

**EVALUATION OF THE PROTECTION OF
CIVIL RIGHTS ACT, 1955
AND ITS IMPACT ON THE ERADICATION OF
UNTOUCHABILITY**

A STUDY BY THE CENTRE FOR THE STUDY OF CASTEISM,
COMMUNALISM AND THE LAW
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY , BANGALORE

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PREFACE

National integration is the process of unifying people from various strata of the society through the legal and non legal mechanisms and thus enabling them to participate in and contribute towards the national building process. Need for social mobility of the downtrodden classes (primarily Scheduled Castes/ Scheduled Tribes) and their upliftment has been a major concern for the Government of India in achievement of this goal. Socio-economic backwardness of the Scheduled Castes (SCs) and Scheduled Tribes (STs) makes them vulnerable to unequal treatment in social life and challenge to the same is meted out with atrocities against them. Both legal and non legal measures are resorted to by the concerned people to bring an end to this bleak situation.

The aim of this study was to 'Evaluate the Impact of the Protection of Civil Rights Act (PCRA), 1955'. The PCRA had the primary objective of enforcing the sanction of Article 17 of the Constitution of India by achieving the eradication of untouchability. The need for this evaluation arises out of a pervasive sense of the failure of the Act, given the undisputed fact that untouchability continues to exist. Also the enactment of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (PoAA), 1989 with the objective to punish atrocities committed against SCs and STs is relevant to the debate on the efficacy of the PCRA. Reports of the National Commissions for Scheduled Castes (SCs) and Scheduled Tribes (STs) (official statistics) during the 1990s show a remarkable drop in the registration of offences under the PCRA in the 1990's reports of) While this is sometimes linked to the enactment of PoAA, the different subject matters of the two legislations do not lend logical support to this view. The Study was undertaken to evaluate the impact of the PCRA and suggest changes, if any, to the legislative and administrative framework so that the constitutional promise of eradication of untouchability is fully realised.

The primary problem that a researcher encounters in such an inquiry is that the vastness and diversity of India renders empirical regional studies, even though relevant for formulating local conclusions, insufficient for national policy making. Given the limitations, the study required either a comprehensive research

throughout the length and breadth of the country, or it can rely upon diverse samples from different parts of the country and hope that it approximates to national trends.

Another vital problem in this impact analysis is that the legislation is only one of the interventions towards eradication of untouchability, in conjunction with others like reservation policy, land reforms etc. An exclusive analysis of how much effect the PCRA alone has had, therefore becomes difficult and inadequate. While it is methodologically difficult to overcome this problem, the researcher needs to be conscious of this limitation.

The third problem encountered in this analysis is that of the meaning of 'impact' itself. Different perspectives will have different answers to what impact of the legislation entails, and consequently, how it needs to be measured.

With these issues in mind a comprehensive research design was evolved and executed. Extensive research and analysis has been undertaken. We sincerely hope that the study has made significant beginnings in answering the research questions that were the mandate of the study. The end product of the study is the result of contribution of several people and organizations. We express our profound gratitude to each one of them. We are especially thankful to the Ministry of Social Justice and Empowerment, Government of India, for providing financial assistance and support. (*see acknowledgements*)

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FOREWORD

We, in India are good in articulation and conceptualization, but our track record in implementation has been very poor. Our Constitution, as a social document, places a great deal of emphasis upon the removal of untouchability and various other social evils. A number of steps have been initiated from time to time to combat these evils. We have registered some success but it is far too inadequate especially in the context of fast changing social scenario.

A serious attempt has been made in the present study to 'Evaluate the Protection of Civil Rights Act, 1955 and its Impact for the Eradication of Untouchability'. It is our earnest hope that it would contribute to the national understanding of the problem and thereby to the solution. My colleague Dr. S. Japhet, who heading the Centre for the Study of Casteism, Communalism and Law (CSCCL), carried out this study by enlisting the support of a quite a few people both within and outside the NLSIU.

The Centre for the Study of Casteism, Communalism and Law (CSCCL) which was established at the National Law School of India University (NLSIU) to focus upon the socio-economic problems of the weaker sections, had also successfully completed the study of 'Working of the Designated and Exclusive Special Courts under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, commissioned by the Ministry of Social Justice and Empowerment, Government of India.

We are grateful to the Ministry of Social Justice and Empowerment, Government of India for providing the financial assistance and support and look forward to continue this association for similar kind of endeavours in future as well.

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I. INTRODUCTION

The practice of untouchability in Indian society is an attribute of the hierarchical stratification of society into castes. On the one hand, the Vedic use the term “varna” (colour) to denote caste seems to indicate that the caste system began as a result of racial differences between people. On the other, the characteristic feature of the caste system is also its categorisation of the pure and the impure based on religious beliefs and division of labour. While many authors argue that the concept of an untouchable caste did not exist in the initial stages of the caste system,¹ at some point in history, the concept of untouchability did become “a historical cohort of the caste system, but not its essence.”²

Numerous policies and laws have been made over the years to tackle the issue of untouchability. This Study attempts at studying one legislative attempt in this regard, viz., the Protection of Civil Rights Act, 1955 (PCRA). The basic difficulties of studying and improving the use of law as a tool of directed social change results from the fact that law by itself is the only component of a large set of policy instruments and usually cannot and is not used by itself.³ This caveat should be kept in mind while dealing with the problem of untouchability. The recommendations and suggestions made in this Study are solely in light of the problems faced in the provisions and implementation of the PCRA. These recommendations will have little effect if implemented in isolation, and without the backing of other policy measures.

¹ Srinivas, MN, “Collected Essays”, p. 161 (Oxford University Press, New Delhi; Dumont, Louis, “Homo Hierarchicus: The Caste System and its Implications”, p. 67; Beteille, Andre, “Equality and Universality: Essays in Social and Political Theory”, p. 64. However, it is important to note that some of the groups which later became ‘untouchables’, such as Chandalas, find mention in the Laws of Manu (the ancient Brahmin law giver) as well as in Buddhist texts. Gupta, Dipankar, “Interrogating Caste: Understanding hierarchy and difference in Indian society”, p. 143

² Beteille, *id.*

³ Friedmann, W., 1970, *Law in Changing Society*; Lloyd, Bennis, 1970, *The Idea of Law*, cited from, A. K. Kapoor, *Law and Scheduled Tribes*, p. 178.

Historically the caste system formed the basis for social and economic governance in India. This system is based on the division of people into social groups with each group being assigned rights and duties that are determined by birth and are hereditary. These rights and duties differ across various social groups and are unequal and hierarchical. The system is maintained through a rigid system of social and economic penalties.⁴ The distribution of rights and obligations across the various groups is based on the notion of purity and pollution. Linked to the concept is the idea of the superiority of the pure and the inferiority of the unclean. The hierarchy in the order of the caste system stems from this opposition between the pure and the impure whereby the pure and the impure must always be kept separate. Similarly, the division of labour between the pure and the impure occupations must be kept separate. The notions of purity and impurity are based on the functions carried out by the various categories and the food eaten by them. Scholars link the purity-impurity concept to the beliefs in ahimsa and to the worship and non-killing of the cow (*aghnya*).⁵ It is interesting to note that the cow is a symbol of purity as well as impurity. The cow was revered while it was alive where even its body wastes were treated as purificatory agents (in contrast to human wastes), whereas it became impure after its death. The untouchables were supposed to remove the carcass of the cow. Consequently, they made artifacts out of cow hide and ate beef. Such functions and activities rendered them impure and hence untouchable. There are other forms of impurity as well that result from body wastes and death. The '*Chandala*' is said to have been on duty at cremation grounds and who lived on men's refuse.

The scope of the practice of untouchability has expanded from the twin notions of purity and pollution to exclusion and restriction for the purposes of subjugation and oppression. For example, practices like restrictions on wearing bright clothes, etc, cannot be logically traced to notions of purity or pollution of certain castes. Thus, the inferior status of the unclean castes is used to impose

⁴ National Campaign for Dalit Human Rights Report, p. 6

⁵ supra n. 3, p. 183

restrictions on their behaviour and to exclude them from various activities, particularly those which involve them coming into physical or spatial contact with the upper castes. Over the centuries, therefore, this categorization has worked as a system for legitimizing the oppression of certain castes either for economic, social or political gains, or merely as an accepted pattern of behaviour. The following diagram depicts how the discrimination and oppression based on caste hierarchy feed into a self-perpetuating system for entrenching social practices and structures of deprivation:

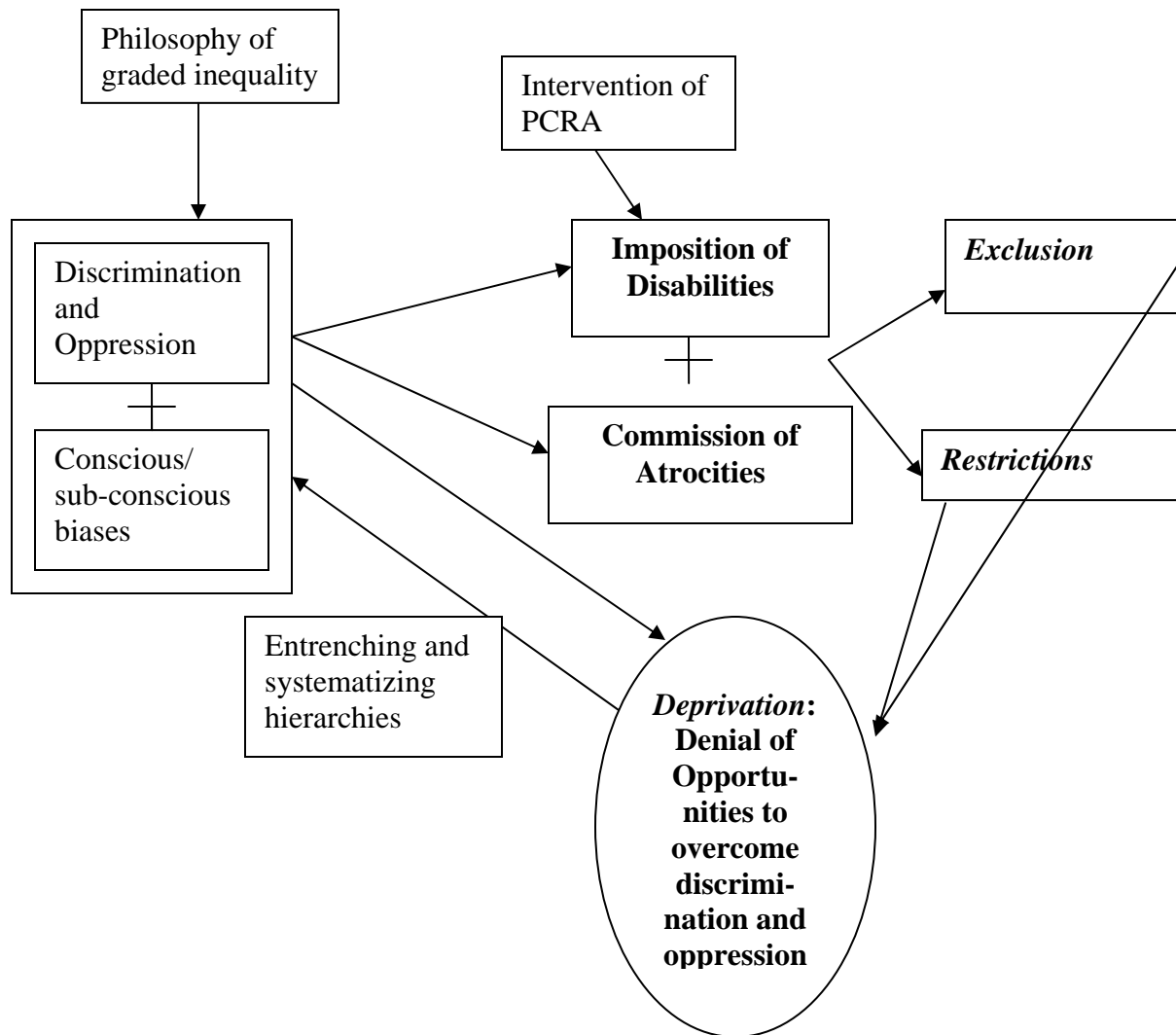


Figure: Reproduction of Hierarchies and entrenchment of discrimination against oppressed groups.

It is trite to say that law is an important tool for social change. Through its systems of incentives and deterrents, law plays a pivotal role in shaping public opinion, and this is the first step towards moving away from deeply entrenched values and mores which have lost their justification in present-day society. Keeping this in mind, this Study will first examine the legal responses to untouchability from pre-British times up to independence, and then examine the legal framework for combating untouchability following the enactment of the

Constitution. It will focus on the working and implementation of the Protection of Civil Rights Act (PCRA), 1955, and will discuss issues pertaining to the substantive content of the Act as well as the institutional setup for operationalizing the Act. This report has made use of data collected through a field study (discussed in detail in the chapter on research methodology) as well as other secondary sources on this issue.

II. RESEARCH METHODOLOGY

The social construction of caste and untouchability in India is a complex phenomenon and to study it in interface with law poses a great challenge for any researcher. The methodology adopted for the present study has been a combination of a range of tools and techniques that can be applied to a socio-legal research.

The objective of the study

This study aimed at evaluating the impact of the Protection of Civil Rights Act, 1955 and its effectiveness for the eradication of the untouchability. The study sought to review the working of the PCR Act and suggest changes, if any, for its contemporary relevance.

Research questions

The study sought to answer some specific questions as regards the implementation of Protection of Civil Rights Act (1955):

- What has been the impact of the Protection of Civil rights Act, 1955?
- What is the status of untouchability?
- What is the extent of the use of PCRA?
- Has the use of PCRA declined?
- What have been the determinants of variations in case filing?
- Has the Prevention of Atrocities Act of 1989 made the PCRA redundant?
- Is a civil remedy desirable?
- Should sentences for PCRA be enhanced?
- Should new provisions be added to the PCRA to make it more effective?

Research Design

Considering the intricacy of the subject of the study, a rigorous process went into the development of the entire research design that was started with developing the conceptual lucidity over the contentious issue of untouchability and its interface with law. The process of developing the research design entailed an exhaustive study of the available secondary resources on the subject as well as the selection of the tools for data collection and the potential respondent. The empirical research that went into the study was carried out through a combination of individual interviews and observation administered by the researcher in the selected geographical areas.

Sources of Data

Both primary as well secondary sources have been analysed for the purpose of the study. Primary data have been obtained from interviews with and observation of the respective people. Secondary sources included books, statutes, case law, reports of the commissions and various government departments and commentaries and articles on the subject. Electronic sources as well as print literature have been consulted.

Respondents

While the phenomenon of untouchability and the laws related to it, as well as their administration involves a range of stakeholders, it would not have been inappropriate to leave out any of those while conducting this study as it would have resulted in a partial view of the entire scenario. After rigorous deliberations, it was decided to record the responses from the following (Table 2.1)

Table 2.1 Respondents

Stakeholders	Level of administration
Victims of the practice of the untouchability,	village
Dalit households	
Village panchayats	
Community leader/teacher/ any other prominent non-dalits	
Judges	District and state
Police	Village district and state
Dalit leaders	
DPP	State

Development of tools

Prior to developing a set of questionnaires for all the aforesaid stakeholders, an information inventory was prepared to be carried by all the field investigators as a checklist for collecting the bare minimum of the relevant data at village and district and state levels from the respective states.

In addition to this, seven different interview schedules were developed for each for the above-mentioned stakeholders⁶.

Sampling

The sampling framework that was adopted for the study was Multi-stage, stratified Simple Random Sampling. This was employed to ensure representation to the geographical diversities, to capture the dynamics of the practice of Untouchability and the impact of PCRA in different geographical and development contexts.

All the States and Union Territories of India formed the Universe of this study.

⁶ All the questionnaires are annexed with the report.

Stage 1: Area-Wise Sampling

1. Division of the States and Union Territories of India into FOUR GEOGRAPHICAL REGIONS- NORTH, SOUTH, EAST and WEST
2. Selection of ONE STATE from each region based on the data on incidence of untouchability practices⁷.

Stage 2: Stratified Sampling

1. The selection of states was followed by the stratification of all the districts of the selected State into two groups: districts with higher incidences of untouchability practices and districts with lower incidences of untouchability practices.
2. Then TWO DISTRICTS, one from each strata were selected: district with highest of the incidences of untouchability practices and district with lowest of incidences of untouchability practices.

The study of West Bengal as a State posed the special problem in selection of districts and villages for conducting sample surveys. The general criteria for other States of selection of the basis of number of cases filed under the PCR Act, 1955 was not applicable in West Bengal, as there were no cases filed under the Act in the last few years at all.

The districts of Murshidabad and South 24 Parganas were chosen based on the percentage of the rural Scheduled Caste population vis-à-vis the total rural population. Murshidabad had the least, 13.6 %, and South 24 Parganas had one of the highest figures (the third highest) Cooch Bihar and Jalpaiguri were the districts which had the highest percentage of rural SC population compared with the total rural population. However, these districts are not conducive for

⁷ Initially it was decided to select one state from each region. However, considering a huge number of cases registered in Madhya Pradesh under PCRA, it was felt vital to include the state in the purview of the study. Similarly the geographical proximity and accessibility led to the inclusion of Karnataka also.

Table 2.2 Sample Households

conducting fieldwork, and honest responses could not be expected from the people under the threat of the ULFA and the KLO. Moreover, South 24 Parganas

States	Districts	Villages
Andhra Pradesh	Kurnool	Ullindakonda
		Devarakonda
	Vijayanagaram	Rachagumnadam
		Mayida
	MP	Ujjain
Tarana		
Umariya		Indwar
		Basehi
West Bengal	Murshidabad	Comiba
		Bohra

	South 24 Paraganas	Daulatpur
		Boyaria/ Muchipara
Karnataka	Uttara Kannada	Karki
		Morba
	Gulbarga	Bommanahalli
		Warangere
Uttar Pradesh	Sitapur	Lauli
		Bhagwanpur
	Balrampur	Dayalipur/Mohanpur
		Kothwal
Rajasthan	Bharatpur	Saintri
		Bansikala
	Udaipur	Nimadi
		Amarpura

as the highest absolute SC population, and also provided an interesting angle of studying the effect of 'urbanization' on untouchability.

Stage 3: Selection of Sample Villages

1. TWO VILLAGES FROM EACH SAMPLE DISTRICT were selected with the similar logic above, combined with the basis of other secondary data such as proneness to atrocity, SC/ST Population, literacy rates, etc.

Stage 4: Selection of Sample Households

1. It was decided to survey all the dalit households in a village upto 50 and in case of presence of more than 50 dalit household sample using Systematic Simple Random Sampling, depending on the population was drawn
2. Identification of the potential respondents from the sample households for in depth interviews.

The entire sampling exercise led to the selection of 6 states representing 12 districts and 24 villages. Owing to the resource constraints, the sample size of the survey was restricted to 6 states, 12 districts and 24 villages. While 4 villages from each of the 6 states may not represent the entire state, the diversity of the sample was ensured by choosing districts and villages with the highest and lowest numbers of cases registered under the PCRA, with West Bengal as an exception because of the afore-mentioned reason.

Data collection

12 field researchers with the knowledge of the respective local dialect and fair understanding of the law were oriented about the project and engaged in the extensive field work that was conducted by administering questionnaires, taking individual interviews, collecting other information through primary data available in the forms of the government reports and actual objective observation of the situation.

Data entry and analysis

Considering the huge bulk of the data in the form of filled in interview schedules, case studies, it posed a real challenge to feed it electronically and format it for final analysis. This arduous process involved feeding and analysing the data through SPSS spreadsheets. The result obtained thereafter fed into the accumulated findings of the field work.

Scope and Limitations

Untouchability, being a social fact which has been bedded in the Indian Society over centuries, is a very vast, intricate and complex subject to study. There are various aspects and spheres of manifestation of discriminatory behaviour, all of which could not have been captured under the constraints of time. Other forms of discrimination, for instance, the discrimination against the Muslims in Bengal, the forms of discrimination in urban areas, or intra-caste discrimination could not be addressed properly, as they fell outside the scope of Study.

There were also limitations imposed on the research work in the form of bureaucratic barriers, and red-tapism. At quite a few levels, researchers were refused co-operative behaviour from the officials.

Coordination of the field study from one place considering the varied social set ups, varied manifestations of the untouchability and diverse geographical conditions, was a Herculean task under the limitations of time and human resources.

Despite being extensive and exhaustive, study was limited to the 24 villages from the 12 districts of 6 states. It does not provide the overall view of the practice of untouchability and has attempted, only at a moderate level, to capture the variance across the regions.

The analysis, conclusions and recommendations in the present Study that have been arrived at, are based primarily on the field data collected as well as theoretical understanding of the secondary sources and would therefore also necessarily be subjected to the limitations faced in the collection of data as detailed above.

III. LEGAL MANDATE

i. Pre-Constitutional Developments

The enforcement of disabilities arising out of caste status of individuals had legal sanction in the Pre-British era. The caste system had the sanction not only of law, but also of religion. With the coming of the British, laws given by the sovereign took control of the country, which diminished the social control wielded by the caste *Panchayats* in some spheres. Support for the existing system however continued through direct and indirect support from the law. The British adopted a policy of non-interference in caste related issues, which generally translated into an active support for continuing caste based oppression.⁸

The establishment of a nation wide legal system brought a general movement of disputes from the tribunals responsible to the locally powerful to the Government's Courts. It also spread a consciousness of rights which might be vindicated independently of local opinion. The norm of equality before the law was articulated as the standard of state conduct, even if in practical application this was not often the case. However, in relation to untouchability, the movement towards abolition of slavery in other parts of the world also translated into awareness about the plight of untouchables and a move to grant protection against untouchability.

The problem of untouchability, as it came up before the courts of law, was faced on two fronts- in religious practices and in use of secular facilities. With respect to

⁸ See, e.g., Section 21 of the Bengal Regulation III of 1793 provided that: "...no interference on the part of the Court in caste questions is hereby warranted beyond the admission and trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff, arising from some illegal act or unjustifiable conduct of the other party."

Cited from, Justice SB Wad, Caste and the Law in India, DVC Centre for Corporate and Business Policy Research, New Delhi, 1984, p. 6-7.

the use of the religious premises, caste groups enjoyed the active support of the courts in upholding their claims for precedence and exclusiveness. Courts granted injunctions to restrain particular castes from entering temples even where the temple was dedicated to the entire Hindu community.⁹ Excluded castes were punished for criminal offences if they entered temples knowing that they were prohibited from doing so and damages were awarded for purificatory ceremonies that had to be undertaken because of the pollution that was supposedly caused.¹⁰ For example, in *Anandrav Bhikiji Phadke v. Sankar Daji Charya*,¹¹ which upheld the exclusive right of Chitpavan Brahmins at a temple, it was reasoned that the right is one that the “courts must guard because otherwise the high caste Hindus would hold their sanctuaries and perform their worship only so far as the lower castes permit.”¹² It is pertinent to note that the courts did not endorse exclusionary practices with respect to other religions, an example being the case of *Michael Pillai v. Barthe*¹³, where the Court refused to grant an injunction to the Roman Catholic Pillais to re-erect a wall separating them from low-caste Christians. It said that pollution did not cause a spiritual or temporal injury among Christians.¹⁴

Exclusionary practices in other fields did not enjoy the same active support as religious practices. This was with respect to secular facilities like schools, wells and roads.¹⁵ While interpreting the constituents of the offence under Section 277 of the Indian Penal Code (offence of corrupting or fouling a well), the Court said that there had to be “some act which physically defiles or fouls the water”. The mere act of taking or drawing water would not be an offence. In *Kazan Chand v. Emperor*¹⁶, it was held that other users did not have any right to prevent Chamars

⁹ *Anandrav Bhikiji Phadke v. Sankar Daji Charya*, [ILR 7 Bom 323 (1883)]; *SK Wodeyar v. Ganapathy*, AIR 1935 Bom 371.

¹⁰ *Anandrav Bhikiji Phadke v. Shankar Daji Charya* [ILR 7 Bom 323 (1883)], *Sankaralinga Nadan v. Raja Rajeswara Dorai*, 35 I.A.C. 176 (1908)

¹¹ *Anandrav Bhikiji Phadke v. Sankar Daji Charya*, ILR 7 Bom 323 (1883).

¹² Marc Galanter, “The Abolition of Disabilities – Untouchability and the Law”, in, *Contemporary India*, J Michael Mahar, ed., University of Tuscon, Arizona, 1972, at p. 4

¹³ AIR 1917 Mad 431

¹⁴ Galanter, *op.cit.*, 5

¹⁵ *Saddagoppa Chariar v. Rama Rao*, ILR 26 Mad 376 (1902).

¹⁶ AIR 1926 Lahore 683

from drawing water from a public well. In *N.D. Vaidya v. B.R. Ambedkar*¹⁷, when the Court was called upon to decide whether a certain municipal tank could be accessed by Hindus of all castes, it found that there was no long-standing custom of exclusion and allowed the tank to be accessed by all Hindus. The Court said it was “doubtful whether any attempt would have been made to secure exclusive use of the water until the tank came to be surrounded by higher caste Hindus.” The Court attempted to justify the difference in its attitude towards public utilities and religious premises on the basis that in the latter case, the “long practice acquiesced in by the other castes and communities may naturally give rise to a presumption of dedication to the exclusive use of the higher castes, and may throw on the ‘untouchables’ the burden of proving that they are among the people for whose worship a particular temple exists.”¹⁸ In the instant case, the court found that there was no such presumption, and held against exclusion.

However, there was no consistency in deciding for or against untouchability related disabilities in British Courts. While on the one hand, public tanks, roads etc were opened to all castes, on the other, judicial support was extended to instances where higher castes carried out acts to enforce their superior rights over lower castes. In one instance, the Court found that no case for insult or nuisance was made out against some leading villagers for excluding the low castes from using the well.¹⁹ Again, in an instance where Sonars were excluded from the use of the village well and from social interaction by other Hindus, they filed criminal charges but the Court held that the villagers’ conduct did not amount to a nuisance nor did it amount to an insult with intent to provoke breach of peace. Other instances to the contrary existed. The lower castes seeking judicial help were restricted to bringing petty charges against the oppressors as there was no special protection to them. Therefore, lower castes did take recourse to the law in an attempt to seek protection but to little avail. Scholars have found that the lower castes were generally unsuccessful in their attempts to

¹⁷ AIR 1938 Bom 146 at 148

¹⁸ *Vaidya v. Ambedkar* (1937) 39 Bom L R 1295, Galanter, p. 6

¹⁹ *Ramditta v. Kirpa Singh*, 1883 Punjab Record (Criminal) 3.

seek redressal through the use of police and/or courts for corporate wrongs done to them by upper castes. This was because the upper castes, apart from having economic power and political clout, had the “knowledge of the courts and the intricacies of the law and better access to officials”, which thwarted attempts to change the position of the lower castes in the village society and economy.²⁰

Further, during British rule, legal control over the provision of services by village artisans and servants was relaxed and therefore neither was there a right to enforce the provision of customary services, nor was there a legally enforceable right to serve. Dominant castes could thus alter their patronage while untouchable groups who depended on service relations for their livelihood would be subjected to pressure and not have access to judicial remedies.²¹ This further weakened the position of such groups because service relations were vulnerable to the exercise of local political and economic power. For example, in *Sheikh Jinaut v. Sheikh Khusen*,²² it was held that the use of defendants’ influence “to stop the services of the village barber, washerman and others from being rendered to the complainant” was insufficient justification for an order requiring the defendants to post security under Section 107 of the Code of Criminal Procedure. In case of social boycotts, where the offender was deprived of services, the result would not be restricted to withdrawal of economic relations but could often impact areas where untouchables possessed enforceable legal rights as to the use of footpaths, etc.²³

Yet another way in which courts offered support to upper castes was by upholding the disciplinary powers of castes against reformers and any others who worked towards reducing and removing disabilities of untouchables.²⁴ The dismissal of a purohit for conducting a widow remarriage was upheld.²⁵ Venkataraman, a reformer, observed that untouchables were unable to exercise

²⁰ B Cohn, *Anthropological Notes on Disputes and Laws in India* (*American Anthropologist*, 67: 82 – 122)

²¹ Galanter, p. 9

²² 7 CWN 32 (1902)

²³ Galanter, p. 9

²⁴ Galanter, p. 9

²⁵ Venkayya v. Venkataramiah, AIR 1915 Mad 908

their rights because the higher castes made use of Section 144 of the Criminal Procedure Code to get restraint orders passed in their favour.²⁶ The overall impact of the judicial attitude towards caste disabilities opened up some possibilities for improvements but did not really enable untouchables to use these opportunities because of disparities in power equations. While it is true that there were no laws aggressively insisting on adhering to the practice of untouchability, higher castes were in a better position to enforce their rights, at the cost of lower castes.²⁷ Courts largely followed a policy of “non-interference” in caste matters and there was a need to introduce laws expressly providing for alleviating the situation of untouchables. However, the progressive legislation that did exist in this field was mandated not because of the recognition of the oppressive nature of the existing system, but to further the interests of the British. Therefore, for example, the Caste Disabilities Removal Act was enacted in 1850, providing that:

“So much of any law or usage now in force within India as inflicts on any person forfeiture of rights or property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be in force as a law in any Court.”

The immediate provocation of passing the legislation was to assure the Indians who converted to Christianity from Hinduism that their property rights would not be affected by the conversion. At the same time however, Section 9 of the Civil Procedure Code excluded caste questions from the jurisdiction of Civil Courts.

In the early case law relating to caste based disputes, the tendency was to see whether any civil right such as the loss of property or office was involved. Mere loss of social prestige did not constitute any loss.²⁸ The prevailing notion was that social and religious prerogatives did not give rise to any enforceable legal rights

²⁶ Galanter, p. 11

²⁷ Galanter, p. 11

²⁸ *Nathu Velji v. Keshwaji Hira Chand*, (1901) 26 Bombay 174; *Jasnani v. Emperor*, AIR 1936 All 534.

unless the right was the sort of thing that could be possessed and could be made use of.

On the legislative front, the Madras and Bombay Legislatures were pioneers in passing resolutions that enforced the right of untouchables to equal use of governmental facilities, schools and wells.²⁹ The Government of Bombay as early as 1858 had declared that “all schools maintained at the sole cost of Government shall be open to all classes of its subjects without discrimination.”³⁰ In 1915, it was found that this policy was not being enforced. However, the Bombay Government persisted and passed a resolution cutting off aid to educational institutions that refused admission to members of the depressed classes.³¹ In 1925, S.K. Bole moved a Bill in the Bombay Legislative Council that opened up public places and institutions maintained by the government to untouchables. In 1925, a Bill was introduced in the Madras Legislative Council throwing open all public roads, streets or pathways giving access to any public office, well, tank or place of public resort to all classes of people.³²

Reform activity at the national level began after the 1917 Indian National Congress modified its hitherto tentative stand on untouchability stating:

“the Congress urges upon the people of India the necessity, justice and righteousness of removing all disabilities imposed by custom upon the Depressed Classes, the disabilities being of a most vexatious and oppressive character, subjecting those classes to considerable hardship and inconvenience.”³³

Post this, reform activity in favour of the untouchables multiplied. However, the action was limited to those places where public opinion was in favour of it. In the

²⁹ Galanter, p. 12

³⁰ Ghurye, G.S., “Caste, Class & Occupation”, quoted in the Report of the Committee on Untouchability, Economic & Educational Development of the Scheduled Castes”, 1969, p.3

³¹ The Committee on Untouchability, R. Elayaperumal Committee (M.P.)” Government of India, 1965, April 27, p. 3

³² Ghurye, p. 184, in Elayaperumal report..

³³ Quoted in Marc Gallanter, “The Abolition of Disabilities – Untouchability and the Law”, ”, in, *Contemporary India*, J Michael Mahar, ed., University of Tuscon, Arizona, 1972.

1932 session of the Indian National Congress a charter of fundamental rights for the future India was propounded which included provisions:

“... (vi) no disability to attach to any citizen by reason of his or her...caste... in relation to public employment, office of power or honours, and in the exercise of any trade or calling.

(vii) equal rights of all citizens in regard to public roads, wells, schools and other places of public resort.”³⁴

It was only after Gandhi’s fast in protest of separate electorates that the leaders were willing to use law affirmatively to abolish disabilities.³⁵ Pursuant to this, a meeting of caste Hindus was held in Bombay to ratify the Poona Pact. It was accepted thus:

“this Conference resolves that henceforth, amongst Hindus, no one shall be regarded as untouchable by reason of this birth, and that those who have been so regarded hitherto will have the same rights as Hindus in regard to the use of public wells, public roads, public schools and all other public conveniences. This right shall have statutory recognition and shall become one of the earliest acts of the Swaraj Parliament, if it shall not have received recognition by that time”

“It is further agreed that it shall be the duty of all Hindu leaders to secure, by every legitimate and peaceful means, an early removal of all social disabilities now imposed by custom upon the so-called untouchable classes, including the bar in respect to admission in temples.”

³⁴ All India Congress Committee, 1931.

³⁵ *Supra* note 40.

Between 1932 and 1936 numerous state and provincial legislations were passed on the issue of removal of disabilities associated with untouchability.³⁶ While the temple-entry bills allowed trustees to open temples to untouchables if a majority of the Hindu voters of the locality approved, the anti-disabilities bills gave untouchables the general right to use public facilities.³⁷ The bills faced stiff opposition at times; for example, temple-entry bills in Madras were denied sanction by the Government, which asserted that the subject was of an all-India character and could be legislated on only by the Central Government.³⁸ A Bill was introduced in the Central legislative Assembly as well, but never came up for vote in light of conservatism displayed by some members and the opposition of the government.

Princely states such as Travancore were not far behind and were more progressive. In 1936, the *Maharaja* of Travancore passed the "Temple Entry Proclamation", which stated as follows: "*none of our Hindu subjects should, by reason of birth or caste or community, be denied the consolations and solace of the Hindu faith.*"³⁹ All prohibitions on entry to temples controlled by the Travancore government were removed. Earlier, the princely state of Baroda had attempted a similar proclamation.⁴⁰ The Maharaja of Mysore implemented administrative measures such as opening up all State schools to untouchables, giving them clean clothing and providing them with educational facilities. Scholarships were provided to untouchables in order to enable them to access higher standards of education.⁴¹

None of these bills contained penal provisions, and the trustees of a temple were empowered to allow other castes if a majority of the Hindu voters in the area allowed it. They declared in general terms the rights of the untouchables to use public facilities and outlawed enforcement to the contrary by public authorities.

³⁶ Madras Removal of Civil Disabilities Act, 1938; The Bihar Harijan [Removal of Civil Disabilities] Act, 1949; the Bombay Harijan [Removal of Social Disabilities] Act, 1946

³⁷ Galanter, p. 13

³⁸ Galanter, p. 13

³⁹ Elayaperumal report, p. 3

⁴⁰ Galanter, p. 14

⁴¹ *Ibid.*

After the new governments came to power in 1937, the support for removing disabilities became more pronounced. In 1938, the Madras legislature passed the Madras Removal of Civil Disabilities Act⁴², making it an offence to discriminate against untouchables not only with regard to public facilities like wells, etc but also restaurants, hotels and shops.⁴³ The Act barred judicial enforcement of any customary right or disability based on membership in a group.⁴⁴ Violation was made a cognizable offence⁴⁵, with progressive fines.⁴⁶ Baroda⁴⁷, Bombay⁴⁸ and Travancore⁴⁹ also passed similar legislations.

The Malabar Temple Entry Act 1938 opened access to temples for all persons contingent on ratification of the same by a majority vote of the caste-Hindus of the locality.⁵⁰ The Madras Temple Entry Indemnity Ordinance 1939 further indemnified officials and trustees against liability arising out of the opening of temples. This was followed by a comprehensive province-wide act, the Madras Temple Entry Authorization and Indemnity Act, 1939, which authorised trustees to open temples to excluded classes if the worshippers of the temples were not opposed to the idea.⁵¹ The Bombay Hindu Temple Worship (Removal of Disabilities) Act, 1938 made it an offence to obstruct Harijans from worshipping in an opened temple. Similar bills were in the pipeline in the Central Provinces and in the United Provinces when the Congress Governments resigned.

Despite a flurry of legislative activity, most major temples still remained closed to untouchables. The enforcement of most disabilities was made cognizable, and such actions were made unenforceable by the courts. The pre-war temple

⁴² The Madras legislation began with an act providing that temples in the Malabar District might be opened by a majority vote of the caste Hindus of the locality and an ordinance indemnifying officials and trustees against liability arising out of opening of certain Malabar temples. Later, this was followed by a comprehensive legislation that allowed opening if the worshippers were generally not opposed.

⁴³ Section 2, Madras Removal of Civil Disabilities Act, 1938

⁴⁴ Section 2, Madras Removal of Civil Disabilities Act, 1938.

⁴⁵ Section 4(f), Madras Removal of Civil Disabilities Act, 1938.

⁴⁶ Section (6), Madras Removal of Civil Disabilities Act, 1938.

⁴⁷ Baroda Removal of Civil Disabilities Act, 1933.

⁴⁸ The Bombay Hindu Temple Worship (Removal of Social Disabilities) Act, 1938 contains penal provisions making it an offence to prevent harijans from being prevented from praying at opened temples.

⁴⁹ The Travancore-Cochin Temple Entry [Removal of Disabilities] Act, 1950.

⁵⁰ Galanter, p. 14

⁵¹ Galanter, p. 15

legislation had only been permissive. It protected the trustees if the temples were closed in pursuance of customary practices. In fact, as late as 1945, the Madras High Court granted damages for the pollution caused by the entry of Ezhavas into a temple.⁵² In any case, most of the big temples were still not open to untouchables. It should be noted that excluded groups had no enforceable right to enter temples. The provincial governments took a cautious approach by decriminalising the disobedience of customs by excluded persons but did not command temple authorities to do away with such practices.

After 1945, legislations removing civil disabilities of untouchables were passed in most provinces and many large princely states. Public facilities were made accessible to all and violations of the provisions were made criminal offences. The Bombay Harijan (Removal of Social Disabilities) Act, 1946 aimed at ameliorating the situation of untouchables with regard to the enjoyment of social and secular amenities of life. The Madras Legislature enacted the Madras Temple Entry Authorization Act, 1947.⁵³ The Bombay Legislature followed suit by enacting the Bombay Harijan Temple Entry Act, 1947. In the United Provinces, the United Provinces (Removal of Social Disabilities) Act, 1947 was enacted, and similar legislations came into force in the Central Provinces and Berar. Similar acts were passed in most provinces and princely states. They withdrew judicial enforcement, both civil and criminal, of customary rights of exclusion and gave untouchables a legally enforceable right of entry into temples.⁵⁴ Prior to the enactment of the Constitution, most states (with the exceptions of Assam and Rajasthan) had passed anti-disability legislation.⁵⁵

The assessment of the British rule in India gives a mixed result. The law advanced some possibilities of change to the lower castes, but provided no special leverage to the untouchables to use these opportunities. The use of

⁵² *Chatunni v. Appakuttan*, AIR 1945 Mad 232.

⁵³ Galanter, p. 16

⁵⁴ Galanter, p. 16

⁵⁵ *Id.*

whatever was given to them was mostly in accordance with the existing caste hierarchy.⁵⁶

There are four clear lessons to be learnt from an analysis of the pre-Independence efforts towards eradication of untouchability. First, most of the efforts were geared towards the removal of certain symptoms of untouchability, and not towards the removal of its cause, that is, graded inequality in a deeply hierarchical society. The cure offered was therefore symptom-specific, like providing for temple- entry laws, or providing access to public tanks, roads etc. The responses did not look at a holistic approach towards abolishing untouchability. At the same time, the legal responses to the practice of untouchability only took account of limited symptoms of untouchability, mostly those located in the pollution-purity paradigm of caste relations. They were therefore not cognizant of the oppressive, restrictive and exclusionary character of the practice, above and beyond certain symptoms.

Second, the issue of untouchability was categorized into impervious compartments of religious and secular practices. The former category was demarcated as a protected zone beyond the reach of law, whereas the latter category was made subject to law and public policy. It is in this latter category that the earliest attempts at removal of caste-based disability found feet. With growing awareness and politicization of the issue, the content of the two categories changed over time, but as shall be seen in later chapters, the categories themselves have remained constant. There are still certain spheres of activities, like the “personal” sphere, where the practice of untouchability has not been expressly abolished. A historical examination shows however, that these categories are artificial constructs and that no sphere of activity is beyond the pale of law, if it is determined that such a sphere needs to be regulated in public interest.

Third, the historical examination of untouchability clearly highlights the need for political involvement in social issues for such issues to be given legislative and

⁵⁶ *Supra*, note 40.

judicial attention. It also reveals that legislation is more often a culmination of changing social preferences rather than a starting point for social revolution. The important lesson in this is that there is need for active engagement at the political and social level for a social norm transformation in issues such as untouchability. Mere legislation is not enough. There is need for political mobilization for gathering momentum against a socially accepted oppressive practice and changing it from a norm to a crime.

Finally, systemic characteristics often dictate whether or not legal tools have any social relevance as agents of transformation. Where there is a disconnect between law on the one hand, and social structures, hierarchies and power equations on the other, law has a limited chance of success. Where the social conditions are therefore not conducive for change through law, the legal instruments must be embedded in the social structures to be effective. They must take account of social realities to be able to better address the same. Therefore, for example, creating judicial remedies for an issue affecting people who have limited access to justice can never be a recipe for success unless pro-active measures are taken to bring justice to their doorsteps. Similarly, the practice of untouchability cannot be abolished if the institutions for redress are removed from the social realities of the community where the practice is prevalent.

ii. The Constitutional Guarantee

The Constitution of India guarantees to all citizens equality before the law and equal protection of the law. This standard of equality does not permit any discrimination based solely on the caste-characteristics of a person. However, this guarantee is not merely a restriction on state action. It also confers a positive obligation on the state to effectuate the creation of a society free of all practices, customs, laws, policies and conditions which impose or have the effect of

imposing disabilities on sections of society based on their caste characteristics.⁵⁷ The state is duty bound to secure social, economic and political justice for all, and provide for an atmosphere congenial to growth for all. Article 17, in particular, is intended to remove the social stigma and the badge of inferiority, degradation, degeneration, and halt the engine of oppression that results from the practice of untouchability. It states:

“17. Abolition of Untouchability.—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.”

There are also other provisions in the Constitution that are relevant in this context. The Constitution guarantees certain liberties to all citizens including the freedom of speech and expression, the freedom of movement and association and the freedom to carry on any trade, business and occupation.⁵⁸ It also protects the right to life and personal liberty of all persons. Right to life in this context includes the right to live with dignity.⁵⁹ Further, there is an express guarantee against exploitation and forced labour in the Indian Constitution.⁶⁰ It also protects the freedom of religion of individuals and limits state action in this respect. However, the freedom of religion is subject to over-riding public order, morality and health. All social welfare legislation, especially those targeted at throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus, are specifically protected. The freedom to manage religious affairs is also made subject to certain overriding state interests. Therefore, while the Constitution creates a protected space for religious activity, it recognizes that a complete hands-off approach to this sphere will encroach

⁵⁷ Article 14, Article 15, and Part IV, Constitution of India.

⁵⁸ Article 19, Constitution of India.

⁵⁹ *Bandhua Mukthi Morcha v UOI* AIR 1997 SC 2218; *Vishakha v Rajasthan*, AIR 1997 SC 3011.

⁶⁰ Article 23, Constitution of India. It states:

Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

upon the other rights guaranteed by the Constitution. It therefore subjects its protection to greater social interest.

The Constitution provided for the categorization of the former untouchable castes as Scheduled Castes, so as to enable them to be given special protection and benefits to correct historical discrimination against them.⁶¹ Each of these Constitutional guarantees is implicated by the continued prevalence of the practice of untouchability.

Article 17, which abolished untouchability, was the most direct form of attack of this practice in the Constitution. During the constitutional debates on the provision abolishing untouchability (which was then Article 11), two important issues were voiced. First, Dr BR Ambedkar had suggested a broader based provision,⁶² abolishing any privilege arising out of rank, birth, person, family, religion or religious usage and custom. According to him, the goal of the Constitution was not temple entry but a casteless society.⁶³ He said:

“Is temple entry the final goal of the advancement of the social status of the depressed classes in the Hindu fold? Or is it only the first step? If it is the first step, then what is the final goal... Merely and amendment to provide for temple entry is not sufficient. What is required is to purge it (Hinduism) of the doctrine of *chaturvarna* (which is the) parent of the caste system and untouchability.”

This proposition was, however, not accepted and Article 17 was enacted in its current form. However, this issue of the precise target and goal of anti-untouchability laws is the core question facing us today as well. The answer has enormous consequences for designing and implementing an effective legal and institutional set-up for the eradication of this practice.

⁶¹ Article 341, Constitution of India.

⁶² Dr Ambedkar’s suggestion: “Any privilege arising out of rank, birth, person, family, religion or religious usage and custom is abolished.”

⁶³ Justice SB Wad, *Caste and the Law in India*, Ove Centre for Corporate and Business Policy Research, New Delhi, 1984, p. 6-7.

The second issue that was extensively discussed in the Constituent Assembly Debates was question of the definition of untouchability. Mr. Naziruddin Ahmad proposed the article which read as follows, “No one shall on account of his religion or caste be treated or regarded as an ‘untouchable’; and its observance in any form may be punishable by law.” He proposed a change in the wordings of the original section as the word ‘untouchable’ was not clearly defined in so much that it could be applicable in different situations such as for a person suffering from a contagious disease or a wife below 15 years of age who was untouchable to prevent marital misbehaviour on the part of her husband.⁶⁴ Mr. K.T. Shah elaborated on the necessity of the amendment to the article as proposed by Mr. Ahmad. He said that if the word ‘untouchability’ was not defined, it would create problems in instances where temporary untouchability was practiced on people who suffered from communicable diseases or on people who had attended funerals. The lack of a definition would facilitate the misinterpretation of the provision by “busy bodies” and “lawyers”.⁶⁵ However, Dr. B.R. Ambedkar did not accept the amendment and did not respond to Mr. Shah’s suggestion. The amendment was negatived and the article was adopted in its original form.⁶⁶

lii. Post-independence enactments

Article 17 of the Constitution which abolishes untouchability has to be read with Article 35 which confers on Parliament the exclusive power to make laws prescribing punishments for those acts that are declared to be offences under Part III of the Constitution. Pursuant to this the Untouchability (Offences) Act was enacted in 1955 to award punishment for offences amounting to the observance of the practice of untouchability. This was amended in 1976, and more stringent

⁶⁴ Constitutional Assembly Debates, Book No. 2, Vol. No. VII, 4th November 1948 to 8th January 1948, p. 665 Lok Sabha Secretariat

⁶⁵ *Id.* at p. 668

⁶⁶ *Id.* at p. 669

provisions were introduced. The name of the Act was changed to the Protection of Civil Rights Act. It is pertinent to note that from 1955 to 1976, 22,470 cases under the Untouchability Act were registered of which 19,893 were taken to court, out of which 3,402 were compounded, 3,288 acquitted and 6,178 offenders were convicted.⁶⁷

The Protection of Civil Rights Act did not have the effect of curbing effectively either the practice of untouchability or the atrocities committed against Scheduled Castes flowing from the practice of untouchability. Further, social change and transformation in the social, political and economic conditions of the former untouchables has met with considerable (often violent) resistance by those who derived power from the extant social organization. This led to an increase in the atrocities perpetrated against the Scheduled Castes.⁶⁸ In 1989 another legislative attempt took place to prevent the same, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted. Apart from this, targeted intervention has been made from time to time to prohibit and regulate practices arising out of the notion of untouchability. For example, the state has enacted the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition Act), 1993, the Bonded Labour (Abolition) Act, 1976, the Child Labour (Prohibition and Regulation) Act, 1986, the Minimum Wages Act, 1948, the Inter – State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979, to deal *inter alia* with specific issues that arise in the context of untouchability.

