

# JUSTICE UNDER TRIAL

Caste Discrimination  
in Access to Justice  
before Special Courts



National Dalit Movement for Justice (NDMJ) - NCDHR  
New Delhi



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## CASTE DISCRIMINATION IN ACCESS TO JUSTICE BEFORE SPECIAL COURTS

Dr Jayshree Mangubhai

Adv Rahul Singh



National Dalit Movement for Justice (NDMJ) - NCDHR  
New Delhi

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### Caste Discrimination in Access to Justice before Special Courts

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# CONTENTS

Acknowledgements	v
Preface	vii
Note of Appreciation	xi
Foreword, <i>(P. S. Krishnan)</i>	xiii
Foreword, <i>(Farah Naqvi)</i>	xxiii
Glossary & Abbreviations	xxv
Introduction	1
<b>CHAPTER 1</b>	
Legal Standards and Guidelines for Criminal Trials	19
<b>CHAPTER 2</b>	
Overall Functioning of the Special Courts	37
<b>CHAPTER 3</b>	
Access to Justice through Special Courts: Obstructive and Facilitative Factors	73
<b>CHAPTER 4</b>	
Conclusions and Recommendations	111
Bibliography	126
Annexures	131



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# PREFACE

**Dr. VA Ramesh Nathan**

*General Secretary*

National Dalit Movement for Justice - NCDHR

“...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 untouchability; to accord to the Dalits and the Tribes right to equality, social integration a fruition and make fraternity a reality.....”-  
State Of Karnataka vs Appa Balu Ingale and Others, Justice K. Singh and K Ramaswamy, Supreme Court of India, dated 01/12/1992

The significance of establishing Special Courts under SCs and STs (PoA) Act is not only to introduce a system to deal with the issue of atrocity against Dalit and Adivasis, but also to promote speedy disposal of cases. Apart from designated special courts, some of the states have constituted Exclusive Special Courts to deal with increasing cases of atrocities. There are both Exclusive and Designated Courts in some States but majority of the States have only designated courts which take up cases of atrocities. In the States where the incidents of atrocities are high, for example Tamil Nadu and Andhra Pradesh, both Exclusive and Designated Special Courts function. But despite the new court systems introduced to deal with atrocity cases, delay in trial and right of

Dalit and Adivasis victim and witnesses to participate in judicial trial remains one of the major problems, as also seen in this study.

There are many reasons for this concern– under-utilization of the Act as well as poor investigations and prosecutions of genuine atrocity cases; denial of the right to speedy trial; absence of Exclusive Special Courts, inadequate court personnel, absence of prosecution witnesses, delay tactics by the defense, denial of the right to relevant and accurate information, denial of proper space for Dalit and Adivasis victims to participate in criminal trials, denial of the right to security of life and equal protection of the law and fair hearing and multiplicity of grounds in the judgments taking priority over the intent of the Act and the merits of the case etc. This indifference and lack of concern towards the victims and witnesses by the Criminal Justice System is also reflected in the Code of Criminal Procedure, which has no special provisions specifying the role of victims during criminal proceedings or any provisions to protect and enhance the rights and interest during their interaction with the Criminal Justice System.

All these reasons, in some or other way influence the effectiveness of the system. Further, it undermines the reliability and credibility of the system. This also dilutes the strength of the prosecution. In the absence of protection mechanisms, victim and witness, burdened with the duration of the proceedings and repeated court appearances, either tend to compromise, turns hostile, refuse to cooperate or are no longer capable of contributing to the evidence because of the prolonged trial between the occurrence of the offence and the court hearing. Delay also adversely affects the motivation of the victims and witnesses of the penal system. The longer the proceedings run, the lower their motivation in clearing a case.

The present study is conducted in five States with findings, leading to important recommendations for the reforms in the Criminal Administrative Systems, particularly the judiciary. Some of the key findings of the report are – amendments to the PoA Act to include important provisions for strengthening the effective enforcement of the Act, enforcing the Ministry of Home Affairs advisories for curbing crimes against SCs/STs, free atmosphere for victims and

witnesses to depose, creating guidelines for effective functioning of Special Courts, effective monitoring of trial processes before special courts etc. The findings lead us to further look at the overall performance of these courts all over the country and study the obstructive factors for delay in the criminal justice system particularly the special courts and judiciary, and the impact of establishment of the Special Courts on the finalization of cases of atrocities. The study brings to fore the need for building of a protective and supportive environment through the additional mandates, guidelines and mechanisms in the judicial system to build confidence in vulnerable sections in their fight for justice. The work is valuable in collating the many obstacles victims and witnesses faces during the trial and gives us a valuable set of recommendations to move forward.

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**Anandkumar Bolimera**

*Country Representative*

Christian Aid, UK

*“Justice too long delayed is justice denied”* by Martin Luther King Jr.

I must appreciate NDMJ - NCDHR for the production of this well-researched report that goes beyond the statistics on conviction and acquittal rates to examine the process of accessing justice for Scheduled Caste and Scheduled Tribe victims/survivors of atrocities. Twenty-five years have passed since the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989. Many Dalit civil society organisations and human rights organisations have been engaged in monitoring this Act and exposing the discrimination and other challenges faced by victims/survivors and witnesses of atrocities as they attempt to access legal remedies. Most of this focus has been on the functioning of the police as well as the district administration, where a large number of obstacles exist regarding the registration and investigation of cases, as well as undertaking relief and rehabilitation. The process of trials in the Special Courts specifically created to mete out speedy justice to these victims/survivors has not received equal attention, despite the abysmal conviction rate for cases registered under POA.

This study, therefore, is a significant step forward in terms of enhancing our knowledge of the justice dispensation process, the actions of various court actors and the ways in which caste discrimination pervades the judicial system. As such, it will surely serve as a wakeup call to those within the criminal justice system as well as a useful tool for civil society organisations and human rights defender committed to ensuring equality in legal justice in the country.

With the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendments through Presidential Ordinance on 4 March 2014, the monitoring of these Special Courts becomes even more necessary. The Ordinance, which hopefully will eventually pave the way for Parliament to pass the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, mandates the creation of exclusive special courts, which have the power to directly take cognisance of atrocities and which will dispose of atrocity cases within stipulated timeframes. The stage is therefore set for enhancing access to justice for Scheduled Castes and Scheduled Tribes across the country. This demands that adequate attention be placed on establishing robust monitoring and protective mechanisms in the judicial system to ensure victims/survivors from some of the most marginalised sections of society enjoy their basic rights to security of life and equality before the law. The time has come for the judiciary to review its justice dispensation process and ensure speedy delivery of justice and also send a right message to curtail the growing culture of impunity. There is a greater need to build a critical mass of social justice lawyers, paralegals and connect them with human rights defenders and human rights organisations for better coordination and improved access to justice.

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# FOREWORD

## **P. S. Krishnan**

*Chief Advisor,*

National Coalition for Strengthening the POA Act and its Implementation  
Former Secretary, Govt. of India

Former Member, National Commission for Scheduled Castes & Scheduled Tribes;  
Former Special Commissioner for Scheduled Castes & Scheduled Tribes;  
Former Member-Secretary, National Commission for Backward Classes;  
Former Member, Expert Committee on Backward Classes;  
Chairman, Sub-Group on “Perspective Planning for Development of SCs” of the  
Planning Commission’s Working Group on SCs in the XII Plan;

The present book under the evocative and eloquent title “**Justice under Trial**” by Dr. Jayshree Mangubhai & Rahul Singh is the commendable outcome of the laborious and painstaking work of the authors and their associates. The authors belong to the National Dalit Movement for Justice which is part of the National Coalition for Strengthening the POA Act and its Implementation and was a prime mover in the establishment of the National Coalition which consists now of about 500 Dalit civil society and human rights-oriented civil society organisations (as contra-distinct from the “general” civil society organisations which are generally indifferent to the rights of Dalits and Adivasis,

ie., Scheduled Casts and Scheduled Tribes including their most basic Right to Life under Article 21 of our Constitution).

In order to appreciate the significance of this effort and this book it is necessary to understand the problem of Atrocities against Dalits and Adivasis – SCs and STs, and the circumstances under which the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (the POA Act) and the recent Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 dated 4<sup>th</sup> March, 2014 came into existence.

In my article titled “Atrocities Against Dalits: Retrospect and Prospect” (Combat Law, Vol. 8, Issue 5 & 6, Sept.-December, 2009), I have explained the problem and genesis of Atrocities on SCs and STs. This is one of the manifestations of the Indian Caste System (ICS) which was the social structure, system and frame that evolved as an effective instrument to impose the burden of agricultural labour and other labour on the masses of the people, consisting of the SCs and STs and also the Socially and Educationally Backward Classes – with maximum virulence and severity on the SCs – and to corner a monopoly or near-monopoly of the advantages and privileges of society and economy and polity for a privileged minority who belonged to the Socially Advanced Castes (SACs) or “upper” castes or the non-SC, non-ST, non-BC castes (NSCTBCs). As explained in detail in my book *Empowering Dalits for Empowering India: A Road-Map* (Manak Publications, Delhi, 2009), among the main features and effects of the working of the Indian caste system through the centuries till date have been to lock up labourers as labourers, and Agricultural Labour Castes (ALC) as ALC, keeping down SCs in their place and keeping the STs away in remote areas; and to keep both of them in conditions of segregation and demoralization and to deprive / minimise opportunities for their economic, educational and social advancement and upward mobility, retaining a virtual monopoly over superior opportunities in the hands of a small elite drawn from SACs / NSCTBCs.

The coercive mechanism to secure this purpose has been the ICS in its totality and specifically against the SCs the instrumentality of “Untouchability” over the centuries which continues to this day with full virulence. For many centuries the ICS with “Untouchability” was able to operate as the perfect



instrument to keep the “Untouchable” castes and plains tribes under total subjugation as providers of labour for agriculture and other purposes.

The weapon of Atrocities emerged in the modern context when SCs have rejected the ICS ideology and psychology of subservience and thus the efficiency of “Untouchability” as a disciplining instrument has been partly blunted.

The reformist, nationalist and revolutionary movements of the last one and a half centuries and the Ambedkarite movement have instilled a new sense of awareness in the dalits. It became necessary for the dominant classes drawn from Upper Castes or Dominant Upper Castes (more recently, some of the landowning Middle Castes or Dominant Middle Castes too) in different parts of the country to forge new instruments of control. This is how Atrocities, as we know them, made their debut on a large scale in independent India. As the resistance of the dalits has grown, so the frequency and brutal ferocity of Atrocities have grown apace.

In modern times, Atrocities can be traced back to the 19th century in parts of India when the discipline of “Untouchability” began to be challenged by “Untouchables”. Atrocities against SCs and STs in different States gathered momentum after Independence. Under pressure of Dalit MPs, Government of India started monitoring of Atrocities from 1974, and in the case of STs 1981 onwards. There was a flare up of atrocities in and from 1977. I have been deeply associated with the issues of the castes and tribes of the three oppressed classes – SCs, STs and BCs – including “Untouchability” and Atrocities from my teenage and administratively from the beginning of my service in the IAS in 1956. At the national level, I was closely associated with them, and particularly with monitoring and combating of Atrocities from 1978 onwards as Joint-Secretary in the Ministry of Home Affairs in charge of the subject of SCs and BCs. This vantage point gave me the opportunity to take up monitoring of atrocities in a systematic manner and secure certain results like the convictions in Belchi, Pipra, Jettalpur etc., including death sentences in Belchi.

But, atrocities continued with rising ferocity and frequency as basic contradictions, vulnerabilities and causative factors were evaded by the Central and

State Governments for obvious reasons and treatment was mainly symptomatic and palliative instead of the required radical solutions.

Under continued pressure of Dalit MPs and Leaders, the magnitude and gravity of the problem was recognized by Prime Minister Rajiv Gandhi in his announcement from the Red Fort in his Independence Day Address on 15.08.1987 that an Act would be passed, if necessary, to check atrocities. Immediately after this, apparently realizing that my presence was necessary in the context of the Prime Minister's announcement, I was called back from the State and appointed as Special Commissioner for SCs (Constitutional machinery before National Commission for SCs and STs), and resumed my work at the national level for SCs including dealing with atrocities against SCs and STs.

The then Ministry of Welfare (now trifurcated into the Ministry of Social Justice & Empowerment, Ministry of Tribal Affairs and the Ministry of Minority Affairs) was not enthusiastic about a new Act and expressed the view that it would be enough if the PCR Act is tweaked. I pressed the point that it would not be enough but a new and stringent Act is necessary. With the help of the late Dr. B. Shankaranand, the then Minister for Law, and Shri Buta Singh the then Minister for Home, my view prevailed and that is how this Act came into existence as a watershed in the jurisprudence of protection for the Scheduled Castes (SCs) and Scheduled Tribes (STs) and as a legislative instrumentality for their better coverage by the Right to Life under Article 21.

The Act has created a certain measure of confidence in SC and ST that they have a protective cover, but the full impact of the Act has not been available for them on account of deficiencies in the Act which were pointed out by me during meetings for discussing the Bill and in writing, and yet knowingly allowed into the legislation by those in charge of that process, and deficiencies in various aspects of the implementation of the Act, combined with caste-induced attitudinal distortions of those who were in charge of implementation from time to time at different levels. As a result crimes against SCs and STs mostly pass with impunity. They are crimes without punishment, thereby encouraging more crimes to be committed.

There are many pitfalls at each stage – the stages of FIR, investigation, trial, appeal, interlocutory applications and so on. The case law of Atrocities against SCs before and after the POA Act is replete with acquittals at the trial or appeal stage, from Kizhavenmani (Tamil Nadu, 1968) to Laxmanpur Bathe (Bihar, 1996), and to the acquittals in 2013 at the High Court stage of all the accused in as many as 6 cases in Bihar, who had been convicted by the trial court.

The weaknesses and deficiencies and loopholes which facilitate the perpetration rather than prevention of atrocities have been identified. Some were known even at the time of the initial enactment. I had then pressed for the inclusion of offences like murder, massacre, rape, mass-rape, gang-rape, social boycott, economic boycott, etc. to be included in the Act but they were not. Of particularly relevance to the present study, I had pressed for the establishment of special courts exclusively for the trial of atrocities, but the Act provided the subterfuge of “designating” existing courts as special courts. These and other loopholes found in practice by grassroots workers and by myself during visits to the sites of atrocities were all discussed by a National Coalition of Dalit and Human Rights organisations, with me as its Chief Advisor in 2009 and a draft Bill for the comprehensive amendments of the Act of 1989 and related Acts were formulated to remedy the deficiencies. I communicated this draft Bill to the Government as early as 19 November, 2009 (the anniversary of the PCR Act) on behalf of the National Coalition by a DO letter addressed to the then Minister for Social Justice & Empowerment under the signature of myself as Chief Advisor and of the Convenor of the National Coalition.

The Government, with the slow pace typical of Indian governance in all matters pertaining to SCs, STs and other such deprived classes, at last formulated a draft Bill and introduced it in the Lok Sabha at the fag end of its term of office. This delay occurred despite my periodic reminders both in person and in meetings and conferences as well as by letters to the Ministers and Secretaries of the Ministry, leaders of the Government and of the ruling Coalition’s lead Party and other ruling Coalition Parties and synchronised efforts by activists of the National POA Act Coalition and to leaders of Opposition

Parties. This was also taken up with the National Advisory Council which, after consultations, recommended the enactment of the Bill largely along the same lines as the National Coalition's draft Bill. It is not clear whether it is a coincidence or the result of design that changes of Ministers took place at crucial moments. The Minister who was committed to introduce the Bill in the Winter Session of 2012 (though even that was 3 years late) was dropped two months before the Winter Session. The next Minister could have resumed the thread from that point and introduced the Bill in the Lok Sabha in the Winter Session of 2012 as committed by the previous Minister, but the new Minister, despite my pleas, personally and by letter, began from the beginning, needlessly delaying the matter till the Winter Session of 2013. That Minister was in turn dropped soon after the Bill was introduced in the Lok Sabha and the charge of the Ministry was given as additional charge to another Minister who was already burdened with the work of another heavy Ministry.

The Government's draft Bill contained some of the suggestions of the National Coalition's Bill, but there were also serious omissions. After introducing its Bill, the Government failed to ensure that the Bill was considered and passed by the Lok Sabha and then by the Rajya Sabha in the first leg or in the second leg of the Winter Session. The matter was allowed to go down to the wire. After heart-breaking suspense and intense efforts of myself and Coalition activists the Government promulgated the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 which was notified on 4<sup>th</sup> March, 2014.

One of the improvements in this Bill pertains to speedy trial through special courts. The provision in the Act of 1989 was an eye-wash as it provided only for designation of an existing court of session in each district as a special court which naturally made no difference. It was one of the major weaknesses of the Act which held up trials, encouraging the committing of more Atrocities. Unless punishment follows crime with deterrent rapidity, by the time the punishment comes what it is for is forgotten by the people and the punishment does not have the desired effect. Punishment should follow the crime within a reasonable time, say a few months.

The establishment of exclusive special courts, supported by exclusive public prosecutors and investigating officers in each district and the careful selection of judges and also prosecutors and investigators on the basis of their sensitivity to justice in the context of the acute vulnerability of SCs and STs was one of my key points in 1988-89, in the Dalit Manifesto formulated by me in 1996 on behalf of the National Action Forum for Social Justice and in the National Coalition's draft Bill. This has been partly provided for in the Ordinance, but with ambiguity. For, the amended Section 14(1) of the Ordinance under the marginal head "Special Court and Exclusive Special Court" provides for establishment of an Exclusive Special Court for "one or more Districts". This and the reference to special courts as well as exclusive special courts in the amended section leaves scope for "discretion" and/or excuses for authorities for not establishing any exclusive special court in a district on the ground of inadequate number of cases, leading to the continuance of delays in trials and coercion of victims, survivors and witnesses during the long period of the pendency of the trial.

In the present book, the authors have studied the judicial and related processes in five "special courts" in the pre-Ordinance context, namely, the "special courts" in the districts of Ranga Reddy (Andhra Pradesh – from 2<sup>nd</sup> June 2014 Telengana), Villupuram (Tamil Nadu), Palamu (Jharkhand) and Alwar (Rajasthan). The study analyses various obstacles and hurdles excruciatingly experienced by SC and ST victims of atrocities, their survivors and witnesses during each stage of the trial and the pre-trial processes. It brings to light acts caste-based discrimination which come under the rubric of "Untouchability", being practised inside these five special court-halls and adjunct offices, and various other obstructions, problems and all-round hostile environment faced by the victims, survivors and witnesses. For example, they are not allowed to sit inside the court rooms during the hearings. The court staff do not properly record the statements of victims and witnesses in the court. They collect money from the victims even to provide information about the date of the next hearing.

The study identifies a number of factors for the slow speed of trials in these courts like the absence of judges from the courts for various reasons like fail-

ure to appoint judges promptly, judges having to attend to cases other than trial of atrocity cases and to other work; lack of interest on the part of judges in these cases; absence of special public prosecutors and / or their lack of full attention to atrocity cases.

Another reason for the delay in trials is that these “special courts” are also overburdened with cases as they also have to take up non-Atrocity cases. This is fundamentally contrary to the purpose of special courts which is to see that they deal with only cases of Atrocities against SCs and STs, and secure speedy trial through day-to-day hearings. Burdening the special courts with other cases and thereby delaying the POA Act cases became possible by the provision wantonly introduced in the Act of 1989 for designation of special courts instead of establishment of special courts. This grievous loophole has only been partly remedied by the Ordinance of 2014. Though the court at Alwar in Rajasthan has been designated as Exclusive Special Court it also takes up non-atrocity cases though fewer in numbers than the other four courts studied. The Report brings out that because of the fewer number of non-atrocity cases that the Exclusive Special Court at Alwar has to take up, it could cover about 400 cases of atrocities per year which is around double the number of cases covered by the other four courts. It is revealed that the court at Banda in UP has over 100 pending cases of atrocities dating back as far as 1998! Is it any wonder that Atrocities continue unabated?

The findings in this Report clearly brings out the need for establishing a Court of Session to be the Special Court exclusively to try the offences under the POA Act in each district. This exclusive Special Court should not try any other offences. The Judges of the Special Courts of sessions should be appointed taking into consideration their record of and reputation for upholding the Constitutional rights of Scheduled Castes & Scheduled Tribes, especially the right of Scheduled Castes & Scheduled Tribes to protection against violence and “Untouchability”. The Special Courts and their judges should be provided adequate supporting staff and facilities, which should not be less than what is provided for other mainstream sessions courts and their judges; and should not be prevented from functioning optimally by being starved or partly starved of the supporting staff and facilities required for the efficient discharge of the

functions; For every Special Court, the State Government should appoint a Public Prosecutor, or an Advocate who has been in practice as an advocate for not less than seven years as a special public prosecutor, for the purpose exclusively of conducting cases under the POA Act in that Court, selected on the basis of his / her record of and reputation for upholding the Constitutional rights of SCs and STs, especially their right to protection against violence.

While the authors have rendered yeoman service by this detailed study, this is only the beginning and not the end. The future tasks for the National Dalit Movement for Justice, for the National POA Act Coalition and for me are cut out. It has to be ensured that the Ordinance which partly, though not fully, helps to improve the situation is converted into an Act within six weeks of the beginning of the first session of the Parliament after the general elections of 2014. While the Ordinance is an improvement over the Act of 1989, the continuing deficiencies and ambiguities need to be identified and if possible getting them rectified in the Bill to be introduced in the Parliament. To facilitate this task, I am preparing a list of such deficiencies and ambiguities (E.g.: continued omission of murders, mass-murders / massacres of SCs and STs and rapes, gang-rapes and mass-rapes committed on SC and ST women and the ambiguity and loopholes regarding exclusive special courts and their underpinnings). This will have to be taken up with leaders of different political Parties which are likely to lead or participate as Coalition partners in the next Government and also with other Parties during the interregnum before the Government formation. Meanwhile, all-out efforts have to be made to see that to the extent the Ordinance facilitates, implementation is tightened up throughout the country. In this the partners of the National POA Act Coalition and other Social Justice-sensitive civil society organisations and their activists have to play a major role. It would also be useful for the authors to study the working of exclusive special courts under the dispensation of the Ordinance and the future legislation, covering the five special courts that they have studied now and as many more courts in different States as possible.

The Party which forms the next Government or heads the Coalition that forms the next Government and also other Parties have to take note of the deep resentment among the SCs and STs caused by the neglect they have expe-

rienced in the nearly seven decades of India's independent existence. Under the influence of the dominant classes and their castes, whom they represent and/or on whom they depend, they have deliberately and knowingly neglected the task of strengthening these communities in various ways through legislative measures and programmatic, schematic measures along with proper systems and structures of implementation and selection of socially sensitive persons at each level for implementation and providing them the financial and organisational wherewithal for unhampered and effective implementational work. All these measures required have been communicated by me to various major political parties. They should not fail to make use of all the knowledge that has been placed at their disposal including the present valuable study for which I express my appreciation of the young authors. This is *sine-qua-non* for the strengthening of the nation and for securing the optimal and sustained growth of India's economy.

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# FOREWORD

**Farah Naqvi**

*Activist & Writer*

Member, National Advisory Council, Gol

When we are presumed equal before law, but clearly unequal in society, the road to justice will be long and hard. For it is a tough, hostile road, paved with resilient bricks of difference and discrimination, of violence and violations. Of the many fulcrums of entrenched prejudice in India, caste and ethnicity remain among the most difficult to dislodge, disenfranchising over one fourth of our citizens – Dalits and Adivasis. But India also has among the finest Constitutions in the world, and it guides us as we walk, especially when we falter and stumble. The Constitution gives us Protection of life and personal liberty, Abolition of untouchability, Prohibition of discrimination by the State, and Equality before law. This is the framework of citizenship that has given endless hope to Dalits and Adivasis. This is the armory of rights that we have repeatedly deployed in the search for that elusive outcome called justice. It was to uphold these constitutional promises that we crafted progressive laws like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (SC/ST PoA Act). But a law alone cannot give justice. For laws need to be filled in and fleshed out, and brought to life. The systems of criminal justice need to own, uphold and implement these laws, in both letter and spirit. To do this, these systems must first purge themselves of the same prejudices that they seek to penalize.

This report is important because it sheds light on one critical, perhaps key pillar of the criminal justice edifice – the Special Courts established under Section 14 of the SC/ST (PoA) Act. Through painstaking primary research, secondary data analysis, and, above all, through the eyes and words of survivors and witnesses, the report forces us to engage with the incredibly difficult process of accessing justice for Dalits and Adivasis. It helps explain why conviction rates under the Act remain alarmingly low; why justice for atrocities is still so elusive. The report peels away the shroud of neutrality and fairness that cloaks the Special Courts, revealing the deep pool of prejudice that too often lurks beneath. From an inaccessible system of court administration to hostile attitudes of myriad court actors; from direct harassment to subtle discrimination; from forced compromises to blatant coercion – this is the story that this report tells. A narrative of failed justice, of denied equality.

It is a report that demands of us a serious response - to craft solutions and design interventions that can truly bring lasting change in our criminal justice system; that can make it work as it should - impartial, fearless, upholding the rule of law equally for all. As citizens, activists and litigants it is up to each of us to speak out and shout loud when the very systems mandated to deliver justice are themselves unjust. We have fought long and hard to bring progressive laws on our statute books. Now we need to fight to defend and bring them to life. Only then can we rightfully say that while we lived in an unfair and imperfect democracy, we tried to better it, struggling always towards a shared and equal citizenship. For the constitutional promise of justice for all is only achievable when justice is delivered to the last in line.

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# GLOSSARY & ABBREVIATIONS

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<b>Adivasi</b>	Tribal or indigenous person in India
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<b>Atrocity</b>	Non-legal term that, according to the Ministry of Home Affairs, refers to offences under the Indian Penal Code perpetrated against scheduled castes and scheduled tribes by those not belonging to either community, where caste consideration is the root cause of the crime even though caste consciousness may not be the immediate motive
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<b>Charge sheet/ Challan</b>	Formal document of accusation filed by the police before a court after the completion of investigation into a criminal case
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<b>Cr.P.C.</b>	Code of Criminal Procedure 1973
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<b>Dalit</b>	Literally meaning 'broken people', a term employed by rights activists to denote 'untouchables' or scheduled castes, the lowest group in the ritualized social hierarchy of the caste system, facing widespread discrimination on the basis of work and descent
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<b>District Magistrate/ Collector</b>	Administrative head of a district with quasi-judicial powers
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<b>DSP</b>	Deputy Superintendent of Police
<b>Dominant caste/s</b>	Social groups with ascribed ritual status, and economic and political power, exercising dominance over Dalits in particular. Invariably the term refers to every castes, except for scheduled castes and tribes, who are dominant vis-à-vis Dalits
<b>First Information Report</b>	First report recorded by police of a crime
<b>I.E.A.</b>	Indian Evidence Act 1872
<b>I.P.C.</b>	Indian Penal Code 1860
<b>Panchayat</b>	Local governance institution
<b>PCR Act</b>	Protection of Civil Rights Act
<b>PoA Act</b>	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989
<b>PoA Rules</b>	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995
<b>Reservations</b>	Quotas for Dalits allowing for increased representation in education, government jobs and political bodies
<b>Sarpanch</b>	Head of a village panchayat
<b>SC</b>	Scheduled Caste
<b>Scheduled caste</b>	Official terminology for those castes characterised as socially, educationally and economically backward due to the traditional practice of ‘untouchability’, and listed by the Government of India for the purposes of accessing special development, protection and affirmative action schemes
<b>Scheduled tribe</b>	Official terminology for those communities listed by the Government of India as tribal communities
<b>ST</b>	Scheduled Tribe
<b>Untouchability</b>	The imposition of social disabilities on persons by reason of their birth into certain ‘polluted’ castes

# INTRODUCTION



# INTRODUCTION

**Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.**

*Article 4, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985<sup>1</sup>*

The experiences of one-and-a-half decades of monitoring and intervening in cases of atrocities<sup>2</sup> have clearly shown the large hurdles that Dalit and Adivasi victims/survivors of atrocities face in the process of seeking legal justice. Despite Constitutional rights and protective legal provisions, the reality for Dalit and Adivasi citizens who suffer atrocities is often that of delayed or denied justice. The criminal justice system as a whole serves as a limited tool for securing justice after atrocities take place. Despite this, the criminal justice reforms process to date<sup>3</sup> has contained no detailed analysis of the process of criminal justice for specific vulnerable sections of Indian society, the institutional biases within the criminal justice administration system that work against the rights of socially excluded groups such as

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1 General Assembly Resolution 40/34, annex IV.

2 The term 'atrocities', according to the Ministry of Home Affairs, refers to offences under the Indian Penal Code perpetrated against scheduled castes and scheduled tribes by those not belonging to either community, where caste consideration is the root cause of the crime even though caste consciousness may not be the immediate motive.

3 See, for example, Justice Malimath Committee, 2003. *Report on Reforms of the Criminal Justice System*. New Delhi: Ministry of Home Affairs.

Adivasis and Dalits, and the workings of social-oriented criminal laws such as the SC/ST (Prevention of Atrocities) Act 1989 (herein the PoA Act). This is a law created to check and deter crimes against SCs/STs committed by non-SCs/STs due to the inadequacy of existing laws such as Indian Penal Code and the Protection of Civil Rights Act.

Hurdles exist at every stage of the process to attain justice after atrocities take place, including at the stages of registration of cases, investigation of cases, charge sheeting, and during trials. Tremendous pressure is placed on the victims not to lodge their initial complaints of atrocities. They are often threatened and intimidated not to speak about the incident. Quite often police officials refuse to write the complaint of the victims or register the FIR, or to register cases under the PoA Act. Even if the case is somehow registered under the PoA Act, often police will not register the case under the proper sections of this Act. Moreover, counter and false cases are increasingly being registered against the victims at the behest of the dominant castes, sometimes in collusion with police officials. Police do not arrest the accused immediately. Cases are not investigated in time. Inquiries are not made with all the victims and witnesses during the investigation. Most of the time, the victims and witnesses of atrocities are not provided with protection during and after investigation of atrocity cases. It is also seen that the investigations into counter cases are faster than in PoA Act cases. At the time of filing the charge sheet, often the statements are not corroborated with the contents of the charge sheet. Sometimes, vital information is deliberately left out of the charge sheet in order to weaken the case in favour of the accused.<sup>4</sup>

In response to the situation of atrocities, particularly the need for speedy trials of atrocity cases, section 14 PoA Act creates the obligation on the Indian state to establish Special Courts in each of the 671

**In response to the situation of atrocities, particularly the need for speedy trials of atrocity cases, section 14 PoA Act creates the obligation on the Indian state to establish Special Courts in each of the 671 districts in the country to try offences under this Act.**

4 See National Coalition for Strengthening SC/ST (Prevention of Atrocities) Act, 2010. *20 Years of the SC/ST (Prevention of Atrocities) Act: Report Card*. New Delhi: NCSPA; 2012. *People's Report on Implementation of the SC/ST (Prevention of Atrocities) Act: Report Card*. New Delhi: NCSPA.

districts in the country to try offences under this Act. The Special Court is to be manned by a Sessions Judge. Section 2(d) of the Act defines the Special Courts as a Court of Sessions specified as a Special Court in Section 14. Therefore, Sessions Courts are designated as Special Courts only once a notification is issued by the State Government. This can be contrasted with the notion of Exclusive Special Courts, which are separate courts created to solely try atrocity cases. Section 15 also establishes Special Public Prosecutors (SPPs) – senior advocates practising law for not less than seven years – to conduct cases in these courts. Moreover, each state government has the obligation, as per section 21(2)(vi) PoA Act, to periodically survey the working of the provisions of this Act (including provisions for Special Courts and SPPs) in their state, with a view to suggesting measures for the better implementation of these provisions.

