

# **CASTE GENDER AND POWER:**

## **A Socio-legal Analysis of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

*Dissertation submitted to Jawaharlal Nehru University in partial  
fulfillment of the requirements for the award of the degree of*

**Master of Philosophy**

**HARPREET KAUR DYHIA**



**Centre for the Study of Law and Governance**

**Jawaharlal Nehru University**

**New Delhi 110067**

**2014**



27 July 2015

DECLARATION

I, Harpreet Kaur Dyhia, declare that the dissertation entitled "Caste, Gender and Power: A Socio-legal Analysis of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989" submitted by me in partial fulfillment of the award of the degree of Master of Philosophy (M. Phil) of Jawaharlal Nehru University is my original work. This dissertation has not been submitted for any other degree of this University or any other university.

*Harpreet Kaur*

Harpreet Kaur Dyhia


Certificate

It is hereby recommended that this dissertation be placed before the examiners for evaluation.

*Amit Prakash*

Amit Prakash


Chairperson

 प्रो. अमित प्रकाश/Prof. Amit Prakash  
अध्यक्ष/Chairperson  
विधि एवं अभिशासन अध्ययन केन्द्र  
Centre for the Study of Law and Governance  
जवाहरलाल नेहरू विश्वविद्यालय  
Jawaharlal Nehru University  
नई दिल्ली/New Delhi-110067

*Pratiksha Baxi*

Dr. Pratiksha Baxi

Supervisor

 Supervisor  
Centre for the Study of  
Law and Governance  
Jawaharlal Nehru University  
New Delhi-110067

**CASTE GENDER AND POWER:**  
**A Socio-legal Analysis of the Scheduled Castes and  
Scheduled Tribes (Prevention of Atrocities) Act, 1989**

*Dissertation submitted to Jawaharlal Nehru University in partial  
fulfillment of the requirements for the award of the degree of*

**Master of Philosophy**

**HARPREET KAUR DYHIA**



**Centre for the Study of Law and Governance**

**Jawaharlal Nehru University**

**New Delhi 110067**

**2014**

## Acknowledgments

---

I dedicate this study to my mother, Roseline and father, late Rajwant Singh. My parents have always supported my ambition of studying and learning. After the demise of my father, my mother stood behind my every step of the way. Her perpetual trust in me has always kept me going even at the worst moments in my life. She has supported my study in every way even when she does not understand or agree with my ideas about life that I try to translate into my work.

I am also thankful to my son, Kabir for his smiles that kept me going even at the lowest moments during my work. He has made smile and cry at the same time when I was writing and he needed my undivided attention. Balancing with his needs and my work has been a difficult task. But in the end his smiles inspired me to work.

I would like to thank my supervisor Dr. Pratiksha Baxi for guiding me, and without her encouraging words this study would not have really been completed. She has been a great inspiration at the times when I was about to lose faith in myself. Most of all she has been the most patient and amazing mentor.

I am grateful to Prof. Amit Prakash, Prof. Niraja Gopal Jayal, Prof. Jaivir Singh and Prof. Amita Singh of the Centre for the Study of Law and Governance for their help and support during these two years of my M.Phil.

Lastly, but most importantly, I am thankful to my friends Deep, Madhavi, Manpreet, Andrew, Padma, Rahul, and Anand, who are my extended family. They have stood by me during my difficult times of raising my son alone. Without their support I would not have completed this study. I would like to thank Swastee for all the help while writing my dissertation. I would like to thank Gautam for being a good friend and for encouraging words.

## Contents

List of Abbreviations .....	4
List of Cases.....	5
Chapter I.....	6
INTRODUCTION: CASTE SYSTEM AND STATUS OF DALIT AND ADIVASI WOMEN.....	6
UNDERSTANDING CASTE THROUGH GENDER LENS.....	8
CASTE IN INTERNATIONAL SCENARIO .....	14
OBJECTIVE OF THE STUDY .....	18
CHAPTER PLAN.....	19
Chapter II .....	20
ANALYZING CASTE ATROCITY LANDMARK JUDGMENTS .....	20
<i>TUSUNDUR MASSACRE</i> .....	23
<i>BAITHANI TOLA MASSACRE</i> .....	26
<i>KHAIRLANJI MASSACRE</i> .....	29
CONCLUSION.....	42
Chapter III.....	44
ANALYSIS OF PROVISIONS RELATING TO WOMEN UNDER THE PREVENTION OF ATROCITIES (PoA) ACT 1989 .....	44
CONCLUSION.....	60
Conclusion .....	62
Bibilography .....	66

## **List of Abbreviations**

PoA – Prevention of Atrocities Act, 1989

SC –Scheduled Caste

ST- Scheduled Tribe

IPC Indian Penal Code

Cr.P.C- Code of Criminal Procedure

CBI - Central Bureau of Investigation

FIR - First Information Report

SHO - Station Head Office

PW - Prosecution Witness

DW - Defense Witness

## List of Cases

*Eknath Ganpat Aher and others v. State of Maharashtra and Others* (2010) 6 SCC 519

Khairlanji Case: Special Criminal Case No. 01/2007 in Bhandara Special Court, Maharashtra

*Kailas and Others v. State of Maharashtra* MANU/MH/0273/2010

*Kailas and Ors.v. State of Maharashtra T.R. Taluka P.S.* MANU/SC/0011/2011

*M.C. Prasannan v. the State* MANU/WB/0072/1999

*Miss M.S. Annaporani v. State of UP* MANU/UP/0959/1992

*State of Bihar v. Ajay Singh, Manoj Singh and Narendra Singh @ Nagendra Singh AND Sanjay Singh S/o Shri Ram Tawakya Singh Vill.-Barki Kharaon, P.S.-Sahar, Dist-Bhojpur v. The State of Bihar* MANU/BH/0183/2012, 2012(2)PLJR601

*State v. Dharambir and Ors*, Addl. Sessions Judge-II (North-West)/ Spl. Judge (SC/ST Cases): Rohini Courts: Delhi. Mirchpur Case: Session Court Case No. 1238/10

*State through Sub Divisional Police Officer, Tenali v. Modugula Sambhi Reddy and Ors*, in the Court of Special Sessions Judge-cum-Addl. Sessions Judge, Guntur. Sessions case no. 36/1993.

*Suhail Fasih v. State of Uttar Pradesh. and Another* MANU/UP/3694/2011

## Chapter I

### INTRODUCTION: CASTE SYSTEM AND STATUS OF DALIT AND ADIVASI WOMEN

Our everyday lives are imbued with pictures of our society, which rationalize, or critique caste atrocities. Incidents of caste crimes have been a reality of Indian society, invoking important questions with respect to relevant laws, their implementation and social context in India. In order to understand caste violence and its relation to law today, one must first ask oneself a rather contentious question: what is caste? There are several debates on how to think about the caste system but broadly, at the risk of simplification, scholars have argued and established that we may think of caste either as a site of etching difference or maintaining hierarchy.

Historically, caste has been a subject of study, often understood in rather simple analytical categories of discrimination, reservation and affirmative, of a certain individual or community, based on birth. That caste system produces, subjugation and oppression is mostly ignored, leading to be misconstrued it as an 'innocent' term. Be it women or men, oppressors and oppressed are a part of an intricately weaved structures that are only visible at a more generalised level. It is therefore quite common to come across cases where a simple affair between two individuals may be a rather complicated relationship between two individuals who have been ascribed two different castes. Caste then appears to be a contingent factor, following other categories such as, class, gender, social upbringing, cultural differences, which has contributed to playing a significant role in an individual's life. Therefore, all the actions of a person are reflective of his/her sensibilities that are shaped up because of his/her being in a set of those contingent factors, in this context, caste. Simply put, nothing is out of the context.

Divided into *varnas*, that is based on caste system, majority of Indians are labeled as Hindus and stratified socially as *brahmins* (priests), *kshatriyas* (warriors), *vaishyas* (traders), *shudras* (meant for serve of the other three castes) and 'untouchables' (outcastes, having no place in the caste system). The norms and rules of the caste system find reference in ancient Hindu scriptures such as the Vedas, *Manusmriti*, *Brihatdharma Purana*, *Brahmabaibartya Purana* (Barman 2010, Chakravarti 2003: 10). According to these Hindu scriptures, 'shudras' and 'untouchables' are at the lowest in the order of caste system. Social stratification on the basis of birth and



ancestry is the core of caste system. Berreman (2003) points out that human meaning of caste 'for those who live it' is power and vulnerability, privilege and oppression, honour and degradation, plenty and want, reward and deprivation, security and anxiety (Chakravarti 2003). The inherent feature of the caste system, in terms of lived experience, is the unequal access to material resources and power (Chakravarti 2003). The ideology of caste system not only governs the lives of people in Hindu society but also 'pervades the Muslim and Christian communities in India who have kept their caste identities even within the new fold.' (Chakravarti 2003: 2)

Based on the ideology of pure and impure, the caste system necessitates endogamous marriages, so that reproduction is bounded within a specific group to maintain it as a discrete social unit (Dumont 1980). Therefore, marriages must conform to the rule of endogamy in a caste society where there is a crucial relationship between caste and gender in perpetuation of the caste system (Chakravarti 2003: 28). The Hindu texts although religious in its content and form, act as a legal document where its law maintains, regulates and upholds different behavioral standards for both men and women. This calls for scrutiny of the text with specific reference to women especially those who carry the burden of belonging to a lower caste- for example, *dalit* women.

Caste atrocities common in cases of transgressions reflect not only the permissible limits accorded to individuals belonging to lower caste but serving to consolidate the dominance and power of the upper castes. Foucault stated the questions concerning power should mainly involve '*how is power exercised?*' and not who exercises power. (2000; 336) Caste system is not powerful because of its relationship between four *varnas* but *through* the exercise of power on the subjects that it creates in name of 'untouchables/*dalits*'. There are five fundamental characteristics that caste system strictly follow; *Systems of differentiations* through four *varnas* and then the further classification of 'shudras' and ex-untouchables permits one caste to act upon the actions of the other castes. Power relation within castes puts into operation differences such as economic privileges, appropriation of resources, cultural differences, and educational privileges, that are its conditions and at the same time outcome of such relations; (Foucault 2000)

*Types of objectives* – the objective of caste systems is to maintain hegemony by regulating social, economic and cultural rights among the caste members and according them their position in a said hierarchy;

*Instrumental modes:* the main mode of exercising power within the caste is through violence – verbal, economic disparities and the means of control, explicitly or implicitly;

*Forms of institutionalization:* caste system strictly follows a hierarchical structure, which is traditional, and legalized through the written rules within the religious scriptures; caste system serves as an autonomous institution which even though illegal as pronounced by the state constitution, but is followed as legitimized through scriptures such as the ‘devadasi custom’ which is followed various states in India. Caste system follows a strict principle of regulation of each caste and to some extent is also a distributor of all the power relations with respect to caste in the given social structure.

*The degree of rationalization:* In caste system all the illegal and restricted acts are rationalized on the grounds of inferiority of particular group based on birth. Foucault argues that ‘the exercise of it is not a naked fact, an institutional given, nor is it a structure that holds out or is smashed: it is something that is elaborated, transformed, organized; it endows itself with processes that are more or less adjusted to the situation.’ (Foucault 2000: 345)

## **UNDERSTANDING CASTE THROUGH GENDER LENS**

There is a certain danger in constructing the category of ‘caste’ as a homogenous category consisting only of men. As I explore in this study, albeit through legal processes, the position of women within this system is even more deplorable, for they not only are lowest of the low, but are also of the most peripheral.

Consider the Manusmriti; women have no right to education, independence, or wealth. It not only justifies the treatment of *dalit* women as a sex object and promotes child marriage, but also justifies a number of violent atrocities on women as can be seen in the following verses (Agarwal; Manusmriti)

A man, aged thirty years, shall marry a maiden of twelve who pleases him. Or a man of twenty-four a girl of eight years of age. If (the performance of) his duties would otherwise be impeded, he must marry sooner. (Manusmriti IX. 94)

By a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house.” (Manusmriti V. 147)

Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence. (Manusmriti IX. 3)

Women have no right to study the Vedas. That is why their Sanskaras are performed without Veda Mantras. Women have no knowledge of religion because they have no right to know the Vedas. The uttering of the Veda Mantras is useful for removing sin. As women cannot utter the Veda Mantras, they are as unclean as the untruth. (Manusmriti IX. 18)

A Brahman, Kshatriya, or Vaishya Man can sexually exploit any shudra woman. (Manusmitri IX. 25)

Even the killing of a dalit woman is explicitly justified as a minor offence for the Brahmins: equal to the killing of an animal (Manusmriti). The inherent feature of the caste system in terms of lived experience is the unequal access to material resources and power along with lack of dignity to self-hood(Chakravarti 2003). The ideology of caste system not only governs the lives of people in Hindu society but also ‘pervades the Muslim and Christian communities in India who have kept their caste identities even within the new fold’ (Chakravarti 2003: 2). Caste is a social system that mainly revolves around three pillars:

... *separation* in matters of marriage and contract, whether direct or indirect (food), *division* of labour, each group having, in theory or by tradition, a profession from which their members can depart only within certain limits and finally *hierarchy*, which ranks the groups as relatively superior or inferior to one another.<sup>1</sup>

Instances of caste atrocity, is a form of ‘sexual violence, which performs a pedagogical function in socializing men and women, Dalit and caste Hindu alike, into caste norms’ (Rao 2011). Baxi (2014) argues that it’s not just instructional and recreational, but is also ‘enjoyed for its own sake’.. Since caste primarily tries to regulate sexuality and kinship, sexual relation in and outside caste ties – which is very crucial for reproducing caste hegemony and supremacy. Rao (2011) argues that ‘sexual economy of caste is complex: it prohibits all men from viewing all women as potential marriage partners while giving upper- caste men the right to (sexually) use Dalit and lower-caste women’ (2011:622). Undeniably, this is a *public secret* known to all, which is normalized as a privilege of the upper castes, and experienced as a shameful secret by the sufferer of such atrocity.Caste hegemony is protected in two ways: by regulating caste respectability, and by justifying blatant transgression as a form of upper-caste privilege. The double economy of caste is at work in the exchange of women within the caste community on the one hand, and in the informal circuit of sexual liaison with

---

<sup>1</sup> Dumont, Louis. 1980. *Homo Hierarchicus: The Caste System and Its Implications*. University of Chicago Press. p. 21

women seen as always-already amenable to sexual violation “by right” on the other. The putatively closed circuit of marriage and respectability is destabilized by this “other” economy of sexual violation/pleasure that equates caste privilege with the availability of lower-caste women as upper-caste property. Although marriage regulates caste purity to some degree, the sexual economy of caste is intrinsically unstable. The problematic permeability of violence and desire, of rape and marriage, intimates that sexual violence is caste violence because it operates as the prerogative of upper caste men. The brutal violence against Dalit men accused of desiring upper-caste women further illuminates the double jeopardy of sexual violence as caste violence. If Dalits’ political awareness has intensified caste conflict, a crucial but invisible consequence of Dalit politicization is understood as the desire for upward mobility now recast as a desire for sexual access to upper-caste women (Rao 2011). The pernicious euphemization of sexual violence as a form of upper-caste male desire thus permits upper castes to fantasize about sexual possession, even as the sexual violation of upper-caste women becomes an important vector for consolidating Dalit caste masculinity (Rao 2011). Caste identity plays a central role in regulating the social and gender hierarchy. Women are believed to be the “bearers” of the caste identity. Women are seen the embodiment of family honor, hence protecting their honor is a source of considerable stress in conflict-ridden communities. A Dalit woman perhaps constitutes the most miserable section of the society since they have to face violence from two directions i.e. being dalit and being women. They are frequently attacked as a means of revenge against male relatives who are thought to have committed some acts against the upper castes. The media reports often released the facts of sexual assaults on dalit women, frequently perpetrated by landlords, upper caste villagers, and police officers. In most cases the atrocities against the dalit women particularly rape are dismissed by the police officers as false complaints. It has been noticed in the study reports of NGO that in order to dismiss rape cases the police routinely demand bribes, threaten witnesses, cover up evidence, and beat up the women’s husbands. Rape victims have also been murdered. Such crimes often go unpunished (Saikia 2014).

Dr. Ambedkar points out that “...the common belief among scholars that the caste system has either been imposed upon the docile population of India by a law-giver as a divine dispensation, or that it has grown according to some law of social growth peculiar to the Indian people” (1916; 11).

Social norms based on Hindu religio-legal texts that are governing caste system are so shrouded and normalized in our routine activities that it is almost impossible to identify clearly the extent of their violence. This calls for scrutiny of the text with specific reference to woman especially dalit or lower caste woman. For instance, according to the Manusmriti, women have no right to education, independence, or wealth. The following verses of Manusmriti not only justify the objectification of lower caste, especially *shudra* women, as sex objects and promote child marriages but also permits violent atrocities on them.

94. A man, aged thirty years, shall marry a maiden of twelve who pleases him. Or a man of twenty-four a girl of eight years of age. If (the performance of) his duties would otherwise be impeded, he must marry sooner. (Manusmriti IX)

By a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house.” (Manusmriti V. 147)

Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence. (Manusmriti IX. 3)

Women have no right to study the Vedas. That is why their Sanskaras are performed without Veda Mantras. Women have no knowledge of religion because they have no right to know the Vedas. The uttering of the Veda Mantras is useful for removing sin. As women cannot utter the Veda Mantras, they are as unclean as the untruth. (Manusmriti IX. 18)

A Brahman, Kshatriya, or Vaishya Man can sexually exploit any shudra woman. (Manusmriti IX. 25)

Even the killing of a dalit woman is explicitly justified as a minor offence for the Brahmins: equal to the killing of an animal (Manusmriti). If the killing of an untouchable was justified as a minor offence, you can imagine the treatment they received throughout their lives.