⁶⁷ *Vichitra Meena v. Union of India and ors*, MANU/RH/0054/1982.

⁶⁸ Andre Beteille, “The Scheduled Castes s: An Inter-regional Perspective”, 12 *Journal of Indian School of Political Economy*, p 366.

IV. THE LEGISLATIVE HISTORY OF THE “PROTECTION OF CIVIL RIGHTS ACT (PCRA) - 1955 ”

i. Untouchability Offences Act 1955

A number of states and Union territories had anti-disabilities laws in force between 1950 and 1955. Bihar, Madras, Orissa, Mysore and Coorg had passed the Removal of Disabilities Acts. Bombay, Punjab, Uttar Pradesh, West Bengal, Hyderabad, Saurashtra and Travancore had enacted Removal of Social Disabilities Act. Temple Entry Acts were present in Coorg, Bombay, Orissa, Punjab, Hyderabad, Mysore and Travancore.⁶⁹ Thus, Anti-Disabilities legislations were present in 14 states while Temple Entry legislations were present in 7 states. 12 states did not have either.⁷⁰ Offences under the state Acts were punishable with imprisonment which would extend to six months or with a fine up to Rs. 500. Many of these Acts were challenged as being unconstitutional. One ground of challenge was the lack of legislative competency of the States in the light of Article 35 of the Constitution that empowered only the Parliament to enact laws in relation to Part III. In *State v. Kishan*⁷¹, the Indore Bench of the Madhya Pradesh High Court held that the powers of state legislatures to make laws prescribing punishment for those acts that were declared to be offences under Article 17 were withdrawn by Article 35 and vested solely in Parliament. However, Article 35 had prospective application thus saving legislations enacted before the commencement of the Constitution till such time that they were

⁶⁹ Kshirsagar, RK, *Untouchability in India: Implementation of the Law & its Abolition*, New Delhi, Deep & Deep Publications, 1999 pp. 104-106

⁷⁰ *Ibid.*, p. 106

⁷¹ AIR 1955 MB 207

repealed by Parliament.⁷² In *Venkatraman Devaru v. State of Mysore*⁷³, the Madras Temple Entry Authorisation Act 1947 was held to be constitutionally valid. The Court referred to Article 25 (2) (b) which confers the unqualified right on all classes and sections of Hindus to enter public temples whether it is sought to be exercised against an individual under Art. 25 (1) or against a denomination under Art. 26 (b).⁷⁴

By virtue of its power under Article 35 (a) (ii), Parliament passed the Untouchability (Offences) Act 1955. The Untouchability (Offences) Bill 1954 (No 14 of 1954), which took final shape as The Untouchability (Offences) Act 1955 was introduced in the Lok Sabha on 15th March 1955. The Members of Parliament while commending the bill, labeled it as a 'belated measure' because it took more than four years for the Government to introduce such legislation after the promulgation of the Constitution. After inviting suggestions from various organizations the bill was introduced in the Lok Sabha. During the discussion on the Bill in the Rajya Sabha, Dr. Ambedkar had had said that the name of the legislation should be 'The Civil Rights (Untouchables) Protection Act' so that it would indicate enforcement and protection of rights in addition to punishment of offenders.⁷⁵

The Bill received a mixed response by the members of Parliament. To quote Shri Laskar, "by this sort of legislation, the untouchables will get courage to shake off their inferiority, because they will feel that the law is with them and also because the 'high caste' people will realize that law will not spare them if they infringe any of the provisions of the Act." On the other hand, the Bill was also described as calculated eyewash just to hoodwink the Harijan population.

The Untouchability (Offences) Act 1955 was passed by the Parliament on 2nd May, 1955 and received the assent of the President on 8th May, 1955. All the 21 legislations which were in force after the commencement of the Constitution were

⁷² Kshirsagar, p. 107

⁷³ AIR 1958 SC 255

⁷⁴ Kshirsagar, p. 107

⁷⁵ Rajya Sabha Debates, Vol. VII, No. 16-29, on 16th September, 1954, p. 2431, Kshirsagar, p. 109

repealed after the enactment of the Untouchability Offences Act 1955 under Section 17.

ii. The Elayaperumal Report

Based on the recommendation of the Parliamentary Joint Select Committee, the Minister of Home Affairs had written to the State Governments to make arrangements for the effective implementation of the Untouchability (Offences) Act and to appoint small committees to oversee implementation of the Act. But none of the State Governments apart from Bihar and the Madhya Pradesh appointed any such committees.

To quote from its letter to the State Governments dated 13th February 1975⁷⁶, “Prosecuting agencies should be specifically advised to give high priority to cases under the Untouchability (Offences) Act and serious notice should be taken of the lapses committed by them in conducting these cases before courts. Investigating officers should request the court to award deterrent sentences so that people at large may be aware of the legal consequences of their acts of discrimination. The supervisory officers should make it a point to ensure that no avoidable delay is caused in the disposal of such cases on account of any deficiencies on the part of the prosecution staff.”⁷⁷ The Ministry had also recommended that special police squads and cells be set up under the Chief Minister’s supervision, in areas where atrocities were committed in order to address the grievances of SCs and STs. It also suggested that suitable institutional arrangements be made in the offices of the Superintendent of Police and the District Collector to register the complaints of the protected groups. The Ministry put the onus of collecting information on atrocities and taking prompt effective action on District Officers, such that failure on their part would render

⁷⁶ D.O. Letter No. III/11013/105/74 NID(A)

⁷⁷ Kshirsagar, pp. 174, 175

them liable of dereliction of duty.⁷⁸ The Ministry emphasized on imposing deterrent sentences on offenders to serve as warning to the public. An important suggestion of the Ministry was that of the appointment of qualified public prosecutors especially from the Scheduled Castes. It also asked State Governments to establish 'special courts' for speedy disposal of cases under the PCRA and to "create confidence in the minds of the victims in the legal and administrative machinery of the State."⁷⁹

An examination of the working of the Untouchability (Offences) Act showed that its implementation was inadequate because of various loopholes. Few cases had been filed under the Act. The compoundable nature of the offences resulted in compromises and the punishments were small.⁸⁰ Most of the victims were reluctant to lodge complaints for fear of social reprisal and harmful economic consequences at the hands of their land lords, money lenders and rural oligarchies who would not give them work or full wages for the work done by them.⁸¹

A meeting of the Central Advisory Board for Harijan Welfare was held in 1963 to address the issue which was then brought to the notice of the Department of Social Welfare.⁸² In 1965, the Government of India constituted a Committee on Untouchability, Educational & Economic Development of Scheduled Castes under the chairmanship of L. Elayaperumal to study "the various aspects of untouchability; in particular, the working of the Untouchability (Offences) Act 1955, and the restrictions, if any, imposed on the entry of Harijans into public places of worship and to suggest remedial measures."⁸³ The Committee took around four years to submit its report. The report was submitted in 1969 but the Government did not bring up the issue in the House until 1972.

⁷⁸ Kshirsagar, p. 175

⁷⁹ Kshirsagar, p. 176

⁸⁰ Purane, *Untouchability and the Law – A ground Reality* (Delhi: 2000) at p. 45

⁸¹ Purane, p. 45

⁸² Kshirsagar, p. 188

⁸³ The Committee on Untouchability, R. Elayaperumal Committee (M.P.) Government of India, 1965, April 27, Purane, p. 45

The Elayaperumal Committee submitted a comprehensive report studying the implementation of the Untouchability (Offences) Act and examining ways and means of strengthening the substantive and institutional content thereof. The main recommendations of the Committee are discussed below.

a) Provision on religious disabilities

The Committee found the Temple Entry provision as enacted under s.3 of the Act problematic. The said provision read:

“3. Punishment for enforcing religious disabilities: Whoever on the ground of “untouchability” prevents any person:

(a) from entering any place of public worship which is open to other persons professing the same religion or belonging to the same religious denomination or any section thereof, as such person, or

(b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water course in the same manner and to the same extent as is permissible to the other persons professing the same religion or belonging to the same religious denomination or any section thereof, as such person.

shall be punishable with.....

Explanation - For the purposes of this section and Section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or development including Virashaivas, Lingayats, Adivassis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminaryan Sampraday shall be deemed to be Hindus.”

This provision was reviewed by many High Courts who concluded that it would be attracted only when the place of worship was open to other persons professing the same religion or belonging to the same religious denomination as the complainant. The flaws of the provision were pointed out by the Committee – first of all, the section did not permit members of the Schedule Castes to enter a place which is open to any religion or any sect of the religion to which he does

not belong. Secondly it not only preserved the distinction between the places belonging to different religions but also between the different denominations of the same religion, and thirdly, rather than creating any new rights for the Schedule Castes it merely sought to put them at par with the other caste Hindus.

Another problem that was pointed out by the Committee was that the existence of the phrase, "or belonging to the same religious denomination" which virtually negated the Explanation. The Committee referred to the efforts of the states of Bombay, Kerala and Uttar Pradesh governments which had made it an offence to prevent Hindus of any class or section from entering a Hindu temple. They recommended the addition of the same so as to make it applicable to all States.

b) Social and economic boycott

Another problem that the Committee pointed out was that when a Scheduled Caste wanted to quit the traditions of performing menial jobs, he was often confronted with social and economic boycott. The Joint Select Committee had recommended the addition of provision in the 1955 Act prohibiting such a practice, but the Parliament had refused to incorporate it, rejecting it on the ground that it would amount to forced labour and hence would be covered under Article 23 of the Constitution and S. 374 of the Indian Penal Code. The Committee again recommended the addition of a provision to deal with this, and the same was accepted.

c) Mens Rea Requirement

The Committee analysed the requirement of *mens rea* in the Untouchability Offences Act and compared them to public welfare offences (like sale of impure/adulterated food, violation of traffic regulations, violation of anti-narcotic acts) in common law. It concluded that offences of untouchability would not fall within the purview of public welfare offences and hence would require *mens rea*

to be proved.⁸⁴ Therefore, the Committee was against making the offence of untouchability a strict liability offence.

d) Compoundable Offences

The Committee referred to Section 15 that made offences cognizable but compoundable. The Committee found that this provision served as a handy tool for coercing the accused to arrive at a compromise with the complainant by means of threats, promises or bribes. The Committee recommended the deletion of the provision which was accepted by the Parliament.

e) Punishments

The Elayaperumal Committee was of the opinion that the punishments imposed under the Act were too light and without any minimum requirements. It suggested a minimum imprisonment term of 3 months up to 6 months, and a minimum fine of Rs. 50 up to Rs. 200.

f) Analysis of cases decided by lower courts

The Elayaperumal Committee asked State Governments to provide details of the cases decided by the lower courts as well as copies of the judgments to enable it to carry out a sampling to arrive at definite conclusions.⁸⁵ However, it received a very small number of cases forcing it to use what it termed a “convenient sampling” method to draw conclusions.⁸⁶

The Committee found that the longer the delay in disposal of cases, lower was the rate of conviction. The reason was that delays prevented the complainant as well as witnesses from being able to attend hearings and prove the offence.⁸⁷ The Committee had heard of instances where cases had been purposely delayed

⁸⁴ *Id.* at p. 59

⁸⁵ *Id.* at pp. 50, 51

⁸⁶ *Id.* at p. 51

⁸⁷ *Id.* at p. 51

to cause hardship to complainants so that they would not have either the energy or the resources to pursue the case.⁸⁸

The Committee observed that the upper castes enjoyed the support of law enforcement officials like the police and magistrates, and that the Scheduled Castes would not get any protection from them.⁸⁹ The Committee found that factors like social backwardness, economic dependence and apathy of caste-Hindus were predominant reasons why victims of untouchability were unable to gather sufficient cogent evidence to prove the offence against them. Interestingly it found that judges often disbelieved evidence of witnesses belonging to the Scheduled Castes in cases of untouchability-related offences, believing them to be interested witnesses. However, the evidence of caste-Hindus was not disbelieved on the same grounds.⁹⁰ This highlighted the continuing entrenchment of caste-based discrimination in covert forms embedded in the doctrine, logic and structural framework of the legal setup.

In sum, the causes of greater number of acquittals were enumerated by the Committee as follows:

1. Complainants are coerced into compromising cases.
2. Complainants do not adduce sufficient evidence to convince the judge. Their socio-economic backwardness and hostile or indifferent attitudes of the upper castes act as obstacles in obtaining evidence.
3. Faulty investigations by the police.
4. Apathetic attitude of magistrates who do not trust the evidence of Scheduled Castes on the ground that they are interested witnesses.⁹¹

⁸⁸ *Id.*, at p. 51

⁸⁹ Kshirsagar, p. 189

⁹⁰ *Supra*, note at p. 53

⁹¹ Kshirsagar, p. 250

g) Civil remedy mechanism

The Committee suggested that the offence of untouchability be treated both as a crime and a tort. The difference between a crime and a tort is in the interest affected and the legal remedy provided. A crime is an offence against the public and the State acts as its representative in the proceedings.⁹² The purpose of criminal proceedings is to “protect and vindicate” interests of the public through deterrent, retributive or reformatory punishment. Tort action is initiated by the injured person against the wrong doer in order to get compensation for such injury from him/her. Where an offence is both a crime as well as a tort, separate actions can be initiated either simultaneously or successively where the outcome in one case will not affect the decision of the other.

The Elayaperumal Committee strongly recommended creation of an agency to facilitate the provision of civil remedies. The initiation of tort action would make available machinery different from the “police-cum-court machinery”.⁹³ Tort action would provide the victims with corrective remedies and would not obstruct the functioning of the Untouchability Offences Act. The advantage of such an agency was that it would address the requirements of the victims and be involved in stages on investigation, local inquiries, conciliation and administrative sanctions. The Committee was in favour of setting up Boards at district levels which would be coordinated by State officials. The Board would consist of an administrative wing (including an investigation section) and a Hari Adhikran (Quasi-Judicial Wing). The members of the quasi-judicial body did not have to have a legal background and “may be persons of sound common sense, capable of coming to reasonable conclusions...” The Elayaperumal Committee detailed out the functions and procedures of functioning of the Administrative and Quasi-Judicial wings which were to follow principles of administrative law and reduce the number of procedural and evidentiary requirements of judicial processes.⁹⁴

⁹² *Supra*, note at p. 56

⁹³ *Supra*, note at p. 56

⁹⁴ *Supra*, note at p. 57, 58

h) Awareness of legislation

The Committee found that there was very little awareness and wide ignorance about the provisions of the Untouchability Offences Act. It also found that distribution of copies of the legislation had been faulty. The Committee noted the ignorance of various officials and authorities about the existence of the Act. Out of 30 police personnel interviewed by the Committee, 27 were aware that untouchability had been abolished, 15 knew about the existence of the PCRA but only 2 out of 30 policemen were able to display knowledge of provisions of the Act.⁹⁵ In this respect, the Committee recommended that awareness levels of the PCRA be raised through wide publicity about its existence.⁹⁶

The Committee also expressed an opinion on the functioning of voluntary organisations that received Government grants to alleviate the condition of SCs/STs. It was not at all satisfied with their reports and said that the grants were not spent fully and that no action was taken to remove untouchability.⁹⁷

The Elayaperumal Committee clarified that merely enacting legislations would not solve the problem of untouchables. To quote from its report, "The problem of untouchability is, therefore, inseparably linked up with the question of the caste system and the social set up based on that. It is an indisputable fact that the caste system is the dominating social force in this country. Hence any attempt to remove untouchability without striking at the root of the caste system is simply to treat the outward symptoms of a disease or to draw a line on the surface of the water. Untouchability cannot be abolished in this country unless the social order is changed by establishing new values, and for this purpose the values based on the Hindu religion must be changed first."⁹⁸

⁹⁵ Kshirsagar, p. 196

⁹⁶ Kshirsagar, p. 189

⁹⁷ Kshirsagar, p. 182

⁹⁸ From speech of Shri Krishna Chandra Halder, Ramesh Chandra, p. 42, *Supra*, note 90.

iii. Parliamentary Debates

There was a prolonged parliamentary debate on the Bill before it was finally passed after 4 years. Some of the salient observations at the debate have been highlighted.

Prof. Nurul Hassan moved the Bill to amend the Untouchability (Offences) Act 1955. He explained the salient provisions of the Bill as follows:

- i) Amendment relating to the raising of the quantum of punishment in the Act.
- ii) Making offences non-compoundable under the Act.
- iii) Bringing within the definition of place of public worship, privately-owned temples used as places of public worship and disqualifying persons convicted under the Act from contesting elections to Central and State legislatures.⁹⁹

The major points of the debate are discussed below:

Title of Bill – “practice and preach untouchability”: Mr. Yogendra Makwana underscored the difference in title between the Act and the proposed Bill. He said that the Act punished the practice of untouchability while the Bill punished both the practice and preaching of untouchability. He referred to religious heads who sometimes made derogatory remarks against the Scheduled Castes. Such offences are provided for under Section 7. The change in title also echoed Dr. Ambedkar’s suggestion at the time of the enactment of the Untouchability Offences Act. He had suggested the title ‘The Civil Rights (Untouchables) Protection Act’ so that it would indicate enforcement and protection of rights in addition to punishment of offenders.¹⁰⁰

⁹⁹ Chandra, Ramesh & Mitra, Sangh, “Untouchability and the Law”, 1st ed. 2003, p. 40

¹⁰⁰ Rajya Sabha Debates, Vol. VII, No. 16-29, on 16th September, 1954, p. 2431, Kshirsagar, p. 109

Penal provisions and policy - Mr. Hassan stated that the Government did not want to take a harsh stance on penal provisions as it felt that if the punishments for first offences were high, the courts would acquit the accused on some doubt or the other. The Government proposed a minimum sentence of one month and accepted the recommendations of the Committee pertaining to the six month limit on imprisonment and on fines.

Mr. Shukla referred to the three kinds of punishment – retributive, reformatory and deterrent punishment and said that the Untouchability Offences Act provides for reformatory punishment. Hence there was no need to provide for a minimum term of imprisonment as that would take away the reformatory nature of the legislation and impinge on the discretion of the judges to decide on the quantum of punishment.¹⁰¹ He referred to the Prevention of Food Adulteration Act which provided for a minimum of six months imprisonment and a fine of Rs. 1000 and which had been ineffective because wrongdoers had resorted to corrupt measures to escape being caught under it.¹⁰²

Mr. JM Gounder quoted statistics of the year 1968 to show that few cases were being brought before the authorities. He said that the number of untouchability offences was 203, of which convictions took place in 35 cases, acquittals in 52 and reconciliations in 39. The remaining 77 cases were pending.¹⁰³ Mr. CM Stephen referred to these statistics and said that cases had not been brought before courts, prosecutions had not been launched and severe punishment had not been imposed. While supporting an enhancement of punishments in the Bill, he emphasised a need for overhauling the existing infrastructure.

Mr. Hassan brought up the issue of the attitude of the Presiding Magistrates and referred to the Elayaperumal Committee's observations on the sentencing of offenders. The Committee had found that out of a total of 70 cases, 23 had

¹⁰¹ Chandra, p. 56

¹⁰² Chandra, p. 57

¹⁰³ Chandra, p. 50

resulted in convictions, of which 17 had been fines. The amount of the fines had been upto Rs. 25 in 12 cases and upto Rs. 100 in 5 cases.

Venkatasubbaiah spoke about the factors that should be taken into account by the Judge who decides on cases under the Act. He said, "The Judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed it and other factors. The purpose of doing so is to acquaint the Judge with the exact nature of the circumstances so that he can impose a punishment befitting the circumstances."¹⁰⁴

It is clear therefore that there was no consistent legislative will in framing a penal policy for the legislation. As will be seen, this has found reflection in sentencing practices under the Act.

Implementation of the Act and other initiatives: There was broad consensus during the debates that the Act required pro-active enforcement by state officials for it to be a success. Mr. Hassan referred to the letter sent by the Government asking Collectors and Superintendents of Police to provide protection to Scheduled Castes against any discrimination that they might face. Mr. Makwana opined that there was a need for measures to haul up police officers who neglected duties and evaded their responsibilities. Mr. Vaishampayan added that measures should be taken to ensure that funds that were earmarked for the welfare of Scheduled Castes and Scheduled Tribes be spent for such purposes. According to Mr. NH Kumbhare the Act would have been more comprehensive had it incorporated a scheme to locate areas of untouchability and deal with them. He was of the opinion that Government officers should be appointed to conduct surveys and identify such areas. It was necessary to have proper administrative machinery to enforce the Act else it would remain dead letter law.

Shri Venkatasubbaiah emphasized on integrating untouchables into society by providing them with social, political and economic equality. Mr. Hassan said that

¹⁰⁴ *Id.*, at p. 92

there was great need for a social revolution and that social and political workers needed to mobilize the masses in order to stir their conscience against untouchability. He also suggested that educational institutions take measures to spread the message about the evils of untouchability. Mr. SK Vaishampayan suggested that incentives be given to people who have succeeded in abolishing untouchability in villages. Mr. Abu Abraham emphasised on desegregation efforts such as common hostels instead of Harijan hostels in order to eradicate untouchability.

Mr. Gounder pointed out the difficulties faced by victims of untouchability. According to him, the person against whom the offence of untouchability is committed does not have the courage to approach the court, s/he does not have the money to spend on the case and s/he will have to face the hostilities of the upper castes after the case has been disposed off. The amended Act would have to take into account these realities for making a meaningful contribution to the abolition of untouchability.¹⁰⁵

These discussions on the floor of the house indicate that there was a felt need to put in place a comprehensive machinery to deal with the issue of untouchability. While the Act under discussion was one intervention in dealing with the issue, the wider problem of discrimination faced by members of the Scheduled Castes required a larger set of policy and institutional involvement for the issue to be meaningfully tackled.

The Parliament referred the Bill to the Joint Select Committee which was first headed by Mr. RD Bhandare and then by Mr. SM Siddayya. The Joint Select Committee emphasised on the protection of rights of victims of untouchability. To quote from its report, "By reason of the abolition of 'untouchability' certain rights are conferred on those who are subjected to the disability of untouchability and, therefore, the law should mainly concern itself to protect those rights. Hence, more emphasis should be laid in order to protect those rights rather than punishing the offenders who preach or practice untouchability in any form.

¹⁰⁵ *Id.*, at p. 95

Therefore, the committee feels that the short title of the Principal Act should be changed to the Protection of Civil Rights Act.”¹⁰⁶

The Elayaperumal Committee recommendations were incorporated and the scope of the Untouchability (Offences) Act 1955 was enlarged. The title of the Act was changed to the Protection of Civil Rights Act. It included within the offence of practicing untouchability the following:

- (i) Insulting a member of the Scheduled Castes on the ground of untouchability
- (ii) Preaching Untouchability, directly or indirectly or its practice in any form
- (iii) Justifying untouchability on historical, philosophical or religious grounds or on the ground of any tradition of the caste system.

Punishment was imposed on persons who enforce disabilities in the spheres of religion, society, public space, institutions such as hospitals and educational establishments. Boycott of untouchables was also penalised.

The penal sanction was been enhanced by providing that: (a) in the case of subsequent convictions for the second offence the punishment may range from a term of not less than six months and not more than one year, and also with fine which shall not be less than two hundred rupees and not more than five hundred rupees;(b) for the third offence or any offence subsequent to the third offence with imprisonment for a term of not less than one year and not more than two years and also with fine which shall not be less than 500 rupees and not more than 1000 rupees; (c) a person convicted for the offence of untouchability shall be disqualified for election to the parliament and state legislatures.

Apart from these changes in the law, to make prosecutions more effective the Act shifts the burden of proof by prescribing that if the offence is committed on

¹⁰⁶ Report of the Joint Committee on the Untouchability (Offences) Amendment and Miscellaneous Provision Bill, 1972. Submitted by Shri S.M. Siddayya, Chairman of the Committee on Feb 22, 1974 to the Parliament, Kshirsagar, p. 110

members of the Scheduled Castes, the court shall presume, unless the contrary is proved, that such act was committed on the ground of untouchability (Section 12). A duty was imposed upon the public servant to investigate such offences. It was provided that if a public servant willfully neglects the investigation of any offence under the Act, he shall be deemed to have abetted an offence punishable under the Act. All the State Governments were directed to adopt additional measures to combat untouchability. They were asked to appoint special officers and special courts to deal with offenders, to provide legal aid to victims, and to take strong steps to identify and remedy these problems.

Offences were non-compoundable under the amended Act. They were made cognizable and could be tried summarily by a Judicial Magistrate First Class. State Governments are empowered to impose collective fines on the inhabitants of an area if they commit or abet any offence under the Act. Governments are also required to provide facilities such as legal aid to victims of untouchability. Government officials have been mandated to appoint officers for initiating supervision over prosecutions, to set up special courts, to constitute committees at different levels, to undertake periodic surveys and identify areas where untouchability is practiced and to take suitable remedial measures for the enforcement of the provisions of the Act.

V. OBJECTS, STRUCTURE AND SCOPE OF THE “PROTECTION OF CIVIL RIGHTS ACT (PCRA) - 1955 ”

i. The Landscape of the PCRA

The Preamble to the Protection of Civil Rights Act describes it as an Act to “prescribe punishment for the preaching and practice of “Untouchability” for the enforcement of any disability arising therefrom for matters connected therewith.”

The focus of the Act therefore appears to be on punishing the preaching and practice of untouchability. However, the title of the Act belies this assumption. The title of the Act was changed from “Untouchability Offences Act” to “Protection of Civil Rights Act.” This title was mooted even at the time of the enactment of the Untouchability Offences Act. During the discussion on the Bill in the Rajya Sabha, Dr. Ambedkar had said that the name of the legislation should be “The Civil Rights (Untouchables) Protection Act’ so that it would indicate enforcement and protection of rights in addition to punishment of offenders.¹⁰⁷ The same issue came up for discussion in the Parliamentary Joint Select Committee deliberations studying the amendment of the Untouchability Offences Act. The Joint Select Committee recommended that “By reason of the abolition of ‘untouchability’ certain rights are conferred on those who are subjected to the disability of untouchability and, therefore, the law should mainly concern itself to protect those rights. Hence, more emphasis should be laid in order to protect those rights rather than punishing the offenders who preach or practice untouchability

¹⁰⁷ Rajya Sabha Debates, Vol. VII, No. 16-29, on 16th September, 1954, p. 2431, Kshirsagar, p. 109

in any form. Therefore, the committee feels that the short title of the Principal Act should be changed to the Protection of Civil Rights Act.”¹⁰⁸

The change in title therefore seems to indicate that the intention of the Legislature was to go beyond mere punishment of the offence of untouchability and target the root cause behind this social malaise. The Legislature wanted to create a facilitative environment for the protection of the rights of the former untouchables. Therefore, any study of the implementation of the Protection of Civil Rights Act cannot be limited to studying the nature and types of punishments awarded under the Act. It has to be a comprehensive study examining the impact of the legislation in protecting the rights of a section of the citizens of the country.

The debate over the title of the Act therefore highlights the crucial issue of the goal or purpose of the Act. Dr. Ambedkar’s words in the Constituent Assembly Debate, while discussing Article 17, still resonate through the PCRA. Dr. Ambedkar said of Article 17, “Is temple entry the final goal of the advancement of the social status of the depressed classes in the Hindu fold? Or is it only the first step? If it is the first step, then what is the final goal... merely an amendment to provide for temple entry is not sufficient. What is required is to purge it (Hinduism) of the doctrine of *chaturvarna* (which is the) parent of the caste system and untouchability.”¹⁰⁹

The issue that Dr. Ambedkar raised before the Constituent Assembly has not been satisfactorily answered all these years later. The legislative history and the content of the PCRA do not provide a clear answer as to the goal of the legislation. The Preamble describes the Act as targeted against the preaching and practice of untouchability. The Act itself focuses on removing specific disabilities associated with the practice of untouchability. However untouchability

¹⁰⁸ Report of the Joint Committee on the Untouchability (Offences) Amendment and Miscellaneous Provision Bill, 1972. Submitted by Shri S.M. Siddayya, Chairman of the Committee on Feb 22, 1974 to the Parliament, Kshirsagar, p. 110

¹⁰⁹ Justice SB Wad, *Caste and the Law in India*, Ove Centre for Corporate and Business Policy Research, New Delhi, 1984, p. 6-7.

itself, and disabilities imposed on persons by virtue of untouchability, are merely symptoms of a deeper social malaise, that is, caste-based discrimination and oppression. Can a legislation that merely targets the symptom but leaves the disease intact, make a meaningful contribution in ridding the society from the evil?

This issue was raised by the Elayaperumal Committee as well. It stated that “[t]he problem of untouchability is, therefore, inseparably linked up with the question of the caste system and the social set up based on that. It is an indisputable fact that the caste system is the dominating social force in this country. Hence any attempt to remove untouchability without striking at the root of the caste system is simply to treat the outward symptoms of a disease or to draw a line on the surface of the water. Untouchability cannot be abolished in this country unless the social order is changed by establishing new values, and for this purpose the values based on the Hindu religion must be changed first.”¹¹⁰

Similarly, in the 2001-2002 study of the prevalence of untouchability in contemporary rural India by Action Aid, which comprised of a survey of 565 villages in 11 states, it was found that the practice of untouchability was entrenched in economic and political inequality and was reproduced by the ideology of caste hierarchy.¹¹¹

In light of this, the first issue that needs to be clarified and strengthened is the goal or purpose of the PCRA. Only when the goal is clear can individual provisions be analyzed to see if they further, or take away from the end purpose. It is submitted that if the goal of the legislation is the eradication of untouchability, then the focus of the legislation has to be on the cause and not on the symptom of untouchability. Therefore the focus of the Act has to shift from enumerating specific disabilities that have been prohibited, to targeting the issue of caste-based discrimination and oppression that manifests itself in the practice of untouchability. This has four implications for any legislative reform of the Act:

¹¹⁰ From speech of Shri Krishna Chandra Halder, Ramesh Chandra, p. 42

¹¹¹ *Id.*, at p. 62

1. The substantive content of what is criminalized and how much, and what is left out, will have to be re-examined;
2. The focus of the Act shifts from pursuing and prosecuting individual offenders to also looking at societal structures, institutions and policies and processes which perpetuate and entrench the discrimination and oppression that leads to the practice of untouchability;
3. The institutional setup will have to be strengthened to deal with the wider issue of not only removing disabilities but also creating the abilities that are required to cast off the burden of centuries of discrimination and oppression. Merely outlawing a socially entrenched practice, and expecting it to create a level playing field, will result in formal not substantive equality.
4. The role of the state and its instruments needs to be revised keeping in mind the goal of the Act. If the goal is the mere punishment of the practice or preaching of untouchability then the role of the state is restricted to ensuring that when matters of such nature are brought before it, it deals with them effectively and efficaciously. However, if the focus is on effectuating the guarantee of Article 17 and abolishing the practice of untouchability, then the state has to take on a pro-active role in bringing about the change in social conditions which will enable this norm transformation to take place. The Parliamentary Debates over the Protection of Civil Rights Act indicate that the legislature was aware of this greater and more robust involvement of the state in striking at the root of untouchability.

It is recommended that the purpose of the PCRA should be that of giving effect to the Article 17 guarantee of abolishing untouchability in all its forms. If this is the purpose, then the focus of the PCRA cannot be limited to punishing the practice of untouchability. Criminalizing the practice is important to effectuate the guarantee, but it is not the sole or sufficient intervention by the state in this

respect. The PCRA will be required to address the issue of discrimination and oppression in Indian society that lead to the practice of untouchability. This discrimination and oppression then becomes the target of the legislation, and the focus shifts from merely punishing individual infringers, to creating a societal environment which negates the root causes behind the practice of untouchability.

ii. Constitutionality

The constitutional vires of the Protection of Civil Rights Act has been challenged twice in the 50 years since its enactment. Both challenges were made after its amendment in 1976. The grounds of the challenges and the responses of the judiciary have been detailed below.

In *Shanmugasundaram Pillai v. State*,¹¹² the petitioner challenged S. 12 as being violative of A. 14 of the Constitution. The Court dismissed the challenge. It referred to a precedent *A. B. Krishna v. State of Madras*,¹¹³ which had involved a similar contention with respect to the shifting of burden of proof provision in the Madras Prohibition Act 1937. The Supreme Court in that case had held that the presumption was raised against all persons against whom the facts mentioned had been established. It said that such presumptions were ancillary to the exercise of legislative power and did not apply to offences outside the Act. The Madras High Court “in view of the categorical statement made by the Supreme Court” said that S. 12 was not violative of A. 14.

The shift in the burden of proof onto the defence is critical to secure prosecutions and the court by rejecting the challenge to S. 12 had upheld the social welfare characteristics of the Protection of Civil Rights Act. However, its reasoning is limited to the decision in AB Krishna does not explain the necessity of the presumption of S. 12 in favour of the Scheduled Castes.

¹¹² MANU/TN/0019/1982

¹¹³ 1957 SCR 399

In *Laxminarayana Reddy v. Union of India*,¹¹⁴ the respondent, a KEB employee, had been transferred to a different place. He delayed in handing over charge as a result of which the petitioner, a colleague, along with four others, abused him and called him names like 'Holiya' and 'Madiga'. The respondent registered a case under the Protection of Civil Rights Act. The petitioner denied all allegations and questioned the validity of S. 7. He challenged Section 7 on the grounds that it had infringed upon the petitioner's liberty, equality and freedom of speech and expression and that it conferred absolute power on state agencies to initiate criminal proceedings irrespective of whether they were genuine.

The Court did not uphold the challenge. It said that the PCRA had been enacted to expound the various forms of untouchability that had been abolished by the Constitution.

With respect to the challenges to Articles 14, 19 and 21, the Court said that the petitioner did not have a right to do any act that was forbidden by the same chapter. The rights under Articles 14, 19 and 21 cannot be treated as superior to rights and obligations created by other articles under the same chapter. The Court referred to the precedents *Kochuni v. States of Madras and Kerala*¹¹⁵ and *Madhu Limaye v. S. D. M. Monghyr*¹¹⁶ which said that the rule of harmonious construction had to be adopted which says that an article cannot defeat the object of another article unless it is impossible to reconcile both.

The Court further said that the Preamble of the Act along with various definitions described forms of enforcement of disability and hence the contention that unguided and arbitrary power had been conferred on state authorities was not valid. It is often alleged that the PCRA is abused by Government servants who are entangled in service disputes. The Karnataka High Court has sustained the strong provisions of the legislation despite these allegations. It should be noted

¹¹⁴ MANU/KA/0016/1987

¹¹⁵ MANU/SC/0019/1960

¹¹⁶ MANU/SC/0147/1970

that the present report has not studied aspects relating to the abuse of the PCRA.

Having examined the history and purpose of the PCRA, let us turn to its scope. A study of the scope of the Act raises two related questions that will be examined in this segment. These are:

1. What does the Act mean by the term untouchability? What forms and types of untouchabilities are covered by the Act?
2. Who is protected by the Act? Who can commit an offence under the Act? Is the Act limited to Scheduled Castes or does it extend to members of other castes/ religions as well?

iii. Definition of Untouchability

The word untouchability has not been defined under the Act and there is no definition in the Constitution either. The assumption is that the word has a well-known connotation – it refers to any social practice, which looks down on certain depressed classes, solely on account of their birth and disables them from having any interaction with people from the so called higher castes or classes. The Executive, Legislature and the Courts tend to define the term denotatively by pointing to well known examples of practice rather than connotatively by demarcating specific boundaries, leaving it to the judge to decide whether the notion of untouchability was a part of the mental framework of the accused when he committed the act.¹¹⁷

The National Human Rights Commission (NHRC) has made an attempt to define the term. In its Report on Prevention of Atrocities Against Scheduled Castes (Saxena Committee Report), untouchability has been defined to mean the

¹¹⁷ KD GENGADE, SOCIAL LEGISLATION IN INDIA, 254 (1978)

practices evolved as social restrictions in sharing food, access to public places and denial of access to drinking water sources etc.¹¹⁸ This is again an inclusive definition and it does not lay down any generic connotation of the term. The problem with such a definition is that it may not take into account all forms of practice of untouchability.

One understanding of the term is to include all instances in which a person is stigmatized as unclean or polluting or inferior because of his origin or membership in a particular group. However, this view has been rejected by the courts, and the use of the *varna* classification continues without judicial censure.¹¹⁹ The High Court of Bombay in *Laxman Jayaram Shant v. State of Maharashtra*,¹²⁰ ruled that “Untouchability” is referable to the caste and sub-caste. In different parts of the country, different castes have been considered as “untouchable”. This shows the emphasis of the judiciary on limiting the definition of untouchability to certain castes, irrespective of other forms of untouchability practiced against groups not on such basis.

The *practice* of untouchability is not confined literally to the avoidance of contact. It would seem to include any invidious treatment associated with the victim’s membership or origin in an untouchable group even if the practice does not involve the avoidance of pollution, e.g. restrictions on dress of untouchables.

The Supreme Court has had no occasion to define the term, but the Mysore High Court has defined it as:

“The subject matter of Article 17 is not untouchability in its literal or grammatical sense but the practice of it as it has developed historically in the country.”¹²¹

¹¹⁸ Report on Prevention of Atrocities Against Scheduled Castes s, National Human Rights Commission, New Delhi, 2004, p. 13.

¹¹⁹ *Ajit Kumar v. Ujayar Singh*, AIR 1961 SC 1334.

¹²⁰ MANU/MH/0021/1980.

¹²¹ *Devarajiah v. Padmanna*, AIR 1958 Mys 14.

5.1 The caste and economic status of the perpetrator in the cases

State	SC	ST	OBC	Others	Mixed	Not responded
Andhra Pradesh	0	0	1	0	0	3
Karnataka	2	1	3	4	0	4
Madhya Pradesh	1	0	0	2	0	3
Rajasthan	0	0	1	1	0	1
Uttar Pradesh	0	0	0	0	12	1
West Bengal	0	0	0	0	0	0
Grand Total	3	1	5	7	12	12

Notwithstanding the fact that the Statement of Objects and Reasons of the PCRA states that the Act is not confined in its application only to Hindus, there is a common perception, even amongst judges,¹²² that the practice of untouchability is confined only to members of the Scheduled Castes, who by their very definition are Hindus. The above Table which is based on the interviews of police personnel shows that the practice of untouchability is prevalent even within the members of SCs and STs. It has to be understood, however, that untouchability is a social phenomenon, whereas the characterisation of certain groups as Scheduled Castes is based on the discretion of the President. Even if a caste is taken out of the purview of the list under Article 341, under which such list is made, untouchability might still be practiced against it. Further, Scheduled Castes as contained in the list are only those professing the Hindu religion. Later amendments were made to the Presidential Order of 1950 to include Dalit converts to Sikhism and Buddhism. If a member of such Scheduled Castes converts to, say, Christianity/Islam, he is no longer considered a member of the Scheduled

¹²² Source: Interviews conducted by the Team. See annexures.

Castes. However, since untouchability is a social phenomenon, it might still be practiced against such person. Therefore, the concept of untouchability has to be separated from the *varna* gradation and each circumstance of untouchability should be examined in its own context. Another problem with confining the scope of untouchability to the *varna* gradation is that it is concluded that persons who belong to categories against whom untouchability is practiced, would not in turn be practicing untouchability themselves. This interpretation would not take into account the fact that there might be caste demarcations within Scheduled Castes themselves. For example, in, Nizampatnam of Guntur district, fishermen who belong to Scheduled Castes became economically rich because of prawn-culture and fish-culture during 1990s. Fishermen dominate the religious festivals, religious ceremonies. It is the Fishermen caste, which now practice untouchability towards Dalits.¹²³

It cannot be said, therefore, that the Scheduled Castes are a homogenous group, with the same interests and values. Such notions of homogeneity however, do exist, as is amply clear from legislations like the POA Act.¹²⁴

Finally, untouchability can be practiced even between members of different religions. This issue has been discussed later in detail. It is sufficient to say, at this point, that the term untouchability cannot be confined only to members of the Scheduled Castes. They are certainly the main beneficiaries of this provision. However, the practice of untouchability can extend beyond the legal categorization of castes, into the social interaction between different groups. Therefore, in light of consistent judicial practice that limits the application of the Act only to members of the Scheduled Castes, it is necessary to clarify that the Act covers the imposition of disabilities against any person because of his membership in a particular social group, on grounds of untouchability.

¹²³ People's Report on Status of Untouchability Practices in India, p.72.

¹²⁴ Most provisions in the Prevention of Atrocities Act begins with the caveat, "whoever, not being a member of the Scheduled Castes or Scheduled Tribes...". There is nothing to suggest that there will not be hierarchies and caste demarcations within the Scheduled Castes themselves.

An alternative to defining the scope of the act in terms of what constitutes untouchability, would be to define the term 'untouchable'. The Untouchability Offences Bill in S. 2 (f) had defined untouchable as:

“Untouchable means a member of the Scheduled Castes as defined in Article 366 (24) of the Constitution and includes any other person who by custom or usage is regarded as untouchable by any community or section thereof:

Explanation I:

A member of the Scheduled Castes shall not cease to be a member if he resides in any locality other than the locality specified in relation to him in any public notification issued or any law made by Parliament under Article 341 of the Constitution.

Explanation II

A member of the Scheduled Castes who has been converted from the Hindu religion to any other religion shall, notwithstanding such conversion, be deemed to be an untouchable for the purposes of this act.”

It is submitted, that this is a comprehensive definition and can be adopted in place of a definition of untouchability, if it is felt that the definition of the latter term is superfluous, given the common usage of the same. The need for this definition arises in the context of confusion with respect to applicability of the PCRA in situations where offences are committed against persons who are not members of a Scheduled Caste. This leads us to the second question in relation to the scope of the Act. The precise application of the PCRA to different caste groups has been litigated in several cases discussed below.

iv. Applicability of the PCRA

1. Exclusion based on 'Sectional' differences

The Mysore High Court addressed the question of the applicability of the PCRA in *Devarajiah v. Padmanna*.¹²⁵ In this case, the petitioner had filed a complaint against the respondent for distributing pamphlets which stated that the petitioner was prohibited from entering temples or places of public worship belonging to Jains. He also alleged that the respondent had instigated Jains not to have social or religious intercourse with others belonging to the same religious community as the petitioner. The case was registered under the Untouchability (Offences) Act. Justice Sreenivasa Rau said that Article 17 did not use the word 'untouchability' in its literal or grammatical sense but in the context of the practice as it had developed historically. Similarly, the Act referred to untouchability in its historical context. The Court warned that a literal interpretation of the term would lead to situations where temporary untouchability of persons due to an illness suffered by them or because of their association with a dead person, would also fall within the purview of the Act, which did not have any connection to the practice of untouchability on a specific group of persons.

The Court held that the respondent was not guilty of the offence of untouchability. His acts and conduct could amount to instigation to social boycott towards a particular community not on the ground of their origin but because of religious or social beliefs and practices of the Jain community. The emphasis of the court is on protecting the freedom of religious denominations to manage their own religious affairs. The Court was clear that the Act applied only to persons who belonged to communities that were regarded as 'untouchable' over time.

It would be necessary to discuss the implications of the decision on the interpretation of S. 3 after the 1976 amendment deleted the words, "belonging to the same religious denomination". The Elayaperumal Committee recommended

¹²⁵ AIR 1958 Mys 84

such deletion on the ground that prevention of temple entry on the ground of untouchability should be punishable even if the person obstructing entry does not belong to the same religious denomination as the person prevented. However, it said that access to places of public worship to persons belonging to the same religion was subject to Article 26 of the Constitution. To briefly outline S. 3, it punishes persons who enforce religious disabilities on the ground of untouchability by preventing any person from entering any place of public worship *which is open to other persons professing the same religion, or any section thereof as such person*, or from praying or performing religious services or from using the waters of any sacred tank, well etc *in the same manner and to the same extent as is permissible to other persons professing the same religion or any section thereof as such person*. The Madhya Pradesh High Court in *State v. Puranchand*¹²⁶ stressed on the italicised words above to clarify that S. 3 intended to put untouchables at par with other caste Hindus.¹²⁷ The Kerala High Court offered further clarifications on the interpretation of S. 3 in *Parameswaran Moorthy v. Vasudeo Kurup*¹²⁸ by holding that the Section does not confer unfettered and absolute rights to perform religious services that are supposed to be performed only by priests according to religious tenets or to enter such places where such rituals are being conducted.¹²⁹ The Supreme Court has also adopted the same line of reasoning and has held that there is no unregulated and unrestricted right of entry in a public temple or other religious institution for persons who are not connected with religious functions.¹³⁰ In the case of *Venkatraman Devaru v. State of Mysore*,¹³¹ it held that denominations' had the religious freedom to manage their own religious affairs and could hence exclude outsiders from temple ceremonies.¹³²

¹²⁶ AIR 1958 MP 352

¹²⁷ Kshirsagar, p. 117

¹²⁸ ILR 1960 Ker 73

¹²⁹ Kshirsagar, p. 117

¹³⁰ Hindu Religious Endowments Board v. L.T. Swamiyar, AIR 1954 SC 282, Kshirsagar, p. 117

¹³¹ AIR 1958 SC 255

¹³² Kshirsagar, p. 119

As stated earlier, the 1976 amendment deleted the words, “belonging to the same religious denomination” from S. 3. However, it retained the words “sections thereof”. This would indicate that the section does away with denominational differences but retains sectional differences. However, there is no explanation as to what the distinction between denominations and sections is. The Explanation to the section adds to the confusion by including a number of sects/denominations/sections within the ambit of “Hindus” such as Virashaivas, Lingayats, Adivasis, Brahma Samaj, Arya Samaj, Buddhists, Sikhs, Jains etc.

