

FACT SHEET

20 YEARS OF SCs & STs (POA) ACTS, 1989 AND RULES, 1995 IN MADHYA PRADESH

Indian Penal Code 1869 as well as Protection of Civil Rights Act 1955 (PCR Act) have proved inadequate to prevent and eliminate gross indignities and atrocities targeted towards SCs and STs on account of their social identity and status. Hence, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (SCs & STs (PoA) Act) and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act Rules 1995 were enacted specifically to protect SCs and STs from atrocities committed against them by persons belonging to non-SC/ST communities.

- Scheduled Castes (SCs) and Scheduled Tribes (STs) are the worst affected in terms of atrocities covered under the SCs & STs (PoA) Act because, inter alia, they are minorities; because they are excluded from full enjoyment of national and state level resources and power; and because the SCs in particular are considered untouchables and hence denied social mobility.
- There is a clear trend of increasing atrocities against SCs and STs, with new forms of caste, class and gender discrimination and violence emerging over the years. This is compounded by the difficulties in accessing justice once atrocities take place, and inadequate implementation of protection mechanisms to stem the tide of atrocities.

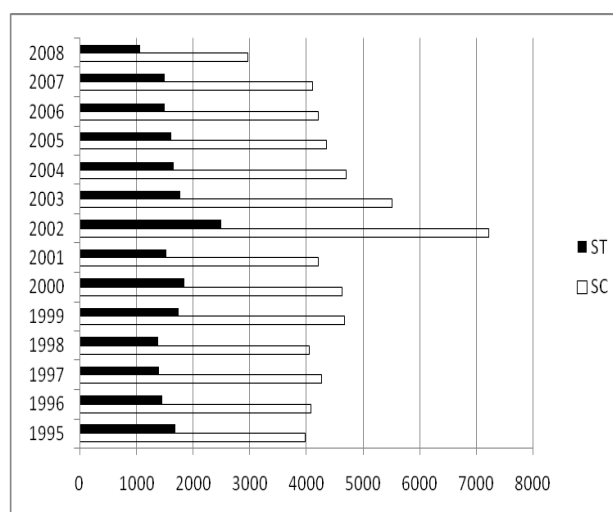
These are weighty reasons to assess the status of implementation of the Act by national and state governments, to scrutinize the lacunae in the scope of the Act, and to suggest ways to make it a more effective mechanism for guaranteeing security of life to all SCs/STs and above-excluded minority communities.

Two decades of the Act and over 60 years of India's Independence provide an opportune time span to embark on this enterprise of demanding state accountability to the most excluded and neglected communities in the country as well as in the State of Madhya Pradesh.

1. Extent of Atrocities in Madhya Pradesh

As per the National Crime Record Bureau, Crime in India from 1995 – 2008:

- Over the period from 1995 till 2008, a total of 85,669 cases of atrocities against SCs and STs were registered in MP with the police. However the actual number of atrocities is much larger. (62,948 cases of atrocities against SCs & 22,721 cases of atrocities against STs)
- The trend between the period 1995 to 2008 shows that Atrocities against SCs & STs are on an average 23.19% of all India total – includes 15.74% against SCs and 30.64%.
- The 4036 cases of atrocities (2965 against SCs and 1071 against STs) in 2008 shows a 14 year lowest registration of atrocities against SCs & STs, which is steadily decreasing after 2002 onwards. (see Figure 1)



(Source: Crime in India 1995-2008 – National Crime Records Bureau)



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2. Nature of Atrocities in Madhya Pradesh

As per the National Crime Record Bureau, Crime in India from 1995 – 2008:

- **“Hurt”** (simple hurt or grievous hurt) a common form of atrocity (55.67%) do not find an appropriate section under the SCs & STs (PoA) Act, 1989.
- **“Arson”** (Ransacking of house hold items and destruction of movable and immovable property) another form of atrocity (2.85%) do not find an appropriate section under the SCs & STs (PoA) Act, 1989.
- **“Abduct or Kidnap”** another form of atrocity (2.83%) do not find an appropriate section under the SCs & STs (PoA) Act, 1989.