However, the number of cases pending trial in 2012 (including pending cases from previous years) and registered under the PoA Act was only 46,510 out of the total 131,518 criminal cases pending trial that year. In other words, a mere 35% of crimes against SCs/STs and pending trial were charged under the PoA Act. Moreover, of the 46,510 cases registered under the PoA Act and pending trial, 5,181(11%) were acquitted, and convictions resulted in only 1133 cases (2%). At the end of that year, 39,392 cases (85%) were pending trial.<sup>5</sup> A similar situation existed in 2010, where the cases registered under the PoA Act and pending trial (including pending cases from previous years) was 45,247. Of these, 5,748 (13%) were acquitted, and convictions resulted in only 3430 cases (8%). At the end of that year, 37,768 (79%) cases were pending trial.<sup>6</sup> In sum, there are serious issues of delayed trials and low conviction rates that work against the very purpose for which the Special Courts were set up.

A number of lacunae have been identified regarding the functioning of the Special Courts. One is the lack of Special Courts in all districts of every state. District Session Courts have been designated as Special Courts in all States and Union Territories except for Arunachal Pradesh, Mizoram, Nagaland, Jammu and Kashmir, Lakshadweep and Dadra & Nagar Haveli. This leaves

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5 National Crimes Record Bureau, 2013. *Crimes in India 2012*. New Delhi: NCRB.

6 National Crimes Record Bureau, 2011. *Crimes in India 2010*. New Delhi: NCRB.



9% of districts without even Designated Special Courts.<sup>7</sup> The National Commission for Scheduled Castes and Scheduled Tribes has noted in this regard,

Designated Special Courts are not in a position to do justice with these cases of atrocities against SCs and STs because of prolonged proceedings, lack of interest by witnesses and their preoccupation with other Sessions Cases... There should be exclusive Special Courts, not just designated Courts, for speedy trial of atrocity cases.<sup>8</sup>

However, to date only nine out of 35 states/union territories have set up a total of 170 Exclusive Special Courts to try cases under the Act. Even in those nine states/UTs, the number of atrocity-prone districts continues to outstrip the number of such Courts. Moreover, Exclusive Special Courts do not exist in 53% of districts in these nine states/UTs.<sup>9</sup>

In addition, a number of issues contribute to the denial of speedy justice to SC/ST victims of atrocities. These include the non-appointment of judges or SPPs and the poor competency of appointed SPPs. Notably, while Rule 13(1) PoA Rules stipulates that administrative officers and other staff appointed to areas prone to atrocities should have the right aptitude and understanding of the problems of scheduled castes and scheduled tribes, this does not extend to the staff in the Special Courts trying atrocity cases.

There is also the lack of speedy trials through Special Courts: trials are delayed due to the accused, victims and witnesses not appearing for trial; the judge being absent; the defence advocates requesting frequent adjournments and undertaking long cross-examinations of prosecution witnesses; the arguments taking a substantial length of time; administrative delays where the Courts are not exclusively trying atrocity cases and are overburdened

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7 Ministry of Social Justice and Empowerment, 2010. *Report under sec. 21(4) SC/ST (PoA) Act for 2010*. New Delhi: MSJE; People's Commission against Atrocities on Dalits, 2008. *Draft Observations & Advice on Effective Measures to Address Atrocities against SCs & STs*. New Delhi, p. 4.

8 National Commission for SCs and STs, 1998. *Fourth Report 1996-97 & 1997-98*. New Delhi: NCSCST, para 9.17.

9 Ministry of Social Justice and Empowerment, 2010. *Report under sec. 21(4) SC/ST (PoA) Act for 2010*. New Delhi: MSJE.

with cases.<sup>10</sup> Certain procedural matters also delay the trials: e.g. the Special Courts have no power to take cognisance of atrocity cases without the case being committed to them by a Judicial Magistrate.<sup>11</sup> Further, connected cases, such as counter cases filed by the accused, are not tried in the same court and so advocates inform the proceedings of the regular court to the Special Court and take adjournments. The Special Courts also sometimes wait for the orders of the other courts, which delay the trials.<sup>12</sup>

The reasons for the high acquittals include the victims and witnesses turning hostile during court proceedings due to fear or threats; the SPPs failing to adequately prepare the victims and witnesses to face trial, leading the witnesses to give inconsistent statements or additional information; the lack of protection extended to victims and witnesses during trials; the preconceptions of judges that the PoA Act is being misused or that it is being used for less serious criminal offences; the judges suggesting that sexual violence against Dalit women occurred due to 'sexual desire' as opposed to the caste of the victim. These cases fail on a number of procedural grounds: that the Investigating Officer was below the legally stipulated rank of Deputy Superintendent of Police; the delay in the filing of the FIR by the victim; the failure to have a medical examination done in case of physical injuries; the inability of the SPP to prove that the accused know the victim's caste beforehand; the failure to prove that the insult or intimidation took place in public; etc.<sup>13</sup>

Despite this poor situation of justice delivery by the Special Courts, state governments have not made public any information on the workings of these courts. This suggests the non-fulfilment of their obligation to periodically monitor the enforcement of the PoA Act under section 21(2)(vi) PoA Act. Moreover, little research has been undertaken to uncover the constraints in the process of criminal justice through these Special Courts, the role of dif-

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10 See Centre for Study of Casteism, Communalism and Law, 2004. *Study on Performance of Special Courts set up under the SC ST Prevention of Atrocity Act*. Bangalore: National Law School.

11 *Gangula Ashok and others vs State of Andhra Pradesh* (2000). AIR 2000 SC 740.

12 National Coalition for Strengthening SC/ST (Prevention of Atrocities) Act, 2009. *Position Paper on Amendments to the SC/ST (PoA) Act*, presented on 11/9/2009 at New Delhi.

13 See Haan, M., 2005. *An Analysis of 112 Judgements of Special Courts for SCs and STs (PoA) Act Cases*. Secunderabad: Sakshi Human Rights Watch – A.P.; Centre for Study of Casteism, Communalism and Law, 2004. *Study on Performance of Special Courts set up under the SC ST Prevention of Atrocity Act*. Bangalore: National Law School.

ferent court and non-court actors involved at different stages, and to suggest concrete ways to support victims of atrocities to achieve legal justice. What research has been done to date has mainly focused on the timeliness of trials in designated as opposed to exclusive Special Courts and the trial outcomes. The *trial process* itself and how the different perceptions and actions of different actors involved in a trial affect both the process and outcomes of these trials has not been examined.

This research constitutes a response to this gap. It is an attempt to systematically document and analyse the legal processes in the Special Courts over an extended period of time. The research also was linked to an intervention component, in order to develop tools and methods for Adivasi and Dalit civil society organisations, in collaboration with advocates, to monitor the functioning of Special Courts and to intervene in specific cases at specific stages. The research findings then suggest a number of recommendations to the government and civil society organisations.

## Purpose of the Study

The overall purpose of the study is to enhance the process of accessing justice through the Special Courts and ensuring just outcomes for SC/ST victims of atrocities. More specifically, the study should promote a greater understanding of the judicial processes in Special Courts in order to strengthen interventions by civil society organisations in terms of monitoring court processes, supporting victims and witnesses, and advocating for reforms to ensure speedy justice to SC/ST victims of atrocities.

## Study Objectives

1. To examine the judicial process in the Special Courts by tracking the progress of cases under trial over a protracted period of time;
2. To analyse the various obstacles that SC/ST victims and witnesses face during each stage of the trial process as against the legal standards;

3. To identify the opportunities and constraints existing within legal procedures, administration and personnel of the Special Courts for ensuring justice to SC/ST victims of atrocities;
4. To develop concrete and practical recommendations for strengthening the functioning of the Special Courts.

## Study Scope and Perspective

The study covered five Special Courts in the five states of **Andhra Pradesh, Jharkhand, Rajasthan, Tamil Nadu** and **Uttar Pradesh**. The states were chosen on the basis of regional diversity, reflecting the south, north, east and west of the country. They were also chosen due to the presence of a civil society organisation that is actively monitoring the implementation of the PoA Act. All states, except Jharkhand, have established Exclusive Special Courts in some of their districts. Moreover, in terms of rate of atrocities against SCs and STs in 2012, as per the NCRB Crimes in India data, these states hold high and medium rankings:

State	Rank as % of total Crimes against SCs	Rank as % of total Crimes against STs
Andhra Pradesh	4	4
Jharkhand	12	8
Rajasthan	2	1
Tamil Nadu	8	13
Uttar Pradesh	1	15

Within each state, one Special Court was chosen in a district where the civil society organisation had a strong presence and network in place, which is engaged in monitoring atrocities in the district, had strong relations with the local SC/ST communities as well as strong networks with other SC/ST/human rights organisations in the district, and some working relations with district police and government officials. This was required to ensure that any follow up interventions the civil society organisation undertook would facilitate the building of strong, supportive relationships between the victims and advocates.

Furthermore, these courts were also chosen on the basis of coverage of both Designated Special Courts and Exclusive Special Courts. This enabled the examination of differences in terms of the lengths of trials and problems encountered by victims of atrocities in accessing justice through these different types of courts. The Special Courts chosen for study were:

Andhra Pradesh      Rangareddy Exclusive Special Court

Jharkhand            Palamu Designated Special Court

Rajasthan            Alwar Exclusive Special Court

Tamil Nadu           Villupuram Designated Special Court

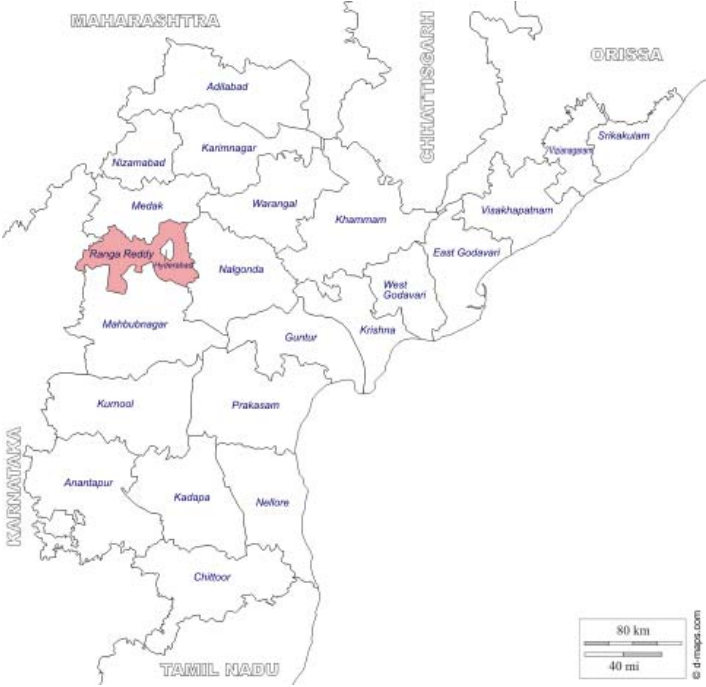
Uttar Pradesh        Banda Exclusive Special Court

Note that Rangareddy, Alwar, Villupuram and Banda districts are all officially classified as atrocity-prone by the respective state governments.

The perspective adopted for the study was a human rights perspective. Hence, the existing norms, roles and responsibilities of different actors in the Special Courts were examined, as per the PoA Act and Rules as well as criminal procedure. At the same time, a move was made beyond this to suggest additional norms, roles and responsibilities that are in keeping with human rights norms regarding non-discrimination in access to the criminal justice administration system.

Maps of States with Districts Indicated for the Study

**ANDHRA PRADESH**



**JHARKHAND**



## RAJASTHAN



## TAMIL NADU



## UTTAR PRADESH



## Research Methodology

The study was undertaken in collaboration with civil society organisations in each of the five chosen states: Sakshi Human Rights Watch and Dalit Stree Shakti in Andhra Pradesh; Sampoorana Gramin Vikas Kendra in Jharkhand; Centre for Dalit Rights in Rajasthan; Social Awareness Society for Youth in Tamil Nadu; and Dynamic Action Group in Uttar Pradesh. Each organisation appointed one advocate to monitor the functioning of the chosen Special Court in their state, collect secondary data and track the atrocity cases under trial. These advocates were chosen on the basis of the following criteria: (i) knowledge of the PoA Act; (ii) experience of working in a trial court, preferably the Special Court; (iii) existing or potential linkage to the civil society organisation; and (iv) good documentation skills preferably in English.



The study is qualitative research aimed at developing an in-depth understanding of the legal processes in the Special Courts and the roles and actions of various actors in these processes. At the same time, complementing this investigation of the substantive issues involved in these judicial processes is an investigation of the possible interventions in Special Court procedures, in order to support cases of atrocities under trial to reach successful convictions. Hence, several research methods were used.

- 1. *Daily Observation of Trial Process:*** One method was daily observation by advocates of the atrocity trials in two of the chosen Special Courts, one Designated Special Court (Palamu, Jharkhand) and one Exclusive Special Court (Alwar, Rajasthan), over an extended period of time (October 2012 to June 2013). Detailed notes were produced that allowed the mapping of the progress of registration of cases in court, pre-trial preparations, trial up to judgement delivery. The purpose of these daily observations was also to capture the perceptions, mindsets and actions of key actors in the court process – the victims, witnesses, accused, Special Public Prosecutors, Defence Advocates, Judges, Investigating Officers and Court administrative staff. A format was developed for recording such detailed observations at every stage of the cases under trial in the Special Courts (see Annexure 1).
- 2. *Information and Secondary Data on Special Courts, Cases Pending Trial and Judgements:*** Basic information was collected on the background of the five Special Courts, their administration and personnel as per a designed format (see Annexure 2). In addition, the advocates collected the list of pending cases before the five Special Courts, including the charges framed in the court as well as current stage of trial (see Annexure 3). The advocates also attempted to collect judgements from the five Special Courts from January 2012 onwards, as well as any appeals filed in the High Courts of each state against judgements produced in these Special Courts during the same period.
- 3. *Right to Information Data on Special Courts in the five states:*** The above secondary data was supplemented by Right to Information applications (see Annexure 4) filed in the five states, which sought to obtain overall data on the functioning of the Special Courts across the five states

in terms of the number of cases under trial, as well as convictions, acquittals and appeals between 2010 to 2012.

**4. *Meetings with Victims and Witnesses of Atrocities:*** In each state, victims and witnesses linked to atrocity cases under trial in the five chosen Special Courts were brought together for two-day meetings to discuss the discrimination, harassment, delay and other tactics they were encountering from different court actors and the accused in the courts during the trial process. The following types of cases were selected: (i) older cases which had at least reached the prosecution evidence stage and in which the victims and witnesses had visited the courts; (ii) cases being followed up the civil society organisation; cases that had ended in compromises, acquittals or convictions, where the victims were willing to share their experiences. The meetings also presented an opportunity for the attending civil society organisation staff and advocates to provide information and clarifications to the victims and witnesses on the trial process and which actors could help them during the process. The court documents for each of their cases were obtained, wherever possible, in order to fully understand how their cases were proceeding before the courts, as well as to enable the attending advocates to link up with these victims and witnesses in order to support them in future. Thus, for example, in Jharkhand two petitions were filed before the District Magistrate, Palamu to ensure the appointment of a private prosecutor in two cases. In Rajasthan, protection petitions for victims and witnesses in two cases were filed before the Alwar Special Court. In Andhra Pradesh, a RTI application was filed and the Joint Director of the Andhra Pradesh Social Welfare Department met with regard to collecting information on the compensations amounts allotted and paid to the victims of atrocities, so as to facilitate a number of victims without compensation in Rangareddy district to receive the same.

**5. *Short Survey of Victims and Witnesses' Perceptions as regards the Trial of their Cases:*** A small survey (see Annexure 5) was developed to capture the perceptions of the victims and witnesses as regards the conduct of their trial before the Special Courts, including their experiences of unfair treatment, threats, provision of information, their willingness to continue with the case, etc. The aim of this survey was to produce some

quantitative information from a range of victims and witnesses on their experiences in the Special Courts, to supplement the qualitative information obtained through the trial observations, meetings with victims, witnesses and advocates, and case studies.

6. *Case Studies of Victims' Experiences in Atrocity Cases:* Based on the meetings with victims and witnesses in the five states, certain victims of atrocities were chosen for more detailed case studies (see Annexure 6) of their perceptions and experiences of the different stages of the trial process in the Special Courts. These cases were chosen based on the detail of sharing by the victim in the aforesaid meetings and the different types of problems that they were facing in the courts.
7. *Meeting with SC/ST Advocates and Other Advocates Intervening in Atrocity Cases:* A separate one-day state-level meeting was held with SC/ST advocates and other advocates intervening in atrocity cases in the five focus states for the research. The aim of these meetings was to share and discuss the problems faced by victims and witnesses in atrocity cases under trial in the Special Courts. The advocates were also invited to share the difficulties they faced in intervening in these cases. The overall purpose of the meeting was to evolve a collective process to create a state-level forum of advocates interested in supporting victims and witnesses of atrocities in taking forward their legal cases.
8. *Interviews with the Special Public Prosecutors:* Individual interviews were conducted with all Special Public Prosecutors in the five chosen Special Courts in order to understand their perceptions and experiences in trying atrocity cases. Specific emphasis was placed on how the SPPs explained the lower conviction rate for atrocity cases as compared to general criminal cases under the Indian Penal Code, any difficulties in interpreting and applying the PoA Act provisions, and their specific efforts taken to prosecute these cases successfully.

## Challenges involved in Data Collection and Study Limitations

This study was not without a number of challenges. By far the greatest challenge was to get access to information on the special courts, especially on

the stages of the cases pending before the courts as well as the judgements in atrocity cases. The lawyers and social activists from the Dalit civil society organisations supporting them often had to adopt multiple methods to obtain this information, including through developing good relations with the court clerks over time in order to view the court register, visiting the different police stations within the district, or filing RTI applications to receive this information. Different states followed different procedures for what was recorded in the court registers regarding atrocity case trials, and had different application procedures to gain access to court documents including judgements. Hence, while the study originally aimed to collect a large number of court files to analyse the court records and judgements in different cases, this proved to be too difficult to collect in most cases.

Another challenge faced in this research was the fact that many victims who were met had never been to the courts or visited only once to give their evidence. Many did not know the status of their cases and what was happening during the trial process. Hence, meetings with victims were broadened to include not only victims who currently had cases under trial in the courts, but also victims whose cases had been already decided, either as convictions or acquittals. Victims in older cases were also chosen due to the greater chance of their having court experiences to share. This, however, often required locating victims who might not be associated with the local civil society organisation, or might no longer live at the address noted in the court documents. The work involved to bring victims and witnesses together for two-day meetings, therefore, was substantial.

The limitations of this study are likewise several. The study does not claim to be an exhaustive study on the administration and functioning of the Special Courts in delivering justice to scheduled caste and scheduled tribe victims of atrocities across the country. Rather, it uses a sample of five courts across five states and combines qualitative and quantitative data analysis to derive some broad conclusions as regards the functioning of these courts. The study suggests more generalisations in terms of the different aspects that should be inquired into while monitoring the administration and functioning of these courts. Moreover, the focus is more on the procedural delivery of justice in terms of the types of discrimination at play during trial processes, and less on examining the evidence of atrocity cases that reach trial. Likewise, there

is only an analysis of sample judgements to elicit some trends in the interpretation of the SC/ST (Prevention of Atrocities) Act by these courts, without generalising across the Special Courts across the country. That requires a much more detailed study to do justice to judicial trends in adjudicating on atrocity cases.

The study also does not involve interviews with a number of stakeholders in the criminal justice delivery system, such as judges, defence lawyers, defendants, court personnel or the District Magistrate/ Collector. Given the scale of the study and the limitations of approaching such actors as a Dalit civil society organisation, the study was confined to a focus on victims, witnesses, the SPPs and Dalit lawyers.

## Data Analysis and Report Writing

Given the large number of data sources, data collation and analysis occurred throughout the study period as information was obtained. The trial observations were tabulated according to the stage of each case and within each stage, the observations per case. The various meeting reports and case studies were likewise collated, and then coded in order to develop categories for the analysis. Tables were also developed based on the list of pending cases for trial in each court to highlight the prevalent trends in terms of speed of trial, stages of the cases, and sections of the PoA being charged. All the data was then grouped under different categories for analysis, such as protection, access to information, interactions with different court actors, compensation, travel allowances, etc. Similarly, the short survey data was tabulated and then groups together under different themes.

Note that in this report, all the names of the victims and witnesses have been changed to preserve their anonymity. At most the year that their case entered into the Special Court is mentioned, along with the details of their case and experiences in the court, without mentioning the name of the court in which their case lies. As all the cases are *sub judice*, this anonymity is done to ensure their protection and to not interfere in the court process.

# Framework of the Report

This report consists of an introduction and five chapters.

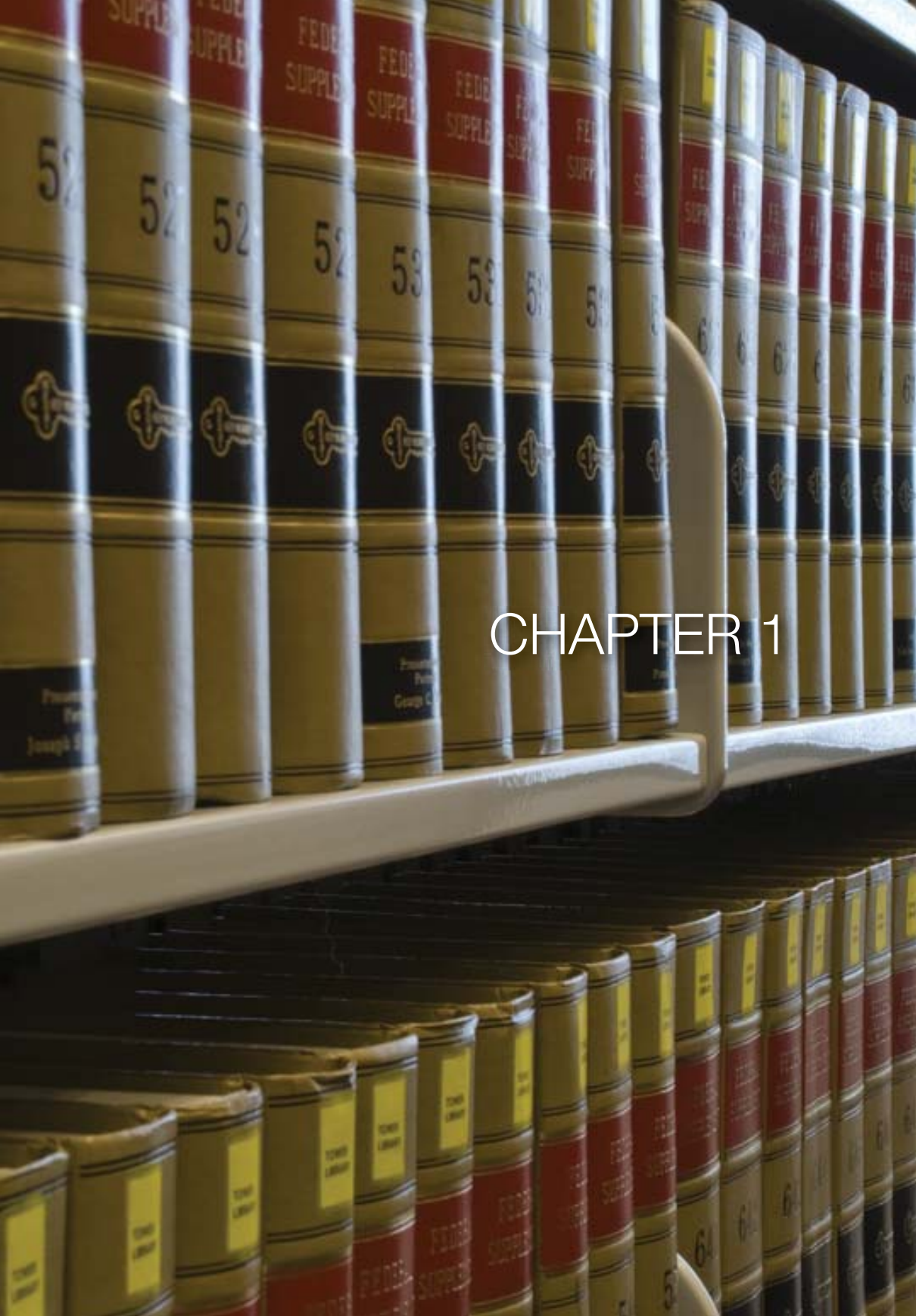
The *Introduction Chapter* presents the background context for this study, before detailing out the study objectives and methodology.

*Chapter 1* lays down the international standards that apply for access to justice. It then describes the national legal standards and guidelines that apply for the conduct of trials, including the specific standards of conduct for Special Courts. These are examined primarily in terms of the rights of victims and witnesses, and the duties of Special Public Prosecutors, Defence Lawyers and Judges in such trials.

*Chapter 2* presents the overall status of the structure and functioning of the Special Courts in general and specifically the five Courts chosen for the study. Secondary data are analysed in terms of the types of atrocity cases under trial, charges framed, stages of the cases, duration of trials and rates of convictions, acquittals and compromises. The grounds for the judgements are also analysed, as well as trends in terms of appeals as well as monitoring the trials of atrocity cases.

*Chapter 3* analyses the obstructive and facilitative factors related to victims and witnesses accessing justice before the five Special Courts. Based on the prevalent trends revealed regarding the types of discrimination, harassment and delay tactics, as well as the counter or supportive tactics in these cases, an analysis is made of the implications for the functioning of the criminal justice system vis-à-vis Dalits and Adivasis and specifically the equal right to a legal remedy.

*Chapter 4* sums up the key issues impacting on judicial processes and access to justice before the Special Courts. It then lays down a series of legal and policy recommendations aimed at bringing the victims of atrocities to the centre of the criminal justice system and ensuring more effective, speedy and just outcomes for scheduled caste and scheduled tribe victims of atrocities.



# CHAPTER 1





# LEGAL STANDARDS AND GUIDELINES FOR CRIMINAL TRIALS

**...every citizen is equal before the law and is entitled without any discrimination to the equal protection of the law.**

## 1.1 Understanding Access to Justice in the Criminal Justice System

Under Article 14 Constitution of India,<sup>14</sup> every Indian citizen is equal before the law and is entitled without any discrimination to the equal protection of the law. Moreover, the Indian state has undertaken to ensure that any person whose civil-political rights or freedoms are violated will have an effective remedy, as per Article 2(3) International Covenant on Civil and Political Rights.<sup>15</sup> Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories

<sup>14</sup> See also Articles 2(1) and 14 International Covenant on Civil and Political Rights.

<sup>15</sup> See also Article 6 International Convention against All Forms of Racial Discrimination 1966, under which the Indian state shall assure to everyone within its jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial (*read*, caste) discrimination which violate her/his human rights and fundamental freedoms, as well as the right to seek form such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

of persons.<sup>16</sup> Two such vulnerable social groups are the scheduled castes (Dalits) and scheduled tribes (Adivasis), for whom the India state is mandated to provide special protection from social injustice and all forms of exploitation (Article 46 Indian Constitution). To this end, the Committee on the Elimination of Racial Discrimination has recommended that states like India ‘take the necessary steps to secure equal access to the justice system for all members of descent-based communities (i.e. communities facing caste-based discrimination such as Dalits), including by the provision of legal aid, facilitation of group claims, and encouragement of non-governmental organisations to defend community rights’ (para. 21). States also should ‘ensure where relevant that judicial decisions and official actions take the prohibition of descent-based (i.e. caste) discrimination fully into account’ (para. 22). Further, the Committee has suggested that states ‘ensure the prosecution of persons who commit crimes against members of the communities and the provision of adequate compensation for the victims of such crimes’ (para. 23).<sup>17</sup> All this should be supported by national strategies or plans of action aimed at the elimination of structural caste discrimination, including guidelines for the prevention, recording, investigation and prosecution of caste-based crimes.<sup>18</sup> Read together, these constitutional and international standards stipulate the right to an effective legal remedy for any crimes committed against Dalits and Adivasis.

The right to an effective legal remedy, especially with regard to criminal offences, has multiple elements:

**First** is the right to a fair and public hearing by competent, independent and impartial judicial or administrative tribunals. Alleged incidents of violence should be promptly, thoroughly and effectively investigated by competent, independent and impartial law and order officials. All victims of violence should have equal access to the courts, to administrative

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16 See Human Rights Committee, 2004. *General Comment 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*. UN Doc. CCPR/C/21/Rev.1/Add.13, para. 15.

17 Committee on the Elimination of Racial Discrimination, 2002. *General Recommendation 29 on Descent Based Discrimination*. UN Doc. A/57/18.

18 See Committee on the Elimination of Racial Discrimination, 2005. *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*. UN Doc. A/60/18, para.5(i).

mechanisms, and to competent, independent and impartial judges who are not influenced by personal bias or prejudice. The hearing itself should be procedurally fair, in that there should not be any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A fair hearing also requires that the trial be expeditious, without any undue delays.

**Second** is the right to appropriate and prompt reparation. All victims of violence should be given reparation that is commensurate with the gravity of the violations and injury suffered, including any injury caused by the malfunctioning of the criminal justice system. This generally entails appropriate compensation, but can also include restitution and rehabilitation measures.<sup>19</sup>

**Third** is the right to relevant and accurate information.<sup>20</sup> Victims of violence should have access to information on the judicial, legal, administrative, medical, psychological and social mechanisms available to them to remedy the violence done to them.

**Fourth** is the right to the prevention of reoccurrence of the violence. The state should take adequate measures to prevent the violence from reoccurring.<sup>21</sup>

In addition, a number of principles of the system of justice for victims and measures to make it easier for victims of discrimination to bring cases to court have been developed. These form the basis for a victim-centric vision of criminal justice. The basic principles are that the system of justice should:

- grant a proper place to victims of racial/caste discrimination and witnesses throughout criminal proceedings, by enabling complainants to be

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19 See Human Rights Committee, 2004. *General Comment 32: Right to Equality before Courts and Tribunals and to a Fair Trial*. UN Doc. CCPR/C/GC/32, paras 21, 25-27.

20 See Committee on the Elimination of Racial Discrimination, 2005. *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*. UN Doc. A/60/18, para. 7.

21 See Human Rights Committee, 2004. *General Comment 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*. UN Doc. CCPR/C/21/Rev.1/Add.13, paras 15-17 regarding these elements of an effective legal remedy.

heard by judges during the court hearings, to have access to information, to confront hostile witnesses, to challenge evidence and to be informed on the progress of proceedings.