One means of resolving the ambiguity with respect to the use of such terminology would be to look at the intent behind the exclusion. If the intent is to exclude on the basis of untouchability, then such intent cannot be protected as it falls foul of the Article 17 guarantee that abolishes untouchability in all its forms. An indication of the intent behind the exclusion can be gauged by observing how a particular community treats all non-members. If it excludes certain sections of non-members and allows other non-members, then it might be guilty of practising untouchability. If it excludes all non-members, then it could prove such exclusion as being “essential” to the practice of its religion. Therefore, for example, if a particular place of worship excludes all non-members, the situation would be characterized differently than if it excludes members of one particular religion, or caste.

2. Whether PCRA applicable to Other Backward Classes, non-Scheduled Castes/Scheduled Tribes and non-Hindus

In *Bharatinath Namdeo Gavand v. Lakshman Mali*¹³³, the complainant had obtained an injunction in respect of agricultural lands that were sought to be sold by the accused Panchas and village representatives. The complainants filed a case under S. 7 of the Protection of Civil Rights Act on the ground that the accused did not permit them to participate in village festivals, that they did not accept donations from them, were not on talking terms with them and penalised people who interacted with them. The respondents filed a criminal revision

¹³³ MANU/MH/1020/2006

petition contending that the PCRA was not applicable to the complainants as they were members of the Agra community which fell under the category “Other Backward Classes” and hence not “untouchable”. The Court had to decide whether the PCRA would be applicable to the complainants. The Bombay High Court examined the object and provisions of the Act and held that the Act had been enacted in the background of the practice of untouchability prevalent in India and to prohibit it, the same must receive an interpretation so as to subserve the said object. Hence the provisions cannot be extended to those who are not entitled to the protection thereof. The court referred to the distinction in the constitution between Backward Class of citizens and Scheduled Castes and Tribes [Articles 15(4) and 16(4)], stating that Scheduled Castes were the only groups entitled to invoke the Protection of Civil Rights Act.

In *Kanhu Ram v. Durga Ram*,¹³⁴ the respondent had stood as surety for Ramka, a member of the Scheduled Castes, against whom a case had been registered. According to the respondent, the petitioners resolved to ex-communicate him as he had stood as surety for a Harijan. He filed a private complaint with the Judicial Magistrate under the PCRA. The petitioners moved an application before the Magistrate contending that the respondent could not file a complaint under the Protection of Civil Rights Act as he was a Rajput and not a member of the Scheduled Castes. The Court dismissed their application and held as follows,

“It is evident by reference to Section 15 of the Untouchability (Offences Act, 1955 that the offences under the Act are cognizable and there is nothing in the Act to show that only a particular person can file a complaint for the offences committed under the Act. Under the circumstances, there is no substance in the contention that the respondent-complainant has no locus standi to file this complaint.”¹³⁵

The above decision is a rare one where the court has allowed a non-Scheduled Castes /Scheduled Tribe member to use the PCRA. The Himachal Pradesh High

¹³⁴ MANU/HP/0029/1979

¹³⁵ *Id.*, at Para 7.

Court did not examine the evolution of the practice of untouchability to see whether it was practised only on particular categories of people. It examined the bare provisions of the legislation, did not find any bar as regards the caste of the complainant and upheld the complaint. The case highlights an interesting point whereby untouchability is practised on a person by reason of his association with a member of the Scheduled Castes group.¹³⁶

By and large however, the courts have concluded that the definition of untouchability has to be interpreted in the historical context of the practice of untouchability where members of certain groups have been excluded from various spheres because of their supposedly 'impure' and inferior caste status. While this approach is possibly in keeping with the legislative intent, it does not logically follow that the protection of the Act should be extended only to members of the Scheduled Castes. This is of immense consequence for those groups who have been historically discriminated against on grounds of untouchability but are not part of the legal category of Scheduled Castes for various reasons. This proposition finds support in the argument of the then Home Minister GB Pant, who had stated during the debates on the Untouchability Offences Bill that "[t]his Bill does not apply to Hindus alone. It applies to all – we have, however, enlarged the scope of this Act. It will apply not only to Scheduled Castes, but probably to Christians in the South who are not allowed to enter Churches by those who consider themselves belonging to higher classes. There are certain Muslims who are treated in the same manner by the followers of Islam. They will have the benefit of the Provision."¹³⁷

¹³⁶ It is pertinent to note that the PCRA has taken such situations into consideration and incorporated a remedy in its provisions. S. 7 (2) imposes punishment of anybody who denies any right/privilege to which a member of a community is entitled, or who participates in the excommunication of such person because of his/her refusal to practice untouchability or because such person has acted in furtherance of the objectives of the Act. The scope of the words "any act done in furtherance of the object of this Act" is wide and would include cooperating with or providing assistance to ex-untouchables. In the *Kanhu Ram* case, the respondent by standing as surety for a member of the Scheduled Castes provided him assistance and hence would be able to take recourse to S. 7 (2) (ii). Though the Court came to the right conclusion, it should have made use of the relevant provision of the law which clearly allowed any person to take recourse to the PCRA irrespective of his caste, if he was discriminated against or excluded because of his association with an ex-untouchable.

¹³⁷ Lok Sabha Debates, April 27, 1955, pp. 6545-6672, in Kshirsagar, 120

At this juncture, it is also important to examine S. 7 (1) (d) of the PCRA. The section states that it is an offence to insult or attempt to insult a *member of the Scheduled Castes* on the ground of untouchability. The scope of the clause is restricted to members of the Scheduled Castes thus implying that the rest of the Act (apart from S. 12) is applicable to Scheduled Castes and other castes as well. Section 12 shifts the burden of proof as to the intent behind the action where a disability is imposed on a member of the Scheduled Castes. This implies that there might be cases where the offence is not committed against members of Scheduled Castes. In such cases, the burden of proof will not shift.

3. Whether applicable when accused is member of Scheduled Castes / Scheduled Tribes

Another question as regards applicability of the Act is whether a complaint can be registered against an accused who is a member of the Scheduled Castes. In *State of Karnataka v. Shantappa*¹³⁸, it was held that where the complainant and accused are members of the Scheduled Castes, an offence cannot be registered under the PCRA as there cannot be any preaching or practising of untouchability on the ground of caste. In this case, during a meeting on the choice of construction of a Ram temple, the respondent/accused had abused the petitioners in the name of their caste and had poked the chin of the first petitioner with a torch. The Court held that even if the petitioners proved that the respondent had indeed abused them, this would mean that he engaged in “self-condemnation of the community to which he equally belonged.”¹³⁹

While the reasoning of the Court is sound in so much that the respondent would be insulting his own community by abusing the petitioner, it does not take into account complex hierarchies that may exist within the Scheduled Castes or Tribes. Empirical investigation into the forms and practices of untouchability has revealed for example that in Nizampatnam of Guntur district, fishermen who belong to Scheduled Castes become economically rich because of prawn-culture

¹³⁸ MANU/KA/0137/1996

¹³⁹ *Id.*, at Para 9.

and fish-culture during 1990s. Fishermen dominate the religious festivals, religious ceremonies. It is the Fishermen caste, which now practice untouchability towards Dalits.¹⁴⁰ Therefore, treating the Scheduled Castes as a homogenous group structured horizontally rather than hierarchically would be simplifying the issue.

4. Whether applicable to persons who have converted to Buddhism or any other sect

In *Kumara Mangala v. State of Maharashtra*¹⁴¹, the accused had insulted the complainant and other members of his community who had converted to Buddhism during a palanquin procession. A case was filed and the accused were convicted by the trial court under S. 7 (1) (c) and (d) of the PCRA. On appeal, the Sessions Court remanded the matter back for trial for the accused to lead evidence to show that the complainant was not a member of the Scheduled Castes. A revision application against this order was filed before the High Court. The High Court held that the Sessions Court had erred in applying S. 12 and putting the burden of proving that the complainant was not a Scheduled Caste on the complainant. It said that the complainant had to show that he belonged to the Scheduled Castes. While admitting that the end result was unfortunate and that the conduct of the accused had been improper, the Court said that it was restrained and had to acquit the accused.

It is necessary for the PCRA to take such situations into account. The reason why many Scheduled Castes have converted to Buddhism is because of the discrimination and humiliation faced by them from the upper castes. They convert to another faith in the hope of a better life, but this does not always happen. They continue to be treated as lower castes. They will be left without remedy if they are not allowed to use the PCRA. Similarly, Dalit Christians are also known to face discrimination and are demanding that they be classified as Scheduled Castes.

¹⁴⁰ People's Report on Status of Untouchability Practices in India, p. 125.

¹⁴¹ MANU/MH/0249/1979

After the passage of the Constitution (Scheduled Castes) Order (Amendment) Act 1990, paragraph 3 of the Constitution (Scheduled Castes) Order 1950 includes Buddhists to say that conversion of a Scheduled Caste into Buddhism will not alter their status in respect of their caste.¹⁴² Thus, the present position is that members of Scheduled Castes who convert to sects that are considered to be a part of the Hindu religion will not lose their caste status that entitles them to certain constitutional and legal protections. SC/ST members who convert to another religion will lose their caste status.

It is important to note that there is no Supreme Court decision that has set the matter at rest as a result of which disputes regarding the scope of the PCRA have come up before High Courts at regular intervals. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on the other hand, as the title suggests, is clearly applicable only to Scheduled Castes and Scheduled Tribes. This is evident from the sections as well which begin by stating that a person who is “not a member of the SCs/STs” is liable to be punished for carrying out any of the atrocities mentioned in the Act.¹⁴³

5. Notification of Scheduled Castes not uniform across all States

The case of *Charles Raj v. State of Maharashtra*¹⁴⁴ highlights the conflict that exists in the notification of Scheduled Castes between different states. Here, the complainant filed a case under the PCRA in the State of Maharashtra alleging ill-treatment by the accused on the grounds of untouchability. It was found that the caste of the complainant had not been notified as Scheduled Castes in Maharashtra but had been notified in Tamil Nadu from where the complainant hailed. However, the Court referred to Article 341 which states that a caste would be deemed to be a Scheduled Caste only in relation to that State as notified in the list. Hence no offence would lie either under the PCRA or the POA.

¹⁴² Naval, T.R., “Legally combating atrocities on Scheduled Castes s & Scheduled Tribes”, p. 59

¹⁴³ Naval, p. 73

¹⁴⁴ MANU/MH/0859/2004

There is a need for the PCRA to address this problem. Humiliation/discrimination by upper castes does not necessarily take place based on whether Dalits have been notified as Scheduled Castes such by their respective states as this case indicates. While the POA clearly requires the complainant to be a member of the Scheduled Castes / Scheduled Tribes, the PCRA does not mandate such a requirement. If the judiciary reads in such a requirement in the legislation, such an interpretation could leave victims of untouchability without remedy especially in cases like the present one which are a result of administrative shortcomings.

VI. DISABILITIES UNDER THE “PROTECTION OF CIVIL RIGHTS ACT (PCRA), 1955”

This Chapter details the various disabilities arising from the practice of untouchability that are sought to be removed under the Act, the provisions relating to the same, and the incidence of such practices as revealed through our field study. It attempts to analyze the data gathered in order to evaluate the provisions of the PCRA which relate to such specific practices.

i. Religious Disabilities

Section 3 punishes the enforcement of religious disability on the ground of “untouchability” in the form of preventing any person from entering a place of public worship open to persons professing the same religion, or from worshipping/offering prayers or bathing in a sacred well or any other sacred water body. The punishment is imprisonment between one month and six months and a fine of Rs. 100 or more upto a maximum of Rs. 500.

Section 3 prescribes imposition of disabilities against persons of the same religion. This has been controversial right from the time of the legislative debates on the PCRA. During the Parliamentary debates, Mr. J.M. Gowder was of the opinion that that the use of the phrase ‘professing the same religion’ would adversely affect the secular nature of the state as the Act was applicable only to Hindus preventing Scheduled Castes from entering temples but not to non-Christians or non-Muslims who were prevented from entering churches or mosques. He felt that in a secular State like India, people belonging to different religions should have the freedom to worship wherever they want. So, if a non-Muslim wants to pray in a mosque or a non – Christian in a church, they should not be prevented from doing so. He opined that religion was the bedrock of casteism and bigotry, which was bedeviling the entire country and unless religion

was deprived of its legal backing, it was not possible to successfully implement any legislation for the removal of untouchability. Hence, to whichever religious faith a place of worship may belong, there should not be any practice of untouchability and there was no need of mentioning religion in the Act.¹⁴⁵

Section 3 is confined only to those situations where the oppressor and the victim belong to the same religion. This does not take into account the fact that untouchability is no longer a mere religious phenomenon, but a social one. In situations where a Hindu, who perceived to be an untouchable, converts to another religion, say, Christianity, he might still wish to follow the rituals of his earlier religion. This is not uncommon. In this respect, untouchability might still be practiced against him. However, he will not be protected by Section 3, since he is now a Christian whereas the oppressor is a Hindu.

Further, linking the Act back to Article 17 of the Constitution which provides for abolishing untouchability *in all its forms*, the limitation imposed by the Act is incongruent. If persons of other religions are kept out merely on the notion that they are untouchable, then the legislative policy should provide for proscribing such practices. The clear indication of whether a group is kept out for reasons of discrimination based on notions of pollution or inferiority can be determined by examining whether exclusion is practiced against all groups or whether it is practiced selectively. In the latter case, discrimination on the basis of untouchability can be presumed.

Field studies reflected in the following data indicate that untouchability is still practised in the religious sphere despite the existence of S. 3. Disabilities in the religious sphere are the most common forms of practice of untouchability.

Our study interviewed 648 people about their experience of untouchability in the religious sphere. About 619 persons out 648 said that they like to go to temple. Only about 29 said that they are not interested in going to the temple. (table. 6.1).

¹⁴⁵ Lok Sabha Debates, May 23 1972, cols. 174 – 75.

Table 6.1 Whether want to go to Temple

State	Yes	No	Total
Andhra Pradesh	110	0	110
Karnataka	190	0	190
Madhya Pradesh	142	0	142
Rajasthan	25	17	42
Uttar Pradesh	70	12	82
West Bengal	82	0	82
Grand Total	619	29	648

When asked whether the respondents are allowed to enter the temple in the village. For this, about 132 said that they are allowed to enter the temple. But majority of them (about 516) answered that they are not allowed. This is exactly the problem. The casteist practices have a religious sanctioning. This is the real threat to the implementation of the PCRA.

6.2 Allowed to enter the temple

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	116	74	190
Madhya Pradesh	0	142	142

State	Yes	No	Total
Rajasthan	16	26	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	132	516	648

Let us move on to see the kinds of activities that are performed in the temple. About 358 said that they take part in the temple activities of the village.

6.3 Taking part in the activities of temples

State	Yes	No	Total
Andhra Pradesh	106	4	110
Karnataka	59	131	190
Madhya Pradesh	142	0	142
Rajasthan	9	33	42
Uttar Pradesh	5	77	82
West Bengal	37	45	82
Grand Total	358	290	648

If so then in what kind activities do they participate? About 36 said that they participate in temple activity by beating the drums. Most of them are found in Andhra Pradesh. Another 36 said that they act as harbingers of information. All these are found in MP. Only about 43 said that they have to do both. Another 34 who are from Karnataka, said that they have to do both. About 78 have said that they participate in prayers. About 397 said that there is no fixed activity. About 375 said that Brahmins preside over their religious activities. Only about 98 said the community elders would officiate the activities. Again another 21 said that the local priest performs for them. About 158 have not responded.

6.4 Who acts as purohit while performing marriages

State	Brahmin	Community elder	Local priest	Not responded	Total
Andhra Pradesh	0	89	21	0	110
Karnataka	190	0	0	0	190
Madhya Pradesh	57	0	0	85	142
Rajasthan	19	9	0	14	42
Uttar Pradesh	27	0	0	55	82
West Bengal	82	0	0	0	82
Grand Total	375	98	21	154	648

To another question regarding marriage processions in the village about 599 have said that they could take the procession in the village vicinity of other

castes. About 581 said that they are allowed drum beats during procession. Only about 49 said that they are not allowed.

6.4 (a): Whether Dalits are prohibited from participating in the temple activities

State	Yes	No	Not responded	Total
Andhra Pradesh	5	8	1	14
Karnataka	1	8	1	10
Madhya Pradesh	1	13	1	15
Rajasthan	4	3	1	8
Uttar Pradesh	0	2	8	10
West Bengal	0	10	1	11
Grand Total	11	44	13	68

This questionnaire was also presented in non-dalit households. In response, a considerable number of them agreed that untouchability was still observed especially in connection with temple activities.

6.5 Taking marriage processions

State	Yes	No	Total
Andhra Pradesh	106	4	110

State	Yes	No	Total
Karnataka	150	40	190
Madhya Pradesh	142	0	142
Rajasthan	39	3	42
Uttar Pradesh	82	0	82
West Bengal	80	2	82
Grand Total	599	49	648

With regard to whether Bridegrooms had to walk in the vicinity of the upper castes, about 101 said that they have to. But majority said that they need not (Table -6.6). About 4 said that they have to take the mandatory blessings. Whereas the majority have said that they need not. Are there any conflicts over marriage? To this only in Rajasthan it is said that Brahmins did not allow taking baarat, and the police had to intervene.

Table: 6.6 Have to walk in upper caste vicinity during Marriage processions

State	Yes	No	Total
Andhra Pradesh	0	106	106
Karnataka	0	150	150
Madhya Pradesh	83	59	142
Rajasthan	8	31	39
Uttar Pradesh	6	76	82

State	Yes	No	Total
West Bengal	4	76	80
Grand Total	101	498	599

Regarding separate burial grounds the following responses were made: about 586 said that funeral procession will take place. But only about 62 said there will no be procession (Table: 6.6).

Table: 6.7 Funeral procession

State	Yes	No	Total
Andhra Pradesh	81	29	110
Karnataka	188	2	190
Madhya Pradesh	112	30	142
Rajasthan	41	1	42
Uttar Pradesh	82	0	82
West Bengal	82	0	82
Grand Total	586	62	648

To a question about organizing processions for their deities, about 436 said that they are allowed to do so, and 151 that they were not allowed. (Table: 6.7).

Only a negligible minority of non-dalits accepted that prohibition of this nature is imposed on dalits.

Table: 6.8 Religious processions of deities (Survey in dalit households)

State	Yes	No	Not Practice	Total
Andhra Pradesh	46	64	0	110
Karnataka	142	48	0	190
Madhya Pradesh	142	0	0	142
Rajasthan	23	19	0	42
Uttar Pradesh	21	0	61	82
West Bengal	62	20	0	82
Grand Total	436	151	61	648

When the same data was triangulated with that of the response from non dalit only a few agreed to the prevalence of such practice.

6.8 (a) : Whether Dalits are allowed to bring Marriage processions to localities where non-dalits live (Survey in non-dalit households)

State	Yes	No	Not responded	Total
Andhra Pradesh	7	2	5	14

State	Yes	No	Not responded	Total
Karnataka	10	0	0	10
Madhya Pradesh	14	0	1	15
Rajasthan	7	0	1	8
Uttar Pradesh	10	0	0	10
West Bengal	11	0	0	11
Grand Total	59	2	7	68

With regard to the question of being called by their caste names, about 26 persons said that their employers do so. Another 40 said that the dominant castes call them so. Thus, totally about 114 said that they are addressed by their caste names. Only about 2 felt bad about being addressed by their castes. But about 114 said that it is generally accepted notion. Only in Rajasthan there was a conflict when a Brahmin called a dalit as chammaar, then they fought and complained to the police.

Table: 6.9 Calling by caste names.

State	employers	Upper caste	Brahmin, Jats	Generally	Total
Andhra Pradesh	26	0	0	0	26
Karnataka	0	40	0	0	40
Madhya Pradesh	0	0	0	31	31
Rajasthan	0	0	17	0	17
Uttar Pradesh	0	0	0	0	0
West Bengal	0	0	0	0	0
Grand Total	26	40	17	31	114

To briefly summarise, it is heartening to see that there seems to be progress in certain areas to religious disabilities – for example, in many states, all untouchables were allowed temple entry. However, notable instances of caste based discrimination still exists in the religious sphere, giving cause and reason to better implement beneficial legislation like the PCRA. Data suggests that in some states, traditional forms of discrimination still exist, like prohibitions from organizing processions for deities, etc.

ii. Social Disabilities

Section 4 imposes punishment for enforcing social disabilities on the ground of untouchability. It lists the offences that fall under the purview of 'social disabilities'

- preventing any person from - entering a shop, public restaurant or place of public entertainment; using utensils and other articles kept in any public restaurant, dharamshala, sarai or musafirkhana; practising any profession; using any river, stream, well, tank or any other water body, or any cremation ground, sanitary convenience, road/passage or public resort; using any place which is used for charitable or public purpose wholly or partly out of state funds; using any public conveyance; constructing, acquiring or occupying any residential premises and observing any social or religious custom or ceremony.

The empirical study reveals rampant violations of Section 4. This was observed in Bommanahalli village of Gulbarga district, Karnataka. Members of the Scheduled Castes were made to reside in settlements outside the city. Further, they were not allowed to sit in the presence of people from “upper” castes. They were also not allowed to enter houses of people who were not from the Scheduled Castes. They were served food separately in weddings and if there was a wedding in their family, to which they had invited people from the “upper” castes, they were required to arrange for a special cook. Even the sources of water were segregated. Where they were allowed to draw water from common sources, they were not allowed to operate the pump themselves. They had to wait for an “upper” caste person to draw water and give it to them. Members of the Scheduled Castes/tribes were not allowed entry into temples as well, especially during festivals. The field investigators discovered that there had been instances of violence when the members of the Scheduled Castes/Tribes tried to enter these temples. Another violation of the PCRA found in Bommanahalli village was the fact that the members of the Scheduled Castes/Tribes were made to carry on certain tasks like drum beating and cleaning the village streets. Though they were not forced to do these tasks, refusal to do them led to verbal abuse. There were also separate graveyards for “upper” castes and the Scheduled Castes/tribes. The latter were strictly prohibited from taking processions of dead bodies through the streets where people of the “upper” caste resided.

6.9(a): Are dalits supposed to carry their own plates

State	Yes	No	Not responded	Total
Andhra Pradesh	1	10	3	14
Karnataka	0	10	0	10
Madhya Pradesh	0	12	3	15
Rajasthan	2	6	0	8
Uttar Pradesh	1	9	0	10
West Bengal	0	11	0	11
Grand Total	4	58	6	68

The responses of dalits have suggested that the practice of untouchability leading to social disabilities is prevalent. A few non-dalit respondents have also confirmed that untouchability is observed with members of dalit community during the social gatherings and feasts.

6.9(b) Are dalits supposed to wash the plates used by them

State	Yes	No	Not responded	Total
Andhra Pradesh	2	11	1	14
Karnataka	1	9	0	10

Madhya Pradesh	1	12	2	15
Rajasthan	2	5	1	8
Uttar Pradesh	6	4	0	10
West Bengal	1	10	0	11
Grand Total	13	51	4	68

If we look at the responses from non-dalits, we find that only 4 out of 68 overtly accepted that dalits are served food in different vessel. However the next table shows that about 20% of the non-dalits responded that dalits are supposed to wash their own utensils after having food during a marriage procession.

A similar situation was found in Waganagare village of the same district. Further, in Waganagare, it was found that the usage of caste name was very prevalent. In terms of usage of water, the investigators found an instance where the members of the Scheduled Castes were not permitted to take water from a common source, even when “their” source had been highly contaminated, since a dog had died in the well. In Waganagare, the members of the Scheduled Castes/tribes were forced to perform certain vocations like grave digging, drum beating, cleaning the village streets. If they refused to do these tasks, they were subject to physical and verbal abuse. There was a major issue as regards graveyards as well. Separate graveyards were maintained. However, due to shortage of space, non- Scheduled Castes people started burying their dead in graveyards earmarked for the Scheduled Castes people. This led to a situation where the latter have had to bury one body over another. Further, there have been cases of violence on this issue.

Hence, the PCRA seems to have had no impact in these two villages of Gulbarga district of Karnataka. Even in Honnavar taluk of Uttara Kannada district of Karnataka, which was chosen by virtue of having the least number of cases reported under the PCRA, there were restrictions on people from the Scheduled Castes entering the house of people of the “upper” caste. They were not allowed to take water from wells earmarked for use by the non- Scheduled Castes people, nor were they allowed entering houses of Konkani Brahmins. In case of other castes, people belonging to the Scheduled Castes were allowed to enter the house, but not the kitchen and the *pooja* room. Usage of caste names to address people is a common practice in Honnavar. Further, if people from the Scheduled Castes were asked to work in houses of the non – Scheduled Castes, they were made to eat using plantain leaves or if they used plates, they were made to wash the plates with ash. In some instances, they were required to sweep the area on which they sat and clean it with cow dung as well. Hence, practices related to untouchability seem to be prevalent in areas of Karnataka and the PCRA seems to have failed in its objective.

In Murshidabad District of West Bengal, where the research investigators visited, the people of the *dom* community were not allowed to fill water from common taps and they were served food in different vessels. This was practiced by the *sadgoph* community. When the *sadgophs* were interviewed, they accepted that they followed these practices, but attributed it to personal hygiene, rather than to untouchability. In Brahminpara village of Murshidabad district, it was observed that the Brahmins washed taps after people from the Scheduled Castes filled water from them and also did not allow the people from the Scheduled Castes to enter temples, except during festivals. However, in Muchipara and Daultapur villages of South 24 Parganas, no such discriminatory practices were found. In Lauhi and Bhagwanpur villages in Sitapur district of Uttar Pradesh, it was observed that separate utensils were given to people belonging to the Scheduled Castes and the schedules tribes. However, there were no issues as regards untouchability or other forms of discrimination flowing from the practice. The conclusion drawn by the field investigators in Uttar Pradesh was that there was

no untouchability in the traditional sense. Hence, it appears that in general, the PCRA seems to be having little effect in preventing practices prohibited by Section 4 in Karnataka and parts of West Bengal. However, in Rajasthan, Madhya Pradesh and Uttar Pradesh, traditional forms of untouchability, and those forms which come within the purview of the PCRA were not being practised.

Another important place to check the practice of untouchability is the Village Main Street. Are the dalits free to enter the main street in the village? Only about 48 of them said that they can enter the main street they are prohibited to enter the main street. This aspect is especially evident in Karnataka and Madhya Pradesh.

6.10: Prohibition on entering the main street

State	Yes	No	Total
Andhra Pradesh	1	109	110
Karnataka	15	175	190
Madhya Pradesh	30	112	142
Rajasthan	2	40	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	48	600	648

With regard to wearing of sandals and walking in front of a dominant caste person, about 597 of the respondents said that they have no problems of wearing sandals. But about 51 of them said that they cannot wear the sandals and walk. Surprisingly in UP and WB those incidents are not reported.

Table: 6.11 Wearing of Sandals

State	Yes	No	Total
Andhra Pradesh	106	4	110
Karnataka	175	15	190
Madhya Pradesh	112	30	142
Rajasthan	40	2	42
Uttar Pradesh	82	0	82
West Bengal	82	0	82
Grand Total	597	51	648

Respect for Other Castes in social Interactions:

Talking to people of other castes with folded hands: regarding this, only about 57 said that they have to do that. Whereas the rest 589 said that they need not do so. Asked to sit at lower level than other caste people: to this also only about 46 said that they have to sit at a lower place before the dominant castes.

6.12 Talking with folded hands

State	Yes	No	Total
Andhra Pradesh	3	107	110
Karnataka	16	174	190
Madhya Pradesh	36	106	142
Rajasthan	2	38	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	57	589	648

6.13 Standing up in respect in front of dominant caste

State	Yes	No	Total
Andhra Pradesh	53	57	110
Karnataka	17	173	190
Madhya Pradesh	36	106	142
Rajasthan	2	38	42

State	Yes	No	Total
Uttar Pradesh	78	4	82
West Bengal	1	81	82
Grand Total	187	459	648

Table: 6.14 Sitting at a lower level

State	Yes	No	Total
Andhra Pradesh	1	109	110
Karnataka	2	188	190
Madhya Pradesh	36	106	142
Rajasthan	2	38	42
Uttar Pradesh	5	77	82
West Bengal	0	82	82
Grand Total	46	600	648

Table: 6.15 Reaction of Respondents to these practices.

Reaction	Andhra Pradesh	Karnataka	Madhya Pradesh	Rajasthan	Uttar Pradesh	West Bengal
It is Common Practice	0	15	1	0	12	6
Oppose	0	0	0	1	0	0
Should complain to Police	0	1	0	0	0	0
No Reaction	110	174	141	41	70	76
Total	110	190	142	42	82	82

Entry to Non-Dalit Houses:

When asked how far they could enter into the house of the other caste a significant number i.e., 535 said that they do have entry to the houses. Only about 113 said that the upper caste people do not accept them into their houses. (Table: 6.15). About 113 said that they could go into the interior of the house.

6.15(a) Acceptance into their house

State	Yes	No	Total
Andhra Pradesh	109	1	110
Karnataka	157	33	190
Madhya Pradesh	112	30	142
Rajasthan	27	15	42
Uttar Pradesh	82	0	82
West Bengal	48	34	82
Grand Total	535	113	648

On being asked whether they are supposed to clean their feet and hands before entering their houses, about 137 said that they have to clean their feet and hands.

Are there particular castes who do permit the dalits to enter their houses? For this about 49 of them answered that Brahmins and Konkani castes don't allow them to their houses. (Table 6.16). But in West Bengal we find that about 34 OBC castes don't allow entry into their houses.

6.16 The castes which does not allow in their house

Caste	Andhra Pradesh	Karnataka	Madhya Pradesh	Rajasthan	Uttar Pradesh	West Bengal
Brahmin & Konkani	0	33	1	15	0	0
Reddy	1	0	0	0	0	0
Some OBC	0	0	0	0	0	34
Total	1	33	1	15	0	34

6.16(a) If Dalits are allowed entry, how far can they enter the house

State	Interior	Exterior	Not Responded	Total
Andhra Pradesh	5	2	7	14
Karnataka	8	2	0	10
Madhya Pradesh	2	2	11	15
Rajasthan	2	5	1	8
Uttar Pradesh	3	6	1	10
West Bengal	9	1	1	11
Grand Total	29	18	21	68

A good number of non-dalits said that even if dalits are allowed into their houses, they are not allowed to enter the interior parts of the house. This was especially true in Karnataka, Andhra Pradesh and West Bengal.

Serving of Food and water in Non-Dalit Houses:

With regard to serving food and water about 516 said that they are served. Only about 132 have said they are not served. If so then do they serve them in separate vessels? About 160 said that they are being served in separate vessels (Table. 6.18).

Table: 6.17 Served food and water in non-dalit houses

State	Yes	No	Total
Andhra Pradesh	110	0	110
Karnataka	190	0	190
Madhya Pradesh	29	113	142
Rajasthan	23	19	42
Uttar Pradesh	82	0	82
West Bengal	82	0	82
Grand Total	516	132	648

Table. 6.18 Serving with segregated vessels

State	Yes	No	Total
Andhra Pradesh	6	104	110
Karnataka	55	135	190
Madhya Pradesh	0	142	142
Rajasthan	12	30	42
Uttar Pradesh	51	31	82
West Bengal	36	46	82
Grand Total	160	488	648

6.18(a): Are dalits served food and water in segregated vessels

State	Yes	No	Not Responded	Total
Andhra Pradesh	1	11	2	14
Karnataka	2	8	0	10
Madhya Pradesh	0	13	2	15
Rajasthan	4	3	1	8

State	Yes	No	Not Responded	Total
Uttar Pradesh	8	1	1	10
West Bengal	1	10	0	11
Grand Total	16	46	6	68

In responding to questions about the serving of food, more than 25% of the non-dalit respondents said that food and water is served in different vessels for dalits and non-dalits.

6.18(b): Whether Dalits are served food in their towels or upper garments

State	Yes	No	Not responded	Total
Andhra Pradesh	1	11	2	14
Karnataka	0	10	0	10
Madhya Pradesh	1	12	2	15
Rajasthan	0	6	2	8
Uttar Pradesh	6	4	0	10
West Bengal	0	11	0	11
Grand Total	8	54	6	68

A small number of non-dalits, especially in Uttar Pradesh also said that instead of vessels or plates, dalits are served food in their towels and/or upper garments. A larger number agreed that while giving drinking water to dalits, they prefer pouring it directly in their hands instead of using a tumbler or any other vessel.

6.18(c): Do non-Dalits pour drinking water into the hands of the dalits

State	Yes	No	Not Responded	Total
Andhra Pradesh	1	12	1	14
Karnataka	0	10	0	10
Madhya Pradesh	0	13	2	15
Rajasthan	6	1	1	8
Uttar Pradesh	8	0	2	10
West Bengal	3	8	0	11
Grand Total	18	44	6	68

When dalits were asked if they walk at a distance when they encounter someone from other castes, 78 persons answered in the affirmative.

Table: 6.19 Walking at a distance

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	56	134	190
Madhya Pradesh	0	142	142
Rajasthan	22	20	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	78	570	648

Segregation at Feasts and Community Lunch:

Festivals are part and parcel of life. At least during these festivities there is leniency in discriminatory practices. But they could also serve to reinforce the existing realities. Table 6.20 shows that about 591 are being invited to take part in important occasions such marriage. About 10 remarked that they are invited as workers. Only about 52 said that they are not invited. But in these said occasions about 171 said that they have to eat only after the other castes finish their eating whereas about 476 answered negatively. But there are incidences of serving food standing in a distance. About 89 said that these practices are still alive. Reaction to these practices: only about 7 respondents feel that it is a common or normative.

6.20 Do other caste people invite

State	Yes	As Worker	No	Total
Andhra Pradesh	110	0	0	110
Karnataka	153	5	32	190
Madhya Pradesh	142	0	0	142
Rajasthan	23	0	19	42
Uttar Pradesh	82	0	0	82
West Bengal	81	0	1	82
Grand Total	591	5	52	648

Inter-dining:

Inviting other castes for any celebrations? About 508 said that they do invite other caste people for celebration or important occasions. About 139 reported that they don't invite. The following table gives us the glimpses at the various celebrations or important occasions for which all castes invited.

Table: 6.20.1 Various Occasions

Occasion	Caste	Andhra Pradesh	Karnataka	Madhya Pradesh	Rajasthan	Uttar Pradesh	West Bengal
Marriage & other Function	All caste	84	143	142	5	81	50
House ceremony	All caste	0	13	0	0	0	0
Laximipooja/Tulasi Pooja	All caste	0	24	0	0	0	0
Jathras	All caste	0	0	0	0	0	0
Some Festival	All caste	0	5	0	0	0	4

Only 11 out of 68 non-dalits agreed that dalits are prohibited from participating in temple activities.

6.20.2: Are Dalits prohibited from participating in the temple activities

State	Yes	No	Not responded	Total
Andhra Pradesh	5	8	1	14
Karnataka	1	8	1	10

State	Yes	No	Not responded	Total
Madhya Pradesh	1	13	1	15
Rajasthan	4	3	1	8
Uttar Pradesh	0	2	8	10
West Bengal	0	10	1	11
Grand Total	11	44	13	68

Access to Drinking water

Another important area where untouchability is practised is accessibility to drinking water. The sources of water, who draws, how water is drawn all these throw much light on the caste discriminatory practices.

Table: 6.21 Sources of water for the respondents:

Drinking Water	Andhra Pradesh	Karnataka	Madhya Pradesh	Rajasthan	Uttar Pradesh	West Bengal	Total
Well	72	128	60	19	0	0	279
Handpump	0	21	68	13	82	82	266
Tap	2	11	14	10	0	0	37

Drinking Water	Andhra Pradesh	Karnataka	Madhya Pradesh	Rajasthan	Uttar Pradesh	West Bengal	Total
Both Well & Tap	0	15	0	0	0	0	15
Tank	36	0	0	0	0	0	36
Canal Water	0	15	0	0	0	0	15
Total	110	190	142	42	82	82	648

On whether both the communities are using the same sources of water or there is exclusive source, about 46 have their own individual sources of water. But another big number i.e. 343 have common water sources. Only about 259 said that they exclusively for their own community. Only about 20 out of 425 said that they have to wait until others draw the water. None reported the existence of a separate queue.

Table 6.22 Drinking facilities

State	Own	Used by others	Our community	Total
Andhra Pradesh	0	69	41	110
Karnataka	38	105	47	190
Madhya Pradesh	0	142	0	142

State	Own	Used by others	Our community	Total
Rajasthan	8	22	12	42
Uttar Pradesh	0	0	82	82
West Bengal	0	5	77	82
Grand Total	46	343	259	648

6.22.1: Whether Dalits are allowed to avail the services of other public sources of drinking water

State	Yes	No	Not responded	Total
Andhra Pradesh	8	1	5	14
Karnataka	10	0	0	10
Madhya Pradesh	9	5	1	15
Rajasthan	4	3	1	8
Uttar Pradesh	8	1	1	10
West Bengal	10	0	1	11
Grand Total	49	10	9	68

6.22.2 Is there a separate drinking water facility for dalits

State	Yes	No	Not responded	Total
Andhra Pradesh	5	8	1	14
Karnataka	2	8	0	10
Madhya Pradesh	1	14	0	15
Rajasthan	2	5	1	8
Uttar Pradesh	1	9	0	10
West Bengal	0	11	0	11
Grand Total	11	55	2	68

The fact that untouchability is observed even in case of access to drinking water was further substantiated with the data coming in from the non-dalit respondents. 11 out of 68 non-dalit respondents also agreed that there are separate sources of drinking water for dalits and non-dalits. It was observed that the practice is more prevalent in Andhra Pradesh. 10 out of 68 non-dalit respondents also said that dalits are not allowed to avail the facility of other public sources of drinking water.

The Action Aid study examining the prevalence of untouchability in rural India also found extensive imposition of social disabilities in contemporary rural society. The following table reflects this position:

Form/Site of Untouchability Practice	Percentage of Villages where Form is Practiced	Percent Villages Not Practiced	Total Surveyed Villages
Denied access to water facilities	48.4 (255)	43.5	527
No entry into village shops	35.8 (186)	57.0	519
No access to restaurants/hotels	25.6 (92)	64.9	359
No entry into private health center/clinic	21.3 (74)	72.4	348
No access/entry to public transport	9.2 (41)	87.0	447
No entry / seating in Cinema Halls	3.2 (6)	93.0	187
Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.			

Source: Action Aid, People's Report on Untouchability in Rural India.

The study also highlights a disturbing trend of imposition of restrictions on public behaviour that is not adequately dealt with by the PCRA. The study found the following:

Discriminatory Restrictions on Public Behaviour

(Forms/Sites arranged in decreasing order of incidence; pooled data from 11 states)

Form/ Site of Untouchability Practice	Percentage of Villages where Form is Practiced	Percent Villages Not Practiced	Total Surveyed Villages
Ban on marriage processions on roads	47.4 (229)	49.9	483
Forced to stand in front of upper caste men	25.6 (136)	67.9	532
Ban on festival processions on public roads	23.8 (114)	64.2	478
Cannot wear new/'bright' clothes	19.0 (101)	75.1	531
Cannot use umbrellas in public roads	16.7 (82)	80.4	490
Cannot wear dark glasses, smoke etc.	13.7 (66)	82.5	481
Cannot use chappals on public roads	10.6 (47)	86.9	443
Cannot use bicycles on public roads	7.1 (32)	90.6	448

Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.

Source: Action Aid, People's Report on Untouchability in Rural India.

To briefly summarise, the above data on the social disabilities indicate that the numerous and widespread instances are to be found of the practices sought to be eradicated through Section 3, including segregation and restriction of access to basic human resources. Such instances are found not only in the 'public' domain such as marriage processions and common water resources but also in the manner of invitation to one's household.

iii. Refusal to admit persons to hospitals etc.

Section 5 punishes the refusal (on the ground of untouchability), to admit persons to hospitals, dispensaries, educational institutions or hostels that have been established for the benefit of the public. It also makes an offence any act that discriminates against any person after his/her admission into such institutions. The punishment that can be imposed is a fine of a minimum of Rs. 100 and maximum of Rs. 500, and imprisonment of a minimum of 1 month to a maximum 6 months.

Our field studies indicate that despite the existence of this enactment, there is discrimination against dalits in the field of public services. Public life today is

largely defined to an extent how much a society is being educated. Given caste politics in Indian society we have to investigate this aspect seriously.

School Life

About 487 reported that their children go to school. About 161 said that their children do not go to school. The following reasons have been cited as to why they have to send their children go to school. About 22 reported that the children go to school because of mid day meals. If they are not sending what are the reasons? 31 have responded that they are not interested. Another 31 have said due to economic reason their children do not go to school.

6.23 Why do they go to school

State	Education	To get government or good job	Both	For mid day meals	Total
Andhra Pradesh	94	0	26	0	120
Karnataka	27	62	40	0	120
Madhya Pradesh	55	18	13	22	108
Rajasthan	29	4	0	0	33
Uttar Pradesh	45	9	14	0	68
West Bengal	42	7	6	0	55
Grand Total	292	100	0	22	513

If children are going to school where do they go? About 10 reported that they go to a private school. Whereas 477 out of 487 have said they go to government school.

Table 6.24 Private school or Govt. school

State	Private	Govt.	Total
Andhra Pradesh	0	94	94
Karnataka	2	127	129
Madhya Pradesh	0	108	108
Rajasthan	8	25	33
Uttar Pradesh	0	68	68
West Bengal	0	55	55
Grand Total	10	477	487

Are there any restrictions on going to school? All reported that there are no restrictions. Again everybody reported that there are no separate seating arrangements in the school. Though there are no separate seating arrangements yet the dalit children are asked to sit back in the class.

Table: 6.25 Children are asked to sit at the back of the class

State	Yes	No	Total
Andhra Pradesh	4	106	110
Karnataka	16	174	190
Madhya Pradesh	0	142	142
Rajasthan	2	40	42
Uttar Pradesh	2	80	82
West Bengal	46	36	82
Grand Total	70	578	648

About 78 have said that mid day meals are not served along with other caste children. This practice has been reported to a significant level from Andhra Pradesh. And to receive mid day meals about 12 reported of standing in separate queue.

6.25(a) Whether dalit children have entry into village school

State	Yes	No	Not responded	Total
Andhra Pradesh	7	0	7	14
Karnataka	9	1	0	10

State	Yes	No	Not responded	Total
Madhya Pradesh	13	0	2	15
Rajasthan	5	1	2	8
Uttar Pradesh	9	0	1	10
West Bengal	6	4	1	11
Grand Total	49	6	13	68

In West Bengal 6 out of 11 non-dalits also said that dalit children do not have entry to schools in the states. This brings into light the extent of untouchability being observed in the State.

Table: 6.26 Children allowed having food with other children

State	Yes	No	Total
Andhra Pradesh	74	36	110
Karnataka	2	188	190
Madhya Pradesh	0	142	142
Rajasthan	2	40	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82

Grand Total	78	570	648
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The aforementioned findings are further substantiated by the results of a recent study conducted by Action Aid, which showed that caste-based discrimination and untouchability is rampant even in schools and among children. It was reported that Dalit children are made to sit separately during meal time in village schools of Madhya Pradesh. When they protest, they are threatened and beaten badly by the teacher. Villagers of dominant caste do not even allow Dalits to cook midday meals at the school.¹⁴⁶ The case provides an insight into the penetration of the practice of untouchability.

Library

When asked about the availability of library facility in the village, about 83 have said that there is library facility. But a large number i.e. 565 have said that there is no library in their village. The library is utilised based on literacy levels. There are no restrictions whatsoever.

Table: 6.27 Public library in the village

State	Yes	No	Total
Andhra Pradesh	31	79	110
Karnataka	42	148	190
Madhya Pradesh	0	142	142
Rajasthan	10	32	42

¹⁴⁶ <http://www.actionaid.org/india/index.aspx?PageID=%202942>

State	Yes	No	Total
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	83	565	648

Women and untouchability

Caste Discrimination ultimately results in victimising women, particularly in Dalit community. Hence it becomes important to check whether the PCRA has resulted in giving agency to women or not.

About 55 of the respondents said that women of Dalit community have to walk at a distance when she encounters someone from other castes. We find this interestingly being practiced in Karnataka. With regard to the question of wearing saree above their knees, only about 12 from Andhra Pradesh said that they have to do so whereas 636 have reported that there is no such practice. Is there a practice that women are not allowed to wear blouses? None reported this practice. But about 20 respondents said that the women of Dalit Community are not allowed to wear jewellery. About 628 reported there is no such practice.

Table 6.28 Woman walking at a distance

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	53	137	190
Madhya Pradesh	0	142	142
Rajasthan	2	40	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	55	593	648

To briefly summarise, with respect to access to public services, while many untouchables do not have access to these services, it is still doubtful as to whether the cause is caste-based discrimination. In services like public schools, there are reports that children are asked to sit behind, and often there is discrimination practiced in the implementation of public services like the mid day meal scheme. Women especially face this discrimination in the context of their appearance and clothing. Here again, while the magnitude of figures is not high, the problem still exists.

iv. Refusal to sell goods or render services

Section 6 states that whoever, on the ground of untouchability, refuses to sell any goods or render any services to any person at the same time and place and on the same terms as they are sold to other members of the public during the ordinary course of business can be punished with is a fine of a minimum of Rs. 100 and maximum of Rs. 500, and imprisonment of a minimum of 1 month to a maximum 6 months.

The Action Aid study found the prevalence of other forms of economic disability imposed on the grounds of untouchability. The following table illustrates this issue:

Market Discrimination — Access to Work & Resources

Form/Site of Untouchability Practice	Percentage of Villages where Form is Practiced	of Villages where Form is Not Practiced	Total Surveyed Villages	
(a) Labour Market				
Denied work as agricultural labour	35.5	(158)	60.0	445
No touching when paying wages	37.1	(174)	59.7	469
Paid lower wages for the same work	24.5	(119)	70.8	486
Dalits not employed in house construction	28.7	(152)	62.0	529
(b) Input Market				
Denied access to irrigation facilities	32.6	(152)	59.4	466

(c) Common Properties Resources				
Denied access to grazing/fishing grounds	20.9	(76)	71.7	364
(d) Consumer Market – Sale & Purchase				
Not allowed to sell to milk cooperatives	46.7	(162)	48.1	347
Prevented from selling in local markets	35.4	(165)	54.9	466
Not allowed to buy from milk cooperatives	27.8	(100)	59.2	360
Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.				

Source: Action Aid, People's Report on Untouchability in Rural India.

6.28(a) Whether there are any Dalit Teachers in schools

State	Yes	No	Not responded	Total
Andhra Pradesh	6	6	2	14
Karnataka	6	0	4	10
Madhya Pradesh	0	8	7	15
Rajasthan	0	4	4	8
Uttar Pradesh	1	8	1	10
West Bengal	9	2	0	11
Grand Total	22	28	18	68

The scant number of dalit teachers also reflects upon the bias towards these castes. As many as 28 out of 68 non dalit respondents accepted that there are no dalit teachers in schools in their respective villages.