These verses of Manusmriti, are illustrative of the rules that need to be followed by various authoritative figures in the society. It states the conducts and duties of king, priests, ordinary men and women of all the castes. These regulations have a significant bearing in the minds of the caste Hindu men and women and are of great importance in upholding caste system. As Foucault (2000) has stated that pastoral power has taken a different shape with the advent of the ‘modern state’ ( 2000: 333), Extending this to apply to the caste system in India, one finds that the intrinsic nature of the caste system is well-adapted while framing of *modern* Indian laws as well. The outcome of which is that the laws are inherently laden with patriarchal gendered mindset. Instances of such provisions under the law can be found at various levels- Such as two-finger test of the

rape survivor to prove the crime of rape; gendered texts of the laws i.e., *wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water* (S. 3(1) (v) of the POA Act of 1989); descriptive testimony of the sexual crimes with respect to women and corroboration of such crimes at a length that the survivor feels intimidated in the presence of men in the courtrooms; and the like. The whole apparatus of the justice system is loaded with similar instances.

In a male dominated society, Dalit women have been suffering oppression beyond belief, not just because of caste but also gender from which they cannot escape. The religio-legal texts close all economic, political, social, educational, and personal channels through which Dalit women could be uplifted. Since ages ‘shudras’ and ‘untouchables’ together politically categorized as ‘Dalits’ were denied even the basic human rights let alone their socioeconomic rights.

After Independence, under the Constitution of India, everyone was made equal in the eyes of the law, but social equality is yet to be achieved. The Constitution of India lays out elaborate frame for protection and development of Scheduled Castes and Scheduled Tribes. The relevant Articles of the Constitution are listed as follows:

- Ensure equality before law and equal protection to all (Art. 14)
- Prohibition of discrimination on the grounds of religion, race, caste, sex and place of birth (Art. 15)
- Ensures certain fundamental rights (Art. 15(4)) do not hinder the laws and measures to benefit the Scheduled Castes and Scheduled Tribes (Art. 16(4))
- Abolition of untouchability (Art. 17)
- Protection of certain rights regarding freedom of speech and expression (Art. 19)
- Protection of life and liberty (Art. 19)
- Protection against forced labour (Art. 23)
- Freedom of conscience and free profession, practice and propagation of religion, entry into temples of Hindu religious institutions of a public character (Art. 25)
- Legislations to give effect to the provisions for fundamental rights (Art. 35)
- Responsibility of the State to secure social order for the promotion of welfare of the citizens (Art. 38)

- Duty of the State to ensure equal justice and free legal aid (Art. 39)
- Duty of the State to promote educational and economic interests of the Scheduled Castes and Scheduled Tribes and protect Scheduled Castes and Tribes from social injustice and all forms of exploitation (Art. 46)
- Fundamental duty of every citizen to promote harmony and spirit of common brotherhood, amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women (Art. 51 A(e))

Apart from the provisions of the Constitution there is a whole set of protective and anti-exploitative laws. For instance, laws prohibiting practice of bonded labour, enactments relating to allotment, ban on transfer and restoration of alienated lands, control of money lending and scaling down of debts incurred by the Scheduled caste and Scheduled Tribes and the Minimum Wages Act and so on. For the empowerment of the SCs and STs various development programs were also initiated including the Tribal Sub-Plan and Special Component Plan (Saksena 2010: 17-19). It was postulated that these initiatives would automatically enable the SCs and STs to occupy a position of equality and eliminate the myriad forms of social and economic injustice prevalent in different parts of the country through centuries. However, it was found that education, political awareness and economic strength created among these sections was of the level which would reduce the incidence of caste-based discrimination and exploitation-motivated crimes (Saksena 2010: 19).

In 1974, the Government of India initiated monitoring of caste-related offences and found a considerable increase in the trends. Assaults on dalit and Adivasi women are viewed instrumentally to teach lessons to the community. Incidents where women were made to consume human excrement, raped and paraded naked in public, abducted from the fields, left dead and their bodies brutally mutilated, newly wedded dalit brides were sent to the house of village head for their enjoyment for a night by their own husband and the like. Dalit women were subjected to these kinds of crimes, and if such crimes were reported, they were addressed under the criminal law. Such atrocious treatment of dalit women in the society called for immediate redress. Therefore, there was a demand for special law prescribing stringent punishments for such offences as only a measure of the kind that would deter the higher castes. Hence, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill was introduced and unanimously passed in Lok Sabha in 1989. (Saksena 2010: 19) Between the protectionist venture of

legislative conundrum began in 1955 and the final enactment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA, Act), crucial aspects of everyday life and social relations between castes was brought within the ambit of this new juridical category, the “caste atrocity.” The key point was that by providing punishments to dissuade the occurrence of caste crimes, the Untouchability Offences Act included the Dalit’s body as ‘deformed or injured property that belonged to the state’ (Rao 2011). Therefore, to abolish untouchability and bring in the legislation to curb its practice, it was important to recognize and exemplify it at the same time. As “untouchability” was framed through its contiguity with the juridical category of atrocity, its association with crime began to lift the practice of untouchability out of the contexts of everyday life into the realm of performance and spectacle (Rao 2011). It was not a coincidence that right after the legislation to protect Dalits came into force incidence of violence against Dalits increased. The new strategies of recognition of Dalits created through the process of legal remedies for which one had to produce their self as subjects or objects of a cultural practice of untouchability. However, law in itself does not provide justice unless backed by the societal norms. This externality of law produces the effect of violent and new ways of circumventing the legal measures by the dominant castes and not *per se* the role of law in creating the vulnerable identities (Rao 2011). This brought the relationship of Dalits and higher caste Hindus under intense regulation of law and in the bureaucratic discourse, ‘leading to new formations of violence that resurrected symbologies of ritual degradation and humiliation’ (Rao 2011).

## **CASTE IN INTERNATIONAL SCENARIO**

India is not the only country facing caste or caste-like abuses. Narula (2004; 286) points out that dalits in other South and East Asian countries such as, Bangladesh, Nepal, Sri Lanka and Pakistan face such acts of caste discriminations or abuses. Likewise, the Buraku people of Japan, communities in Mauritania and Senegal, Peekchongas in Korea, Ragyappas in Tibet and the Osu in Nigeria face such similar fate under a similar caste like system (Narula 2004; Sheth 2004; 86). Caste is an important economic and social indicator for Asian diaspora in United States, the United Kingdom, South Africa, Malaysia, and many other countries in the World.



(Narula 2004). Caste discrimination or caste-like abuses at the international level were confirmed and recognized at various conferences and treaty documents. For instance,

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in the concluding observations of its forty-ninth session held in August/September 1996 ... the Committee on the Elimination of Racial Discrimination (CERD) affirmed that 'the situation of scheduled castes and scheduled tribes falls within the scope of the convention. ...the term 'descent' contained in Article 1 of the convention does not refer solely to race, and encompasses the situation of scheduled castes and tribes. In March 2001, CERD's 'concluding observations' on Japan's report noted that discrimination based on descent constitutes racial discrimination, and ...Art. 1 of ICERD has its own meaning and is not to be confused with race or ethnic or national origin.' ...while reviewing Bangladesh's report, the committee reaffirmed that 'the term "descent" does not solely refer to race or ethnic or national origin and [that it] is of the view that the situation of castes falls within the scope of the convention.

Likewise, concerns were raised in U.N. special rapporteur on racism, racial discrimination, xenophobia and related intolerance in his January 1999 report and the Human Rights Committee in 1977 that affirmed the issue of 'severe social discrimination,' endured by the members of scheduled castes and violations of their rights under the International Covenant on Civil and Political Rights (ICCPR). CERD in 2000 also raised similar concerns in the case of Nepal. In 2000, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women (CEDAW) in their reviews of India's periodic reports under the children's rights and women's rights conventions also reiterated serious concerns over the treatment of dalit children and dalit women in India. (Narula 2004)

In spite of the concerns raised at the international level, numerous scholars have disagreed on equating caste and race. Beteille argues that racism is based on pseudo-science since there are no biological and genetic differences among human beings; and secondly, no comparison can be drawn between caste and race, however politically beneficial it may seem to some people (2004). It is erroneous to compare caste with racism (Beteille 2004: 49-52). However, Omvedt refutes this argument stating both the arguments contradict each other, as both caste and racism are not actually based on biological differences among human beings (2004: 190) 'Race has a biological connotation whereas caste is a socio-cultural construct' (Sheth 2004). Unlike race, a caste is not determined by biological characteristics of a person such as the colour of the skin. Caste status is ritualistically assigned by a complex sociohistorical structure within a social group having very clear rules specifying a

degree of purity or pollution attached to it, an occupation, and a specific range, within which its members can form marital unions. Racism, on the contrary, is a form of discrimination both social and political based on biologically marked inter-group diversities. Internationally such claims of the inherent superiority of one social group over the other have been widely discredited (Sheth 2004). Sheth (2004), however, argues that it would be a futile to compare caste and race however, undeniably the effects of such evils are no different. The problematic of both caste and race can be understood in terms of oppression of certain group of people based on culturally formed categories, giving preferences or privileges based on their descent. One cannot deny the injustice that is brought upon human beings in the name of both caste and race. Both are intrinsically different but are similar in the effects they brought upon humans consequentially.

This endless debate on caste and race difference has its own advantages and disadvantages. For the purposes of this study the only point that needs to be highlighted is the sub-humanizing consequences on the under-privileged people. Invariably, the most under privileged sections include the women and the children of the community. Narula (2004) also pointed out that ‘lower caste women are singularly positioned at the bottom of caste, class, and gender hierarchies’ (2004: 88). Invariably, women are paid lesser in their jobs worldwide and face incomparable exploitation, discrimination and physical attacks. Especially, lower caste women bear excessive discrimination with respect to their access to health care, education, and wages in comparison with women of higher castes. Often, landlords and the police recourse to sexual abuse and other forms of violence against women to inflict political ‘lessons’ and crush disagreement within the community (Narula 2004).

Purity/pollution is very necessary to uphold the structure of the caste system. It is a most important factor that supports the three pillars of the caste system. This concept of purity/pollution is a thread that binds caste into a structure and preserved through endogamy (Dumont 1980). Marriage as an institution is important to uphold caste, mainly through keeping the bloodline pure and a discrete social unit (Dumont 1980). The customs and rites of a particular caste are the main characteristics that constitute a caste along with the fact of being born in a particular caste. Hierarchy of the system is maintained to uphold the hegemony in the society. Most of the rules, rites and customs of the caste system are based on keeping the bloodline pure and achieved through controlling the women belonging to that community. Women and men are

kept under control with such regulations. These regulations and customs are based entirely on the Vedic texts and scriptures that are the foundation of the caste system. These rules that govern the sexuality of a woman are different from what men are meant to follow. Patrilineal societies like ours accept the deviant behaviour of men and women at very different levels. Women are expected to follow a stricter regulation because they are considered as carriers of the bloodline to uphold the dignity and pride of the family. Therefore, regulating the sexuality of a woman is crucial for maintaining the caste system. Marriages must conform to the rule of endogamy as there is a crucial relationship between caste and gender in perpetuation of the caste system (Chakravarti 2003: 28). As Weiss (2001) have correctly pointed out that

... Our own sense of being male or female is something taken for granted. One can only imagine what it would be like to lose that sense of ourselves and to be discriminated against. ... It is difficult to tell what fish talk about, but we can be sure it is not water. Gender is the water we swim in. Those who are accorded privilege by society do not experience the pervasive and life-altering effects of such discrimination, and may well wonder if such effects really exist and to what extent. It is, therefore, necessary to unmask the assumptions which create our reality and to examine them in light of the reality...(2001: )

Similarly, Linda Alcoff (2006) points out that

...habits and practices are critical in the construction of meaning. ... Gender is not a point to start from in the sense of being a given thing but is, instead, a posit or construct, formalizable in a non arbitrary way through a matrix of habits, practices, and discourses (cited in Kapadia 1995: 6).

Kapadia(1995) also mentions the centrality of Bourdieu's 'habitus' and practices in the analysis of inequality (1995). For Alcoff "*the concept of positionality shows how women use their positional perspective as a place from which values are interpreted and constructed rather than as a locus of an already determined set of values*" (Kapadia 1995). She is pointing to the concept of 'sankritization' of the lower caste and transformation of the values and customs of the lower caste while locating themselves in the 'habitus' influenced by the upper castes. A simple example of replication of caste system within the dalits is evident from the treatment of lower sub-caste serving them. Not only dalit women but dalit men also follow the popular practices of Hinduism such as dowry, importance of mangal-sutra in marriages and other marriage rituals, concept of modesty of women, sexually violent behavior of a

husband to chastise or discipline the wife as his right. Such instances in the society serve as a standard for treating women and normalize violence on women that is socially acceptable.

Intricacies of the caste system in Indian social set up brings about various normative structures that are recognized as inhumane, yet socially acceptable. It is evident from the literature that sexuality of woman is a way to uphold and strengthens caste system. Therefore, 'good' conduct of a woman is seen as a matter of pride and honour of the whole family in the society. There is a lot of stigma attached to a family name if the woman of a family is raped or dishonoured in any other way. In patriarchy, the sensibility of a woman is also conditioned in accordance with the way society treats women of a 'non-virtuous' nature. Those women are looked down-upon who try to break down the traditional order of the things (Menon 2012: 131). With so much of importance given to the conduct of women, it plays a double edged sword as women themselves while trying to fend this so-called prescribed 'honour' either accept any injustice silently, or face even more dreadful consequences as a victim facing shame in front of the whole society. Women of higher caste accept injustice with a fear of dishonouring their family name, and women from the lower castes as are seen as property for the enjoyment of the men of the higher caste having no right at all and have no option but to live with such injustice. Women, considered as property, hold a symbolic value to a certain caste and violent or atrocious behavior towards the lower caste women is seen a symbol of upholding hegemony of the higher caste. It is used to undermine men of the lower caste and at the same time creating a spectacle of such acts of violence which routinize the society and normalize violence.

## **OBJECTIVE OF THE STUDY**

In this study, I intend to interrogate the relationship that law has with the gendered caste, specifically by studying the socio-legal aspects of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of, 1989 (the Act). Legal discourses as Sathe (1996) writes, 'constructs women as gendered subjects' often in need of protection, thereby subordinating them to an inferior status. The same is also echoed by Ratna Kapur (2005) in her work where she argues that 'Law is a site of contest over the meaning and construction of Indian culture in the context of sex and sexuality. (2005:87).

If this is the relationship that law has with women, then a significant inquiry must be made in to the question of how law interrogates women belonging to the Dalit and Adivasi caste, who have their own role pre-defined in '*Indian culture*'. Through this study, I do an extensive reading of case laws on the subject thereby arguing that law does in fact perpetuate the caste status for women while disposing justice.

## **CHAPTER PLAN**

The study including this chapter consists of four chapters. In the present, '*Caste system and status of dalit and Adivasi women*' I have discussed the nature of caste system, caste atrocities on women, and the objectives of the study. In Chapter two, '*Analyzing caste atrocity landmark judgments*', I discuss the expression of the Constitutional fundamental rights in the form of this substantive law i.e., Prevention of Atrocities Act (hereafter, PoA) vis-à-vis the interpretation of this law by the courts, lawyers and the implementing agency –police, has on the social realities of Dalits. This chapter also emphasize on the technicalities of this law that cast a shadow on the very purpose of securing justice and preventing atrocities against SCs and STs. In my third chapter, '*Analysis of Provisions relating to women under PoA Act*', I explore the nature of provisions listed under the PoA Act and probing the question of justice. In my concluding chapter, I, surpassing the technicalities of this law that is implemented through a patriarchal Hindu frame of mind, argue that it is not only difficult but it also contributes in systematically strengthening the structural power of the caste system, in which atrocities on women are spectacularized to establish hegemony over Dalit community as a whole.

## Chapter II

### ANALYZING CASTE ATROCITY LANDMARK JUDGMENTS

In this chapter I attempt to analyze provision of the PoA Act that holds relevance for *dalit* women in the caste understanding of society with the help of landmark judgments. This chapter states the provisions of the Act that are either directly or indirectly affecting the lives of dalit women. I intend to view these provisions in the light of sociological constructs of the Indian society. These constructs not only define the lived realities of women in the lowest folds of the caste system but also bring forth wide ranging issues within the structure of law that undermine agency of a dalit woman.

After Independence, the Government of India with a view to safeguard the interests of SC/STs came up with few legal measures in the Anti-untouchability Act, 1955, which later reenacted as the Protection of Civil Rights Act, 1979.

The POA Act was mainly enacted as a protectionist measure to safeguard SC/STs against the discrimination and violence of the upper and dominant castes. The preamble of the POA Act, states,

... to prevent the commission of offences of atrocities against the members of Scheduled Castes and Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offenses and for matters connected therewith or incidental thereto.<sup>2</sup>

The Constitution and POA Act provides for various provisions under which person belonging to SC/ST community can seek justice in case of any caste-based discrimination or crime against him/her. The Act creates the provision which is substantive law protecting their rights and interests. However, ground realities are much different from the provisions that seem to provide a holistic approach to the problems faced by the SC and ST community.