- treat victims of racial/caste discrimination without any discrimination or prejudice, and ensure that hearings are carried out with adequate sensitivity towards ensuring the absence of such discrimination and prejudices (from all actors involved, including judges and judicial personnel).
- guarantee to victims a court judgement within a reasonable period<sup>22</sup>;
- guarantee victims just and adequate reparation for the material and moral harm suffered as a result of racial/caste discrimination.<sup>23</sup>

State measures to make it easier for victims of caste discrimination and violence to bring cases to the court then include:

- offering procedural status of the victims, such as to associate themselves with the criminal proceedings, or other similar proceedings that enable them to assert their rights in the criminal proceedings;
- granting the victims effective judicial cooperation and legal aid;
- ensuring that victims have information about the progress of the proceedings;
- granting protection to the victim or their family against any form of intimidation or reprisals, and of their privacy;
- providing for the possibility of suspending the functions, for the duration of the investigation, of the agents of the state against whom the criminal complaints are made.
- providing proper assistance to victims throughout the legal process.
- providing the necessary material, medical, psychological and social assistance to victims of crime through government, voluntary or community means.

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22 The Supreme Court in *A.R. Antulay vs R.S. Nayak and Another* (1988 AIR 1531, 1988 SCR Supl. (1) 1) has interpreted Article 21 Indian Constitution – the right to life – to include the right to a speedy trial at all stages including trials, appeals, revisions and re-trials.

23 Committee on the Elimination of Racial Discrimination, 2005. *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*. UN Doc. A/60/18,,para. 18.

- providing sensitisation training for police, justice, health, social service and other personnel concerned on the needs of victims of crime, and guidelines to ensure proper and prompt aid.<sup>24</sup>

The above standards broadly define the principles and guidelines that would enable any criminal justice system to function in a manner conducive to ensuring justice for vulnerable social groups who face collective discrimination, prejudice and violence, such as Dalit and Adivasis. These standards now have to be seen in light of the current context and experiences of Dalits and Adivasis of the criminal justice system to date.

## 1.2 Standards in Indian Law

Under the Indian Constitution, both criminal laws and criminal procedure are concurrent subjects. This means that both the central and state governments have the powers to make substantial and procedural laws in this area. The Code of Criminal Procedure 1973 (CrPC) and Indian Evidence Act 1872 (IEA) lay out the basic framework for criminal trials across the country. The CrPC specifies how charges should be framed against an accused in a criminal case coming for trial before the courts, the legal procedures for changing those charges during the trial, summonses and arrest warrants, the trial procedure at every stage and compensation measures, among other things. The IEA indicates the rules for admission of evidence in the form of witness statements, examination-in-chief and cross-examination, dying declarations, expert opinions, references to the character of the accused, and so on.

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24 Committee on the Elimination of Racial Discrimination, 2005. *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*. UN Doc. A/60/18, para. 17; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985. UN General Assembly Resolution 40/34, annexure IV, para. 6.

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## STAGES OF CRIMINAL TRIAL OF ATROCITY CASES

**Committal in Magistrates Court:** Before an atrocity case can be tried in the Special Courts, it first has to be committed to the Special Court in the district by the Magistrates Court, as per sec. 193 Cr.P.C. The Special Public Prosecutor and the Defence Advocate will give their arguments on the charge sheet (placing charges against the accused) or the final report (recommending case to be closed for lack of evidence) filed by the police. If the court rejects the charge sheet or accepts the final report of the police closing the case, the case will be closed and accused discharged. If the Court rejects the final report of the police, it can direct the police to further investigate the case. If the court accepts that a prima facie case exists based on the charge sheet, it will take cognisance of the case, frame the charges and post the case for trial in the Special Court.



**Framing of Charges by Special Court:** The accused is called to appear before the court and is asked to plead guilty or innocent to the charges framed against him/her. If s/he pleads guilty, depending on the seriousness of the crime, the Court may either convict the accused on the basis of his/her plea, or post the case for trial. If the accused pleads not guilty, and the judge weighs the evidence and see that there are sufficient grounds to proceed, then the case is posted for trial.



**Prosecution Evidence:** Examination in Chief of the victim/s, prosecution witnesses and other evidence from the prosecution side. The defence advocate has a chance to cross-examine the victims/s and all the witnesses.



**Statement of Accused:** The accused gives his/her statement under section 313 Cr.P.C. Note that the court has the power to question the accused at any point, and must examine the accused after prosecution evidence if the evidence appears incriminating.



**Defence Evidence:** Examination of the defence witnesses, who are cross-examined by the Special Public Prosecutor, and exhibit of the defence evidence.



**Final Arguments:** The Special Public Prosecutor and the Defence Advocate present their final arguments on behalf of their clients.



**Judgment and Sentencing by the Court:** The judge pronounces judgement on the accused – either acquittal on all charges, or conviction on all or some of the charges. If convicted, then the Special Public Prosecutor and the Defence Advocate will give arguments on the quantum of the sentence, after which the judge will pass the sentence on the accused.



**Appeal (within specified period of limitation):** An appeal can be filed in the High Court by either party to a case who is aggrieved by the judgment, challenging the acquittal, conviction, or the reduction of sentence.



**Appeal Arguments:** If the High Court allows the appeal, a notice will be issued to both parties. The Public Prosecutor in the High Court and the Defence Advocate will then place their arguments before the Appeals Court.



**Judgment of Appeal Court:** The High Court will pronounce its judgement on the appeal, either overturning or affirming the judgement of the lower court, or else send the case back to the lower courts for retrial (rare).

Additionally, as far as SC/ST atrocity cases are concerned, the SC/ST (Prevention of Atrocities) Act 1989 and Rule 1995 lays down some additional guidelines pertaining to the trial of such cases. These include the following:

- Atrocity cases under the Act are to be exclusively tried in Special Courts, which are Courts of Sessions set up at the district level for the purpose of ensuring speedy trials. (sec. 14)
- The appointment of a Special Public Prosecutor who is a senior advocate

with no less than seven years of practice to conduct cases in the Special Courts. (sec. 15)

- The ability of the District Magistrate/Collector or a victim of atrocity to engage another eminent Senior Advocate for conducting cases in the Special Courts, should the performance of the appointed Special Public Prosecutor prove unsatisfactory. (Rule 4(5))
- The non-applicability of sec. 438 Cr.P.C. (anticipatory bail for bailable offences by application to the High Court or Sessions Court) to the accused in atrocity cases (sec. 18)
- The provision of travelling allowances for trial hearings to every victim of an atrocity or her/his dependant and witnesses of atrocities, daily maintenance allowances for those days spent at trial hearings, as well as the payment of diet expenses. The District Magistrate or other Executive Magistrate should make these payments/reimbursements not later than three days after the visit to the Special Courts for the trial hearings. (Rule 11)

### 1.2.1 RIGHTS AND PROTECTION OF VICTIMS AND WITNESSES

Aside from the role and duties of various court actors, the rights of victims and witnesses, including to protection, are significant. Despite the current lack of any mention of such rights in the SC/ST (Prevention of Atrocities) Act, the High Courts and Supreme Court have interpreted a number of constitutional, legal and administrative provisions in order to ensure such rights. These rights at present include:

- **The right to anonymity** (*Smt. Sudesh Jakhu vs Narender Verma, 2004*).
- **In camera trial** under sec.327 Cr.P.C. is essential in rape crimes, and has been extended to all crimes involving the sexual assault of children (*Sakshi vs Union of India, Writ Petition (Crl.) No. 33 of 1997, Supreme Court of India*).
- **Video conference** is allowed in the trial of crimes (*State of Maharastra vs Praful B. Desai (2003) 4 SCC 601*). This ensures not only anonymity, but also the protection of victims and witnesses.



- **Free atmosphere in the Court:** In *Sakshi vs Union of India*, it was held that ‘the whole inquiry before a court is to elicit the truth. It is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. ....A screen or some such arrangements be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused.’
- **Recess during court proceedings:** Whenever a child or a victim of rape is required to give testimony, sufficient breaks should be given as and when required (*Sakshi vs Union of India*).
- **Legal representation as a legal right:** In *Delhi Domestic Working Women’s Forum vs Union of India (1995 (1) SCC 14)* the requirement of legal representation and counselling is extended to the victim right from the police station itself.
- Victim can have **private lawyers** who can assist the Public Prosecutor and even submit written arguments while still functioning under the Public Prosecutor, vide sec. 301(2) Cr.P.C.
- The right of the accused to **cross examine prosecution witnesses including the victim**, though a legal right, is restricted by the judgement in *Sakshi vs Union of India*. In cases of sexual assault of children, the defence cannot question the victim directly, but has to furnish the questions to the court and the court will, in turn, communicate it to the victim.
- **Compensation is an entitlement** for any victim who has suffered any injury/loss as a result of a crime, under sec. 357 Cr.P.C.
- **Compensation can be awarded to the victim from the convicted person** even if there was no fine as part of the sentence (*Bodhi Sattwa Gautam vs Subra Chakroborty, 1996 1 SCC 490*).
- Every state government is to prepare a **scheme for providing funds for the purpose of compensation** to the victim or her/his dependents who have suffered loss/injury as a result of a crime and who require rehabilitation, as per sec. 357A Cr.P.C.

- **Compensation** can be awarded to the victim **even without conviction** and even during the trial proceedings (*Delhi Domestic Working Women's Forum vs Union of India*).
- **Delay in reporting of the case** will not affect the case, if reasonable explanation is given/brought out during the investigation (*Harpal Singh vs State of Himachal Pradesh, 1981(1) SCC 560*).
- **Defective or flawed investigations** are not ground to deny justice to the victim. 'It would not be right to acquit an accused person solely on account of defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective' (*Karnal Singh vs State of Madhya Pradesh, 1995 5 SCC 518; Zahira Habibullah vs State of Gujarat, 2004 (4) SCC 158*).
- **The prosecutrix need not be examined:** in *State of Himachal Pradesh vs Mohan Misra (1995 CrLJ 3845)*, the Court held that 'merely because the victim girl is not examined, this can never be a ground to acquit an accused if there is evidence otherwise available proving the criminal act of the accused'.
- **Character and antecedents of the victim** has no bearing or relevance... and can never serve either as mitigating or extenuating circumstance. No stigma should be implied against the victim/witness, since 'it is the accused and not the victim of sex crime who is on trial in the court'. (*Haryana vs Prem Chand and others, 1990 (1) SCC 249; Maharashtra vs Madhukar Narayan Marvikar, AIR 1991 SC 207; State of Punjab vs Gurmeet Singh, AIR 1996 SC 1393*).
- When the **issue of consent to sexual assault and rape** is in question, evidence of the character of the victim or her previous sexual experience shall not be relevant to the issue of consent or the quality of consent, as per sec. 53A Evidence Act.
- **Reliability of victim's evidence:** The evidence of a victim of sexual offence is entitled to great weight, the absence of corroboration notwithstanding (*Punjab vs Gurmeet Singh*). The rule that the evidence of a victim of sexual assault must be corroborated in material particulars has no application (*Maharashtra vs CPK Jain, AIR 1990 SC 658*).

- **On corroboration:** The statement of the rape victim aged 15-17 years inspires confidence for acceptance and, therefore, corroboration of the evidence is not needed *Punjab vs Gurmeet Singh*. There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted (*Himachal Pradesh vs Raghubir Singh, 1993 SCR (1)1087, 1993 SCC Supl. (3) 150*). There is no rule of practice that there must in every case be corroboration before a conviction can be allowed to take place (*Rameshwar vs Rajasthan, AIR 1952 SC 54*).
- **Discrepancies in the statement of victim/witness:** In cases involving sexual assault minor contradictions or insignificant discrepancies in the statement of the witnesses should not affect the case (*Punjab vs Gurmeet Singh; Andhra Pradesh vs Gangula Satyamurthy, JT 1996 (10) SC 550*). It was held that the court must appreciate the evidence in totality of the background of the entire case and not in isolation.
- **On medical reports:** In *Rampal vs State of Haryana (1994 Supp(3) SCC 656*), the conviction was based on the sole testimony of the prosecutrix. Though the doctor did not find any visible injuries, the court held that there was no reason to suspect the testimony of the victim and upheld the conviction of the accused.
- **Expeditious trial** is an essential ingredient of reasonable, fair and just procedure guaranteed by Article 21 (*Menaka Gandhi vs State, 1978(1) SCC 248*). It is the constitutional obligation of the state to devise such a procedure as would ensure a speedy trial (*Sheela Barse vs Union of India, 1986 (3) SCC 632*).
- **Courts need to take participative role** to deliver justice to victim. 'The Courts have to take a participative role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Secs. 311 Cr.P.C. and 165 Evidence Act confer wide and vast powers on presiding officers of the Court to elicit all necessary materials by playing an active role in the evidence collecting process (*Zahira Habibullah vs Gujarat, 2004 (4) SCC 158*).
- **Witnesses to turn up in trial:** In order to ensure a fair trial, the prosecution has a duty to produce witnesses on time. 'The presence of the Investigat-

ing Officer at the time of the trial is necessary in order to ensure the witnesses are present. If there is a failure on the part of the witness to remain present, it is the duty of the court to take appropriate action' (*Shailendra Kumar vs Bihar, 2002 (8) SC 13*).<sup>25</sup>

## 1.2.2 ROLE AND DUTIES OF SPECIAL PUBLIC PROSECUTORS

The Special Public Prosecutors (SPPs) who prosecute atrocity cases on behalf of the state are attached to the SC/ST or Social Welfare Departments of a state. Their appointments are political, in that the ruling party will appoint a SPP of their choice (and party). Under the common law system which operates in India, the public prosecutor acts in accordance with the directions of the judge. The judge controls the trial process. This starts from the committal process itself, where the decision to prosecute an atrocity case is taken by the Judicial Magistrate on the report submitted by the police. The SPP, as an officer of the court, represents the public interest. As such, s/he is impartial in seeking the truth of the case and the fair treatment of both parties to the case, not necessarily the conviction of the accused. In other words, the SPP is committed to the fair administration of justice on behalf of the state.<sup>26</sup>

The Supreme Court has defined the role and function of the Public Prosecutors<sup>27</sup> as:

- i. The prosecution of an offender is the duty of the executive which is carried out through the Public Prosecutors. At the same time the office of the Public Prosecutor is not purely executive, but also has a judicial character.<sup>28</sup>
- ii. Withdrawal from prosecution (*nulle presequi*) is an executive function of

25 Taken from National Legal Research Desk. Retrieved Oct. 2013 from <<<http://nlrd.org/resources-womens-rights/anti-trafficking/anti-trafficking-schemespolicy-document/victim-witness-protection-systems-anti-trafficking>>>.

26 See *Babu vs. State of Kerala* (1984) Cri. LJ 499 (Ker); *Mukul Dalal vs. Union of India* ((1988) 3 SCC 144); Sharma, Madan Lal, 1998. 'The Role and Function of Prosecution in Criminal Justice'. In UNAFEI 107<sup>th</sup> International Training Course: Resource Material Series No. 53. Tokyo: UNAFEI, pp. 185-200.

27 *Shiv Nandan Paswan vs. State of Bihar and Others* (AIR 1983 SC 1994).

28 For this interpretation of the Public Prosecutor office as also judicial, see *Shamsher Singh vs. State of Punjab* ((1974) 2 SCC 831).

the Public Prosecutor, who has the sole discretion to recommend on withdrawal at any stage of a case. S/he may withdraw from prosecution, on receiving the consent of the court, on the ground of paucity of evidence, and also on other relevant grounds in order to further the broad ends of public justice, public order and peace.

iii. The Public Prosecutor is an officer of the Court and is responsible to it.<sup>29</sup>

*At the investigation stage*, the Public Prosecutor may obtain an arrest warrant for the accused from the court; obtain search warrants for any premises to collect evidence; obtain a police custody remand for the custodial interrogation of the accused; initiate court proceedings if the accused is not traceable for the accused to be declared a proclaimed offender; record her/his advice in the police file as regards the advisability of prosecution. The Public Prosecutor also files the police charge sheet before the court to initiate judicial proceedings. A common practice is for the police to take the advice of the Public Prosecutor on whether a *prima facie* case is made out based on the charge sheet. This, however, is not mandatory. In *R. Sarala vs. T.S. Velu and others*<sup>30</sup>, the Chennai High Court has laid down that the role of the Public Prosecutor is inside the court and, therefore, the Prosecutor should not get involved at the police investigation stage. This means that no investigating agency can be compelled by the court to see the opinion of the Prosecutor on the charge sheet. Moreover, the police have the final decision making power as to whether to send a case for trial.

*At the trial stage*, the Public Prosecutor prosecutes the cases and has the burden to establish the guilt of the accused beyond a reasonable doubt in the court. This requires the Prosecutor to ensure all the available oral evidence (i.e. statements of witnesses), documentary evidence and circumstantial evidence are collected, presented before the court and proved as reliable evidence with the help of the witnesses to the crime and experts. The Public Prosecutor plays a vital role in ensuring the right to a speedy trial, by ensuring that sufficient witnesses are examined in the court hearings, that

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29 See Sharma, Madan Lal, 1998. 'The Role and Function of Prosecution in Criminal Justice', in UNAFEI 107<sup>th</sup> International Training Course: Resource Material Series No. 53. Tokyo: UNAFEI, pp. 193-94; K.N. Chandrasekharan Pillai, 2008. 'Public Prosecution in India'. Retrieved 05.10.2013 from <<[www.article2.org/mainfile.php/0704/329/](http://www.article2.org/mainfile.php/0704/329/)>>.

30 AIR 2000 Supreme Court 1731.

documents are placed before the court in time, and that the police cooperate in appearing at the court hearings. Under sec. 321 Cr.P.C., s/he can also withdraw a case from prosecution if s/he believes that the allegations against the accused are false due to political or personal vendetta; that prosecution is inexpedient for public policy reasons; or that prosecution will harm the public interest in light of a changed situation.<sup>31</sup> On securing a conviction of the accused, the Prosecutor then plays an important role in guiding the court with regard to sentencing, to ensure adequate punishment is meted out. In the case of an acquittal of the accused, the Prosecutor should file an appeal to the higher (appellate) court where the evidence suggests that the trial judge could have erred.<sup>32</sup>

### 1.2.3 ROLE AND DUTIES OF DEFENCE LAWYERS

At the same time, defence lawyers, as officers of the court, operate under a code of professional conduct. This code is laid down in Chapter II, Part VI of the Bar Council of India Rules and applies to all advocates by virtue of sec. 49(1)(c) Advocates Act 1961. Under these Rules, all advocates should adhere to the following in court:

- To conduct him/herself in a dignified manner.
- To respect the court.
- To not communicate in private with the judge on any matter pending before any judge.
- To refuse to act in an illegal manner towards the opposing counsel or party.
- To refuse to represent clients who insist on unfair or improper means, such as by damaging the reputation of the opposing party on false grounds during the pleadings.

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31 See *State of Punjab vs. Union of India* (1987 Cri. LJ 151 (SC)); *R.K. Jain vs. State* (AIR 1980 SC 1510);

32 See Sharma, Madan Lal, 1998. 'The Role and Function of Prosecution in Criminal Justice'. In UNAFEI 107<sup>th</sup> International Training Course: Resource Material Series No. 53. Tokyo: UNAFEI, pp. 193-94.

Advocates also owe the following duties, among others, to their clients:

- To accept any brief in the courts in which s/he practices.
- To not withdraw from serving a client once agrees to serve them, unless there is sufficient cause and sufficient notice is given to the client.
- To not appear in matters where s/he him/herself is a witness.
- To ensure full and frank disclosure to clients.
- To uphold the interests of her/his client by all fair and honourable means. This includes defending a person accused of a crime regardless of her/his personal opinion as to the guilt of the accused.
- To not suppress any material or evidence that would prove the innocence or guilt of the accused.
- To not disclose any client-advocate communications.

Further, advocates also have duties towards the opposing party, such as:

- To not negotiate directly or call for a settlement with the opposing party, except through the advocate representing the opposing party.
- To carry out legitimate promises made to the opposing party.<sup>33</sup>

#### 1.2.4 CONDUCT OF JUDGES

In addition, international guidelines on judicial proceedings specify the right to an independent and impartial tribunal, and lay down guidelines for the *conduct of judges*. States should ensure the lack of any racial (caste) prejudice on the part of judges and other judicial personnel. They should further prevent all direct influence of any groups or ideologies on the justice system and judicial decisions that allows for discrimination against any person/s.<sup>34</sup> In this regard, states can take account of the Bangalore Principles of Judicial Conduct 2002,<sup>35</sup> which specify that judges should be independent, impartial,

33 Bar Council of India, 'Rules on Professional Standards', retrieved 21.01.2014 from <<<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>>>.

34 Committee on the Elimination of Racial Discrimination, 2005. *General Recommendation 31: Prevention of Racial Discrimination in Administration and Functioning of the Criminal Justice System*. UN Doc. A/60/18, paras 31-32.

35 UN Doc. E/CN.4/2003/65, annex.

discharge their judicial duties with integrity, act with propriety, competence and diligence. Value 5, in particular, states that equality of treatment to all before the courts is essential to the due performance of the judicial office. This means that judges should be aware of societal diversity and differences linked to (caste) background, should not manifest by words or conduct any (caste) bias towards persons or groups, and should actively oppose any manifestation of prejudice by persons under their direction and by lawyers against any person/s based on their caste.<sup>36</sup>

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In conclusion, a host of legal stipulations and guidelines have been laid down for the conduct of criminal trials in atrocity cases and specifically the duties of key court actors in such trials. In addition, in the absence of any comprehensive codification of victim and witness rights, a number of judgements and legal provisions lay down a broad framework for such rights. This is in addition to Constitutional stipulations such as the right to non-discrimination on the basis of caste, race, gender, etc. The application or non-application of these legal standards, examined in relation to the wider right of equal access to justice, forms the core of analysis in next two chapters.

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36 *Ibid.* See also CERD *General Recommendation 31: Prevention of Racial Discrimination in Administration and Functioning of the Criminal Justice System*, para. 33.



A photograph of a prison cell block. The cells are arranged in a long, narrow corridor. The walls are made of dark metal bars. The floor is a light-colored, textured material. The lighting is dim, creating a somber atmosphere. The text "CHAPTER 2" is overlaid in white, sans-serif font in the center of the image.

## CHAPTER 2



# OVERALL FUNCTIONING OF THE SPECIAL COURTS

Having spelt out above the broad principles covering the functioning of the criminal justice system and its key actors in the previous chapter, the structure and functioning of these Special Courts is next examined. In the five states under the study, both exclusive and designated Special Courts operate. Both their case loads and functioning vary in terms of the type of court, as well as from state to state. Focusing primarily on the five courts that are the subject of the study, the major trends in terms of the types of atrocity cases under trial, charges framed, stages of the cases, duration of trials and rates of convictions, acquittals and compromises, grounds for judgements, appeals and monitoring mechanisms specific to trials are detailed.

## 2.1 State-level Data on the Special Courts

First, the broad data available at the state level is analysed. This shows that only in Andhra Pradesh have Exclusive Special Courts been set up in all 23 districts of the state. By contrast, Jharkhand has not established a single Exclusive Special Court. Meanwhile, Rajasthan has established Exclusive Special Courts in only 17 of its 33 districts, Uttar Pradesh has Exclusive Spe-

cial Courts in only 40 of its 71 districts, and Tamil Nadu is only 4 of its 32 districts.<sup>37</sup>

In terms of the overall disposal of registered crimes against SCs/STs by the courts in the five states, in 2012 the disposal rate was poor (see Table 1). The pendency rate for cases under trial ranged from 61.9% in Andhra Pradesh to 93.2% in Rajasthan. Taking the conviction rate for cases under the PoA Act alone, this also ranged from 8.5% in Andhra Pradesh to 49.2% in Uttar Pradesh, or an average of 23.6% conviction rate across the five states. This can be compared to the average conviction rate of 44.7% for crimes registered under the IPC in the five states, almost double the conviction rate for crimes under the PoA Act. Moreover, this conviction rate does not take into account the number of cases withdrawn, in which case the conviction rate would be even lower for SC/ST atrocity cases.

**TABLE 1** | Disposal of Cases by Courts for Crimes Committed against SCs/STs in 2012

State	No. of cases for trial, incl. pending cases from previous year	Cases with-drawn by govt	Cases com-pounded or with-drawn	No. of cases trial completed		No. of cases pending trial at end of the year	Con- viction rate for SC/ST (PoA) Act
				Con- victed	Acquitted or Dis- charged		
Andhra Pradesh	7012	2	251	198	2221	4342	8.5%
Jharkhand	1655	0	14	98	282	1261	18.6%
Rajasthan	14,514	0	48	362	584	13520	25.9%
Tamil Nadu	4141	0	0	119	570	3452	15.8%
Uttar Pradesh	23,981	4	55	1857	1755	20314	49.2%
<b>All India</b>	<b>131,518</b>	<b>6</b>	<b>1586</b>	<b>4882</b>	<b>15733</b>	<b>109,717</b>	<b>17.9%</b>

Source: National Crimes Records Bureau, 2013. *Crimes in India 2012*. New Delhi: NCRB

37 Ministry of Social Justice and Empowerment, 2012. *Report under sec. 21(4) of SC/ST (Prevention of Atrocities) Act for the Year 2010*. New Delhi: MSJE, Chapter 2.

Turning to the five courts under study (Table 2), the three exclusive and two designated Special Courts were established between 1992 and 2010. The monthly case load before the Exclusive Special Courts is significantly higher (over 100 cases) than that before the Designated Special Courts (20-30 cases). Data on the annual judgements delivered on SC/ST atrocity cases also show that the Exclusive Courts are able to deliver a greater number of judgements. This number, though, is not always much higher than the Designated Courts. For example, Villupuram Designated Special Court has averaged around 30 judgements per year, while the three Exclusive Special Courts have averaged around 50 judgements. Where information was available, the appeal rate is also very low. Only in the case of Rangareddy Special Court have appeals been filed in 15 cases for one year, of which 14 appeals were against acquittals.

However, the most striking data is that all the Special Courts, whether designated or exclusive, are trying non-SC/ST atrocity cases in addition to atrocity cases. In other words, Exclusive Special Courts are not functioning as exclusive courts in reality. This seems to be occurring regardless of the high number of atrocity cases pending trial before the Exclusive Special Courts. Note that the current situation contradicts a statement from one Director of Public Prosecutions that only where a small number of atrocity cases exists in a district do the Special Courts try other types of cases as well. The significance of this finding is that, as the example of Alwar Special Court closest shows, if the courts did function as Exclusive Special Courts taking up only atrocity cases, they could easily try a larger number of such cases each year and help bring speedy justice to a greater number of victims. The non-exclusive functioning of these courts then has to be analysed in relation to the number of years that cases are under trial, as seen in Tables 3–7 below.

**...all the Special Courts, whether designated or exclusive, are trying non-SC/ST atrocity cases in addition to atrocity cases. In other words, Exclusive Special Courts are not functioning as exclusive courts in reality.**

**TABLE 2** | Basic Information on the Five Special Courts

Information	Rangareddy, AP	Palamu, JHK	Alwar, RAJ	Villupuram, TN	Banda, UP
Type of Special Court	Exclusive	Designated	Exclusive	Designated	Exclusive
Year of Establishment	2008	2010	1992	1993	1998
Approx. no. of atrocity cases tried per month	120	25	400	25	150
Approx. no. of other (non-atrocity) cases tried per month	180	110	3	110	200
Approx. no. of atrocity cases reaching judgment per year*	55	10	50	30	55
No. of appeals on atrocity cases filed in 2012	15	3 (2010-12)	approx. 5	n/a	approx. 5

\* Averaged from judgement rate for 2010-2012. Only in the case of Banda Special Court, judgement rate taken for period Dec. 2012 to Nov. 2013. Excludes cases in which compromises or other events occurred to dispose of cases prior to final judgement.

## 2.2 Right to Speedy Trial: Status of Pending Cases before Special Courts

The five Special Courts have different caseloads before them (Tables 3 to 7). At the bottom end are the two Designated Special Courts in Jharkhand and Tamil Nadu, which have only 65 and 186 pending cases respectively. These courts can be compared to the three Exclusive Special Courts in Andhra Pradesh, Rajasthan and Uttar Pradesh, which have pending cases numbering 210, 340 and 1017 respectively.

In terms of the right to a speedy trial, for only four courts is the information complete. Given the large pending case load before Banda Special Court, information for only a sample of approximately one-fifth of the cases could be collected. Nonetheless, the sample of pending cases from this Court also confirms the following pattern. Taking the pending cases before the five courts (Tables 3 to 7), there is a clear violation of the right to a speedy trial for atrocity cases. Cases have been pending since 1998 in Banda Special Court

in Uttar Pradesh, 2000 in Palamu Special Court in Jharkhand, since 2004 in the Villupuram Special Court in Tamil Nadu and Alwar Special Court in Rajasthan, and since 2008 in Rangareddy Special Court in Andhra Pradesh. In other words, cases have been pending in four of these five courts for over or just under a decade.

Looking at the percentage of cases that have been pending for over a year (taken as cases prior to 2012) in the four courts for which information is complete (Tables 3 to 6), these vary from 49.0 to 76.2 percent. There does not seem to be a clear difference between Designated and Exclusive Special Courts in this regard. The rate of pendency of cases registered in or before 2011 ranges from 49.0% to 64.6% in Villupuram and Palamu Designated Special Courts. Meanwhile, the rate ranges from 63.3% to 76.2% in the case of Rangareddy and Alwar Exclusive Special Courts. One explanation for this is that, as mentioned above, the latter courts do not function as exclusive courts in reality.

**TABLE 3** | Status of Pending Cases before Rangareddy Special Court, Andhra Pradesh

Status of Case	No. of Cases Committed to the Special Court by Year of Committal						Total
	2008	2009	2010	2011	2012	2013	
Appearance	1			2	2	4	9
Framing of Charges		2	4	15	36	2	59
Prosecution Evidence	7	14	40	39	24	5	129
Defence Evidence	1	1	1	4	2	2	11
Final Arguments	1						1
Judgement				1			1
<b>Total</b>	<b>10</b>	<b>17</b>	<b>45</b>	<b>61</b>	<b>64</b>	<b>13</b>	<b>210</b>

\* Pending cases as on 15.03.2013 from court records.

**TABLE 4** | Status of Pending Cases before Palamu Special Court, Jharkhand

Status of Case	No. of Cases Committed to the Special Court by Year of Committal											Total	
	2000	2002	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013
Appearance							1				5	2	8
Framing of Charges										2	9	1	12
Prosecution Evidence													
1		1	1	5	1	14	2	2	6	6		39	
Defence Evidence		1	1		1								3
Final Arguments						2	1						3
Judgement													0
<b>Total</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>6</b>	<b>3</b>	<b>16</b>	<b>2</b>	<b>2</b>	<b>8</b>	<b>20</b>	<b>3</b>	<b>65</b>

\* Pending cases as on 02.02.2013 from court records.

**TABLE 5** | Status of Pending Cases before Alwar Special Court, Rajasthan

Status of Case	No. of Cases Committed to the Special Court by Year of Committal										Total	
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013		
Appearance												0
Framing of Charges							2	4	20	41	2	69
Prosecution Evidence	3	2	12	22	11	34	44	54	37			219
Defence Evidence			1	2	2	1	1	1				8
Final Arguments		5	2	2	3	15	10	6	1			44
Judgement												0
<b>Total</b>	<b>3</b>	<b>7</b>	<b>15</b>	<b>26</b>	<b>16</b>	<b>52</b>	<b>59</b>	<b>81</b>	<b>79</b>	<b>2</b>	<b>340</b>	

\* Pending cases as on 02.02.2013 from court records.