Forms	Incidence
Murder	1528
Rape	7860
Abduct / Kidnap	705
Dacoit	23
Robbery	201
Arson	709
Hurt	13848
Total	24874

(Source: Crime in India 1995-2008 – National Crime Records Bureau)

- A study of 500 Dalit women’s cases of violence across different States of India between 1999 and 2004 revealed that the majority of the women faced several forms of violence from either or both perpetrators in the general community and the family. The most frequent forms of violence were verbal abuse (62.4%), physical assault (54.8%), sexual harassment and assault (46.8%), domestic violence (43.0%) and rape (23.2%).¹

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

- **Refusal to pay wages or contract wages:** We have seen dominant caste landlords not paying the wages after completion of the labor, paying part wages and denying the actual wages, physical assault to the victims on demanding the wages, not paying the wages on time and delaying it for long.
- **Social Boycotts or economic boycotts or blackmails:** Abundant instances of cases are seen where dominant caste people imposes social restriction on communities to access shops, public restaurant, hotel or place of public entertainment, ordering shopkeepers not to sell any article to Dalits, preventing the right to use or access any river, stream, spring, well, tank, water-tap or other watering place, or any bathing ghat, or any other place of public resort.
- **Voluntarily causing simple hurt and grievous hurt:** It is a common notion and practice with the dominant caste community to abuse in caste names, humiliate and practice untouchability but also they attack , and inflict physical injuries to the scheduled castes and Scheduled Tribes, but the perpetrators of the crime easily evade themselves under the IPC, and are not booked under the SC/ST Act at all, as there are no specific sections on simple hurt or grievous hurt.

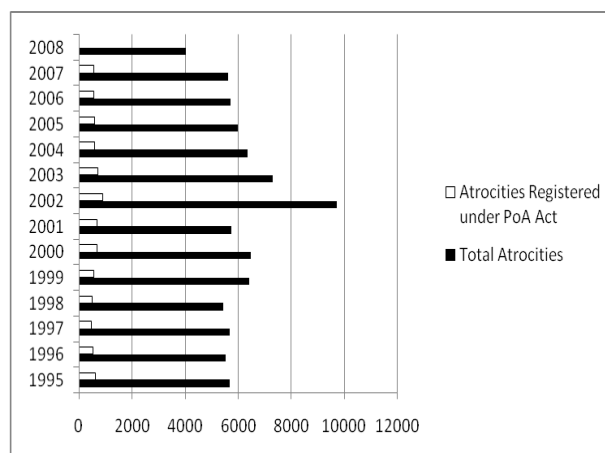
¹ “Dalit Women Speak Out” Violence against Dalit women in India; by Irudayam, A., Mangubhai, J.P. & Lee, J., 2006, Chennai; NCDHR, NFDW & IDEAS

- **Ransacking of house hold items and destruction of movable and immovable property:** It is a common practice with the dominant caste community to attack and aid the crime, as a mob, in numbers and ransack and destruct the properties of the SC, s and ST, s, but the perpetrators of the crime easily evade themselves under the IPC.
- **Abduction and Kidnapping:** One of the major crimes against Dalits is to abduct or kidnap one of the people from the family members of the SC/ST community. They are later subjected to other forms of atrocities in the course of abduction. Since the crime Abduction and Kidnapping is not defined in the SC/ST Act, it virtually impossible to book the accused under the Act
- **Lynching:** One of the newer forms of atrocities against Dalits is to lynch Dalit victims without legal process or authority, especially by hanging, murdering, for a perceived offense or as an act of bigotry.
- **Gang Rape:** Dalit women are also Gang raped as a form of retaliation from their community. Women of scheduled castes and scheduled tribes are raped as part of an effort by dominant caste upper-caste to suppress their retaliations.
- **Counter cases:** It is a common practice on the part of the dominant caste community to file false/counter cases against the victims of atrocities in order to pressurize them for a compromise. It is evident that there is an increase of false counter cases being filed against Dalit victims of atrocities who have started to file cases of atrocities, dominant castes utilizing this method in a concerted effort to eventually bring the Act of 1989 dysfunctional.