The data also indicates that despite the existence of Section 6, many goods and services are still denied to dalits and lower castes, as indicated below.

Hotel/ Public Eating places:

The following table shows the number of people who go to hotels in the villages across different states. Majority i.e., 350 out of 648 are not going to village hotels. Why? Is it being restricted? Our study shows, in Table 6.29, that either in most of villages there is no hotel, or the reason seem to be no money. Generally access to hotels is not restricted. Here the economic criterion seems to be the main cause than one's caste.

Table 6.29 Reason for not going to hotel

Reason	Andhra Pradesh	Karnataka	Madhya Pradesh	Rajasthan	Uttar Pradesh	West Bengal	Total
Economic	19	72	0	0	0	2	93
We eat at home	3	0	0	1	0	1	5
No Hotel	0	0	130	34	40	45	249
Had quarrel with hotel owner	0	0	0	1	0	0	1
Too far	0	0	0	0	0	2	2
Total	22	72	130	36	40	50	350

Table 6.30 shows the kind of practices that exist in serving food and beverages in the hotels in the villages. Out of the 298 respondents who go to hotel only 48 responded that they are served outside the hotel. Majority of them are from Andhra Pradesh. Another 12 respondents are from MP and in Karnataka only 2

reported of being kept outside the hotel. But in UP and W.B such practices are not reported.

Table 6.30 Serving food outside the hotel

State	Yes	No	Total
Andhra Pradesh	28	60	88
Karnataka	2	116	118
Madhya Pradesh	12	0	12
Rajasthan	1	5	6
Uttar Pradesh	0	42	42
West Bengal	0	32	32
Total	43	255	298

But when the respondents were asked whether they are served in separate vessels, totally 18 respondents reported that they were served in separate vessels. Out of this number 17 are from Karnataka. Here, the peculiarity is that they are not restricted from entering the hotels but inside the hotel food is served with separate utensils.

Shops

Another public space where every body has to go is the village shop for grocery. Table 6.31 shows the location of the shops in the village. About 461 respondents said that the shops are located inside the village.

Table: 6.31 Location of the Shop

State	Main Road/ Inside the village	Inside the Colony	Near by town	Total
Andhra Pradesh	110	0	0	110
Karnataka	88	24	78	190
Madhya Pradesh	122	0	20	142
Rajasthan	12	0	30	42
Uttar Pradesh	58	0	24	82
West Bengal	71	0	11	82
Total	461	24	163	648

With regard to the question whether they are allowed touch the items they buy, about 627 persons said that they could touch and chose items to buy. Only 21 respondents said that they cannot touch and buy.

Table: 6.32 Touching and choosing items

State	Can touch	Can't touch	Total
Andhra Pradesh	90	20	110
Karnataka	190	0	190

State	Can touch	Can't touch	Total
Madhya Pradesh	142	0	142
Rajasthan	41	1	42
Uttar Pradesh	82	0	82
West Bengal	82	0	82
Total	627	21	648

Another question was asked to the respondents, where would they sell their products. Table 6.33 shows their responses. About 407 do not sell their products. Only about 177 sell their products in the market place. Another 38 of them sell through the middle men.

Table: 6.33 Selling of products

State	No Production /don't Sell	Market	Middle Man	Both market & Middle man	Total
Andhra Pradesh	90	0	20	0	110
Karnataka	188	2	0	0	190
Madhya Pradesh	0	142	0	0	142

State	No Production /don't Sell	Market	Middle Man	Both market & Middle man	Total
Rajasthan	3	21	18	0	42
Uttar Pradesh	78	4	0	0	82
West Bengal	47	8	0	27	82
Total	406	177	38	0	648

Table: 6.34 Respondents stand outside the shop while purchasing

State	For every one	Yes	No	Total
Andhra Pradesh	1	49	60	110
Karnataka	0	8	182	190
Madhya Pradesh	0	0	142	142
Rajasthan	0	1	41	42
Uttar Pradesh	0	0	82	82
West Bengal	0	0	82	82
Total	1	58	589	648

Laundry

The respondents were asked whether they wash their clothes by themselves, everyone said yes. Further when it was asked whether the Dhobi gives them laundry services (table-6.35) about 43 said yes. But about 344 said that Dhobis do not give services to the respondents. Another 206 said that there are no dhobis in their villages and again another 55 said that they don't require their services.

Table 6.35 Village Dhobi gives laundry services

State	Yes	No	No Dhobi	We don't take service	Total
Andhra Pradesh	43	67	0	0	110
Karnataka	0	135	0	55	190
Madhya Pradesh	0	142	0	0	142
Rajasthan	0	0	42	0	42
Uttar Pradesh	0	0	82	0	82
West Bengal	0	0	82	0	82
Grand Total	43	344	206	55	648

Barber:

Another area that was investigated is the services of the Barber to the respondent community. About 317 of the respondents across the states said that they would go to the barber shop for haircut. Another 218 said that the Barber

comes to their colony for haircut. This is found in Karnataka, M.P and West Bengal. The rest 113 said that they go to the nearby town for the same purpose. When the question was posed regarding the denial of haircut there was an unanimous response that nothing of that sort existed.

But about nine respondents reported that though there is no denial of haircut but separate instruments are used for them. (table. 6.36)

Table: 6.36 Using Separate instruments

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	2	188	190
Madhya Pradesh	0	142	142
Rajasthan	0	42	42
Uttar Pradesh	0	82	82
West Bengal	7	75	82
Total	9	639	648

Again, about 58 respondents, particularly from Uttar Pradesh reported that they are not allowed to enter into the Saloon. This is quite interesting because in the above table it is seen that the Barber gives services to them all, but in the Saloon entry is denied. This might be due to the fact of where the saloon is located. To the other questions there are no negative responses recorded.

Table. 6.37 Entry into the Saloons

State	Yes	No	Total
Andhra Pradesh	110	0	110
Karnataka	48	0	48
Madhya Pradesh	90	0	90
Rajasthan	40	2	42
Uttar Pradesh	0	55	55
West Bengal	57	1	58
Total	345	58	403

To briefly summarize, data suggests that largely there is access to services like hotels, public eating places, and discriminatory access was only reported in a few states. There are disturbing instances with some persons not being able to touch goods in a shop, and a large percentage of untouchables apprehensive about selling their goods in the village shop. Other services like haircuts also seem to be not subject to caste based discrimination.

v. Other offences arising out of untouchability

S. 7 prescribes punishment for other offences that arise out of untouchability. The offences under sub-section include preventing any person from exercising his/her right under Article 17; molesting, injuring, annoying, obstructing, or

causing a person to lose his/her right or injures or boycotts any person who has exercised such right; using words (spoken or written), signs, visible representations or incites or encourages any person/s to practice untouchability; or insults or attempts to insult a member of the Scheduled Castes on the ground of untouchability. The punishment that can be imposed is a fine of a minimum of Rs. 100 and maximum of Rs. 500, and imprisonment of a minimum of 1 month to a maximum 6 months.

The following data from our field report suggests that dalits are still being denied their basic rights, despite the existence of this section. In this section the following aspects are verified: Forced services, Discriminatory practices in wage/ workplace/ irrigation etc. the responses are largely varied.

1. Forced Services dalits /people perform in the village: whether there are forced services in the following category, the responses again varied.

- i. Drum beating
- ii. Grave digging
- iii. Cremation
- iv. Harbingers of death news
- v. Chappal making
- vi. Removal of carcass
- vii. Animal Sacrifice
- viii. Manual scavenging
- ix. Cleaning the village

About 154 said that they are forced for drum beating, another 42 have said that they have to dig the graves for burial. About 97 have said that they have to make

chappals and about 78 have said that they have to do animal sacrifice. Scavenging is not reported (Table: 6.38)

Table: 6.38 Services that respondent and people from respondent caste perform

State	Drum beating	Grave digging	cremation	Chappal making	Removal of carcass	Animal Sacrifice	Sweeping	Scavenging	Traditional brewers	Total
Andhra Pradesh	60	6	0	42	63	63	57	0	0	291
Karnataka	86	0	0	19	0	0	0	0	0	105
Madhya Pradesh	0	26	0	26	0	0	0	0	0	52
Rajasthan	0	10	0	10	0	15	0	0	0	35
Uttar Pradesh	8	0	0	0	0	0	0	0	5	13
West Bengal	0	0	0	0	0	0	0	0	57	57
Grand Total	154	42	0	97	63	78	57	0	62	553

Discrimination in Wages: The following table shows the mode of payment that exists in the village. About 328 have said that the mode of payment is through money for their work. Either money or grain is given in another 313 cases. Regarding restrictions on the type of work, 10 respondents, all from MP have said that there are restrictions on type of work they have to do.

Table 6.39 Mode of Payment

State	Money	Grains	Both	Not working	Total
Andhra Pradesh	39	0	71	0	110
Karnataka	127	0	61	2	190
Madhya Pradesh	103	0	36	3	142
Rajasthan	30	0	12	0	42
Uttar Pradesh	14	0	66	2	82
West Bengal	15	0	67	0	82
Grand Total	328	0	313	7	648

Table: 6.40: Difference in lease rates and conditions

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	0	190	190
Madhya Pradesh	10	132	142
Rajasthan	0	42	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	10	638	648

Table: 6.41: Does employer keep money on the floor or throw into your hands to avoid touch

State	Don't touch	Give it to hand	Total
Andhra Pradesh	0	110	110
Karnataka	0	190	190
Madhya Pradesh	0	142	142

State	Don't touch	Give it to hand	Total
Rajasthan	2	40	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	2	646	648

Discrimination at workplace:

Standing outside the field until other castes finish ritual performance in the beginning of agricultural activity: about 55 have said that they have to perform this. 82 persons reported they are allowed to enter the field only after non-Dalits.

Table: 6.42: Standing outside the field

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	55	135	190
Madhya Pradesh	0	142	142
Rajasthan	0	42	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82

Grand Total	55	593	648
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As an indication of discrimination in the work place as well as in access to basic resources, about 197 have said that they cannot take water from wells and pots, and also 58 said that they have to sit separately at lunch.

Table: 6.43 Taking water from wells and ponds

State	Yes	No	Total
Andhra Pradesh	56	54	110
Karnataka	175	15	190
Madhya Pradesh	86	56	142
Rajasthan	15	27	42
Uttar Pradesh	42	40	82
West Bengal	77	5	82
Grand Total	451	197	648

Table: 6.44: Sit separately while taking lunch

State	Eat at home	No	Yes	Total
Andhra Pradesh	23	87	0	110
Karnataka	0	135	55	190
Madhya Pradesh	0	142	0	142
Rajasthan	0	39	3	42
Uttar Pradesh	0	82	0	82
West Bengal	0	82	0	82
Grand Total	23	567	58	648

Discrimination in Irrigation facilities:

371 farmers said they did not have the facility of access to water from a public source, as indicated below. In 26 cases, it is said that they have to take permission for utilising water. All of these cases are reported from MP.

Table: 6.45: Showing the accessibility of water from public source

State	Yes	No	Total
Andhra Pradesh	44	66	110
Karnataka	55	135	190

State	Yes	No	Total
Madhya Pradesh	62	80	142
Rajasthan	38	4	42
Uttar Pradesh	4	78	82
West Bengal	74	8	82
Grand Total	277	371	648

Traditional maid Service:

Any Dalit daya/maid working in other caste houses: about 293 have said that they have to work as maids/dayas in other caste houses. About 26 have said that there is discrimination in wage payment offered to a dalit daya and a non-dalit daya. During their work in the house about 293 have said that they are allowed inside the house. Whereas about 355 said that they are not allowed

Table: 6.46 Maids working in other caste houses

State	Yes	No	Total
Andhra Pradesh	55	55	110
Karnataka	97	93	190
Madhya Pradesh	52	90	142

State	Yes	No	Total
Rajasthan	13	29	42
Uttar Pradesh	68	14	82
West Bengal	8	74	82
Grand Total	293	355	648

Table: 6.47 Differentials in the wages offered to a dalit daya and a non-dalit daya

State	Yes	No/ Not sure	Total
Andhra Pradesh	0	110	110
Karnataka	0	190	190
Madhya Pradesh	26	116	142
Rajasthan	0	42	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	26	622	648

Table: 6.48 Maid allowed entering the house

State	Yes	No	Total
Andhra Pradesh	55	55	110
Karnataka	97	93	190
Madhya Pradesh	52	90	142
Rajasthan	13	29	42
Uttar Pradesh	68	14	82
West Bengal	8	74	82
Grand Total	293	355	648

6: Political Life

Exercising Rights:

About 625 have said that they have freedom and liberty to participate in the political activities of the Village. Only about 3 from West Bengal have said that there are restrictions to that.

Then are they prevented from entering the Village Panchayat Office? No such thing exists. They are even free to contest elections. But with regard to voting pattern about 4 have said that they are prevented from voting. Again the same number have said that they had to wait for their turn to cast their vote.

Table: 6.49 Prevented from exercising respondent's right to vote

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	0	190	190
Madhya Pradesh	0	142	142
Rajasthan	4	38	42
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	4	644	648

Table: 6.50 Compelled to vote only after the other castes finish their turn

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	0	190	190
Madhya Pradesh	0	142	142
Rajasthan	4	38	42

State	Yes	No	Total
Uttar Pradesh	0	82	82
West Bengal	0	82	82
Grand Total	4	644	648

The following tables based on the data collected from non-dalits reflect more upon the political disabilities emanating from the practice of untouchability. The indicate that although dalits are not prevented from contesting elections, exercising their right to vote and participating in the village panchayat meetings, the level of participation of dalits in political life is negligible.

6.50.1: Do Dalits have the freedom and liberty to participate in the political activities of the village

State	Yes	No	Not responded	Total
Andhra Pradesh	6	0	8	14
Karnataka	10	0	0	10
Madhya Pradesh	15	0	0	15
Rajasthan	7	0	1	8
Uttar Pradesh	6	4	0	10

State	Yes	No	Not responded	Total
West Bengal	11	0	0	11
Grand Total	55	4	9	68

6.50.2: Whether Dalits are prevented from contesting in elections

State	Yes	No	Not responded	Total
Andhra Pradesh	0	7	7	14
Karnataka	0	10	0	10
Madhya Pradesh	1	14	0	15
Rajasthan	0	7	1	8
Uttar Pradesh	4	6	0	10
West Bengal	0	11	0	11
Grand Total	5	55	8	68

6.50.3: Are dalits prevented from exercising their right to vote

State	Yes	No	Not responded	Total
Andhra Pradesh	0	7	7	14

State	Yes	No	Not responded	Total
Karnataka	2	8	0	10
Madhya Pradesh	1	14	0	15
Rajasthan	0	7	1	8
Uttar Pradesh	0	10	0	10
West Bengal	0	11	0	11
Grand Total	3	57	8	68

The fact that is worth considering is that even though dalits themselves have at many instances complained about the untouchability practiced by other castes, very few non-dalit respondents accepted that dalits are discriminated against during the Gram Sabha proceedings.

6.50.4: Are Dalits given segregated seating arrangement in the meetings of the village panchayat

State	Yes	No	Not responded	Total
Andhra Pradesh	0	7	7	14
Karnataka	0	10	0	10
Madhya Pradesh	0	11	3	14

State	Yes	No	Not responded	Total
Rajasthan	0	7	1	8
Uttar Pradesh	2	8	0	10
West Bengal	0	11	0	11
Grand Total	2	54	11	67

6.50.5: Are Dalit representatives served food and drinks in segregated vessels

State	Yes	No	Not responded	Total
Andhra Pradesh	0	8	6	14
Karnataka	0	10	0	10
Madhya Pradesh	0	13	2	15
Rajasthan	1	6	1	8
Uttar Pradesh	2	8	0	10
West Bengal	0	11	0	11
Grand Total	3	56	9	68

6.50.6: Do dalits participate in the meetings of the Grama Sabha

State	Yes	No	Not responded	Total
Andhra Pradesh	3	1	10	14
Karnataka	10	0	0	10
Madhya Pradesh	0	0	15	15
Rajasthan	1	7	0	8
Uttar Pradesh	6	4	0	10
West Bengal	11	0	0	11
Grand Total	31	12	25	68

6.50.7: Are Dalits prohibited from participating in the meetings of the Grama sabha

State	Yes	No	Not responded	Total
Andhra Pradesh	1	4	9	14
Karnataka	3	7	0	10
Madhya Pradesh	0	13	2	15

State	Yes	No	Not responded	Total
Rajasthan	0	7	1	8
Uttar Pradesh	0	3	7	10
West Bengal	0	11	0	11
Grand Total	4	45	19	68

About 58 have said that there are separate seating arrangements at Panchayat Meetings. whereas about 590 have denied such practice. About 30 have said that Dalit representatives served Food and Drinks in separate vessels. But about 618 have denied any such thing.

Table: 6.51 Given segregated seating arrangement in the meetings of the village panchayat

State	Yes	No	Total
Andhra Pradesh	0	110	110
Karnataka	0	190	190
Madhya Pradesh	26	116	142
Rajasthan	22	20	42
Uttar Pradesh	3	79	82

State	Yes	No	Total
West Bengal	7	75	82
Grand Total	58	590	648

To other questions about restrictions on exercising power/ called by caste name, or being invited to preside over functions in the village etc, there are no negative responses.

The following table shows that normally dalits contest elections only from the reserved constituencies. Even if they contest from unreserved sets, their chances of winning are bleak. It shows that the political empowerment of dalits through affirmative action has been largely confined to the constituencies reserved for SCs/STs.

6.51.1: Have Dalits contested and won in constituencies which were not reserved for Dalits

State	Yes	No	Not responded	Total
Andhra Pradesh	1	5	8	14
Karnataka	(for member ship) 3	7	0	10
Madhya Pradesh	(BSP influence) 7	8	0	15
Rajasthan	3	5	0	8
Uttar Pradesh	4	6	0	10

State	Yes	No	Not responded	Total
West Bengal	0	8	3	11
Grand Total	18	39	11	68

Table: 6.54 Respondents participating in the meetings of the Grama Sabha

State	Yes	No	Total
Andhra Pradesh	95	15	110
Karnataka	115	75	190
Madhya Pradesh	31	111	142
Rajasthan	37	5	42
Uttar Pradesh	0	82	82
West Bengal	82	0	82
Grand Total	360	206	566

Though there is no prevention of respondents from expressing their view points in the council meeting, but about 66 have said that they are addressed by their caste names

The following tables, based on the data collected from non dalit respondents, also testify to the fact that the participation of dalits in the political life of village is

far from satisfactory. More than 20 non dalit respondents out of the total 68, have agreed that dalits are not invited to be the president of official functions of the village panchayat. Only 31 out of total 68 non dalit respondents positively replied to the question about the participation of dalits during the meetings of village panchayats.

6.54 (a): Whether Dalits are being invited to be the president of all official functions within the jurisdiction of the village panchayat

State	Yes	No	Not responded	Total
Andhra Pradesh	1	0	13	14
Karnataka	9	1	0	10
Madhya Pradesh	1	12	2	15
Rajasthan	0	3	5	8
Uttar Pradesh	6	4	0	10
West Bengal	11	0	0	11
Grand Total	28	20	20	68

**6.54(b) Do dalits participate in the meetings of the Grama sabha
(Village Assembly)**

State	Yes	No	Not responded	Total
Andhra Pradesh	3	1	10	14
Karnataka	10	0	0	10
Madhya Pradesh	0	0	15	15
Rajasthan	1	7	0	8
Uttar Pradesh	6	4	0	10
West Bengal	11	0	0	11
Grand Total	31	12	25	68

The following table gives glimpses into the various facilities that are accessed by Dalits. Are there discrimination in schemes to Dalits and non-Dalits? Only about 2 in Rajasthan have said that they have been discriminated.

Table: 6.52 Facilities and schemes meant for the Dalits

State	Gas connection, Food for work	Given houses, Chattels, Health camps,	school, hospital, rashan, Light, Drinking	Reservation, Loans at low interest	PDs card, Emp guarantee scheme (road	School, SC certificate	No particular	Total

		scholarship	Water		construction works)			
Andhra Pradesh	85	0	0	0	0	0	25	110
Karnataka	0	143	0	0	0	0	47	190
Madhya Pradesh	0	0	84	0	0	0	58	142
Rajasthan	0	0	0	32	0	0	10	42
Uttar Pradesh	0	0	0	0	52	0	30	82
West Bengal	0	0	0	0	0	24	58	82
Grand Total	85	143	84	32	52	24	228	648

It was also observed that the non-dalit respondents had very limited knowledge about the schemes and facilities available for dalits. This also, at times, prevents the proper execution of the welfare programmes of state and central governments to be executed and make the benefits of these schemes reach the deserving.

6.52(a) What facilities and schemes meant for the Dalits

State	All normal govt schemes	Deepam Panchayat budget, Jawahar Ragar yojans jobs for SC's , subsidy in veterinary hospital	BPL and, Buffaloes Loans etc	BPL cards ,grdiro awas yojna	educational support, employment assurance, etc	Not Responded	Total
Andhra Pradesh	6	2	0	0	0	6	14
Karnataka	0	0	8	0	0	2	10
Madhya Pradesh	0	0	0	0	0	15	15
Rajasthan	0	0	0	8	0	0	8
Uttar Pradesh	0	0	0	0	8	2	10
West Bengal	0	0	0	0	0	10	11
Grand Total	6	2	8	8	8	10	68

The following table gives details regarding the reactions against the practice of discrimination. Of the Respondents, about 360 have said that they participate in village meetings. About 206 have said that they do not participate. Of the people participating, 12 in Rajasthan reported separate seating arrangements.

Table: 6.53 Reaction to these practices

State	Can't do anything	Told to leaders	Total
Andhra Pradesh	0	0	0
Karnataka	2	0	2
Madhya Pradesh	0	0	0
Rajasthan	0	3	3
Uttar Pradesh	0	15	15
West Bengal	0	16	16
Grand Total	2	34	36

Table: 6.55 Respondent addressed by their caste name

State	Some times	No	Total
Andhra Pradesh	0	110	110
Karnataka	2	188	190
Madhya Pradesh	0	142	142
Rajasthan	4	38	42
Uttar Pradesh	6	76	82

State	Some times	No	Total
West Bengal	54	28	82
Grand Total	66	582	648

Further offences under Section 7

Section 7 (2) punishes a person who denies to any other person belonging to his/her community or any section thereof the right or privilege to which such person would be entitled as a member of such community, or who participates in the excommunication of such person on the ground that such person has refused to practice untouchability.

This provision is intended to protect persons who have been associated with people who are treated as 'untouchable' or who refuse to carry out practices of untouchability. Such persons can avail of the PCRA to take action against those who have denied them rights or been party to their ex-communication.

In *Kanhu Ram v. Durga Ram*¹⁴⁷, the respondent had stood as surety for Ramka, a member of the Scheduled Castes, against whom a case had been registered. According to the respondent, the petitioners resolved to ex-communicate him as he had stood as surety for a Harijan. He filed a private complaint with the Judicial Magistrate (provisions of law not mentioned in judgment) under the PCRA. The petitioners moved an application before the Magistrate contending that the respondent could not file a complaint under the Protection of Civil Rights Act as he was a Rajput and not a member of the Scheduled Castes. The Court dismissed their application and held as follows,

¹⁴⁷ MANU/HP/0029/1979, 1980 CriLJ 518

“It is evident by reference to Section 15 of the Untouchability (Offences Act, 1955 that the offences under the Act are cognizable and there is nothing in the Act to show that only a particular person can file a complaint for the offences committed under the Act. Under the circumstances, there is no substance in the contention that the respondent-complainant has no *locus standi* to file this complaint.”¹⁴⁸

An important question that has often come up before courts is the interpretation of S. 7 (1) (d) of the PCRA which punishes persons who insult a member of the Scheduled Castes on the ground of untouchability. The PCRA does not provide a definition of “insult”. S. 504 of the IPC defines insult as “*an intentional use of abusive filthy language which is capable of provoking breach of peace on the part of the complainant.*” The problem arises in ascertaining whether the insult of a Scheduled Castes has occurred on the ground of untouchability. Courts have held that ‘insult simpliciter’ does not come within the purview of S. 7 (1) (d). The test is to ask whether the insult would have taken place irrespective of the fact whether the victim was or was not a member of the Schedule Caste. If yes, then the insult falls under the category ‘insult simpliciter’ which is outside the ambit of clause (d). On the other hand, if the insult is uttered specifically because the victim was a member of Scheduled Castes and would not have been made if he had been of higher caste, then the insult is on the ground of untouchability.¹⁴⁹

In *Laxman Jayaram v. State of Maharashtra*¹⁵⁰, the accused who was employed at the same department as the complainant insulted him as follows, “*Come on Maharsaheb. Have you finished the leave? Are you joining? Rs. 900 has been spent and so now you remember about your service. God has given bread to your Mahar caste and you do not deserve it. Your caste is such.*” An offence was registered under S. 7 (1) (d) of the PCRA. The question before the court was whether the insult had been on the ground of untouchability. The Court held in the negative. It said that the accused intended to tell the complainant to be honest and hardworking in the discharge of his duties. To quote from the

¹⁴⁸ *Id.*, at Para 7

¹⁴⁹ *Phulsingh v. State of Madhya Pradesh* 1991 Cri.L.J. 2954

¹⁵⁰ MANU/MH/0021/1980, 1981 CriLJ 387

judgment, “A person—returned from long leave and a superior officer expressed his resentment on the attitude of a person towards his job, cannot be said to be referable to preaching and practice of untouchability or expression thereof cannot be said to be on the ground of untouchability. It is necessary to read those words in the context and the background and one cannot take those words out of context and say that they deal with the Mahar caste and therefore they are on the ground of untouchability.” The Court refused to apply S. 12 on the ground that even assuming that the words alleged to be used by the accused were true, they were not an insult but an admonition and therefore, no presumption of law arises in this case.

The reasoning of the Bombay High Court is fallacious. S. 12 comes into operation once the following two conditions are satisfied – (i) the victim is a member of the Scheduled Castes, (ii) the use of the insulting words is proved. The burden is on the defence to prove that the insult was not because of untouchability. In the present case, both conditions were satisfied and the burden was therefore on the accused to prove that his words were not on the ground of untouchability and that they were intended to reprimand the complainant for his laxity towards his job. Yet, the court put the burden on the prosecution and held that it could not prove that the insult was on the ground of untouchability.

In *Shantabai v. State of Maharashtra*¹⁵¹, the complainant received lands for cultivation from a person and this was not liked by the accused. The accused went up to the complainant while he was cultivating the land and said, “*Mahardya, do not speak more, I will cut you. This Mahardi of Dahisar had gone too high (has become arrogant) and each one of them should be killed.*” The complainant registered a case and the accused was prosecuted for offences under Ss. 7 (1) (b) & (d). The question before the court was whether the insult was on the ground of untouchability. The court referred to the *MR Balaji* decision where the Mysore High Court had examined the caste system and said that its original functional and occupational bases had been replaced by rigid conceptions of superiority

¹⁵¹ MANU/MH/0032/1981

and inferiority. In this context, the word 'Mahadarya' was insulting and if used by a person belonging to a higher caste on a Scheduled Castes, it would have a nexus with untouchability. However, the court said that no general rule could be laid down as it would depend on the facts and circumstances of the case. It said that every insult/attempt to insult a Scheduled Castes was not necessarily on the ground of untouchability and would not fall under S. 7 (1) (d). But since the abuse was addressed to a member of the Scheduled Castes, the presumption under S. 12 would be available to him. The Court criticised the decision in *Laxman Jayaram* as having restricted the scope of S. 12. To quote from the judgment,

"If for proving an offence under Section 7(1) (d) of the Act, the prosecution is also required to prove the fact that the act constituting the offence was committed on the ground of untouchability, then the presumption contemplated by S. 12 will have no meaning and the entire S. 12 will become redundant or surplusage."¹⁵²

With respect to the merits of the case, the Court found that the accused had been convicted by the trial court under S. 7 (1) (d) without having been given an opportunity to explain the incriminating circumstances against him during his examination under S. 313 of the CrPC. Hence, the Court remanded the matter back to the trial court to give the accused such opportunity.

In *Phul Singh v. State of Madhya Pradesh*,¹⁵³ the accused had abused the complainant and threatened to run over him with a tractor. He was convicted under S. 7 (1) (d) which he appealed against. The question before the court was whether the offence was committed on the ground of untouchability. The Court held that the test was whether the insult would have taken place irrespective of whether the complainant was an untouchable or not. If yes, then the insult would not fall under S. 7. If the answer was in the negative, then the insult would be on the ground of untouchability. The Court further said that it should examine whether the insult was part of personal quarrel which took place between a person of higher caste and a member of Scheduled Castes; or whether it was

¹⁵² *Id.*, at Para 13

¹⁵³ MANU/MP/0285/1991, 1991Cri LJ 2954

offered in a studied manner in the absence of any quarrel. It found that the complainant and the accused had quarreled in the past and were not on good terms. To quote from the judgment, "What the P.C.R. Act seeks to punish is preaching and practice of untouchability vide the preamble given at the outset of the Act. The Act does not seek to punish acts simply because they were committed in relation to a person belonging to Scheduled Castes."¹⁵⁴ It further stated that when full facts of a case are known, the presumption under Section 12 would not reverse the decision of the case.

The problem with the decision is that the offence of untouchability gets buried in the finding that there existed previous personal enmity between the parties. The fact that both the complainant and accused are not on good terms does not justify the insulting of the former by the latter on the ground of caste. Such an approach carries the danger of looking for a sole intention of untouchability whereas no such requirement has been specified in the Act.

In *M.A. Kuttappan v. E. Krishnan Nayanar*,¹⁵⁵ the complainant filed a case under S. 7 (1) (d) of the Protection of Civil Rights Act alleging that the respondent made disparaging observations against him stressing on the fact that he was a member of the Scheduled Castes . (He allegedly stated as follows - There is an MLA Kuttappan, that Harijan MLA, he climbed over the table and was dancing.) The Supreme Court acquitted the accused saying that the respondent did not utter the words against the complainant on the ground of untouchability; neither did he instigate the audience to practise untouchability.

To quote from the judgment, "To attract the said provision it had to be shown that the words so uttered had the effect of insulting the appellant on the ground of 'untouchability' which is not the case. There was no justification for the submission that the words allegedly uttered by respondent No. 1 encouraged his audience to practise untouchability or that respondent No. 1 practised

¹⁵⁴ *Id.*, at Para 8

¹⁵⁵ (2004) 4 SCC 231

untouchability. The appellant was neither insulted nor attempted to be insulted on the ground of untouchability".¹⁵⁶

In *Pandurang Laxman Chaudhry v. State of Maharashtra*,¹⁵⁷ the accused, who was the landlord of the complainant, got annoyed by smoke that was being emitted by the water heater and went to the house of complainant and abused him by calling him names such as 'Dhedgya Mahardya'. The complainant lodged a complaint under S. 7 (1) (d). The accused was convicted for criminal trespass under the IPC and under the PCRA. He went on appeal to the Court of Sessions which upheld his conviction. He then filed a criminal revision petition. The High Court set aside the conviction and said that the appellant had visited the complainant's house with the primary purpose of stopping the smoke nuisance. Also, the case had been filed after the delay as a result of which the witnesses could not remember the exact words used. Hence the conviction under the PCRA was not sustainable.

The survey of case law under Section 7 (1) (d) reveal a measure of judicial 'stinginess' in deciding cases in relation to this Act. The Section makes it an offence to insult or attempt to insult "*on the ground of 'untouchability'* a member of a Scheduled Castes." Most of the cases, as discussed above have held in favour of the accused by interpreting the term 'on ground of untouchability' narrowly. The section nowhere states that the insult should be on grounds of untouchability *alone*. There might be other reasons for the insult, but as long as untouchability is part of the rationale matrix of the accused, the offence is committed. Further, the phrase 'on grounds of untouchability' can be interpreted in two ways, each imposing a different standard of scrutiny for the offence. If 'on grounds of untouchability' is deemed to mean that the insult would not have been made if the victim was not a member of the Scheduled Castes, then the focus of the court will be on the parties themselves and the relationship between them. Another interpretation of the phrase would be to look at the content of the insult.

¹⁵⁶ *Id.*, at Para 11

¹⁵⁷ MANU/MH/0285/1980

If the insult is directed at the caste characteristic of the member of the Scheduled Castes, it is sufficient to constitute an offence of untouchability. In the cases described above, the accused used language that sought to belittle the victim on the basis of his or her caste characteristic. The field work also shows that verbal abuses and calling SCs by their caste names, especially when they try to assert their rights is a very common phenomenon. For example, the empirical study in Bommanahalli village revealed that members of the Scheduled Castes s/tribes are abused using their caste names, when there is a conflict/dispute. This shows that abusing a person by his/her caste name is still a prevalent practice. Not prosecuting/punishing a person just because the caste name was used during a conflict would amount to a miscarriage of justice. If the goal of the Act is to eradicate the practice of untouchability, then any form of oppression or discrimination based on caste characteristics has to be targeted. In keeping with this goal, it is submitted that it is this second interpretation that has to be adopted to give meaning and effect to the purpose of the Act.

Section 7, by and large deals with mild forms of atrocities. The more aggravated forms are dealt with under the POA Act. However, as stated above, the practice of untouchability and the commission of atrocities are inextricably interlinked. Untouchability is often the root cause and atrocity is the result. Therefore, both atrocities and untouchability should be dealt with in the same legislation and the same machinery should be set up to fight both these evils.

To conclude, the role of judges, as also other state functionaries, including legislators under this Act can be summed up in the words used by Justice Ramaswamy in *State of Karnataka v. Appu Balan*,¹⁵⁸ where he said, "In interpreting the Act, the judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate

¹⁵⁸ AIR 1993 SC 1126

untouchability; to accord to the Dalits and the Tribes right to equality, bring social integration to fruition and make fraternity a reality.”¹⁵⁹

¹⁵⁹ *Id.*, at Para 35

VII. PROCESSES UNDER THE “PROTECTION OF CIVIL RIGHTS ACT (PCRA), 1955”

A certain procedure is followed for the way complaints are made, FIRs are registered, and the institution functions in the prosecution of caste-based crimes under the PCRA. This chapter contains data on the study of these processes, and has slotted the issues and problems pertaining to processes in four broad problem areas.

i. Problems with Registration of FIRs

While making a complaint under the PCRA, it is mandatory for the complainant to state his caste in the FIR. In *Manoj alias Bhau v. State of Mali*,¹⁶⁰ it was specified that while an FIR is not an encyclopedia of events, the basic prosecution case had to be stated whereby it discloses the requirement of law which would enable the police to conduct their investigation. For offences under the PCRA, if the complainant does not state his caste in the FIR, then they cannot be registered. The caste of the accused has to also be stated in order to show that s/he is not a member of the Scheduled Castes.

In *Bhalchander v. State of Maharashtra*,¹⁶¹ the complainant (village Sarpanch) was abused by the respondents in the name of his caste and manhandled as well when he tried to maintain peace during a Panchayat meeting where they had tried to create obstructions. The complainant did not state the caste of the accused in the typed report but added it in his own handwriting later. This was held to be valid as an FIR by the court. To quote from the judgment, “even though in the body of the F.I.R., the complainant has failed to specifically mention that the accused does not belong to the Scheduled Castes or Scheduled Tribe, still he may bring sufficient material before the concerned Police Officer to make

¹⁶⁰ (1994) 4 SCC 268

¹⁶¹ MANU/MH/0812/2006

out his case under the Atrocities Act and to commence investigation for the same. For this, the complainant could make a statement before the Police Officer about the caste of the accused or he could produce certain documents and if the Police Officer finds that material sufficient to come to prima facie conclusion that the accused does not belong to Scheduled Castes or Scheduled Tribe, he may register the offence under the Atrocities Act or Civil Rights Act and investigate the offence, provided other ingredients of such offence are made out.”¹⁶²

In *Manohar v. State of Maharashtra*¹⁶³, the Court had to decide a common question in many appeals regarding the non-mention of the caste of the complainant and the accused. The High Court referred to the decision of *Laxmibai Poul v. State of Maharashtra*¹⁶⁴ which “laid down that if the caste of the complainant is not disclosed in the F.I.R. the police authorities could not be said to have any material to invoke the powers under Chapter XII of the Criminal Procedure Code and to commence investigation considering the complaint to be a cognizable complaint”.¹⁶⁵ It also referred to *Manoj v. State of Maharashtra* which had said that “there is a distinction which can and ought to be drawn between disclosure of all facts and details relating to a cognizable offence and disclosing essential substantial facts which are necessary to be given for conducting that a cognizable offence has been committed.”¹⁶⁶ Hence the caste of both the complainant and the accused is a mandatory requirement of FIRs for offences under the PCRA and POA. FIRs without mentioning the caste are invalid and hence liable to be quashed.

In *Bibhishan v. State of Maharashtra*¹⁶⁷, the complaint was quashed because the complainant did not state his caste in the FIR. The facts were that the respondents were chatting by the side of a road when the accused persons stopped near them, abused them by calling them by the name of their caste

¹⁶² Para 6, The Court referred to the decisions in *Martandrao Kulkarni and Anr v. State of Maharashtra* [2005 (4) Mh.L.J. 588] & *Anant Vasantlal Sambre v. State of Maharashtra*.

¹⁶³ MANU/MH/0877/2005 [2005 CriLJ 4653]

¹⁶⁴ MANU/MH/0966/2004.

¹⁶⁵ *Id.*, at Para 7

¹⁶⁶ *Id.*, at Para 7

¹⁶⁷ 2006 INDLAW MUM 353

'Mangtya' and manhandled them. When Respondent One's wife tried to intervene, she was also beaten. A case was registered under the IPC, S. 3 (1) (x) of the POA and S. 7 (1) (d) of the PCRA. The accused filed a writ petition seeking to quash the FIR on the ground that it had been falsely filed because of previous enmity and because the complainant had not stated his caste in the FIR. The format of the FIR shows the caste of the complainant to be 'Hindu Mang' and that of the accused to be 'Hindu Mali' whereas the body of the FIR does not state the caste of the complainant. The Court accepted the contention of the accused and held that no case could be registered under either the PCRA or the POA. Though the format of the FIR shows the complainant as belonging to the 'Mahar' caste, it is not known where the police got this information from, and the complainant has not stated his caste anywhere in the body of his report.

It is interesting to note that while the PCRA itself does not differentiate between accused belonging to different castes, the judicial as well as police policy has read in the need for this information into the FIR. Further, invalidating FIRs on the ground of small technicalities reveals that the judicial policy is not attuned to the larger social goal of the enactment.

It should be the duty of the police officers to inform the complainants to state their caste in the FIR since the PCRA does not contain provisions indicating the procedure of filing complaints.

ii. Procedural lapses

In *State of Maharashtra v. PC Tatyaji*¹⁶⁸, the respondent, a police constable had been charge-sheeted for an offence under S. 7 of the PCRA. He contended that the chargesheet had been filed beyond the period of limitation (6 months) under S. 468 of the CrPC, and that the investigation had continued beyond the stipulated 6 months without the prior sanction of the Magistrate as required by S. 167 (5) of the CrPC and was hence illegal. The trial court discharged the respondent on the ground that the charge-sheet was illegal as it had been filed

¹⁶⁸ MANU/MH/0034/1985

late. The state appealed against this order contending that the chargesheet had been filed within the period of limitation and that irregularity in investigation does not affect the Court's power to take cognizance of an offence. The High Court found that the charge-sheet had been filed within the period of limitation which was one year for an offence punishable with imprisonment of a term not exceeding one year. With respect to the requirement of magisterial sanction of investigations continuing beyond 6 months, it sent the case back to the trial court to see whether additional investigation was necessary and whether any miscarriage of justice had been caused because of the delay in filing the charge-sheet.

In *State of Karnataka v. Lakshminarayan Bhatt*¹⁶⁹, the question before the court was whether the prosecution was barred by time. The facts of the case were that the Deputy Superintendent of Police had conducted a raid on a tea hotel run by the respondents on the basis of a petition filed by the chairman of the Panchayat Committee. He found that certain utensils (lower part of a coconut chip) were kept aside for use by Scheduled Castes s. He registered a case under Section 4 (i) and (ii) of the Protection of Civil Rights Act. The Sub-Inspector of Police filed the charge-sheet beyond time, he submitted an application requesting that the delay be condoned as the accused had been absconding and evading arrest. The Magistrate condoned the delay and the respondents filed a revision petition challenging this order. The Magistrate allowed the petition on the ground that the reasons given by the prosecution for the delay were not acceptable. The State filed a revision petition against this order in the High Court. The Court held that the Magistrate's order was not based on a proper appreciation of the matter and hence invalid. It said, "Having regard to the mandate of our Constitution in Article 17 of the Constitution, the object and purpose of the Act, the nature and the gravity of the allegations made against accused Nos. 1 and 2, the seriousness of the charge, which totally escaped the attention of the Magistrate when he proceeded to consider the question as to whether the delay should or should not

¹⁶⁹ MANU/KA/0147/1991, 1991 Cri LJ 2126

be condoned; in their cumulative and total effect would show that this is a fit case to take cognizance of the offences alleged against accused Nos. 1 and 2 after expiry of the period of limitation, in the interest of justice.”¹⁷⁰ It directed the Magistrate to proceed with the trial and to conclude the proceedings within six months.

The approach of the court works to the advantage of the victim of untouchability since s/he has no control over the investigation beyond the filing of the offence and testifying during the proceedings. Non-compliance or irregularities in procedural requirements result in the loss of a remedy to the complainant for no fault of his/hers. At the same time, the reason for specifying such requirements is to ensure that the rights of the accused are protected so that s/he is not put behind bars for an indefinite period of time without being tried. It is the responsibility of the investigation and prosecution agencies to ensure that procedural irregularities do not take place resulting in vitiation of proceedings to the detriment of the complainant or violation of the rights of the accused.

In *Jagadeesh Ram v. State of Rajasthan*¹⁷¹, the accused-petitioner refused to accept water from the non-petitioner who had offered water to him on his request for the same as he was a Scheduled Castes. A case was registered but the Magistrate proceeded with the case without considering the police report that been submitted as per the requirements of S. 210 of the Code of Criminal Procedure. This action was challenged before the High Court which set aside the order of the lower court for not considering the police report during his enquiry under Sections 200 and 202 of the CrPC. The High Court said, “The record which has been submitted by the police is a material placed on the record and it is the duty of the Court to consider that record and then to arrive at its own conclusion whether in such a case process should be issued against the accused or not. In this case, the Magistrate has not at all considered that record. The order issuing process against the accused does not disclose that he even looked

¹⁷⁰ *Id.*, at Para 44

¹⁷¹ MANU/RH/0152/1988 (1989 CriLJ 745)

into that record what to talk of its consideration before it ordered to issue the process against him and, therefore, that has resulted in the abuse of the process of the Court and grave miscarriage of justice.”¹⁷² The Court this sent the matter back to the trial court to proceed according to the law.

This case involves a procedural lapse on the part of the Magistrate leading to unnecessary prolongation of the trial to the detriment of both the victim and the accused. There is an urgent necessity for the State investigation and prosecution machinery to be made aware of the procedures to be followed by them.

As this section highlights, there have been several instances of non-compliance with procedural requirements on the part of both the police and the Judiciary. There have been some instances of misinterpretation of the provisions of the PCRA by Judges. Both sets of cases highlight the authorities’ ignorance of the substantive and procedural aspects of the law. We strongly recommend the preparation and distribution of training manuals that will detail out the required procedures that are to be followed by the police during registration of offences, investigation and charge-sheeting of offences, as well as by the Magistrates in commanding the police to stop or continue investigations etc. The Police and Judicial Academies can play a pivotal role in preparing manuals and bench books for the proper implementation of the Act.

iii. Problems with Witnesses

One important factor in the large number of acquittals under the Act is that of the problems faced by witnesses. The following provides more information on the problems with regard to the witnesses during the trials.

When asked about the response of witnesses during the trials half the dalit leaders said that the witnesses did not cooperate at all. Such non cooperation from the witnesses was particularly observed in Karnataka, Andhra Pradesh and Uttar Pradesh.

¹⁷² *Id*, at Para 14

6.55(a): How do witnesses respond to the trial

State	Do not cooperate	Respond well	With money they can go back	Not Responded	Total
Andhra Pradesh	2	0	0	1	3
Karnataka	4	0	0	0	4
Madhya Pradesh	0	0	0	2	2
Rajasthan	0	1	1	0	2
Uttar Pradesh	2	0	0	2	4
West Bangal	0	0	1	0	1
Grand Total	8	1	2	5	16

The following Table highlights another issue with regard to the role of witnesses in the cases. All the DPPs who were interviewed felt that in many cases, witnesses turn hostile and this, in absence of other admissible evidence, results in the acquittal of the perpetrators. Judges also shared the same view. (Table...) Another Table (...) depicts that delay in trials, economic reasons and settlement of cases between parties are primarily responsible for witnesses turning hostile.

6.55(b): Do the witnesses turn hostile resulting in acquittal of the accused (DPPs)

State	Yes	No	Not Responded	Total
Andhra Pradesh	0	0	0	0
Karnataka	0	0	0	0
Madhya Pradesh	1	0	0	1
Rajasthan	1	0	0	1
Uttar Pradesh	9	0	0	9
West Bengal	0	0	0	0
Grand Total	11	0	0	11

6.55(c): Whether witnesses turn hostile resulting in acquittal of the accused (survey amongst judges)

State	Yes	No	Not Responded	Total
Andhra Pradesh	0	0	0	0
Karnataka	1	1	1	3
Madhya Pradesh	0	0	1	1
Rajasthan	1	0	1	2

State	Yes	No	Not Responded	Total
Uttar Pradesh	4	1	0	5
West Bangal	0	0	0	0
Grand Total	6	2	3	11

6.55(d): Why do witnesses turn hostile? (data from judges)

State	Economic reason	Delay in trail	Settlement between the parties	Not Responded	Total
Andhra Pradesh	0	0	0	0	0
Karnataka	0	0	0	0	0
Madhya Pradesh	1	0	0	0	1
Rajasthan	1	0	0	0	1
Uttar Pradesh	1	2	3	3	9
West Bangal	0	0	0	0	0
Grand Total	3	2	3	3	11

It can be concluded that the main factors responsible for the failure of cases of atrocities in the courts are considered to be the following:¹⁷³

1. Economic vulnerability of the witnesses leading to their being won over at the hearing stage;
2. Pendency of atrocity cases in the courts for long periods;
3. Atrocity cases being taken over by less experienced prosecutors and some of them playing dubious roles;
4. Lack of interest by the police in the investigation of the case;
5. Failure on the part of the investigating officer to produce requisite evidence; and
6. Lack of adequate support and protection by the police to the prosecution witnesses.