**TABLE 6** | Status of Pending Cases before Villupuram Special Court, Tamil Nadu

Status of Case	No. of Cases Committed to the Special Court by Year of Committal										Total
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
Appearance				1		2	1	2	20	6	32
Framing of Charges									7	1	8
Trial halted due to CBCID Inquiry							1				1
Prosecution Evidence	1	3	2	3	2	5	36	25	54	5	136
Defence Evidence						1	1	4	2	1	9
Final Arguments											0
Judgement											0
<b>Total</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>8</b>	<b>39</b>	<b>31</b>	<b>83</b>	<b>13</b>	<b>186</b>

\* Pending cases as on 20.09.2013 from court records.

**TABLE 7** | Status of Pending Cases before Banda Special Court, Uttar Pradesh\*\*

Status of Case	No. of Cases Committed to the Special Court by Year of Committal										Total	
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2010		2011
Appearance												
Framing of Charges										1		1
Prosecution Evidence						2				34	131	167
Defence Evidence	1	1	1	2	5	5	2	5	1	11		34
Final Arguments			1		1	1						3
Judgement												
<b>Total</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>8</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>46</b>	<b>131</b>	<b>205</b>

\* Pending cases as on 15.01.2014 from court records.

\*\* Only a sample of around one-quarter of the cases under trial before the court is represented here, due to large number of pending cases.

Further analysis can be made of the right to speedy trial by examining the various stages of trial at which pending cases lie in the Special Courts. Taking the four courts with complete information on pending cases together (Tables 3 to 6), the following major trends appear:

- 18.4% of pending cases are at the charge framing stage
- 65.3% of pending cases are at the prosecution evidence stage
- 3.9% of pending cases are at the defence evidence stage
- 6.0% of pending cases are at the final arguments stage
- Less than 1% of pending cases are at the judgement stage.

While appearances can be called at any stage of the trial, the two crucial initial stages in the special courts are the framing of charges and the prosecution evidence. The bulk of cases are pending at these two stages. In the Special Courts in Andhra Pradesh, Jharkhand and Rajasthan, around one-third of cases (33.1%) at the stage of framing of charges have been pending at this stage for over a year. Some cases in Andhra Pradesh and Rajasthan are still at this stage after entering the Special Courts in 2009; i.e. they have been stuck at this stage for up to four years. Turning to the prosecution evidence stage of trial, three-quarters of cases (75.0%) at the prosecution evidence stage were committed to the Special Courts over a year ago. All this evidences the slow pace of trial in these courts.

## 2.3 Charges Framed under SC/ST (Prevention of Atrocities) Act

In terms of the charges framed for the various atrocities in the Special Courts, a great deal of variation was seen across and within the states (Tables 8 to 12). Moreover, one has to look at the variation in the charges framed by the Court as compared to the FIR and the charge sheet in a case. This indicates the low level of knowledge on the provisions of the PoA Act.

For example:

Case No. & Court	Sections in FIR	Sections in Charge Sheet	Charges Framed in Special Court
SC No. 09/2011 in Palamu Special Court	3/4 PoA Act	3/4 PoA Act	3(1)(xii) PoA Act
SC No. 14/2008 in Palamu Special Court	3/4 PoA Act	3(1)(x) PoA Act	3(1)(v) PoA Act
SC No. 44/2012 in Alwar Special Court	3(i)/ 3(x)/ 3(xii) PoA Act	3 PoA Act	3(1)(xii) PoA Act

An overall analysis of the charges framed under the PoA Act in the Special Courts, in comparison to the type of atrocity that occurred, reveals the following:

- Even though eligible to be charged under sec. 3(2)(v), in 46 of the 195 cases involving grievous offences such as murder, attempted murder, rape, dowry death, rape and assault, only sec. 3(1)(x) – verbal abuse/intimidation– is being applied and not sec. 3(2)(v).
- Charges under sec. 3(2)(v) have been framed in a total of 90 atrocity cases only in the last five years (since 2009), with three sole exceptions (i.e. pre-2009) in Andhra Pradesh, Tamil Nadu and Uttar Pradesh. Moreover, this section has been applied the least in atrocity cases appearing before the Special Court in Jharkhand.
- In cases of rapes of SC/ST women, which number 137 cases<sup>38</sup>, only in 45 cases has sec. 3(2)(v) been applied. Notably, the Special Court in Andhra Pradesh has applied sec. 3(2)(v) in most cases. In other states, it is more often secs. (3)(1)(xi) and (xii) being applied, or even 3(1)(x).
- The crime of caste abuse and intimidation alone seems to more commonly brought before the Special Courts in the southern states of Andhra Pradesh and Tamil Nadu (total of 79 such cases). In the northern states, this was the single charge in only one case.
- There appears to be no particular pattern of improvement over the years in terms of the correct sections of the PoA Act being applied to newer cases. Rather, it appears to be highly discretionary as to whether the

38 Two rape cases involve sexual violence against SC/ST boys/men.

police and then the public prosecutor ensure that the correct sections of the law are applied while charges are framed in the Special Courts.

- The least knowledge of the specific sections of the PoA Act appears to be in cases appearing for trial in Palamu Special Court in Jharkhand and Banda Special Court in Uttar Pradesh. This was evident from the 29 cases of different types of atrocities in Palamu for which simply sec. 3, sec. 3(1) or secs. 3/4 was written without specifying an actual provision of the law. Similarly, 168 of the 204 sample atrocity cases in Banda that involve offences other than verbal abuse/intimidation are being tried only under sec. 3(1)(x).

In addition, the SPP for Palamu Special Court noted that there are many cases that do not reach the Special Court due to the removal of PoA Act charges and remittance only as IPC cases. This occurs at any stage, from the time of FIR filing, to charge sheet filing, to the framing of charges before the Special Court. The other prevalent trend was to file cases solely under sec. 3(1)(x) PoA Act for caste abuse.

An overall conclusion can be drawn from the above trends in charges framing in the Special Courts. This is that the courts are not ensuring that the cases are framed under the correct sections of the PoA Act. Further, it can be inferred that the SPPs are not contesting this incorrect framing of charges.

**TABLE 8** | No. of pending cases as per atrocity type & year of entry into Rangareddy Special Court, A.P.

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court						Total
		2008	2009	2010	2011	2012	2013	
Caste abuse	3(1)(x)	2	1	11	21	24	4	63
Murder, rape & murder	3(1)(x)	1						1
	3(2)(v)		1	4	3	2		10
Attempted murder	3(1)(x)	1			1			2
	3(2)(v)			1				1
Dowry death, dowry death & physical assault	3(1)(x)		1					1
	3(1)(xi)					1		1

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court						Total
		2008	2009	2010	2011	2012	2013	
Culpable homicide that is not murder	3(1)(x)			1				1
Rape	3(1)(x)		1	1	1			3
	3(2)(v)	1	2	2	6	9		20
Rape & assault, kidnapping & rape, rape & sexual exploitation	3(1)(xi)						1	1
	3(1)(xii)					1		1
	3(1)(x)					1		1
	3(2)(v)		1	2	1		1	5
Kidnapping/ abduction	3(2)(v)				1			1
Assault, assault with weapons	3(1)(x)	1	4	13	14	8	4	44
Grievous assault, wrongful restraint	3(2)(v)			1				1
Assault, property destruction	3(1)(x)				3	1		4
Assault/ use of force against woman	3(1)(x)			3	3	3		9
	3(1)(xi)					6	2	8
Selling minor girl for prostitution	3(1)(x)			1				1
Forcing SC/ST to leave house	3(1)(x) & (xv)	1						1
Assault &/or dispossession from land/house	3(1)(x) & (v)	1						1
	3(1)(v)		1			2		3
Assault, wrongful possession/ occupation of land/house	3(1)(iv) & (v)					1		1
Dumping obnoxious matter in SC neighbourhood	3(1)(ii)				1			1
Destruction of property, caste abuse	3(1)(x)	1	1	1	1	1	1	6
	3(1)(iv)			1				1
	3(1)(v)		1					1
Property cheating, caste abuse	3(1)(x)		1	1		3		5
Wrongful restraint, caste abuse	3(1)(x)	1		1				2
Cruelty by husband or relatives	3(1)(x)		1	1	4	1		7
Abetment to suicide	3(1)(x)		1		1			2

\* As on 15.03.2013 from court records.

**TABLE 9 |** No. of pending cases as per atrocity type & year of entry into Palamu Special Court, Jharkhand

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court											Total			
		2000	2002	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013		
Caste abuse, intimidation	3(1)														1	1
Murder	3 / 4						1									1
	3(1)(vi), 3(2)(v)														1	1
Attempted murder	3(1)(v), (v)		1													1
	3(1)(x), (xi)														1	1
	3, 3 / 4					1								1	2	5
Rape, rape & assault	3, 3 / 4	1														2
	3(1)(xii)					1										1
	3(1)(x)					1	1									2
	3(1)(x), (xi)														1	1
	3(1)(x), (xii)						1									1
	3(1)(xi), (xii)						1									1
Physical assault, assault & wrongful restraint, theft, false case or verbal abuse/ insult	3(1)(x)				1	3									1	12
	3(1)(v), (v)														1	1
	3(1)(xiii)													1		1
	3(1), 3, 3 / 4											2	1	6	7	16

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court											Total			
		2000	2002	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013		
Assault, dumping obnoxious substances in Dalit area	3(1)(ff), (x)							1								1
Assault, dispossession from land or premises, verbal abuse	3(1)(v), (x), (xi)							1								1
Assault, property damage	3(1)(iv), (v), (x), (xv)									2						2
	3(1)(iv)											1				1
	3(1)(xi)											1				1
Assault/ use of force against woman	3(1)(x), (xi)											1				1
	3(1)(xi), (xii)											1				1
	3 / 4							1								1
Wrongful restraint, caste abuse	3(1)(x)						1									1
	3 / 4						1									1
Trespass, defiling place of worship	3 / 4			1												1
Preparing forged document	3															1
Sections not known			1					1	1				1			4

\* Pending cases as on 02.02.2013 from court records.

**TABLE 10** | No. of pending cases as per atrocity type & year of entry into Alwar Special Court, Rajasthan

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court									Total	
		2004	2005	2006	2007	2008	2009	2010	2011	2012		2013
Murder	3(2)(v)						1		1	1		3
Attempted murder	3(1)(xi)						1					1
Rape, rape & assault, kidnap & rape	3(1)(xii)		3	1	1	2	4	7	3	9	1	31
	3(2)(v)						1	1		3		5
Gang rape, gang rape & assault, kidnap & gang rape	3(2)(v)						3	1	3	5		12
	3(1)(v)							1				1
	3(1)(xii)					1	4	1	1	4		11
Attempted rape	3(1)(xi)			4	4	2	6	3	11	4	1	35
	3(1)(x)									1		1
Unnatural sex with boy	3(1)(x)								1			1
Physical assault, Assault & caste abuse, wrongful restraint, verbal abuse/insult	3(1)(x)	3	2	6	21	7	25	33	49	35	3	184
	3(1)(viii), (x)					1						1
	3(1)(xi)								2	1		3
	3(1)(x), (xv)								1			1
Grievous assault	3(2)(v)						1					1
Dispossession/interference with enjoyment of land/house, Assault & dispossession	3(1)(iv)			1			1			3		5
	3(1)(v)		2	2	4	3	7	9	4	3		34
	3(1)(x)				1	1	1	3		1		7
Sections not known						1	2			3		

\* Pending cases as on 02.02.2013 from court records.



**TABLE 11** | No. of pending cases as per atrocity type & year of entry into Vilupuram Special Court, T.N.

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court										Total
		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
Caste abuse, criminal intimidation	3(1)(x)							5	5	5	1	16
Murder	3(2)(v)						1	2	2	4		9
Attempted murder	3(1)(x)	1			1		1	4	1	6		14
	3(2)(v)							1		2	1	4
Rape, kidnapping & rape	3(2)(v)							3	1			4
	3(1)(x)		1						2	4		7
	3(1)(xi)								1			1
Rape, assault, sexual exploitation	3(1)(xii)								1			1
Kidnapping/ abduction	3(1)(x)										1	1
Assault, assault with deadly weapons	3(1)(x)		1	2	2		5	17	10	49	6	92
Grievous assault, grievous assault & wrongful restraint	3(2)(v)		1				1	1	1		1	5
Assault, wrongful possession/ occupation of land/house	3(1)(iv) &/or (v)								1	1		2
Destruction of property, caste abuse	3(1)(x)				1				1			2
Wrongful restraint, caste abuse	3(1)(x)								1	2		3

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court										Total
		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
Assault/ use of force against woman	3(1)(x)							2	1	2	1	6
	3(1)(xi)							4	1	5	2	12
	3(1)(iv)								1			1
Dumping obnoxious substance in SC neighbourhood	3(1)(ii)								1			1
	3(1)(ii), (x)					1						1
Assault of woman, denial of access to public place	3(1)(x), (xi), (xiv)					1						1
Restraint, compulsory slavery, forced labour	3(2)(iv) & 3(1)(xv)									1		1
Property damage using fire, property damage & assault	3(2)(iv)									1		1
	3(1)(x)									1		1

\* Pending cases as on 20.09.2013 from court records.

**TABLE 12** | No. of pending cases as per atrocity type & year of entry into Banda Special Court, U.P.

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court										Total	
		1998	1999	2000	2001	2002	2003	2004	2005	2006	2010		2011
Murder, kidnap & murder	3(1)(x)	1		1								4	6
	3(2)(v)			1								1	2
	3(1)(v)						1						1
	3(1)(xii)										1		1
Attempted murder	3(1)(v)									1			1
	3(1)(x)											2	2
	3(2)(v)											1	1
Attempt to commit culpable homicide	3(1)(x)											2	2

Type of Atrocity	PoA Act sections invoked	No. of cases as per year of entry into Special Court											Total
		1998	1999	2000	2001	2002	2003	2004	2005	2006	2010	2011	
Rape	3(1)(x)				1	1		1					3
	3(1)(v)										1		1
	3(1)(xii)										7	14	21
	3(2)(v)										1	1	2
Kidnap & rape	3(1)(xii)										1		1
	3(2)(v)										2		2
Rape & assault	3(1)(xii)											1	1
Kidnapping & physical assault	3(1)(x)				1							1	2
Kidnapping	3(1)(x)										1	5	6
Physical assault & verbal abuse	3(1)(x)		1			5	5	1	5	1	21	60	99
	3(1)(v)										2		2
Assault/ use of force against woman	3(1)(x)						1				3	29	33
Mischief, damage to property	3(1)(x)						1				3	2	6
Mischief & assault	3(1)(x)											1	1
Trespass, rioting & verbal abuse/ intimidation	3(1)(x)										1	1	2
Wrongful restraint & verbal abuse	3(1)(x)										1	3	4
Wrongful restraint & physical assault	3(1)(x)											1	1
Cheating, forgery and verbal abuse	3(1)(x)											1	1
Verbal abuse/ intimidation	3(1)(x)										1		1

\* Pending cases as on 15.01.2014 from court records.

## 2.4 Disposal of Cases: Convictions, Acquittals and Compromised Cases

With regard to the disposal of cases before the five Special Courts, the average disposal rate is poor. While a number of cases are entering these courts each year, most end up pending trial at the end of the year. As previously mentioned, Table 2 shows that two of the three Exclusive Special Courts have higher disposal rates for atrocity cases than in the Designated Special Courts. However, the difference between them in this regard is not very large due to all five Courts taking up additional non-atrocity cases.

Of the cases that reached judgement in these Special Courts during the three-year period from 2010 to 2012, the **overall conviction rate averaged at only 20.4 percent** (Table 13). This was only marginally higher than the average conviction rate under the PoA Act across the country (17.9%). The average conviction rate over the three-year period ranged from 13.5% in Rangareddy Special Court to 23.0% in Alwar Special Court. In other words, **less than a quarter of all cases reaching judgement in any of these courts are ending in convictions**. The majority are seeing the acquittal or discharge of the accused persons. Only in Rajasthan, where some further disaggregated data was available, it could be seen that the majority of cases disposed of by Alwar and other Special Courts ended in compromises.

Another significant point that emerges from the data in Table 13 is that the records on the number of convictions do not specify whether the convictions occurred under the PoA Act or not. In fact, the NCRB official database also does not make this distinction. Hence, without disaggregated data on the number of convictions under the IPC alone, PoA Act alone, and IPC and PoA Act, it is impossible to judge whether the PoA Act is performing its crime deterrence role. For example, taking the 21 judgements analysed in subsection 2.5, nine are convictions. However, out of those nine cases, five are only convictions under the Indian Penal Code while the PoA Act charges were struck off.

**TABLE 13 |** Details of SC/ST Atrocity Trials in the Five Special Courts between 2010 and 2013

Name of Special Court	Cases disposed during that year			Convictions			Acquittals			Otherwise* disposed					
	2010	2011	2012	2013	2010	2011	2012	2013	2010	2011	2012	2013			
Rangareddy, A.P.	45	60	73		7	10	7		35	46	64		3	4	2
Palamu, Jharkhand**	29	5	24		not available										
Alwar, Rajasthan	96	89	119		15	26	29		34	21	18		47	42	72
Villupuram, T.N.	46	24	19		12	4	1		34	20	18		not available		
Banda,															
U.P.***			28	47			8	14			16	33	not available		

\* e.g. Trials closed due to the death of the accused during the trial, compromises, etc.

\*\* For Palamu Special Court, only data for the three years together was available.

\*\*\* For Banda Special Court, data was available only for the time period Aug-Dec. 2012 and Jan.-Nov.2013.

Sources: Alwar, Banda and Rangareddy Special Court records; RTI Response from Public Information Officer, Office of the Superintendent of Police, Palamu dated 01/04/2013 for the period Jan. 2010 to Dec. 2012; RTI Information from Office of Additional Superintendent of Police – Crime, Villupuram, C.No. 1028/ AdSP-C/RTI/MPM/2013, dated 26-06-2013.

The prevalence of this trend of low convictions and high acquittals is supported by the RTI responses received from other district Special Courts in the five states under the study. In none of the courts for which responses were received is the conviction rate higher than acquittal/discharge rate. Moreover, in almost all the courts the conviction rate was almost the same low level of under 25 percent. Given this situation, it is questionable whether the Act is truly serving as a deterrent against such caste/ethnicity-based crimes.

## RTI DATA IN THE FIVE STATES:

**Andhra Pradesh:** Further details provided through RTI applications show that of the total of 71 cases reaching judgement (acquittal or conviction) in 2012, 25 cases entered the Rangareddy Special Court in 2008, 23 in 2009, 18 in 2010, 1 in 2011 and 4 in 2012.<sup>39</sup> The average length of trial once the case reached this Special Court, therefore, was around three years.

**Jharkhand:** Further details provided through RTI applications show that in other Special Courts in the state, the situation during the period of 2010 to 2012 was as follows:

**Chaibasa district:** Out of 13 cases tried by the Court, only five cases reached judgement, all acquittals. Moreover, one of the cases had entered into the Special Court in 1997 and reached judgement in 2012; i.e. after 15 years. The trial duration in the other four cases averaged 2-3 years. None of the cases were appealed to the High Court.<sup>40</sup>

**Giridih district:** A total of 298 cases were tried by the Court, with only 18 convictions secured during this period. Further, in eight cases appeals were filed with the High Court.<sup>41</sup>

**Seraikela Kharsawan district:** Only five cases completed trial during this period. Four ended in acquittals, while one was disposed of due to the accused absconding. None of these cases were appealed to the High Court.<sup>42</sup>

**East Singhbhum district:** Out of the 10 cases disposed of by the Court, all ended in acquittals because the witnesses turned hostile.<sup>43</sup>

39 RTI response received from Special Public Prosecutor, Rangareddy Special Court, L.B. Nagar on 23-08-2013 for the period Jan. 2012 to 31-07-2013.

40 RTI response received from Special Public Prosecutor, Chaibasa district on 25.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

41 RTI response received from Superintendent of Police, Giridih district on 06.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

42 RTI response received from Superintendent of Police, Seraikela district on 17.04.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

43 RTI response received from Special Public Prosecutor, East Singhbhum district on 16.04.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

**Latehar district:** Out of 23 cases tried by the Court, 10 cases reached judgement with only two convictions.<sup>44</sup>

**Jamtara district:** Out of 23 cases tried by the Court, only one case ended in a conviction while 15 ended in acquittals.<sup>45</sup>

**Bokaro district:** Trial was completed in 28 cases, out of which only 6 cases ended in convictions. No appeals were filed before the High Court during this period.<sup>46</sup>

**Ramgarh district:** Only five cases were tried by the Court and none reached judgement during the three year period.<sup>47</sup>

**Dhanbad district:** Trials were conducted in 49 cases over the three year period, and only 1 case ended in conviction while 20 cases ended in acquittals.<sup>48</sup>

**Gumla district:** For the period 2011 to 2012, 53 cases were under trial in the court. Of these cases, 11 cases reached judgement as acquittals or discharge of the accused. Seven were under criminal revision with cases before the High Court.<sup>49</sup>

**Rajasthan:**

Further details provided through RTI applications show that in other Special Courts in Rajasthan, the situation is similar to that in Alwar Special Court:

**Tonk district:** Between January 2010 and December 2012, 296 were under trial in the Special Court. A total of 241 cases reached judgement during this period, out of which only 46 (19.1%) ended in convictions.<sup>50</sup>

**Baran district:** Between January 2010 and December 2012, 381 cases were under trial in the Special Court. A total of 60 cases were decided during this period with only 9 (15%) convictions.<sup>51</sup>

**Jhunjhunu district:** Between July and December 2012, 216 cases were under trial in the Special Court. A total of 14 cases were decided during this period, with only 4 (28.6%) convictions.<sup>52</sup>

44 RTI response received from Superintendent of Police, Latehar district on 06.04.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

45 RTI response received from Superintendent of Police, Jamtara district on 03.05.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

46 RTI response received from Superintendent of Police, Bokaro district on 21.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

47 RTI response received from Superintendent of Police, Ramgarh district on 25.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

48 RTI response received from Superintendent of Police, Dhanbad district on 21.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

49 RTI response received from Special Public Prosecutor, Gumla district on 25.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

50 RTI response from Special Public Prosecutor, Tonk district on 30.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

51 RTI response from Special Public Prosecutor, Baran district on 20.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

52 RTI response from Assistant Director of Prosecutions, Jhunjhunu district on 14.02.2013 for the period 1 July to 31 Dec. 2012.

**Jalore district:** Between July and December 2012, 98 cases were under trial in the Special Court. A total of 8 cases were decided during this period, with only 2 (25%) convictions.<sup>53</sup>

**Pratapgarh district:** Between January 2010 and December 2012, 199 cases were under trial in the Special Court. A total of 78 cases were decided, out of which only 11 (14.1%) ended in convictions.<sup>54</sup>

**Bhilwara district:** Between January 2010 and December 2012, 511 cases were under trial in the Special Court. A total of 333 cases were decided, out of which only 54 (16.2%) ended in convictions and 136 in acquittals. The remaining 143 cases primarily ended in compromises.<sup>55</sup>

**Pali district:** Between January 2010 and December 2012, 510 cases were under trial in the Special Court. A total of 185 cases were decided, out of which only 24 (13.0%) ended in convictions and 156 in acquittals.<sup>56</sup>

**Sri Ganganagar district:** Between January 2010 and December 2012, 581 cases were tried in the Special Court. A total of 325 cases were decided, out of which only 61 (18.8%) ended in convictions and only three appeals were given against acquittals.<sup>57</sup>

**Dausa district:** Between January 2010 and December 2012, 236 cases were tried in the Special Court. A total of 97 cases were decided, out of which only 17 (17.5%) ended in convictions.<sup>58</sup>

**Jhalawar district:** Since April 2006, the post of Special Court judge has been vacant in this court. Between January 2010 and December 2012, only 19 cases ended in judgements, 7 (36.8%) ending in convictions.<sup>59</sup>

**Jaipur district:** Between January 2010 and December 2012, 532 cases were tried in the Special Court. Out of those cases completing trial, 47 cases ended in convictions, 157 in acquittals (55 due to compromises).<sup>60</sup>

53 RTI response from Additional District Collector, Jalore district on 14.02.2013 for the period 1 July to 31 Dec. 2012.

54 RTI response from Special Public Prosecutor, Pratapgarh district on 22.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

55 RTI response from Special Public Prosecutor, Bhilwara district on 22.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

56 RTI response from Special Public Prosecutor, Pali district on 31.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

57 RTI response from Special Public Prosecutor, Sri Ganganagar district on 06.04.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

58 RTI response from Special Public Prosecutor, Dausa district on 23.03.2013 for the period 1 Jan. to 31 Dec. 2012.

59 RTI response from Special Public Prosecutor, Jhalawar district on 01.04.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

60 RTI response from Special Public Prosecutor, Jaipur district on 15.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.



**Tamil Nadu:** According to the Additional Director General of Police, Social Justice and Human Rights, the overall details of atrocity cases reaching judgement in the Special Courts in Tamil Nadu, and total acquittals and convictions.:

*in 2010*, out of 288 cases reaching judgement, only 14 (5%) ended in convictions;

*in 2011*, out of 87 cases reaching judgement, only 5 (6%) ended in convictions;

*in 2012*, out of 51 cases reaching judgement, only 2 (4%) ended in convictions.<sup>61</sup>

**Uttar Pradesh:** Further details provided through RTI applications show that in other Special Courts in the state, the situation is not much better than in Banda Special Court:

**Gonda district:** In just the six month period between June to December 2012, a total of 289 cases were under trial in the Special Court. A total of 24 cases were decided during this period, of which none ended in convictions.<sup>62</sup>

**Gorakhpur district:** In January 2012, out of 980 cases under trial, only seven judgements were handed down, all acquittals. Similarly, in July 2012, out of 1095 cases under trial, only in three cases were judgements given, one being a conviction.<sup>63</sup>

## 2.5 Grounds for Judgements

Both interviews with the SPPs and an analysis of available judgements from four of the Special Courts present some of the key reasons for the granting of acquittals or convictions, and reveal the judicial weight given to the social context of the cases alongside interpretation of the letter of the law. According to the SPP in Alwar Special Court, in land disputes cases the accused are mostly acquitted because the Dalits cannot prove possession of the land title. They cannot show the documents which can prove their possession on the land. Moreover, he stated that especially cases of caste abuse and of rape most frequently end in compromises. The Villupuram SPP also noted that the majority of cases are acquitted before the Special Courts. This he saw as primarily caused by the poor police investigations carried out, which mean that the cases are weak in terms of the evidence he needs to secure a conviction. In the opinion of the Banda SPP, in addition to poor police investigations, he noted that most victims and witnesses turn hostile in his court

61 RTI response from Additional Director General of Police, Social Justice & Human Rights, Chennai on 27.03.2013 for the period 1 Jan. 2010 to 31 Dec. 2012.

62 RTI response from Senior Prosecution Officer, Gonda district on 28.05.2013 for the period 1 June to 31 Dec. 2012.

63 RTI response from Joint Director of Prosecutions, Gorakhpur district on 09.04.2013 for the period 1 Jan. to 31 July 2012.

due to the social pressure applied to them by the dominant caste community as well as the protracted court trial process. Illiteracy also hinders the victims from understanding the court process and poverty renders them susceptible to compromises through the payment of money.

Only the Rangareddy SPP talked about the inherent deficiencies in the PoA Act. He stated that while many people might term the PoA Act a flexible Act, in reality it is not so. One major problem is how to prove 'intent to humiliate' in sec. 3(1)(x) – verbal abuse and intimidation – which is often applied in cases. Very often this is not recorded in the victims' statements by the police. Moreover, the issue of proving 'on the grounds of being a SC or ST' is also problematic to prove as many victims do not think to share how their caste identity was known to the accused while making their statements to the police. Nor do the police know to make sure this point is recorded into the statements. Then there is also the fact that once the PoA Act sections have been disproved in the court, often the Indian Penal Code charges will also fail due to the accused being given the benefit of the doubt. Furthermore, the denial of anticipatory bail under the PoA Act is often circumvented to allow the accused out on bail through an application to the High Court. This leaves the accused free to intimidate and pressurise the victims into compromises. Lastly, there are often a number of procedural aspects that are violated and which can lead to acquittals.

### **POTENTIAL PITFALLS IN PROSECUTING ATROCITY CASES: THREE MAJOR ATROCITY CASES**

An examination of the Tsundur, Kherlanji and Mirchpur atrocity cases, which occurred in Andhra Pradesh in 1991, Maharashtra in 2006 and Haryana in 2010 respectively, reveals several common factors that led to the dilution of prosecution cases and to some acquittals (for full details and individual analysis of these cases, see Annexure 7). The major pitfalls observed in these three judgments are:

- The Court citing *problems originating from the pre-investigating stages and the police investigation*: i.e. the police suppression of information and delay in the investigation; failure to timely arrest the accused; delay in gathering witness state-

ments or else gathering statements that appear “mechanical” in nature; police failure to properly register the offenses; omissions in the original witness statements to police; etc.

- **Problems regarding the proof of motivation**, putting additional hurdles to PoA Act prosecutions: i.e. whether the accused used the caste name “in the context of identification and not derogation”; court refusal to view atrocities as social crimes demanding enhanced accountability separate from the Indian Penal Code; court insistence on narrowly interpreting incidents without greater contextualisation of caste tensions. This impediment is ironic, since the PoA Act generally does not require proof of caste motivation for atrocities; rather, it defines atrocities in reference to the caste status of the accused and the victim alone.<sup>64</sup> Nonetheless courts often require proof of intent, for instance demanding proof of caste slurs at the time of the offence.<sup>65</sup>
- **Question of witness credibility**: i.e. court rejection of evidence that is not corroborated with the incident or other witnesses; courts discrediting witnesses who do not personally know the accused; courts discrediting witnesses for undefined “unnatural conduct”; and the stand of the victim/s and witnesses, such as their supporting the defence version of events, refusing to testify, or fear of social/economic boycotts or physical threats negatively affecting their testimony.<sup>66</sup>

Looking at the 21 judgements that were collected from the Special Courts in the study (see table with individual case details in Annexure 8), nine were convictions and 12 were acquittals. Several trends in terms of the grounds on which judgements are made emerge. Two different categories of grounds were identified: procedural grounds and substantive grounds. Procedural grounds refer to reasons related to the failure to follow the mandatory rules or procedures of the PoA Act. In these types of cases, the transcript of the whole judgment focuses on the technicality and procedures of the PoA Act and Rules, rather than on the merits of the case. Substantive grounds refer

64 National Coalition for Strengthening SCs & STs (Prevention of Atrocities) Act, 2010. *20 Years of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act Report Card*. New Delhi: NCSPA, p.3.

65 Agrawal, Girish and Colin Gonsalves, 2005. *Dalits and the Law*. New Delhi: Human Rights Law Network, p.139.

66 Part of the analysis is from the note “*Problems and Recommendations for Atrocity Prosecutions*” produced for National Dalit Movement for Justice by Jordan Berman, dated 12 July 2012.

to the availability of evidence that is required to prove beyond a reasonable doubt that the accused committed the offence. The quality and the quantity of such evidence have to pass a certain threshold, which is often where atrocity cases fail. Notably, in hardly any case was there only one ground responsible for the acquittal. With multiple grounds for acquittals, there was hardly any case where any specific ground contributed more powerfully than the other ground to the decision to acquit the accused. Hence, in the below analysis, all the grounds are treated with equal importance.