Main features of the POA Act and Rules are enumerated as follows:

1. Offences covered under the Act:

---

<sup>2</sup> <http://www.socialjustice.nic.in/poa-act.php> accessed on May 7, 2014

- (a) Broadens the area of criminal liability with identification of new types of crimes resulting from the acts of omission or commission that are not covered under IPC or PCR Act;
  - (b) Provides protection from various kinds of atrocities that related to social disabilities, malicious prosecution, property, economic exploitation and political rights;
2. Application of the Act on the basis of caste of the offender (non-SC.ST) and the victim (SC/STs)
  3. Investigations
    - (a) Officer investigating the cases relating to caste crimes should not be below the rank of the Deputy Superintendent of Police with experience and ability to investigate such cases;
    - (b) Mandatory provision for the completion of investigation within thirty days of occurrence of such crimes;
    - (c) Prohibition on the grant of anticipatory to the accused against whom the case is filed.
  4. Provision for setting up Special Courts with special powers to ensure speedy trial of atrocity cases and appointment of Special Public Prosecutors to conduct the cases.
  5. Imposition of punishment which serves as a deterrent stringent than under the IPC for such atrocities, except for the cases of rape. A public servant accused of any crime under the Act has been made liable to a higher minimum punishment and importantly, in case of omission of his/her official duty, regarding the prevention of such crimes has been made punishable.
  6. Relief and Rehabilitation to the survivors: - Provision to provide financial assistance to the survivor of such crimes is made a legally justiciable right. Moreover, provisions of relief and rehabilitation, apart from travel and maintenance allowance for the survivors and witnesses during the investigation and trial are also one of the important features of the Act.<sup>3</sup>

---

<sup>3</sup> Section 21 (2) of the PoA Act provides for the duty of the state government to ensure effective implementation of the act. These may include:

- ...
- (i) the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice;
- (ii) the provision for travelling and maintenance expenses to witness (es), including the victims of atrocities, during investigation and trial of offences under this Act;
- (iii) the provision for the economic and social rehabilitation of the victims of the atrocities;

## 7. National and State level Monitoring Mechanisms

- (a) Establishment of the SC/ST Protection Cell at the State Headquarters under the charge of Director or Inspector General of Police for supervision of various actions taken under the Act;
- (b) Appointment of Nodal Officers (at the State level) and Special Officers (at District Level) to coordinate with the District Magistrate(s) and the Superintendent of Police and other authorized officers responsible for carrying out the purposes of the Act;
- (c) Provision for constituting State and District level Vigilance and Monitoring Committee to improve accountability and political supervision of the implementation of the provisions of the Act;
- (d) State Government to submit an annual report to the Central Government for the measures taken by the State Government in implementing the provisions of the Act;
- (e) Wider powers assigned to National Commission for Scheduled Castes and Scheduled Tribes.

8. Preventive measures such as preparing a model contingency plan; identification of atrocity prone areas; cancellation of arms licenses of potential offenders; provision to grant arms license to SC/STs as a means of self defense; provision to hold awareness camps in atrocity prone areas to educate the community about their rights are included under provisions of the Act.

From a quick view of the POA Act, it seems relatively progressive law that provides very elaborate provisions ensuring a lot of protective provisions for SC/STs. However, a closer look at the provisions of the Act in the light of atrocities that are on the rise in the society; the cases registered and tried under the Act; the manner in which such cases are disposed off in the courtrooms, a different story emerges.

Mostly, the PoA Act and the IPC read together in the cases of caste atrocities. In order to understand provisions of the PoA Act, I quote three major landmark cases of mass atrocities, along with the cases that deal with issues related to dalit women. These

---

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

...

(vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members...



landmark judgments include Tsundur Case<sup>4</sup> of Guntur District in Andhra Pradesh, Khairlanji Massacre Case<sup>5</sup> of Maharashtra and the Mirchpur Case<sup>6</sup> of Haryana. Even though Tsundur Case and Mirchpur Case are not directly related to issues of dalit women, relevance of these cases with respect to procedural defects of the law calls for the urgency to highlight the facts and circumstances of these cases elaborately.

### ***TUSUNDUR MASSACRE***

The Tsundur case is important to discuss because it was the first landmark case that came before courts right after the enactment of the PoA Act in the year 1989. During this time atrocities against dalits were on the rise in retaliation of enactment of this Act. Rage of the higher castes could be seen in the manner these crimes were committed and the extent of brutality upon dalits belonging to Mala and Madiga community in the Andhra Pradesh. As the Judgment states, various small incidents of caste quarrels were going on in the village. Few criminal cases were filed against dalit youth in that area on picking up fights with the higher caste. It is noteworthy that in the judgment details of a drama called “Chintamani” that was organized by youth belonging to ‘Telaga’ community is quoted, however, how it lead to a fight between the youth of Telga and Mala community is not stated.

In Tsundur case in Guntur district of the Andhra Pradesh, a person named Ravi, while watching a movie in a theater at Tsundur rested his foot on the front seat that was occupied by a person named Kurri Srinivas Reddy belonging to a dominant caste in Andhra Pradesh. Ravi and Srinivas Reddy got into a minor fight and heated remarks exchanged and Srinivas used caste slurs. Following this event, Reddys had started to harass Ravi and his father. A social boycott of Malas (Dalits in the region) was decided to be enforced by the Reddys and Telags that lead to a lot of tension and promulgation of 144 of Cr.P.C in the village. On 6 August 1991, the event in question occurred, when more than 300 people from the dominant castes armed with knives, sticks and spears brutally murdered eight persons of Mala and Madiga in Harijanwada of Tsundur village and injured many others.

---

<sup>4</sup> Tsundur Massacre Case: Sessions case no. 36/1993. State through Sub Divisional Police Officer, Tenali vs. Modugula Sambhi Reddy and Ors, in the Court of Special Sessions Judge-cum-Addl. Sessions Judge, Guntur.

<sup>5</sup> Khairlanji Case: Special Criminal Case No. 01/2007 in Bhandara Special Court, Maharashtra

<sup>6</sup> Mirchpur Case: Session Court Case No. 1238/10, State vs. Dharambir and Ors, Addl. Sessions Judge-II (North-West)/ Spl. Judge (SC/ST Cases): Rohini Courts: Delhi.

It was stated in the judgment that following the various incidents that took place in the village between harijans and upper castes of the village, about 300 persons of Reddy and Telaga community, had gathered before the police station, armed with deadly weapons, like Sticks, rods, knives, axes and spheres on 6 August 1991. At the same time, police officials of the area also entered Harijanwada to arrest various people allegedly accused of the crimes committed against the higher castes prior to this incident. Fearing the arrest most of the male members of the community ran away from the Palle (Basti). One group of harijan community ran away towards the road to Tsundur to Modukuru in the southern direction and the other group went towards the railway gate on the southern side of the village. Upper castes who gathered at the police station also followed the harijans who had fled the village. Along with them more than 50 people also chased the harijans with weapons in a tractor. As a result of this chase eight people were brutally killed and two were injured from the harijan community.

All this happened with the connivance of the police officials of the village which is mentioned in the Andhra Pradesh High Court verdict in this case dated 22 April 2014, I quote

...the role played by the police at Tsundur in 1991 was far from satisfactory. Either it is a case of total collapse of the system, leaving the ground for the unlawful elements to have a hay day, or exhibition of a knee-jerk reaction, to cover up the lapses. Otherwise it is just unthinkable that in a Village of which, one end, which can be seen from the other end, and where hundreds of police were already deployed, as many as 8 deaths that too not in a clandestine manner, but as a result of groups of about 20 or 30, having been chased by about groups of about hundred each; remain unnoticed by the police. Still astonishing is the fact that the police is also said to have chased the assailants up to some distance.<sup>7</sup> (p.16)

In the trial 219 person were accused of various offences punishable under IPC and the PoA Act. A list of 134 prosecution witnesses was filed, who were investigated in the case. A Special Court was set up and a Special Public Prosecutor was also appointed for the case. However, the judgment of the case was delivered after a gap of more than ten years on various accounts. During these years of pendency of case in trial court, thirty-three accused died. The judge of the trial court acquitted 123 out of the 179 accused. The Court could not find evidence against 41 accused, and 62 were released on benefit of

---

<sup>7</sup> Tsundur Judgment pp. 16

doubt. For the lack of omissions of evidence or only a single witness could testify another 20 accused were let off.

There Special court acknowledged discrepancies with respect to investigative procedure followed by the public prosecutor; negligence of the police officials to help the villages. Further it was stated that the police had failed to register the conspiracy charges against the accused. The mob of higher castes which gathered in front of the police station was not taken into custody. It was also acknowledged that but for the inaction of the police this tragic event would have been averted and precious lives of the deceased would have been saved. Lack of proper investigation by the police had lead to omissions and contradictions resulting in acquittal of the accused that were present at the time of the incident. However, similar parallel was not drawn even by this court.

Both the courts have discredited witnesses on the grounds of either lack of identifying the witness by name or when the witness was a relative of the victim declaring them as ‘interested parties.’ This lead to a very less number of witness and further resulted into miscarriage of justice. Similarly, it was acknowledged that the massacre was definitely coloured with caste issues, however the court opined that it was the consequence of the previous 14 cases that were registered in the police station regarding caste fights between the two communities. Moreover, in the verdict the court did not impose any separate sentence under the PoA Act. It was further mentioned in the judgment that sentencing under IPC is sufficient for the interests of justice. However, it was clear from the circumstances of the case that it was clearly a fight to establish hegemony over the lower castes in the village.

In the judgment of Andhra Pradesh High Court, it was acknowledged that

*‘no complaint of attack or murder on Harijans was received by the police at P.S., Tsundur or in any nearby stations. If in fact, 8 persons were killed and 2 were seriously injured, that too, when the heavy bundobusth of police was there in the village, it is unimaginable that the information does not reach the police, even if, a formal complaint was not submitted.’<sup>8</sup>*

It is noteworthy that for three days no such crime was reported and investigations started after two dead bodies of the deceased were found in the Tungabhadra Canal. Even the unverified call to the DSP was not verified for accuracy by the police

---

<sup>8</sup> Ibid. p. 66, emphasis added

officials until the discovery of the dead bodies in the canal. The bodies were recovered from the canal after three days completely mutilated and identification of the bodies was very difficult. Mutilation of the bodies also resulted in mismatch of the eye-witnesses' account of the injuries on the deceased victims and their testimony was discredited on these grounds as well.

Dayari Dhanraj who got injured during the incident was the main witness for the prosecution. He furnished the names of more than 100-120 persons those who attacked on the day of the incident and but he could not furnish all the names of the 10 persons from his own community who were proceeding before him while he was being chased. His testimony was partially accepted. Testimonies of even the accepted witnesses were also found to inconsistent by the court resulting into acquittal of the main accused. As the judgment stated that

The trial Court itself discarded [sic] that the evidence of substantial number of witnesses cannot be accepted. Even the left over witnesses were not consistent. For example, PW.1 stated that A1, A6, A11 and A20 attacked D1, whereas, PW.4 stated that it is A1, A2, A6, A11, A20 and A26 attacked D1. PW.7 stated that the attackers are A2, A6, A11, A20 and A26. The trial Court recorded a finding to the effect that A6 and A20 are guilty of killing D1. The basis for the same is not indicated. Similar conclusions were arrived at with reference to other deceased.<sup>9</sup>

It is important to understand the history of Andhra Pradesh with respect to the case of atrocities that were happening since 1985. There were many massacres that had already happened before the Tsundur case in 1991 (Balagopal 1991: 2404) However, this fact was not an important factor for the courts to accept and enhance the punishment of the convicted accused in this case. The influence of the *Reddys* and *Telagas* in the political setup of Andhra Pradesh has lead to this elongated trial that had span over 15 years which resulted in acquittal of all the 56 accused of the crime.

It is important to note that the statements of the prosecution witness were rejected on the ground of stating different time of the attack in the Harijanwada and their inability to state the time of arrival of police where the incident occurred.

## **BAITHANI TOLA MASSACRE**

Incidents of mob attacks on dalits discussed in the second chapters, the relevance of this incident is that in this mob attack most of the victims that were killed in this

---

<sup>9</sup> Ibid. pp.69

collective caste violence were women and children. In Bathani Tola, a place in village called Barki Kharaon in district Bhojpur, on the afternoon of 11 July, 1996 at about 2 p.m. a group of more than sixty-five people who appeared to be the members of Ranvir Sena attacked and killed eighteen villagers who were all women and kids who died on the spot. Subsequently, a boy of age twenty-five years and another child of age six died in the course of treatment. The informant, Kishun Choudhary narrated the whole event to the police stating that after looking at a crowd of fifty odd Ranvir Sena members approaching the village with arms, from the window of his house he hid himself in a ditch near the house of Marwari Chaudhary. From that ditch he witnessed the whole incident. On the basis of his *fardbyaan* (first statement) at 4 a.m on the morning of 12 July, 1996 police filed an FIR and started arresting the suspects from the nearby villages. Some of these suspects were arrested from their home with their licensed fire arms and ammunition. However, the police did not mention the time of registering that FIR. Sixty two accused were arrested from the nearby villages for this massacre. These accused were charged under various sections of IPC, Arms Act and the POA Act. Even though there were more than sixty-five perpetrators, trial began with only fifty three accused. It was reported many of the suspects absconded, against few charges were dropped and for some proceedings were quashed. Consequently, in the trial out of fifty three accused thirty were acquitted of all charges on the grounds of lack of evidence and remaining twenty-three were convicted. Twenty accused were sentenced to life imprisonment and death sentence was awarded to three accused. An appeal against the order of death penalty was filed in the Patna High Court. In 2012, Patna High Court acquitted of all the accused.

The Court rejected even the informant's statement on the basis that where he claimed to hide during the massacre the police did not find any ditch of the same description while investigation. The lacunas in conducting the investigation that were pointed out by the appellant's lawyers were (a) the information about the incident that was received on the wireless was never produced by the prosecution in the court; (b) many witnesses such as Hira Lal Choudhary, Lal Chand Choudhary, Naimmudin, Bukan Choudhary, Nirmal Choudhary (Chowkidar of the village) were witness to *firdbayan* of the main witness were never examined; (c) arrest were made but those accused were brought before Magistrate after a gap of two days; (d) accused were arrested from their homes and they did not try to abscond, hinting their non-involvement in the carnage; (e) even though the *fardbayan* was recorded at four-thirty in the morning but

the time of registration of FIR is not recorded; (f) statement of the informant could not be relied due to his unexplained absence for twelve hours between the incident and recording his first information to the investigating officer; (g) the informant Kishun Choudhary, identified around thirty accused of the neighbouring villages from the his hiding point, without getting caught by the perpetrators who came with an intention to kill everyone in the village; (h) even though the distance between hospital in Ara was only two to three hours away, there were unexplained delays of around thirty-six hours in sending the dead bodies for the post mortem except the body of the only male victim Balchand Choudhary; (i) examination of 13 witnesses took nine years; and (j) as reported there were hundreds of rounds of gunshots fired but there were no cartridge shell that was seized by the police, not even the licensed arms and ammunitions that were seized from the accused were ever tested for their use. The High Court acknowledging these discrepancies in the prosecution's case, stated that

...it is crystal clear that information of cognizable offence written and oral were received by the police right from 4.30 pm on the date of occurrence itself but all those were kept out of record. Police personnel, high officials of the Government had reached the place of occurrence within about four hours but no statements were being recorded till the Fardbayan of the informant next morning giving enough time to the people to meet, discuss, plan out the story. Defence has rightly argued that prosecution has deliberately concealed the first information allowing time for story to be built up which discredits the correctness of the involvement of the appellants. Why this concealment was done is not explained. All along the night, injured were being evacuated, examined at the instance of police but statements were not being taken about the occurrence. Persons are arrested and not produced before Magistrate Patna High Court D. REF. No.7 of 2010 dt.30-03-2012 43 /57 for almost 48 hours. The Fardbayan, which is the foundation, is recorded after undue delay with interpolation in time of its recording. All we can say in this regard is that the prosecution was being given time to come up with story as the earliest versions were some how not palatable. The Court would, in such circumstances, not only reject the accusation but would draw adverse inference also in relation to the investigation. ...These are serious matters especially when we see how mercilessly people were killed. All we can say is thanks to the investigating agency and the administration the true culprits have escaped gauntlet.<sup>10</sup>

Consequently, all appeals were allowed and the accused were acquitted of all the charges. Another point that is to be noted is the insensitivity of the councils to deal

---

<sup>10</sup> State of Bihar vs. Ajay Singh, Manoj Singh and Narendra Singh @ Nagendra Singh AND Sanjay Singh S/o Shri Ram Tawakya Singh Vill.-Barki Kharaon, P.S.-Sahar, Dist-Bhojpur vs. The State of Bihar MANU/BH/0183/2012, 2012(2)PLJR601

with the cases. The defense lawyer cited the case of *Eknath Ganpat Aher and others vs. State of Maharashtra and Others*<sup>11</sup> wherein the Judge said:

It is an accepted proposition that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the court with regard to the participation of any of those who have been roped in, the court would be obliged to give the benefit of doubt to them

... when there is such a riotous act then witnesses would first be more interested in concealing themselves rather than sticking their neck out to see who were the miscreants and what type of injuries they were causing. In the present case, we find it quite conflicting that the allegation and the act are such that the miscreants had come to eliminate everyone in the village. After killing, they set fire to the houses. How could they did not bother to look for people in hiding in close vicinity of the village itself?