3. 91% of cases not registered under SCs & STs (PoA) Act

Non registration of cases in MP is a common phenomenon. In many of the cases It is common that under influence of the Dominant caste police officials deliberately ignore the complaints of the powerless Dalits and do not register the complaints at all and what is observed in MP as per National Crime Record Bureau, Crime in India, during 1995- 2008 is shocking-

- From 1995 to 2008 only one-tenth (9.13%) of the crimes against SCs & STs in Madhya Pradesh were registered under SC & ST (PoA) Act provisions (8.73% of Atrocities against SCs & 10.25% of Atrocities against STs).
- Shockingly, in 2008, in spite of so many atrocities being reported not a single atrocity has been registered under the SCs & STs (PoA) Act. This is a sudden jump from the 554 atrocities registered under this Act in 2007.
- Nationally, out of registered cases, 56.3% of cases not registered under appropriate section of the Act. Madhya Pradesh is nothing different or maybe more.



(Source: Crime in India 1995-2008 – National Crime Records Bureau)

In spite of law laid down by the Supreme Court, and various advisory² issued by Ministry of Social Justice and Empowerment, police do not register FIRs. Sometime even after the orders are passed by the courts for registration of the case, police do not take the necessary steps. Police adopt different strategies to avoid registering cases under the SCs & STs (PoA) Act such as, registering FIRs under IPC which attract lesser punishment for the same offence. In many cases where police do register a case under Act, but purposely cite improper sections. A potent method by police is to punish victims who insist on pursuing their cases by filing counter cases. For serious crimes such as murder, rape, destruction of property, dispossession of land, fouling drinking water sources, etc., police tend to cite only sec.3(1)(x) of the Act, which relates to insulting or intimidating a SC/ST person.

4. 5% of Investigation cases Pending Investigation

It is no doubt that Rule 7 was introduced by which the specified officer (not below the rank of Dy.S.P. has to conduct investigation. This check was introduced by putting a specific bar in conduct of investigation by other investigating officers other than the specified in the Rule with a fond hope that such offences to be investigated with better care and caution, more concerned with social compulsions, order and disorder and hence, if investigation is entrusted to a higher officer, the same may be proceeded with on sound lines within the shortest possible time. He has to complete the investigation on top priority basis within thirty days and submit the report to the SP who has to immediately forward the report to the DGP of the State Government.

But National Crime Records Bureau, Crime in India, 2001 – 2008, exposes

- Some of the cases for **investigation remain pending – 5.19%** of cases for Investigation from 2001 – 2008 (4.94% of atrocities on SCs & 5.88% of atrocities on STs)
- **Charge-sheets are submitted in ninety one percent** of the atrocities for investigation – **91.12%** of atrocities (91.56% of atrocities on SCs & 89.91% of atrocities on STs)
- **Nationally 1456 cases** of atrocities are **closed during investigation** between 2002 - 2008

As per report of the State Level Vigilance & Monitoring Committee meeting 8th March 2010, there is **no Deputy Superintendent of Police in 15** of the 50 districts in Madhya Pradesh.

<u>Not yet Approved</u> 5 districts	Ashoknagar, Burhanpur, Alirajpur, Singrauli, Anuppur
<u>Position Vacant</u> 10 districts	Datia, Rajgarh, Narsinhpur, Chhattarpur, Tikamgarh, Seedhi, Umriya, Shahdol, Bhind and Satana

Moreover, the Dy.S.P have not yet joined in 3 districts of Guna, Balaghat, Mandla

As per Police Headquarter (AJK Cell), in at least 242 atrocity cases, investigation took more than 30 days during 2009.