The following are the major grounds of acquittal found on analysis of the judgements.

#### A. PROCEDURAL GROUNDS:

- 1. *Investigation not done by the competent Authority:*** Rule 7 PoA Rules states that the investigation of atrocity cases has to be done by the Deputy Superintendent of Police (DSP). Hence, acquittals resulted due to the fact that the investigation was not done by the competent authority (in one case), or there was no proof of authorisation on the part of the Investigating Officer to investigate the case (in one case).
- 2. *Delay in filing First Information Report:*** Even though that the judge has the discretion to condone the delay in filing of the FIR, it was found in one judgment that the Judge had mentioned the delay in filing the FIR and this was successfully taken up by the accused to escape a conviction.
- 3. *Offence not committed on grounds of being SC/ST:*** In four cases of acquittals where sec. 3(2)(v) PoA Act was the charge, the courts judged that the offence was not committed “on the ground of victim being SC or ST” as required under that legal section. As a consequence, sec. 3(2)(v) was held to be not applicable.

#### B. SUBSTANTIVE GROUNDS:

- 4. *Victim and witnesses denying the incident/statement/complaint during examination:*** In seven atrocity cases the victim had given a complaint to the police immediately after the incident. In order to prove the prosecution case, the victim is required to repeat and state before the court her/his earlier statement or complaint during the trial itself. However, in these

cases the victim or witnesses denied either the incident or their statements given to the police. Thus, for not supporting the prosecution's case, these victims and witnesses were declared hostile.

5. *Statements of victims/witnesses entirely different from the previous statements made before the police:* In one case, the witness had given a statement to the police soon after the incident. However, once in court, they decided to not repeat the contents of this statement and instead gave a version of the facts that was insufficient to help establish the guilt of the accused.
6. *Statements of some of the witnesses not corroborated by other witnesses:* In two cases the judges found that statements given by the victims and witnesses did not corroborate the statements of other witnesses and thus did not support the prosecution's case.
7. *Interested witnesses:* In one case, the evidence of the witnesses was not considered by the judges as the witnesses were related to the complainant. The ground taken by the Court was that some of the prosecution witnesses are interested witnesses as they belong to the victim's family and, therefore, are not reliable. Under these circumstances, the accused were acquitted.
8. *Victims and witnesses deny knowing the accused or were not abused using caste name:* The analysis of two judgments, resulted in acquittals, revealed that the complainant as well as witnesses in court retracted their earlier police statements. They instead stated that they did not know the accused, did not know the caste of the accused, or nobody abused them using their caste name. When these important aspects were re-futed, the proceedings were stalled and the judges forced to dismiss the case or acquit the accused.
9. *Problems with the medical evidence:* In one case, the medical evidence of injuries to the murdered victim was found to not corroborate the statements of witnesses on multiple injuries, and this interpretation of the evidence supported an acquittal of the accused. This was because the fact of only one injury was stated to show that there was no intention on the part of the accused to kill the victim. Hence, there is no element of mens rea on the part of accused and the higher offence under sec. 3(2)(v) PoA Act was not made out.

**10. Problems with regard to evidence of insult/humiliation abusive words in public view, dominating the will of a woman:** In one case the lack of corroborating evidence from witnesses to show that the victim was insulted or humiliated in a place within the public view became one of the grounds for the acquittal. In another case, the victim was a home guard and the accused was a police constable. The Court found the elements in section 3(1)(xii) - “position to dominate the will” and “using that position to exploit her sexually” – were not made out since a police constable would not have a supervisory role vis-à-vis a home guard. Further, since the accused made a false promise to marry the victim, this supported deceit and inducement and not domination of the will of the woman. Hence, the accused was acquitted of the PoA Act charge. On the other hand, in another judgement, the judge found accused guilty of the rape of a ST woman due to the accused taking advantage of the woman’s ‘lower’ social status and dominating her will by virtue of his ‘higher’ social status. Hence, the accused was convicted under sec. 3(1)(xii) PoA Act and sec. 376 IPC.

One conclusion from the above grounds for judgements in the Special Courts is that the courts need to understand that technical violations by police are not automatic grounds for acquittal. Procedural rules for investigations are safeguards meant to ensure impartial practices, not to provide additional grounds to terminate a case.<sup>67</sup> The Supreme Court of India has echoed this sentiment in case of *Kailash and Others vs. State of Maharashtra*,<sup>68</sup> where it observed that courts should not reject cases on hyper-technicalities such as the investigation was not done by an officer of the rank of Deputy Superintendent of Police.

It is also a settled principle of criminal jurisprudence that the mere delay in lodging a FIR is not fatal in all cases. Instead, depending on the circumstances of the case, the delay in lodging the FIR can be one of the factors that

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67 Haan, Max, 2005. *Justice Delivery System and Dalits: Analysis of Special Court Judgements*. Secunderabad: Sakshi Human Rights Watch, A.P.

68 *Kailas and Ors vs. State of Maharashtra*, judgement dated 05.01.2011 arising out of Special Leave Petition (CrI) No. 10367 of 2010, Supreme Court of India.

corrode the credibility of the prosecution version. The delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case.<sup>69</sup>

At trial, a frequent impediment to convictions under the PoA Act is convincing the Courts that the incident was motivated by caste discrimination. This impediment is ironic, since the PoA Act generally does not require proving caste motivation for atrocities; rather, it defines atrocities merely with reference to the caste status of the accused and the victim. Some of the PoA Act sections require proof that the offence was committed against a victim “on the ground that such a person is a member of a Scheduled Caste or a Scheduled Tribe” (e.g. section 3(2)(v)). In such cases where the victims are socially and economically vulnerable, the Courts have to take the social realities into account and consider that such offences are invariably committed on the ground of the victim’s social identity. The Supreme Court in *Appa Balu Ingale and Ors*<sup>70</sup> has stated: “The criminal law primarily concerns social protection, prescribes rules of behaviour to be observed by all persons and punishes them for deviance, transgression or omission. That *metis rea* is not an essential ingredient in social legislations is the settled law.”

Another ground in the judgements is the interpretation of the words “public view” in sec. 3(1)(x) PoA Act and citing that the offence was not committed in a place within public view and, therefore, the PoA Act is not applicable. It is well settled, however, that wherever the public is watching and wherever an incident is viewed by members of the public, this constitutes the “public view”. This is regardless of whether the place itself is a private or public place,<sup>71</sup> since a place can be a private place but still within the public view.<sup>72</sup> Note that these legal interpretations are wider than the ordinary definition of a public place, which is a place owned or leased by the government or the municipality or gram sabha or an instrumentality of the State, and not by private persons or private bodies.

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69 *Jitendra Kumar vs. State of Haryana* (2012) 6 SCC 204.

70 *State of Karnataka vs. Appa Balu Ingale and Others* (AIR 1993 SC 1126, 1993 (1) ALT Cri 390, 1993 CriLJ 1029).

71 *E. Tirupem Reddy vs. Deputy Superintendent of Police*, Writ Appeal No. 2048 of 2005, High Court of Andhra Pradesh.

72 *Swarn Singh and Others vs. State through Standing Counsel*, Special Leave Petition (Criminal) No. 987 of 2007, Supreme Court of India.

With regard to the victims or the witnesses turning hostile in the court, it also well settled that in the event of a portion of evidence not being consistent with the statements given under section 161 CrPC and the witnesses declared hostile, this does not mean the total rejection of the evidence. The portion which stands in favour of the prosecution or the accused may be accepted, but the same shall be subjected to close scrutiny.<sup>73</sup>

The other impediment in atrocity cases is the ground of rejection of the evidence of “interested witnesses”. In *Balraje @ Trimbak vs. State of Maharashtra*<sup>74</sup>, the Supreme Court has stated that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it would not be proper to conclude that they would shield the real culprit and instead implicate innocent persons. The Court is required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. However, if after careful scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard that evidence.

There are several other grounds for acquittals, leading to the failure of the prosecution cases. However, the core question there is whether the courts have taken into consideration the social context of the SCs and STs. This requires understanding the influence of the dominant castes in the area, whether strong political grounds have been taken into account while delivering the judgements. It requires also understanding how many victims and witnesses receive pressure to withdraw the case, to compromise, threats to their life, etc. All this has an impact on the victims and witnesses during their evidence depositions. Sometimes they deny the whole incident, deny knowing the accused, deny giving any report to the police, etc. Therefore, given the unequal socio-economic status of the victims and witnesses of atrocities, and with the objective of furthering justice and the purpose of the PoA Act, the question arises as to the need for the judiciary to review the use of procedural and substantive grounds/defects that defeat the purpose of the enactment of this social legislation. Justice Krishna Iyer has stated in this regard:

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73 *Gurpreet Singh vs. State of Haryana* (AIR 2002 SC 3217).

74 *Balraje @ Trimbak vs. State of Maharashtra* (2010) 6 SCC 673.



*“The law makes intent, knowledge and degree of negligence an ingredient of the offence. But where social necessity demands from the angle of public welfare or because of the difficulty of proof of the accused’s mental stage, jurisprudence points to dispensing with or of the onus of proof of metis rea.”<sup>75</sup>*

## 2.6 Appeals against Acquittals or Convictions in SC/ST Atrocity Cases

Little information was publicly available on the number of cases each year for which appeals are given by the Special Public Prosecutors (SPPs) to the High Courts. The estimates given by Special Public Prosecutors in the five Special Courts, as mentioned in Table 2, show that very few cases are being appealed despite the high number of cases resulting in acquittals and discharges. What seemed clear from the statements of some SPPs was that the appeal rates differ from SPP to SPP, depending on the interest taken to push forward the cases. Moreover, given the high number of cases ending in compromises and/or in victims and witnesses turn hostile witness in court, and the number of cases weakened by poor police investigations and evidence gathering, few cases are *able* to be taken forward on appeal.

## 2.7 Mandatory Monitoring of SC/ST Atrocity Cases under Trial

Finally, the SC/ST (Prevention of Atrocities) Rules 1995 spell out a number of monitoring and implementation mechanisms for cases under trial in the Special Courts. According to Rule 4(2), the District Magistrate and the Director of Prosecution should conduct bi-annual reviews of the performance of the SPPs, and submit a report to the state government. Any dissatisfactory conduct of cases by the SPP can result in the SPP being de-notified. Furthermore, the District Magistrate and person in charge of prosecutions at the district level should review the position of cases registered under the Act and submit monthly reports on the same, under Rule 4(4). The monthly reports

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75 Quoted in *State of Karnataka vs. Appa Balu Ingale and Others*, Justice K. Ramaswamy (AIR 1993 SC 1126, 1993 (1) ALT Cri 390, 1993 CriLJ 1029).

should contain information on actions taken or proposed to be taken in respect of investigation and prosecution of each case. In addition, a district vigilance and monitoring committee (DVMC) established in every district should review the prosecution of cases under the Act once every three months, as per Rule 17.

In reality, though, these Rules are being followed more in their breach. For example, the Villupuram SPP reported that no DVMC meetings were conducted in 2013 to review the cases; nor was any review conducted on his performance during that year. Before 2013, the meetings and reviews had taken place. In Palamu, the SPP reported that there is no Director of Prosecution in the state and no regular reviews of his performance are done by the Law Department. Moreover, he has never been invited to attend any DVMC meeting. Information collected also showed that neither the mandatory monthly meetings chaired by the District Magistrate nor the DVMC meetings are not being held regularly. Meanwhile, in Alwar, a DVMC member admitted that the meetings are more a formality, as little or no substantial discussion takes place on the atrocity cases that are at different stages in the criminal justice system. This was confirmed by the Alwar SPP. Moreover, the mandatory monthly meetings chaired by the District Magistrate are taking place only once every three or four months, while the review of the SPP's performance is not being conducted. A similar situation of irregular meetings chaired by the District Collector existed in Rangareddy district.

Further, even when meetings have discussions, the quality of monitoring of the cases under trial is questionable. As the Rangareddy SPP pointed out, in the DVMC meetings the focus is on the disposal rate of the cases and relief/rehabilitation provisions, not on the problems and issues confronting the victims and witnesses, or the SPP, during the trial of atrocity cases. This is also the case for bi-annual review by the Director of Prosecution on the performance of the SPP, which is sometimes done by video conference. Similarly, in Alwar district the meetings chaired by the District Magistrate concentrate only on reviewing the provisioning of relief and rehabilitation. In other words, the focus on outcomes obscures the core issues and structural factors such as threats to the victims and witnesses, and discrimination and biases within the judicial system, that cause those outcomes.

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In sum, despite judicial pronouncements on the right to speedy trial, the creation of Special Courts with Special Public Prosecutors to try atrocity cases, the impact in terms of access to justice for SCs and STs can be termed minimal. Across the five states in which the study was conducted, as well as within the five focus Special Courts, the trends are uniform. Trials are protracted, with cases even stuck at the initial stage of the framing of charges for several years. The correct sections of the POA Act are not being applied, especially in grievous cases. Moreover, in no court is the conviction rate at least matching if not exceeding the acquittal rate. In fact, taking acquittals, discharges and compromises together, over 80% of atrocity cases in general are leaving SC/ST victims without justice. The relevant question in this situation, therefore, is not whether the PoA Act is being misused, as is often raised. Rather, it is the very serious question of the non-implementation of the POA Act and the grave injustice being perpetuated against SC and ST victims of atrocities within the criminal justice system. This is all compounded by the failure of state mechanisms to adequately monitor the prosecution of SC/ST atrocity cases beyond looking at the outcomes of acquittals versus convictions. Without a concerted effort to recognise, inquire into and address the processes and caste structure behind the failure of these cases in the judicial system, this situation will not change. These causal factors are explored in the next chapter.



## CHAPTER 3



# ACCESS TO JUSTICE THROUGH SPECIAL COURTS: OBSTRUCTIVE AND FACILITATIVE FACTORS

**I believe that since people in the judicial system come from the same society as those under trial in the criminal justice system, they cannot be entirely free from the existing prejudices, biases and stereotypes. This is reflected in the statements recorded in my case and will also be reflected at the time of formulation of the judgement in my case... If the accused is not punished, I will feel that the POA Act is no use for the victims of atrocities. The law must deliver fair and speedy justice to the vulnerable communities.**

**Amit Kumar, atrocity survivor**

Having given a broad overview of the functioning of the five Special Courts under study, and more widely the functioning of other Special Courts in the five states, this chapter examines in detail the experiences of SC/ST victims and witnesses of atrocities before the Courts. The data derives from the individual survey of victims and witnesses' experience of the trial process as well as through group discussions with the victims and witnesses. The perspectives of Special Public Prosecutors in the five Courts as well as SC/ST advocates are also included to give a broader picture of the various factors, including systemic factors, which either obstruct or facilitate access to justice for victims-survivors of atrocities.

*First*, the various reasons for the high pendency of cases under trial before the Courts are explained. *Second*, the discrimination, harassment and other obstructions that victims and witnesses experience in the Special Courts in examined. The analysis shows that these two factors of delay and obstructions are interlinked, and feed into the process of denial of justice to the victims-survivors. Moreover, the structural cause for these obstructions, caste, manifests in the discrimination that is rampant in the judicial system. *Third*, positive experiences of facilitation are described, to indicate the ways in which victims and witnesses can be supported throughout the court process.

### 3.1 Reasons for High Pendency of Cases

The rationale for setting up the Special Courts under sec. 14 PoA Act was to ensure the speedy trial of atrocity cases. However, a number of factors lie behind the high rate of pendency of cases and low rate of convictions in the Special Courts trying atrocity cases. Court observations by lawyer-researchers of Palamu Designated Special Court and Alwar Exclusive Special Court, and discussions with victims and witnesses in the five states, revealed the following trends as far as the **speed of trials** is concerned. Despite the Supreme Court's judgement<sup>76</sup> linking the right to speedy trial (a manifestation of fair, just and reasonable procedure) with the right to life enshrined in Article 21 Indian Constitution, most atrocity cases under trial have protracted hearings at every stage of the case, including the stage of framing of charges. One factor is that trials become delayed in the absence of judges appointed to the Special Courts, or if the judge is on leave, or if the judge has to attend any legal awareness programmes such as those organised by the State Legal Services Authority. For example, trials were delayed when the post of judge in Alwar Special Court was vacant for several months. When the judge in Palamu Special Court was on medical leave during the month of May 2013, no atrocity case was listed for hearing that month. In Rangareddy Special Court, once the regular judge retired in May 2013, another regular judge was not appointed to the Special Court for some time. Instead, the in-charge judges from other courts were seconded to this Court. This situation results in seemingly less interest paid to SC/ST atrocity cases as they are seen as merely an additional workload.

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76 P. Ramachandra Rao vs State of Karnataka (2002) 4 SCC 578.

Along the same lines, a second factor for delays in atrocity trials is the absence of the Special Public Prosecutors (SPPs) or their lack of full attention to atrocity cases. These absences are primarily due to illnesses, requiring both short and long-term absences. For example, when the SPP for Rangareddy Special Court had to take medical leave for two months, his cases were taken over by another Public Prosecutor. According to him, though, knowledge and interest in pushing forward these cases was missing in his absence, since he had been handling these cases over a period of time. In the case of the Palamu SPP, he continues to function as a private advocate as well. This means that he cannot devote his full time to the atrocity cases.

A third factor is the volume of cases before especially the Exclusive Special Courts. As previously mentioned, this is exacerbated by the fact that all these courts, both exclusive and designated courts, take on the trials of other non-atrocity cases as well. Hence, court observations revealed that often the judge does not have time to go through the case records before the hearing, or is busy with other non-atrocity cases listed in his/her court. At times, Special Court judges have to also take on the cases of the Sessions Court judge when the latter are not available in the court (as occurred in Palamu), or else have additional duties in other Fast Track Courts (as occurred in Alwar). This again means that the judges have no time to review the records on atrocity cases up for hearing in the Special Court, or are not able to even attend the Special Court. In all such cases, even where the witnesses are present, orders will not be passed and often the case just posted for another hearing later on.

The case overload also affects SPPs and their time to prepare cases as well. As a result, it was observed that in some hearings before Alwar Special Court, the SPP had to ask for an adjournment as he had not had time to prepare for final arguments. This case overload has caused the Banda SPP to write an appeal to the District Magistrate to request only the trial of SC/ST atrocity cases in the Special Court. His application, however, has not resulted in any action from the district administration. Moreover, even where over 1000 cases are pending trial before Banda Special Court, an assistant SPP has not been appointed. In the absence of assistance, most SPPs in courts with caseloads like Rangareddy deal with 10-15 cases per day in court, which



means less time than they require to prepare the cases. At the same time, the Rangareddy SPP also talked about the additional work that comes to him from the Investigating Officers, who often present the charge sheets to him for corrections. While this is not a mandatory work for SPPs, it is something he nonetheless does as there are too often deficiencies in the charge sheets that need to be rectified in order to build a strong case for the prosecution based on the available evidence.

A fourth and related factor is that many cases undergo a large number of adjournments at every stage. Sec. 309 Code of Criminal Procedure specifies day-to-day trial proceedings until all the witnesses have been examined. Adjournments should only be granted in specific circumstances beyond the control of the party, not on request. In reality, however, adjournments are frequent.

One case before Palamu Special Court from 2007 has been running prosecution evidence since July 2008. Over four years and 51 court hearings later, in February 2013 the case was yet again as the prosecution witnesses did not turn up to give evidence.

In one case before Palamu Special Court from 2000, the last prosecution witness was examined in 2006 and after that there has been a lapse of six years where the case has been stuck at the prosecution evidence stage.

In one case before Palamu Special Court from 2004, one more prosecution witness remains to be examined but has failed to attend court. The previous prosecution witness was examined five years ago, in 2007.

In one case before Palamu Special Court from 2006, defence evidence has been running since 2011 and the 20<sup>th</sup> hearing at this stage was on February 2013.

In one case before Palamu Special Court from 2011 that has reached the stage of final arguments, the defence advocate has not completed final arguments even after four hearings. In October 2012, the SPP, however, did not move the court to compel the defence advocate to complete his arguments; nor did the judge take any action as he was about to go on

leave and, therefore, did not want to close the case and have to give his judgement within 14 days.

In Alwar Special Court, it was observed that a number of cases are adjourned due to the heavy work load in the court. Hence, the Special Court judge does not have time often to hear atrocity cases.

In one case before Alwar Special Courts since 2004, eight years later the case is still at the stage of prosecution evidence, partly due to the non-appearance of witnesses.

One common reason for the frequent adjournments is that prosecution witnesses do not appear at hearings, including the Investigating Officers. This seems to be especially so for cases that have been pending for a long period before the Special Courts.

In one case before Alwar Special Court from 2006, the prosecution witnesses did not appear to depose their evidence in January 2013. No summons was then issued; nor were the witnesses intimated about the date of the next hearing. Hence, in the next hearing again no witnesses turned up.

In some cases, by the time the case comes to the stage of prosecution evidence, the Investigating Officer has been transferred to another district. Hence, the SPP has to track the Investigating Officer down and secure their attendance, which sometimes does not happen in one hearing.

Moreover, even when the Special Public Prosecutor has issued bailable or non-bailable warrants against the witnesses, often the lack of receipt of the service record (of the warrant by the police) by the court further delays the trial proceedings. Delays are also caused by sometimes the victims and witnesses having moved in the interim, so that their whereabouts are not known and the court summons/ warrants do not reach them.

In a number of cases before one Special Court, the lawyer-researcher observed that the attitude of the court seemed to be indifferent to ensuring a speedy trial; that is, failing to take any proactive steps to prevent numerous adjournments. At the same time, in a number of cases the defence lawyers seem to deploy adjournments as a delay tactic. This can be done by filing

a number of different plea petitions on behalf of the accused, including for discharge of the case.

The lawyer-researcher observed that the attitude of several defence lawyers are to prolong the trials, especially in rape cases, due to the fact that the present Palamu Special Court judge has awarded a conviction in a rape case where the circumstantial evidence was present even though the victim turned hostile and denied her statement in court. The perceptions in the Court, therefore, are that this judge is proactive in ensuring convictions if sufficient evidence is available.

Otherwise, cases are delayed when the defence lawyer or the accused fail to make an appearance in court.

In one case before Palamu Special Court from 2004, all the accused are policemen. Non-bailable warrants have been issued against them and all processes exhausted to try to secure their appearance before the court. As on June 2013, letters to the Director General of Police, Inspector General and Palamu Superintendent of Police had been issued without any reply and, therefore, the case was adjourned once more.

In Jharkhand, moreover, any bandhs called by the Naxalites result in the courts becoming reluctant to pass any adverse court order or warrants against anyone. Overall, only where the Special Public Prosecutor or judge are actively following up cases and filing appropriate petitions (e.g. for speedy disposal of the case) or order (e.g. to ensure the regular appearance of witnesses) respectively are cases moving ahead faster.

The most significant link between prolonged trials and obstructions to justice is that in the interim, as seen below, pressure can be exerted on the victims and witnesses to recant their statements as to the atrocity. Another is that the prolonged period of trial negatively affects the ability of the victims and witnesses to remember accurately the incidents and their statements before the police. As one SPP put it, many cases thus are acquitted on the grounds of giving the accused the benefit of the doubt.

Anjaiah was 7 years old when his older brother was murdered in front of him by dominant castes in 1998. Once the case came to trial in the

Special Court several years later, he started receive death threats from the accused. A complaint was made, but the police did not take any action to provide Anjaiah and his family with police protection. By the time Anjaiah was called to give his evidence, it was around 10 years later. The defence counsel then took the line of badgering him as to how he could exactly recall the facts when the incident had taken place so long ago when Anjaiah was a child. Anjaiah's reply was to ask if the advocate could reply if he would be able to exactly recall something he did even a week ago. Unfortunately, this statement was seized by the defence counsel as evidence that Anjaiah's memory of the incident could not be relied upon. Ultimately, in 2008 the judgement was delivered that the prosecution had failed to prove the case beyond a reasonable doubt. The accused thus were acquitted.

### 3.2 Victims' and Witnesses' Experiences of Discrimination and other Obstructions

The denial of the right to speedy trial, despite the establishment of Special Courts for this very purpose, is compounded by a number of rights violations that occur during the trial process. These violations have to be seen in terms of the actions by different court actors that adversely affect the SC/ST victims and witnesses. An important observation in this regard is that Rule 13 SC/ST (Prevention of Atrocities) Rules specifies that the state government shall ensure that the administrative officers and other staff members appointed to an area prone to atrocities have the right aptitude and understanding of the problems of SCs and STs. This includes ensuring that SCs and STs are adequately represented in the administration and police force at all levels. However, similar stipulations do not lie for actors within the judicial system who ultimately determine whether a victim-survivor receives legal justice. In this situation, discussions with victims and witnesses whose cases are pending trial before the five Special Courts revealed a number of disturbing trends.

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**TABLE 1** | Survey of Victims and Witnesses

A short survey of 45 victims and witnesses across the states found the following:

- Only 9 victims/witnesses had been given orientation on court processes at the start of the trial.
  - Only 2 received regular information on the progress of their case before the court.
  - Only 15 had received some briefing from either the SPP or their private advocate before they deposed before the court.
  - 24 had faced threats or harassment from either the accused or the defence advocate once the trial started, especially to compromise the case. However, for only 3 persons had someone during the trial process asked if they required protection.
  - For only 5 victims/witnesses had someone made efforts to give them privacy and protection while within the court premises.
  - Counter cases had been filed against 13 victims once they filed the atrocity case with the police.
  - 22 had been approached during the trial by the SPP or defence advocate, primarily the latter, to compromise the case.
  - Only 2 had received some reimbursement for their travelling and maintenance expenses while attending the court.
- 

Take the following case as an example:

Dinesh was allotted agricultural land by the government and transformed himself from a landless labourer into a successful small cultivator. A dominant caste landowner did not like seeing this and, therefore, forcibly dispossessed Dinesh of his land. This landowner also beat, threatened and verbally abused Dinesh using his caste name when he protested.

After this atrocity, Dinesh decided to file a case with the court as the police station was located too far away. The court directed the police to register the FIR and the DSP investigated the case. The police registered the case only under sec. 3(1)(x) PoA Act and not under the sec. 3(1)(v) – wrongful dispossession of land. This was not corrected in the charge sheet.

According to Dinesh, his ordeal only started once his case entered the Special Court in 2011. He has visited the court around 30 times so far and yet has never once been briefed by the SPP about his case and the trial process. From the first meeting with the SPP, the SPP has been reluctant to give any information about the case or to even answer Dinesh's questions such as about the date of the next hearing. Nonetheless, the SPP charges Dinesh around Rs 100 each time there is a hearing of his case.

Dinesh was paid interim relief of Rs 6250 once the FIR was registered, but to date estimates that he would have spent around Rs 25,000 on the case, both for travels to and from the court, and payments to the SPP. He did not know that he was entitled to a TA/DA allowance and has not received such allowance to date.

Meanwhile, he said, 'I am constantly being pressurised by the accused to compromise. He also threatens that he will kill me if I do not do so... Even in the courtroom the accused tells he that he can kill me anytime'. Despite Dinesh telling the SPP about these threats, the SPP has not intervened to ensure protection for Dinesh. Even when Dinesh told the judge about the threats to his life while he was deposing his evidence, the judge did not pass any direction in this regard.

Dinesh also feels that in the court the accused is listened to more than he is. In his words, 'I feel that because we are from low caste, therefore inside the court they do not listen to us...' He cited how when the defence counsel was aggressively questioning him about the incident several times, asking the same questions again and again, neither the SPP nor the judge intervened.

However, he persists in attending the trial, as he fears that if he does not turn up, then his case will simply be disposed of without justice for him. Even then, he holds out little hope for getting justice: 'I do not think that I will get justice.'

Dinesh's case illustrates a number of issues related to access to information, treatment by the SPP, threats to personal security from the accused, the role of private advocates, defence counsel and judges, and ultimately feelings of being discriminated and unlikely to receive justice. These and other issues that emerged from the data are analysed below. These findings primarily stem from discussions with victims and witnesses with cases before the five Special Courts, in which all were asked to explain in detail their experiences of the court process.