There has been a long list of violent caste crimes in the history of Bihar, to name a few Laxmanpur Baithe massacre in 1997,<sup>12</sup> Miyanpur massacre in 2000.<sup>13</sup> From the acquittals in all these cases, a similar pattern emerges, same strategies adopted by the defense lawyers, heavy sentence at the trial or sessions court and then acquittal the High Court.

### ***KHAIRLANJI MASSACRE***

In 2006, another case of caste atrocity occurred in a place called 'Toli' at the outskirts of Khairlanji village in Bhandara District, Maharashtra. According to the facts stated in the case, the incident resulted from an altercation between Sidharth Gajbhiye and Sakru while Sidharth was visiting Bhaiyyalal Bhotmange. Sakru demanded back wages from Sidharth on the morning of 13 September, 2006 and Sidharth slapped Sakru. On the same evening while Sidharth was on his way to Kandri few villagers assaulted him. Surekha Bhotmange (wife of Bhaiyyalal) and Priyanka (daughter of Bhaiyyalal), heard the news and brought Sidharth back to their house. After two days of this incident, Sidharth lodged a complaint at Andhalgaon Police Station. Surekha

---

<sup>11</sup> (2010) 6 SCC 519

<sup>12</sup> In 1997, in Laxmanpur Baithe, Bihar fifty-eight dalits were killed by Ranvir Sena members, out of these fifty-eight dalits, there were twenty-seven women and sixteen children. In the trial, twenty-six accused, who were convicted by the Sessions court and in April, 2010 they were all acquitted by the High Court.

<sup>13</sup> More than one hundred fifty accused in a jeep dressed in black commando uniform attacked and killed thirty-four dalits, including nine children and thirteen women, were killed and more than 15 others injured by activists of Ranvir Sena at Miyapur village in Aurangabad district. Nine out of ten accused were held guilty in district special court however, the Patna High Court acquitted all of them.

identified the accused and gave a statement on the basis of which attackers were arrested. However, 29 September 2006 they were released on bail. On the same evening 30-40 people mostly men gathered around the house of Bhaiyyalal Bhotmange and few of them shouted and claimed that they were falsely implicated by Surekha and abused in their caste name. Bhaiyyalal fled the place after seeing them, while Surekha came out of the house and set fire her cattle shed probably with a view to ward off the attackers. When Surekha tried to run away from the place, the attackers chased and caught her. The attackers beat her with blows of sticks, bicycle chain and kicks and fist blows until she was dead. Similarly the son of Bhaiyyalal, Suresh was also beaten up to death and his body was dragged near the body of his mother. Then, the attackers tried to search the other members of the Bhotmange family and found Roshan in the nearby cattle shed and he also was succumbed to the same fate as that of his brother and mother. According to the facts stated in the case, Priyanka also was killed in the same manner. Thereafter, all their bodies were dragged and kept at one place and the accused threatened the villagers, who were witnessing this crime, not to report this incident to anyone and it is disclosed to anyone they would also face the same treatment. Thereafter, bodies of all the members of Bhotmange family were carried on a bullock cart towards the village Kandri and dropped into the canal.

The facts and circumstances of the incidents were not properly framed as it was common local knowledge which was also reported in the local newspaper that during the incident wife and daughter of Bhaiyyalal were paraded naked to the village center, the genitals of the boys were crushed with stones, both women were subjected to gang rape till they could not bear and died and then their corpses were thrown into the canal (Teltumbde 2008 cited in Baxi 2014; 305). Also, charge of rape was also not framed against the accused. Even after various protests that were held condemning the incidents and the case was handed over to Central Bureau of Investigation, not even the CBI could bring forth the charges of rape and parading and stripping the women naked to the trial. Since the post mortem which was conducted in a very hurriedly manner due to which the report completely ruled out the possibility of sexual violence and rape. The CBI charged eleven accused of murder under section 302, outraging modesty under section 354, trespassing under section 449, causing disappearance of evidence under section 201, rioting and criminal conspiracy under sections 148-149 and 129B of the IPC (Baxi 2014, 306). The provisions of PoA Act were also invoked



and accused were charged under sections 3 (1) (x), 3 (1) (xi), 3 (2) (v), and 3 (2) (vi) of the PoA Act.

The trial was conducted in the Special Court and the Judge convicted eight accused for murdering and rioting and awarded death sentence to six accused and life sentence to the two and three were acquitted. The eight accused were convicted under IPC however, they were not found guilty under the POA Act. Appeal for acquittal against the death sentence along with CBI of the eight accused charged under POA Act was heard. In July 2010, the high court upheld the trial court judgment but reduced the punishment from death sentence to life imprisonment directing that none of the accused will be released before the twenty four years of life imprisonment including the period undergone. The CBI's appeal was failed (Baxi 2014).

The high court opined that it was not a matter of caste violence but a matter of revenge for personal enmity between the wife and for daughter for agreeing to act as witnesses in a case of assault against the accused (Baxi 2014). The accused belonged to a dominant caste and they time and again intimidated and harassed the women of the Bhotmange family for daring to become witnesses against them. "The high court insisted that the mob who surrounded Surekha and her helpless children did not conspire to murder them on the grounds of their caste" (Baxi 2014, 306). Rather, the court held that the accused had personal enmity against Surekha and her daughter for the reason of her agreeing to provide testimony against the accused in the case of assault. Acting as a witness in the case of assault against the accused was considered as the motive that provoked the attack on Bhotmange family (Baxi 2014). The fact that right after the accused were released on bail, they gathered men from their community and in a celebratory mood with the intention to teach a lesson to Mahar family both Surekha and Priyanka, were targeted for the very fact of being a lower caste woman and standing against an influential higher caste people in the village.

This brings us to the question as to why only Bhotmange family was a target of such hatred. In order to understand this fact, it is important to look into the struggle of Bhotmange family who were relatively better off among their own community and were a hard working family who had made their way up the economic ladder. Baxi points out citing Teltumbde (2000) that Bhaiyyalal and his family moved to Khairlanji village in 1989. They owned a piece of land and started cultivating it. They rolled bidis also to meet their ends. Sudhir was partially blind so he helped in their farm. His younger son was studying in a computer centre and daughter Priyanka was also a

school topper. Among the four dalit families in the village, Bhotmange family was relatively doing better in life, which was a point of unrest among the other backward castes living the village such as *Kunabis*, *Tellis*. The dominant families wanted to build a road through the land of Bhaiyyalal upon resistance from him there were a series of complaints of encroachment of land, destruction of crops and trespassing lodged in the police station by Bhaiyyalal. Sidharth Gajbhiye, the village *patil* which is an honorary post affiliating a villager to the police station, was a family friend to Bhaiyyalal because of which such complaints were entertained in the police station even though the police officials had a dislike for Bhaiyyalal. This part of the story was never highlighted in the court case which is connecting all the links to caste angle within the proceedings of the case. This is how the proceedings, the structural aspect of law miss out on an important social factor, with over emphasis on an immediate provocation of an attack, leading up to the arbitrary interpretation of the law in question. The excessiveness on the immediate is a misleading factor and just a part of the whole narrative and a major factor to understand how law is placed within these tight compartments. As Baxi clearly points out that ‘the legal framing of the events in a standardized legal formats, which sees motive in a single event as provocation to violence, elides a reading of the way caste materializes dominance over bodies, spaces, resources, memories, and affect’ (2014: 307-8, Rao 2011, Teltumbde 2007).

In this case various defects at the procedural level are also very eminent. Even during the special court trial, it was noticed that investigation was not conducted properly. The police did not believe the story of Bhaiyyalal until the bodies of his wife, daughter and two sons were not recovered until the next day. Since the police investigation was not carried out in a proper manner, and charges were not carefully looked into which lead the trial court to dismiss the caste angle, which was erroneous. However, even when the charge sheet in Khairlanji stated that the accused abused and threatened to kill them in the name of the caste of the Bhotmange family as ‘Mahars’ during the murder itself the High Court in concurrence with the trial court held that revenge was the only objective behinds the gruesome killings.

Technically, when a woman is being raped or paraded naked the charge of outraging the modesty of the women under section 354 of the IPC and in case a caste angle is involved then section 3(1)(xi) of the PoA Act is also added. However, in the Khairlanji case, wherein it was a deposed by the witnesses that both the women if the family were gang-raped and even this fact was substantiated by the photographic

evidence of genital mutilation, despite this the official post mortem report did not find the evidence of rape of the women. This also brings us to the point of unethical practices of the medical provisions which are being used to manipulate the cases and leading to misguide the courts on very important aspects of the caste atrocities. Socially, the caste identities influence our lives, and doctors are no exceptions. The disparity on the failure of medical officers to follow procedure and preserve evidence, as well as the police's failure to investigate the possibility of rape despite obvious bruising on the body of the deceased women were ignored in the Courts.<sup>14</sup>

Khairlanji case is not only important in terms of brutality of higher castes on dalits, but it also holds relevance on the aspect of the post-Khairlanji protest and outrage of the dalit assertion to get justice for the Bhotmange family. This might not be the sufficient solution to prevent such inhumane treatment of dalits in future but all it can ensure is a symbolic value to the movement of dalit assertion.

### **Mirchpur Carnage**

In yet another case of caste atrocity in 2010, where a house of dalit in Mirchpur, a small village in Narnaund Tehsil of Hissar District, Haryana was torched and two persons were murdered by a group of 50-60 people from Jat community of the same village. This village is located around 145 kms from New Delhi with a population of approximately 8,737, according of Census 2011. Approximately 17.8% of the total population belongs to scheduled castes such as *Valmiki*, *Chamar*, *Dom*. Jat community constitutes more than 50% of the population in the village. There is a major disparity between the resources that are shared between the villagers. For instance even the drainage system of the village is maintained in such a way that the all filth flows out toward the pond where the *Valmiki* community resides. This itself shows the culture of untouchability as even after dalits' protesting against the waste disposal near their basti, no action was allowed by Jats to clean the place. This is evident in Mirchpur as it has a very long standing of caste fights among the villagers, caste plays a major role in the lives of residents of Mirchpur village.

Prior to this incident of Mirchpur in 2010, there were other instances of caste violence that had occurred in Mirchpur. Before discussing this case it is important to see the backdrop of the state of Haryana with respect to caste violence. There have been

---

<sup>14</sup> National Campaign on Dalit Human Rights, Rape and Murder – Khairlanji Fact-Finding Report, p.5

numerous caste atrocity cases in Haryana and the state itself has been a hub of caste violence for more than two decades. Instances of caste violence have been increasing each year for various reasons such as whenever dalits have tried to avail themselves to legal recourse for any discrimination, assert their right to resources (land, water, livelihood, housing), choice of occupation, participation in cultural life of the community (entering into the Temples or organizing religious ceremonies), casting vote, and also even in case of higher castes ceremonies or rites dalits are used as a sacrificial commodity in an event of witchcraft to satisfy the superstitious beliefs of the higher castes. The upward mobility and assertion of SCs and STs in Haryana have caused a sense of unrest amongst the higher caste. Whenever, such instances of development in the status of lower castes come into light, sense of insecurity of the other castes who have been dominating the region for over 50 years comes out as a urge to re-establish their hegemony. This urge of higher caste communities to reclaim their place which is threatened by the upward mobility of the lower castes, translates into drastic measures such as violent outrage towards dalits. Such drastic measures not only provide a spectacle for others to not rise against them, but it also satisfies their unjust quest to hold power. For instance, in 2007, five dalits of *Dom* community were paraded naked in the village.<sup>15</sup> Incident of Mirchpur atrocity of 2010 cannot be

---

<sup>15</sup> Facts of the case: Mukkaddar, aged 15 years S/o Jay Prakash, Vikram, aged 16 years S/o Kapoora, Nanhi, aged 35 years w/o Suresh Kumar, Omwati alias Omi aged 50 years w/o Kapoora Singh, Sheelawanti, aged 43 years w/o Jay Prakash from Mirchipur, Dist. Hisar, Haryana belong to Scheduled caste (Dom) community. On 2 May, 2007 at about 8.30 pm. Hoshiyar Singh and his wife Nanhi Singh, from the same village went to Dalit Colony in search of Mukkaddar and Vikram. The couple beat up by Vidya w/o Kuldeep Kumar as she refused to inform the whereabouts of Mukkaddar and Vikram. She fell unconscious. The couple later forcefully entered the house of Mukkaddar, where they found that both the boys Mukkadar and Vikram after having food had gone to bed. Hoshiyar Singh woke them up, abused them, using abusive words and dragged them to his residence. At Hoshiyar Singh's house they were compelled to admit that they had the homosexual relationship with Sunny a 14 year old S/o Hoshiyar Singh 2 ½ years back. Together with his wife, Hoshiyar Singh allegedly stripped them naked after abused and physically tortured. After that Hoshiyar Singh sent his wife Nanhi Singh for Nanhi (35) w/o Suresh Kumar, Omwati alias Omi (50) w/o Kapoora Singh, Sheelawanti (43) w/o Jay Prakash. They too were stripped off their clothes after being physically tortured and abused, as they too did not admit that Mukkaddar and Vikram had homosexual relationship with Sunny, the son of Hoshiyar. Then the women and their sons were locked in the same room. However, the victims managed to escape the perpetrator's house in the nude state and ran to their house. They then approached the village head (Sarpanch) Ramphal, belongs to Dominant Caste at about 11.30 p.m, but their cries went unheard, as he did not want to raise his voice against the 'Zamindar'. They later went to the residence of DSP (Surender Kumar) at Narnaund at 4 o' clock a.m, who directed them to Narnaund police station and talked to the S.H.O (Vinod Kazol) over phone to lodge the complaint. Directed by DSP, they went to Narnaund police station. The S.H.O Mr. Vinod Kazol lodged their complaint u/s 323, 452, 506, 342, 354 & 34 IPC, but SC/ST (POA) Act 1989 was not invoked in the FIR. However, on the very day, the perpetrator Hoshiyar Singh was arrested but was bailed out on the same day. The perpetrator then became the threat to their lives. Fearing attack, about 50 – 60 women from the colony hired a truck and went to the police station demanding the immediate arrest of the perpetrators and the registration of the case under the SC/ST (POA) Act, on 6.5.2007. After that, Section 3(1) SC/ST (POA) Act 1989 was invoked in the FIR and both the perpetrators Hoshiyar Singh and his wife Nanhi Singh were arrested on 06.05.07. The victims did not feel secure in the village, as the perpetrators became

seen in isolation as similar caste violence in Salwaan atrocity case (2007) in Karnal District, Gohana, Sonipat District case in the year 2005<sup>16</sup> and lynching case five dalits of Jhajjar in 2003. These cases are just the tip of the iceberg, and many more cases have been reported by various organizations which are still under trial.

Now with this brief narrative about the backdrop of caste violence in Haryana, I state the facts of the Mirchpur case of 2010. On the evening of 19 April 2010 some of the boys belonging to the Jat community namely Rajender S/o Pale, Sonu S/o Pappu, Monu S/o Suresh, Rishi S/o Satbir along with another 10 – 15 other boys were passing through Balmiki Basti in an intoxicated state and on seeing these group of more than fifteen persons, the she-dog of a dalit, Karan Singh, started barking at them. Few of them, started throwing stones at the dog and some of these stones entered into the house of Karan Singh and his nephew, Yogesh objected to it. Karan Singh intervened with an attempted to settle the matter. The group of these boys then left from there. After some time a resident, Ajeet (Jat community) of the same village, who resided near the same *basti*, approached Karan Singh and advised him to apologize otherwise he would have to face dire consequences by saying '*zyada nuksaan ho jayega*'. Karan Singh along with his neighbour Veer Bhan went to the

---

threat to their lives. Neither the administration has ensured security or given compensation to the victims yet. The motive behind the incident is that the son of Hoshiyar Singh had the practice of having homosexual relationship with his friend who hails from the neighboring colony. Having come to know about this, Mr. Hoshiyar had beaten up his son and asked for the name of the other person who is indulged with him in Homosexual relationship. Out of fear and to save his partner, Sunny has falsely alleged the names of Mukkaddar (15) S/o Jay Prakash and Vikram (16) S/o Kapoora. This had enraged to Hoshiyar Singh to teach the boys a lesson and hence committed this heinous crime.