9 Months	6 Months	3 Months	30 Days	Total
22	24	90	106	242

² The time factor is vital in the lodging of an FIR and inordinate delay may prove detrimental both for effective investigation and prosecution [D.O No. 11012/2/2002-PCR (Desk) 19/09/02], Suitable Departmental action may be initiated against a police officer in case he or she does not register the FIR. Further, in case the police officer does not belong to SC ST, appropriate action may be initiated under section four of the Act [No. 11011/8/2006-PCR (Desk) – 14/03/06], You are kindly requested [to ensure that] complaints are duly registered by police authorities [No. 11020/1/98-PCR – 26/03/02]

In spite of advisories³ by Ministry of Social Justice and Empowerment, police often delay investigation of atrocity cases, record statements from solely dominant castes, and see that incompetent or unauthorized officials investigate the case, thus laying the foundation for acquittal on technical grounds and thereby flout the 30-days investigation rule to acquit the accused. Even after the advisories⁴ and orders issued by the Ministry of Social Justice and Empowerment investigations are delayed and charge sheets are invariably submitted late. Charge sheets are not filed within the stipulated time of 30 days and also the investigation is not done by the officers of the rank of Dy.S.P. in spite of the advisory issued by the Ministry of Home Affairs⁵.

5. 74% cases Pending Trial in Court

The Act makes arrangements for establishment of Special Courts under section 14 to try offences under the Act to ensure speedy trial which comes under Right to life (Article 21 of the Constitution). It is clear that the jurisdiction of the ordinary criminal courts constituted under the Code of Criminal Procedure has been taken away and Special Courts have been constituted. Section 14 read with Section 2(d) makes it clear that the special Court is to be manned by a Sessions Judge. Section 2(d) of the act defines the special Courts as a Court of Session specified as a Special Court in Section 14. Every sessions Court is not a special Court, but every Special Court shall be Court of Sessions by virtue of notification issued by the State Government. Further it is clearly provided in Section 14 of the Act that the special Courts are constituted for the purpose of speedy trial of the cases. Further the Special Courts has been given the powers which Sessions Court does not enjoy.

But National Crime Records Bureau, Crime in India, 2001 – 2008, exposes

- Most of the Trial in the Courts of Madhya Pradesh, remains pending – 74.25% of cases for Trial (74.08% of cases of atrocities on SCs & 74.74% of cases of atrocities on STs).
 - **Total trial pendency rate** in Madhya Pradesh in 2008, as per National Crime Records Bureau, is **68.31%** but trial pendency rate in **49 Special Courts** in 2009, as per Report of State Level Vigilance & Monitoring Committee Meeting 8th March 2010 is **73.42%**.
- ✓ It has been found that **Special Courts** have been established in **49 out of 50 Districts** (except Singrauli, where this process is underway) in Madhya Pradesh.

There are some gaps in Procedure and Conduct of Trial proceedings which vitiates the speedy trial:

- b) Existing Designated Courts over burdened - The existing designated courts are already overburdened with the cases other than SCs & STs (PoA) Act Cases; hence the cases under the act are not given priority.
- c) No day to day trial - Trial of the cases are not conducted on a day to day basis or speedy manner or in other words the cases registered under the Act.

³ You are kindly requested [to ensure that] investigation of the registered cases are completed on time [No. 11020/1/98-PCR – 26/03/02]

⁴ Soon after the investigation of a case has been completed, the concerned police officer should meticulously draw up the charge sheet and file the same in the court so that process of judicial action starts quickly. [D.O No. 11012/2/2002-PCR (Desk) 19/09/02], It is important to ensure that the monitoring of cases is done towards their expeditious investigation as well as filing the charge sheet in respect of cases in the courts [D.O.No.13016/01/2002-PCR(Desk) – 07/01/03], Ensuring that... an effective charge sheet is filed in the court at the earliest [No. 11012/3/2004.PCR(Desk) – 28/12/04]