**TABLE 2 |** Overview of Actors, Forms of Discrimination and other Obstructions, and Legal Standards Breached

Actors	Forms of Discrimination and Other Obstructions	Legal Standards Breached
Court staff	<ul style="list-style-type: none"> <li>• <i>Victims and witnesses are not provided information on trial dates, especially on important hearing dates, and the progress of their trial.</i></li> <li>• <i>Summons or warrants are issued to victims and witnesses, but do not reach them, or do not reach them in time, or are only served one or two days in advance of the hearing.</i></li> <li>• <i>Victims and witnesses are not allowed to sit inside the courtroom.</i></li> <li>• <i>Victims and witnesses are made to stand up if the accused's side or others need seat inside the courtroom.</i></li> <li>• <i>Police do not let victims and witnesses sit inside the courtroom even during their trial hearings.</i></li> <li>• <i>On seeing the physical appearance of victims and witnesses, and which court they are attending, the court staff treat them differently, as if they know nothing about their cases.</i></li> <li>• <i>The court typist does not properly record the statements of victims and witnesses in the court.</i></li> <li>• <i>The court staff charge money to the victims even to pass on information about the next trial hearing dates.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Article 39A Constitution lays down the duty on the State to secure the operation of a legal system that promotes justice on the basis of equal opportunity.</li> <li>• The evidence of witnesses shall be taken down in the form of a narrative. (sec. 276(2) Cr.P.C. After recording the evidence of each witness, it has to be read over to the witness, as per sec. 278(1) Cr.P.C. The record of evidence should be signed both by the witness as well as by the judge.</li> </ul>
Dominant caste accused and accused's community	<ul style="list-style-type: none"> <li>• <i>Victims often do not know that there is a Public Prosecutor appointed for their case.</i></li> <li>• <i>Victims and witnesses receive little guidance from the SPP as to the court process, how to depose evidence in court and how to face cross-examination of their evidence from the defence lawyer.</i></li> <li>• <i>The dominant caste accused tries to appoint a defence advocate who is of same community as the judge in order to influence the trial.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The court has the power to order that any particular person, witness or police officer not under examination shall not remain in the court room. (sec. 327(1) Cr.P.C.)</li> <li>• The victim and witness have the right to depose their evidence in a free atmosphere before the Court. (Sakshi vs. Union of India)</li> </ul>

Actors	Forms of Discrimination and Other Obstructions	Legal Standards Breached
	<ul style="list-style-type: none"> <li>• <i>Victims and witnesses face constant harassment, threats and pressure from the accused and accused's community, and including through the defence advocate, to ensure any of the following outcomes: compromise, acquittal or discharge.</i></li> <li>• <i>Victims and witnesses also felt that the dominant caste accused receives more attention in the court because they have more money.</i></li> <li>• <i>Victims and witnesses are forced into compromises or to turn hostile witness.</i></li> <li>• <i>Victims and witnesses face false counter cases in court.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Merely because the Court has given permission to the Public Prosecutor to cross-examine her/his own witness by declaring her/him hostile, it does not mean that the evidence of such a witness is completely effaced. (<i>Anil Rai v. State of Bihar</i>).</li> <li>• Any non-SC/ST who files a false, malicious or vexatious suit or criminal proceedings against a SC/ST member commits an offence. (sec. 3(1)(viii) POA Act)</li> </ul>
SPP and Judges	<ul style="list-style-type: none"> <li>• <i>Victims and witnesses are misguided as to the trial hearing dates, even after giving money to the SPP as demanded to learn of these dates.</i></li> <li>• <i>When judges or the SPP are on leave, victims and witnesses are not informed of the postponement of the trial hearings beforehand or even immediately after reaching the court.</i></li> <li>• <i>The SPP does not allow victims or witnesses to enter into his chambers, while the accused and defence advocate can enter.</i></li> <li>• <i>The SPP charges money to the victims each time that he represents them in court, despite the fact that he already receives a salary from the government.</i></li> <li>• <i>The SPP does not brief victims and witnesses as to the court process, the status of their case and how to give their statements before the court.</i></li> <li>• <i>The SPP does not prepare well for arguing the cases.</i></li> <li>• <i>The SPP is biased against the victims and believes they are bringing false cases to trial.</i></li> <li>• <i>The SPP threatens or coerces the victims and witnesses to compromise the cases or turn hostile witness in court.</i></li> <li>• <i>The SPP is colluding with the defence advocate to ensure acquittal of the cases.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Article 39A Constitution lays down the duty on the State to secure the operation of a legal system that promotes justice on the basis of equal opportunity.</li> <li>• The Constitutional right to equality before the law and equal protection of the law (Article 14).</li> <li>• The prosecution has the duty to produce witnesses on time. (<i>Shailendra Kumar vs. State of Bihar</i>)</li> <li>• SPP has the duty to be impartial in seeking the truth of a matter, to ensure the fair administration of justice on behalf of the state (<i>Babu vs. State of Kerala</i>)</li> <li>• Judges should not manifest by words or conduct any bias towards persons or groups. (<i>Bangalore Principles of Judicial Conduct</i>)</li> </ul>



Actors	Forms of Discrimination and Other Obstructions	Legal Standards Breached
	<ul style="list-style-type: none"> <li>• <i>The SPP or judge uses abusive or rough words with the victims and witnesses in the courtroom.</i></li> <li>• <i>The SPP is not appealing acquittals to the High Courts, even where there is a reasonable chance of overturning the lower court ruling.</i></li> </ul>	
Private Advocates	<ul style="list-style-type: none"> <li>• <i>Private advocates, appointed due to the unhelpful attitude of the SPP, also collude with the SPP in pressuring the victims to compromise their cases.</i></li> <li>• <i>Private advocates charge a lot of money to SC/ST victims, saying they have to pay the SPP, clerk, pleader, etc. to obtain information on their cases.</i></li> </ul>	<ul style="list-style-type: none"> <li>• As per sec. 49(1)(c) Advocates Act and Bar Council Rules, lawyers should uphold the interests of their clients by all fair and honourable means.</li> </ul>
Defence Advocates	<ul style="list-style-type: none"> <li>• <i>The defence advocate seeks multiple adjournments of atrocity cases, the reasons for which are not informed to the victims and witnesses.</i></li> <li>• <i>During cross-examination, the defence advocate is allowed to twist the statement of victims and witnesses, and neither the SPP nor judge intervenes.</i></li> <li>• <i>The defence advocate insults or threatens victims and witnesses in the court premises, including to turn hostile or to compromise the case.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Sec. 309(1) Cr.P.C. mandates that once a criminal trial has started, it should proceed on a day-to-day trial basis.</li> <li>• As per sec. 49(1)(c) Advocates Act 1961, lawyers have the duty not to negotiate directly or call for a settlement with the opposing party, except through the advocate representing the opposing party.</li> <li>• As per sec. 49(1)(c) Advocates Act 1961, lawyers have the duty to refuse to act in an illegal manner towards the opposing counsel or party.</li> </ul>
Social Welfare Department	<ul style="list-style-type: none"> <li>• <i>Almost all victims and witnesses do not receive travelling and maintenance expenses while attending the court; nor are they even informed of this entitlement.</i></li> <li>• <i>Even at end of trial with conviction, victims are sometimes being denied the balance compensation amount.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Rule 11 PoA Rules provides that victims and witnesses shall be provided with travelling and maintenance expenses while attending the court.</li> <li>• Rule 12 PoA Rules mandates compensation (interim and then final relief) to the victim/s.</li> <li>• Any criminal court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court, as per sec. 312 Cr.P.C.</li> </ul>

### 3.2.1 ACCESS TO INFORMATION ON COURT PROCEEDINGS

When asked to describe the judicial process in their cases, almost all victims and witnesses of atrocities displayed little knowledge. Many had only attended court once or twice to depose their evidence and be cross-examined. Some did not even know the stage at which their cases had reached. One can argue that this situation breaches the Constitutional duty to ensure the operation of a legal system on the basis of equal opportunity, which requires access to information. Four major points emerged from the discussions, which partly explain why a number of cases get delayed due to the non-appearance of prosecution witnesses:

- *Victims and witnesses are not provided information on trial dates, especially on important hearing dates, and the progress of their trial.*

In one case that entered Alwar Special Court in 2006, the prosecution witnesses did not turn up for a hearing in January 2013. Afterwards, the witnesses were not summoned nor intimated of the next hearing date. Hence, the same non-appearance was repeated in the next hearing.

- *Victims and witnesses are misguided as to the trial hearing dates, even after giving money to the SPP, as demanded, to learn of these dates.*

*When judges or the SPP are on leave, victims and witnesses are not informed of the postponement of the trial hearings beforehand or even immediately after reaching the court.* Hence, they may take a day off work to travel to the court, sit in the court for a few hours only later to learn that the hearing has been postponed. This results in economic loss to the victim and witnesses, who often cannot afford this.

Amit Kumar shared how he received notice from the court to appear and give his evidence. He travelled from his far-away village to the court on that day and stood waiting for the whole day outside the courtroom. However, in the end he was not examined as the judge was too busy with other cases. He stated, 'I should have been informed earlier rather than making me stand outside the court as if I have committed a crime. It was really upsetting for me to wait all

those hours and then to be told that I have to come again on another day... Another time some of the incident records were not there and so we waited a whole day only to have the case adjourned. Why didn't they ask me or the SPP to make sure the records were at court... As a witness, I am harassed a lot. It has become more or less regular practice to have the case adjourned again and again until the witnesses tire and give up.'

- *Summons or warrants are issued to victims and witnesses, but do not reach them, or do not reach them in time, or are only served one or two days in advance of the hearing.* Despite the fact that the prosecution has the duty to produce its witnesses on time, a number of gaps in the court procedures are leading to a situation where summons and warrants sometimes do not reach the victims and witnesses so as to allow them to attend court on the required hearing dates.

In addition, two points highlight the unequal position that SC/ST victims and witnesses occupy as compared to most dominant caste accused as they enter into the court process:

- *Victims often do not know that there is a government Prosecutor appointed for their case.* The weakness in the system, according to one SPP, is that the Investigating Officers do not follow a general rule of informing the victims and witnesses, once the charge sheets are filed in the court, that they should meet the SPP to receive guidance on the trial of their cases. Nor do the Officers pass on the contact information of the SPP to the victims and witnesses.
- *Victims and witnesses receive little guidance from the SPP as to the court process, how to depose evidence in court and how to face cross-examination of their evidence from the defence lawyer.* (see 3.2.5)

### 3.2.2 SEATING AND OTHER ARRANGEMENTS

There are no legal standards applicable for the seating arrangements for victims and witnesses in the Special Courts. Moreover, the spatial arrangements inside the Special Courts varied greatly. Some were very small rooms with only enough space for the bench where the judge sat, a bench and table for

the lawyers and one bench behind. Others were large rooms with tables and chairs for a number of lawyers and witnesses. What was especially noticeable in the smaller Special Courts was the following:

- *Victims and witnesses are not allowed to sit inside the courtroom.*
- *Victims and witnesses are made to stand up if the accused's side or others need seat inside the courtroom.*
- *Police do not let victims and witnesses sit inside the courtroom even during their trial hearings.*

All the victims felt that this behaviour was rooted in caste discrimination from the court staff and advocates, which violates the right to non-discrimination under Article 15 Constitution. Moreover, these seating arrangements contribute to the victims and witnesses understanding little about their cases and the trial process, which arguably contributes to denying them access to justice.

An equally serious issue is the lack of privacy given to the victims and witnesses. Most atrocity cases involve grievous crimes and, as subsection 3.2.4 will show, harassment and threats against the victims and witnesses from the accused and her/his side are common. This situation exists despite the Supreme Court judgement on the right to depose evidence in a free atmosphere before the court (*Sakshi vs. Union of India*). Moreover, in none of court complexes where the Special Courts lie are any arrangements available for a separate room for victims and witnesses, or any other arrangement that would prevent the accused from speaking to or otherwise interfering with the victims and witnesses. Nor, as seen in several cases, do any court actors take action when they notice or it is brought to their notice that the accused or their supporters are harassing or threatening the prosecution witnesses.

### 3.2.3 ACTIONS OF COURT STAFF

Beyond the seating arrangements for victims and witnesses, other discriminatory behaviours were observed from court staff, most of whom were dominant caste, on contravention of the right to non-discrimination and duty to ensure equal opportunity in the pursuit of justice:

- *Victims and witnesses told that on seeing their physical appearance and which court they are attending, the court staff treat them differently, as if the staff know nothing about their cases.*
- *In some cases, the court typist does not properly record the statements of victims and witnesses in the court.* The CrPC lays down the procedure for the recording of statements, which includes that the statement should be read out to the witness and then signed by both the witness and the judge. However, some victims and witnesses noted that this procedure is not being followed. Only after their private advocate insists will the court typist write up their statements in court, and often these statements have to be checked afterwards to see if they are indeed correctly typed up.
- *The court staff charge money to the victims even to pass on information about the next trial hearing dates.*

Ironically, because the Special Courts have been created, the caste identity of those who attend the court as prosecution witnesses (most of whom will be SC or ST) is always known. Instead of supporting these witnesses to navigate the courts, most often the witnesses are faced with an unwelcoming or even hostile environment.

### 3.2.4 ACTIONS OF ACCUSED

As soon as an atrocity takes place, once cases enter the criminal justice system through the police registration of a FIR, and throughout the trial of cases, an enormous amount of pressure is often brought to bear on SC/ST victims and witnesses of atrocities. This is because the social atmosphere in the villages once an atrocity has occurred is so tense and the caste power relations so imbalanced that often the threat of further violence is very real. Despite the rights to non-discrimination and security of life, during the court trial process, victims and witnesses noted the following actions by the accused:

- *The dominant caste accused tries to appoint a defence advocate who is of same community as the judge in order to influence the trial.*
- *Victims and witnesses face constant harassment, threats and pressure from the accused and accused's community, and including through*

*the defence advocate, to ensure any of the following outcomes: compromise, acquittal or discharge.*

In one case that entered Alwar Special Court in 2012, the lawyer-researcher observed that the relatives of the accused tried to stop the prosecution witnesses from deposing before the Court. Moreover, the accused and relatives threatened the life of the witnesses as they waited to depose their evidence.

In another case before the same Court since 2007, the relatives of the accused were milling around the courtroom as two SC witnesses deposed their evidence. Both witnesses changed their statements in court and said that they were not aware of the atrocity that had taken place. Afterwards, when the lawyer-researcher approached the witnesses, they confessed that they had been threatened by the accused into retracting their statements.

In one case before the same Court since 2012, a witness to her mother's murder described how her family has been forced to leave their village out of fear of the accused and their dominant caste community. The two accused have been released on bail and tried to attack the witness once. They have also told her that they will kill her just like they did her mother unless she compromises the case.

In one murder case before Rangareddy Special Court from 2011 that is now at the stage of framing of charges, the accused have now declared a social boycott of the victim's family. For instance, no share autorickshaws operated by dominant castes are allowed to accept the family as passengers, forcing the family to walk the 3 km up to the main road to catch public transport. Moreover, all the family, including the children, have been threatened with death should the case go ahead in the court.

- *Victims and witnesses also felt that the dominant caste accused receives more attention in the court because they have more money.*

Srinivas, a witness in a murder case and social activist, described his experiences during a Special Court trial. While the atrocity took place in 2008, it took two years for the case to come to trial in the Special Court. He was summoned three days beforehand to attend the

first hearing, and for three hearings he attended the case was merely adjourned. Only on his fourth visit to the court was he called to give evidence. Each time, no one in the court talked of the travelling and maintenance allowance due to him as a witness.

Meanwhile, the accused, through the defence advocate, pressured Srinivas not to give his evidence in the court. Back in the village, through local politicians and the dominant caste village elders, attempts were being made by promising money or land, etc. to pressurise all the witnesses into compromising the case or turning hostile witness. The accused and his supporters also abused the Dalit witnesses and attacked them once. For this, the Dalits applied for and received police protection.

Before Srinivas appeared in the court, he was not briefed by the SPP on the trial process and how he was to depose evidence. Consequently, he felt it was difficult to recall exactly what he had spoken at the time of filing the FIR and his statement before the police. In addition, the police had filed a written addition to his statement without his knowledge, which left him unprepared for certain questions put by the defence advocate during cross examination. Nonetheless, he and other the witnesses withstood the pressure to see the case end in a conviction.

Moreover, even without spoken threats to the victims and witnesses, the sheer physical presence of the accused and their supporters in and around the court premises can itself be a perceived threat by the victims and witnesses. All this denies the victims their right to depose their evidence in a free atmosphere before the Court, as laid down by the Supreme Court in the Sakshi vs. Union of India judgement. Many victims, for example, spoke of their feelings of intimidation to speak in court when the accused in present and often facing them as they speak.

For example, in one case that entered Alwar Special Court in 2009, it was observed that the defence tried to mislead the prosecution witnesses by asking them several times similar questions. The judge intervened at this stage and asked the defence advocate not to pressurise the witnesses as they were not well educated and could not recall the facts in the detail that the defence advocate was requesting. The witnesses, meanwhile, were visibly scared as there were only three people on the victim's side present around the courtroom, while around 20 people on the accused's side were present.

A major problem faced by SC/ST victims and witnesses was the lack of protection provided to them. This often became a deciding factor in the decision to compromise the case or else turn hostile witness. At the same time, even when many victims and witnesses shared the threats to their personal security with the SPP or their private advocates, or even mentioned these threats in court, no action was taken to provide them with any protection in most cases. Currently, India does not have any witness protection law. Nor is there any specific mechanism built into the PoA Act or Rules to provide protection to victims and witnesses of atrocities, aside from the provision to remove a person from the area if s/he is likely to commit an atrocity under the Act. At most, therefore, the SPP should inform the Court of the harassment or threats to her/his witnesses and can request the court for an externment order against the accused if there is some indication that a further atrocity may take place. With the delays in court trials, moreover, providing protection for several years is a large challenge for an already constrained police force. At the same time, one SPP said that he has put applications before the judge for the bail bond of the accused to be cancelled or applications to the Superintendent of Police for police protection where the victims and witnesses have approached him regarding the need for protection from the accused. These applications to the judge, however, often did not succeed, in his experience.

### 3.2.5 ACTIONS OF SPPS AND JUDGES

In the Special Courts under the study, two out of five current judges were scheduled castes, as were two out of five current SPPs. Many victims and witnesses in protracted court trials, however, have seen several different judges and SPPs attend to their case. Their experiences, therefore, spanned a larger pool of these court actors. By far the most responses from victims and witnesses on issues during the court trials related to the actions of the Special Public Prosecutors (SPPs), while a few also talked of the attitude of the judges. The Constitution guarantees the right to equality before the law and equal protection of the law, and directs the state to ensure the operation of the legal system promotes justice on the basis of equal opportunity. Moreover, both the SPP and judges have the duty to remain impartial, refrain from manifesting any biases against either party in the case, and seek the truth



of the matter. However, in reality, the victims and witnesses described many breaches of these rights and duties, especially from the SPPs:

- *The SPP does not allow victims or witnesses to enter into his chambers, while the accused and defence advocate can enter.*
- *The SPP charges money to the victims each time that he represents them in court, despite the fact that he already receives a salary from the government.*

Amit Kumar was assaulted and abused using his caste name by dominant castes in 2005, all for taking a road construction contract. Following his filing of a FIR, he was again beaten up and ended up in hospital. This time the police did not register a FIR and he had to approach the court in order to get the police to do so. Even then, it was only on his insistence that the police recorded the exact words of caste abuse that he had experienced. During the police investigation, the police again tried to suppress the caste angle by telling his wife not to mention the caste abuse used against Amit Kumar during the attack.

His case entered the Special Court only in 2008 and is pending at the stage of defence evidence five years later. Throughout these years, he has faced constant threats and abuse from the accused to compromise the case. Moreover, his wife, who is a school president and witness in the case, has been threatened and efforts made to try to remove her from her post. Amit Kumar also has three false cases filed against him in counter to the atrocity cases he has filed against the accused. He has shared all these problems with the SPP and his private advocate, but no action has been taken to seek protection for him and his wife.

In terms of information on his case, Amit Kumar met the SPP for the first time only when he was called to give evidence. He was never briefed about his case and the trial process. He has therefore engaged a private advocate in order to the required support during the trial. At the same time, he noted that the private advocate charges a lot of money, saying that he has to pay the SPP, clerk, pleader, etc. to obtain information on the case. He also had to come to court five times before he was finally given the chance to depose his evidence. Then, the defence counsel cross-examination was done in such an aggressive manner that both Amit Kumar and later his wife felt threatened and intimidated. Even though they were cross-examined beyond the relevant points, the SPP did not intervene.

Moreover, Amit Kumar is very clear that the SPP has been at some level colluding with the defence counsel. He noted that before giving her evidence, the SPP told his wife not to mention the caste discriminatory words used by the accused, including the use of their caste name. During prosecution evidence, moreover, three of the witnesses were also bribed and threatened by the accused and allegedly the defence counsel. All then turned hostile witness in the court. He states in this regard, 'Quite often thoughts come to my mind that if we were dominant caste, then we would not have to bear these kinds of problems and discrimination in the legal trial of my case. We feel humiliated and weak because of the behaviour of the court staff and also because we cannot expect any help from the dominant castes in this place.'

On top of this, though he has received Rs 6500 as interim relief, almost half of this amount has gone to the court staff, including the SPP, to get information on hearing dates, get documents related to his case, etc. Hence, he states, 'I feel that SPP must be changed in my case. The government should allow victims to engage a private lawyer of their choice as the SPPs are always corrupt. If an advocate of my choice is appointed, then at least he will inform me the dates and status of my case in detail'.

- *The SPP does not brief victims and witnesses as to the court process, the status of their case and how to give their statements before the court.* This is perhaps one of the most significant points which arguably leads to the denials of a fair trial and equal opportunity within the judicial system. A number of observations of court proceedings as well as discussions with victims and witnesses revealed how this lack of adequate briefing negatively impacts on the legal process.

In one case that entered Alwar Special Court in 2012, it was observed that two SC witnesses were not briefed before deposing their evidence. Both were obviously scared on entering the courtroom and therefore, were unable to enter any question put to them by either the SPP or defence advocate properly.

In one case that entered Alwar Special Court in 2009, the lack of briefing to two witnesses contributed to both giving evidence in court that significantly deviated from what they have said in their statements to the police. The defence advocate was seen to take ad-

vantage of this lack of briefing to pull apart the statements of the witnesses in the court.

- ***The SPP does not prepare well for arguing the cases.*** On the one hand, the SPPs talked of their lack of support staff especially to handle large caseloads such as those before the three Exclusive Special Courts. Another was the lack of proper space for the SPPs to prepare for the cases. For example, in Rangareddy Special Court, the SPP shares a room with two other Public Prosecutors. In his opinion, on most days it is like a cattle fair with people crowded into the room talking about their cases. On the other hand, the victims and witnesses observed that the SPPs sometimes do not show any interest in actively pursuing their cases in the court.

In one case before Alwar Special Court since 2011, the accused denied all charges during defence evidence and was seen to be well prepared by the defence advocate in his statements before the court. The SPP, however, did not cross-examine any of the defence witnesses that were called that day.

In one case before Palamu Special Court since 2006, the SPP was seen to be not properly cross-examining the defence witness and pointing out the gaps in the statement of the witness. The judge actually intervened at one stage to request the SPP to ask relevant questions so as to strengthen the prosecution case.

In another case before the same court since 2006, the SPP did not ask any questions to the defence witnesses based on their statements in the court, nor even ask supplementary questions to adduce additional facts that could discount the witness statement.

- ***The SPP is biased against the victims and believes they are bringing false cases to trial.*** In such cases, the right to a fair trial and the duty of a Public Prosecutor to pursue the truth of the matter before the court are both violated.

In one case tried before a Special Court, the victim was beaten up and when he filed a police case, he and the man who rescued him were implicated in a false case. This counter case was acquitted three years later. However, when the atrocity case came before the

Special Court, the SPP's attitude showed that he did not believe the victim and thought he had filed a false case. Hence, the SPP advised the victim to compromise the case and end it. When the victim chose to continue with the trial, he observed that two of his key witnesses were not issued summons to appear before the court on the pretext that they were not present in the village, when they were available.

- *The SPP threatens or coerces the victims and witnesses to compromise the cases or turn hostile witness in court.* In some cases, especially where a counter case is filed against the victim, some SPPs feel that the victim is best served by compromising the case in order to get the false charges against him/her dropped. This constitutes another blatant violation of the SPP's duties to impartially pursue the truth of the case.

In one case of rape that is before a Special Court, the victim has appeared twice to give her evidence before the court. Due to frequent demands from the SPP, she has paid him Rs 2,500 so far to try her case. Meanwhile, once the accused came out on bail he has been threatening her, her husband and son so much that they have been forced to leave their village. As they lost their income by leaving the village, at one point they could not pay the SPP and he stopped supporting them. Instead, the SPP then started to pressurise her to compromise her case by saying, 'If something bad happens to you (from the accused), I will not be able to help you'.

In one case of physical assault and wrongful restraint that had been decided in another Special Court, the victim had a counter case of attempted rape filed against him. When his case came to court, the SPP advised the victim to compromise the case since the accused belonged to the dominant caste majority in the village. The SPP also said that he could not help him even though the SPP knew the attempted rape charge against the victim was false. He instead said he would get Rs 1 lakh out of the accused if victim agreed for a compromise. The defence counsel also pressurised the victim to compromise the case. When the victim refused, the case went to trial. However, the victim felt that the SPP then did not actively pursue his case, including to intervene during the tough cross-examination of

his evidence. Eventually the case ended in an acquittal, which the victim is appealing against to the High Court.

Leelavathi, a ST woman, was physically assaulted by a dominant caste man in 2008. The police initially refused to file a FIR, and she had to persist a lot just to get the FIR registered. The police then registered a counter case of theft against her at the instigation of the accused, which was later disproved and that case closed.

In 2010, Leelavathi's case came for trial before the Special Court. When she and her son went to meet the SPP for the first time, he asked them if they had brought money with them. He made them pay Rs 100 to get tea and snacks, and then sent them away. The second time they met him in court, he shouted at them that they were not spending any money but still expecting him to advocate on their behalf before the judge. He demanded money for lunch and also questioned her rudely, saying she was giving contradictory statements. He also made insinuating comments against her character. As a result, her son filed a petition before the Court against the SPP for humiliating his mother and trying to discourage her from pursuing the trial of her case. When the judge called the SPP to explain, the SPP alleged that some social activists were encouraging the victim to give false complaints against him.

During the trial, then, the accused tried to coerce Leelavathi into compromising the case in exchange for money and when she refused, threatened to set her house on fire. She refused to compromise and also withstood all the pressures to give her statement in court. In 2011, therefore, the case ended in a conviction. After she won the case, however, some of the dominant castes took revenge on her by seeing that she was denied the benefits of various government schemes that she applied for. She also did not receive any final compensation amount despite the case being a conviction, nor was she paid any TA/DA allowance for all her travels to and from the court with her son.

- *The SPP is colluding with the defence advocate to ensure acquittal of the cases.* However, some victims and witnesses attested to this collusion by pointing out that the SPP in some cases misleads or confuses the witnesses by telling them to say something in court that is not at all true.

In one case of physical assault and caste abuse pending before a Special Court from 2009, the victim was clear that the SPP colluded with the defence counsel. The SPP told him to state before the judge

that he did not know the accused. Moreover, the SPP instructed two other prosecution witnesses to turn hostile by stating that they could not recognise the accused. The victim was also threatened by the SPP to regularly attend the court or else face arrest from the police, all to intimidate him and financially drain him into dropping the case.

- *The SPP or judge uses abusive or rough words with the victims and witnesses in the courtroom.* Several victims and witnesses talked of how they are spoken to rudely inside the court room, especially since they often do not know what is the correct procedure they should follow (having never received any guidance from the SPP on this).
- *The SPP is not appealing acquittals to the High Courts, even where there is a reasonable chance of overturning the lower court ruling.*

Notably, no victims and witnesses talked about open judicial biases. However, meetings with senior advocates in a number of states supported a general perception that biases do exist since judicial actors are as much a part of the social system based on caste as anyone else.

On the part of SPPs, some talked of how even when they brief witnesses on how to speak in court, the witnesses may still change their statements in ways that allow the accused to be acquitted.

Suraj, a retired police Sub-Inspector, was beaten up by his dominant caste neighbour when some water and waste material accidentally flowed from his house to the neighbour's house. Suraj filed a FIR and this case is presently before the Magistrates Court. After this case was filed, his neighbour started pressurising him to reach a compromise. Suraj refused, after which the neighbour attacked, abused and threatened him in retaliation. The dominant castes then returned in the evening and threw stones and human excreta at Suraj's house. Suraj's wife, on protesting against this behaviour, was also beaten up.

Faced with problems in filing the second FIR, Suraj approached the court for the order to the police to file the FIR. The DSP then delayed investigation of the case for one year, following which the accused were exonerated. Suraj then approached the SP with a petition to reopen the case. This was done and eventually a charge sheet filed against

the main accused. However, the others (neighbour's wife and brother) who participated in the atrocity were left out of the charge sheet.

Since the case came before the Special Court in 2011, he has visited the court a number of times. From the beginning, the SPP has not been cooperative. Whenever he asks questions about his case, the SPP turns around and asks if Suraj doubts the abilities of the SPP. The SPP has not briefed him about his case and does not inform about the dates of the court hearings. Suraj, therefore, has hired his own private advocate to help him through the case. Moreover, he has observed that the SPP does not talk much in court and take a proactive role in the case. This included intervening during his cross-examination. He also felt that the Investigating Officer created a hostile atmosphere for him when he had to depose before the court. The SPP also asks Suraj to pay around Rs 200 per witness that comes for prosecution evidence. Meanwhile, the defence advocate keeps asking for multiple adjournments that delay the trial.

At the same time, both Suraj and his daughter, who is studying her MA in another state, face false counter cases filed against them by the accused. He has a total of six counter cases filed against him. This means that the police are harassing them too, including to compromise the case. The accused as well continue to threaten him to compromise the case, which he has told to his private lawyer. His witnesses are also being threatened. No steps, however, have been taken to provide him and other witnesses with protection. As he states, 'I am scheduled caste and so I am seen as weak and low in caste. [The accused's side] knows this very well and they can beat me at any time.'

Furthermore, he has not received any interim relief so far as due to him under the PoA Act. Nor has he received any TA/DA allowance for all his travels to and from the court. He was not even aware of either of these provisions to be able to approach his private advocate for help to receive these entitlements. In sum, he estimates that he has spent Rs 2 lakhs so far for this case. In his words, 'I have wasted all my retirement money on this case. If I had saved this money it would have been good for my family.'

### 3.2.6 ACTIONS OF PRIVATE ADVOCATES

Given the low levels of knowledge about the SPP as well as low levels of contact with the SPP prior to attending court, in several cases SC/ST victims have approached private advocates to support them in their cases. In some

cases, private advocates have played an important role in terms of orienting the victims and witnesses as to the court process and how to depose their evidence. Court observations in Alwar Special Court, for example, revealed that witnesses in some cases appeared to be fairly well prepared for what took place in the courtroom.

At the same time, other victims described the following problems with private lawyers, which contravene the duties of lawyers undertaking private practice as mandated by the Bar Council:

- *Private advocates, appointed due to the unhelpful attitude of the SPP, also collude with the SPP in pressurising the victims to compromise their cases.* This action by private lawyers breaches their duty not to negotiate directly or call for a settlement with the opposing party, except through the advocate representing the opposing party.

In one case of rape before a Special Court from 2011, the accused was arrested but then released on bail after 11 months. He then started to threaten and pressurise the victim, Sushila to compromise the case. When she refused, her husband was physically assaulted and threatened with a pistol. Her husband tried to file a FIR after this attack, but the police refused to register the case immediately. Only after he petitioned the Deputy Inspector General of Police was a direction given to the local police to file the case. In the meantime, the accused filed a counter case of assault against the victim. Due to all the threats and pressure, Sushila and her husband have been forced to flee their village.

Since the rape case has come to trial before the Special Court, the SPP has not briefed the victim about her case. Whenever Sushila tries to tell the SPP about all the problems they are facing from the accused, he replies, 'Why do you tell me? You should tell all this to the judge.' In other words, he takes no efforts to help her and her husband get protection from the accused, who continue to pressurise her to compromise the case. Nor does the SPP advise her about the counter case.

As Sushila feels that the SPP is not supporting her and may even be accepting money from the accused to allow the trial to drag out with numerous adjournments, she has hired a private advocate. However,



even the private advocate is also apparently colluding with the SPP and pressurising her now to compromise the case.

- *Private advocates charge a lot of money to SC/ST victims, saying they have to pay the SPP, clerk, pleader, etc. to obtain information on their cases.* In such cases, victims have paid as much as Rs 25,000 to such lawyers for their legal support.

Under the PoA Act, a private advocate have a role to play in terms of either replacing the SPP, if the victim decides and the private advocate has the requisite years of service, or else assisting the SPP. In many cases, however, the private lawyers performed mostly the role of providing legal advice and assistance to the victims, without engaging in the court process. Moreover, one SPP alleged that private lawyers in fact hamper his work, in that they actively prevent the victims and witnesses from meeting him in order to get money out of the victims.

### 3.2.7 ACTIONS OF DEFENCE ADVOCATES

Another important actor that can significantly influence the course of an atrocity trial is the defence advocate. Their duties under the Advocates Act include to not directly negotiate or call for a settlement with the victims, nor to act in an illegal manner towards the victims and prosecution witnesses. As previously mentioned, in a number of cases the defence advocates deliberately delay the trial proceedings. This and other obstructions were described by atrocity victims and witnesses as follows:

- *The defence advocate seeks multiple adjournments of atrocity cases, the reasons for which are not informed to the victims and witnesses.*
- *During cross-examination, the defence advocate is allowed to twist the statement of victims and witnesses, and neither the SPP nor judge intervenes.* In this situation, it is as much a breach of the duty of the defence advocate as well as the duty of the SPP, who should intervene in pursuit of the truth of the matter and to ensure a fair trial procedure on the behalf of the victim.

In one case that entered Alwar Special Court in 2012, the witnesses had not been briefed by the SPP and instead prepared for trial by a private advocate. The defence advocate tried to mislead the witnesses and asked several questions that were not related to the case. Moreover, the witnesses were visibly unable to understand many questions posed by the defence advocate. However, throughout the cross-examination the SPP did not intervene on behalf of the witnesses. In the end, the witnesses turned hostile in the court room.