<sup>16</sup> Facts of the case: On 27 August 2005 a dalit named Shivpal, a resident of Balmiki Basti, went to a Photo Studio to get his photograph clicked. At the Photo Studio he got into a small quarrel with Shivpal, and Baljit and few others. After this minor scuffle, Shivpal gathered some other dalits from the Balmiki Basti went to settle the quarrel, and they got into a fight, which led to death of Baljit who belonged to a Jat community. The dominant Jat community of Gohana took it as insult on their caste pride and protested at the police station on 27 August. Immediately on the basis of their FIR in which 7 Dalits were named, the police arrested four Dalits. The case was lodged under sections 148, 149, 302 and 323 of the Indian Penal Code. Jats were not happy with these arrests and convened a Maha Panchayat on 28 August and gave an ultimatum to the police and administration that if within 48 hours the culprits are not apprehended and justice is not done to the Jats, the Jats would burn the entire Balmiki Basti. Fearing retaliation from the dominant Jat community and also harassment by police, dalits in the Balmiki Basti started fleeing from their houses in search of security to their kith and kin in the neighboring places like Sonapat, Panipat and others from 29 August 2005. On 31 August, another Maha Panchayat of Jats took place, a large group of 1500-2000 Jats fully armed with batons, axes, spears, petrol and kerosene oils entered the already deserted Balmiki Basti and started burning the houses. In the entire operation, which lasted about four hours, around 55 to 60 Dalit houses were burned by the rampaging mass of Jats. They also damaged TV, Refrigerators, and other useful items in the Dalit houses. It is also alleged that valuables have been looted from the Dalit houses. Even food grains were not spared. In the mayhem, which lasted for about four hours, the local Police ably assisted the rampaging mass of people. The Police claims to have fired 12 rounds in the air to disperse the mob. They did not take any credible action to stop the mass of 1500-2000 from burning and looting of Dalit houses.

house of Rajendra S/o Pali where all the boys belonging to the Jat community had gathered to settle the matter. However, both Karan Singh and Virbhan were beaten up by the accused as a result of which they received injuries. The injuries on Veer Bhan were more serious. Initially both Karan Singh and Veer Bhan were rushed to the hospital in Hansi, as injuries of Veer Bhan were serious Karan Singh took Veer Bhan to the District Hospital of Hissar. Veer Bhan was hospitalized for a day.

Apprehending the tension because of the previous night, Karan Singh on 20 April 2010, got Veer Bhan discharged and on their way back to the village, they reported the last night incident and the tension that was lurking in the village to the SHO of Narnaund, police station but the SHO (accused Vinod S/o Ram Niwas) did not perceived it as a serious matter and sent five to six Constables to handle the matter, despite clear information from Karan Singh. Constables made no such attempt to settle the dispute, further, on the morning of 21 April 2010, there was a lot of tension in the Basti which lead to SHO Narnaund and the dominant community to call a meeting of the members of Jat community at the Jat Chaupal and later call a meeting of the Valmiki members at the chaupal of Basti. Most of the members of the Valmiki community including children, women and elderly persons gathered around the chaupal of Basti to look into the matter. It was at that time, the accused duly armed with kerosene, petrol in bottles along with lathis, jellies and stones surrounded the Basti and started attacking on them, while shouting "*in \*\*\*\* chooron ke gharon ko jhala do, inki bacchon ko gharon main hi zinda jhala do, inke ghar tod do aur inka gaon se khatma kar do*"(burn the houses of these dalits, burn their kids alive in their houses, break their houses and shun them out of the village). This according to the prosecution was done with the support and protection of the SHO (accused Vinod S/o Ram Niwas).

In this incident, Tara Chand, another resident of the basti, and his handicapped daughter Suman were badly burnt. Suman died right at the spot and Tara Chand, in order to save his life, rushed towards his neighbour Diwan Singh's house in the meanwhile his house was also set on fire and could only managed to save himself at that time. As Diwan Singh also sustained severe burn injuries, he was taken to Civil Hospital, Hissar in a government vehicle by his son Amar Lal along with his nephew Ashok. The police recorded Ashok's statement (Dying Declaration) in the presence of the Judicial Magistrate First Class and later succumbed to his injuries on the same day. In this incident, 51 persons belonging to Valmiki community were injured, 18

properties belonging to dalits were burnt and there was large scale rioting and looting of properties of dalits. This incident of rioting, looting and burning of the houses of Valmiki community went on for more than three hours and about after 12.30 pm. the fire brigade arrived at the scene. It is to be noted that Mirchpur is a very small village where the distance from one side of the village to the other is not more than half an hour or forty five minutes. The Superintendent of the Police and Deputy Commissioner and few media reporters arrived along with the fire brigade.

The FIR was lodged on the same day. SHO, Vinod Kajal and Naib Tehsildar, Jaagi Ram were reported but their names were never registered in the FIR. A second report was lodged again in 2010 including both SHO and Naib Tehsildar. On the basis of this FIR, protests by villagers and supporting groups around the country who were informed through media coverage, only 29 accused persons were arrested. Following the arrest of these 29 persons a Maha Khap Panchayat was organized in the Mirchpur village, demanding their release. In the meanwhile around 150 Valmiki families left Mirchpur, in the apprehension of further outbreak of violence of people who were demanding the release of the arrested members of Jat community. These 150 Valmiki families seeking rehabilitation and relocation at Talwandiрана, another village of Hissar went to the office of District Commission, Hissar. They also demanded compensation, and adequate punishment for all the culprits for destroying their livelihood, homes and looting their entire life's savings. These villagers were called for a meeting with DC, wherein brother of Suman, who was burnt and died in the incident, was given an appointment letter, and a cheque of 16 lakhs was handed over to her mother. Also, compensation was promised to the others and were asked to move back to their homes in Mirchpur village. Few of the villagers were asked to meet the Chief Minister of Delhi, however, no requests were heard but it was simply stated that security and facilities will be provided to the survivors of the incident. During this time several Khap Panchayats meetings were held, to pressurized and threatened Valmikis to take their complaints back and compromise or face fire circumstances further. During all such Khap proceedings the administration did not pay any heed to the either provide rehabilitation or compensation to the villagers for their loss. Losing their homes, source of livelihood, continued threats from Jat community and even the hope of any relief from the administration, some of the villagers left Mirchpur and took shelter in Valmiki temple at Panchkuian Road, New Delhi.

After investigations, the charge sheet was filed under provisions of Sections 120-B, 302, 307, 147, 148, 149, 323, 325, 395, 397, 427, 435, 436, 449, 450, 452 Indian Penal Code and under Sections 3 (1) (x), (xv), 3 (2) (iii), (iv) (v) of the Scheduled Caste/ Scheduled Tribes (Prevention of Atrocities) Act, 1989, against these accused. In 2011, court settled the charges under Sections 120-B, 302, 147, 148, 149, 323, 325, 395, 397, 427, 435, 436, 449, 450, 452 Indian Penal Code and additional charge under Section 3 (1) (x), 3 (1) (xv), 3 (2) (iii), 3 (2) (iv), 3 (2) (v) of the PoA Act against 103 accused. Out of 103 accused, 98 faced the trial together and five were separately dealt in juvenile court. At first, the trial was started in District Court of Hissar, Haryana. The victims, the witnesses and the advocates were receiving threats on a regular basis; therefore, the case was then transferred to Special Court, Rohini, Delhi by the Supreme Court of India.

The Additional Sessions Judge of Rohini Special Court, Delhi, decided the case in 2011 and held 15 of the 97 accused guilty of various criminal acts, however, none of the accused was held guilty of murder. 15 accused were sentenced to life imprisonment under sections 3(2)(iv) and 3(2)(v) PoA Act. Other five were convicted under section 3(2)(iii) of PoA Act sentencing them for five years rigorous imprisonment. Eight accused were also sentenced to two years' rigorous imprisonment for rioting and voluntarily causing hurt. They were also fined Rs.20,000 each, which was to be fully awarded to the victims of the riot. Seven others, who were not held liable under PoA Act were let off on probation for one year.

In this case, it was observed that the dying declaration of the main witness under section 32 of the Evidence Act does not inspire confidence on the grounds that his condition, when he was brought to the hospital was not fit and he was not conscious and disoriented because of the 99% burn injuries. The court elaborated on the principle of prudence. The judgment stated that it is important, while making dying declaration the person should be in a fit state of mind and should be able to coherently narrate the events on the basis of which is accusing the other and at the same time the legal maxim '*Nemo Moriturous Praesumitur Mentire*' should also be considered. I quote from the judgment

*...meaning, that a man will not meet his maker with lie in his mouth. Woodroffe and Amir Ali, in their treatise on Evidence Act state: "when a man is dying, the grave position in which he is placed is held by law to be a*



*sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with.”*

It is unlikely that a person with such injuries, with no recorded pulse be fit or in a right state of mind and body. Dying declaration under the Evidence Act has been a grey area of law where a person making a statement who is dying cannot be proved to of sound mind or otherwise except the sole testimony of the doctors. This being said the whole case is dependent upon the testimony of the doctor to corroborate the soundness of the mind of the deceased. This law is used to manipulatively twist the provisions which created doubts and the culprit is not booked getting the benefit of doubt that is arises. Similarly, in this case technicalities were brought in to question the veracity of the dying declaration which has been a known strategy to discredit a statement of a main victim.

The Court further observes the animosity between the communities of the village while stating the facts that Tanwar Singh has an anti-Jat campaign, however the courts have failed to accept the same when it came to the facts of the case that they were attacked because of their caste. Affirming and discrediting the same caste angle at various levels as per the convenience is suggestive of manipulative practices adopted in a courtroom.

Rejection of the testimony of a woman named Sunita (found be called as Kanta) on the grounds of technical grounds such as name of the eye-witness of the witness not stated correctly in the recorded statement, the age not stated while making the statement and during the medical examination, thumb impression did not match as her hand was injured after the incident. Similarly her testimony was stated as false on the grounds of her not being able to recognize the perpetrators in the court. However, It is fact that when such an incidents of stone pelting and spreading smoke around the village because of the burning of houses and when everyone was covering their faces because of the smoke, it is not only difficult for a person to identify the perpetrator as her only concern at that point would be survival of her children and herself. While it was clearly mentioned that she was present the place where the incident took place, her testimony and was rejected purely on procedural grounds. It was also states that she could not identify the SHO by name that her testimony cannot be relied upon, however while identification she identified the SHO in person. It is a common fact that in a patriarchal society women are not supposed to mingle with men knowing a name of an SHO of the area is hardly a ground where her testimony is rejected. The

social factors are not considered as important as the law is totally procedural and leaves no place for emotional vulnerability of women.

A common ground that is stated in a particular case is that witness went hostile. In such cases, where the incidents are so gruesome and terrorizing for the victims facing such tragic event, their sense of security is lost in the society. While the initiation of the trial is taking a long time in this case a year, it is quite a common for the family of the accused to approach the victims to ask them to retract from testifying against the accused by giving threats or in the name of settling the dispute with money. Where the state of the victim is already bad, in terms of either financial difficulties or damage to their property because of the incident, the most obvious solution to him/her would be to surrender the demand for justice and accept the offer made by the accused.

In such trials the most shocking facts such the negligence of the police officials and in some cases even active involvement in the incident, are either ignored by the courts or stated very lightly. The fact that a person is not testifying because of this hostile nature of law, evident from not recognizing negligence of the implementing agency, is an important factor where the sense of security of the witness is shattered and witnesses prefer to retract from their testimony.

The hostile state of affairs in Mirchpur was evident when people from Jatt community had the liberty to announce on the loudspeakers that “*pachas mar jao sau mar jau chhoron ko chhuta ke chhodengae*” (whether 50 die or 100 die but they will ensure that their boys are set free). Even after informing the police about the incident, no action was taken by the police. Therefore, most of the witnesses and the victims felt scared of happening of any untoward incident, they decided to leave their village and went to Hissar.

It is important to note as well that during the testimony of a witness Sushil, aged 35 years, it was stated that a panchayat of Jats was also organized before the incident took place. After which the houses were attacked and the riot started. However, no such record was maintained regarding the Panchayat or the fact that while the incident was happening he informed the police about the mob were carrying oil cans, gandasis and jellies in their hands and were working the houses belonging to Valmiki community. The fact that it was a premeditated attack was evident from the organizing of the Jat community right before the attack. However, this fact was not reported in the FIR. At the same time when such a mob violence happened and even the courts accepted the negligence of the police officials to stop such an event from

happening, it can easily be deduced that police was also party to such violence on the pretext of caste. The shouting of slogans such as “*utha leye dedo ki ladkiya ne inko gaon se kada gae*” (pick up the girls of Valmiki and remove them from the village) and enough to establish that the attack was clearly a caste violence.

Media around the trial also pointed out how the dominant caste groups used to flock both the inside and outside the courts. This was a practice to intimidate the victims who were testifying against the community. This phenomena was never pointed out even by judges to secure the court premises for the victims to feel safe in the courtrooms. Since the case trial was lengthy task, survivors, victims and families and people of the Jat community were all at the same place this created a very intimidating atmosphere for the people belonging to Valmiki community. This aspect is not looked into by law. The PoA Act does not provide a special protection against such intimidating pressures. The protection of witnesses which is the prime concern when such trials are going on however, when the implementing agency, police is already biased it is but natural for the witnesses to change their testimony in courts. This has also led to discrediting of most of the prime witnesses of these cases. This also proves that in case of mass violence where recognition of the accused is not only difficult but also a next to impossible task, the courts discrediting the witnesses on the basis of not recognizing the accused in the identification parade rule leaves no relief to survivors.

The main problems with the decision of the Rohini Special Court judgment can be stated as mere technicalities of law that were drawn to cases. Even though the court explicitly noted that the police suppressed the fact of spreading the rumor of killing of a Jat boy by the lower caste, which led to such an outrage from the higher caste, no stringent action was taken against the police officials. Also the court could not the issue of caste names taken in the courts, as it was held that the caste names were used by the accused to identify the person’s caste. This itself proves the point that even though the PoA Act which is made to protect SCs and STs, is not able to protect them in a social setup when the implementing agencies like police and justice delivery system, a court is not able to make difference between the insult on the basis of caste. Mangubhai and Singh (2014) in a report published by National Dalit Movement for Justice-NCDHR have stated that there were various other issues that came up during the trial of the case, such as,

- (i) lack of coordination among the courts;

- (ii) appointment and appearance of different of public prosecutors on behalf of the Haryana government, which led to prolongation of the case;
- (iii) interference of khap panchayat members to attempt a compromise which went against the principle of free trial of a case;
- (iv) Hissar court records were not transferred to Delhi Court;
- (v) few of the documents placed before the Delhi Court as evidence on behalf of the accused were not verified;
- (vi) witness protection arrangement within and outside the court was not arranged and also there was a lack of coordination between the Delhi government and Haryana government with respect to protection and bearing of expenses for the arrangement for the witnesses;
- (vii) lack of protection to the witnesses lead to serious threats to the families resulting in witnesses denied their statements and were discredited as hostile witnesses;
- (viii) no police protection was provided to few witness who had to travel from Hissar to New Delhi for the hearing;

## **CONCLUSION**

These cases that are stated in this chapter are important to establish that technicalities are used to undermine the cases of caste violence. The rules are bent and used against the very idea of justice to encourage the perpetrators of crime. Caste is undeniably an important factor in Indian society. However, in the courtrooms, this factor is conveniently ignored quoting the secular nature of law and in the name of objectivity of the law i.e., in the name of facts and circumstances of the case. Each case is different and their circumstances have to considered but the law remains the same in each and every case. Law is restricted to a particular event of a case, however how that even has come into existence is always ignored.

A common reality that is always ignored in such mob attacks, when the properties of such survivors are burnt, then they are left with nothing. The demand of caste certificates in such cases are nothing but another social reality overlooked by the courts. Mostly, the acquittal of accused on the grounds of lack of evidence such as caste certificate of the survivor of that atrocity becomes the ground for acquittal.

In the cases of mob violence it is clearly difficult for witnesses to recognize who was involved actively or not. Where victims of that violence were discredited on the grounds of technicalities of law, the courts in a way not only denying the fact that their suffering was real but at the same time strengthening the mob violence culture in such cases. As in mob violence the perpetrators stand a chance of going scot-free on the basis of technicalities of law. A person, who is struggling to save their lives in a mob attack, and are also under a constant stress even after the attack as there is no security is provided to a large number of survivors of the attack, is expected to be coherent all the while. Further, the courts discrediting such witnesses are not only denying them a chance to get justice, but also make their suffering unreal to the world.

The main point that comes out clearly is that the whole case is based on the statements that are made to the police, the implementing agency responsible for the ensuring efficacy of the PoA Act. The negligence or omission of the police officials have been pointed out in each case invariably. The question that arises is: how this negligence or omission on the part of the implementing agency can be handled? Rather more importantly, can it be handled in a society, where social and professional lives are not so different? Does it mean that a police official who is of upper caste when he is working in his a professional capacity is a different person when he enters his house and act as a caste Hindu male? Various police reforms are suggestive of the sensitization of police officials towards the plight of women, while addressing the cases relating to sexualized crimes. The personal capacity and professional capacity of man living in a patriarchy, how far the sensitization towards woman is achieved is a matter which debatable. Caste rules our society, which is undeniably reality. Patriarchy, not only strengthen caste it also provides a tool to subjugate dalits.

This leaves us with a question; how does law mobilise caste? Law, that is supposed to provide justice, uses technicalities to undermine the promise of law. Despite this, the law seems to be the dominant site of securing justice for survivors of caste violence and discrimination; and the promise of justice from courts of law remains a strong ground for dalit politics (Jaoul 2008).

## **Chapter III**

### **ANALYSIS OF PROVISIONS RELATING TO WOMEN UNDER THE PREVENTION OF ATROCITIES (PoA) ACT 1989**

The landmark judgments discussed in Chapter two provide us a glimpse of the treatment of caste atrocity cases in the courtrooms. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, details provisions that were framed to substantiate the principles of equality and justice guaranteed under the Constitution of India. The PoA Act was framed with a view to not only protect the lower castes from the unjust treatment of the upper castes, but it was also an instrument to ensure justice to the SCs and STs. It was enacted for SCs and STs to embrace equality as a ‘right’ rather than just a sympathetic or paternalistic gesture for unjust treatment towards them in the past.