The protection of witnesses is, therefore, another important factor that needs to be effectively dealt with. It has been stated in a note furnished to the Eleventh Committee, by the Ministry of Welfare, that the State Governments have pointed out that witnesses turning hostile, or the witnesses being won over by accused persons, or complainants themselves not supporting their complaints are the major reasons for large scale acquittals. The Governments have stated that they are taking measures to expedite the investigation of such cases. They have further mentioned that cases are being contested vigorously by the accused also resulting in large scale acquittal.¹⁷⁴ The Committee recommended in this regard that adequate protection should be provided to witnesses to prevent them from turning hostile.¹⁷⁵

¹⁷³ Prasad, Chandra, Kumar, *Effective Implementation*, pp. 17-18.

¹⁷⁴ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1985 – 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986, pp. 79-80.

¹⁷⁵ *Ibid.*, p.85.

In response to a query by the Twenty-Third Committee, the Ministry of Home Affairs replied that most cases lodged under the PCR and POA ended in acquittal because of the unwillingness on the part of the witnesses to attend court due to various reasons principal among which is their loss of wages on the day they attended courts, the time spent by them and the expenditure incurred by them.¹⁷⁶ Other reasons for the high rate of acquittals were found to be weak prosecution, no-coordination amongst investigation officers and lack of control over supervision.¹⁷⁷

In speaking to Judges who handle cases under this Act, we asked them whether this was still a reason why there were such a large number of acquittals in caste based offences. We were told that even though the POA Act provided for compensation to witnesses, this was not given till months after the witness appeared in court. Thus, in practical effect, giving of compensation to the witnesses had not proved useful in bringing down acquittal rates. It is pertinent to note that the NHRC has also recommended that necessary arrangements have to be made for providing traveling expenses and maintenance to victims and witnesses.¹⁷⁸ Therefore, it is important not only to compensate the witnesses, but to do so expeditiously, and as far as possible, on the same day.

Another good suggestion, which was given by Shri. Gowder, MP at the time of debate in Parliament was that mobile courts should be set up throughout the country for the purpose of implementing the Act vigorously. He also suggested that adequate protection should be given to victims who approach the Court.¹⁷⁹

iv. Non-compoundable nature of offences

¹⁷⁶ This was also given as a major reason for high rates of acquittal by the Ministry of Welfare to the Eleventh Committee. Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1985). 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986,p.80.

¹⁷⁷ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1992 – 93), Tenth Lok Sabha, Twenty Third Report on Ministry of Home Affairs and Ministry of Welfare, *Atrocities on Scheduled Castes and Patterns of Social Crimes Towards Them* Lok Sabha Secretariat, New Delhi, April 1993, p.22.

¹⁷⁸ NHRC, p.271-73.

¹⁷⁹ Lok Sabha Debates, May 23 1972, col. 178.

The Untouchable Offences Act 1955 contained a provision which permitted offences to be compounded. The Elayaperumal Committee recommended the deletion of the provision on the ground that the victims of practices of untouchability were coerced into withdrawing their complaints and opting for settlements by the aggressor. This defeated the purpose of the legislation. The recommendation was accepted and the provision was deleted by the 1976 amendment. Hence, there is no such provision in the Protection of Civil Rights Act. Yet the question as to whether offences are compoundable has come up before the courts.

In *Dhanraj v. State*,¹⁸⁰ the Court held that offences under the PCRA were compoundable. To quote from the judgment – “The Preamble to the Protection of Civil Rights Act reads that the Act was intended to punish the preaching of and practice of Untouchability, and for the enforcement of any disability arising therefrom. When the parties themselves have voluntarily and willingly come forward to settle their differences, I do not think there can be any legal impediment in permitting the same, since it is not contrary to the spirit of the Act. When the affected parties under the Protection of Civil Rights Act themselves come before this Court and are prepared to compound the offence, there is no reason why this Court should not accept the same, since, in my opinion, the Act itself will be better implemented if compounding of such offences is permitted.”¹⁸¹

The Court adopted an erroneous interpretation of the PCRA completely disregarding the objective of offering protection to victims of untouchability by omitting the section on compoundable offences after the 1976 amendment.

In almost all the instance, it was found during the study (Table 6.55(e)), that cases result in compounding which could be attributed to the reasons mentioned above.

¹⁸⁰ MANU/TN/0008/1985

¹⁸¹ *Id.*, at Para 4

6.55(e): The cases that end in compounding (DPPs)

State	Yes	No	Not Responded	Total
Andra Pradesh	0	0	0	0
Karnataka	0	0	0	0
Madhya Pradesh	1	0	0	1
Rajasthan	1	0	0	1
Uttar Pradesh	7	1	1	9
West Bengal	0	0	0	0
Grand Total	10	1	1	11

In *State v. Kudligere Hanumanthappa*,¹⁸² the question before the court was whether offences under the IPC and under S. 7 of the PCRA were compoundable. The Court held that the PCRA did not make any provision for compounding offences. With respect to seeking the permission of the court to compound offences, the Karnataka High Court was of the opinion that once the State prosecuted a person for the alleged contravention of the PCRA, individuals who have been responsible for initiating action by the police cannot approach the court to allow the offence to be compounded without getting the State's consent. It further said that compounding of offences would not further the objectives of the PCRA which was a penal statute whose purpose was to ensure that people were not ill-treated or humiliated merely because of their caste. To quote from the judgment, "More often than not those who had suffered any indignity, suffered humiliation and physical punishment at the hands of those who claim

¹⁸² MANU/KA/0149/1991, 1992 CriLJ 832

superiority of birth and very often are persuaded to accept a truce imposed either by further threats or intimidation or at times being lured with the offer of a measly sum in exchange for their silence.”¹⁸³ Saying this, the Court expressed its dissent from the decision in *Dhanraj v. State*.

¹⁸³ *Id.*, at Para 6

VIII. THE SUPPORTING INSTITUTIONAL INFRASTRUCTURE

This chapter deals with the weaknesses and problems afflicting the myriad institutional infrastructure behind the PCRA and the efforts to eradicate untouchability.

i. Institutional Weaknesses

During the British period, the chief legal support for untouchability came not through affirmative enforcement of disabilities, but through the immunity granted against self help by the upper castes either through institutional apathy or through a policy of non-interference, which effectively resulted in support for the action taken by the upper castes. The institutional setup provided by the PCRA has aimed at reducing institutional apathy by legislating upon a slew of substantive and procedural principles to be followed by public officials in the implementation of the Act. The Act also places a positive obligation on governments to take affirmative steps to effectuate the provisions of the Act.

The PCRA is part of a wider policy to eradicate caste-based discrimination and disability. It is recognition that untouchability is deep – rooted and there is a need for social change to achieve eradication. Hence, various legislations, like the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition Act), 1993, the Bonded Labour (Abolition) Act, 1976, the Child Labour (Prohibition and Regulation) Act, 1986, the Minimum Wages Act, 1948, the Inter – State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were enacted, in addition to the PCRA, to bring about social and economic change. It is pertinent to note that all these enactments are fighting different symptoms of the same disease. Also, all enactments suffer from the same problems of lack of awareness and implementation because of the existence of better machinery under one or the other Acts. All these Acts also overlap in certain areas creating confusion as to the exact nature and scope of the various provisions. In light of this, it is

important to examine whether there is need for separate legislation on each of these symptoms of caste-based discrimination and persecution, or whether a comprehensive legislation addressing all these issues, but also locating the cure in a legislatively mandated framework of affirmative policy options as well as special institutional structures might be better suited to tackling these issues. In the particular context of examining the institutional setup to deal with these legislations there is a clear need to establish an integrated mechanism for addressing the grave issue of designing an effective institutional solution to address the problem of caste-based discrimination and untouchability.

In addition to this broader recommendation, let us look at the role of each of the institutions that are required to play a role in the effective implementation of the Act.

ii. Police

1. Intelligence

Gathering intelligence and in the process preventing crimes is one of the most important tasks undertaken by the police. In light of the perception that PCRA crimes are 'light' crimes, the police do not give importance to collection of intelligence as regards the PCRA. Hence, there have been suggestions to constitute a Cell to exclusively deal with caste related crimes.

In its Fifty-First report, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes recommended that a Special Cell should be constituted in the Central Bureau of Investigation (CBI), which should collect information on atrocities committed against Scheduled Castes and Scheduled Tribes wherever they occur, provide facilities for investigation by a Central team of Officers when needed and coordinate with the State Governments for speedy disposal of such cases.¹⁸⁴

¹⁸⁴ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1973 – 76), Fifth Lok Sabha, Fifty First Report, Ministry of Home Affairs (Presented on March 31, 1976), Lok Sabha Secretariat, New Delhi, March 1976, p. 15.

When the Eleventh Committee suggested that a special Cell from the side of the Government should be constituted to look after the instances of atrocities against Sc/STs, the representative of the Ministry of Welfare stated as follows:

“There is a very large network of Intelligence-gathering machinery in the States. There are special arrangements to gather special types of Intelligence. You have already got a Central Agency which again supplements and complements. There are many other items of work. By fragmenting one particular intelligence gathering agency and calling it a ‘Cell’ you will not get much purpose out of it. The important point is this. This subject of atrocities against harijans which creates or causes such problems which must be the responsibility of all concerned. That is what has got to be impressed, that is being impressed. We cannot substitute wide network of agencies that are functioning in the field by creating any small Cell there and saying, ‘No, you do something about it’ and so on. I very much doubt that kind of a thing which can substitute the agencies that exist. We have to continuously improve our functioning. I would in the end only like to plead with you that it is very difficult to subscribe to the view that the cause of atrocities, etc., is due to the failure of the machinery. It is not so.....all that I am saying is that the addition of a Cell in the intelligence machinery at the Central level may not serve the desired purpose from the Ministry’s point of view.”¹⁸⁵

While this point is well made, a reconciliation of the two views can take place by creating a Cell which acts as a nodal committee for gathering information supplied by the whole network of intelligence agencies. It would be the responsibility of such a Cell to forward information so received to appropriate authorities and help, where required, in investigative work as well. This will help in streamlining the intelligence gathering mechanism and also apportion responsibility efficiently.

¹⁸⁵ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1985 – 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986, pp.70-71.

The argument to set up such a cell is buttressed by the fact that a particularly disturbing factor behind many of the pre-planned atrocities and other caste based offences is the absence of adequate advance information with the state government authorities and, therefore, the lack of a proper protective arrangement. Such incidents not being a result of sudden eruptions, many of them can be prevented if timely intelligence is available, a correct assessment of the situation is made, and adequate preventive action taken in time.¹⁸⁶

2. Investigation

Section 15 of the PCRA makes the offences under the Act cognizable in nature. By virtue of Schedule I of the CrPC, they are bailable. Because of this, the provisions of the Act lose much of their teeth, since bail becomes a matter of right. Hence, complaints have been received, that the police advise the informant not to use this Act. Further, political leaders who usually accompany the victim insist that the cases be registered under the POA Act since the offences under that Act are non-bailable. This ultimately leads to a situation where there is a mismatch between the factual position and the offence that the person is charged for, ultimately leading to the person being discharged or acquitted, as the case may be. This brings down, not only the rate of conviction but also the rate of registration of cases itself. Hence, the police play a very important role, at the initial stage itself and if there are problems at this stage, it may lead to cases not being registered and even if they are, of them not being properly investigated, leading to the acquittal of the accused. Keeping this in mind, various suggestions have been made regarding the role of the police, with respect to investigation.

At the time of amending the Untouchability (Offences) Act, there was recognition of the fact that there needs to be an examination of the reasons because of which the number of cases being registered under the Act was abysmally low. It was felt by certain MPs that this was because the police were hesitant to register FIRs under the said Act and even if they were registered, the cases were not

¹⁸⁶ Prasad, Chandra, Kumar, *Effective Implementation*, p.18.

pursued with interest. This was attributed to the mindset of the police.¹⁸⁷ Prior to this, in 1962, the Estimates Committee, in its 48th Report, on page 20, had stated that the PCRA had not been effective and the experience had been that offences go unnoticed, partly due to the lack of police officials to prevent and investigate offences and partly due to the fact that the Harijans are dependent on the Caste Hindus economically, in rural areas, and hence are hesitant to file a report with the Police.¹⁸⁸ There was also an apprehension that in certain cases there was willful neglect by the police in investigating cases. It was further suggested by Shri Bholu Prasad, MP, that the Act should set up Appellate machinery, which could be approached in case the police refuse to register FIRs or if the victims feel that the police are not taking an active interest in investigating their matter.¹⁸⁹ Along the same lines, Shri S.K. Vaishampayan suggested that vigilance committees be set up at the District level to monitor implementation of the Act.¹⁹⁰

In 1980, the then Home Minister wrote to the Chief Ministers of the States and in that letter certain guidelines were issued for the proper implementation of laws to prevent atrocities being committed against Scheduled Castes and Scheduled Tribes.¹⁹¹ These guidelines provided, *inter alia*, that:

- When an atrocity has taken place in a village, there is a possibility of chain reactions in neighboring villages and areas, therefore, preventive vigilance and preparedness, and intensive patrolling should be stepped up in such villages and areas.
- The effectiveness of punishment depends not only on the quantum but also on the speed with which it is imposed. Therefore, the police machinery should be required to complete the investigation on a top priority and charge these cases within the shortest possible time, in any case not exceeding 14 days.

¹⁸⁷ Lok Sabha Debates, May 23 1972, col. 167.

¹⁸⁸ Lok Sabha Debates, June 15, 1962, col 10940.

¹⁸⁹ Rajya Sabha Debates, September 3 1976, col. 67.

¹⁹⁰ Rajya Sabha Debates, September 3, 1976, col. 81.

¹⁹¹ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1985 – 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986, p.47.

In regard to a suggestion made by the 31st committee that Cells should be set up at the District level to effectively deal with cases of atrocities, the Ministry of Home Affairs replied that:

“The suggestion that such cells should be set up at the District level has been examined. The Ministry is of the view that there should be a cell in the Office of the District Superintendent of Police for not only collecting statistical information with regard to cases of atrocities but also to give due attention to the investigation of such cases. Institutional arrangements should also be made in the office of the District Magistrate/Collector to deal with grievances of SC/STs. This cell should register all complaints received from members of Scheduled Castes and Scheduled Tribes, ask for reports from the concerned authorities and place them before the Collector/Magistrate for passing of necessary orders. State governments have been requested to consider setting (*sic*) of such cells at the district levels, particularly in areas prone to this problem.”¹⁹²

It has been seen that even where Special Cells have been created to overlook investigation etc, the personnel manning such cells are drawn from the regular police force, and they do not have any special training for this post.

It has been recommended by the 31st committee that the Government should arrange special training courses for the police officers with a view to enable them to understand the problems and difficulties of Scheduled Castes and Scheduled Tribes and to equip them with the basic knowledge of laws and rules in respect of matters concerning the amelioration of Scheduled Castes and Scheduled Tribes and also the Government’s approach and policies on these issues.¹⁹³

At the National Workshop on the Effective Implementation of the POA Act, Dr. Subramanian suggested the following measures to improve the image of the

¹⁹² Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1978 – 79), Sixth Lok Sabha, Thirty First Report, Ministry of Home Affairs – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1979, p. 17.

¹⁹³ *Ibid.*, p. 33.

police among the citizens and making it welfare and justice- orientated organisation.

- a. Provide sensitivity training;
- b. Conduct orientation courses in terms of innovativeness and social leadership;
- c. Train them in terms of group and public management and related techniques;
- d. Increase their awareness and social participation in public affairs;
- e. Recruit and train officers through continuous exposures of various programmes fostering professional ethics and commitment to social justice.¹⁹⁴

iii. Judiciary

The role of the judiciary in ensuring that the Act is effectively implemented does not need to be emphasised. Looking at the sensitivity of the issue, and the need for speedy justice, Section 15 – A(2)(iii) empowers the State Governments to set up Special Courts for the trial of offences under the Act. The issue of the setting up of Special Courts has found favour with many persons associated with the working of this Act.

In 1980, the then Home Minister wrote to the Chief Ministers of the States and in that letter certain guidelines were issued for the proper implementation of laws to prevent atrocities being committed against Scheduled Castes and Scheduled Tribes.¹⁹⁵ In the context of special Courts, these guidelines stated that:

- One specific measure that can help in securing quick trial and ensuring punishment of offenders with deterrent rapidity is to set up special courts to

¹⁹⁴ Prasad, Chandra, Kumar, Effective Implementation, p.48.

¹⁹⁵ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1985 – 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986, p.47.

try crimes under the IPC and the PCRA. There may be an erroneous impression in some minds that the justification for special courts depends on the number of cases. This is not correct. The real justification for special courts is the need to secure punishment for crimes under the IPC or under the PCRA with deterrent rapidity and to impress offenders as well as potential offenders of the firm determination of the State Government to put an end to atrocities once for all, irrespective of the number of cases on file. In fact, if this process of speedy trial through special courts starts, it is very likely that many cases where complaints are not made by the Scheduled Castes victims of crimes on account of their lack of confidence in the legal and administrative machinery, may come to light, providing even numerical justification for special courts at a later stage.”

Special Courts have been set up, as provided under the Act, in many States. However, in most cases, existing Courts are given the added title of Special Courts. They do not deal exclusively with caste-based offences. Therefore, the very purpose of setting up such Special Courts is lost. As the twenty-third committee noted with dismay, there was nothing special about the Special Courts, i.e., they did not have their own Prosecutor, Police Officer, etc., to deal with atrocities at a faster rate. The Committee therefore recommended that Special Courts as suggested by the Chief Ministers’ Conference and as set up in Andhra Pradesh¹⁹⁶ and Rajasthan, should also be set up in other States and Union Territories to *exclusively* deal with and expeditiously dispose of atrocity cases. The Committee was of the view that non-setting up of Special Courts was one of the foremost reasons for the pendency of a large number of cases in various States.¹⁹⁷ They also stressed that the Special Courts/ Special Cells

¹⁹⁶ The Government of Andhra Pradesh took the lead in 1979 by setting up 5 Special Courts. The motive behind the setting up of these Special Courts was to deal *exclusively* with the crimes against Scheduled Castes s/Scheduled Tribes. See, Committee on the Welfare of the Scheduled Castes s and Scheduled Tribes (1985 – 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes s and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986, p.79.

¹⁹⁷ Committee on the Welfare of the Scheduled Castes s and Scheduled Tribes (1992 – 93), Tenth Lok Sabha, Twenty Third Report on Ministry of Home Affairs and Ministry of Welfare, *Atrocities on Scheduled Castes s and Patterns of Social Crimes Towards Them* Lok Sabha Secretariat, New Delhi, April 1993, p.35

should have their own Prosecutor, Police Personnel and other Officials so appointed to tackle and dispose of the atrocity cases independently and with a deterrent rapidity.¹⁹⁸

It was recommended at the National Workshop on the Effective Implementation of the PoA that Section 14 of the PoA should be amended to provide for *exclusive* special courts of the category of courts of sessions, to deal with cases arising under that Act.¹⁹⁹ Further, the Prosecutor appointed under Section 15(i) of the PoA should deal *exclusively* with cases arising thereunder. This recommendation in the context of the POA holds good for the PCRA also.

Shri P. S. Krishnan, Member-Secretary of the National Commission for Backward Classes has also made certain recommendations for amendment of the PoA Act which hold good for the PCRA as well. He suggests that special courts set up under the Act should not be the same as the existing courts. There should be *exclusive* courts and they should hear cases under the Act on a day-to-day basis, so as to provide for speedy disposal of cases. He also suggests the appointment of Special Public Prosecutors for exclusively conducting trials under this Act. Similarly, he recommends appointment of a Special Investigating Officer exclusively for the purpose of investigation in respect of offences under the Act. He further suggests that judges of the exclusive Special Courts, Special Public Prosecutors and Special Investigating Officers should be appointed from a panels prepared on the basis of their record of and reputation for upholding rights of SCs and STs.²⁰⁰

It has to be noted that under Section 15 of the PoA provisions have been made for the appointment of a Special Public Prosecutor for the Special Courts under that Act. However, this is problematic in that it requires the person so appointed to have experience of at least 7 years, whereas the CrPC in Section 24(7)

¹⁹⁸ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1992 – 93), Tenth Lok Sabha, Twenty Third Report on Ministry of Home Affairs and Ministry of Welfare, *Atrocities on Scheduled Castes and Patterns of Social Crimes Towards Them* Lok Sabha Secretariat, New Delhi, April 1993, p.35.

¹⁹⁹ Prasad, Chandra, Kumar, Effective Implementation, p.57.

²⁰⁰ NHRC, p.291-94.

provides that to be appointed as a Special Public Prosecutor, a person appointed should have at least 10 years experience. Given the fact that the PoA Act is a special legislation, and deals with offences of a serious nature, it seems incongruous that it requires lesser experience to be a Public Prosecutor here. This point should not be lost sight of in appointing Special Public Prosecutors under the PCRA.

iv. Role of the Central and State Governments

The Central and the State Governments play a very important role in the implementation of the Act. The Act places a responsibility on the Governments in this regard. The amended Act has for the first time made the Central Government responsible to co-ordinate the measures taken by the State Governments under Section 15A of the Act and to place on the table of each House of Parliament every year a report on the measures taken by itself and the State Governments in pursuance of provisions of Section 15A of the Act. Under Section 15A (2) of the Act, the State Governments are required to take measures for providing adequate facilities including legal aid, appointment of officers for initiating or exercising supervision over prosecutions, setting up of special courts, appointment of committees at appropriate levels, provision for periodic surveys on the working of the provisions of the Act and identification of the areas where persons are under any disability arising out of untouchability.

Section 15 A deals with rules that may be made by the State Government, in addition to the rules made by the Central Government under the Act. This, *inter alia*, is to include:

1. Provision of adequate facilities, including legal aid to persons subjected to disability.
2. The appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of the Act. For this, the Civil Rights Enforcement Cell (CRE Cell) has been set up in Karnataka. It is headed by an Addl. Director General of Police. It consists of an Inspector

General of Police, a Dy. Inspector General of Police and Superintendents of Police. The CRE Cell does not investigate cases; it is just a watchdog. All investigations are done by the local police. The local police are required to inform the CRE Cell at all stages of the investigative process. It seems to be mostly concerned in addressing grievances of *Dalits*. However, it is pertinent to note that the officers who man the CRE Cell are not specifically trained for this purpose. They are on deputation to the cell. Further, the duration of the deputation is not fixed. This takes away from the utility of having such a cell. A better mechanism would be to have a Special Cell within the police department, as discussed above.

3. The setting up of Special Courts for the trial of offences under the Act. Even where these Courts have been set up, the purpose of the Act is defeated as a Magistrate is given this duty in addition to his regular work, though he is already overburdened with work. There is need to set up *exclusive* Special Courts to deal with caste-based offences, so that there is speedy disposal of cases and administration of justice.
4. Setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures. This is an interesting provision that can be made use of to not only ensure that the Act is implemented properly, but to adequately safeguard the rights of untouchables in a comprehensive manner.
5. Provision for a periodic survey of the working of the provisions of the Act, with a view to suggesting measures for the better implementation of the provisions of this Act. This can also be done through the mechanism of the Vigilance Committees.
6. The identification of the areas where persons are under any disability arising out of “untouchability” and adoption of such measures as would ensure the removal of such disability from such area.

Section 16 B empowers the Central Government to make rules. It also contains procedure for laying the same before the Legislature. The Protection of Civil Rights Rules were enacted in 1977. These rules are specific to Section 10 A of the Act.

The Government of India in pursuance of the statutory provisions contained in Section 15A (4) of the PCR, Act, 1955, is responsible to lay on the Table of each House of Parliament an Annual Report containing the measures taken by the Central Government and the State Governments/Union Territories to ensure that the rights accruing to persons subjected to disability arising out of untouchability are made available to them.

Central assistance is also available for the proper functioning of the machinery under the Protection of Civil Rights Act, 1955.²⁰¹ A Centrally sponsored Scheme was introduced for implementation of the PCRA in the year 1974-75. Under this scheme 50% financial assistance is provided to the State Governments and 100% to Union Territory Administrations. The scheme provides assistance for strengthening the enforcement machinery and judicial administration, publicity and relief and rehabilitation of affected persons.

The distribution of financial assistance according to the NHRC report brings out that firstly, funds released to States bear no correspondence to volume to atrocity cases therein. Secondly, in states like Bihar, Orissa, Punjab, West Bengal, Assam, and Himachal Pradesh, the drawal of assistance is extremely low despite sizable population of SCs and high incidence of cases of violence against them. West Bengal especially is not claiming assistance though it has the second largest SC population in the country. This according to the NHRC points towards the indifference in the implementation of the Act. Thirdly, there is uneven distribution of assistance across the years in various states. This, according to the NHRC may be due to unsatisfactory utilisation of the resources already provided in certain years. This further reflects laxity in the implementation of the Act. Fourthly, some States are drawing disproportionately large amounts in

²⁰¹ Thirty-first report, p.5

certain years. This shows uneven implementation of the Act across States and within the same State during different years. The NHRC suggested that the ground level position in respect of implementation of the scheme State wise with reference to the level of atrocities is examined in depth by the Ministry of Social Justice and Empowerment and the problems arising in its implementation in different states are clearly brought out in the Annual Report submitted to the Parliament. Being a Centrally sponsored scheme it is governed by the condition that 50% of the entitlement under it has to be contributed by the State Government. The NHRC has noted that the inability of some State Governments to contribute this amount may have stood in the way of receiving Central share.²⁰²

The NHRC observes in its Report that State Governments have not taken the implementation of the Act very seriously. Punjab and West Bengal have not taken any administrative measures for implementation of the Act. West Bengal, in fact has claimed that untouchability is not practised there! Major states like Assam, Uttar Pradesh, Bihar and Rajasthan have not constituted special courts under the Act. Madhya Pradesh has wound up the special courts set up because of the small volume of cases. Only Gujarat, Maharashtra and Rajasthan have identified Untouchability – prone areas. Madhya Pradesh is conducting the exercise. Incentives like those for Inter – Caste marriages have not been implemented in Rajasthan, Tamil Nadu, U.P and Uttaranchal. In Assam, adequate budgetary allocation has not been made for the scheme. The States seem to suggest that either the problem of untouchability does not exist or its incidence is so negligible that it is not worthy of much attention. The NHRC opines that this shows the inability or perhaps the unwillingness of the State Governments to come to grips with the practice of untouchability, particularly in its most subtle forms at various levels of society.²⁰³ No measure taken for the eradication of untouchability can be successful without the active support of the

²⁰² Report on Prevention of Atrocities Against Scheduled Castes s, National Human Rights Commission, New Delhi, 2004, pp. 48-51.

²⁰³ Report on Prevention of Atrocities Against Scheduled Castes s, National Human Rights Commission, New Delhi, 2004, p. 21.

Central and State Governments. Therefore, all recommendations in this paper are subject to them being faithfully implemented by the concerned Government. If this is not done, there can be no cure for the evil of untouchability

The NHRC Report further goes on to state that in the rare cases where the State Governments have identified untouchability prone areas, a plan of action has not been devised to eliminate the practice. No publicity has been given to the Act, no periodical surveys, as required by the Act are carried out, special Public Prosecutors have not been appointed, there is no monitoring of the implementation of the Act at any level. Further, Vigilance and Monitoring Committees have not been constituted, functionaries appointed to conduct prosecution lack competence and motivation.²⁰⁴ There is urgent need for all of the above to be done; otherwise, none of the recommendations given here will have any impact on the removal of untouchability.

One other recommendation made with respect to the role of the Government has been in the context of Local Self Government. The Saxena Committee Report suggests that State Governments should involve Panchayati Raj institutions in the implementation of the Act. These institutions, according to the Committee can play a key role in eliminating untouchability practices and providing necessary social support in the enforcement of the Act.²⁰⁵ It is submitted however, that such Panchayati Raj systems are quite often themselves steeped in caste hierarchies. They are very often instrumental in encouraging as well as perpetuating caste based discrimination. To involve them in the process of implementation of the Act might not, therefore, serve any useful purpose. On the contrary, it might be quite detrimental to the implementation of the Act.

However the idea that there is need for local involvement in the effective implementation of PCRA is not new. During the parliamentary debates over the PCRA it was suggested by Shri Bhola Prasad, MP, that the Act should set up

²⁰⁴ Report on Prevention of Atrocities Against Scheduled Castes s, National Human Rights Commission, New Delhi, 2004, pp. 25 – 26.

²⁰⁵ Report on Prevention of Atrocities Against Scheduled Castes s, National Human Rights Commission, New Delhi, 2004, p.27.

Appellate machinery, which could be approached in case the police refuse to register FIRs or if the victims feel that the police are not taking an active interest in investigating their matter.²⁰⁶ Along the same lines, Shri S.K. Vaishampayan suggested that vigilance committees be set up at the District level to monitor implementation of the Act.²⁰⁷

A similar suggestion was made by the 31st Committee, which opined that Cells should be set up at the District level to effectively deal with cases of atrocities. In response to this, the Ministry of Home Affairs replied that:

“The suggestion that such cells should be set up at the District level has been examined. The Ministry is of the view that there should be a cell in the Office of the District Superintendent of Police for not only collecting statistical information with regard to cases of atrocities but also to give due attention to the investigation of such cases. Institutional arrangements should also be made in the office of the District Magistrate/Collector to deal with grievances of SC/STs. This cell should register all complaints received from members of Scheduled Castes and Scheduled Tribes, ask for reports from the concerned authorities and place them before the Collector/Magistrate for passing of necessary orders. State governments have been requested to consider setting (*sic*) of such cells at the district levels, particularly in areas prone to this problem.”²⁰⁸

The enabling power to create local level bodies is found in Section 15A (2) (iv) of the PCRA which provides that the State Government may set up Committees at appropriate levels to assist the State Government in formulating or implementing measures for ensuring that the rights arising from the abolition of “untouchability” are made available to, and are availed of by, the persons subjected to any disability arising out of the “untouchability”.

²⁰⁶ Rajya Sabha Debates, September 3 1976, col. 67.

²⁰⁷ Rajya Sabha Debates, September 3, 1976, col. 81.

²⁰⁸ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1978 – 79), Sixth Lok Sabha, Thirty First Report, Ministry of Home Affairs – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1979, p. 17.

However, it is recommended that merely creating a cell within one institution like the police will not suffice in fulfilling the broad mandate carved out for such committees under this provision. A Civil Rights Enforcement Committee comprising of representatives of the police, administration, civil society and affected communities is essential to give a holistic perspective to the issue of caste-based discrimination and structural and institutional reform required to effectively deal with the issue of untouchability. The mandate of the committee can *inter alia* cover the following:

1. Providing assistance to victims of discrimination and disabilities based on untouchabilities;
2. Pro-actively ensuring that practices of untouchability that are so commonplace as to be accepted as part of normal life, are addressed through social awareness, reform, and/or litigation;
3. Creating awareness about the constitutional guarantees and the gamut of legislations on this issue;
4. Working as a watchdog to ensure that local officials implement the provisions of the Act, and in its absence, acting as a reporting mechanism for complaints in this regard
5. Providing data and research to the Government on the forms and extent of untouchability, and other caste-based discrimination in the district, and making suggestions and recommendations for policy interventions in this regard;
6. Providing feedback and vigilance for Government initiated schemes for the welfare and upliftment of oppressed and marginalized groups.

The advantage of such a committee at the local level is that it will serve as a nodal point for mobilization around the issue of caste based discrimination. The field work carried out as part of this report has consistently shown that those areas in which the former untouchables were politically organized were much

better off in terms of the prevalence of untouchability than those places which did not have such organization.

Such nodal points will also be effective in dealing with discrimination arising from untouchability which takes the form of subtle social and economic pressures and cannot be categorized into one or the other form of disability criminalized by the Act. For example, Srinivas makes a reference to Bailey's study of a village in Orissa where he found that Sanskritization did not help members of the Untouchable caste. The Boad caste group whose occupation was selling hide were not allowed to move up in the hierarchy by the other caste communities including other untouchables like the sweepers. They have been asking for help from officials and courts to enforce the rights that have been guaranteed to them by the Constitution.²⁰⁹ In cases such as this, a Civil Rights Enforcement Committee can give voice to the sufferings of the marginalized group.

v. Non Governmental Organisations

It has been recognised that attempts made to remove untouchability will only touch the periphery of the problem unless it is aimed at changing mindsets and social behaviour. The 31st Committee approved of the recommendation of the Elayaperumal Committee, which stressed on the role which non-official organisations can play in this regard. In a democratic form of Government, increasing participation of the people in the welfare programmes is essential for the success of any scheme. These organisations should reflect the actual needs and desires of the society for reformation and change. Coercive methods of law should always be buttressed by the persuasive methods of 'slow mass education' or propaganda. The Committee felt that voluntary organisations in the country can play an effective role in this sphere and can contribute substantially in supplementing Governmental efforts for the removal of untouchability. They recommended that the Government should encourage voluntary organisations in

²⁰⁹ Srinivas, p. 254

educating public opinion and in creating a change in the people's attitude towards Scheduled Castes and Scheduled Tribes.²¹⁰

In the Eleventh Report it has been stated that as the removal of untouchability is a gigantic task it is necessary to elicit the cooperation of other voluntary organisations which are engaged in similar welfare activities. The government should encourage other social organisations to come forward to do voluntary social work for removal of untouchability.²¹¹

The Third Five Year Plan emphasised the role of Voluntary Organisations in eradicating untouchability. Rs. 114 crores was sanctioned for the eradication of untouchability, part of which was to be allocated to voluntary organisations. Earlier, the First and Second Five Year Plans had allocated Rs. 1.383 crores and Rs. 1.22 crores respectively, towards eradication of untouchability.²¹²

Voluntary organisations can play a very important role in the implementation of the PCRA and in the eradication of untouchability and other caste-based offences. One possible role for them within the institutionalised framework would be to identify one voluntary organisation in each district and make it part of the Civil Rights Enforcement Committee recommended above. With their experience in working with victims of caste-based offences, they can help in the sensitization of such Committees and see to the proper functioning of the same. Another use for such voluntary organisations within the framework of the Act could be to identify the organisations working in this area and to officially recognise them under the Act in the same manner as is done under the Juvenile Justice Act. However, such organisations will function as the nodal agencies for helping the victim go through the entire process from the filing of the FIR through the trial stage, to subsequent relief and rehabilitation. This will help in making the system

²¹⁰ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1978 – 79), Sixth Lok Sabha, Thirty First Report, Ministry of Home Affairs – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1979, pp.50-51.

²¹¹ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1985 – 86), Eighth Lok Sabha, Eleventh Report, Ministry of Welfare – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1986, p.67.

²¹² Lok Sabha Debates, June 16, 1962, col. 10967.

victim-friendly, and will prevent the police from not registering cases. With the force of a dedicated voluntary organisation behind him, the victim will not remain in the same powerless position as he is now, when confronted with apathetic State machinery.

vi. Miscellaneous

One of the major weaknesses of all government programmes, protective legislations and actual achievements is the lack of adequate publicity and information among the rural population about these measures. Very few people in the villages are aware of the provisions of the IPC, CrPC, Evidence Act, PCRA, or POA Act. Even if they are aware, there is no information about the channels of complaints, whom to make representations to and where to register cases. It is very important that some method be devised for dissemination of information on the rural areas so that it can reach the Scheduled Castes hamlets.²¹³

The Planning Commission set up a Committee under the Chairmanship of Ms. Renuka Ray to study the manner in which the condition of the backward classes could be improved. This Committee in its Report stated that legislation alone cannot achieve the objective of eradicating untouchability. It needs to be backed up by publicity and propaganda. To highlight this, the Report referred to the First Five Year Plan, wherein a fourfold approach had been proposed to eradicate untouchability. The aim was to achieve eradication through:

- Law
- Persuasive and Educative processes
- Practice of democratic behavior in social and recreational activities

²¹³ Prasad, Chandra, Kumar, *Effective Implementation*, p.20.

- Providing opportunity for self – development, betterment of health, education and economic life.²¹⁴

The 31st committee recommended that the mass media, i.e., newspapers, films, radio and T.V. should be extensively made use of for educating and shaping the public opinion and to fight against discrimination and untouchability. Wide publicity should be given to the provisions of this Act. Documentary films should be produced in this subject and those already produced should be dubbed into different regional languages and compulsorily exhibited in every cinema show in the rural areas and in the sensitive districts, particularly. Suitable cinema slides should be made and widely exhibited. Appropriate slogans should also be printed in bold letters on the postal stationary so that these get widely circulated.²¹⁵

The National Commission of SCs and STs in its 6th Report has made the following recommendations as regards the PCRA:²¹⁶

1. The Central Government and the State Governments should ensure wide publicity of the Act.
2. The Central Government should review the kind of facilities including legal aid being provided by the State Governments to the victims of untouchability and issue guidelines to ensure proper implementation of the Act.
3. The Central Government should impress upon the State Governments to ensure that the officers appointed under the Act are utilised for initiating and exercising supervision over prosecution of all cases registered under the Act. The State Government should also ensure that the Special Public Prosecutors are appointed or ear-marked to deal exclusively with the PCRA. In States where there is no such arrangement, these Public

²¹⁴ Lok Sabha Debates, June 1, 1962, paras 8437 - 8440.

²¹⁵ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1978 – 79), Sixth Lok Sabha, Thirty First Report, Ministry of Home Affairs – *Atrocities on Scheduled Castes and Scheduled Tribes*, Lok Sabha Secretariat, New Delhi, April 1979, p.52.

²¹⁶ Report on Prevention of Atrocities Against Scheduled Castes, National Human Rights Commission, New Delhi, 2004, pp.266-267.

Prosecutors, should be carefully selected and trained and brought under the scheme of reward and admonition for the success or otherwise of their labour.

4. The Central Government should request the States to complete identification of untouchability prone areas on a time bound basis.
5. The Central Government should critically evaluate the impact of the scheme of liberation of scavengers on removal of untouchability.
6. The State Governments should give wide publicity to the scheme of inter-caste marriages through mass media in order to encourage large number of youths for inter-caste marriages.
7. The State Governments should evolve schemes for providing healthy competition at the village/ Gram Sabha level for eradication of untouchability.
8. The Central Government should review the impact of the work being done by voluntary organisations and enlist their support in this matter. In order to bring about healthy competition among social workers, State Governments should also consider launching a scheme of giving rewards and commendation certificates to select social workers for their outstanding contribution towards the eradication of untouchability.
9. The Central Government should constantly monitor the Special Courts under the PCRA in terms of the concrete results that they have produced so far.

The National Commission for SCs and STs also suggested that the remuneration to public prosecutors should be reasonably enhanced. In order to monitor the effective implementation of the Act, the Commission suggests that the various Committees at District and State levels should review the pendency of cases

regularly, examine the cause of overwhelmingly large proportion of acquittals and take urgent corrective measures to improve the rate of convictions.²¹⁷

²¹⁷ *Id.* pp 268-69

IX. PUNISHMENT AND SENTENCING

One of the issues that the report seeks to address is whether the penal policy underlying the PCRA impacts its usage and leads to its not being used. A perusal of the penal sections of the legislation reveal that the punishment for committing most of the offences, ranges from a minimum imprisonment for one month and a maximum of six months. With respect to fines, the minimum fine that can be imposed is Rupees One Hundred and the maximum is Rupees Five Hundred. This begs the question of whether quantum of these jail terms or fines is deterrent enough to prevent people from committing these crimes. Two issues need to be addressed. First, whether sentences for committing offences under the PCRA should be enhanced and secondly, whether new sentences need to be added to the PCRA.

To be able to understand whether there is a need for enhancing sentences, one needs to examine the penal policy underlying the PCRA. This, however, is not evident, either from the legislation or from the legislative history. From the quantum of punishment imposed, especially considering that this is a social welfare legislation, the aim seems to be rehabilitation, because of which the offender is not sentenced to a long term in prison. On the other hand, when compared to the PoA Act, which has more stringent punishment, it appears that offences under the PCRA are being treated as minor offences, in comparison to the PoA Act. The punishments under the latter seem to be following the *just deserts* and the deterrent theory. Before arriving at a conclusion as regards this issue, let us first examine a few cases on the issue of sentencing.

Questions relating to the extent of discretion of courts to sentence offenders have come up for interpretation before various High Courts. In the case of *Suhasini Baban Kate v. State of Maharashtra*²¹⁸, the Bombay High Court upheld the trial court's decision to impose less than the minimum prescribed punishment. The petitioner had abused a Sub-Inspector when he had objected to her throwing

²¹⁸ MANU/MH/0062/1984, 1985 (1) BomCR 409

garbage on a public road. She had responded by abusing him and referring to his cobbler caste and telling him to leave the locality as its residents belonged to the Maratha community. The petitioner did not challenge the conviction on merits but challenged the quantum of the sentence. Her counsel pleaded that the petitioner was a married lady aged about 30 years and had three children. There were no bad antecedents to her credit. He further argued that the incident occurred on the spur of moment and the alleged utterances were also out of a sudden flaring of temper. The Court accepted the petitioner's arguments and held that it was unnecessary to send her back to jail and that she could be released on the sentence already served "in the interests of justice". It is pertinent to note in this context that S. 7 of the PCRA prescribes a minimum imprisonment for a term of one month and a minimum fine of Rs. 100.

In *State v. Ponnuvel*²¹⁹, the accused had asked the complainant (the President of an association which worked for the welfare of Scheduled Castes) why the SCs did not honour the caste Hindus by calling them "Ande" (Master). He then referred to her caste and to the private parts of women belonging to her community and asked her what her association would do if he pulled her breasts. The complainant registered a case under S. 7 (1) (d). The trial court convicted the accused and sentenced him to three months imprisonment. On appeal, the Sessions Court upheld the conviction but modified the sentence into only a fine of Rs. 300 on the ground that the earlier punishment was "harsh and excessive". The State preferred an appeal to increase the quantum of punishment. The Madras High Court sentenced the accused to rigorous imprisonment of one month and a fine of Rs. 100 and stated as follows - "The learned Sessions Judge has erroneously traveled outside the four corners of the Act when there is no ambiguity at all in the language that an offence under section 7 of the Act is punishable with imprisonment of not less than one month and a fine of not less than Rupees 100/-."

²¹⁹ MANU/TN/0032/1983

In the case, *State of Karnataka v. Annappa*²²⁰, the trial court had imposed a fine of Rs. 250 but had not imposed any sentence of imprisonment. The question was whether it had the power to do so despite the minimum requirement of a fine of Rs. 100 and imprisonment of one month. The High Court held that the court's discretion came into operation once the minimum sentence of the fine as well as imprisonment had been imposed and that it could not impose only a fine.

Hence, practice shows that Courts are sometimes averse to imposing the mandatory minimum. This might be also because of the perception of the judge as regards the seriousness of the offence. Viewed from a holistic point of view, and comparing the PCRA with the PoA Act, the *prima facie* conclusion would be that due to the harsher punishments and harsher procedures under the PoA Act, it is more likely to be preferred in case of prosecution.

However, when compared to the original Untouchability (Offences) Act, 1955, the 'Protection of Civil Right' Act, 1955, has considerably tightened the penal provisions of the law and incorporates various new features to curb the practice of untouchability. All types of untouchability cases which were cognizable but compoundable under the old Untouchability (Offences) Act, 1955, have been made cognizable as well as non-compoundable under the amended Act. Under the old Act the punishment for committing untouchability offences was imprisonment which may extend upto 6 months or with fine upto Rs. 500 or both. Under the amended Act for the first time minimum and maximum punishments have been quantified, namely, for the first offence the minimum punishment will be imprisonment for one month and a fine of Rs. 100 and the maximum imprisonment for 6 months and a fine of Rs. 500. For the second offence the minimum punishment will be imprisonment for 6 months and fine of Rs. 200 and maximum imprisonment for 1 year and a fine of Rs. 500 for the third and subsequent offences, the punishment may range from imprisonment for 1 year and fine of Rs. 500 to imprisonment for 2 years and a fine of Rs. 1000. From this it would be seen that in the amended PCRA the law has been considerably

²²⁰ MANU/KA/0152/1991

tightened with stringent penal provisions. One significant characteristic of the Act is that public servants who show willful neglect in the investigation of any offence punishable under the Act are deemed to have abetted an offence punishable under that Act. The State Governments have also been empowered to impose collective fines on the inhabitants of any area who are concerned in or are abetting the commission of untouchability offence.

The Elayapreumal Committee Report had recommended that the first offence under the PCRA, should be punished with imprisonment of not less than 3 months, upto 6 months and also fine of not less than Rs. 50, but upto Rs. 200. The Government felt that the quantum of punishment was too high and this would lead to Judges finding reasons to acquit the accused. Hence, at the time of proposing the Untouchability (Offences) Amendment Bill, the Government proposed that in case of the first offence, the mandatory minimum punishment should be one month.²²¹ It is worth noting that the proposed change from the recommendation of the Committee was accepted by the Parliament and Section 3 of the PCRA reflects the same. The Report, though had further stated that increased punishment would not be the solution to eradicate untouchability, but there is a need to bring about a change in the social order.²²² Some of the MPs were of the opinion that mandatory minimum punishment should not be introduced in the Act. They were of the opinion that the Judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed the offence and other factors. They felt that this would enable the Judge to acquaint himself with the exact nature of the circumstances, so that he may give a punishment that would suit the circumstances.²²³

Shri B.R.Shukla, MP opposed the amendment of the Untouchability (Offences) Act. He was of the opinion that only if the penal provisions in the Act are

²²¹ Lok Sabha Debates, May 23 1972, col. 156.

²²² Lok Sabha Debates, May 23 1972, col. 156.

²²³ Lok Sabha Debates, May 23 1972, cols. 170 – 72.

inadequate, amendment becomes necessary. He felt that the real point to be considered is whether the punishment of fine or imprisonment upto six months, as in the 1955 Act has been inadequate to remove untouchability. He opined that for that one needs to see how many cases have gone to the Courts and how many persons have been really prosecuted and convicted, and in spite of conviction and light punishment under the Parent Act, those very persons have persisted in repetition of the offence. Only in such a case he states that it would be necessary to make a change. But if the implementation of the provisions of the Parent Act has been insufficient, there is no question of bringing an amendment Bill. He further states the Government had not made out a case for bringing a Bill imposing a mandatory minimum punishment in case of a first offence, then adding another term for the second offence and adding a further term for a third offence. He felt that the theory of reformation is what should be emphasised upon and the present position does not follow this theory and gives no discretion to the Judges, because after a Judge has come to the conclusion that a certain person has committed an offence for which he should be punished, what should be the quantum of punishment should be left to the discretion of the Judge who decides it taking into account a variety of reasons. He hence opined that the Bill was uncalled for, the punishment was already there and to amend it was unnecessary. He felt that the punishment would not in any way deter an offender from committing a crime, because the offender would look for loopholes to evade provisions of the Statute.²²⁴

From the legislative history, the penal policy that was sought to be followed is not clear. The quantum of punishment does not indicate deterrence of *just deserts*. It seems to be geared towards rehabilitation. In order to reach a conclusion as to whether sentences should be enhanced, it is necessary that the purpose of punishing offenders be clarified. The next issue to be examined is alternative forms of punishment under the PCRA.