- *The defence advocate insults or threatens victims and witnesses in the court premises, including to turn hostile or to compromise the case.*

After the attempted rape of Sangeeta, a Dalit woman, in her home by a dominant caste Rajput, her brother Satish confronted the man. The man responded by beating up and abusing Satish. Satish had to visit the police three times before they finally filed a FIR. In the meantime, the accused filed a counter case of assault against Satish.

The case filed by Satish entered the Special Court in 2011. Since then, Satish has visited the court so many times that he says that the court is like a second home to him now. Each time, he is not allowed to sit or even stand inside the court room. Since no seating arrangements are available outside the court room, if he wants to know what is going on with the trial he has to stand outside the courtroom for hours. He has never sat down with the SPP to be briefed on his case and the trial process. Instead whenever he visits the court the SPP asks for money in return for examining the prosecution witnesses. In this situation, Satish has paid money to a private advocate to brief him about the case and accompany him to the court. The private lawyer also informs him about the court hearing dates since the court staff do not keep him informed, even when he asks.

Moreover, when Satish was cross-examined by the defence counsel, the SPP kept silent and did not intervene at any point. Sangeeta was also called as a witness, and despite the offensive questions posed by the defence counsel about her character, neither the SPP nor the judge intervened. Sangeeta was also subjected to the accused being present in the courtroom while she deposed her evidence. He accused openly taunted her, saying that 'if she walked in her house naked, she should expect them to misbehave with her again'. The SPP heard this but did not speak up. The accused has also openly abused Satish when seeing him around the court premises.

At the same time, Satish has come under pressure from the defence counsel to compromise the case. Both he and his sister are also being threatened by the accused and his relatives both in the village as well as in the court premises. He said, 'We are very much terrorised in our village by the dominant castes, as we are the only Dalit family in the village. Now it has become very difficult to stay in our village as quite often the dominant castes abuse us using our caste name and threaten me that if I do not withdraw the case, they will teach me a lesson.'

Given this situation and the court process, Satish ended by stating, 'I am fed up with this case. It takes too much time and money. I am a poor man who works as a labourer in the fields. It is very hard for me to attend the trial proceedings for such a long period of time. I want to withdraw the case.'

### 3.2.8 FORCED COMPROMISES AND COUNTER CASES

- *Victims and witnesses are forced into compromises or to turn hostile witness.* By far the most common trend with the most direct, negative impact on atrocity cases is the culmination of pressures, threats and harassment from different actors – the accused, supporters of the accused, defence advocates and even the SPPs in some cases – to compromise cases. As other studies have shown<sup>77</sup>, the word 'compromise' is a misnomer in such cases where unequal power relations exist between the two parties in a case. Most often, these 'agreements' to end a prosecution are forced or coerced, including through the payment of money to the economically poorer victim. Victims also are pressurised into compromises because they know they have to live in the same village as the accused and his/her caste community. Once the compromise is agreed upon, either the victim will file an application before the High Court to quash the case, or else s/he will turn hostile witness in court. One SPP estimated that around 60% of atrocity cases that he tries end in compromises. In cases where the victims and witnesses turn hostile and deny the atrocity, the Court has no time to look into the matter of why this has happened. The SPP may try to persuade the victim and witnesses while they are on the stand, but once the statement is recorded, there is little

77 See Irudayam, A., J.P. Mangubhai and J.G. Lee, 2011. *Dalit Women Speak Out: Caste, Class and Gender Violence in India*. New Delhi: Zubaan, Chapter 14.

that can be done. The same SPP, however, also later admitted that compromises might be a good option given the overburdened judicial system.

In 2007, Lakshmi faced an attempted rape from a dominant caste man. Once the case came to trial before the Special Court, she faced enormous pressure on her to scuttle the case. The accused threatened that unless she did so, he would not allow her to walk along the only path to her agricultural land that went through his lands. Eventually, she gave in and both she and witnesses turned hostile witness in court, denying that the atrocity took place. The accused was therefore acquitted and initially her allowed her to walk through his lands to her land for some time, In 2012, however, once the judgement was delivered, the accused stopped Lakshmi from entering into his land. Moreover, he has now filed a false case against her husband in revenge.

- *Victims and witnesses face false counter cases in court.* An important and rising trend in recent years has been for one or more counter cases to be filed against a victim and her/his family members in an attempt to further harass and pressurise the victim to discontinue with the atrocity case. Significantly, these counter cases are not taken as linked to the atrocity case. Hence, it is the normal practice for these cases to have to be first proved false before the victim can file a FIR under sec. 3(1) (viii) – institution of false, vexatious or malicious suit against a SC/ST. The result is that atrocity victims and their families are further victimised and economically punished for having tried to access justice.

In one case of caste abuse pending before Rangareddy Special Court from 2011, two counter cases – one of attempted murder and one of rape – have been filed against the victim’s husband in an effort to make her withdraw her case.

In one case pending before Palamu Court from 2008, a witness to an assault and verbal abuse of a SC woman who helped her file the FIR was subsequently abused and jewellery stolen from him home by the dominant caste accused. He filed a separate case, after which he was falsely implicated in several counter cases. Since then, he estimates that he has spent around Rs 4 lakhs in engaging private lawyers to deal with the counter cases, paying money to the SPP to deal with his atrocity case, travelling to and from the court as well

as district administration offices to collect documents related to his case.

In one case of mass attack on Dalits pending before Alwar Special Court from 2011, one of the victims has a counter case filed against him. The atrocity case is only at the stage of framing of charges and the accused filed an appeal before the High Court to quash the charges against them. The High Court disallowed the appeal and also stayed the proceedings in the counter case against the victim. Now the counter case has been transferred to the Special Court.

### 3.2.9 DENIAL OF TA/DA, RELIEF AND COMPENSATION

The entitlements of victims to travelling and maintenance (TA/DA) expenses in order to attend trials, and to relief and compensation/ rehabilitation under the PoA Act and Rules 11 and 12 Rules are significant in terms of enabling victims and witnesses to depose their evidence, as well as victims to be able to recover their lives in the aftermath of atrocities. Yet it is often the compensation/ rehabilitation provisions under the PoA Act which are quoted in building a perception that Dalits and Adivasis only or often file false cases to claim compensation. At the same time, in a number of cases the victims have to fight to obtain access to relief and compensation/rehabilitation for their suffering.

Take for example, the situation in Rangareddy district. The District Collector announced at a DVMC meeting in early 2013 that a high number of SCs and STs who filed cases under the PoA Act are being forced to flee their homes for fear of pressure from the accused. An indication of this trend is the frequent need of the district administration to revalidate the cheques for the initial relief amounts to be paid to the victims of atrocities because they have moved out of their villages and their whereabouts were not known.<sup>78</sup>

Given the frequent adjournments to atrocity trials and often requirement that the prosecution witnesses attend court on several occasions to complete the

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78 Staff Reporter, 2013 (9 Feb.). 'Dalits forced to flee after filing cases under Prevention of Atrocities Act', *The Hindu (Hyderabad edition)*.

deposition of their evidence, the issue of travelling and maintenance (TA/DA) allowances arose in discussions with the victims and witnesses. To be noted is that most did not know about this entitlement, let alone the method to access this entitlement. In addition, discussions with the victims highlighted the issue of the non-payment of the balance compensation by the court after the initial relief provided on the registration of the FIR. Both issues of TA/DA and final compensation point to breaches of the legal standards under the PoA Act and Rules, which create these provisions for victims in order to provide reparations as well as enable their access to justice:

- *Almost all victims and witnesses do not receive travelling and maintenance expenses while attending the court; nor are they even informed of this entitlement.*
- *Even at end of trial with conviction, victims are sometimes being denied the balance compensation amount.*

Jhansi's husband was beaten to death for trying to break up a fight between two dominant caste men. The case came before Rangareddy Special Court and the accused were convicted in 2010. They were sentenced to seven years imprisonment under the Indian Penal Code, but not under the PoA Act. The accused have now preferred an appeal against the conviction to the High Court and is out on bail pending the hearing of his appeal. In the meantime, Jhansi received interim compensation for the death of her husband, but even after the judgement she has not received the full compensation amount due to her.

Sujatha was raped by a dominant caste man in Rangareddy district, Andhra Pradesh. She had a positive experience the only time she attended the court. The judge allowed an in-camera trial so that she could give her evidence only before the SPP and the judge. She was not made to face an open court and was not cross-examined. The case ended in the conviction of the accused and sentencing to 10 years imprisonment. However, a few years later he was released by the state government for his 'good behaviour' on Gandhi Jeyanthi. At the same time, Sujatha received interim relief of Rs 25,000 following

the incident, but was never awarded the balance Rs 75,000 due to her once the conviction judgement was delivered.

Moreover, some SPPs do not consider it part of their mandate to see that victims and witnesses are made aware of their entitlement to TA/DA. Others, like the Banda SPP, have given a representation to the District Magistrate on the issue of TA/DA allowances for victims and witnesses, but so far the approval has not come. Similarly, the Alwar SPP talked of having a meeting with the District Magistrate regarding the payment of this allowance. Procedural hurdles and delays on the part of the Social Justice Department, however, hamper the receipt of this entitlement.

### 3.3 Positive Experiences of Court Processes

There were few observations, or victims and witnesses who shared positive experiences of the trial process before the Special Courts. In one case before Palamu Special Court from 2008, for example, it was observed that the SPP prepared the witness well before entering the courtroom on how to deliver his evidence as well as how to face cross-examination. The judge also treated the witness kindly and told him to give his evidence without fear. Cross examination was then done in line with the evidence in chief, with the SPP intervening where appropriate. This, however, was a rare experience.

What did emerge were a few pointers in terms of how civil society organisations and private advocates can support the victims and witnesses of atrocities. One is in terms of information on the court process and how to depose evidence before the Court. A number of victims and witnesses who have employed private advocates revealed how this gave them some confidence to go through the trial process. What was clear is the need to explore more seriously than has been done to date the possibilities of private advocates supporting the SPPs, where the latter are willing, or else taking over atrocity cases where the victim applies for an advocate of their own choice to try their cases. The impact, where petitions are filed by a number of victims, can be significant. For example, in Tamil Nadu, where a rape survivor, with the help of the local civil society organisation, applied to have an advocate of her own choice appointed to her case, the judge allowed the advocate to assist the

SPP. The moral support provided by the private advocate, as well as orientation on the trial process and the status of her case helped the woman depose before the court. The case ended in the accused being sentenced to seven years imprisonment. Moreover, the fact that several applications are being filed in a single court under Rule 4(5) for a private advocate to become the prosecutor is causing the judiciary and the SPP to become more alert that people are monitoring the performance of the Special Courts.

With regard to the protection of victims and witnesses, where private advocates involved the study intervened to help victims, in some cases they were able to succeed in stopping the harassment of the victims. For example, in one case in Andhra Pradesh, the advocate helped the victim to file a petition with the police against the accused for obstructing her path to her fields in retaliation for her filing a case. After the police visited and made an inquiry, this obstruction has stopped. The advocate in Rajasthan also supported a number of victims to file a joint petition for protection against a number of accused who were trying to coerce the victims into compromising their cases. Their petitions are being considered at the time of writing.

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In conclusion, this chapter has shown a number of instances and patterns of caste discrimination operational within the criminal justice administration system. This discrimination manifests in a number of ways, including further violence, and with a number of actors whom SC/ST victims and witnesses of atrocities encounter as they seek to access justice following atrocities. There is a strong link between the right to a speedy trial and right of access to a fair trial in such cases. Where cases are prolonged over several years or even a decade, ample time is given for victims and witnesses to be pressurised or coerced into retracting their statements before the court, or for defence counsels to be throw doubt on the veracity of the witness statements in court. At the same time, the lack of information on the court processes and their cases severely hampers the ability and confidence of witnesses to depose before the courts. The illegal demands placed on victims and witnesses, most of whom are already poor, to pay for justice further exacerbates their situation.



When combined with a number of obstructions arising from different actors within the courts, it is clear that the right to a legal remedy and fair access to justice within the judicial system is severely compromised in the Special Courts today.





# CONCLUSIONS AND RECOMMENDATIONS

**It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that [s]he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would subvert the rule of law.**

**Sunil Kumar Pal vs. Phota Sheikh [(1984) 4 SCC 533]**

The rights to equal protection of the law and to an effective legal remedy are core elements of upholding justice and human dignity. These rights are also central to upholding the rule of law in a democracy. The rule of law refers to ‘a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated...’<sup>79</sup> In the present case, the SC/ST (Prevention of Atrocities) Act has been in place for over 20 years now. Its legitimacy and its necessity to protect the right to security of life of SCs and STs, and to provide for equity and social justice,

<sup>79</sup> UN Secretary General, 2004. *UN Secretary General’s Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*. UN Doc. S/2004/616.

are beyond question. Yet the enforcement of this social law remains ineffective even today. While many focus on the key role of the police in maintaining this poor state of affairs, this study has shown that the judicial system plays an equally significant role. The structural cause for this situation is undoubtedly caste, which manifests in rampant discrimination, including harassment, threats and other deliberate attempts to obstruct access to justice to SC/ST victims of atrocities. The Supreme Court of India has noted in this regard:

Unfortunately, the centuries old caste system still takes its toll from time to time... It is absolutely imperative to abolish the caste system as expeditiously as possible of the smooth functioning of the Rule of Law and Democracy in our country.<sup>80</sup>

Unfortunately, to date this pronouncement has received little serious attention by state actors and by actors within the judicial system that determine the course of legal justice in cases of atrocity. Instead, a secondary victimisation of SC/ST victims of atrocities occurs when they face numerous hurdles as they try to access legal justice. Moreover, the lack of accountability for atrocities against SCs/STs has a further negative effect on the communities. The result is to deny 25% of the Indian population security of life and to weaken the rule of law. This further denies SCs and STs the opportunities to participate, on equal par with other citizens, in social, economic and political life. The evidence that corroborates this overall conclusion is summed up below under three major findings, leading to a series of recommendations and guidelines for ensuring equal access to justice for SCs and STs.

## 4.1 Major Conclusions

### 4.1.1 THE NEED FOR EXCLUSIVE SPECIAL COURTS, JUDGES AND SPSS

Section 14 PoA Act currently provides for a contradiction to arise. On the one hand, it creates Special Courts to ensure the **right to speedy trial** for SC/ST victims of atrocities. On the other hand, it talks only of Sessions Courts being designated as Special Courts, meaning that they take up atrocity cases

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80 Supreme Court in *State of Uttar Pradesh vs. Ram Sajivan* [(2010) 1 SCC 529], para. 1.

in addition to their already huge case load. In this situation, it is not surprising that the right to a speedy trial is being denied to SC/ST victims of atrocities. This finding is attested to by the high pendency rate for atrocity cases in all the five states, as well as the number of years that a sizeable proportion of cases have been pending before the five Special Courts. The two key factors behind this situation are:

- ***Absence of Exclusive Special Courts in reality:*** All courts, including courts deemed as Exclusive Special Courts, try non-atrocity cases in addition to atrocity cases. This is despite courts like Banda having over 1000 pending atrocity cases dating back as far as 1998. At the same time, Alwar Exclusive Special Court, which has the least number of non-atrocity cases before it, is able to cover around 400 cases per year, around double that of the other Courts. This indicates that if Exclusive Special Courts are established in all the districts, victims would be able to enjoy their right to speedy trial.
- ***Inadequate court personnel for the case load:*** In addition to the need for exclusive courts, there is also a need for exclusive judges and SPPs to cope with the high volume of atrocity cases under trial in many districts across the country. Both judges and some SPPs currently face an overload of cases. Some judges are also presiding over other courts, while SPPs lack assistants to help shoulder the case load. Some SPPs, moreover, take on private cases as well. All this could be changed through the designation of Exclusive Special Courts, to which appointed judges exclusively preside over and to which SPPs devote their entire time with adequate supportive staff.

#### 4.1.2 THE NEED FOR MECHANISMS TO MONITOR AND ADDRESS DISCRIMINATION AND OTHER OBSTRUCTIONS IN THE COURT PROCESSES

In line with international standards on equal access to justice and legal remedies, two complementary Constitutional provisions mandate the right to equality before the law and equal protection of the law, and the duty of the Indian State to secure the operation of a legal system that promotes justice on the basis of equal opportunity. Hence, Dalit and Adivasi citizens of the

country have the right to equal access to legal remedies through the Special Courts. This has to be facilitated by the existence and effective operation of monitoring mechanisms as well as mechanisms to both prevent and redress discrimination and other obstructions.

However, despite the increasing number of atrocities against SCs and STs over the years, trends across the five states in which the study was conducted, as across the country, indicate that a *disproportionately lower conviction rate exists for crimes prosecuted under the PoA Act* than under the Indian Penal Code. While a common misperception exists that the PoA Act is being highly misused by SCs/STs to file false cases, the data show that the core problem is, in fact, that of under-utilisation of the Act as well as poor investigations and prosecutions of genuine atrocity cases. The data also reveal a clear linkage between protracted trials and a number of obstructive factors rooted in caste discrimination that come into play to deny the victims a right to a fair hearing. All these factors together are responsible for the low conviction rates and work against the very objective of the POA Act in terms of deterring caste-based crimes in the country.

- *Widespread discrimination and obstructions faced by victims and witnesses that obviate a fair hearing before a court of law:* The most striking conclusion from this study is regarding the multiple forms of discriminatory practices existing during trials in the Special Courts. Some are overt practices of discrimination in terms of differential access to SPP offices, seating arrangements in the court and treatment by court staff. Other obstructions such as threats and coercion into compromises or turning hostile witness, or SPPs not supporting the prosecution witnesses in the court, or colluding with the defence counsel, are also rooted in caste-class discriminatory attitudes much of the time. In the same way that the Act presumes that atrocities occur on the basis of the social identity of the victim, the fact that the social identity of these victims and witnesses are known to all during the criminal trial process also lends itself to the same inference of caste-based discrimination. While discrimination may not be the immediate motive behind the actions of different actors in the Special Courts, it definitely is the root cause for their negative actions towards SC/ST victims and prosecution witnesses.

- ***Absence of protection mechanisms:*** The absence of protective mechanisms exists at two levels. One is the denial of the right to equal protection of the law due to the often inaccurate framing of charges under the PoA Act. If one accepts that this social law was created in recognition of the specific vulnerabilities of SC/ST communities to certain type of violence based on their social identities, then its existence is to create a level playing field in terms of legal protection against violence. Therefore, when atrocity cases are charged under vague provisions of the POA Act or else only 3(1)(x) even in cases of grievous crimes, this is arguably a breach of the right to equal protection before the law.

Secondly, the absence of any legal and administrative mechanisms to protect SC/ST victims and witnesses of atrocities from the time their complaints are registered by the police through to the conclusion of the court trial denies them their right to security of life. They lack the equal protection of the law, in that threats and harassment from the accused, accused's community and supporters, defence advocates and even the SPP and private advocates in some instances, have been shown to negatively influence the outcome of atrocity trials. This is most often in terms of forced or coerced compromises as well as victims and witnesses turning hostile in the courts and denying their statements to the police regarding the atrocity.

- ***Inadequate monitoring of SC/ST atrocity cases under trial:*** While a number of mandatory provisions within the POA Act and Rules create mechanisms at the district and state levels to monitor the effective implementation of the Act, including the prosecution of atrocity cases, the reality is these mechanisms are at best nominally functional. Aside from the lack of regular meetings, what is significant is the approach to tracking atrocity cases. The focus currently lies solely on outcomes in terms of the number of convictions and not on the reasons behind protracted trials and why a disproportionate number of cases ended in compromises or acquittals.



### 4.1.3 THE NEED FOR GUIDELINES ON THE EFFECTIVE FUNCTIONING OF SPECIAL COURTS

Interlinked with the need for mechanisms to monitor and address the obstructions in the Special Courts is the need for clear guidelines at all stages of trial procedure, in order to eradicate current court practices that delay or dilute the spirit of the PoA Act. The rights to speedy trial and equal access to judicial remedies demand that the administration of the courts should be such that all parties to a case – victim, witnesses and the accused – approach the court on a level playing field so as to be able to effectively participate in the trial. Currently, however, information systems in the courts, legal procedures to allow for victim participation in trials, administrative measures and legal procedures to ensure a speedy trial, legal procedures and court spaces to ensure the protection of victims and witnesses, and transparent procedures to deal with the dispersal of financial allowances and compensation – all these measures and procedures all lacking.

- ***Access to relevant and accurate information:*** Trials before the Special Courts lack any semblance of transparency as far as SC/ST victims are concerned. Due to a combination of case overloads on the SPPs and/or discriminatory and indifferent attitudes towards the victims and prosecution witnesses, they are denied the right to information on the progress of their case and on the dates of trial hearings. Equally serious is the lack of support provided by SPPs in terms of information on the basic trial process before the Courts as well as how to depose before the courts and face cross-examinations. In contrast to a dominant caste accused who generally will be well-prepared by their defence counsel, therefore, SC/ST victims and prosecution witnesses enter into the courtrooms at a decided disadvantage.
- ***Space for SC/ST victims to participate in criminal trials:*** Little space is currently granted to SC/ST victims of atrocities to be heard by judges during the criminal trial hearings, to have access to information, to confront hostile witnesses, to challenge evidence and to be informed on the progress of proceedings. Instead, victims are expected to pay for information in many cases or else denied any information on their cases. They are only called to appear before the Courts at the time of giving their evi-

dence and otherwise have no procedural status during the trial process through which to make their voices heard. In sum, they are denied any assistance throughout the legal process.

- ***Court procedures to ensure speedy trial:*** The current administrative or judicial procedures to deal with especially the multiple adjournments that occur in atrocity cases are inadequate. First, many trial adjournments occur due to the absence of prosecution witnesses, including the Investigating Officers. Currently, the administrative/police mechanisms to track victims and witnesses, who may flee their village due to safety issues, is poor. Moreover, witnesses are sometimes not served notices or served notices with sufficient advance notice. Second, the defence counsel and accused are being allowed to use the tactic of multiple adjournments to delay the trial. This allows more time for prosecution witnesses to be intimidated into retracting their statements in court, or else allows the defence counsel to use the passage of time to cast doubt on the veracity of the prosecution witness statements in court.
- ***Protective spaces within the court premises:*** As previously mentioned, many SC/ST victims and witnesses experience threats, harassment and other obstacles in order to ensure that the atrocity case under trial ends in an acquittal of the accused, dismissal of the case or compromise. These forms of obstruction occur both inside and outside the court premises, and denies SC/ST victims and witnesses equal access to justice. Their protection, therefore, includes the provision of a protected and private space within the court premises that ensures an atmosphere free of intimidation in which to depose their evidence. Such a provision, however, is currently missing in all the Special Courts.
- ***Right to appropriate and prompt reparations:*** Reparation includes the right to compensation for damage done by a wrongful act, where restitution or the re-establishment of the situation that existed before the wrongful act was committed, is not possible. Compensation is a means of acknowledging and validating the loss or injury to the victim. Compensation in PoA Act cases, however, has been shown to be not paid where the district administration and law and enforcement machinery fail to provide adequate protection to SC/ST victims and witnesses, forcing them to leave their villages in order to escape harassment and threats.

Otherwise, where interim compensation is paid, even on conviction the final compensation amount is not provided to SC/ST victims of atrocities. Coupled with the lack of comprehensive rehabilitation provisions, this effectively cripples the ability of many SC/ST victims to rebuild their lives post-atrocity. Moreover, even where victims receive interim relief amounts from the government, this amount is often offset by their medical bills as well as the money they spend paying off SPPs to try their cases, or hiring private advocates due to the lack of support received from SPPs during the trial process, or due to the lack of reimbursement of travelling and maintenance expenses as victims travel to and from the courts. In sum, the reality is that adequate reparation is rarely enjoyed by SC/ST victims of atrocities.

In sum, this research shows that changes to the status of courts and personnel (towards exclusivity in administering/adjudicating), monitoring, prevention and redress mechanisms, as well as court administrative and judicial procedures, are all required to give effect to the spirit of the SC/ST (Prevention of Atrocities) Act. Altering just one aspect without the others will not fulfil the right of SC/ST victims to equal access to legal remedies. What follows, therefore, are a series of recommendations aimed at ensuring a comprehensive framework for ensuring speedy justice without discrimination and other obstructions before the Special Courts.

## 4.2 Key Recommendations

### **STRENGTHEN THE POA ACT AND RULES THROUGH AMENDMENTS:**

- Amend the PoA Act to include the following necessary provisions for strengthening the effective enforcement of the Act:
  - Establish Exclusive Special Courts and exclusive Special Public Prosecutors in the districts to exclusively try atrocity cases under the PoA Act.
  - Introduce a timeframe of 120 days for the completion of trial from the date of taking cognisance of the offence in order to ensure speedy justice to the victims.

- Specify the powers and responsibilities of the Special Courts, including to explain to the victims about their rights during the trials, and to assess the requirement for protection and security for victims and witnesses throughout the trial.
- Provide for victims and witnesses' rights, including the right to protection from intimidation and harassment; the right to information on the status of investigation and charge sheet preparation; the right to information on relief and rehabilitation, as well as travelling and maintenance allowances to attend trial hearings; the right to a pre-trial visit to the court to become familiar with the legal process; the right to be informed in advance of the dates and places of trial; the right to an adequate briefing on the case and preparation for trial, including information on criminal justice procedures; the right to information about legal aid; the right to an experienced SPP, even a SPP of the victim's choice.
- Spell out specific police actions or inactions – including the failure to register a FIR – as “wilful negligence” punishable under the Act.
- Eliminate words such as “intent”, “intention”, “intentionally”, ‘wilful’, “public place” and “on the ground”, which give law enforcement officials and judicial officers leeway to enable the accused to escape the sanctions of the Act.
- Provide that where it is brought to the notice of the Special Court trying an atrocity case that a counter case has been filed against the victim/s in the same or another police station, shortly before or after the offence of atrocity occurred, the Special Court shall call for records of such case and try that case. Further, if that counter case is found to be baseless, the Court shall include in the charges the offence under sec. 3(1)(viii).
- Specify that any Special Public Prosecutor who has not conducted the atrocity case to the best of her/his abilities and with due care and caution, or has done any illegal act (such as demanding money from the victims and witnesses) shall be deemed to have neglected their duties under the Act and be liable to punishment under sec. 4.

- Amend the PoA Rules to include:
  - A sub-rule, in line with Rule 13, that the selection of officials and staff of the Special Courts should be based on the right aptitude and understanding of the problems of SCs/STs, and that adequate representation of SCs/STs should be ensured in the judiciary and panel of public prosecutors.
  - In every trial conducted under the Act, the district magistrate should assign a member of the panel to assist the Special Public Prosecutor in conducting the trial.
  - A new Rule on the powers and responsibilities of Special Courts, including that the Court shall inform and explain the rights of the victim as provided under the Act; assess the need or requirement of protection and security for the victims or witnesses, and periodically review the status of victim/witnesses protection and security; obtain a report from the Investigating Officer about the status of fulfilment of the obligations pertaining to relief, compensation and rehabilitation, travelling and maintenance allowances, and review periodically the status of the same.

#### **ENSURE STRICT ENFORCEMENT OF THE LAW TO CURB ATROCITIES:**

- Strictly enforce the Ministry of Home Affairs Advisories for curbing crimes against SCs/STs, especially as regards:
  - Minimising the delays in the investigation of cases of atrocities and improving the quality of police investigations;
  - Regular training programmes for law enforcement machinery at all levels and other functionaries of the criminal justice system (such as judges and SPPs) on the PoA Act and PCR Act, mandatory rules/measures for their effective enforcement, as well as sensitisation on caste-based crimes against SCs/STs and the need for such social laws.
  - Including a discussion on the reasons for delays in atrocity trials in the regular DVMC meetings and monthly meetings of the District Magistrate, Superintendent of Police and Special Public Prosecutor.

- The Superintendent of Police ensuring the timely attendance and protection of all prosecution witnesses, including Investigating Officers and officials witnesses.<sup>81</sup>

### **CREATE A FREE ATMOSPHERE FOR VICTIMS AND WITNESSES TO DEPOSE:**

- Create a waiting room within the Court premises for SC/ST victims and witnesses to sit while they await the hearing of their cases, in order to provide privacy. One court staff member should be appointed to be present in the room so as to ensure protection to the victims and witnesses.
- Create a video conferencing room within the Court premises and provide for the ability of witnesses, on application to the judge, to testify via video conferencing in cases where caste tensions or any harassment of victims and witnesses exist after the atrocity has taken place.
- A mechanism should be in place before the trial of the case, so as to involve victim, family member or witness to see and experience the layout of the court. This should be arranged with the support of Public Prosecutor or an appointed facilitator, who has the responsibility for the case.
- A facilitator, along the lines of the Protection Officers under the Domestic Violence (Prevention) Act 2005, should be appointed to aid SC/ST victims from the time of reporting cases to the police to the conclusion of court proceedings. The facilitator should serve as an intermediary between the victims and the criminal justice system, including by reporting issues of security for victims and witnesses and connecting them to the SPPs.

### **CREATE GUIDELINES FOR EFFECTIVE FUNCTIONING OF SPECIAL COURTS:**

- Ensure that the transfer of judges is planned in such a manner that the posts of judges are never kept vacant in the Special Courts. Further vacancies in the posts of judges arising on account of unexpected and unforeseeable contingencies shall be filled within 30 days after the occurrence of such contingencies.
- Vacancies in the posts of Special Public Prosecutors arising on account

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<sup>81</sup> Ministry of Home Affairs, 2010. 'Advisory on Measures needed to Curb Crimes against SCs/STs'. F.No. 15011/48/2009-SC/ST-W, dated 01.04.2010.

of unexpected and unforeseeable contingencies shall be filled within 30 days after the occurrence of such contingencies.

- For every Special Court, the state government should appoint an Assistant Special Public Prosecutors and ensure that either the SPP or Assistant SPP should be SC or ST.
- Adjournments should not be given frequently and should be avoided by the Special Courts as far as possible. Adjournments should be monitored on a regular basis and clear explanations placed in the court records as to the reasons for such adjournments.
- The Public Prosecutor should ensure that the witnesses' memory is refreshed regarding the contents of his/her prior testimony by showing him/her the records for her/his case prior to the commencement of the deposition.
- The views and concerns of victims of atrocities, where their personal interests are affected, may be represented in the court and shall be considered at the appropriate stages of the trial proceedings without prejudice to the rights of the accused and consistent with the criminal justice system. This includes the opportunity to be heard in respect of adjournments, bail, discharge, release, pardon, parole, conviction, acquittal or sentencing of an accused or any connected proceedings or arguments.
- Either the audio-recording of victim and witness statements in atrocity cases or else the recording of such statements before Magistrates should be made mandatory, in order to ensure that the statements recorded are accurate and to be able to strengthen cases even where witnesses turn hostile witness in court.
- In order to facilitate the ascertainment of the truth, the presiding Special Court judge should exercise control over the cross-examination of witnesses. This includes the mandate to decline questions that are inappropriate, unfair, misleading, needless, repetitive or expressed in language that is too complicated for the witness to understand.<sup>82</sup>
- Witness protection orders, in the form of (i) injunctions against the accused having contact with victim and witnesses, (ii) pre-trial detention

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82 See Majlis Legal Centre, 2013. *Guidelines for Functioning of Special Courts: Protocols for Maharashtra*. Mumbai: Majlis Legal Centre.

order or no-contract bail conditions, or (iii) protection by police should be made available in all atrocity cases under trial.