Dalit men and women share a very different experience with respect to claims and protections provided under the POA Act. In this chapter, I attempt to highlight and analyze the specific provision of the PoA Act, which hold relevance for the dalit women directly or indirectly. Women in general are considered vulnerable section of the society and few of the mainstream feminists argue that issues of women should be dealt at a single platform as ‘women’ and not necessarily as a separate faction of ‘dalit women.’ However, it is an undeniable fact that women who are socially and economically positioned differently are more susceptible to physical and emotional abuse. It gives rise to another layer of society where dalit women are “minorities within minorities, who suffer additionally on account of their gender” (Chitnis 2007, 3). The question then arises: Are these issues of dalit women adequately accommodated within the PoA Act?

First and foremost, an essential condition for the applicability of this Act is that– the offence must be committed against the member SC or ST community and must be committed by an individual, who does not belong to SC/ST community. In a court of law everything claimed has to be proved beyond a reasonable doubt. In a case of caste violence, the main component is the caste identity of the aggrieved party, as well as the accused; the aggrieved member of the SC/ST community has to prove their caste identity with a caste certificate. If the caste identity of the parties is not established

even the most obvious caste abuse case is not charged under the PoA Act, but IPC. The police often do not secure the caste certificate from the victims. This means that the lawyers of the accused are able to circumvent stringent punishments under the PoA Act by using this lacuna of establishing identity. Avoiding a case to fall under PoA Act help the accused to file an anticipatory bail application, which otherwise is not allowed under section 18 of the PoA Act. This is also one of the factors for the low rate of conviction under the PoA Act.

The PoA Act is structured in five chapters. Chapter I states the territorial jurisdiction to which it applies and the definitions, which are presently only five terms.<sup>17</sup> The second chapter of the PoA Act encapsulates the offences of atrocities. Section 3 enumerates the kind of atrocities that fall under the purview of this Act. It also prescribes the punishment of atrocities listed under section 3(1) of the PoA Act. Further, it states the application of certain provisions of the Indian Penal Code (section 6). Section 9 of the PoA Act provides for the conferment of the State government power on the police officer for carrying out the purposes of the Act. The third chapter of the PoA Act provides for the process of externment of persons likely to commit an offence, from a scheduled area. It also prescribes penalties for non-compliance of such orders of the Special Courts. The process to set up a ‘Special Court’ and the appointment of ‘special public prosecutors’ is provided under chapter four of the PoA Act. The last chapter provides for miscellaneous provisions, such as preventive action to be taken by the law and order machinery to carry out the purposes of the Act;<sup>18</sup> non- applicability of section 438 of Cr.P.C (anticipatory bail) in cases of arrest of persons accused under the PoA Act;<sup>19</sup> and non-applicability of section 360 of Cr.P.C. and the Probation of Offenders Act, 1958 i.e., probationary release of the offender above eighteen years convicted under this Act is not allowed.<sup>20</sup> Further, this chapter lays down the duties of the government to take effective measures for the implementation of this Act.<sup>21</sup> In the light of this brief summary of the

---

<sup>17</sup> The PoA Act 1989 presently defines only five terms which are: ‘atrocities,’ ‘code,’ ‘scheduled castes and scheduled tribes,’ ‘special courts,’ ‘special public prosecutor;’

A new Bill to amend the PoA Act was introduced in Lok Sabha on the July 16, 2014 which was titled as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014. The status of the bill is pending. There are more definitions that have been introduced under the Bill. These definitions are: ‘dependent,’ economic boycott,’ ‘exclusive special court,’ ‘forest rights,’ ‘manual scavenger,’ ‘public servant,’ ‘schedule,’ ‘social boycott,’ ‘victim,’ and ‘witness.’

<sup>18</sup> Section 17 of the PoA Act, 1989

<sup>19</sup> Section 18 of the PoA Act, 1989

<sup>20</sup> Section 19 of the PoA Act, 1989

<sup>21</sup> Section 21 of the PoA Act, 1989

PoA Act and the relevant provisions for the women under this Act, outlines the groundwork for this chapter.

Section 2 (1) (a) of the PoA Act quotes the term ‘atrocities,’ however; it does not specifically define the term ‘atrocities.’ Prior to the enactment of PoA Act in 1989, the popular term to describe caste violence was *jaatiya atyachaar*, or caste atrocity (Rao 2011, 13). The Commission for Scheduled Castes and Scheduled Tribes in their fifth report observed that the term “atrocities” is not a legal term but more of an everyday description (Rao 2011).<sup>22</sup> Various dictionaries define the term “atrocities” and these definitions keep shifting from viewing it as an unnatural act, or a crime against humanity, to a violation of civility, an offense to aesthetic sensibilities and cultivation (Rao 2011). Nowhere does it designate offenses against a particular class or group of people. However, according to the Ministry of Home Affairs, the term “atrocities” was assumed to define offenses under the Indian Penal Code perpetrated on Scheduled Castes and Scheduled Tribes.

[W]here the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes, caste consideration are really the root cause of crime, even though caste consciousness may not be the vivid and immediate motive for the Crime (Awasthi 1994; 159 as cited in Rao 2011)

Atrocities, made into spectacle in everyday life, serves the purpose of legitimizing this practice of everyday caste violence into “something extraordinary, from the structural to spectacular, spatial segregation, to ritual humiliation, to political terror were understood as constituting the practice of untouchability” (Rao 2011). Here, Rao defines an act of atrocity as something that is used as an instrument to normalize caste violence in society. With this act of glorifying the caste violence as something that is not only celebrated among dominant castes but it also provides a reason for the so-called lower castes to internalize this modality of justifying violence. This leads to a situation where an act of caste violence that is as simple as insulting by the name of caste, at times does not qualify as an ‘atrocity’ in the court of law. Similar instances were found in the cases of caste violence where to identify the victim caste names were used by the accused during the court proceedings as in the Mirchpur massacre case (see Chapter 2).

---

<sup>22</sup> The Fifth Report of the Commission for Scheduled Castes and Scheduled Tribes (April 1982, March 1983)



Baxi defines 'atrocities' on the basis of the definition of Claudia Card. According to Card, 'an atrocity, as a *gross evil*, is the widespread toleration of wrongfully perpetrated intolerable harm to the individual' (cited in Baxi 2014, 283). Therefore, essential elements that could be drawn for this definition include 'intolerable harm' and infliction of this harm on a person belonging to SC/ST. However, it is not necessary that it would only constitute as an atrocity if that 'intolerable harm' is meted out on a large number of persons or 'sum of assaults' (Baxi 2014). In the cases of caste violence it is not necessary that the harm is inflicted on a large number of people, but it would suffice as an 'atrocity' if that harm is wrongful and intolerable for that individual/(s) of lower caste.

For instance, rape of a dalit woman is not simply a violation of her physical self i.e., her body, but it also reminiscent of the control on her granted liberty in a patriarchy. As Card (2004) suggests that for a rape to be termed as atrocity, should communicate an immediate message to the woman "...we will have in our bodies only the control that we are granted by men and thereby in general only that control in our environments that we are granted by men (cited in Baxi 2014, 284). This means that women have only that much liberty or rights that is allowed by the patriarchal society, at the same time they also believe and understand their own right to be not more than what is allowed to them. Therefore, the perception of women especially dalit women regarding their own rights and liberties is limited to the same imposed patriarchal understanding of society. One of the instances that prove this point is when in a case of domestic violence most of them do not 'actually' see it as a kind of issue that requires any intervention from any legal agency.

Baxi points out the fact that it took fourteen years after the enactment of the POA Act, when in 2003 'parliamentarians raised the question regarding the distinction between 'mere' rape and 'rape as atrocity' (2014, 283). The cases of rape of dalit women have been dismissed as atrocities under the PoA Act merely on technical grounds such as lack of certificate to establish the caste identity of the victim, which then amounts to a crime falling under section 375 of the Indian Penal Code. Since, the PoA Act does not specifically define the term 'atrocity' leaving ample space to manipulate the crimes to fall under the category of crimes defined under IPC. Rape of a Dalit woman is treated as rape, even though it is historically established that a Dalit woman is a vulnerable and prone to such violence because of the fact that she belonged to a

particular lower caste. Thus, it is not just ‘rape’ but ‘rape as atrocity’ and case must be tried under the PoA Act.

The offences that are constituted as atrocity are listed under section 3 of the PoA Act. Section 3 (1) (iii) states the following:

*Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity -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*

This section covers the crime committed against a member of SC/ST community, who has been forcibly stripped naked, *parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity*, by the non-SC/ST member. Such a crime is punishable with imprisonment that is not less than six months extendable to five years and with fine.

An ugly reality with respect to such crimes against women and especially Dalit women is that such crimes are mostly seen as a way to punish women for going against the set norms of the society. Women who have been subjugated for centuries, if they raise their voice or dare to be different even in terms of appearance, or their attire, they are considered as threats to the normative structure of the society. Hence, a need or rather urge to ‘correct’ arises, leading to such drastic measures. Parading a woman naked was a part of a customary way of punishing her, which has been prevalent since the ages (Baxi 2006). Baxi argues that while sexual violence against women during communal riots are almost never prosecuted, spectacular communal violence against individual women are sanctioned by state law by evoking colonial laws on customary punishment of social transgressions. This was evident in the case of *Miss M.S. Annaporani v State of UP*.<sup>23</sup> Even though this case does not fall under the POA Act nonetheless, it traces the attitude of judiciary towards the cases of ‘parading a woman naked.’ This case exemplifies legal analysis of the expression of violence upon a young woman in Uttar Pradesh for marrying a person from a Muslim community. This case arose from a writ petition of habeas corpus filed under Article 32 of the Constitution. The writ petition was filed by the Miss. Annaporani, an advocate, when she was aggrieved by a judgment reported in a local newspaper. The judgment detailed the violence endured by a woman named Santaraji Debi aged 30

---

<sup>23</sup> [MANU/UP/0959/1992](#)

years. She was gang-raped, stripped and paraded naked in a Saurana village in Uttar Pradesh on the account of marrying a Muslim man. The newspaper reported

In the afternoon of June, Yadav barged into their house. In the fracas that ensued. Raza was beaten up by the headman's Hindu supporters. The police arrived and removed the three protagonists to the Camporganj police station about 15 Kms. away. Raza was remanded to custody but Santaraji and Parasnath were released, contravening standard procedure which requires all persons immediately connected with a case to be taken in for questioning. Worse, the woman was handed over to the villagers, to be used as they saw fit. And then began the abominable outrage. Santaraji was taken to the house of one Badri Kiwat, one of the *dadas* (toughs) of Rampur. At nightfall they entered her room. She was repeatedly raped till the early hours. Everyone seemed to be waiting to have his fill. At dawn, after satiating half a dozen men, she made desperate bid to rescape. But she could then hardly walk and was predictably recaptured and punished for her temerity.

A grand carnival of sexual insult was arranged. One Bijlee Singh, assistant Pradhan and Parasnath's right hand man, and Phool Singh, another heavy-weight, were placed in charge of special effects. They cropped her hair, garlanded her with a necklace of shoes, painted half her face with black ink and half with lime, stripped her, smeared her body with red paint, sat her on an ass and paraded her for four hours through every land in the locality. The bizarre procession featured amateur music-makers hoarding the principal exhibit with drums and trumpets. The Pradhan's Bullet motorcycle, symbol of power in the outback, brought up the rear. At any given time, at least a hundred people were involved in the proceedings. Santaraji was stoned and beaten with lathis all along the 50Km route. She often fell off the ass, only to suffer the indignity of being held back by the breasts. Finally, she was thrown out of the village and warned never to return.<sup>24</sup>

The excerpts of the newspaper report in the judgment are relevant to understand the state of public and the police of the village Saurana. Such a ghastly incident was described and equated with a carnival, celebrating the plight of a woman. The important point here is that even the legal discourse allows and sanctions such spectacle of violence in the courtroom. This collective violence continued for four hours. According to Baxi,

The genealogy of the description of women being paraded has been stabilized in law to the extent that collective and organized violence is domesticated through categories of “parades”, “proceedings” or “processions”. The law itself produces a spectacle whereby the reader of the judgment is invited to be part of the “proceedings” by turning a sexualized gaze on the woman put on display

---

<sup>24</sup> [MANU/UP/0959/1992](#)

The anchoring of the violence in communitarian forms of disciplining and punishing through processions of shaming in village spaces may be traced to the evocation of the colonial law on offences that evoke notions of divine displeasure (2006, 75–76).

Not only were the people of the village party to this event but also the police did nothing to prevent such an event from happening. The FIR lodged against the four accused did not even mention the offence of gang-rape and rioting. The FIR mentioned various offences that are punishable under IPC such as obscene songs (section 294), wrongful confinement (section 324), charge of outraging the modesty of a woman (section 354), detaining a married woman with a criminal intent (section 498) intentionally insulting with intent to provoke breach of peace (section 504) , an act caused by inducing a person to believe that he will be rendered an object of divine displeasure (section 508) and word, gesture intended to insult the modesty of a woman (section 509) (Baxi 2006, 74).

The police was party to this crime as they believed in this violence as a form of communitarian punishment, for breaking the customary laws of marrying outside the bounds of the religious custom. She was also made to believe the same on the basis of their understanding of these customs. Baxi points to this upsetting fact when “the police translate and author the spectacle of sexual violence as legitimate customary punishment” (2006: page). The perpetrators of the crime, witnesses gathered at such horrendous events and the victim of such customary punishment share same belief about the divine sanction underlying these customs (Baxi 2006). Such renditions of law produce an image of violence in the name of customary punishment, that not only takes away the right of a woman as a citizen but also sanction such violence in the name of custom (Baxi 2006, 77).

In another case, *Kailas and Others vs. State of Maharashtra*,<sup>25</sup> a 25 years old woman, Nandabai belonging to ‘Bhil’ tribe, was paraded naked by the family members of a person named Vikram, who belonged to a Maratha caste. Vikram and the ‘prosecution witness 4’ (aggrieved woman referred to as ‘PW4-victim’) were in a relationship, which was referred to as ‘illicit relationship’ in both cases under High court and the Supreme Court. However, Vikram claimed to have married the woman against the will of his family members. They already had a daughter and his wife was pregnant for second time, when the incident in question occurred. According to the facts stated in the case the family members of Vikram barged into the house of the aggrieved

---

<sup>25</sup> MANU/MH/0273/2010

woman on 13 May 1994, and she was beaten, stripped off her clothes, and was paraded naked in the village on account of having an illicit relation with Vikram. All four accused were beating and abusing the woman during this whole incident. This was witnessed by the villagers of Ahmadnagar, including the sarpanch of the village. The Sarpanch gave her a cloth to cover herself and took her to her husband, Vikram, who was at a grocery shop in the village. Vikram went to bring her clothes to wear which were thrown at the roadside. On the same evening, complaint was lodged in the Taluk Police station. However, she did not mention the fact of paraded naked by the family members of Vikram. The case was registered for forcibly removing clothes and parading naked under the section 3(1) (iii) and assault and uses force with an intent to dishonour and outrage her modesty under section 3(1) (xi)<sup>26</sup> of the PoA Act and under sections 452, 354, 323, 506 all read with section 34 of the Indian Penal Code. The case was investigated by the PSI. Her medical report stated two contusions on her body. Broken pieces of bangles of the aggrieved woman were also found at the place where the incident took place. Ten witnesses were examined and Addl. Session Judge convicted the four accused under IPC and PoA Act. All four accused were sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 100/- under relevant sections of IPC and additional rigorous imprisonment for one year and to pay fine of Rs. 100/- under PoA Act.

The convicted accused appealed against the orders passed by the Sessions Court on the grounds that investigating officer was below the rank of DSP vitiates the investigation process, and caste certificate was not provided by the victim in the High Court of Bombay (Aurangabad Bench). The High Court set aside the conviction under PoA Act and allowed the appeal. However, the conviction under IPC was affirmed and fine was raised to Rs. 5000/- to be paid by each accused to Nandabai.

Aggrieved by this order of High Court a Special Leave Petition was filed in the Supreme Court<sup>27</sup> and the case was finally decided in the year 2011 after a period of almost fifteen years. The Supreme Court acknowledged the fact that high court has erred in setting aside the conviction under the PoA Act on the “hyper-technical grounds” that caste certificate was not produced in the court and investigation was

---

<sup>26</sup> Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty 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 (Section 3(1) (xi))

<sup>27</sup> Kailas and Ors.vs. State of Maharashtra T.R. Taluka P.S. MANU/SC/0011/2011

conducted by a police officer below the rank of DSP. Further, it also pointed that these are mere technicalities and can hardly be a ground for acquittal. However, the Supreme Court also pointed as this is not the subject matter of this appeal, and they will not deal with this matter. It also mentioned that the High Court has sentenced the accused very lightly as compared to the gravity of the offence.

This case was a clear instance of caste atrocity, yet the judges on mere technicalities of this law chose to ignore the crime, leaving the victims to wait for justice for over fifteen years. Women who are subjected to such delayed verdicts not only live their lives under fear but are also humiliated till their case is decided in the courts. They re-live such atrocity until their cases are finally decided and if the perpetrators are acquitted by the courts then their sense of securing justice under the law of nation is also completely shattered. The idea behind incorporating such technicalities was to enhance the efficiency of the Courts to deliver justice on the contrary such technicalities have proved to be helpful in diluting the case of the victims of such atrocious crimes.