⁵ Ensuring investigation of the offences of atrocities by an officer not below the rank of DSP, completing the investigation on top priority and within thirty days, in accordance with the Rules [No.24024/9/2004-SC/ST Cell – 03/02/05]

6. Implementation of the Mandatory Provisions are not taken seriously

The Report of State Level Vigilance and Monitoring Committee Meeting of 8th March 2010 observe that:

- **Special Court** – designated in 49 districts (except Singrauli).
- **SC & ST Protection Cell** – established in 48 districts out of 50 districts (except Alirajpur & Singrauli).
- **Atrocity Prone Areas** – 45 areas under 42 police stations in 17 districts.
- **Special Public Prosecutor** – Panel announced in 43 districts, 7 districts yet to announce.
- **Nodal Officer** – Secretary of Scheduled Caste and Scheduled Tribe Welfare Department.
- **Special Officer** – Appointed not in all the districts in spite of instruction by Commissioner of Scheduled Caste Development.
- **Contingency Plan** – Madhya Pradesh SC & ST (Contingency Plan) Rule, 1995 is effective from 1st March 1996.

7. State & District Level Vigilance and Monitoring Committees are defunct

The thrust of the State & District Monitoring vigilance committee lies in the comprehensive review of the implementation of the various provisions of the act , to curb the atrocities and strengthen the performance of the various authorities under the Act , Relief, and Rehabilitation facilities provided to the victims and other matters connected with, prosecution of cases under the Act, role of difference officers / Agencies responsible for implementing the provisions of the Act and various reports received by the Administration.

- State Level Vigilance and Monitoring Committee meeting held on 8th March 2010 after 7th July 2008 – Clear **20 months gap** instead of 6 months as per SCs & STs (PoA) Rules 1995.⁶
- Analysis of the functioning of District Vigilance and Monitoring Committees in 2008 and 2009 showed that in almost all districts the Committees failed to regularly meet⁷ -

No. of Times	In 2008 (out of 48 districts)	In 2009 (up to Sept., out of 50 districts)
Committee never met	4 districts	7 districts
Met once	7 districts	16 districts
Met twice	12 districts	22 districts
Met three times	20 districts	5 districts
Met four times	5 districts	

Though the State level Vigilance and Monitoring Committees members shall meet in January and July every year and District level Vigilance and Monitoring Committees once in three months , but in reality in many of the districts monitoring and vigilance committees had either not been constituted and dysfunctional, or committee meetings are not being held on a regular basis. Even when such Committees have been [constituted], hardly any above mentioned substantive issues are discussed in its deliberations to get meaningful feedback and obviously no serious follow up action emerges from the deliberations of such committees.

⁶ Minutes of the State Level Vigilance and Monitoring Committee meeting held on 8th March 2010.

⁷ Department of SC/ST Welfare, 'Steps taken by Government of M.P., Department of SC/ST Welfare', Bhopal, dated 27.10.2009, prepared for visit of Central Minister of Social Justice & Empowerment, 2009

8. Irregular Monitoring by Enforcement Authorities: -

- District Magistrates are not reviewing regularly the position of cases registered under the Act and **submit a monthly report on or before 20th** day of each subsequent month to the Director of Prosecution and the State Government and also not reviewing the **performance of Special PPs** and submit a report to the State Government as stated in Rules 4(2) & 4(4).
- Quarterly review by the Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution/ the officer in-charge of prosecution and the Director-General of Police on the position of all investigations done by the investigating officer are not done as stated in Rule 7(3).
- Director-General of Police/Inspector General of Police as the head of the SC/ST Protection Cell are not submitting **monthly report on or before 20th** day of each subsequent month to the State Government/ nodal officer about the action taken/proposed to be taken as stated in Rule 8(xi).
- Designated **Nodal Officers** are not ensuring proper coordinating the functioning of the District Magistrates and Superintendents of Police or other authorized officers as stated in Rule 9.