²²⁴ Lok Sabha Debates, May 23 1972, cols. 194 – 96.

i. Other Forms of Punishment

An alternate form of punishment is dealt with under Section 8 of the Act, which deals with suspension of licenses in certain cases. It states that suspension of the license will be with respect to offences mentioned in Section 6.

Section 10 deals with the abetment of offences. The explanation to the section states that a public servant who willfully neglects the investigation of any offence punishable under the Act shall be deemed to have committed an offence. This is a positive step towards enforcement of the provisions of the legislation. Willful neglect would be a situation where a person is willfully blind towards a situation and in the process neglects his / her duties. However, there needs to be an effective mechanism for redressal if a person believes that a public servant is willfully neglecting his duties. At present, the person has to approach the Court for the same, under the PCRA. Sanction has to be taken from the State or the Central Government, as the case may be, by virtue S.15(2) of the Act.

Section 15 (2), which states that sanction needs to be taken for prosecution of public servants is analogous to Section 197 of the Cr.P.C and Section 19 of the Prevention of Corruption Act. There is emerging jurisprudence in this area, which states that the fact as to whether the act was done in the colour of employment should be decided in the trial and not at the time of cognizance. Hence, sanction needs to be taken in almost all cases. Recognising this, Shri K.K. Madhavan, MP sought deletion of this provision.²²⁵ However, his suggestion was not accepted.

Hence, it is recommended that the redressal for this grievance should be through a Vigilance Committee, described below in detail. The Committee can examine *prima facie* if the complaint has any substance, and if it is convinced that it does, then it can refer the matter to the Court. Because of this safeguard, the requirement of sanction may be done away with.

It is interesting to note that the Amendment Bill had a second explanation attached to Section 10. This was suggested by the Joint Parliamentary

²²⁵ Rajya Sabha Debates, Sept 3 1976, col. 96.

Committee. It read : “ Any appointing authority, in relation to any service or post, or in connection with the affairs of (a) the Union or any State Government, (b) the Corporation or Undertaking owned or controlled by the Central Government or the State Government or both, (c) any authority or body established by a Central, State or Provincial Act, (d) any local authority, who show negligence in giving effect to the orders of the appropriate authority relating to the reservation of posts for the employment of members of the Scheduled Castes, shall be deemed to have abetted an offence, punishable under this Act.” This Explanation did not find a place in the Bill. Shri Yogendra Makwana, MP pointed out during the debate that the Commissioner for Scheduled Castes and Scheduled Tribes had mentioned in his Report that for the year 1973 – 74, that the representation of Scheduled Castes and Tribes in Central Government services was far from satisfactory. In this context, he argued that the Explanation ought not to be deleted.²²⁶ Though it might be argued that the position might have changed now, reserved posts not being filled up should definitely be considered to be abetment of untouchability.

Section 10 A provides for the imposition of collective fine on the inhabitants of an area which the government, is satisfied, are concerned in or abetting the commission of any offence punishable under this Act. This is again a rarely, if ever, used provision, according to the magistrates who were interviewed.

Regarding this provision, the Home Secretary stated before the 31st committee that their experience in this matter had not been a happy one. Announcements were made but as soon as normalcy returned, no State Government wanted to keep alive the tension for the recovery of the fines imposed. No one can be certain as to what repercussions would be. The recommendation of the Government in this regard was that if there were atrocities on a large scale, this should be done. But no state had done it so far.

A better method may be to take a collective bond and not a fine, returnable after sustained period of normalcy. This bond shall stand forfeited if normalcy does not

²²⁶ Rajya Sabha Debates, Sep 3 1976, cols. 73 – 74.

return within stipulated time period. This provides an incentive to maintain normalcy in the area. The interest on this bond could be used to educate the people about the ills of untouchability.

Sections 8 and 9 of PCRA have put in place innovative mechanisms for deterring offenders against the practice of untouchability. These Sections provide for the cancellation or suspension of licenses held by the accused and the resumption or suspension of grants made by the Government in certain cases. These are novel tools for securing the implementation of the Act and should be made use of to give teeth to the provisions of the Act.

In its current form, Section 8 deals with the suspension of licenses in respect of offences mentioned in Section 6. This is restrictive. There is no reason as to why this should not be extended to other sections. It is suggested that suspension of licenses should extend to any offence of untouchability committed in the course of or in connection with the business, trade, profession, calling or employment, which requires a license. This will be a more effective tool than either the imprisonment or fine provided in the legislation. Magistrates, who were interviewed in this regard, however claimed that they never used this provision. To make this section workable, it is therefore suggested that as part of the pre-sentence hearing, it be made mandatory for the Magistrate to ask the convict to show cause why his license should not be revoked, and on non-furnishing of adequate grounds, his license should be revoked.

ii. Civil Remedies

The issue of whether a civil remedy is preferable over criminal liability is one worth exploring. To do so, one needs to understand what the advantages of one over the other would be and also examine whether it would work in India, where there the culture of tortuous litigation, as in other countries, has not really developed. Even the judges who were interviewed did not reach any consensus on the issue, although 5 of the 9 DPPs interviewed in Uttar Pradesh did not deem it necessary. (Table 9.1)

9.1: Do they think civil remedy is desired to strengthen PCRA

State	Yes	No	Given adequate relief to victims	joint liability of the community	Depends on individual	Not Responded	Total
Andra Pradesh	0	0	0	0	0	0	0
Karnataka	0	0	0	0	0	0	0
Madhya Pradesh	0	0	0	0	0	1	1
Rajasthan	0	0	0	0	0	1	1
Uttar Pradesh	1	5	1	1	1	0	9
West Bengal	0	0	0	0	0	0	0
Grand Total	1	5	1	1	1	2	11

If we examine the practice in other countries, all Australian anti-discrimination legislations use a hybrid of civil and criminal procedures.²²⁷ Various state laws in

²²⁷ Margaret Thornton, *Anti-Discrimination Remedies*, 9 ADEL L. REV 235, 251 (1983-85).

the United States have civil remedies available, in addition to criminal prosecution.²²⁸

What are the forms of civil redress that can be permitted? Civil causes of action could include damages, injunction against future conduct, actual or nominal damages for economic, non-economic or actual distress, punitive damages, reasonably advocate fees and litigation costs.²²⁹ It has been argued that the payment of monetary damages contains an in-built element of deterrence. It is further argued that the criminal law model does not guarantee any tangible redress to the victim. It is only the society's disapprobation of conduct. Standard of proof is an issue in criminal prosecutions. On the issue of intent, the burden becomes unrealistic. Further, the state machinery like the police and the prosecutor play an important role in the criminal process.²³⁰

When examined in the Indian context, the criticisms of the criminal model are true in India as well. The case law cited earlier clearly shows that courts have difficulty in arriving at a conclusion of whether a person committed a crime under the PCRA, with the specific intent required. Hence, affixing criminal liability, because of the standard of proof requirements, even with presumptions in favour of the prosecution, is proving to be difficult. On the other hand, when the profiles of the victims are examined, it is not likely that their rights will be vindicated by resorting to the civil process. The civil process in India is time consuming and expensive. Further, the empirical study in Madhya Pradesh revealed that the possibility of criminal prosecution does deter people from using caste names. This would possibly be true of other offences as well. Hence, an ideal system in India would involve using both civil and criminal remedies to ensure that discriminatory practices based solely on a person's caste are not practised. Another suggestion would be to encourage prosecutors to pray for compensation, which a court can award under Section 357 of the Cr.P.C.

²²⁸ See David Braithwaite, *Combating Hate Crimes*, 6 B.U. Pub Intl. L. J. 243 (1996-97).

²²⁹ *Id.*, 251.

²³⁰ Margaret Thornton, *Anti-Discrimination Remedies*, 9 ADEL L. REV 235, 256 (1983-85).

X. IMPLEMENTATION OF THE PROTECTION OF CIVIL RIGHTS ACT (PCRA), 1955

This chapter deals with the overall implementation and effectiveness of the PCRA, and data relating to the same. More specifically, it looks at responses of institutions like the police and the judiciary to cases that have been registered under the PCRA, and at the levels of awareness that exist about the PCRA in common imagination today.

i. The Registration of FIRs and disposal of cases

The following reports have dealt specifically with the issues of implementation of the PCRA, and more specifically with respect to whether there are cases being registered and heard by courts under the PCRA. These reports also talk about how the courts have responded to these cases.

1. The Annual Report on the PCRA, Government of India

As per the data given in this report, 453 cases were registered under the PCRA in 2005 alone, the state of Jharkand making up the most number of registrations, with 168 cases being reported.²³¹ This amounts to 37% of the total. The states with the top sixteen quanta of registration are in the following table.

²³¹ Ministry of Social Justice and Empowerment, Annual Report on the PCRA, 1955 - 2005.

Table 10.1

CASES REGISTERED DURING 2005

S. No.	State/UTs	Number of Cases registered during 2005	Percentage of total case registered under the PCR Act
1.	Jharkhand	168	37.09
2.	Bihar	95	20.97
3.	Andhra Pradesh	61	13.46
4.	Maharashtra	32	07.06
5.	Karnataka	28	06.18
6.	Uttar Pradesh	28	06.18
7.	Tamil Nadu	12	02.65
8.	Puducherry	12	02.65
9.	Gujarat	6	01.33
10.	Himachal Pradesh	5	01.11
11.	Chhatisgarh	1	00.22
12.	Jammu & Kashmir	1	00.22
13.	Madhya Pradesh	1	00.22
14.	Punjab	1	00.22
15.	Rajasthan	1	00.22
16.	Delhi	1	00.22
	Total	453	100

Of this, the following table provides us with details of how the courts have dealt with these cases:

Table 10.2

Disposal of cases by Courts

S. No.	Item	Number of Cases	
		Number of cases	Percentage of total cases disposed off by the courts
1	2	3	4
1.	Total number of cases (including brought forward)	3,356	-
2.	Number of cases disposed of by Courts	486	14.48%
(a)	Number of cases ending in conviction	101	20.78%
(b)	Number of cases ending in acquittal	385	79.22%
3.	Number of cases compounded or withdrawn	3	00.09
4.	Number of cases pending with Courts at the end of year	2,867	85.43%

2. The Crime Bureau Reports

The data on the extent to which the PCRA has been implemented has been reflected in the Crime Bureau Report, 2006.²³² A total of 49 cases were reported in 2006, as opposed to 162 cases in 2005. This shows a steep decline of 69.8 %

²³² Crime in India Report, National Crime Record Bureau - 2006.

in the implantation and use of the PCRA in 2006. Of all the cases reported, the state of Jharkand has accounted for 69% of the cases in 2006. Compared to this, in 2006, 1232 cases were reported under the POA, which in only a decline of .2% in comparison to the 2005 figures.

Such a decline in the use of the PCRA may be traced through the previous years, such as a comparative study by the Crime Records Bureau for the years 2003 and 2003,²³³ which indicate a decline of about 37% in the use of the PCRA legislation in the two years.

Table-7(A)
Comparative Incidence of Crime Against Scheduled Castes

Sl. No.	Crime-Head	Years			% Variation in 2003 over 2002
		2001	2002	2003	
(1)	(2)	(3)	(4)	(5)	(5)
1.	Murder	763	739	581	-21.4
2.	Rape	1316	1331	1089	-18.2
3.	Kidnapping & Abduction	400	319	232	-27.3
4.	Dacoity	41	29	24	-17.2
5.	Robbery	133	105	70	-33.3
6.	Arson	354	322	204	-36.6
7.	Hurt	4547	4491	3969	-11.6
8.	Protection of Civil Rights Act	633	1018	634	-37.7
9.	SC/ST(Prev. of Atrocities) Act	13113	10770	8048	-25.3
10.	Others	12201	14383	11401	-20.7
11.	Total	33501	33507	26252	-21.6

Therefore, the data indicates that a decline of almost 40% has been noted over the last 5 years in the use of the PCRA, the reasons for which have been examined in the chapters above.

The table below indicates data about cases registered by the police, and their dismissal under the PCRA during 2005.

²³³ Crime in India Report,, 2003.

Table 10.3

STATEMENT SHOWING CASES REGISTERED BY POICE AND THEIR DISPOSAL UNDER THE PROTECTION OF CIVIL RIGHTS ACT, 1955 DURING THE YEAR 2005

S. No.	State/UT	Number of cases registered during 2005	Number of cases with police during 2005 including B.F.	Number of cases closed by Police after investigation (Cases withdrawn, cases not investigated, cases declared false and cases final reports submitted)	Number of cases chargesheeted in courts	Number of cases pending with police at the end of 2005
1.	Andhra Pradesh	61	84	32	39	13
2.	Assam	0	1	1	0	0
3.	Bihar	95	141	7	64	70
4.	Chhatisgarh	1	1	0	1	0
5.	Gujarat	6	6	0	5	1
6.	Himachal Pradesh	5	6	0	5	1
7.	Jammu & Kashmir	1	1	0	1	0
8.	Jharkhand	168	168	5	20	143
9.	Karnataka	28	34	7	21	6
10.	Kerala	0	1	0	1	0
11.	Madhya Pradesh	1	1	0	1	0
12.	Maharashtra	32	48	6	24	18
13.	Punjab	1	1	0	0	1
14.	Rajasthan	1	1	0	1	0
15.	Tamil Nadu	12	23	7	4	12
16.	Uttar Pradesh	28	32	6	25	1
17.	Delhi	1	1	0	1	0
18.	Ponndicherry	12	17	8	5	4
	TOTAL	453	567	79	218	270

Note:- Nil data reported by 17 States/UTs viz. Arunachal Pradesh, Goa, Haryana, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, Uttaranchal, West Bengal, Andaman & Nocobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep

It is interesting that the charge sheeting rate of crimes against SCs and STs is at 91.3%, which is higher than the national level of charge sheeting rates for the IPC crimes, which is approximately 80 %. 79.7% of persons arrested for crimes under the PCRA and POA were eventually charge sheeted. Surprisingly, the average conviction rates for these crimes stood at 28%, compared to the national average conviction rate which is 42.9% for IPC crimes and 84% for crimes under special laws.

ii. Awareness Programs regarding the PCRA

Our field research specifically looked at the question of the extent of awareness of the PCRA amongst the population of our country, as awareness is an important aspect of the implementation and effectiveness of the act. The

following placement of data indicates our findings with respect to the situation of awareness of the PCRA:

Aware of any Legislation against the practice of Untouchability—

About 318 of the dalit respondents have said that they are aware of legislations against the practice of untouchability, whereas 330 have said no such awareness

Table: 10.4

State	Yes	No	Total
Andhra Pradesh	110	0	110
Karnataka	75	115	190
Madhya Pradesh	84	58	142
Rajasthan	37	5	42
Uttar Pradesh	8	74	82
West Bengal	4	78	82
Grand Total	318	330	648

When the same question was posed to the police personnel most of them said they are aware of the provisions of the PCRA Act and copies of the act are available at their offices. (See table 10.4(a)).

10.4(a) Awareness of police regarding provisions of PCRA

State	Yes	No	Not Responded	Total
Andhra Pradesh	4	0	0	4
Karnataka	7	0	1	8
Madhya Pradesh	0	3	0	3
Rajasthan	1	0	0	1
Uttar Pradesh	8	5	0	13
West Bengal	0	0	0	0
Grand Total	20	8	1	29

10.4 (b) Do Police have a copy of the PCRA in their office?

State	Yes	No	Not Responded	Total
Andhra Pradesh	4	0	0	4
Karnataka	7	0	1	8
Madhya Pradesh	0	3	0	3
Rajasthan	1	0	0	1

State	Yes	No	Not Responded	Total
Uttar Pradesh	8	5	0	13
West Bengal	0	0	0	0
Grand Total	20	8	1	29

However, the awareness of dalit leaders did not have optimum understanding of the provision of the Act. Only 3 in Andhra Pradesh and 2 in Rajasthan said that they have read the Act. 12 out of the total 16 dalit leaders did not even have a copy for the Act in their offices. (Table 10.4(d)) and only 1 out of the total dalit leaders interviewed had received any training in the administration of PCRA. (Table 10.4(e)) This points towards the lack of awareness and appropriate expertise even among the civil society organizations and dalit leaders who are engaged in protecting and promoting the rights of dalits by combating the practice of untouchability.

10.4(c) Have Dalit leaders read the PCRA?

State	Yes	No	Total
Andhra Pradesh	3	0	3
Karnataka	1	3	4
Madhya Pradesh	0	2	2
Rajasthan	2	0	2

State	Yes	No	Total
Uttar Pradesh	0	4	4
West Bengal	0	1	1
Grand Total	6	10	16

10.4(d): Have a copy of the PCRA at their office

State	Yes	No	Total
Andhra Pradesh	3	0	3
Karnataka	1	3	4
Madhya Pradesh	0	2	2
Rajasthan	0	2	2
Uttar Pradesh	0	4	4
West Bengal	0	1	1
Grand Total	4	12	16

10.4(e): Respondent received any training in administering PCRA

State	Yes	No	Total
Andhra Pradesh	1	2	3
Karnataka	0	4	4
Madhya Pradesh	0	2	2
Rajasthan	0	2	2
Uttar Pradesh	0	4	4
West Bangal	0	1	1
Grand Total	1	15	16

Means of awareness:

How did they come to know about the legislation? About 103 have said that they have informed by their elders. About 72 have said that by general means of awareness. Through camps and media awareness has been rather significant. For about 181 have endorsed them.

Table: 10.5

State	Elders/ Dalit leaders	Generally	Political leaders	Awareness camps/ media	Police	Panchayat meeting	Total
Andhra Pradesh	75	0	5	30	0	0	110
Karnataka	9	66	0	0	0	0	75
Madhya Pradesh	15	0	0	69	0	0	84
Rajasthan	0	0	0	0	5	32	37
Uttar Pradesh	0	8	0	0	0	0	8
West Bengal	4	0	0	82	0	0	86
Grand Total	103	74	5	181	5	32	400

About 330 people who don't know such legislation have expressed their desire to know such legislations.

Table: 10.6

State	Yes	Know already	Total
Andhra Pradesh	0	110	110
Karnataka	115	75	190
Madhya Pradesh	58	84	142
Rajasthan	5	37	42
Uttar Pradesh	74	8	82
West Bengal	78	4	82
Grand Total	330	318	648

About 343 have said that legal means helps to remove the practice of untouchability. For fear of law prohibits the practice of untouchability (Table: 10.7). But about 305 have said that legal means will not help.

Table: 10.7

State	Yes	No	Total
Andhra Pradesh	74	36	110
Karnataka	169	21	190

State	Yes	No	Total
Madhya Pradesh	37	105	142
Rajasthan	36	6	42
Uttar Pradesh	8	74	82
West Bengal	19	63	82
Grand Total	343	305	648

Table: 10.8

State	Afraid of law	No exact idea	Total
Andhra Pradesh	74	0	74
Karnataka	169	0	169
Madhya Pradesh	37	0	37
Rajasthan	32	4	36
Uttar Pradesh	8	0	8
West Bengal	19	0	19
Grand Total	339	4	343

The following table gives the details regarding why legality is of no use.

Table 10.9

State	Law will not help	No need, now people are changed	People have to change	Total
Andhra Pradesh	36	0	0	36
Karnataka	9	12	0	21
Madhya Pradesh	0	82	23	105
Rajasthan	6	0	0	6
Uttar Pradesh	74	0	0	74
West Bengal	0	0	63	63
Grand Total	125	94	0	305

About 491 have said that there is a decline in the practice of untouchability over the years. About 151 have said that there is still the practice

Table: 10.10

State	Yes	No	Total
Andhra Pradesh	85	25	110
Karnataka	134	56	190
Madhya Pradesh	82	60	142
Rajasthan	31	11	42
Uttar Pradesh	79	3	82
West Bengal	80	2	82
Grand Total	491	157	648

Table: 10.10 shows the reasons for the above, in which education and improvements of Dalits has been considered significant. The lack of these have cited as the reason for the existence of this practice.

Table: 10.11

State	Scared of law	Awareness	Leaders	Indira Gandhi rules	Education and improvement in dalits	Society had changed with time
Andhra Pradesh	62	23	45	0	0	0
Karnataka	25	16	5	106	9	0
Madhya Pradesh	0	24	0	0	82	0
Rajasthan	0	0	0	0	31	0
Uttar Pradesh	0	0	0	0	5	79
West Bengal	0	15	0	0	80	0
Grand Total	87	78	50	106	207	79

Table: 10.12

State	Because of dalits economic condition is poor	Not responded	Total
Andhra Pradesh	0	25	25
Karnataka	45	11	56
Madhya Pradesh	0	60	60
Rajasthan	11	0	11
Uttar Pradesh	0	3	3
West Bengal	0	2	2
Grand Total	56	101	157

What are the means to strike at the practice of untouchability? About 369 have said that strict laws would be enough. About 81 have advocated for economic improvements, another 39 have said the welfare schemes would put an end to the practice. But the other 249 feel that society has changed and there is no such practice.

Table 10.13

State	Strict Law/ Awareness	Dalits should educate/econo mically strong	Implement welfare schemes for dalits properly minimizing corruption	Society has changed (it has mostly removed)
Andhra Pradesh	110	0	0	0
Karnataka	147	76	0	0
Madhya Pradesh	57	0	0	85
Rajasthan	39	5	39	0
Uttar Pradesh	9	0	0	82
West Bengal	7	0	0	82
Grand Total	369	81	39	249

Most of the dalit leaders interviewed opined that untouchability can be combated if dalits are politically organized and economically empowered. (Table 10.12(a))

10.13(a): Would the situation would be different if the SCs are politically organized/ economically empowered?

State	Yes	No	Not responded	Total
Andhra Pradesh	3	0	0	3
Karnataka	4	0	0	4
Madhya Pradesh	2	0	0	2
Rajasthan	2	0	0	2
Uttar Pradesh	2	1	1	4
West Bangal	1	0	0	1
Grand Total	14	1	1	16

iii. Other Measures Taken for the Implementation of the PCRA

There has been a central scheme set up by the central government for the implementation of the PCRA, which aims at giving administrative, infrastructural and financial support to the institutions that implement the PCRA.²³⁴ There was also a conference held in 2005 on the Prevention of Atrocities against Scheduled Castes and Scheduled Tribes. The table below displays the expenditure at the state level in running these implementation programs:

STATEMENT SHOWING THE STATE/UT-WISE AND YEAR WISE DETAILS OF CENTRAL ASSISTANCE RELEASED UNDER THE CENTRALLY SPONSORED SCHEME FOR IMPLEMENTATION OF THE PROTECTION OF CIVIL RIGHTS ACT, 1955 AND SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 DURING 2002-2003 , 2003-2004, AND 2004-2005.

S. No.	States/UTs	(Rs. in lakhs)		
		2002-2003	2003-2004	2004-2005
1.	Andhra Pradesh	328.1395	464.415	615.755
2.	Assam	-	-	-
3.	Bihar	65.00	85.82	-
4.	Chhatisgarh	88.27	30.095	71.745
5.	Goa	-	0.725	01.00
6.	Gujarat	226.62109	256.63792	337.79
7.	Haryana	27.2795	22.23	14.8445
8.	Himachal Pradesh	4.72	-	37.00
9.	Jharkhand	105.975	-	-
10.	Karnataka	567.05	-	531.1735
11.	Kerala	73.1535	43.69575	30.397
12.	Madhya Pradesh	435.98	1280.97	314.965
13.	Maharashtra	772.52261	150.40	343.49
14.	Orissa	0.812	4.95	08.18
15.	Punjab	-	40.433	57.50
16.	Rajasthan	19.285	33.67844	200.00
17.	Sikkim	1.905	0.95	01.50
18.	Tamil Nadu	336.6668	124.61	218.34
19.	Uttar Pradesh	886.64	1030.22	610.70
18.	Uttaranchal	22.42	-	22.00
20.	West Bengal	-	-	-
21.	Andaman & Nicobar Islands	-	-	-
22.	Delhi	-	-	-
23.	Dadra & Nagar Haveli	26.3251	33.42	30.00
24.	Pondicherry	29.23102	34.63	28.62
25.	Daman & Diu	-	-	-
	Total	4017.996	3637.88	3475.00

²³⁴ *Supra* note 240.

iv. Special courts under the PCRA

Many states in India today also have special courts in the nature of special mobile magistrate courts. These courts are equipped with infrastructure and facilities that empower them, and make it possible to make the benefits of the PCRA accessible to more persons.²³⁵

The following data, by the Ministry of Social Welfare, gives details of the special courts in existence today.²³⁶

Table 10.15

Sl.No.	Name of State	Name of Districts/Jurisdictions of the Courts
1	Andhra Pradesh	1.Guntur 2.Tirupathi (Chittoor) 3.Mahabubnagar 4. Nellore 5. Kurnool 6 Medak 7. Prakasham (Ongole) 8 . Secunderabad
2	Bihar	9 Divisional places and also at East Champaran and Bhojpur districts.
3.	Chhattisgarh	1.Raipur 2. Durg 3. Rajnandgaon 4. Bilaspur 5. Raigarh 6. Surguja 7. Jagdalpur.
4.	Gujarat	1.Banaskantha (Palanpur) 2.Ahemadabad (Rural) 3. Katch (Bhuj) 4. Amreli 5. Vadodara 6. Junagadh 7.Panchmahal 8. Rajkot 9. Surat 10. Surendranagar

²³⁵ *Id.*

²³⁶ Ministry of Social Justice and Empowerment, Information on Exclusive Special Courts Set Up By State Governments Under The Scheduled Castes s And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989.

Sl.No.	Name of State	Name of Districts/Jurisdictions of the Courts
5.	Karnataka	1.Bijapur 2.Gulbarga 3.Kolar 4.Raichur 5.Mysore 6. Belgaum 7. Tumkur
6.	Madhya Pradesh	1.Dhar 2.Shajapur 3.Morena 4.Shahdol 5. Damoh 6.Raisen 7.Mandla 8.Sehore 9. Bhind 10.Tikamgarh 11. Mandaleshwar 12. Dewas 13. Mandaur 14. Indore 15. 14.Hoshangabad 15. Jabalpur 16. Vidisha 17. Panna 18. Chhatarpur 19. Ujjain 20 Guna 21. Satna 22. Rewa 23. Narsinghpur 24. Sagar 26. Gwalior 27. Rajgarh 28. Bhopal 29. Jhabua.
7.	Rajasthan	1.Alwar 2.Pali 3.Pratapgarh 4.Jaipur 5.Ajmer 6.Udapur 7.Jodhpur 8.Kota 9.Bikaner 10.Medta 11.Tonk 12.Ganganagar 13.Baran 14.Sawaimodhopur 15.Dausa 16.Jhalawar 17.Bilwara
8.	Tamil Nadu	1.Trichy 2.Madurai 3.Thanjavur 4. Tirunelveli
9.	Uttar Pradesh	1.Farrukabad 2.Unnao 3.Basti 4.Banda 5.Etawah 6.Hamirpur 7.Gonda 8.Kanpur city 9.Badaun 10.Sultanpur 11.Barabanki 12.Bulandshar 13.Gorakhpur 14.Varanasi 15.Pilibhit 16.Etah 17.Deoria 18.Jhansi 19.Faizabad 20.Agra 21.Kanpur Rural 22.Behraich 23.Lucknow 24.Jalaon

Sl.No.	Name of State	Name of Districts/Jurisdictions of the Courts
		25.Merrut 26.Ghaziabad 27.Sidarth Nagar 28.Mirzapur 29.Chandausi 30.Balrampur 31.Fatehpur 32.Ghazipur 33.Mainpuri 34.Kannauj 35.Gautambudhnagar 36.Hardai 37.Shravasti 38.Bagpat 39.Bareilly 40.Jyotibaphulenagar.

XI. IMPACT OF POA ON PCRA

Despite the amendment of the Untouchability (Offences) Act in 1976 and it's being renamed as the Protection of Civil Rights Act, 1955, discrimination and atrocities against the Scheduled Castes continued to occur and limitations in the enforcement of the Act continued to exist. As a result, in 1989, the Parliament enacted another law titled the "Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (PoA Act). As the title suggests, the legislation sought to target perpetrators of atrocities committed against Scheduled Castes and Scheduled Tribes and aimed to prevent/deter them from committing such acts.

The Statement of Objects and Reasons of the legislation states that it was found that there were increasing attacks on Scheduled Castes and Tribes and commission of atrocities like making them eat human excreta were on the rise. Since existing laws like the PCRA and the Indian Penal Code were found to be inadequate to curb these grave crimes, the new legislation was being enacted. The PoA Act, in addition to providing stringent punishments created special courts for the trial of offences under the Act, and also provided for the relief and rehabilitation of victims of offences. Hence, the main reason for the enactment of the legislation was the failure of the Protection of Civil Rights Act to check the growing number of atrocities that were being committed on the Scheduled Castes and Scheduled Tribes. Statistics from the Reports of the SC/ST Commission, as well as the annual reports submitted by State Governments on the working of respective legislations show that the number of cases filed under the PoA Act is far higher than those filed under the PCRA. In this section, we will compare and contrast the provisions of the two legislations in an attempt to analyse possible reasons for such a disparity.

i. Scope of the Legislations

The PoA Act does not define the term “atrocities” but, in Section 3, lists out the various acts that constitute atrocities. The section offers protection and remedies against the following offences:

Social disabilities – This includes denial of access to places and use of customary passage, and fouling of water.

Personal atrocities – This includes forceful drinking or eating of inedible and obnoxious substances; stripping and imposing restrictions on clothing; parading people naked or with painted faces and/or bodies; outraging the modesty of women; sexual exploitation of women; causing injury and annoyance by dumping excreta, waste matter, carcasses or obnoxious substances in premises or neighborhood causing harm to reputation by way of insults and humiliation “within public view”.

Atrocities affecting property – These offences include wrongful occupation or cultivation of land; dispossession from land, residential premises or water; and damage/destruction of properties.

Punishment for committing social and personal atrocities, as well as atrocities affecting property, ranges from a minimum of imprisonment for six months to a maximum of imprisonment for five years, along with a fine, the amount of which is not expressly prescribed.

Atrocities by malicious prosecution – Offences under this head include institution of false, malicious, vexatious, criminal or other legal proceedings/complaints; supplying wrong information to public servants to make them take action against members of the Scheduled Castes or Scheduled Tribes, thus causing the injury or annoyance; or giving false evidence against them in court to get them convicted of an offence with capital punishment or with severe punishment of imprisonment more than seven years; causing destruction or disappearance of evidence in order to facilitate acquittal of persons accused of

committing crimes against people from the Scheduled Castes or scheduled tribes.

Political disabilities – This includes forcing/intimidating a member of the Scheduled Castes or Scheduled Tribe not to vote, or to vote for a particular candidate or to vote in a manner not provided by law.

Economic exploitation – This consists of compelling or enticing a person from a Scheduled Castes or scheduled tribe to do begging or forced or bonded labour (other than compulsory service for public purpose ordered by the Government).

The PCRA covers religious disabilities, social disabilities and disabilities imposed on the exercise of rights under the legislation, and has a different scope than the PoA Act. The PCRA concentrates on removal of disabilities arising out of the practice of untouchability and restricts the application to Scheduled Castes only, whereas the PoA Act seeks to punish atrocities, for acts committed with a specific intent, keeping in mind the caste of the victim. It also offers protection to persons whose rights are infringed upon because of their refusal to practice untouchability or because of their association with persons who are considered 'untouchable'. It is important to note that the PoA Act does not have a corresponding provision and is applicable in the case of members of Scheduled Castes and Scheduled Tribes.

ii. Hard & Soft Crime Models

Naval argues that the PCRA adopts a mild crime model to tackle the practice of untouchability while the PoA Act is based on a hard crime model to prevent the commission of atrocities on SCs/STs.²³⁷ According to him, the features which categorise the latter within the hard crime model are heavier punishments for offenders as well as officials who do not enforce the legislation's provisions properly, imprisonment for offenders ranging from a minimum of six months to a

²³⁷ Naval, p. 73

maximum of five/seven years. Other strict provisions include the denial of anticipatory bail and probation to offenders, cancellation of arms licenses of the accused, externment of potential offenders and empowering special courts to attach and forfeit property. He points out that the PoA Act provides a stricter punishment for public servants who have committed offences under the legislation. The minimum imprisonment term is one year and extends upto the maximum sentence provided for the particular offence committed.

Naval also points out that the PCRA does not contain any provisions penalising officers for neglecting their duties but only has a provision which punishes public servants for abetting an offence. The rider to the provision is the requirement for prior sanction by the Central or State Government depending on whether the offender is a Central or State Government employee. The PCRA contains provisions that impose sanctions on offenders such as S. 8 which cancels/suspends licenses of persons who commit offences under S. 6, and S. 9 which suspends grants to managers or trustees of a public institution or place of worship who are guilty of offences under the Act. The State Government is empowered to impose collective fines on offenders belonging to a particular area if they have abetted the commission of an offence under the Act or have suppressed evidence or have not cooperated/assisted in finding an offender.

iii. Compensation

A significant feature of the PoA Act is its provision on compensation for victims or their legal heirs. The Rules framed under the legislation mandate the District, Sub-Divisional Magistrate or any other Executive Magistrate to provide immediate relief in cash or in kind (food, water, shelter, medical aid, transport facilities). Immediate relief is in addition to the right to claim compensation by the victims' or their legal heirs. The amount of compensation payable varies from Rs. 25,000 to Rs. 2,00,000 depending on the gravity of the atrocity.

iv. Special Courts/Prosecution Machinery

The PoA provides for the establishment of special courts for the speedy trial of offences under the Act (S. 14). The State Government in concurrence with the Chief Justice of the High Court may specify for each district a Court of Session to be a Special Court to try offences under the Act. It also provides for the appointment of Special Public Prosecutors to conduct the trial of offences under the Act in the special courts (S. 15).

v. 'Public view' requirement in "insult" cases

An examination of the provisions of the PCRA and PoA Act reveals that the latter requires that an offence be committed in "public view" under S. 3 (1) (x)²³⁸ whereas S. 7 (1) (d) of the PCRA²³⁹ does not have any such requirement.

In *Shri Ram Nath Sachdeva v. Govt. of N.C.T. of Delhi*²⁴⁰, a complaint registered under both Acts was allowed under the PCRA but not under the PoA Act on account of the act not being done in 'public view.' The accused, in this case, had abused the complainant inside a house. A case was registered under S. 7 of the Protection of Civil Rights Act. The magistrate found that S. 3 (1) (x) of the POA Act was attracted and that the case would be exclusively triable by a Special Court. The High Court acquitted the accused of the charges under the PoA Act as the insults had not been made in 'public view'. However, the charges under the PCRA were allowed to proceed. The case of *V.P. Shetty v. Inspector of Police*²⁴¹ highlights the pro-active approach of the court. In this case, though an offence registered under the PoA Act had not been committed in public view, the Court held that the police could take cognizance of the offence under the PCRA by virtue of S. 15 of the Act and S. 154 of the CrPC. However, in *Alka A. Misra V.*

²³⁸ S. 3 (1) (x) of the POA reads as follows – Whoever, not being a member of a SC or ST, -- intentionally insults or intimidates with intent to humiliate a member of a SC/ST in any place within public view.

²³⁹ S. 7 (1) (d) says that whoever insults or attempts to insult a member of the Scheduled Castes on the ground of untouchability will be punishable.

²⁴⁰ MANU/DE/0713/2001 [93 (2001) DLT 741]

²⁴¹ MANU/MH/0550/2005 [2005 CriLJ 3560]

*J.P. Shoke*²⁴², the Court acquitted the appellant as it did not find justification for the complaint. It also found that the 'public view' requirement of S. 3 (1) (x) was not fulfilled. These cases underline the importance of the Protection of Civil Rights Act in so much that many victims of untouchability can proceed under it without having to prove that the offences against them were committed in public view.

vi. Non-mention or insignificant treatment of PCRA in offences registered under both legislations

In *Yunus Daud Bhura v. State of Maharashtra*²⁴³, the accused was convicted for insulting the complainant. The court held that the 'public view' requirement was satisfied if the insults were heard by somebody else and that an offence would be committed under the PoA Act. Though a case had been registered under the PCRA as well, along with the offences under the PoA and the IPC, the offence under the PCRA is conspicuous by its absence. It is only at the end of the judgment when the Judge narrates the sections and laws under which the accused has been convicted, that the PCRA appears! We have seen that the remedies under both the Acts differ and the PoA is preferred because of provisions for compensation. Yet a FIR is registered under both legislations.

In *Bhanudas v. State of Maharashtra*²⁴⁴, the petitioners registered a FIR against the respondents under S. 3 (1) (x) of the POA and S. 7 (1) (c) of the PCRA for insulting and abusing them. The Additional Sessions Judge had allowed an application of the respondents stating that the petitioners were not members of the Scheduled Castes and discharged them. On appeal, the Bombay High Court found that the material on record showed that the petitioners belonged to the Scheduled Castes and that the order passed by the Sessions Judge was wrong. It said that there was a prima facie case to proceed against the respondents

²⁴² MANU/MH/0937/2002 [2003 (3) MhLJ 62]

²⁴³ MANU/MH/0342/2001 [2002 Bom CR (Cri)]

²⁴⁴ MANU/MH/0842/2003

under S. 3 (1) (x) and sent the matter back to the Sessions court for proceeding to decide it. While the conclusion of the High Court appears to be right, it is puzzling to find the absence of any mention of the PCRA beyond the narration of the facts of the case. Similarly in *Krishna Kumari Verma v. State of Bihar*²⁴⁵, a FIR was registered under both legislations, but there is not mention of PCRA while convicting the accused. In *M. Niranjan Reddy and Ors. v. State of A.P.*²⁴⁶, investigation was conducted by the Circle Inspector under the PCRA. He found that an offence was made under the PoA Act as well, and charge sheeted the offender under the PoA Act. The trial court passed an order allowing the trial to proceed under the PoA Act. A revision petition was filed in the High Court challenging this order and questioning the officer's competency to charge-sheet the offence under the PoA Act in the light of Rule 7 of the PoA Rules which states that only the Deputy Superintendent of Police can investigate offences under the Act. The High Court quashed the charge-sheet. It said, "In order to ensure any misuse of the Act, Rule 7 of the Rules lays down not only that the investigation should be done by an Officer not below the rank of Deputy Superintendent of Police but also lays down that such Officer should be specifically appointed by the State Government for investigating the offences under the Act. It further lays down that, while appointing such officers the Government should take into consideration his past experience, sense of ability and justice to perceive the implications of the case."²⁴⁷

vii. Position on the Field

The empirical study indicates that the PCRA is hardly used in comparison to the PoA Act. The reason for the same could be the factors listed above. In Andhra Pradesh, when questionnaires were administered in Moida village of Therlam Mandal in Vizianagaram District, most of those who responded (including many Dalit **leaders and police officials**) were ignorant about the PCRA. However most

²⁴⁵ MANU/BH/0406/1999

²⁴⁶ MANU/AP/1029/2000 [2000 CriLJ 3125]

²⁴⁷ *Ibid*, at Para 1

of them (especially police and Dalit leaders) were trained and well versed with the provisions of the PoA Act (please refer to Table at page 194). The position was the same in Ullindakonda village of Kurnool district. Some activists also pointed out that the PCRA was used to the detriment of the Dalits, as the police usually attempted to file cases under PCR instead of PoA which had more stringent provisions. This they alleged was used to dupe complainants and it thus fell upon the activists to actively make sure that PoA Act was invoked. In Madhya Pradesh, when the Director of Public Prosecution was interviewed, he stated that he had no records of the cases filed under PCRA, and he further said that at least during his tenure, very few cases were filed under the PCRA, because most cases were filed under the PoA Act. However, what this leads to is that acts which do not fall within the definition of “atrocities” under the PoA Act, but would lead to punishments under the PCRA are prosecuted under the former, leading to acquittals. Hence, it appears that the PoA Act is being used in substitution of the PCRA, and not to supplement it where possible. In Andhra Pradesh, several Dalit activists interviewed commented that the PCRA was now redundant in the light of the existence of PoA Act.

The problem arises because the scope of PCRA is confined only to certain practices of untouchability. It does not take into account the fact that atrocities committed against members of the Scheduled Castes also arise, by and large, from this very practice of untouchability. The only place where this is recognised is under Section 7 of the Act which penalises very mild forms of atrocities.

However, in its fifty-first report, the Committee on the Welfare of the Schedules Castes and Schedules Tribes took note of the fact that atrocities against SC/STs by and large emanate from the practice of untouchability.²⁴⁸

In its Twenty Third report, the Committee on the Welfare of the Scheduled Castes and Scheduled Tribes, stated that the main causes of atrocities on Scheduled Castes are socio-economic in nature. So far as social causes are

²⁴⁸ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1973 – 76), Fifth Lok Sabha, Fifty First Report, Ministry of Home Affairs (Presented on March 31, 1976), Lok Sabha Secretariat, New Delhi, March 1976, p. 14.

concerned, Scheduled Castes are subjected to various social and civil disabilities arising from the evil custom of untouchability.²⁴⁹

In the following cases untouchability related events degenerated into atrocities:

Kafalta, Almora District, Uttar Pradesh on 9.5.1980; Jetalpur, Kheda district, Gujarat in 1981; Devrali, Sikar district, Rajasthan in December, 1983; Kachur, Rewa district, Madhya Pradesh, on 25.6.1985; a number of villages in South Arcot and adjoining districts of Tamil Nadu in 1987-88; Udamgal-Khanapur, Raichur district in Karnataka on 6.2.1988; Nathdward, Udaipur district, Rajasthan on 23.6.1988 and again from July 1988 to 1.11.1988; Masari, Alwar District, Rajasthan on 9.7.1989; Panwari, Agra district, Uttar Pradesh where seven were killed and 210 injured and Kumber in Rajasthan in 1992.²⁵⁰

From this it follows that both atrocities as well as the **imposition** of disabilities arise from the practice of untouchability and should be dealt with together. The causes of both these social evils are the same and in fact many a times atrocities are inflicted based on the perceived untouchability of the victim. Having two separate legislations and different machinery is not an adequate solution. Therefore it is recommended that there should be a comprehensive legislation covering both the PCRA as well as the PoA Act. In light of the recommendation made above, it is further suggested that other enactments like the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition Act), 1993, the Bonded Labour (Abolition) Act, 1976, etc, be dealt with within the same legislative framework. It is pertinent to note again that all these enactments are fighting different symptoms of the same disease. Also, all enactments suffer from the same problems of lack of awareness and implementation because of the existence of better machinery under one or the other Acts. All these Acts also overlap in certain areas creating confusion as to the exact nature and scope of

²⁴⁹ Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (1992 – 93), Tenth Lok Sabha, Twenty Third Report on Ministry of Home Affairs and Ministry of Welfare, *Atrocities on Scheduled Castes and Patterns of Social Crimes Towards Them* Lok Sabha Secretariat, New Delhi, April 1993, p.7.

²⁵⁰ Prasad, Chandra, Kumar (ed.), *Effective Implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, p.14.

the various provisions. In light of this, it is important to examine whether there is need for separate legislation on each of these symptoms of caste-based discrimination and persecution, or whether a comprehensive legislation addressing all these issues, but also locating the cure in a legislatively mandated framework of affirmative policy options as well as special institutional structures might be better suited to tackling these issues. In the particular context of examining the institutional setup to deal with these legislations there is a clear need to establish an integrated mechanism for addressing the grave issue of designing an effective institutional solution to address the problem of caste-based discrimination and untouchability.

This also makes practical sense. While setting up a different machinery, as has been suggested in the course of this Study, might not be feasible with regard to the number of cases reported in relation to untouchability, in case these legislations are combined together, the setting up of such a machinery becomes a more viable option.

XII. RECOMMENDATIONS AND CONCLUSIONS

This report has been prepared keeping in mind several important lessons gained from the study of attempts at reform and legislation to do away with the practice of untouchability, including the Protection of Civil Rights Act. First, that attempts at removing the symptoms of untouchability without addressing embedded hierarchies cannot meet with success. Second, that the practices of untouchability persist due to the avoidance of any perceived interference in the so-called ‘personal’ sphere. Third, legislation dealing with issues such as untouchability can only be successful if accompanied by active engagement at a social and political level. Last, that any redressal mechanism has to be instituted keeping in mind social realities such as issues of access to justice and corruption. While there is increasing awareness, and assertion of rights, the same resisted through the embedded hierarchies, resulting in new forms and practices of social evils such as untouchability, thus requiring newer methods of studying and dealing with the same. It is with that background that the study of the PCRA has been carried out in the present report. The following are the conclusions and recommendations of this study.

i. Conclusions and Observations on the Basic Scheme of the Act

After six decades of independence, a study of the working of the PCRA provides a glimpse of the changes among the down-trodden sections of society, as well as all that remains unchanged. The very alteration of the title in 1976 indicates that the legislation was not intended to merely punish the offence of untouchability but also to address deeper concerns regarding the basis of this social evil. However, the content of the legislation in its present form does not reflect clearly enunciated goals—whether the Act exists merely to remove specific disabilities symptomatic of the prevalence of untouchability or whether it makes a concerted

effort to strike at the root of the problem. If the stated goal of the legislation is eradication of untouchability, it must attempt the latter, not just the former.

If the stated goal is the eradication of untouchability as a social evil, provisions relating to criminalization have to be seen in a different light—instead of focusing on the punishment of individuals, the Act has to deal with societal structures that perpetuate oppression. This would require the creation of an institutional set-up, as discussed above, which will not only remove disabilities but also create the opportunity and the environment to assert and enjoy rights freely. Therefore, to truly effectuate Article 17, the legislation has to ensure a greater role by the State, not limited to the punishment of individuals.

ii. Definitions of Untouchability

Most definitions of untouchability seem to only highlight practices associated with the same instead of demarcating clear boundaries. A further problem with the understanding of untouchability is its persistent association with the Scheduled Castes, notwithstanding the fact that the Statement of Objects and Reasons of the PCRA states that the Act is not confined in its application only to Hindus. Also, there is a perception that a person belonging to the Scheduled Castes, against whom historically untouchability has been practiced, cannot in turn practice untouchability. A definition of untouchability which would address these problems should make clear that that concept of untouchability is separate from any *varna* gradation, or membership of any caste or religion. A comprehensive definition of untouchable may be found in the Untouchability Offences Bill in S. 2 (f):

“Untouchable means a member of the Scheduled Castes as defined in Article 366 (24) of the Constitution and includes any other person who by custom or usage is regarded as untouchable by any community or section thereof:

Explanation I:

A member of the Scheduled Castes shall not cease to be a member if he resides in any locality other than the locality specified in relation to him in any public notification issued or any law made by Parliament under Article 341 of the Constitution.

Explanation II

A member of the Scheduled Castes who has been converted from the Hindu religion to any other religion shall, notwithstanding such conversion, be deemed to be an untouchable for the purposes of this act”.