Another provision that hold the relevance for women belonging to SC/ST community is stated under the section 3(1) (xii) of the PoA Act. This section deals with a situation when a person belonging to non-SC/ST community uses his position to dominate the will of a woman belonging to SC/ST to exploit her sexually, using any false pretext to make her consent to any sexual favour, which she would not have agreed if not for that false promise/words. Section 3(1) (xii) states

*Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed 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.*

In a society built on the caste system, a woman from a dalit community believing that they are not even accepted as individuals but seen as an object for the pleasure of upper/dominant caste, a slight sign of generous words from a member of higher castes seems believable. In the hopes and aspirations for a better life, when everything around them seems so difficult for their survival, they are the easiest targets for sexual exploitation. Women of lower castes are approached for sexual relation on a regular basis by the men of upper castes based on the understanding of the religious sanctions

in Hindu scriptures. Their economic and social conditions put them in a vulnerable position that can easily be exploited sexually on the false notion of marriage or future security by a person of upper caste. In the courts, many cases are filed and dismissed on the grounds that women, belonging to lower caste, consented to such relation out of her own will. The question of consent in such cases are measured on the basis of medical report of the victim claiming rape or sexual intercourse under the false notion of the marrying the victim. In *M.C. Prasannan vs. the State*,<sup>28</sup> the accused was a school teacher in Bengali *bustee* and the victim was a minor girl (student of class IV) of tribal community in Teressa Island of Nicobar District. The Session Court, Port Blair sentenced the accused on the charge of rape under section 375 of the IPC and section 3(1) (xii) of the PoA Act. The accused filed an appeal in the High Court of Kolkatta (previously called Calcutta). It was stated in the judgment that

...she was told by the accused that he loves the victim and he will marry her. With that assurance, he unclothed the victim and he unclothed himself also and thereafter committed sexual intercourse with that girl. Thereafter on several dates the victim was called by the accused in his house at night and he used to commit sexual intercourse with the victim with the assurance of marrying her. The victim indulged in committing sexual intercourse with the accused as the accused assured to marry her. The victim became "pregnant for such act by the accused person. She stated to the accused about her pregnancy, but the accused gave her pieces of garments and told her to give those pieces of garments to an old lady and cause [sic] abortion and he refused to marry the victim. The victim however did not give the pieces of garments to the elderly woman and did not try to cause abortion as she wanted the child, but she disclosed the fact to her mother and family members.<sup>29</sup>

As for the background of the girl, she was a student of class IV and proof of her age was not furnished in the case. Therefore, the whole case became a matter of deciding her age, which according to Modi's Medical Jurisprudence was decided which is leaves a probability of ( $\pm$ ) 3 years. Baxi suggests that principles of Modi's medico-legal textbooks that are followed in the courts, are nothing but substantiating that medical experts can only expose the tricks deployed by the victims and only they possess such cunning knowledge of criminal law (Baxi 2014, 68). In the case even though the girl was of age 12-15 or 14-16 years it does not necessarily mean that she was not sexually exploited on the basis of her caste and false promise of marriage by the accused. The Session Court Judge argues on the principle of innocence of the girl,

---

<sup>28</sup> MANU/WB/0072/1999, (1999)1CALLT458(HC), 1999(1)CHN123, 1999CriLJ998

<sup>29</sup> Ibid. 2

when she waited to tell her mother about the abuse when signs of pregnancy started showing and she was declared as a girl of *easy virtue*. This case in itself subjugates and mark women on the basis of their sexual preferences that too before the age of consent which in accordance to law is 16 years. This itself speaks of the nature of law which is excessive and mechanical. Here, section 3(1) (xii) provide a legal provision to substantiate the cause of the Act, however the interpretation of these provisions by the court of law annihilate very purpose of the PoA Act.

The clause of insulting and humiliating dalit women are directly or indirectly exemplified in a court of law, which has a bearing on the thinking of the society leading to accept such treatment. Even though, there is a provision that provides protection against such treatment the law is still what is interpreted in the court of law. Section 3 (1) (x) provided hereunder states:

*Whoever, not being a member of a Scheduled Caste or a Scheduled tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or 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.*

This provision says that if somebody humiliates a person belonging to a Dalit or Adivasi communities, the provision says humiliated in a place in ‘public view’ that constitute an offence. In a place in public view specifically means it need not be viewed by anybody, it is not as that you have to be humiliated only in the presence of some person, but if it is an open place which could have been viewed by anybody that is sufficient to make it an offence. The High Courts have systematically read down a place in public view to simply mean ‘viewed in/by public’. Consequently, most of the High Courts have given a number of judgments, stating while the act in question was done there was nobody to witness this insult becomes insult, thus it was not accepted as an offence under the PoA Act. However, the provision simply states that it should be in ‘public view’ and presence of public is not a mandate of this provision (Balgopal 2006).

It is important to note here that this provision does not cover the cases of insult on the basis of caste of an individual (especially dalit woman) working as a domestic help in the house of an upper caste or dominant castes. Private places are not included under the purview of this provision. In the case of *Suhail Fasih vs. State of Uttar Pradesh*.



*and Another*,<sup>30</sup> Munni Devi was working as a part-time maid servant at the house of the accused Suhail Fasih, in Fatehgarh, Farrukhabad District, at wages of Rs. 325/- per month. The accused did not pay her wages for the past five months. In the morning of 11 June 2004 when she demanded for the wages from the accused, he started abusing her and calling her ‘*sali dhobin*.’ He also forcibly took her inside the house and molested her by groping her breasts. She raised alarm, and her husband and few others reached for help. A counter case was also filed against the Kumari Anju, daughter of the complainant for theft of gold bangles and ring of the wife of the accused.

After the investigation of the police, a final report was submitted and protest petition filed by the complainant on 14 December 2005, the Chief Judicial Magistrate, Fatehgarh took cognizance of the offense and summoned the accused to face trial under section 354 of the IPC and section 3(1) (x) of the POA Act. The accused challenged the summoning order under section 482 of Cr.P.C, which was dismissed in the March 2006. Further the order was challenges in the Apex Court under Special Leave to Appeal in May 2006. The Court held,

*After some argument, learned counsel is permitted to withdraw this petition. We may, however, observe that if at the time of framing of charges, a petition for discharge is filed, the same shall be considered on its own merit without being prejudice by any observations made either by the High Court or by the trial Court in the impugned orders. The special leave petition is, thus, disposed of.*

Thereby, in pursuance of the orders passed by the Apex Court an application for the discharged under section 227 of Cr.P.C was filed by the accused before the Special Session Court, which was rejected by the impugned order. Hence the revision petition was filed by the accused. The High Court allowed the revision and discharged the accused setting aside the impugned order on 11 November 2011. It was held in the High Court that ‘public view’ should be a place within the view of the public and the house of the accused does not fall under the meaning of the term ‘public view’ in the PoA Act, therefore the charges under the PoA Act was dropped. Clearly, the accused uttered the word ‘*sali dhobin*’ which is an insult on the basis of the caste of Munni Devi; however, it does not qualify as caste violence.

On the basis of this clause of ‘public view’ none of the cases of women, who are working as a domestic help, and are mostly from the dalit background, will ever

---

<sup>30</sup> MANU/UP/3694/2011, 2012(1) ACR607, 2012(1) ADJ 86, 2012(3) Crimes 295

constitute a strong case of caste violence under the PoA Act. Women, in such professions are always in a vulnerable position to be exploited on the basis of their caste, class, and gender background and provision under the PoA Act do not provide for adequate measures for such vulnerable sections of the SC/ST community.

This debatable point in 'public view' clause that the public who is witnessing that crime should not be related to the victim or the accused. Impartiality and independence of the witnesses are the measures on which the testimonies of various witness, including the prime witnesses' testimony is weighed. Many cases face the challenge of discrediting a witnesses' testimony by the judges on the grounds of their relationship or association with the complainant. Hence, the courts insist upon the uninterested witnesses as a matter of rule of law, where exceptions to this rule are rare. Such demands of the courts in a way create an alternate reality disregarding the social realities that exist outside the courtrooms (Rode, et. al., 2013).

For instance, in this case of an attack on a village where dalits are ghettoized either outside the village or in a particular *basti* or *mohalla*, the probability that witnesses belonging to that community or connection or associated with the victims is a social reality is often disregarded by the courts. Thereafter, independence and reliability of such witnesses is always in doubt. Besides, it is quite common for such crimes to take place closer to the surrounding areas of the house where witnesses could be family members. Hence the court's demand for independence of witnesses of crime to ensure justice often ends in more injustice to the victims (Teltumbde 2008, 146).

One may suggest that many provisions in this act are sometimes unfairly extended - say if a person belonging to scheduled caste or scheduled tribe is beaten, assaulted, insulted, and humiliated on the ground that he or she belongs to SC or ST then it's an offence. The courts on such matter, argue, if it is not clear or evidence is not produced to support the claim the violence was perpetuated on an individual because he belonged to SC or ST, then, the act is not applicable, hence dismissing the case under this Act. This lacuna in the lawm was not present in the protection of Civil Rights Act, which was the original Anti-untouchability Act. Under that Act if any one committed an offence it was *presumed by law* that it was committed on the ground that the victim belonged to the scheduled caste. However, this was not included in the POA Act, excluded and replaced by the present provision:

*Section 3 (2) (v) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property **on the ground** that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;*

Although courts should read the *presumption* into it, only very few Judges have considered it. A presumption could have been read that social structure being such if a non-Dalit person insults and humiliates Dalit person it can be presumed that the general mindset of society has operated. Instead courts have opined as the law says ‘on the ground that the victim is SC or ST,’ unless that is specifically stated in FIR it won’t allow the case of the prosecution. Even further it is not at the end of the trial, but such an objection would get the case dismissed at the level of filing the complaint itself. Hence, an illiterate Dalit who wants to register FIR at the police station should know the identity of the accused before filing a complaint, further that person must confirm the fact that offense is committed because of the fact that he/she belong to a dalit community and the accused was aware of the fact that complainant belonged to SC or ST category. It is presumed that everyone knows the law because that FIR itself will be questioned in the High Court by the upper caste person and the High court will quash the investigation. “Now these are not accidental technical glitches, because if you sit in the High Court or any court for that matter and listen to the comments being made by the judiciary, only in the context of this act one repeatedly hear the judges commenting these are false cases. You will repeatedly hear the judge and the lawyer everybody openly, casually, laughing and joking and saying we all know very well my lord these are false cases” (Balgopal 2006).

In the light of observations made in the above paragraph, the proposed amendment of the PoA Act under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 (is referred to as the ‘Bill 2014’) seem to have shifted the onus on the accused, of disproving the knowledge about of the caste of the complainant. The following changes to section 3(2) (v) are proposed under the Bill 2014.

*...in clause (v), for the words "**on the ground** that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member", the*

words "**knowing** that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" shall be substituted;

...after clause (v), the following clause shall be inserted, namely:

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine."

However, the cases that are already pending under the PoA Act would not be heard bearing in mind the provision of the proposed Bill 2014, till it is pending in the Lok Sabha; and further introduced and accepted in both houses of the Parliament.

Similarly, the definition of 'Special Courts' that are set up under section 14 of the PoA Act does not mandate that such courts shall exclusively try the cases falling under the PoA Act. The Special courts are constituted with the main purpose of speedy trials of the caste atrocity cases. Section 14 of the PoA Act states

*For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.*

Clearly the language of the section suggests that special courts are constituted to provide for speedy trials. Therefore, the courts conferred a status of special court for carrying out the purposes of this Act, should not only be devoted to the cause of justice to the SCs and STs but also dispose off that matter expeditiously. However, this principle seems to be disavowed when such courts also deal with the matters under various other laws, resulting in further delays in dealing with caste atrocities cases. For instance, Parbhani District Court, Maharashtra has conferred the status of special court to three Session Courts to hear the cases under the PoA Act. Besides these courts, the Additional District and Sessions Judge at Basmath and Gangakhed have also been conferred the same status. But these Special Courts act as both a Sessions Court under which other crimes falling under IPC are also taken up and Special Court for the purpose of the PoA Act. The actual purpose of creating a Special Court – to ensure a speedy trial – is lost when it takes 2 to 3 years for a judicial hearing to be over under PoA Act (Rode et.al., 2013). Another point that is observed is that even the 'Exclusive special courts' that is proposed in the Bill 2014,

is not able to provide for speedy trials for caste atrocities cases (NCSPA Report 2009-2011, n.d., 33)

The NCSPA report has outlined the reasons for a very low rate of conviction and higher pendency of cases in the courts. The report points out at the fact that the 'special courts' are almost non-existent. Even though governments are expected to setup special courts under section 14 of the PoA, governments are not inclined take this seriously. Since the designated special courts are not exclusively dealing with cases falling under POA, they are overburdened with other cases also. Caste cases are not the priority in such courts (NCSPA Report 2009-11; 33).

The special court status is conferred upon the Session Courts however according to section 193 of Cr.P.C. the session courts are barred from 'taking cognizance of any offence as a Court of Original Jurisdiction' except when such a case is committed to the Session Court by a Magistrate (NCSPA Report 2009-11; 33). It is noted that this is a time consuming process and vitiates the very purpose of speedy trials.

The cases that are connected such as counter claims of the respondents are often tried under different courts leading to adjournments in the Special Courts on the basis of matter pending in the other courts. Thus, the trials of the cases under the Special Courts are delayed, on account of decisions pending in the other courts. Holding a trial of all the connected cases may help the case to be tried in a speedy manner at the same time the burden of the other courts may also be reduced (NCSPA Report 2009-11; 33).

Rule 3(1)<sup>31</sup> of the PoA Rules 1995<sup>32</sup> provides for the various precautionary and preventive measures that may be adopted by the State Government as the case arises.

---

<sup>31</sup> Rule 3 Precautionary and Preventive Measures.- (1) With a view to prevent atrocities on the Scheduled Castes and the Scheduled Tribes, the State Government shall:-

- (i) identify the area where it has reason to believe that atrocity may take place or there is an apprehension of reoccurrence of an offence under the Act;
- (ii) order the District Magistrate and Superintendent of Police or any other officer to visit the identified area and review the law and order situation;
- (iii) if deem necessary, in the identified area cancel the arms licences of the persons, not being member of the Scheduled Castes or Scheduled Tribes, their near relations, servants or employees and family friends and get such arms deposited in the Government Armoury;
- (iv) seize all illegal fire arms and prohibit any illegal manufacture of fire arms;
- (v) with a view to ensure the safety of person and property, if deem necessary, provide arms licences to the members of the Scheduled Castes and the Scheduled Tribes;
- (vi) constitute a high power State-level committee, district and divisional level committees or such number of other committees as deem proper and necessary for assisting the Government in implementation of the provisions of the Act;
- (vii) set-up a vigilance and monitoring committee to suggest effective measures to implement the provisions of the Act;

Looking at the cases in the chapter 2, as well as in the cases of parading a woman naked there is an underutilization of this rule. The States not only have ignored but also been lenient towards the police officials for their negligence to actively curb such caste practices that are prevalent at the level of a small village. In a report of last 20 years on the status of implementation of the PoA Act clearly emphasized and recommended that the Rule 3 can be a useful tool to implement the provisions of this Act effectively (Irudyam and Mangubhai 2010, 72)

## CONCLUSION

The interpretations of provisions of the PoA under various case laws mentioned in this chapter shows that caste is an intricate part of our system.

With the help of these case laws mentioned in the present chapter I demonstrate that the provisions under the substantive law i.e., POA meant to uphold the rights guaranteed under the Constitution of India are not able to do justice to the very purpose for which it was enacted. The caste system which runs through the veins of the institutional setup through the agents who implement the provisions of this law is a reality. The role of police officials is crucial at every step of this Act. However, time and again it is found in each case that due to the negligence of the police investigation of the cases are vitiated. Later in the court of law most of the caste violence cases fall short of evidence because of poor investigation conducted by the police officials.

A simple explanation that seems apt here is that when law and order machinery is expected to be 'professionals' – which in simple terms means that for a protector of a society a certain degree of physical violence is allowed as long as it is done in the fulfillment of his duty to protect. This underlying principle suggests that violence is allowed, only the degree of violence has to be kept in check, when it comes to the implementing agencies are involved. This dichotomy of curbing violence –perpetrated

---

(viii) set-up Awareness Centres and organise Workshops in the identified area or at some other place to educate the persons belonging to the Scheduled Castes and the Scheduled Tribes about their rights and the protection available to them under the provisions of various Central and State enactments or rules, regulations and schemes framed thereunder;

(ix) encourage Non-Government Organisations for establishing and maintaining Awareness Centres and organizing Workshops and provide them necessary financial and other sort of assistance;

(x) deploy special police force in the identified area;

(xi) by the end of every quarter, review the law and order situation, functioning of different committees, performance of Special Public Prosecutors, Investigating Officers and other Officers responsible for implementing the provisions of the Act and the cases registered under the Act.

<sup>32</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995

on the basis of caste –with law which is inherently violent goes against the principle –  
that police officials should be sensitive while handling the cases of caste violence.

## Conclusion

Atrocities on women are used as an instrument to subjugate scheduled caste and scheduled tribe community as a whole. The manifestation of power can be seen through the treatment of women in a caste based society. In a case of atrocity on women, most of the time either the men of their family run away fearing death, or the dominant or upper castes make them watch ‘their’ women savaged to discipline, and keep them in their limits of being a lower caste. In a patriarchal society, when men are made to watch their women suffer such violence, it is seen as a technique of “emasculatation”. Here, the subjects i.e., the lower castes women are created to establish (caste) hegemony and to validate the existence of a higher/upper castes. For a power relation to exist in a caste based society, control on the sexuality of a woman is instrumental.

