents are of the opinion that they were nor directly known about the suitable provisions of the act in favour of their case. Only with the help of others they could file the complaint. There should be effective awareness programmes on PoA Act. The complainants are satisfied with the special courts and Special public Prosecutors. 76.9% of respondents are of the opinion that, they did not face any problem in getting police verification of their cases, they are satisfied as the police completed investigation and evidence collecting within three months as mentioned in the PoA Act 2019. 69.23% of respondents are of the opinion that, the civil enforcement Directorate (CRED) headed by inspector general of police should be made an autonomous body directly answerable to NHRC and not to the state home ministry. Another 69.23% are of the opinion that, less representation of SC/ST people in government system, police and judicial department also result in getting delay of the procedure of their cases. Another 69.23% said, they are not satisfied with the government oriented and programmes for poverty eradication and because of that, they remain in the same economic backwardness. 53.8% are of the opinion that, though Kerala has implemented the Land reformation act and there are other programmes for proving land to the SC/ST people, they are not getting the benefits of such developmental programmes. Another group of 53.8% said that, they faced some other problems such as, there case seems delayed due to, the delay caused by the accused: When the main accused is absconding from the police, it affects the police investigation which in turn affects the proceedings of the court in the form of waiting for the filing of charge sheet to start the trial, and the failure of the police investigation officer to submit the charge sheet on time is one of the major reasons for delay. One of the important things should be mentioned here is that; politicisation of police department affected their case, that is 30.76% of respondents realized the problem as inaction of police. Cases are not registering as per the

grievance of atrocities done. When the complainant reached the police station, police officers try to compromise the case, by countering the amendment in 2019.

### **Suggestions**

There should be more and more awareness about this act to the SC and ST communities or pockets where these communities are present. Strong vigilance committee as well as infrastructure to be developed to look after this act in the villages. Compensation amount should be enhanced as per the gravity of the cases. The victims/beneficiaries should get proper justification for his loss. Police department should make a uniform check list for investigation and proper coordination between different departments.

The research question also proved here that, “Challenges in the implementation of the act results in inefficiency of the act”, only in its 20<sup>th</sup> year 90% provision of PoA Act got rectified and these drawback heave the backward castes into injustice.

### **Conclusion**

Ministry of Home Affairs documents criminal offences against members of the SCs and STs. National Commission for SCs and STs with wide functions and powers of civil court to takes up matters which are of vital importance for socio economic development of SCs and STs. This legislation aims at preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against Scheduled Castes and Scheduled Tribes. In a caste based society like India, all the governmental machineries are also oriented on the basis of caste and only with the effective implementation of the act will provide justice to the people who denied their rights.

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