The above definition of untouchability may be adopted to remove confusion regarding the commission of offences of persons who are not members of the Scheduled Castes, as is seen in cases where FIRs are not registered or remedies under the PCRA are denied on the ground that the particular caste is not notified as a Scheduled Castes in a particular state, notwithstanding the fact that the PCRA does not mandate Scheduled Castes status.

iii. Scope of the PCRA

The PCRA covers religious and social disabilities, and disabilities imposed on the exercise of rights under the legislation. It has a different scope than the POA Act, since it focuses on removal of disabilities rather than the punishment of atrocities. Milder forms of the practice of untouchability are covered by the PCRA and aggravated offences under the PoA Act. Section 7 (1) (d), PCRA acquires particular importance in this context since it does not have the requirement that the offence be committed in public view, as the corresponding Section S. 3 (1) (x), PoA does. Our field work indicates that the PCRA is hardly used in comparison to the PoA Act, due to harsher punishments in the latter, as well as

provisions for compensation. But such preference leads to offences which are not 'atrocities' being prosecuted under the PoA Act and acquitted, although they would have secured convictions under the PCRA. The PoA Act is therefore being used in substitution of the PCRA.

It should be kept in mind that both atrocities as well as the imposition of disabilities arise from the practice of untouchability and should be dealt with together. **Therefore it is recommended that there should be a comprehensive legislation covering both the PCRA and the POA Act, as well as laws like the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition Act), 1993, the Bonded Labour (Abolition) Act, 1976, etc.,** which fight the same problem, and suffer from similar institutional weaknesses. They also overlap leading to confusion. While different machinery may not be easily set-up for each separate Act, a comprehensive legislation would lend to greater feasibility in the establishment of the institutional mechanisms described in this report.

iv. Conclusions with respect to specific provisions

1. Procedural Reform

With respect to the interpretation of the provisions of the PCRA and the compliance with the procedural requirements of the same, several instances of the same have been highlighted above. For example S. 7 (1) (d) dealing with insult has been interpreted in a number of decisions to mean that in order for insult to amount to an offence has to be on the ground of untouchability *alone*, although the Section itself does not require the same. A further example is the persisting question of whether offences under the PCRA are compoundable, in spite of deletion of the provision which had allowed compounding of offences under the Act.

With respect to procedural issues, the conceptual ambiguity with respect to Scheduled Castes status and offences under the PCRA is also reflected in the fact that FIRs require a statement of the caste of the complainant and the accused, and may be quashed if the information is missing, although the Act itself does not mandate the same. At the very least, police officers should instruct complainants to state their caste in the FIR in such cases. Also, there is non-compliance with procedural requirements by prosecution agencies which result in the vitiation of trials, as seen in a number of decisions. This is to the detriment of the complainant who does not retain any control over the proceedings, but is left without a remedy due to irregularities committed by prosecuting agencies.

In order to deal with procedural lapses, **we recommend the preparation and distribution of training manuals, in consultation with the Police and Judicial Academies**, detailing procedure to be followed for registration of FIRs, investigation and charge-sheeting that will detail out the required procedures that are to be followed by the police during registration of offences, investigation and charge-sheeting of offences, as well as by the Magistrates in commanding the police to stop or continue investigations etc.

2. Witness Protection

Witness protection is a substantive provision of great importance as hostile witnesses are a principal cause for the large number of acquittals. Our field study indicates that compensation is not made available to witnesses till months after the witness appears in court, which is a reason that the practice of compensating witnesses has not resulted in a lowering of acquittal rates. **We therefore recommend an expeditious compensation, if possible on the same day, as well as measures of protection to victims who approach the Courts.**

3. Sentencing and Conviction

With respect to sentencing, it is not clear whether the policy being followed is that of deterrence or rehabilitation, although the focus seems to be on the latter.

Sentencing may be altered only once the goal of the same is made clear, since, if the theory of deterrence is pursued, harsher punishments would be in order. However, the overall focus of the PCRA seems to be more indicative of social rehabilitation, and this should be kept in mind when prescribing punishment. Some specific suggestions are given below:

- a) While conviction proves to be difficult, civil remedies are often time-consuming. Hence, **incorporating both civil and criminal remedies seems to best serve the goals of the PCRA, such as by encouraging prosecutors to pray for compensation, which a court can award under Section 357 of the Cr.P.C.**
- b) **A new Section should be incorporated penalizing practice of untouchability by employees of the State, to which a more stringent punishment should be prescribed, to address the fact that untouchability is rampant in the State services and in access to State services.**
- c) In Section 10, the offence of abetment by a public servant, **situations where reserved posts in service are not filled up should be considered for possible offence of abetment to untouchability**, as originally proposed in the 1976 Amendment Bill Explanation to Section 10.
- d) Instead of the requirement of sanction in Section 15 (2), the **redressal of a grievance of this nature against a public servant should be through a Vigilance Committee. The Vigilance Commission may also conduct periodic surveys of the working of the provisions of the Act**, with a view to suggesting measures for the better implementation of its provisions.
- e) **The little-used Section 10A for the imposition of collective fine may be done away with, and instead the practice of taking a collective bond may be instituted**, returnable only after a specified period of

normalcy in an area. Interests earned from such bond may be used to spread awareness on untouchability.

- f) **Further use should be made of the little-used Sections 8 and 9 for cancellation of government licenses which are innovative practices which may be better used to tackle untouchability, by not merely restricting it to offences under Section 6, but extending it to any offences of untouchability committed in relation to any business, trade, profession, calling or employment, which requires a license. As part of the pre-sentence hearing, it should be mandatory for the Magistrate to ask the accused to show cause why his license should not be revoked.**

4. Institutional Reform

- a) With respect to the investigation of crimes, since it has been noted that investigation of PCRA crimes is not given a great deal of importance by the police, **a Cell should be constituted to exclusively deal with caste related crimes. The Cell may act as a nodal committee for gathering information supplied by the entire network of intelligence agencies already in existence.** It would then forward such information to appropriate authorities and engage in further investigation.
- b) Cells such as the Civil Rights Enforcement Cell (CRE Cell) in Karnataka however are set up only to initiate prosecution or exercise supervision over prosecutions for contravention of the provisions of the Act, and perform a watchdog function rather than an investigative one, as the local police are required to inform the CRE Cell at all stages of the investigative process. A Special Cell within the police department, as discussed above, would instead be a better mechanism.
- c) **With respect to the Special Courts under the Act, they should deal exclusively with caste-based offences, and be set-up in all States and Union Territories, and also have their own Prosecutor, Police**

Personnel and other Officials. While Section 15 of the POA requires a Special Public Prosecutor of at least 7 years, this is less than the mandated 10 years in Section 24(7) of the CrPC. The POA provision loses sight of the fact that special legislation would require persons of greater experience, and the same should be kept in mind when appointing Special Public Prosecutors under the PCRA as well.

- d) With respect to institutional support from the Panchayati Raj institutions, as recommended by the Saxena Committee Report by the NHRC, it is submitted that since such institutions are very often enmeshed in caste hierarchies, their involvement may not assist in the eradication of untouchability. Local involvement may be in the form of Vigilance Committees at the District Level.**
- e) Implementation of the Act is fundamentally impeded by the fact that basic institutional requirements such as the establishment of Vigilance and Monitoring Committees under the Act have not been carried out. Such requirements must be met before any of the suggestions in this report are to have any effect.
- f) **An important institutional support is required which may be met by the setting up of a Civil Rights Enforcement Committee comprising of representatives of the police, administration, civil society and affected communities** whose mandate would include:
- A. Providing assistance to victims of untouchability practices;
 - B. Creating awareness about the constitutional guarantees and the gamut of legislations on this issue;
 - C. Working as a watchdog to ensure that local officials implement the provisions of the Act, and in its absence, acting as a reporting mechanism for complaints in this regard
 - D. Providing data and research to the Government on the forms and extent of untouchability, and other caste-based discrimination in the

district, and making suggestions and recommendations for policy interventions in this regard;

- E. Providing feedback and vigilance for Government initiated schemes for the welfare and upliftment of oppressed and marginalized groups.
- F. A significant role may be played by Voluntary Organizations, through involvement in the Civil Rights Enforcement Committee, and through official recognition under the Act. Such organizations may assist the victim in going through the process of filing of the FIR, trial, relief and rehabilitation.

Awareness generation and capacity building

Annexure I a

INFORMATION INVENTORY

SOURCE	INFORMATION	METHOD
State Directorate of Public Prosecution	<ol style="list-style-type: none"> 1. State-level Consolidated Annual data on number of cases filed under PCRA and POA and the status of the Cases 2. District-wise annual data on number of cases filed under PCRA and POA and the status of the Cases (Selection of sample villages) 3. Administrative hierarchy 4. Contact details of the concerned authorities/representatives at the divisional/district levels and other lower levels 5. Procedural matters 6. Case files- for case analyses 7. Besides identify 2-3 prospective respondents for administering the Opinionaire 	<p>Documentary Analysis</p> <p>Interview</p>
CRE Cell	<ol style="list-style-type: none"> 1. State-level Consolidated Annual data on number of cases filed under PCRA and POA and the status of the Cases 2. Progress of Cases 3. Besides identify 2-3 prospective respondents for administering the Opinionaire 	<p>Documentary Analysis</p> <p>Interview</p>
Ministry of Social Welfare/ Similar Mechanism	<ol style="list-style-type: none"> 1. Compensation 2. Other official data 	<p>Documentary Analysis</p> <p>Interview</p>
State Public Prosecutor	<ol style="list-style-type: none"> 1. Details of the number of cases where appeal is made in high courts 2. Facts of those cases 	<p>Documentary Analysis</p> <p>Interview</p>
District Special Courts And Special Public Prosecutor	<ol style="list-style-type: none"> 1. Data on number of cases filed under PCRA and POA and the status of the Cases for the selected regions/villages and for the entire district 2. Case files- for case analyses 3. Contact details of the complainant and the accused for indepth interviews in each selected case 4. Besides identify 2-3 prospective respondents for administering the Opinionaire 	<p>Documentary Analysis</p> <p>Interview</p>
Local Police Station	<ol style="list-style-type: none"> 1. Data on number of cases filed under PCRA and POA and the status of the Cases 2. Steps taken in concerned cases- triangulation 3. Besides identify 2-3 prospective respondents for administering the Opinionaire 	<p>Documentary Analysis</p> <p>Interview</p>

Annexure I b

TEMPLATE FOR COLLECTING INFORMATION ON VILLAGE BACKGROUND:

Background component	Information	Source
Education	<ol style="list-style-type: none"> 1) Year of establishment of Primary School (up to 4th or 5th (probe), Upgrading of School to 8th Std 2) Where would children go for beyond 5th standard schooling before upgrading? 3) Time of change from single teacher school 4) Statistics on enrolments, failures and drop-outs by standard and sex (probe on potential performance and retention problems among students from different backgrounds, castes) 5) Facilities available in the school: govt. or other support programs (free uniforms, books, etc) 	<p>GP and School</p> <p>Teachers and Head Teacher</p>
Social structure	<ol style="list-style-type: none"> 1. Caste composition (house-list) and hierarchy 2. Main festivals celebrated by villagers: Time of the year and name of festival and any community specificity. 3. Important recent events in the village (e.g. the construction of a new road – brief description along with date – “time-line”) 4. Temples and priesthood 5. Patterns of inheritance across different communities (matriliny, patriline) and implications for hh-structure and hh decision-making 	<p>GP and a key-informant</p> <p>GP</p>

Background component	Information	Source
	<ol style="list-style-type: none"> 6. Aspects of marital practices across communities (preferences, dowries etc) 7. History of the communities in the village 	
Economic activities	<ol style="list-style-type: none"> 1. Main Economic Activities 2. Cropping, tasks and activity patterns by season. Prices. 3. Water availability and specific strategies for water harvesting 4. Non-agricultural activities and availability of work by season 5. Structure of land holdings 6. Wage rates of males, females and children, by season and task. Changes over time. Work on contract 7. In Yeljith: Organisation of seasonal migration to Sirsi 8. Livestock 9. Main problems and constraints in agriculture 10. The opportunities and future prospects and problems facing the youth 11. Patterns of in-migration for construction and agricultural work 	Individual villagers (triangulate), group discussions, GP
Forest Species	<ol style="list-style-type: none"> 8. Predominant species (trees) 9. Local use of the forest 10. Wild animals 11. Hunting in the forest 	Local forest officer, villagers
Activities of Gram panchayat	<ol style="list-style-type: none"> 5. Facilities available in the village (Post office, bank, dairy, shops, electricity, telephone, etc) 6. Drinking water facility 7. Development of roads, bridges-the timing and employment potential 8. Roles of Extension education centre, Anganavadi 9. Origin of GP 10. History of relationship/patterns of conflict and their causes/ between different social groups 	GP Villagers Extension Education Center personnel

Annexure I c

PRACTICE OF UNTOUCHABILITY QUESTIONNAIRE

“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its impact on the abolition of Untouchability”

(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and Empowerment)

Information collected through this questionnaire shall be strictly confidential and will not be used for any other purpose than that of the present research

(To be administered to four different non-dalits in the village at different points of time)

SECTION 1: BACKGROUND INFORMATION

Name of the Village:

Taluk:

District and State:

Village Panchayat:

Population:

Male:

Female:

Total:

Number of Shops:

Number of Sources of Drinking Water:

Number of Hotels:

Name and Profile of the Respondent:

Name of the Interviewer:

Date of Interview:

SECTION 2: SOCIAL LIFE

1. Caste composition of the village:

Sl No	Caste	No of Households	Population

2. At the Village level, who are the Upper, Middle and Lower Castes and where do they live?

Upper Castes	Middle Castes	Lower Castes	Location of Houses Inside the Village/Outside the Village

3. Names of the Castes who live in the main streets of the village:

4. Do the dalits have access/entry into the houses of the non-dalits? Y/N
List the castes which allow and disallow

5. If Dalits are allowed entry, how far can they enter the house?

6. Are dalits served food and water in non-dalit houses? Y/N

7. Are dalits served food and water in segregated vessels? Y/N

8. Do non-dalits pour drinking water into the hands of the dalits? Y/N

9. Are Dalits prohibited from entering the main streets of the village? Y/N

10. Hotels, their location and ownership

Number of Hotels	Caste of the Owners	Location of the Hotels	Are Dalits allowed to take food?	Are Dalits working?

11. If Dalits are allowed to use the hotel, are they served food and beverages in separate vessels? Y/N

12. Where is the post office? Inside the Village/Outside
13. What is the caste background of the postal staff:
Post-man: _____ Post-master: _____
14. Whether Postman delivers the letters to dalits at their door-steps or commands/informs them to collect themselves?
15. Is there a prohibition on the entry of the Postman into Dalit inhabited areas? Y/N
16. Is there a public library in the village? Y/N
17. If yes, its location.....
Caste background of the librarian.....
Whether Library functions everyday? Y/N
Whether dalits have entry to Library? Y/N
Is there a separate seating arrangement for Dalits? Y/N
18. Is there Early Child Care and Education Centre (balawadi/anganawadi) in the village? Y/N
19. If yes, its location:
Caste of the Personnel in-charge:
Whether it functions everyday? Y/N
Whether dalit children have entry? Y/N
If not is there a prohibition on them? Y/N
Is there a separate seating arrangement for Dalit children? Y/N
Number of children in the centre? Total: _____ Dalit Children:
Boys: _____ Girls: _____ Dalit Boys: _____ Dalit Girls: _____
20. Facilities extended at the centre:

21. Are dalit Children discriminated in provision of these facilities? Y/N Give details.

22. Does the Village have Extension Education Centre? Y/N
23. If Yes, its location:
Caste of the Personnel in-charge:
Whether it functions everyday? Y/N
Whether dalits have entry? Y/N
If not is there a prohibition on them? Y/N
Is there a separate seating arrangement for Dalits? Y/N
24. Is there a Primary Health Centre? Y/N
25. If yes, its location.....
26. Whether Dalits have access? Y/N
27. If No, where do the patients go for treatment?

28. If there is a private medical practitioner,
 (a) his/her Caste:
 (b) Location of the clinic:
 (c) Whether Dalits also come for treatment? Y/N
 (d) Details of the practice of untouchability:

29. Is there a bank? Y/N Name of the Bank:

30. Its Location:

31. Number of Account holders:

32. Number of Dalits who hold accounts in the bank

33. Facilities available for Dalit customers:

34. Number of dalit and non-dalit beneficiaries of different schemes:

35. Number of various sources of drinking water, their location and control:

Source	Number	Control
Well		
Pump well		
Tube well		
Tank		
River		
Stream		
Any other		

36. Is there a separate drinking water facility for dalits? Y/N Name it if Yes

37. Are Dalits allowed to avail the services of other public sources of drinking water?
 Y/N

38. During scarcity, are Dalits allowed to use the drinking water sources being used
 by non-dalits? Y/N

39. Is public drinking water facility extended to dalits? Y/N

40. If dalits and non-dalits use the same source of drinking water, is there as
 restriction on dalits to use it after the non-dalits finish their turn? Y/N

41. Are there any instances of conflicts between dalits and non-dalits over access to
 drinking water? Y/N

42. Do dalits stand up in respect before some Non-dalits? Y/N
43. Are Dalits being made to sit at lower levels than non-dalits? Y/N
44. Are dalits used to the practice of standing with folded hands in front of non-dalits? Y/N
45. Shops, their location and ownership:
46. Do Dalits have access to shops in the main streets of the village? Y/N

SECTION 3: CULTURAL LIFE

1. Name of the important festivals and processions in the village:

2. Important Temples in the village, their Location and Priesthood:

Sl No	Name of the Temple	Location Inside /outside	Caste of the Priest	Do Dalits have entry?

3. Do Dalits take part in the religious activities of the temples: Y/N
4. If Yes, what are their roles:
 - (a) beating drums
 - (b) harbingers of information
 - (c)
5. Are Dalits prohibited from participating in the temple activities? Y/N
6. Do Non-Dalits invite Dalits on important occasions such as marriages? Y/N
7. If Yes, How are Dalits treated?
8. Are Dalits supposed to eat after the non-dalits finish their turn? Y/N
(Narrate the hierarchy in dining if any)

9. Are dalits supposed to carry their own plates? Y/N
10. Are dalits supposed to wash the plates used by them? Y/N
11. Are Dalits served food in their towels or upper garments? Y/N
12. Are Dalits served at a distant place than the place of feast for non-dalits? Y/N
13. Do Dalits invite Non-Dalits on important occasions such as marriages? Y/N
14. If Yes, do Non-Dalits attend such functions? Give details

15. Are Dalits allowed to bring Marriage Processions to the localities where non-dalits live? Y/N
16. Are dalits allowed to take Funeral Processions in the localities where non-dalits live? Y/N
17. Do Dalits cremate or perform the funeral in the same graveyard used by the non-dalits? Y/N
18. Do Dalits wear clothes which are distinct from the clothes worn by Non-Dalits: Y/N
19. If Yes, is it incidental or is there a restriction on the clothing patterns of Dalits?

20. Is there a restriction on Dalits wearing Clean clothes? Y/N Narrate

SECTION 4: EDUCATIONAL LIFE

1. Name and year of establishment of the School:
2. Location:
3. Levels of Schooling:
4. Nearest Destination for further education:
5. Distance from the Dalit inhabitation:
6. Background of the teachers:

Name	Designation	Sex	Nativity	Residence	Caste	Experience
	Cook-Mid-day Meals					

7. Background of the students:

All students			Dalit Students		
Male	Female	Total	Male	Female	Total

8. Background of the failed students:

All students			Dalit Students		
Male	Female	Total	Male	Female	Total

9. Background of the drop-outs:

All students			Dalit Students		
Male	Female	Total	Male	Female	Total

10. Special Facilities available for dalit students:

11. Is there separate seating arrangement for Dalit students? Y/N

12. Are there any Dalit Teachers in the school? Y/N

13. If yes, is he/she prevented from residing in the main street of the village? Y/N

SECTION 5: ECONOMIC LIFE

1. Main occupation in the village:

Caste	Numbers	Primary Occupation	Secondary Occupation
Dalits			

2. Details of Landholding in the village:

Degree of Land-holding	Castes	Amount of land holding
Large Scale		
Medium		
Small Scale		
Landless-Tenant Farmers		
Landless- Agricultural workers		

3. Source of Public Irrigation, its location and control:
4. Do dalit farmers have access to public source of irrigation? Y/N
5. Which caste the agricultural wage labourers belong mostly to?
6. What is the nature of work assigned to Dalit agricultural wage labourers in comparison with the tasks performed by non-dalit counterparts?

7. Wage structure:

Sex	Agriculture		Other Sectors	
	Non-dalits	Dalits	Non_Dalits	Dalits
MALE				
FEMALE				

8. Agricultural season in the village:
9. Which are the months wherein the wage labourers find avenues of work?
10. Where do wage labourers go for work during non-work seasons?
11. Details of the non-agricultural activities in the village:

Name of the activity	Caste of the people associated	Sex	Average monthly income
Beedi-rolling			
Selling flowers			
Wood-cutting			

12. Is there any restriction on dalit workers to do a particular type of work? Y/N
Explain

SECTION 6: POLITICAL LIFE

1. Profile of the Village panchayath members:

Name	Designation	Caste	Sex	Education	Reserved?	First-timer?
	President					
	Vice-President					
	Member					

	Secretary				-----	-----

2. Have Dalits contested and won in constituencies which were not reserved for Dalits? Y/N Give Details if Yes

3. Do Dalits have the freedom and liberty to participate in the political activities of the Village? Y/N Give Details

4. Are Dalits being prevented from contesting in elections? Y/N

5. Are dalits prevented from exercising their right to vote? Y/N

6. Are Dalit voters being pressurized to vote for a non-dalit? Y/N

7. Are Dalits given segregated seating arrangement in the meetings of the Village panchayath? Y/N

8. Are Dalit representatives served food and drinks in segregated vessels? Y/N

9. Do dalits participate in the meetings of the Grama sabha (Village Assembly)?

10. Are dalits prohibited from participating in the meetings of the Grama sabha (Village Council)? Y/N

11. If the President or the chief/deputy chief of the Panchayath is a Dalit,
 - (a) Is he/she being prevented from taking his/her seat? Y/N
 - (b) Are his/her decisions being neglected? Y/N
 - (c) Is he/she being prevented from using the telephone meant for the use of the president/vice-president? Y/N
 - (d) Is he/she being addressed by the tag/name of the caste? Y/N
 - (e) Is he/she being invited to be the president of all official functions within the jurisdiction of the village panchayath? Y/N

12. Are there any instances of conflicts between Dalit and non-dalit members of the Panchayath? Y/N Narrate

13. What are the facilities and schemes meant for the Dalits?

14. Is there any discrimination against dalits in extending schemes meant for them? Y/N Narrate

Annexure I d

DALIT HOUSEHOLD SURVEY FORM

“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its impact on the abolition of Untouchability”

(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and Empowerment)

Information collected through this questionnaire shall be strictly confidential and will not be used for any other purpose than that of the present research

(to be administered for all SC Households in the village)

SECTION 1: General Information

Name of the Village:	Village Panchayat:
Taluk:	District and State:
Name of the Respondent:	Household Identification No:
Head of the Household:	Household Composition:
Caste:	Sub Caste:
Main Occupation:	Other occupations:
Landholding:	Annual Income:
Type of House: KUTCHA	PUCCA
Name of the Interviewer:	Date of Interview:

Details of the Members of the Household:

Name	Age	Sex	Relation to HH Head	Education	Reason for Dropping out	Occupation	Migrant for Work?	Income

SECTION 2: Social Life

2.1 Patterns of Habitation and Access to the Village:

47. At the Village level, who are the Upper, Middle and Lower Castes and where do they live?

Upper Castes	Middle Castes	Lower Castes	Location of Houses Inside the Village/Outside the Village

48. Names of the Castes who live in the main streets of the village:

49. Are you prohibited from entering the main streets of the village? Y/N

50. Are you allowed to walk with sandals in the vicinity of other castes? Y/N

51. Are you allowed to use umbrella in other caste localities? Y/N

52. Are you allowed to ride bicycles, rickshaws and bullock carts in other caste localities? Y/N

53. How do you react to these practices?

54. Has there been any conflict over entry to main streets of your village? Y/N
Narrate the episode

2.2 Respect for Other Castes in social Interactions:

1. Are you expected to talk to people of other castes with folded hands? Y/N

2. Do you stand up in respect before dominant castes? Y/N

3. Are you asked to sit at lower level than other caste people? Y/N

4. How do your react to these practices?

5. Has there been any conflict over respect for other castes in your village? Y/N
Narrate the episode

2.3 Entry to Non-Dalit Houses

1. Do you have access/entry into the houses of the non-you? Y/N
List the castes which allow and disallow
2. If you are allowed entry, how far can you enter the house?

Only exterior parts (verrandah).....
Interior parts
3. Are you allowed to enter to store their agricultural produce at the time of harvest?
Y/N
4. If you are allowed, are you asked to clean their feet and hands before you come into their houses?
5. Are you compelled to stand far away from the houses of other castes? Y/N
6. How do you react to these practices?
7. Has there been any conflict over entry to other caste houses? Y/N
Narrate the episode

2.4 Serving of Food and water in Non-dalit Houses:

1. Are you served food and water in non-dalit houses? Y/N
2. Are you served food and water in segregated vessels? Y/N
3. Are you served in aluminium tumblers contrary to steel tumblers used for other caste people? Y/N
4. Do they pour drinking water into your hands? Y/N
5. Should you walk at a distance when you encounter someone from other castes?
Y/N

6. How do you react to these practices?

7. Has there been any conflict over entry to and serving of food at other caste houses? Y/N Narrate the episode

2.5 Segregation at Feasts and Community Lunch:

1. Do other castes invite you on important occasions such as marriages? Y/N
2. Are you supposed to eat after the other castes finish their turn? Y/N
3. Do they serve in the same plates and tumblers meant also for the other castes? Y/N
4. If not do they serve in segregated vessels? Y/N
5. Are you told to wash your plates after the dinner? Y/N
6. Are you supposed to get your plates and tumblers? Y/N
7. Are you served food in towels or are you asked to hold upper garment to collect food? Y/N
8. Are you served food at a distant place from the hosted premises? Y/N
9. How do you react to these practices? Narrate

10. Has there been any conflict over segregation at feasts? Y/N Narrate the episode

2.6 Inter-dining:

1. Do you invite other castes for any celebrations? Y/N
2. If Yes, give details of the occasions and the castes you invite:

3. Do other castes come when invited? Y/N
Give details:

4. Do they eat the food prepared and served by you? Y/N
5. If No, do they cook for themselves or hire a man from their community and makes him cook separately for them?
6. If the other castes never attend the functions or any kind of celebrations in your families, do they order their quota of food directly from the shop without getting into physical contact with you? Y/N
7. In case they take food, is the Food for your caste served in leaves but for other castes in plates? Y/N
8. How do you react to these practices?
9. Has there been any conflict over interdining? Y/N Narrate the episode

2.7 Access to Drinking water:

1. Where do you draw/fetch drinking water from?
2. Is it exclusively for your community or is it used by others also? Y/N
3. In case of common water source for both your community and other castes,
 - (a) Are you allowed to fetch water directly? Y/N
 - (b) If No, do the people of other castes draw and pour water into your pots? Y/N
 - (c) Should you wait till people of other castes draw and pour water into your pots? Y/N
 - (d) If drawing water from open Wells, is there a separate pulley for your community? Y/N
 - (e) Do you stand in separate queue? Y/N
 - (f) Are you allowed to touch the pots brought by people of other castes? Y/N
 - (g) Do they touch your pots? Y/N
 - (h) Should you fetch water only after other castes draw water? Y/N
4. If there are separate wells and bore-wells for your community and other castes and in case of acute shortage of water, do other castes fetch water from your water sources?
Y/N

- (a) If Yes, Should you wait till people of other castes finish their turn? Y/N
 - (b) In case of bore-wells, do they primarily clean the bore- well and its surroundings before drawing water? Y/N
5. If there are separate wells and bore-wells for your community and other castes and in case of acute shortage of water, do other castes allow you to fetch water from their water sources? Y/N
- (a) If Yes, Should you wait till people of other castes finish their turn? Y/N
 - (b) Do you draw water directly? Y/N
 - (c) Are you supposed to clean the bore- well and its surroundings before or after drawing water? Y/N
6. If the source of drinking water is a natural lake or a pond or a tank, are you supposed to fetch from the down stream where other castes do not a reach? Y/N
7. Do you carry drinking water to your workplaces? Y/N
8. If No, do you ask for it from the employer? Y/N
9. Does your employer serve you the drinking water in a vessel or pour into your hands? Y/N
10. How do your react to these practices? Narrate
11. Has there been any conflict over entry to and discrimination at Public sources of Drinking water? Narrate the episode

2.8 Untouchability in public space:

2.8A Hotels/Public Eating places:

- 1. Do you go to hotel in your village? Y/N
- 2. Give reasons if you don't go to hotel?
- 3. Are you allowed to visit the hotel? Y/N
- 4. Are you served food and beverages outside the hotel? Y/N
- 5. Are you served food and beverages in separate vessels? Y/N
- 6. How do you react to these practices?
- 7. Do you know that you can file a case against these practices? Y/N
- 8. If yes, give details:

9. If No, would you like to know about your rights? Y/N
10. Is anyone from your community working in any hotel? Y/N
11. If No, give reasons

11. Has there been any conflict over a dalit being denied entry to a hotel? Y/N
Narrate the episode

2.8B Post-office:

1. Do you go to Post-office? Y/N, If No, Give reasons
2. If you visit post office, does the post-master issue the stamps and other postal material to your hands directly? Y/N
3. Does the Postman deliver the letters to you at your door-steps or does he command/inform you to collect yourself? Y/N
4. Are there instances of late delivery? Y/N
5. Does the Post-man deliver letters through other members of your community without visiting your area? Y/N
6. Is there a prohibition on the entry of the Postman into your areas? Y/N
7. How do you react to discriminatory practices at Post-Office?
12. Has there been any conflict over entry to and discrimination at Post-Office? Y/N
Narrate the episode

2.8C Banks:

1. Do you go to bank? Y/N
2. If Yes what for?
3. If no, why?
4. If you carryout transactions with the bank, do you approach the bank directly or through some middleman? Give details
5. Has there been any conflict over entry to and discrimination at Bank? Narrate the episode

2.8D Shopping:

A General

1. Where do you buy the groceries?
 2. Where is this shop located?
 3. Are you allowed to touch items and choose or should you have to show with a hand or a small-stick while purchasing things in the shop? Y/N
 4. Where do you sell the products you produce?
 5. Are you compelled to sell only dry items such as dry fish? Y/N
 6. Does the shop-keeper collect the money directly from you or does he ask you to keep money or items you bought on floor? Y/N
 7. Should you stand outside the shop and buy? Y/N
 8. Is there a separate tray kept for your community? Y/N
 9. How do you react to these practices?
-
10. Has there been any conflict over entry to and discrimination at shops? Y/N
Narrate the episode

B PDS shops:

1. Do you buy groceries in PDS shop? Y/N
 2. Are you prohibited from entering the PDS shop? Y/N
 3. Are there Separate queues for your community? Y/N
 4. Should you stand carefully without touching the belongings of other castes? Y/N
 5. Is there separate time for your community? Y/N
 6. Does the Dealer touch you and people of your community while giving provisions? Y/N
 7. How do you react to discriminatory practices?
-
8. Has there been any conflict over entry to and discrimination at PDS shops? Y/N
Narrate the episode

2.9 Health Services:

1. Where do you go for treatment in case of ill health (general ailments)?

2. If there is a Primary Health Centre/Govt hospital, are you given treatment there?
Y/N
3. Do you have to stand in separate queue? Y/N
4. Do the doctor and other staff touch you when you go for treatment? Y/N
5. If No, how do you react to such a practice?

6. Does the health worker visit your locality? Y/N
7. Does he/she instruct you to visit the main village for treatment? Y/N
8. If there is no Govt hospital, do you visit a private medical practitioner? Y/N
9. If yes,
 - (a) his/her Caste:
 - (b) Location of the clinic:
 - (c) Does he/she touch you while treating? Y/N

10. Has there been any conflict over entry to and discrimination at hospitals? Y/N
Narrate the episode

2.10 Laundry:

1. Do you wash your clothes? Y/N
2. Does the village DHOBI/Washerman deny laundry services to your community?
Y/N
3. Do you take your clothes to *dhobi ghat* (place of washing clothes) and wash your clothes at lower level of the stream and wait till the *dobhi* washes? Y/N
4. Do the laundry shop owners deny ironing your clothes? Y/N
5. In case if they render service, do they take grains as paid by the other communities as service charges? Y/N
6. If there is denial of service, how do you react?

7. Has there been any conflict over entry to and discrimination at Laundry shops?
Y/N Narrate the episode

2.11 Barber:

1. Where do you go for hair cuts?
2. Are you denied hair cutting services? Y/N
3. If the village barber is providing hair cutting services to you, is he allowed to provide to other castes? Y/N
4. Does the barber use separate instruments for your caste people? Y/N
5. In case of Hair cutting saloons, are you allowed into the shops? Y/N
6. If yes,
 - (a) Do they use separate instruments? Y/N
 - (b) Are you denied the service at home as being given to dominant castes? Y/N
 - (c) Is the Person who services other castes allowed to serve you? Y/N
 - (d) In case if the barber renders service to you in your locality, does he purify himself immediately after returning home? Y/N
7. How do you react to these practices?

8. Has there been any conflict over entry to and discrimination at barber shops? Y/N
Narrate the episode

2.12 Tailoring:

1. Where do you get your clothes stitched?
2. If from the Tailor in the same village,
 - (a) Caste of the tailor:
 - (b) Does he/she touch you while taking measurements or take measurements from distance? Y/N
 - (c) Should you take measurement from home? Y/N
 - (d) Does he/she extend the Darning services as he/she does for other castes? Y/N
 - (e) How do you react to these practices?
3. Has there been any conflict over entry to and discrimination at Tailoring shops? Y/N Narrate the episode

2.13 Potter and Carpenter:

1. Do you buy the pots from the local potter? Y/N
2. Does he allow you to touch the pots? Y/N
3. Does he touch you while giving the pots and collecting the cash? Y/N
4. Does the village carpenter do work for you? Y/N
5. Does the carpenter come to your locality or should you go to him? Y/N
6. Does he touch you during the transaction? Y/N
7. How do you react?

8. Has there been any conflict over access to and discrimination by Potters and Carpenters? Y/N Narrate the episode

2.14 Public Transport System:

1. How often do you travel out of your village and for what purposes?
2. What is the means of transportation?
3. Are you prohibited from entering the buses? Y/N
4. If not,
 - (a) Should you board the bus only after the other castes finish their turn? Y/N
 - (b) Should you occupy only the backseats? Y/N
 - (c) Do you sit besides a person from other castes? Y/N
 - (d) Should you offer seats to people of other castes? Y/N
 - (e) How do you react to these practices?

5. Has there been any conflict over entry to and discrimination at Public Transportation System? Y/N Narrate the episode

2.15 Milk Dairies:

1. Do you buy or sell milk? Y/N Give details
2. If buying from or selling to Milk dairy,
 - (a) Should you stand in separate queues? Y/N
 - (b) Should you sell or buy only after the other castes finish their turn? Y/N
 - (c) Do the dairy staff touch you and your vessels? Y/N
 - (d) Is there any discrimination in the prices for you and for other castes? Y/N
 - (e) Are there delays and discrimination in payment of bills? Y/N
 - (f) How do you react to such practices?

3. Has there been any conflict over entry to and discrimination at Milk Dairies? Y/N
Narrate the episode

SECTION 3: Cultural Life

3.1 Religious Functions and Ceremonies:

1. Name the important festivals you celebrate at home?
2. Do you go to temples on these days? Y/N
3. Do you have any separate deity or god or temple for your family and community?
Y/N
4. Are you prohibited from entering the temples in your village? Y/N
5. If not prohibited, are you allowed to sit in the temple? Y/N
6. How do you react to the issue of temple entry? Y/N

7. Has there been any conflict over Temple entry? Y/N
Narrate the episode

8. Do you take part in the activities of the village temples? Y/N
9. Name the roles that you perform?
 - (a) Drum beating
 - (b) Harbingers of information
 - (c)
 - (d)
10. Do you perform these activities voluntarily or is it mandatory on your part to do so? Y/N
11. If you are forced to perform these activities, how do you react?

12. Who acts as the Purohit while performing marriages in your families?

13. Does the village Purohit (Brahmin) perform marriage rituals, naming ceremonies, death rituals, house warming, in your families? Y/N
14. Where do you bury the dead in your families?
 - (a) Village graveyard
 - (b) Segregated graveyard for Dalits
 - (c) Own lands
15. Are you prohibited from burying the dead in the village graveyard? Y/N
16. If Yes, How do you react to this practice?

17. Has there been any conflict over access to village burial grounds? Y/N
Narrate the episode

3.2 Organising Processions:

3.2A Religious:

1. Do religious processions of deities of other caste people enter your localities? Y/N
2. If Yes, do you offer pooja and break coconut? Y/N
If no, what are the reasons? Is there a restriction? Y/N
3. Do you take religious processions of your deities into other areas? Y/N
If No, is there a restriction? Y/N
4. How do you react to such practices?
5. Has there been any conflict over religious processions in your village? Y/N Narrate the episode

3.2B Marriage:

1. Are you allowed to take marriage processions in the vicinity of other castes? Y/N
2. If allowed
 - (a) are you allowed to beat drums? Y/N
 - (b) should the bride and groom be on foot in other castes' vicinity? Y/N
4. Is it mandatory to seek the blessings of other castes in marriages? Y/N
5. If yes, Name the castes?
6. Is it a practice/ compulsion to Collect Nuptial Knot (*Mangalsuthra or Thaali*) from other castes in marriages? Y/N
7. If yes, Name the castes?
8. Has there been any conflict over marriage processions? Y/N Narrate the episode

3.2C Funeral Procession:

1. Do you take funeral procession? Y/N
2. Are you allowed to take funeral procession through the other caste dwelling areas? Y/N
3. If not allowed, how do you react?

4. Has there been any conflict over funeral processions? Y/N Narrate the episode

3.3 Clothing:

21. When do you wear new clothes?
22. Is there a difference in the clothes you wear and the clothes the other castes wear? Y/N
23. If Yes, is it incidental or is there a restriction on the clothing patterns of Dalits? Y/N
24. Are you allowed to wear clean and washed clothes? Y/N
25. Is there a restriction on wearing neat and clean clothes while traversing in other caste localities? Y/N
26. If there is a restriction on clothing, how do you react?

27. Has there been any conflict over restrictions on Clothing? Y/N
Narrate the episode

3.4 Addressing by caste name:

1. Are you addressed by the name of your caste? Y/N
2. If Yes, who address you?
3. How do you react to such practice?

4. Has there been any conflict over addressing a dalit by caste name? Y/N Narrate the episode

5. Have there been any attacks on your localities by the people of other castes? Y/N
Give details

3.5 Women and Untouchability:

1. Should a woman from your community walk at a distance when she encounters someone from other castes? Y/N
2. Should women from your community wear their sarees above their knees and cover their head whenever they find non-dalits walking in the way? Y/N
3. Are dalits women allowed to wear blouses? Y/N
4. Are dalits women allowed to wear jewellery? Y/N
5. If there is a bar on wearing jewellery and specified clothes, how do you react?
6. Are there instance of attacks on the women of your community? Y/N Give details
7. How did you react and negotiate?
8. Has there been any conflict over restrictions on what dalit women do and wear? Y/N Narrate the episode

SECTION 4: Educational Life

4.1 School life:

1. Do your children go to school? Y/N
2. If yes, why do they go to school?
3. If No, give reasons:
 4. Is it a Private School or a Govt School?
 5. Are they restricted from attending the school? Y/N
 6. Are your children asked to sit together with children of other castes or is there a separate seating arrangement for children of your community? Y/N
 7. Are your children asked to sit at backside? Y/N
 8. Are they allowed to take food with other children? Y/N
 9. Is mid-day meal served to your children? Y/N
 10. Is there a separate queue for students of your caste? Y/N
 11. Are they addressed by caste names? Y/N Give details
 12. Is there a Teacher belonging to your caste? Y/N
 13. If yes, where does he/she reside?

14. Is he/she prohibited from residing in the main village? Y/N
15. Are there instances of the School refusing admission to children from your community? Y/N Give details
16. Do the teachers practice discrimination against your children in providing facilities, evaluation and declaring results? Y/N
17. How do you react to these practices?

16. Has there been any conflict over entry to and discrimination at Schools? Y/N
Narrate the episode

4.2 Early Childhood Care and Education Centre/Balawadi/Anganawadi:

1. Is there Early Child Care and Education Centre (balawadi/anganawadi) in the village? Y/N
2. If yes,
 - (a) its location:
 - (b) Caste of the Personnel in-charge:
 - (c) Whether it functions everyday? Y/N
 - (d) Are your children enrolled? Y/N
 - (e) Are your children denied an entry? Y/N
 - (f) Is there a separate seating arrangement for your children? Y/N
 - (g) Is there discrimination against your children in providing facilities? Y/N
 - (h) Does the person in-charge touch your children? Y/N
 - (i) How do you react to these practices?

3. Has there been any conflict over entry to and discrimination at ECCE Centre? Y/N
Narrate the episode

4.3 Library:

1. Is there a public library in the village? Y/N
2. Do you visit the village library? Y/N Give reasons
3. Caste background of the librarian:
4. Are you prohibited from entering the library? Y/N

5. Is there a separate seating arrangement for your caste? Y/N
6. If yes, how do you react?

7. Has there been any conflict over entry to and discrimination at Library?
Y/N Narrate the episode

4.4 Extension-Education Centre:

1. Does the Village have Extension Education Centre? Y/N
2. If Yes,
 - (a) its location:
 - (b) Caste of the Personnel in-charge:
 - (c) Whether it functions everyday? Y/N
 - (d) Do you visit the Centre? Y/N
 - (e) What do you do there?
 - (f) Does the person in-charge talk to you? Y/N
 - (g) Does the person in-charge allow you to touch the books and other material? Y/N
 - (h) If not is there a prohibition on your entry? Y/N
 - (i) Is there a separate seating arrangement for Dalits? Y/N
 - (j) How do you react to such practices?
3. Has there been any conflict over entry to and discrimination at Extension Education Centres? Y/N Narrate the episode

SECTION 5: Economic Life

5.1 Forced Services:

1. Which are the services that you and people from your caste perform?
 - (a) Drum beating for funerals and festivals/*jataras*.
 - (b) Grave digging
 - © Cremation
 - (d) Harbtrrgers death news
 - (e) Chappal Making
 - (f) Removal of carcass
 - (g) Anima! Sacrifice
 - (h) Sweeping the whole village at the time of festivals and *jataras*
 - (i) *Scavenging*

2. Are you being forced to offer any of these services? Y/N
3. How do you react to the events of forced services?

4. Has there been any conflict over the issue of Forced Services? Y/N Narrate the episode

5.2 Discrimination in Wages:

1. What is the mode of payment of wages? Money/ Grains/ Both
2. Do you think you get the same wages that workers from other castes get? Y/N
3. If no, how do you react?

4. Is there a restriction on you to participate in a specific wage work? Y/N
5. Do you think the Lease rates and conditions differ for Dalit tenants and Non-Dalit tenants? Y/N
6. Is there discrimination in Payment of wages? Y/N
7. What is the nature of work assigned to Dalit agricultural wage labourers in comparison with the tasks performed by non-dalit counterparts?
8. While paying the wages, does your employer keep money on the floor or throw into your hands to avoid touch? Y/N
9. While giving grains, does your employer avoid Physical contact? Y/N Narrate

10. How do you react to these practices?

11. Has there been any conflict over Wage discrimination? Y/N Narrate the episode

5.3 Discrimination at workplace:

1. Should you stand outside the field until other castes finish ritual performance in the beginning of agricultural activity? Y/N
2. Are you allowed to enter into the fields only after non-dalits? Y/N
3. Are you allowed to take water from wells and pots? Y/N
4. Should you carry drinking water to the working place? Y/N
5. Should you keep your lunch box separately? Y/N
6. Should you sit separately while taking lunch? Y/N
7. Should you not touch the vessels if the non-Dalit employer provides lunch? Y/N

8. How do you react to these practices?

9. Has there been any conflict over discrimination at workplaces? Y/N Narrate the episode

5.4 Discrimination in Irrigation facilities:

13. Source of Public Irrigation, its location and control:

14. Whether you and other farmers from your caste have access to public source of irrigation? Y/N

15. Are you supposed to take permission for utilising the water? Y/N

16. Are you expected to irrigate only after the other castes finish their turn? Y/N

17. If you are prevented from irrigating, how do you react?

18. Has there been any conflict over entry to and discrimination in using Irrigation facilities? Y/N Narrate the episode

5.5 Traditional maid Service:

1. Is there any Dalit daya/maid working in other caste houses? Y/N

2. Are there differentials in the wages offered to a dalit daya and a non-dalit daya? Y/N

3. Is the maid allowed entry into house? Y/N

4. If yes, is she (maid) allowed to take bath after labour service? Y/N

5. Is a non-Dalit daya allowed to take bath after labour service? Y/N

6. Is the Dalit daya supposed to sit outside with curtains around and help in delivery? Y/N

7. Does a Non-Dalit daya serve labour service to the Dalit? Y/N

8. If yes,

(a) Does she take bath in daalit house after the service? Y/N

- (b) Does she take the saree they offer? Y/N
- (c) Does she bathe the baby? Y/N

SECTION 6: Political Life

6.1 Exercising Rights

- 15. Do you have the freedom and liberty to participate in the political activities of the Village? Y/N Give Details

- 16. Are you being prevented from entering the Village Panchayat Office? Y/N
- 17. Are you being prevented from contesting in elections? Y/N

- 18. Are you being prevented from exercising your right to vote? Y/N

- 19. Are you being pressurized to vote for a non-dalit? Y/N

- 20. Are you being compelled to vote only after the other castes finish their turn? Y/N

- 21. Do you stand in separate, segregated queues at the polling booths? Y/N

- 22. Are you free (allowed to) hoist the party flag of your choice? Y/N

- 23. How do you react to these practices?

- 24. Has there been any conflict over entry to and discrimination at Village Panchayat? Y/N Narrate the episode

6.2 Panchayath meetings:

- 1. Are you given segregated seating arrangement in the meetings of the Village panchayath? Y/N

- 2. Are Dalit representatives served food and drinks in segregated vessels? Y/N

- 3. If the President or the chief/deputy chief of the Panchayath is a Dalit,
 - (f) Is he/she being prevented from taking his/her seat? Y/N

- (g) Are his/her decisions being neglected? Y/N
 - (h) Is he/she being prevented from using the telephone meant for the use of the president/vice-president? Y/N
 - (i) Is he/she being addressed by the tag/name of the caste? Y/N
 - (j) Is he/she being invited to be the president of all official functions within the jurisdiction of the village panchayath? Y/N
4. Are there any instances of conflicts between Dalit and non-dalit members of the Panchayath? Y/N Give details
5. What are the facilities and schemes meant for the Dalits?
6. Is there any discrimination against dalits in extending schemes meant for them? Y/N
7. How do you react to these practices?