Recommendations

1. Appoint a high-level Committee to **review the implementation of the Act**, assess the realization of its objectives, and take appropriate and speedy action for strengthening the Act for effective implementation in future.
2. Make it mandatory, as per Home Ministry guidelines, that all complaints be immediately registered as FIRs and that investigation is done by investigating officer of a rank no less than the Deputy Superintendent of Police, and therefore appoints more Deputy Superintendent of Police, depending on the intensity, frequency and spread of atrocities in the district.
3. Take immediate legal and departmental disciplinary action against police officials who neglect to discharge their duties under section 4 of the Act and for all cases filed under the SC/ST (PoA) Act.
4. Appoint one or more Assistant Public Prosecutors or senior advocates, including SC/ST advocates, who have been in practice for not less than seven years and on the basis of their record of and reputation for protecting the rights of SCs/STs, to assist the Special Public Prosecutor in conducting trials of cases under this Act and fill all vacancies in the posts of Special Public Prosecutor or Assistant Public Prosecutors arising from unexpected and unforeseeable contingencies within 30 days after the opening of such vacancies.
5. Appoint Judges to the Special Courts of Sessions taking into consideration their record of and reputation for protecting the rights of SCs/STs against 'untouchability' practices, discrimination and violence.
6. The District Magistrate should review at least twice a year the performance of Special Public Prosecutors and Assistant Public Prosecutors, and submit a report to the State/UT Government and to the State level Vigilance and Monitoring Committee.

7. Ensure the formation of State and District level Vigilance and Monitoring Committees, and regular meetings of these committees, as per Rules 16 & 17 SC/ST (PoA) Rules and involve human rights organisations and individuals working for and with SCs/STs in the deliberations of these State and District level Vigilance and Monitoring Committees as members or invitees.
8. Ensure the implementation of precautionary and preventive measures in atrocity prone areas as prescribed under rule 3 SC/ST (PoA) Rules.
9. Appoint in each district a Nodal Officer with the rank of District Collector, preferably a SC/ST, for coordinating the functions of the District Magistrate, Superintendent of Police and Deputy Superintendent of Police for implementing the provision of the Act.
10. Provide relief, compensation and rehabilitation to victims of atrocities as per norms contained in rule 15 SCs & STs (PoA) Rules and prepare a model Contingency Plan consisting of a package of measures for this purpose.
11. Recommend the Government of India to review the implementation of the SCs & STs (PoA) Act and propose the following amendments:
 - Set up **exclusive special courts, exclusive public prosecutors and exclusive investigators** for the speedy trial of cases under the Act.
 - **Include additional crimes** which SCs and STs are subjected to, but do not figure in the present list of offences in the Act, such as social and economic boycotts and false counter cases.
 - **Delete expressions such as “intent”, “on the ground”, “wilful”,** etc. from various sections of the Act which give leeway to the police and judiciary to dilute cases of atrocities through subjective or arbitrary interpretations of the Act.
 - Add a **new chapter in the Act to deal with the rights of victims and witnesses**, thereby explicitly granting various citizen rights to them with regard to their atrocity cases.
 - Amend the Act to explicitly bring in all the types and nature of **negligence by public servants** at various stages in their handling of atrocity cases.
 - **Enhance punishment** for offences of atrocities under the Act to be on par with the Indian Penal Code as well as based on the nature and gravity of the offences, so as to ensure its deterrent effect.
 - **Amend the definitions of ‘Scheduled Castes’ and ‘Scheduled Tribes’** in the Act so as to add: all Christians or Muslims belonging to any of the castes in the Schedule; all ethnic minority communities subjected to atrocities on the basis of their ethnicity; and SC/ST migrant laborers on the basis of their caste/tribal status in their state of origin.
 - Give **priority attention to accepting and implementing the recommendations** of National and State Commissions as well as civil society organizations working to defend and promote the rights of SCs and STs.