The process of subjugation or oppression is mostly ignored leading to misconstrue caste system in such simplified understanding. Be it women or men, oppressors and oppressed are a part of intricately weaved structures that are visible only at a macro level. While investigating a particular incident that initially looked like a private affair between two individuals might turn out to be a different story if analyzed through the lens of caste. Contingent factors, for instance, caste, class, gender, social upbringing, cultural differences, play a major role, in shaping up the understandings of an individual. Therefore, all the actions of a person are reflective of his/her sensibilities that are shaped up because of his/her being in a set of those contingent factors. Simply put, nothing is out of the context. The oppression, a term so widely used in the history should be reexamined. Frye suggests that the root of the term ‘oppression’ is the element ‘press’ (Frye 1998).

... Something pressed is something caught between or among forces and barriers that are so related to each other that jointly they restrain, restrict or prevent the thing’s motion or mobility. Mold. Immobilize. Reduce (Frye 1998; 146).

Therefore, it is important to grasp these networks of forces that *mold, immobilize*, and *reduce* the subjects into mere *docile bodies*<sup>33</sup> (Frye 1998). The caste system is one example of such networks which on the surface of it seems to harmonise the society in a certain order. Undoubtedly, as it proclaims it surely provides a structure that appears logically acceptable, however, such a structure is not far from faults and

---

<sup>33</sup> Foucault, Michel. 1977. *Discipline and Punish: The Birth of the Prison*. Edited by Alan Sheridan, New York: Vintage Books



lacunae (Lindt 2013). As the study shows, the legal discourse contributes to this mould by perpetuating this order of not just marginalisation but also of patriarchy.

Spectacularisation of the atrocious state of the survivors normalizes such crimes in a society. The subjugated community internalizes this state of helplessness thereby believing it to be a normal state of being which makes the society insensitive to such crimes and they cease as a consequence to be constituted as an extraordinary offence. This explains the insensitivity of the judges to acknowledge the gravity of a crime and present them as routine cases dealt under the IPC. The courts do not consider the social implications of an act of atrocity on a woman.

Procedural law and its implementation in a court of law are immensely important to provide justice to a survivor and/or victim of an atrocious crime.

Delaying tactics of the legal professionals are used under the garb of procedures and technicalities involved in a particular case. Provisions such as investigation of a atrocity case is to be conducted by a police official not below the rank of Deputy Superintendent of Police with an experience in handling such matter, were framed with a view that the such designated officials would handle the matter with sensitivity and provide for a fair investigation of a case. However, this provision is used against the victims of the atrocities in a court of law to rebut the violence in entirety.

The cases of mob violence are dealt in a mechanical manner leading to acquittal of most of the accused either on bail or discharged on the basis of lack of evidence or hostility of the witnesses.

Long delays give ample time to the family and friends of the accused to intimidate the victims and witnesses causing miscarriage of justice as well as failure of the purpose of the PoA Act.

The long history of violence against Dalits is a major reason for the assertion of rights by the Dalits and resulting into caste violence is a phenomenon of resisting such assertion of Dalits by the higher caste groups. Caste violence is not the only way to uphold caste hegemony, even the legal structural violence, for instance, the “two finger test” of a rape survivor, corroboration in the court rooms of the survivors of sexual violence, procedural difficulties leave ample space for maintaining patriarchal setup of the society. Caste violence is not only accepted but is also legalized through the scriptures of Hindus. This religious support is evidently the main source of power

of the higher caste men to desexualize the atrocities meted out on the SC/STs in general and specifically on women.

The POA Act provides for the protective measures against the caste based violence, but the machinery to implement this law is still patriarchal and casteist. It is pointed out in the discussion above that POA Act is not a law free from problems, but there is a lot that can be achieved if it is implemented with a spirit to end atrocious crimes on Dalits.

It is an undeniable fact that cases of caste violence are on the rise, even though there are enough number of provisions to protect and deter such violence. This rise in the number of cases of caste violence infer a reality which gives a picture of how caste dominance is a game of power and struggle to maintain caste hegemony of upper castes. Incidents like Khairlanji massacre and the like are mirrors of social structure and caste reality of India. Such atrocities directed towards the women of lower caste not only a way to subjugate them but it also, through spectacularization of such violence, is a way to subjugate lower caste as a whole.

Dalit women are placed lowest in the pyramid of the power structure of caste. They remain oppressed within their own community due to the effects of the patriarchal order of upper caste Hindu cultural and social norms, practiced by members of Dalit community, especially men. This category of the Dalit women is structuralized in such a way that it makes them vulnerable to the subjections of casteist structures in the society. The display of violence on these 'subjects' serves a purpose of establishing power over Dalit men, as dalit women, who are considered as 'their' property, are no longer within their power. This desexualizing of dalit men and dehumanization of dalit women, as subjects, for the manifestation of power plays a crucial role in sustaining the rigidity of caste system in Indian society. Thus, the patriarchal violence of the atrocity on the Dalit women is two-fold; firstly, through the humiliation perpetrated on their bodies by the men of higher caste before the Dalit men of their community, and secondly, by being visualized as 'personal social good' of their respective husbands without any agency of their own.

The structural violence of the caste further becomes embedded in the legal structure through the personal beliefs of public officials entrusted with implementation of the law. This brings us to a larger question of as to how an individual can maintain a balance between the personal beliefs (embedded with caste systems) and ethics of

their profession (contradicting embeddedness of the caste system) that he/she is entrusted with. This duality imposed upon an individual through the legal structure in a caste-based society raises apprehension regarding the efficiency of the laws that are supposed to uphold the principles of equality and justice as enshrined in the Constitution. Thus, this interpretation is also a revelation of an episode of legitimization crisis (Baxi 2001) that requires appropriately sensitized legal intervention to emancipate the bodies of Dalit women from further discriminatory violence of the sexist patriarchal Hindu order of Indian society. Hence, the law in itself remains insufficient and complicit in the subjugation of Dalit women given the contingent social realities. For the law to affirm the security of women and the spirit of the Act, it is thereby necessary to take cognizance of the social norms that bind and subject women to atrocity, limiting their access to justice and equality in their communities.

## Bibilography

- Ambedkar, Dr. B. R. 1916. "Castes in India: Their Mechanism, Genesis and Development." Jalandhar: Bheem Patrika Publication. <https://ia800302.us.archive.org/16/items/castesinindia035140mbp/castesinindia035140mbp.pdf>.
- Ambedkar, B.R. 1987. 'The Hindu Social Order—Its Essential Features,' in Vasant Moon (ed.), *Dr. Babasaheb Ambedkar—Writing and Speeches*, Vol. 3, pp. 95–115. Bombay: Education Department, Government of Maharashtra.
- Awasthi, S. K. *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, Allahabad: Premier Publishing Company, 1994
- Balagopal, K. 1991. "Post-Chundur and Other Chundurs." *Economic and Political Weekly*, 2399–2405.
- Balgopal K, 'Caste and Law,' Speech at CIEFL, Hyderabad in a seminar on "Democracy and Caste in India", 12 Aug, 2006
- Barman, Rup Kumar. 'Caste Violence in India: Reflections on Violence against the Dalits of Contemporary India' in *Voice of Dalit*, vol. 3, no. 2, 2010, pages 193-212
- Baxi, Pratiksha. 2001. "Sexual Harassment." *Seminar*, no. 505. <http://www.india-seminar.com/2001/505/505%20pratiksha%20baxi.htm>
- Baxi, Pratiksha. 2006. "Habeas Corpus in the Realm of Love: Litigating Marriages of Choice in India." *The Australian Feminist Law Journal* 25: 59–78.
- Baxi, Pratiksha. "Feminist Contributions to Sociology of Law: A Review." *Economic and Political Weekly* (2008): 79-85.
- . 2014. *Public Secrets of Law: Rape Trials in India*. New Delhi: Oxford University Press.
- Card, Claudia. 2004. "The Atrocity Paradigm Revisited." *Hypatia* 19 (4): 210–20. doi:10.1353/hyp.2004.0067.
- Chakravarti, Uma. 2003. *Gendering Caste Through a Feminist Lens*. Theorizing Feminism. Bhatkal & Sen.
- Chitnis, Varsha. 2007. "Gender and Caste in India: Some Implications for the Feminist Movement." In *Searching for New Paradigms? Understanding Class and Caste within a World of Global Inequalities*. Vol. 1. Atlanta.

- Dalwai, Sameena. "The Field of Law, Gender and Sexuality: Inclusions and Exclusions." *Feminist Legal Studies* 17, no. 3 (2009): 319-323.
- Dahiwale, S. M. 'Khairlanji: Insensitivity of Mahar Officers' in *Economic and Political Weekly*, vol. 44, no. 31 (AUGUST 1-7, 2009), pp. 29-33
- Dumont, Louis. 1980. *Homo Hierarchicus: The Caste System and Its Implications*. University of Chicago Press.
- Foucault, Michel. 2000. *Power. Essential Works of Foucault, 1954-1984*. Edited by James D Faubion and Robert Hurley. Vol. 3.
- Frye, Marilyn. 1998 'Oppression' in *Race, Class, and Gender in United States: An Integrated Study*, edited by Paula S. Rothenberg, 146-149, New York: Saint Martin Press
- Gunn, Simon. 'From Hegemony to Governmentality: Changing Conceptions of Power in Social History,' in *Journal of Social History* vol.39, no.3, 2006: 705-720,952.
- Irudiyam, Aloysius, and Jayshree P. Mangubhai. 2010. "20 Years: Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act - Report Card." New Delhi. <http://www.ncdhr.org.in/latestinterventions/Report Card Eng.pdf>.
- Kapadia, Karin. 1995. *Siva and Her Sisters: Gender, Caste and Class in Rural South India*. Oxford, UK: Westview Press.
- Kapur, Ratna. *Erotic justice: Law and the new politics of postcolonialism*. Routledge, 2013.
- Kapur, Ratna. "The citizen and the migrant: Postcolonial anxieties, law, and the politics of exclusion/inclusion." *Theoretical Inquiries in Law* 8, no. 2 (2007): 537-570.
- Lindt, Benjamin. 2013. "Towards a Comprehensive Model of Caste." *Contributions to Indian Sociology* 47 (1): 85–112. doi:10.1177/006996671204700104.
- Mangubhai, Dr. Jayshree, and Adv. Rahul Singh. 2014. "Justice Under Trial: Caste Discrimination in Access to Justice before Special Courts." New Delhi.
- Menon, Nivedita. 2012. *Seeing Like A Feminist*. New Delhi: Zubaan.
- Michael, S. M. 2007. *Dalits in Modern India: Visions and Values*. Edited by S. M. Michael. 2nd ed. New Delhi: Sage Publications India Pvt. Ltd.
- Narula, Smita, 'Caste Discrimination,' in *Caste, Race and Discrimination: Discourse in International Context*, (eds.) Sukhadeo Thorat and Umakant, Rawat Publications, New Delhi; 2004, pp. 283-291

- Naval, T. R., *Legally Combating Atrocities on Scheduled Castes and Scheduled Tribes*, Concept Publishing Company: New Delhi, 2004
- NCSPA Report 2009-2011. n.d. "People's Report on Implementation of SCs and STs (POA) Act 1989 and Rules 1995 (2009-2011)." New Delhi.
- Rao, Anupama, *Gender & Caste*, ed. Anupama Rao, New Delhi: Kali For Women, 2003.
- Rao, Anupama. *The Caste Question: Dalits and the Politics of Modern India*, Berkeley: University of California Press; Ranikhet: Permanent Black, c2009., 2009.
- Rao, Anupama. 2011. "Violence and Humanity: Or, Vulnerability as Political Subjectivity." *Social Research* 78 (2, SI): 607–32.
- Rode, Santaji, Vanita Tumsare, and PraiJata Bhardwaj. 2013. "The Experiences of Victims with the Judiciary, Police and Community in the Fight Against Caste Based Atrocities in Parbhani District of Maharashtra." *Indian Journal of Dalit and Tribal Social Work* 1 (2): 45–75. <http://www.daltrijournals.org/IJDTSW/is2a4.htm>.
- S.J., Aloysius Irudyam, and Jayshree P. Mangubhai. 2010. "20 Years: Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act - Report Card." New Delhi. <http://www.ncdhr.org.in/latestinterventions/Report Card Eng.pdf>.
- Saikia, Sailajananda. 'Caste Based Discrimination in the enjoyment of Fundamental Rights: A Critical Review of the present status of Dalit's in India' in *International Journal of Research (IJR)*, vol-1, no. 2, March, 2014
- Saksena, H. S., *Atrocities on Scheduled Castes: The law and The Realities*, New Delhi: Serials Publications, 2010
- Sharma, Smriti. 'Hate Crimes in India: An Economic Analysis of Violence and Atrocities Against Scheduled Castes and Scheduled Tribes' in Rochester: Social Science Research Network, 2013, available at <http://ssrn.com/abstract=2055549>, doi:<http://dx.doi.org/10.2139/ssrn.2055549> accessed on 7 May 2014
- Sheth, D.L. 'Caste in the Mirror of Race,' in *Caste, Race and Discrimination: Discourse in International Context*, (eds.) Sukhadeo Thorat and Umakant, Rawat Publications, New Delhi; 2004, pp.85-96.
- Teltumbde, Anand. 2007. "Khairlanji and Its Aftermath: Exploding Some Myths." *Economic and Political Weekly* 42 (12): 1019–25. <http://www.epw.in/insight/khairlanji-and-its-aftermath-exploding-some-myths.html>.
- . 2008. *Khairlanji: A Strange and Bitter Crop*. New Delhi: Navayana. <https://books.google.co.in/books?id=f4IJPgAACAAJ>.

Teltumbde, Anand, 2009. 'Khairlanji verdict: Whither the Atrocity Act?,' vol. 8  
*Combat Law* p.38

Weiss, Jillian Todd. 2001. "The Gender Caste System." *Law & Sexuality* 10: 123–86.  
<http://heinonline.org>.

## **Appendix**

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

No. 33 of 1989

[11th September, 1989]

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fortieth Year of the Republic of India as follows:-

#### **CHAPTER I PRELIMINARY**

##### **1. Short title, extent and commencement-**

- (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

##### **2. Definitions-**

- (1) In this Act, unless the context otherwise requires,-
  - (a) "atrocitv" means an offence punishable under Section 3;
  - (b) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);
  - (c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of Article 366 of the Constitution;
  - (d) "Special Court" means a Court of Session specified as a Special Court in section 14;
  - (e) "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15;



(f) words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is, not in force, be construed as a reference to the corresponding law, if any, in force in that area.

## **CHAPTER II OFFENCES OF ATROCITIES**

**3. Punishments for offences of atrocities-** (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labor other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, 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.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

4. **Punishment for neglect of duties-** Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

5. **Enhanced punishment for subsequent conviction-** Whoever, having already been convicted of an offence under this Chapter is convicted for 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.

6. **Application of certain provisions of the Indian Penal Code-** Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter V-A, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

7. **Forfeiture of property of certain persons-**

(1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person which has been used for the commission of that offence, shall stand forfeited to Government.

(2) Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realization of any fine imposed under this Chapter.

**8. Presumption as to offences-** In a prosecution for an offence under this Chapter, if it is proved that –

(a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had, abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

**9. Conferment of powers-**

(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,-

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case maybe, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

### **CHAPTER III EXTERNMENT**

#### **10. Removal of person likely to commit offence-**

(1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'Tribal areas' as referred to in Article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

#### **11. Procedure on failure of person to remove himself from area and enter thereon after removal-**

(1) If a person to whom a direction has been issued under Section 10 to remove himself from any area-

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed and at the expiry of the temporary period for which he was permitted to return or on the revocation of such

permission before the expiry of such temporary period shall remove himself outside such area and shall not return thereto within the unexpired portion specified under Section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

**12. Taking measurements and photographs, etc. of persons against whom order under section 10 is made-**

(1) Every person against whom an order has been made under Section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.

(2) If any person referred to in sub-section (1) when required to allow his measurements or photographs to be taken, resists or refuses to allow the taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.

(3) Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

(4) Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

**13. Penalty for non-compliance of order under section 10-** Any person contravening an order of the Special Court made under Section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

**CHAPTER IV  
SPECIAL COURTS**

14. **Special Court-**For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

15. **Special Public Prosecutor-** 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 in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

**CHAPTER V**

## MISCELLANEOUS

**16. Power of State Government to impose collective fine-**The provisions 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.

**17. Preventive action to be taken by the law and order machinery-**

(1) A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such enquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behavior and maintenance of public order and tranquillity and may take preventive action.

(2) The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-Section (1).

(3) The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-Section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

**18. 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.

**19. Section 360 of the Code and the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act-** The provisions of Section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

**20. Act to override other laws-** Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

**21. Duty of Government to ensure effective implementation of the Act-**

(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,-

(i) the provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice-

(ii) the provision for travelling and maintenance expenses to witnesses including the victims of atrocities, during investigation and trial of offences under this Act;

(iii) the provision for the economic and social rehabilitation of the victims of the atrocities;

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;

(vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;

(vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-Section (1).

(4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this Section.

**22. Protection of action taken in good faith-** No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

**23. Power to make rules-**



(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.