6.3 Village Council meetings:

- 1. Do you participate in the meetings of the Grama Sabha (Village Council)? Y/N
 - 2. Are you being prohibited from participating in the meetings of the Grama Sabha (Village Council)? Y/N
 - 3. Is there a separate seating arrangement for your caste people? Y/N
 - 4. Do others prevent you from expressing your view points in the Council meetings? Y/N
 - 5. Are you addressed by your caste name? Y/N
6. How do you react to these practices?

7. Has there been any conflict over entry to and discrimination at Village Council meetings? Y/N Narrate the episode

6.4 Other meetings:

SHGs

1. Is anyone from your family a member of any SHG? Y/N Give details
2. Is there a segregation of seating arrangements in SHG meetings? Y/N
3. Are dalit members prevented from participating in the meetings? Y/N
4. Are dalit members prevented from expressing their view points in the meetings? Y/N
5. Do SHGs arrange their meetings in your localities? Y/N
5. If no, is there a prohibition on organizing such meetings in Dalit wada? Y/N
6. Do members from all castes attend the SHG meetings? Y/N
7. Do upper caste members join dalit groups? Y/N
8. Are dalits allowed to join upper caste? Y/N
9. How do you react to these practices?
10. Has there been any conflict over entry to and discrimination at SHG Meetings? Y/N
Narrate the episode

Section 7: Facilities availed

Provide details of the benefits derived by your family under various schemes and any deprivation and exploitation inflicted upon you:

Section 8: Awareness

1. Are you aware of the legislations for the elimination of the practice of untouchability? Y/N
2. If Yes, how did this awareness come about?
3. If not, would you like to be aware of the legislations? Y/N

4. Do you think legal intervention can help remove the practice of untouchability?
Y/N Explain

5. Do you see any decline in the practice of untouchability over years? Y/N
6. If yes, what according to you are the reasons for this?

7. If no, what could be the reasons?

8. Would you like to suggest any ways and methods to remove the practice of untouchability?

Annexure I e

MODEL QUESTIONNAIRES FOR VICTIMES

“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its impact on the abolition of Untouchability”

(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and Empowerment)

Information collected through this questionnaire shall be strictly confidential and will not be used for any other purpose than that of the present research

Name :

Category : (SC/ST/OBC/Others)

If not Hindu specify Religion:

Education: (Primary/Secondary/Higher Secondary/College/illiterate/literate without education)

Occupation:

Address:

For Victims:

1. Is untouchability practiced in you village/town?

2. What are the other forms of untouchabilities in your village?
 - a. Are the Dalits in this village allowed to enter the temple? (Yes/No)
 - b. Is there common access to water facility or separate? (Yes/No)
 - c. Is there free access to shops, restaurants, public conveyance, school, hospital etc? (Yes/No)
 - d. Is there any other form of untouchability practiced in this village? (Yes/No)
 - e. Has there been any communal violence in your locality in the recent past?

(Yes/No)

3. What is the name of perpetrator in your case?
4. What is the caste of the perpetrator?
5. What was the charge against him?
6. Did you know him before the incident? (Yes/No)
7. What is the nature of that relation?
8. What was your reaction to the offence and why?
9. Where did you file the case?
10. How far is this Station from your house?
11. Did they register it in the first instance? (Yes/No)
12. Did any one try for a compromise? (Yes/No)
13. If Yes, who?
14. Was there an involvement of Dalit leaders in this? (Yes/No)
15. Are you aware of the Act under which the charge is registered? (Yes/No)

16. If yes, what is the name of the Act?
17. Did you know about the Act before this incident? (Yes/No)
18. If yes, how did you know?
19. Did you face any threat after filing complaint? (Yes/No)
20. If yes, what kind of threat?
21. When did the court take up the issue?
22. How far is this court from your house?
23. Did they pay any TA? (Yes/No)
24. How long did it take to decide the case?
25. What was the punishment given?
26. Did you get any compensation? (Yes/No)
27. Was there any fine imposed on the perpetrator? (Yes/No)

28. If yes, what is the amount?
29. Was the public prosecutor sympathetic to your cause? (Yes/No)
30. Who was the judge?
31. What was the caste of the Judge?
32. After the disposal of case did you face any hardships in the village because of the same? (Yes/No)
33. Were there any such incidents in the village other than this? (Yes/No)
34. Were the villagers especially Gram Panchayaths cooperative in your cause? (Yes/No)
35. Is the village dominated by the untouchables? (Yes/No)
36. How was the approach of the political parties to the issue?
37. Which is the dominant party in your village?
38. What are your suggestions for eradication of Untouchability?

39. Do you think that we can overcome this problem?

40. Do you think that SCs can live in harmony with other castes?

41. If so how?

42. Do you practice untouchability among yourselves?

Annexure I f

MODEL QUESTIONNAIRES FOR DALIT LEADERS

“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its impact on the abolition of Untouchability”

(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and Empowerment)

Information collected through this questionnaire shall be strictly confidential and will not be used for any other purpose than that of the present research

Name of the Respondent:

Category: (SC/ST/OBC/Others)

If not Hindu Specify Religion:

Name of the Organization:

Address:

1. What is your perception of untouchability in your village?

2. How many forms of untouchability are practiced in your village? What are they:
 - a. Are the Dalits in this village allowed to enter the temple? (Yes/No)
 - b. Is there common access to water facility or separate? (Yes/No)
 - c. Is there free access to shops, restaurants, public conveyance, school, hospital etc? (Yes/No)
 - d. Is there any other form of untouchability practiced in this village? (Yes/No)
 - e. Has there been any communal violence in your locality in the recent past?
(Yes/No)

3. Is there an economic dependency between the perpetrator and the victim?
(Yes/No)

4. If yes what is the nature?
5. Have you read PCRA? (Yes/No)
6. What is your feedback on it?
7. Are you aware of the provisions of PCRA? (Yes/No)
8. Do you have a copy of the PCRA at your office? (Yes/No)
9. Have you received any training in administering PCRA? (Yes/No)
10. Have you approached the police with regard to any PCRA offences? (Yes/No)
11. Are the officers sympathetic towards the complainant when there is a complaint?
(Yes/No)
12. Are all the complaints registered in the first instance? (Yes/No)
13. Do you try for a compromise without registering the case? (Yes/No)
14. If so, why?
15. What is the caste and economic status of the perpetrator in most of the cases?
(SC/ST/OBC/Others)
16. Have you come across the instance of social boycott? (Yes/No)

17. If yes explain
18. Do you think that the situation would be different if the SCs are politically organized/economically empowered? (Yes/No)
19. Are these complaints genuine? (Yes/No)
20. Is there any positive role of the Dalit organizations in lodging the complaints? (Yes/No)
21. What are the other measures undertaken by your organization for eradication of untouchability?
22. Are you receiving Government grants for the same? (Yes/No)
23. If yes, is it adequate? (Yes/No)
24. Which court takes up the registered cases from your locality?
25. How far is it from your village?
26. How do you commute?
27. Are the Public Prosecutors doing a sincere job with regard to PCRA cases? (Yes/No)
28. Are the victims forthcoming with regard to enforcement of their rights under PCRA? (Yes/No)
29. How do the witnesses respond to the trial?

30. Do they turn hostile in the meanwhile? (Yes/No)
31. If yes how often?
32. What are the reasons for the same?
33. How often does a case result in conviction?
34. Was any compensation paid to the victims? (Yes/No)
35. If yes, what is the maximum amount?
36. Was a fine imposed on the accused? (Yes/No)
37. If yes, what is the maximum amount?
38. Do you think that the PCRA is properly implemented? (Yes/No)
39. Are you of opinion that there is a need for a comprehensive legislation to address the issue of Dalits in place of PCRA and POA? (Yes/No)
40. Suggest changes if any in PCRA?

Annexure I g

MODEL QUESTIONNAIRES DEPUTY DIRECTORS OF PUBLIC PROSECUTION/SPECIAL PUBLIC PROSECUTORS

***“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its
impact on the abolition of Untouchability”***

*(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and
Empowerment)*

*Information collected through this questionnaire shall be strictly confidential and will not
be used for any other purpose than that of the present research*

Name :

Designation:

Category : (SC/ST/OBC/Others)

If not Hindu specify Religion:

Address:

1. Do you perceive any forms of untouchability within your jurisdiction?
2. What are the common practices of untouchability in this place?
3. What is the total number of cases you hear on PCRA a year?
4. Has the enactment of the POA Act had any negative effect on the above?
(Yes/No)
5. What is the nature of crimes tried under PCRA?
6. What is the average time taken in disposal of cases at courts?
7. What is the percentage of cases resulting in conviction?
8. Do the cases end in compounding? (Yes/No)

9. If yes why?
10. Do the witnesses turn hostile resulting in acquittal of the accused? (Yes/No)
11. What is the nature of victims and perpetrators? (Do they have any personal relations?) (Yes/No)
12. Is there a need for strong perjury laws to deal with this situation? (Yes/No)
13. If the provisions of IPC are invoked with regard to a PCR offence how will it reflect on the conviction and punishment?
14. What is the punishment given under PCRA?
15. Has S.8 of the Act pertaining to cancellation or suspension of licenses been invoked as additional punishment? (Yes/No)
16. Was it possible, given the fact situation, to prosecute under the SC/ST (Prevention of Atrocities) Act? (Yes/No)
17. Have S. 9 pertaining to resumption/suspension of grants by government and S. 10A dealing with collective fine, granting penal powers to the Government been invoked ever? (Yes/No)
18. If yes explain the situations
19. Has there been any trial or conviction of a public servant for neglecting the investigation of any offence under the Act under S. 10? (Yes/No)

20. Did the case result in acquittal or conviction? (A/C)
21. If conviction, what was the punishment?
22. Was any compensation paid to the victims? (Yes/No)
23. Was a fine imposed on the accused? (Yes/No)
24. Are there any private complaints by the victims? (Yes/No)
25. If the accused is convicted, apart from the punishment imposed is there a need to reimburse the fine from the convict?
26. Are you of the opinion that there is a need for a comprehensive criminal legislation to address the issue of Dalits in place of PCRA and POA? (Yes/No)
27. Is Yes, give reasons:
28. Do you think that the practice of untouchability has decreased over years? Y/N
29. Do you think that the practice of untouchability could be annihilated through legal interventions? Y/N Explain
30. Do you think PCRA has failed in enabling abolition of the practice of untouchability? Y/N Explain
31. Why do not people file cases under PCRA?
32. Do you think PCRA has become redundant? Y/N Explain

33. Do you think that the existing sentences under PCRA are adequate? Y/N Explain

34. Do you think that new sentences should be added under PCRA? Y/N Elaborate

35. Do you think Civil Remedy is desired to strengthen PCRA? Y/N Give reasons for your answer

36. Do you suggest any changes to PCRA?

Annexure I h

MODEL QUESTIONNAIRES FOR JUDGES

“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its impact on the abolition of Untouchability”

(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and Empowerment)

Information collected through this questionnaire shall be strictly confidential and will not be used for any other purpose than that of the present research

Name :

Designation:

Category : (SC/ST/OBC/Others)

If not Hindu specify Religion:

Address:

1. Do you perceive any forms of untouchability within your jurisdiction?
2. What are the common practices of untouchability in this place?
3. What is the total number of cases you hear on PCRA a year?
4. Has the enactment of the POA Act had any negative effect on the above?
(Yes/No)
5. What is the nature of crimes tried under PCRA?
6. What is the average time taken in disposal of cases at courts?
7. What is the percentage of cases resulting in conviction?
8. Do the cases end in compounding? (Yes/No)

9. If yes why?
10. Do the witnesses turn hostile resulting in acquittal of the accused? (Yes/No)
11. What is the nature of victims and perpetrators? (Do they have any personal relations?) (Yes/No)
12. Is there a need for strong perjury laws to deal with this situation? (Yes/No)
13. If the provisions of IPC are invoked with regard to a PCR offence how will it reflect on the conviction and punishment?
14. What is the punishment given under PCRA?
15. Has S.8 of the Act pertaining to cancellation or suspension of licenses been invoked as additional punishment? (Yes/No)
16. Was it possible, given the fact situation, to prosecute under the SC/ST (Prevention of Atrocities) Act? (Yes/No)
17. Have S. 9 pertaining to resumption/suspension of grants by government and S. 10A dealing with collective fine, granting penal powers to the Government been invoked ever? (Yes/No)
18. If yes explain the situations
19. Has there been any trial or conviction of a public servant for neglecting the investigation of any offence under the Act under S. 10? (Yes/No)
20. Did the case result in acquittal or conviction? (A/C)

21. If conviction, what was the punishment?
22. Was any compensation paid to the victims? (Yes/No)
23. Was a fine imposed on the accused? (Yes/No)
24. Are there any private complaints by the victims? (Yes/No)
25. If the accused is convicted, apart from the punishment imposed is there a need to reimburse the fine from the convict?
26. Are you of the opinion that there is a need for a comprehensive criminal legislation to address the issue of Dalits in place of PCRA and POA? (Yes/No)
27. Do you think that the practice of untouchability has decreased over years? Y/N
28. Do you think that the practice of untouchability could be annihilated through legal interventions? Y/N Explain
29. Do you think PCRA has failed in enabling abolition of the practice of untouchability? Y/N Explain
30. Why do not people file cases under PCRA?
31. Do you think PCRA has become redundant? Y/N Explain
32. Do you think that the existing sentences under PCRA are adequate? Y/N Explain

33. Do you think that new sentences should be added under PCRA? Y/N Elaborate

34. Do you think Civil Remedy is desired to strengthen PCRA? Y/N Give reasons for your answer

35. Do you suggest any changes to PCRA?

Annexure I i

MODEL QUESTIONNAIRES FOR POLICE

“Evaluation of the working of the Protection of Civil Rights Act, 1955 and its impact on the abolition of Untouchability”

(Project undertaken by NLSIU and sponsored by Ministry of Social Justice and Empowerment)

Information collected through this questionnaire shall be strictly confidential and will not be used for any other purpose than that of the present research

Name :

Designation:

Category : (SC/ST/OBC/Others)

If not Hindu specify Religion:

Address:

1. What is your perception of untouchability in your jurisdiction?
2. What are the practices of untouchability commonly found?
3. Are you aware of the provisions of PCRA? (Yes/No)
4. Do you have a copy of the PCRA in your office? (Yes/No)
5. Have you received any training in administering PCRA? (Yes/No)
6. Are all the complaints registered in the first instance? (Yes/No)
7. Do you try for a compromise without registering the case? (Yes/No)
8. If yes why?
9. What is the nature of complaints received by you?

10. What is the caste and economic status of the perpetrator in most of the cases?
(SC/ST/OBC/Others)

11. Is there a misuse of this Act? (Yes/No)

12. If yes then what is the nature and why?

13. Is there any positive role of the Dalit organizations in lodging the complaints?
(Yes/No)

14. Are non-SCs involved in registration of cases in any capacity?

15. Do you think that the situation would be different if the SCs are politically organized? (Yes/No)

16. If so why?

17. Do you think that the PCRA is properly implemented? (Yes/No)

18. Are you of opinion that there is a need for a comprehensive legislation to address the issue of Dalits in place of PCRA and POA? (Yes/No)

19. If so why?

20. Suggest changes if any in PCRA?

Sub Questions:

a. How far is this police station located from the Dalit households?

- b. How do they reach this station?
- c. How many police men do you have in this station?
- d. What are their respective ranks?
- e. What other infrastructure do you have here?
- f. What is the annual registration of the offences under the PCRA?
- g. How many charge-sheets are filed in last year under the Act?
- h. What is the average time taken for disposal of each case?
- i. What is the percentage of cases resulting in conviction/acquittal/compounding/is pending?
- g. What is the rate of registration of offences and conviction under the POAA? How does it compare with the PCRA?
- h. Are the officers sympathetic towards the complainant when there is a complaint?
(Yes/No)
- i. What is the punishment given?
- i. Do you feel that it was adequate?
- j. Did S.8 of the Act pertaining to cancellation or suspension of licences was invoked as additional punishment?

k. Have Ss. 9 pertaining to resumption/suspension of grants by government and 10A dealing with collective fine, granting penal powers to the Government been invoked ever?

l. What measures have been taken by the states under S. 15A (Duties of the State Government-legal aid, supervision, special courts, committees, periodic survey, identification of untouchability prone areas, tabling the annual reports) of the Act?

m. Explain

n. Has there been any trial or conviction of a public servant for neglecting the investigation of any offence under the Act under s. 10? (Yes/No)

o. If yes explain.

p. Was any compensation paid to the victims? Was a fine imposed on the accused?

q. Are there the adequate number of special courts in your state under PCRA?

r. Do you have any suggestions to improve this situation?

THE PROTECTION OF CIVIL RIGHTS ACT, 1955

An Act to prescribe punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising therefore and for matters connected therewith.

Short title, extent and commencement

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

- 1 (1) This Act may be called (the Protection of Civil Rights Act), 1955.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notifications in the Official Gazette appoint.

Definition

2. In this Act, unless the context otherwise requires: -

- (a) "Civil rights" means any right accruing to a person by reason of the abolition of "untouchability" by article 17 of the Constitution;
 - (aa) "Hotel" includes a refreshment room, a boarding house, a lodging house, a coffee house and a café;
- (b) "Place" includes a house, building and other structure and premises; and also includes a tent, vehicle and vessel;)
- (c) "Place of public entertainment" includes any place to which the public are admitted and in which an entertainment is provided or held.

Explanation -"Entertainment" includes any exhibition, performance, game, sport and other form of amusement;

(d) "Place of public worship" means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein; and includes-

- (i) All lands and subsidiary shrines appurtenant attached or to any such place;

(ii) A privately owned place of worship which is, in fact, allowed by the owner thereof to be used as a place of public worship, and

(iii) Such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;)

(da) "Prescribed" means prescribed by rules made under this Act;

(db) "Scheduled castes" has the meaning assigned to it in clause (24) of article 366 of the Constitution;)

(e) "Shop" means any premises where goods are sold either wholesale or by retail or both wholesale and by retail and includes-

(i) Any place from where goods are sold by a hawker or vendor or from a mobile van or cart,

(ii) A laundry and a hair cutting saloon;

(iii) Any other place where services are rendered to customers.

Punishment for enforcing religious disabilities

3. Whoever on the ground of "untouchability" prevents any person-

(a) from entering any place of public worship which is open to other persons professing the same religion or any section thereof, as such person; or

(b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in or using the waters of, any sacred tank, well, spring or water-course (river or lake or bathing at any ghat of such tank, water-course, river or lake) in the same manner and to the same extent as is permissible to other persons professing the same religion or any section thereof, as such person;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupee

Explanation- For the purpose of this section and section 4 persons professing the buddhist, Sikh or Jain religion or persons professing the Hindu religion in any of its forms or development including Virashaivas, Lingayats, Adivasis, followers of Brahma, Prarthana, Arya Samaj and the Swaminarayan Sampraday shall be deemed to be Hindus.

Punishment for enforcing social disabilities

4. Whoever on the ground of "untouchability" enforces against any person any disability with regard to-

- (i) access to any shop, public restaurant, hotel or place of public entertainment; or
- (ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dharmshala, sarai or musafirkhana for the use of the general public or of any section thereof; or
- (iii) the practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or
- (iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or any section thereof, have a right to use or have access to; or
- (v) the use of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public or any section thereof ; or
- (vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of any section thereof; or
- (vii) the use of, or access to, any public conveyance; or
- (viii) the construction, acquisition or occupation of any residential premises in any locality, whatsoever; or
- (ix) the use of any dharmshala, sarai or musafirkhana which is open to the general public, or to any section thereof; or
- (x) the observance of any social or religious custom, usage or ceremony or taking part in, or taking out, any religious, social or cultural procession; or
- (xi) the use of jewelry and finery;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees

Explanation- For the purposes of this section, "enforcement of any disability" includes any discrimination on the ground of "untouchability"

Punishment for refusing to admit persons to hospital, etc.

5. Whoever on the ground of "untouchability"-

- (a) refuses admission to any person to any hospital dispensary, educational institution or any hostel, if such hospital, is plenary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or

(b) does any act which discriminates against any such person after admission to any of the aforesaid institution;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees

Punishment for refusing to sell goods or render services

6. Whoever on the ground of "untouchability" refuses to sell any goods or refuses to render any service to any person at the same time and place and on the same terms and conditions at or on which such goods are sold or services are rendered to other persons in the ordinary course of business shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Punishment for other offence arising out of "untouchability"

7. (1) Whoever-

(a) prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under article 17 of the Constitution; or

(b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests, injures, annoys or boycotts any person by reason of his having exercised any such right; or

(c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practice "untouchability" in any form whatsoever; or

(d) insults or attempts to insult, on the ground of "untouchability" a member of a Scheduled Caste,

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees

Explanation-I A person shall be deemed to boycott another person who-

(a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the

terms on which such things would be commonly done in the ordinary course of business; or

(b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

Explanation-II.- For the purpose of clause (c) a person shall be deemed to incite or encourage the practice of "untouchability"-

(i) if he, directly or indirectly, preaches "untouchability" or its practice in any form; or

(ii) if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of "untouchability" in any form

(1A) Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition of "untouchability" under article 17 of the constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

(2) Whoever-

(i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person, on the ground that such person has refused to practice "untouchability" or that such person has done any act in furtherance of the objects of this Act.

shall be punishable with imprisonment for a terms of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees

Unlawful compulsory labour when to be deemed to be a practice of untouchability.

7A. (1) Whoever compels any person, on the ground of "untouchability" to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umb ilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of "untouchability"

(2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation- For the purposes of this section, "compulsion" includes a threat of social or economic boycott

Cancellation or suspension of licenses in certain cases

8. When a person who is convicted of an offence under section 6 holds any license under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may, without prejudice to any other penalty to which such person may be liable under that section, direct that the license shall stand cancelled or be suspended for such period as the court may deem fit, and every order of the court so canceling or suspending a license shall have effect as if it had been passed by the authority competent to cancel or suspend the license under any such law.

Explanation:- In this section, "license" includes a permit or a permission

Resumption or suspension of grants made by Government.

9. Where the manager or trustee of a place of public worship or any educational institution or hostel which is in receipt of a grant of land or money from the government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

Abetment of offence.

10. Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence.

Explanation:- A public servant who willfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act.

Power of State Government to impose collective fine.

10A (i) If, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in, or abetting the commission of, any offence punishable under this Act, or harboring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government's judgement of the respective means of such inhabitants and in making any such apportionment the State Government may assign a apportion of such fine to a Hindu undivided family to be payable by it:

Provided that the fine apportioned to an inhabitant shall not be realised until the petition, if any, filed by him under sub-section(3) is disposed of.

(2) The notification made under sub-section(1) shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.

(3) (a) Any person aggrieved by the imposition of the collective fine under sub-section(1) or by the order of apportionment, may, within the prescribed period, file a petition before the State Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order of apportionment:

Provided that no fee shall be charged for filing such petition.

(b) The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of the fine exempted or reduced under this section shall not be realizable from any person, and the total fine imposed on the inhabitants of an area under sub-section (1) shall be deemed to have been reduced to that extent.

(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt the victims of any offence punishable under this Act or any person who does not, in its opinion, fall within the category of persons specified in sub-section (1), from the liability to pay the collective fine imposed under sub-section (1) or any portion thereof.

2 of 1974

(5) The portion of collective fine payable by any person (including a Hindu undivided family) may be recovered in the manner provided by the Code of Criminal Procedure, 1973 for the recovery of fines imposed by a Court as if such portion were a fine imposed by a Magistrate.

Enhanced penalty on subsequent conviction

11. Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, shall, on conviction, be punishable-

(a) For the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall not be less than two hundred rupees and not more than five hundred rupees

(b) For the third offence or any offence subsequent to the third offence, with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.

Presumption by courts in certain cases

12. Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste the court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability".

Limitation of jurisdiction of civil courts.

13.(1) No civil court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of "untouchability"

Offences by companies

14. (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: - For the purposes of this section-

(a) "company" means any body, corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Protection of action taken in good faith

(14A) (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or a State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Offences to be cognizable and tribal summarily

15.

2 of 1974

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable and every such offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a Judicial Magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the said code.

2 of 1974

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence of abetment except with the previous sanction-

(a) of the Central Government, in the case of a person employed in connection with the affairs of the Union; and

(b) of the State Government, in the case of a person employed in connection with the affairs of a State.

Duty of State Government to ensure that the concerned persons may avail of the rights accruing from the abolition of 'Untouchability'

15A. (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 ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by, the persons subjected to any disability arising out of "untouchability"

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include-

- (i) the provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of "untouchability" to enable them to avail themselves of such rights;
- (ii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
- (iii) the setting up of special courts for the trial of offences under this Act;
- (iv) the setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;
- (v) 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.
- (vi) the identification of the areas where persons are under any disability arising out of "untouchability" and adoption of such measures as would ensure the removal of such disability from such areas.

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

Act to override other laws.

16. Save as otherwise expressly 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 or any decree or order of any court or other authority.

20 of 1958 Probation of Offenders Act, 1958 not to apply to persons above age of fourteen years.

16A. The provisions of the Probation of Offenders Act, 1958, shall not apply to any person above the age of fourteen years who is found guilty of having committed any offence punishable under this Act.

Power to make rules

16B. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government 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, 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 the rule.)

Repeal

17. The enactment specified in the Schedule are hereby repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

THE SCHEDULE
(See section 17)

1. The Bihar Harijan (Removal of Civil Disabilities) Act, 1949 (Bihar Act XIX of 1949).
2. The Bombay Harijan (Removal of Social Disabilities) Act, 1946 (Bombay Act X of 1974).
3. The Bombay Harijan Temple Entry Act, 1947 (Bombay Act XXXV of 1974).
4. The Central Provinces and Berar Scheduled Castes (Removal of Civil Disabilities) Act, 1947 (Central Provinces and Berar Act XXIV of 1947).
5. The Central Provinces and Berar Temple Entry Authorisation Act, 1947 (Central Provinces and Berar Act XIII of 1947).
6. The East Punjab (Removal of Religious and Social Disabilities) Act, 1948 (East Punjab Act XVI of 1948).
7. The Madras Removal of Civil Disabilities Act, 1938 (Madras Act XXI of 1938).
8. The Orissa Removal of Civil Disabilities Act, 1946 (Orissa Act XI of 1946).
9. The Orissa Temple Entry Authorisation Act, 1948 (Orissa Act XI of 1948).
10. The United Provinces Removal of Social Disabilities Act, 1947 (U.P. Act XIV of 1947).
11. The West Bengal Hindu Social Disabilities Removal Act, 1948 (West Bengal Act XXXVII of 1948).
12. The Hyderabad Harijan Temple Entry Regulation, 1358F (No.LV of 1358F Fasli).
13. The Hyderabad Harijan (removal of Social Disabilities) Regulation, 1358F (No.LVI of 1358F Fasli).
14. The Madhya Bharat Harijan Ayogta Nivaran Vidhan, Samvat 2005 (Madhya Bharat Act No.15 of 1949).
15. The Removal of Civil Disabilities Act, 1943 (Mysore Act XLII of 1943).
16. The Mysore Temple Entry Authorisation Act, 1948 (Mysore Act XIV of 1948).
17. The Saurashtra Harijan (Removal of Social Disabilities) Ordinance (No.XL of 1948).
18. The Travancore-Cochin Removal of Social Disabilities Act, 1125 (Travancore-Cochin Act VIII of 1125).
19. The Travancore-Cochin Temple Entry (Removal of Disabilities Act, 1950 (Travancore Cochin Act XXVII of 1950).

20. The Coorg Scheduled Castes (Removal of Civil and Social Disabilities) Act, 1949 (Coorg Act I of 1949).
21. The Coorg Temple Entry Authorisation Act, 1949 (Coorg Act II of 1949).

Annexure II b

THE PROTECTION OF CIVIL RIGHTS

RULES, 1977

S.O. 3006-DATED 15TH September, 1977- In exercise of the powers conferred by section 16-B of the Protection of Civil Rights Act, 1955 (22 of 1955), the Central Government hereby makes the following rules namely: -

1. Short title and commencement-

- (1) These rules may be called the **Protection of Civil Rights Rules, 1977.**
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition-In these rules unless the context otherwise requires-

- (a) 'Act' means the Protection of Civil Rights Act, 1955 (22 of 1955);
- (b) "Section" means a section of the Act.

3. Manner of Inquiry under sub-section (1) of Section 10-A.

- (1) The State Government may appoint an officer not below the rank of a Sub-divisional Magistrate for the purpose of making an inquiry referred to in sub-section (1) of section 10-A.
- (2) The Officer appointed under sub-rule (1) (hereinafter in this rule referred to as the inquiry officer) shall issue public notice specifying the date, time, place and the purpose of such inquiry and calling upon all the residents of the area in respect of which the inquiry is to be held to furnish such information and materials including documents in their possession, as may be relevant for the purposes of the enquiry, or
- (3) The public notice referred to in sub-rule (2) shall be in the local language or languages of the area and the same shall be;-
 - (i) Published on the notice board in the offices of the District Magistrate, the District Superintendent of Police, the Village Panchayat or Municipal Committee of the area and such other places as the inquiry officer deems fit and at least in one daily newspaper circulating in the area; and
 - (ii) Proclaimed in the area by beat of drum or in such other manner as the inquiry officer may think best in the circumstances to bring the

contents of the public notice to the notice of the inhabitants of the area.

(4) The inquiry officer, while making such inquiry shall follow as nearly as practicable, the procedure for summary trials including the recording of evidence as laid down in Chapter XXI of Code of Criminal Procedure, 1973,2 of 1974).

(5) The inquiry officer shall complete the inquiry as expeditiously as possible and submit his report to the State Government within such period, not exceeding six weeks as may be specified by the State Government in the order appointing the inquiry officer.

Provided that the State Government may having regard to the nature of the inquiry, extend the period of submission of the report by such period not exceeding two months in total as it may consider necessary.

4. Period for filing a petition under sub-section (3) of Section 10-A.

Any person aggrieved by the imposition of a collective fine under sub-section (1) of section 10-A or by the order of appointment, may within a period of thirty days from the date of proclamation of the notification under sub-section (2) of that section file a petition before the State Government or the authority specified by it:

Provided that where the State Government or the authority, as the case may be, may entertain the petition after the expiry of the said period if it is satisfied that the petitioner was prevented by sufficient cause from filing the petition in time.

(2) The State Government or the authority before which the petition is filed shall dispose off the petition as expeditiously as possible.

5. Report by the State Government

Every State Government shall, for the purpose of enabling the Central Government, place the report referred to in sub-section (4) of Section 15-A on the Table of each House of Parliament, furnish to the Government before the 15th day of February each year, a summary of the measures taken by it under sub-section (1) and (2) of that section during the preceding calendar year and shall also furnish such other information as maybe required by the Central Government from time to time.

Annexure II c

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 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 Court 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-1

PRELIMINARY

1. (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. (1) In this Act, unless the context otherwise requires-

(a) "Atrocity" means an offence punishable under section 3;

(b) "Code" means the Code of Criminal Procedure, 1973;

(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 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. (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 Castes or a Scheduled Tribes to do 'begar' or other similar forms of forced or bonded labour 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 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 Castes 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 Tribes 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 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 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. Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully 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. 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. Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code, 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. (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 realisation of any fine imposed under this Chapter.

8. 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 sequel to any existing dispute regarding land or any other matter, it shall be presumed that offence was committed in furtherance of the common intention or in prosecution of the common object.

9. (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 may be, 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 there under.

(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

EXTERNNMENT

10. (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. (1) If a person to whom a direction has been issued under section 10 to remove him self 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. (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 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 his 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.

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

13. 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. 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 offences under this Act.

15. 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. The provisions of section 10A of the Protection of Civil Rights Act, 1955, shall, so far as may be, apply for the purposes of imposition and realisation of collective fine and for all other matters connected therewith under this Act.

17. (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 inquiry 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 tranquility 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. 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. The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 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. 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. (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) provisions 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 maybe 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. 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. (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; show however, that any such modification annulment shall be without prejudice to the validity of anything previously done under that rule.

**V.S. RAMA DEVI ,
Secy. to the Govt. of India**

Annexure II d

Rules 1995
Scheduled Tribes (Prevention of Atrocities) Act, 1989
31st March, 1995

NOTIFICATION

G.S.R. 316 (E). - In exercise of the powers conferred by sub-section (1) of Section 23 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), the Central Government hereby makes the following rules, namely: -

1.SHORT TITLE AND COMMENCEMENT: (1) These rules may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. DEFINITIONS: In these rules, unless the context otherwise requires: -

- (a) "Act" means the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989);
- (b) "Dependent", with its grammatical variations and cognate expressions, includes wife, children, whether married or unmarried, dependent parents, widowed sister, widow and children of pre-deceased son of a victims of atrocity;
- (c) "Identified area" means such area where State Government has reason to believe that atrocity may take place or there is an apprehension of reoccurrence of an offence under the Act or an area prone to victim of atrocity;
- (d) "Non Government Organisation" means a voluntary organisation engaged in the welfare activities relating to the Scheduled Castes and the Scheduled Tribes and registered under the Societies Registration Act, 1866 (21 of 1866) or under any law for the registration of documents or such organisation for the time being in force;
- (e) "Schedule" means the Schedule annexed to these rules;
- (f) "Section" means section of the Act;
- (g) "State Government", in relation to a Union Territory, means the Administrator of that Union Territory appointed by the President under Article 239 of the Constitution;
- (h) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

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 licenses of the persons, not being member of the Scheduled Castes or the 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 licenses 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 ;
- (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 organising 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.

4. SUPERVISION OF PROSECUTION AND SUBMISSION OF REPORT: -

(1) The State Government on the recommendation of the District Magistrate shall prepare for each District panel of such number of eminent senior advocates who has been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts. Similarly, in consultation with the Director Prosecution in-charge of the prosecution, a panel of such number of Public Prosecutors as it may deem necessary for conducting cases in the Special Courts, shall also be specified. Both these panels shall be notified in the Official Gazette of the State and shall remain in force for a period of three years.

(2) The District Magistrate and the Director of prosecution/in-charge of the prosecution shall review at least twice in a calendar year, in the month of January and July, the performance of Special Public Prosecutors so specified or appointed and submit a report to the State Government.

(3) If the State Government is satisfied or has reason to believe that a Special Public Prosecutor so appointed or specified has not conducted the case to the best of the ability and with due care and caution, his name may be, for reasons to be recorded in writing, denotified.

(4) The District Magistrate and the officer-in-charge of the prosecution at the District level, shall review 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. This report shall specify the action taken/proposed to be taken in respect of investigation and prosecution of each case.

(5) Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary, or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts on such payment of fee as he may consider appropriate.

(6) Payment of fee to the Special Public Prosecutor shall be fixed by the State Government on a scale higher than the other panel advocates in the State.

5. INFORMATION TO POLICE OFFICER IN-CHARGE OF A POLICE STATION:

(1) Every information relating to the commission of an offence under the Act, if given orally to an officer in-charge of a police station shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.

(2) A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the

officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by that the police station.

6. SPOT INSPECTION BY OFFICERS:

(1) Whenever the District Magistrate or the sub-Divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of Deputy Superintendent of Police receives an information from any person or upon his own knowledge that an atrocity has been committed on the members of the Scheduled Castes or the Scheduled Tribes within his jurisdiction, he shall immediately himself visit the place of occurrence to assess the extent of atrocity, loss of life, loss and damage to the property and submit a report forthwith to the State Government.

(2) The District Magistrate or the sub-Divisional Magistrate or any other executive Magistrate and the Superintendent of Police, Deputy Superintendent of Police after inspecting the place or area shall on the spot: -

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

7. INVESTIGATING OFFICER

(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) 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 shall review by the end of every quarter the position of all investigations done by the investigating officer.

8. SETTING UP OF THE SCHEDULED CASTES AND THE SCHEDULED TRIBES PROTECTION CELL

(1) The State Government shall set up Scheduled Castes and the Scheduled Tribes Protection Cell at the State head quarter under the charge of Director of Police/Inspector General police. This Cell shall be responsible for: -

- (i) Conducting survey of the identified area;
- (ii) Maintaining public order and tranquility in the identified area;
- (iii) Recommending to the State Government for deployment of special police force or establishment of special police post in the identified area;
- (iv) Making investigations about the probable causes leading to an offence under the Act;
- (v) Restoring the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes;
- (vi) Informing the nodal officer and special officer about the law and order situation in the identified area;
- (vii) Making enquiries about the investigation and spot inspections conducted by various officers;
- (viii) Making enquiries about the action taken by the Superintendent of Police in the cases where an officer in -charge of the police station has refused to enter and information in a book to be maintained by that police station under sub-rule (3) of rule 5;
- (ix) Making enquiries about the willful negligence by a public servant;
- (x) Reviewing the position of cases registered under the Act; and
- (xi) Submitting a 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 in respect of the above.

NOMINATION OF NODAL OFFICER

The State Government shall nominate a nodal officer of the level of a Secretary to the State Government preferably belonging to the Scheduled Castes or the Scheduled Tribes, for coordinating the functioning of the District Magistrates and Superintendent of Police or the offices authorised by them investigating officers and other officers responsible for implementing the provisions of the Act. By the end of the every quarter, the nodal officer shall review; -

- (i) the reports received by the State Government under sub-rule (2) and (4) of rule 4, rule 6, clause (xi) of rule 8.

- (ii) the position of cases registered under the Act;
- (iii) law and order situation in the identified area;
- (iv) various kinds of measures adopted for providing immediate relief in cash or kind or both to the victims of atrocity or his or her dependent;
- (v) adequacy of immediate facilities like rationing, clothing, shelter, legal aid, travelling allowance, daily allowance, and transport facilities provided to the victims of atrocity or his/her dependants;
- (vi) performance of non-Governmental organisations, the Scheduled Castes and the Scheduled Tribes Protection Cell, various committees and the public servants responsible for implementing the provisions of the Act.

10. APPOINTMENT OF A SPECIAL OFFICER

In the identified area a Special Officer not below the rank of a Additional District Magistrate, Superintendent of Police or other officers responsible for implementing the provisions of the Act, various committees and the Scheduled Castes and the Scheduled Tribes Protection Cell. The Special Officer shall be responsible for:

- (i) providing immediate relief and other facilities to the victims of atrocity and initiate necessary measures to prevent or avoid re-occurrence of atrocity ;
- (ii) setting up an awareness centre and organising workshop in the identified area or at the district head quarters to educate the persons belonging to the Scheduled Castes and Scheduled Tribes about their rights and the protection available to them under the provisions of various Central and State enactments or rules and schemes etc. framed therein ;
- (iii) co-ordinating with the non Governmental organisations and providing necessary facilities and financial and other type of assistance to non-Governmental Organisation for maintaining centres or organising workshops ;

11. TRAVELLING ALLOWANCE DAILY ALLOWANCE MAINTENANCE EXPENSES AND TRANSPORT FACILITIES TO THE VICTIM OF ATROCITY, HIS OR HER DEPENDENT AND WITNESSES

(1) Every victim of atrocity or his/her dependent and witnesses shall be paid to and fro rail fare by second class in express/mail/passenger train or actual bus or taxi fare from his /her place of residence or actual bus or taxi fare from his/her place of residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.

(2) The District Magistrate or the sub-Divisional Magistrate or any other Executive Magistrate shall make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the investigating officer, Superintendent of Police, Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate.

(3) Every women witness, the victim of atrocity or her dependent being a woman or a minor, a person more than sixty years of age and a person having 40 percent or more disability shall be entitled to be accompanied by an attendant of her/his choice. The attendant shall also be paid travelling and maintenance expenses as applicable to the witness or the victim of atrocity when called upon during hearing, investigation and trial of an offence under the Act.

(4) The witness, the victims of atrocity or his/her dependent and the attendant shall be paid daily maintenance expenses, for the days he/she is away from the place of his /her residence or stay during investigation, hearing and trial of an offence, of such rates but not less than the minimum wages, as may be fixed by the State Government for the agricultural labourers.

(5) In addition to daily maintenance expenses the witness, the victim of atrocity (or his/her dependant) and the attendant shall also be paid diet expenses at such rates as may be fixed by the State Government from time to time.

(6) The payment of travelling allowances, daily allowance, maintenance expenses and reimbursement of transport facilities shall be made immediately or not later than three days by the District Magistrate or the Sub-divisional Magistrate or any other Executive Magistrate to the victims that dependants attendant and witnesses for the days they visit the investigating officer or in-charge police station or hospital authorities or Superintendent of Police/Deputy Superintendent of Police or District Magistrate or any other officer concerned or the Special Court.

(7) When an offence has been committed under Section 3 of the Act, the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall reimburse the payment of medicines, special medical consultation, blood transfusion, replacement of essential clothing, meals and fruits provided to the victim (s) of atrocity.

12. MEASURES TO BE TAKEN BY THE DISTRICT ADMINISTRATION:

(1) The District Magistrate and the Superintendent of Police shall visit the place or area where the atrocity has been committed to assess the loss of life and damage to the property and draw a list of victim their family members and dependents entitled for relief.

(2) Superintendent of Police shall ensure that the First information Report is registered in the book of the concerned police station and effective measures for apprehending the accused are taken.

(3) The Superintendent of Police, after spot inspection, shall immediately appoint an investigation officer and deploy such police force in the area and take such other preventive measures as he may deem proper and necessary.

(4) The District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the schedule annexed to these Rules (Annexure-1). Such immediate

relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for human beings.

(5) The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.

(6) The relief and rehabilitation facilities mentioned in sub-rule (4) above shall be provided by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate in accordance with the scales provided in the Schedule annexed to these rules.

(7) A report of the relief and rehabilitation facilities provided to the victims shall also be forwarded to the Special Court by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police. In case the Special Court is satisfied that the payment of relief was not made to the victim or his/her dependent in time or the amount of relief or compensation was not sufficient or only a part of payment of relief or compensation was made, it may order for making in full or part the payment of relief or any other kind of assistance.

(13) SELECTION OF OFFICERS AND OTHER STAFF MEMBERS FOR COMPLETING THE WORK RELATING TO ATROCITY:

(1) The State Government shall ensure that the administrative officers and other staff members to be appointed in an area prone to atrocity shall have the right aptitude and understanding of the problems of the Scheduled Castes and the Scheduled Tribes.

(2) It shall also be ensured by the State Government that person from the Scheduled Castes and the Scheduled Tribes are adequately represented in the administration and in the police force at all levels, particularly at the level of police posts and police station.

14. SPECIFIC RESPONSIBILITY OF THE STATE GOVERNMENT

The State Government shall make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocity. It shall review at least twice in a calendar year, in the month of January and July the performance of the Special Public Prosecutor specific or appointed under Section 15 of the Act, various reports received, investigation made and preventing steps taken by the District magistrate, Sub-Divisional Magistrate and Superintendent of Police, relief and rehabilitation facilities provided to the victims and the reports in respect of lapses on behalf of the concerned officers.

15. CONTINGENCY PLAN BY THE STATE GOVERNMENT

(1) The State Government shall prepare a model contingency plan for implementing the provisions of the Act and notify the same in the Official Gazette of the State Government. It should specify the role and responsibility of various departments and their officers at different levels, the role and responsibility of various departments and their officers at different levels, the role and responsibility of Rural/Urban, Local Bodies and Non-Government Organisations. Inter alia this plan shall contain a package of relief measures including the following:

- (a) Scheme to provide immediate relief in cash or in kind or both;
- (b) Allotment of agricultural land and house sites;
- (c) The rehabilitation packages;
- (d) Scheme for employment in Government or Government undertaking to the dependant or one of the family members of the victim ;
- (e) Pension scheme for widows, dependant children of the deceased, handicapped or old age victims of atrocity.
- (f) Mandatory compensation for the victims ;
- (g) Scheme for strengthening the socio-economic condition of the victim ;
- (h) Provisions for providing brick/stone masonry house to the victims;
- (i) Such other elements as health care, supply of essential commodities, electrification, adequate drinking water facility burial/cremation ground and link roads to the Scheduled Castes and the Scheduled Tribes habitats.

(2) The State Government shall forward a copy of the contingency plan or a summary thereof and a copy of the scheme, as soon as may be, to the Central Government in the Ministry of Welfare and to all the District Magistrates, Sub-Divisional Magistrates. Inspectors General of Police and Superintendents of Police.

16. CONSTITUTION OF STATE-LEVEL VIGILANCE AND MONITORING COMMITTEE

(1) The State Government shall constitute a high power vigilance and monitoring committee of not more than 25 members consisting of the following:

- (i) Chief Minister/Administrator-Chairman (in case of a State under President's Rule Governor-Chairman)
- (ii) Home Minister, Finance Minister and Welfare Minister- Members (in case of a State under the President's Rule Advisors-Members).
- (iii) All elected Members of Parliament and State Legislative Assembly and

Legislative Council from the State belonging to the Scheduled Castes and Scheduled Tribes-Members.

- (iv) Chief Secretary, the Home Secretary, the Director General of Police, Director/Deputy Director National Commission for Scheduled Castes and the Scheduled Tribes-Members.
- (v) The Secretary in-charge of the Welfare and Development of the Scheduled Castes and the Scheduled Tribes-Convenor

(2) The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers/agencies responsible for implementing, the provisions of the Act and various reports received by the State Government.

17. CONSTITUTION OF DISTRICT LEVEL VIGILANCE AND MONITORING COMMITTEE

(1) In each district within the State, the District Magistrate shall set up a vigilance and monitoring committee in his district to review the implementation of the provisions of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers/agencies responsible for implementing the provisions of the Act and various reports received by the District Administration.

(2) The district level vigilance and monitoring committee shall consist of the elected Members of the Parliament and State Legislative Assembly and Legislative Assembly and Legislative Council, Superintendent of Police, three group 'A' officers/Gazetted officers of the State Government belonging to the Scheduled Castes and the Scheduled Tribes, not more than 5 non- official Members belonging to the Scheduled Castes and the Scheduled Tribes and not more than 3 members from the categories other than the Scheduled Castes and the Scheduled Tribes having association with Non-Government Organisations. The District Magistrate and District Social Welfare Officer shall be Chairman and Member Secretary respectively.

(3) The district level committee shall meet at least once in three months.

18. MATERIAL FOR ANNUAL REPORT

The State Government shall every, before the 31st March, forward the report to the Central Government about the measures taken for implementing provisions of the Act and various schemes plans framed by it during the previous calendar year.

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GANGA DAS
Joint Secretary