### **ENSURE EFFECTIVE MONITORING OF TRIAL PROCESSES BEFORE SPECIAL COURTS:**

- The various committees created under the Act and the National Commissions for SCs and for STs should monitor the trial process in the Special Courts in terms of the obstacles faced by the victim and witnesses. In addition, they should also follow up on the acquitted or the convicted cases, in order to see where cases should be taken on appeal. Irrespective of the court decision, atrocity prone areas should be visited and the further impact of the atrocity against the Dalit community ascertained so that immediate action is taken to restore peace and order.
- The monitoring committees envisaged under the Act should be further strengthened to function effectively as envisaged under the Act with regard to their mandatory responsibilities of monitoring the investigation and prosecution of cases. Moreover, the task of monitoring cases should not be limited to filing reports on the numbers of convictions and acquittals; instead, the committees should adopt a more analytical and proactive stance that ensures that the objectives of this protective legislation are achieved.
- Civil society organisations working for the rights of SCs and STs should be allowed to work with police officers, public prosecutors and victims to facilitate the smooth running of the cases. They should be allowed to follow up the execution order passed by the Special Courts and monitor their implementation.

### TO CIVIL SOCIETY ORGANISATIONS:

#### **DEVELOP SPECIAL COURTS MONITORING AND INTERVENTION STRATEGIES:**

- Extend Dalit human rights monitoring to the Special Courts by
  - ensuring that contact is maintained with the victims of atrocities in which fact findings are done beyond the police FIR registration, investigation and compensation stages.



- developing systems to monitor the Special Courts in the districts through a combination of consistent RTI applications, engagement with the DVMCs, and periodic engagement with victims and witnesses of atrocities in order to understand and develop strategies to overcome the hurdles they face during the court trial process.
- identifying and capacitating a pool of advocates in the districts who can either assist the SPP or else take over the prosecution of atrocity cases where victims feel that the SPP is not representing their best interests.
- using group petitions on issues such as protection, denial of TA/DA allowances or interim relief and compensation, or for the appointment of private advocates where the SPP is not performing his/her duties well, in order to generate an atmosphere in the Special Courts that is more supportive to victims and witnesses.
- intensely following up significant atrocity cases with strong evidence all the way through to court judgement, which can generate case law that strengthens the implementation of the PoA Act by the courts.

#### **STRATEGICALLY USE CIVIL LAW REMEDIES:**

- Promote the greater use of civil law remedies in conjunction with bringing criminal cases under the PoA Act. This includes bringing civil claims for damages, defamation (where false counter cases are filed against victims), injunctive relief, or restraining orders against the accused.

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# ANNEXURE 1

## SPECIAL COURT OBSERVATION FORMAT

(SEPARATE OBSERVATION RECORDS TO BE WRITTEN DOWN AS PER THE FORMAT FOR EACH CASE UNDER TRIAL)

Date	Case No.	Case Title	Name of Judge	Stage of Case	Observations on the Proceedings	Any Remarks
					<p>Please note down observations, based on the guideline questions, regarding the following here:</p> <ol style="list-style-type: none"><li>1. Observations on the legal procedures – under SC/ST (PoA) Act, IPC, CrPC and Evidence Act</li><li>2. Observations on Actions/Interventions of the SPPs/ Defence advocates/ judges/ victims/ witnesses/ accused</li><li>3. Observations as to the information/ orientation given by the SPP to the victims/ witnesses</li><li>4. Observations on the attitudes and behaviour of the SPP/ defence advocate/ judges/ accused towards the victims/ witnesses</li></ol>	

## SPECIAL COURT OBSERVATION GUIDELINES

Stages of Case	Who to Observe	What to Observe and Write Detailed Notes About
First hearing of the case – charges framing	Investigating Officer  SPP	<ol style="list-style-type: none"> <li>1. What are the basic details of the case? – what are the crimes committed; what injury was caused; who committed the crime (name/caste) and what role did they play (commission/omission); against whom was the crime committed (name/caste); motive why crime was committed; how crime was committed; when and where crime was committed; names and addresses of witnesses.</li> <li>2. Is the chain of events complete?</li> <li>3. Are the necessary ingredients for the offences made out?</li> <li>4. If discriminatory or abusive words were used against the victim/s, are they recorded correctly in the victims' statements?</li> <li>5. Who lodged the FIR, and how are they related to the victim/s?</li> <li>6. What was the time period between commission of the offence, registration of the FIR, committal hearing by Judicial Magistrate (First Class), and the initial hearing in the Special Court? Is any explanation given for any delays?</li> <li>7. What is the rank of the Investigating Officer for the case?</li> <li>8. Is there any delay on the part of the Investigating Officer in bringing case to trial?</li> <li>9. Are the names of all the accused mentioned in the charge sheet? If not, are the reasons for not mentioning the accused given or not?</li> <li>10. Are the correct date, time and place of occurrence of the atrocity mentioned in the charge sheet? Is there any discrepancy between the charge sheet and the FIR?</li> <li>11. What charges are framed?</li> <li>12. Does the charge sheet mention whether any confessions/ statements of witnesses under secs. 161 or 164 CrPC were recorded during the course of the investigation? If yes, are those statements attached to the charge sheet? If not, what reasons are given for non-attachment?</li> <li>13. Are the following information mentioned in, or attached to, the charge sheet the same as what is mentioned in the FIR? – the names of the eye witnesses, any dying declarations of the victims, the sketch map of the place of the crime, the photographs of the crime scene, sketches of the weapons used for the crime, demarcation report of the place of occurrence of the crime, etc.</li> <li>14. Has any Medico Legal Certificate (MLC), Chemical Examiner report, Post Mortem report, finger print expert report, DNA report or forensic evidence or any other expert report been collected? If so, are the details of the reports attached or not to the charge sheet?</li> </ol>



Stages of Case	Who to Observe	What to Observe and Write Detailed Notes About
		<ol style="list-style-type: none"> <li>15. Were any seizures made and other evidence collected from the crime scene? 16. If further investigation u/s. 173 (8) CrPC is continued, is this mentioned in charge-sheet?</li> <li>17. Is the Investigating Officer recommending any externment of persons like to commit atrocities in the area?</li> <li>18. At the time of framing the charges, does the SPP diligently argue the case on behalf of the victim/s?</li> </ol>
Trial Hearings – prosecution witnesses	<p>SPP</p> <p>Victim/s</p> <p>Witness/es</p> <p>Judge</p>	<ol style="list-style-type: none"> <li>1. How many hearings are there during the study period? What is the average frequency of the hearings?</li> <li>2. Are summons being properly served on prosecution witnesses?</li> <li>3. How does the SPP prepare the victim/s and witnesses for the trial? Are they told how to speak in the court?</li> <li>4. What briefings/information does the SPP give to the victim/s and witnesses? Are they told of the trial hearing dates? How many days advance notice are they given of the court hearings?</li> <li>5. Does the victim/s turn up for the trial hearings? If not, why not?</li> <li>6. Do the prosecution witnesses' turn up for the trial hearings? If not, why not?</li> <li>7. Are the victim/s and witnesses receiving their travelling and maintenance allowances regularly in order to attend the court hearings?</li> <li>8. What protection is given in the court premises during the trial for the victim and witnesses?</li> <li>9. Does the SPP give time to the victim/s and witness/es to support them during the trial process? If not, why not?</li> <li>10. How does the SPP treat the victim/s? Does s/he treat them with respect and support them in court?</li> <li>11. How does the SPP treat the witness/es? Does s/he treat them with respect and support them in court?</li> <li>12. Is the examination in chief conducted properly? Does the SPP argue the case diligently, giving all evidence and citing case law?</li> <li>13. Has proper and relevant evidence to prove the guilty conduct of the accused been collected by the IO? Are the facts allegedly contained in the charge-sheet supported by evidence gathered during investigation?</li> <li>14. What circumstantial evidence has been collected?</li> <li>15. Does the SPP seem well prepared to argue the case? If not, please give examples of how you know s/he did not prepare well. If not, why not?</li> <li>16. Does the SPP try to delay the trial at all? If yes, how does s/he delay the trial and for what reason?</li> <li>17. Are there any discrepancies in the evidence collected by the Investigating Officer? What were they?</li> </ol>

Stages of Case	Who to Observe	What to Observe and Write Detailed Notes About
		<p>18. How does the victim/s perform in the court? Are they able to reproduce their statements to the police explaining the atrocity, or are there discrepancies? Do they correctly identify the accused? What process is adopted for them to identify the accused? Do they turn hostile in court?</p> <p>19. Are all the prosecution witnesses examined in the court? 20. How do the witnesses perform in the court? Are they able to reproduce their statements to the police explaining the atrocity? Do they turn hostile in court?</p> <p>21. How does the judge treat the victim/s? Does s/he seem to have any prefixed ideas about the case? Is there any discriminatory attitude towards the victim/s?</p> <p>22. How does the judge treat the witness/es? Is there any discriminatory attitude towards the witness/es?</p> <p>23. Does the court alter or add any charge at any time before the judgment is delivered?</p> <p>24. Does the District Magistrate file a report indicating the status of implementation of relief and compensation measures for victims and witnesses?</p> <p>25. Does the judge check as to the status of relief and compensation measures for victims and witnesses?</p> <p>26. Are there any delays in the trial due to the judge being absent/on leave? If yes, for how long?</p> <p>EVIDENCE ACT:</p> <p>27. Was the evidence that was produced in original documentary form or only a copy of the original?</p> <p>28. Does the court take the opinion of experts in case of any evidence which requires an expert opinion?</p> <p>29. Are any independent witnesses examined to prove the writings and signatures of the accused, in addition to the evidence of handwriting expert?</p> <p>30. Is the accused's previous bad character taken into consideration in the prosecution case?</p>

Stages of Case	Who to Observe	What to Observe and Write Detailed Notes About
Trial Hearing – cross-examination	Defence advocate  Judge	<ol style="list-style-type: none"> <li>1. Is the cross-examination based on the examination-in-chief or does it deviate in any way?</li> <li>2. Is the question-answer format followed during cross examination?</li> <li>3. Does the judge object to any deviations by the defence advocate during cross-examination?</li> <li>4. How does the defence treat the victim/s?</li> <li>5. How does the defence treat the witness/es?</li> </ol>
		<ol style="list-style-type: none"> <li>6. As per the Evidence Act, a witness may, while under examination, refresh her/his memory by referring to any writing made by her/him at the time of the transaction concerning which s/he is questioned. However, does the defence take this as a point to question the witness's statements?</li> <li>7. What issue/s does the defence raise to counter the testimonies of the victim/s and witness/es?</li> <li>8. Does the defence try to delay the trial at all? If yes, how does s/he do so and what are the reasons given?</li> </ol>
Trial Hearing – defence witnesses	Accused  Defence Witnesses  Defence Advocate	<ol style="list-style-type: none"> <li>1. Does the accused turn up for the trial hearings? If not, why not?</li> <li>2. If the accused is present for trial, how does s/he explain the course of events and defend themselves against the charges?</li> <li>3. Is the statement of the accused taken under sec. 313 CrPC in front of the judge?</li> <li>4. Do the defence witnesses' turn up for the trial hearings? If not, why not?</li> <li>5. As per the Evidence Act, in criminal proceedings, the fact that the accused is of good character is relevant. But does the defense try to use this to influence the judge? Does the judge seem to be overly influenced by the supposed good character of the accused?</li> <li>6. How does the SPP treat the defendant and the witnesses? Does the SPP seem to be aligned with the defence in the case?</li> <li>7. Is any new evidence introduced by the defence that should have been investigated/collected by the Investigating Officer? If yes, what is it?</li> <li>8. Does the defence lawyer seem well prepared to argue the case? Explain.</li> <li>9. Does the defence lawyer try to delay the trial at all? If yes, how does s/he delay the trial and on what grounds?</li> <li>10. How do the witnesses perform in the court? Do they turn hostile in court?</li> <li>11. How does the judge treat the witnesses? Does s/he seem to have any prefixed ideas about the case? Is there any obvious sympathy for the defence side of the case?</li> </ol>
Trial Hearing – cross-examination	SPP	<ol style="list-style-type: none"> <li>1. Does the SPP effectively cross-examine the defence witnesses?</li> <li>2. Is the SPP able to point to gaps in the defence evidence? If yes, what are those gaps?</li> </ol>

Stages of Case	Who to Observe	What to Observe and Write Detailed Notes About
Outside of the Courtroom	Victim/s Witness/es Accused	<ol style="list-style-type: none"> <li>1. Does the victim/s or witnesses face any pressure of threats to withdraw their cases?</li> <li>2. Do NGOs/activists extend their support during the trial? If yes, in what way do they provide support to the victim/s and witnesses?</li> <li>3. What protection is given by the courts to ensure the victim/s and witnesses receive adequate protection against any threats to their personal or family security?</li> </ol>
Special Court Powers during Trial	Judge	<ol style="list-style-type: none"> <li>1. Does the judge declare the accused's property forfeited to the government OR attached during trial to be forfeited if convicted?</li> <li>2. Does the judge order the removal of any person beyond the limits of an area for a period of two years because they are likely to commit an atrocity?</li> <li>3. Does the judge make any condition/s for the return of any person removed from the limits of an area due to their likelihood of committing an atrocity?</li> <li>4. Does the judge order the full payment of relief/assistance to victims of atrocities as per the norms for relief amounts if the amount given is deemed insufficient?</li> </ol>
Final arguments	SPP	<ul style="list-style-type: none"> <li>• Does the SPP effectively sum up the case? In what way is s/he effective or not effective?</li> <li>• Does the SPP divert the case away from the main facts that could lead to a conviction?</li> </ul>
Judgement	Defence Advocate	<ol style="list-style-type: none"> <li>1. Does the defence lawyer effectively sum up the case? In what way is s/he effective or not effective?</li> </ol>
	Judge	<ol style="list-style-type: none"> <li>1. What is the social background of the judge?</li> <li>2. Is there any delay in the passing of the judgement? If yes, for how long? If yes, what is the reason given for the delay?</li> <li>3. What is the judgement given? – Acquittal or conviction or otherwise disposed of?</li> <li>4. What are the specific grounds for the judgement? Are there procedural or substantive grounds given? Are the grounds for the case in keeping with the spirit and provisions of the SC/ST (PoA) Act?</li> <li>5. Is there evidence of any judicial bias against the SC/ST victims or witnesses in the judgement itself? If yes, on what grounds is the bias based?</li> <li>6. What sentence is handed down by the judge? Is it the maximum as per the Act? Does the sentence appear to fit the gravity of the crime?</li> </ol>

Stages of Case	Who to Observe	What to Observe and Write Detailed Notes About
Appeal	SPP	<ol style="list-style-type: none"> <li>1. Has the SPP applied for a certified copy of the court judgement within stipulated time period?</li> <li>2. Is the judgement appealed? If yes, to which court is the appeal made? Which party appeals the case? What are the grounds for appeal?</li> <li>3. Does the SPP tell the victims of their right to appeal the case, in case of an acquittal?</li> <li>4. If the case does not end in a conviction, has the SPP obtained permission from the DM to file an appeal before the appellate court?</li> <li>5. What is the status of the appeal? How is it received in the appellate court? Has the High Court admitted the appeal? If not, what reasoning has the High Court given for not taking the case on appeal?</li> <li>6. Has the SPP filed any appeal before the Supreme Court?</li> </ol>

# ANNEXURE 2

## BASIC INFORMATION TO OBTAIN ABOUT THE SPECIAL COURT

### Basic Details:

1. When was the court established?
2. Approximately how many atrocity cases are in trial per week, per month?
3. Approximately how many other types of cases (non-atrocity cases) are in trial per year?
4. If both atrocity and non-atrocity cases are tried in the same Court, is priority given to hearings of atrocity cases?
5. Approximately how many atrocity cases reach judgement per year?
6. What is the average length of trial for atrocity cases in this Special Court? Is it the same for non-atrocity criminal cases tried in the same Court?
7. *Judge in Special Court.*

S. No.	Caste (e.g. OBC Yadav)	Sex (male or female)	How long have they sat in the Special Courts?
1			

8. *Special Public Prosecutor:*

S. No.	Caste (e.g. OBC Yadav)	Sex (male or female)	How long have they been practicing as an advocate?	Date of appointment to the Special Courts
1				

9. How was the special public prosecutor appointed?

- Are there any cases where victims appoint their own prosecutors? If yes, what is the process to do so?

10. On average, how many cases does the special public prosecutor handle every year? Are they able to cope with the amount of atrocity cases coming for trial or are there delays? If not, please explain.

11. *Defence lawyers:*

S. No.	Caste (e.g. OBC Yadav)	Sex (male or female)	How long have they been practicing as an advocate?
1			
2			
3			

12. *Court Staff:*

S. No.	Position in the Court	Caste (e.g. OBC Yadav)	Sex (male or female)	How long have they been working in the Special Court?
1				
2				
3				

13. Are there adequate court staff to handle the day-to-day administration workload of the Special Court? Please explain your answer.

**Court Infrastructure and Running Expenses:**

14. What are the basic infrastructure facilities in the court?

- Is there a separate room within the Court premises for victims to meet with the Special Public Prosecutors?

15. What is the funds and expenditure for running the Special Court annually?

### **Monitoring of Special Court Functioning:**

16. Does the District Magistrate or District Director of Prosecutions undertake a monthly review of the position of all atrocity cases and take action or propose action to be taken with respect to investigation and prosecution in each case? Does this include a report on the relief and rehabilitation provisions?
  - Are those reports publicly available? If yes, what do they say?
17. Does the District Magistrate or District Director of Prosecutions undertake a review of the performance of the Special Public Prosecutors twice a year?
  - Are those reports publicly available? If yes, what do they say?
18. Has any Special Public Prosecutor been denotified due to their poor performance in the Special Court?
  - If yes, who were they (i.e. what caste)? And what specific reason was given for their denotification?
19. Does the DMVC undertake a review of the prosecution of cases under the Act in the Special Courts once every three months?
  - If yes, what do those reports say?



# ANNEXURE 3

## LIST OF ALL PENDING CASES BEFORE SPECIAL COURT

S. No.	Case No.	Case Title	Type of Atrocity	IPC sections	Sections SC/ST (POA) Act	Any other legal sections	List of Documents	Stage of case in Special Court*
1								
2								
3								
4								
5								

\* I.E. committal hearing, appearance, prosecution evidence, defence cross-examination, defence evidence, prosecution cross-examination, final arguments, judgement, etc.

# ANNEXURE 4

## SAMPLE RTI APPLICATION

ANNEXURE "A"  
(See rule 3)

Format of Application for obtaining information under  
**The Right to Information Act 2005**

**Ref: No: NDMJ/01/DGP/UP/2013/4**

To  
The Public Information Officer,  
Directorate of Prosecution,  
Lucknow, Uttar Pradesh.

1. FULL NAME OF APPLICANT :
2. ADDRESS :
3. PARTICULARS OF INFORMATION REQUIRED

(i) Subject matter of information:

Year-wise details of cases tried in Banda Special Court, Banda district under the SC/ST (Prevention of Atrocities) Act between 2010 and 2012, in terms of the number of pending cases for trial each year, number of convictions, number of acquittals, number of compromises, and number of appeals against convictions or acquittals.

- (ii) Period to which the information relates: From 1 January 2010 to 31 December 2012 (3 year period)
- (iii) Description of information required:
- a) Year-wise (2010, 2011, 2012) details of the total number of cases pending trial in Banda Special Court at the start of each year.
  - b) Year-wise (2010, 2011, 2012) details of the total number of cases that were disposed of by Banda Special Court.
  - c) Year-wise (2010, 2011, 2012) details of the total number of cases tried in Banda Special Court that ended in convictions.
  - d) Year-wise (2010, 2011, 2012) details of the total number of cases tried in Banda Special Court that ended in acquittals.
  - e) Year-wise (2010, 2011, 2012) details of the total number of cases tried in Banda Special Court that ended in compromises.
  - f) Year-wise (2010, 2011, 2012) details of the total number of cases tried in Banda Special Court that were otherwise disposed of.
  - g) Year-wise (2010, 2011, 2012) details of the total number of cases tried in Banda Special Court that ended in acquittals and where the Special Public Prosecutor preferred an appeal to the High Court.
  - h) Year-wise (2010, 2011, 2012) details of the total number of cases tried in Banda Special Court that ended in convictions and where the Defence Counsel then preferred an appeal to the High Court.
- (iv) Whether information is required by post or in person: Post
- (v) In case by post (Ordinary, Registered or Speed): Speed post
- (vi) Whether application fee of Rs.10/-(Rupees Ten only) paid and ,if so, please specify mode of payment: Indian Postal Order of Rs.10/- in favour of Accounts Officer , O/o Additional Director General of Police CID, Police Head Quarters, Lucknow, is enclosed bearing No 88E 404073.

4. WHETHER THE APPLICANT IS BELOW POVERTY LINE:

(If yes, attach a photocopy of the proof thereof)

Place :

Date :

Signature of the Applicant

# ANNEXURE 5

## QUESTIONS TO VICTIMS AND WITNESSES OF ATROCITIES

**Special Court Case No.:**

**Name of Victim:**

- How many times has the victim attended the special court?

**Name of Witness:**

- How many times has the witness attended the special court?

*(please mark tick (✓) or cross (×) for each question; if not applicable, please mark as N/A)*

	Question	Victim	Witness
1.	Are you satisfied with the way the case is being handled in the court?		
2.	Were you given any orientation on the court processes before the start of the trial?		
3.	Are you being given regular information on the progress of your case?		
4.	Are you being informed in advance on the dates of important hearings, such as when you have to give your statement in court?		
5.	Have you attended court on days when your trial did not take place and no one informed you that your case was not going to be heard?		
6.	Are you allowed into the SPP's office/room to discuss your case with the SPP?		

7.	Did you receive any briefing/coaching from the SPP/your private advocate before giving your statement in the court?		
8.	Has the SPP asked any money from you to argue your case before the court?		
9.	Did you face any problems to attend the court on the date/s given for the hearing of your statement?		
10.	Did you face any threats or harassment once the trial started?		
11.	Has anyone ever asked you during the trial process if you require any protection?		
12.	When you come to the court, has anyone made any effort to give you privacy and protection while within the court premises?		
13.	Are you allowed to sit equally with others/the accused's side inside the courtroom?		
14.	Did you face any counter cases against you from the accused?		
15.	Did any advocate (SPP or defence) approach you during the trial for a compromise?		
16.	<p>Did you feel at any time during the court trial that you are being cheated or treated unfairly?  If yes, please describe (i) what happened and (ii) who did it to you:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>		
17.	Were you made to feel at any time during the court trial humiliated or abused?		
18.	When you gave your statement before the court and the defence advocate questioned you, did the SPP or judge intervene if the defence advocate was turning around your statement too much?		
19.	Did you ever think to stop the trial and just withdraw or compromise the case during the trial?		
20.	Have you been reimbursed for all your travelling and maintenance expenses while you attend the court trial?		

# ANNEXURE 6

## CASE STUDY WITH VICTIMS AND WITNESSES OF ATROCITIES

Name & Sex of Victim:

Address of Victim:

District & State:

Name & Sex of Witness:

Address of Witness:

District & State:

Date of Atrocity (take from complaint):

Type of Atrocity (take from complaint):

Brief of Atrocity (take from complaint):

Special Court Case No. (take from case file):

Date of start of trial in Special Court (take from case file):

Current stage of trial:

Does the victim/witness feel satisfied with how their case has proceeded in the Special Court and how they have been treated?

## **Rights at Time of Trial:**

Was the victim/witness informed by the investigating officer of the dates fixed for the trial?

How many days before the trial hearing date did they receive the information?

Was the victim/witness regularly informed about the trial hearing dates?

How many days before the trial hearing date did they receive the information?

How was the victim/witness briefed by the SPP before giving her/his evidence? Please describe how they were coached and told to speak before the court.

How many hearings has the victim attended?

Was the victim able to attend the court for all the hearings?

If attending some/all hearings, does the victim feel the court hearings have been fair? Did the victim think there was any difference in attitudes or any bias of the SPP/Judge between the prosecution witness hearings and the defence witness hearings? Please explain answer stage-wise for the court trial.

If victim was not about to attend, why was this so?

When the victim gave her/his statement in the court, how does s/he feel she was treated?

Did the SPP again brief the victim before giving her/his evidence in the court room on how and what to speak?

Did the SPP give any other support to the victim?

How does the victim feel s/he was treated in the court by the SPP/Defence advocate/Judge? Was s/he harassed or treated without respect in any way? Please explain answer in detail.

Was the victim able to reproduce her/his statement in the court? If not, why not?

What process was adopted for them to identify the accused?

Did the victim turn hostile in court? If yes, why?

How was the summons served on the witness? Please describe in detail.

If the witness was not able to attend court on any day on which they were supposed to give their statement, why was this so?

Was the witness able to attend the court hearing on the prescribed hearing date?

If the witness was not able to attend the hearing, why not?

If the witness was able to attend the hearing, what was the witness' experience of the court hearing?

Did the SPP again brief the victim before giving her/his evidence in the court room on how and what to speak?

How does the witness feel s/he was treated in the court by the SPP/ Defence advocate/Judge? Was s/he harassed or treated without respect in any way? Please explain answer in detail.

Was the witness able to reproduce her/his statement in the court? If not, why not?

Did the witness turn hostile in court? If yes, why?

Were any arrangement made at the court for privacy and protection of the victim/witness?

Were the views and concerns of the victim considered at any stage of the trial proceedings by the SPP? If yes, please give examples.

Were the views and concerns of the victim considered at any stage of the trial proceedings by the judge? If yes, please give examples.

What information was given to the victim/witness during the trial?

(i) Legal advice given orally by the SPP?



- (ii) Advice on financial assistance, compensation/relief and social services available?
- (iii) In writing? (e.g. copy of witness statements, charge-sheet, legal advice, etc.)?

### **Right to Protection:**

Has the victim/witness experienced any ill-treatment, violence, threat of violence or intimidation, or retaliation after filing a complaint of atrocity or giving a statement as witness?

If yes, at what stage of the case did this take place?

If yes, did the victim share this to the SPP/court?

If yes, has any official protection been given to the victim/witness against all forms of ill-treatment, violence, threat of violence or intimidation, retaliation?

If yes, what type of protection was given?

If yes, was the type of protection given adequate?

In the court, was any inquiry ever made about arrangements for ensuring the protection of the victim/witness?

If yes, please describe who spoke and what was discussed.

Was any plea for victim/witness protection ignored?

If yes, describe what happened.

Has the victim been provided shelter at government cost with all facilities, including means of livelihood, food, medical aid, transport facilities etc., at the place of her/his residence or at any other place of their choice?

### **Relief and Compensation:**

Did the victim receive fair and adequate relief, compensation, and rehabilitation after the atrocity?

Please describe what was given, when it was given, and whether the victim feels it was adequate.

Was immediate relief such as food, water, clothing, shelter, medical aid and transport facilities given within 24 hours of the atrocity?

Has the victim/witness been reimbursed full payment for travels and maintenance while attending the court hearings?

# ANNEXURE 7

## ANALYSIS OF THREE MAJOR ATROCITY CASES

### 1. CASE STUDY: MIRCHPUR ATROCITY, HISAR, HARYANA<sup>83</sup>

Mirchpur village in Hisar district, Haryana, has a population of 8793, as per the 2001 Census. The Scheduled Caste (SC) population is 1385. The atrocity reportedly resulted out of a minor event when some young dominant caste Jats were passing through the Balmiki basti on 19 April 2010 and threw brick bats at a barking dog. That incident led to a tussle between the youth of the two communities. Then on 21st April 2010, the Jats set on fire 18 houses of Dalits and damaged household goods in another 14 houses. One Dalit man Tara Chand suffered serious burn injuries and subsequently died. His daughter Suman, who was handicapped, also died as a consequence.

After the police investigation, a charge sheet was filed against 103 accused under sections 120-B, 302, 307, 147, 148, 149, 323, 325, 395, 397, 427, 435, 436, 449, 450 and 452 Indian Penal Code and sections 3 (1) (x), (xv), 3(2)(iii), (iv) and (v) of the PoA Act. Initially, the trial started in District Court of

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83 Session Court Case No. 1238/10, State vs. Dharambir and Ors, in the Court of Dr. Kamini Lau: Addl. Sessions Judge-II (North-West)/ Spl. Judge (SC/ST Cases): Rohini Courts: Delhi.

Hisar, Haryana. But since victims and witnesses and the advocates started receiving threats the case was then transferred to Special Court Rohini, Delhi by Supreme Court of India. After completion of trial, out of the 103 persons charge sheeted, 98 faced trial together while the trial of five juveniles was separately dealt with.

### OBSTACLES AT DIFFERENT STAGES OF THE CASE:

- (1) ***Intimidation and threats outside and inside courtroom*** – During the entire trial, the dominant castes used to gather outside and inside the Court premises. Dominant caste advocates from Rohini Court Bar Association as well from Haryana Courts joined together to appear before the Special Court right from the beginning of the trial. This created an intimidating atmosphere all around the court premises. (*Intimidations and threats to the victims and witnesses continued till the end of the trial.*)
- (2) ***Lack of coordination regarding appointment of Public Prosecutor*** – Public prosecutors created a controversy and tried to dilute the trial by taking advantage of the technical aspect of official notification for the appointment of Special Public Prosecutors under the PoA Act. Different Prosecutors appeared on behalf of the Government of Haryana and tried to prolong the trial by presenting different notifications of appointment of prosecutors in the case. (*The technicality of appointment of SPP continued even at the later stages of the trial*)
- (3) ***Question of transfer of case to C.B.I*** – One of the Prosecutors on behalf of the state of Haryana tried to dilute the matter by filing an application informing the Court that the State of Haryana had recommended the handing over of further investigations in this case to the CBI. Hence, he requested that the matter be adjourned until the completion of the CBI investigation.
- (4) ***Non-appearance of Investigating Officer and lack of coordination among I.O. and Public Prosecutor*** – The Investigation Officer, for the unknown reasons, was not present in the court on the first day itself and no information was given to the Court regarding the reasons for his non-appearance.
- (5) ***Pressure from Khap Panchayats for compromise*** – Attempts from the Khap Panchayats were made to pressurise and threaten the witnesses and their family members to compromise the case and to create an atmosphere prejudicial to the free trial of the case.
- (6) ***Multiple discrepancies in Investigation by Delhi Court , including –***
  - i. Non-transfer of all the Hisar court records to Delhi court.
  - ii. No explanation as to discharge of Nine accused by the IO from the JM, First Class, Hisar, placed as the other accused before Delhi court.
  - iii. 200 persons initially named by the victims, but only 103 persons were actually charge sheeted and brought before the court.
  - iv. In Hisar Court on 6.9.2010 (the date on which the charges were framed by the Ld. Predecessor of Rohini Courts) charges were framed only against 37 accused although there were more accused (as many as 62 as per available records) who were actually in custody on the said day. No explanation is available as regards the fate of the other accused who continued to be in judicial custody and against whom no charges were framed.

- v. Date of arrest of the various remaining accused against whom no charges were framed and the period of their detention is also not clear from the judicial record.
  - vi. Charge sheet was against some of the accused after the expiry of the statutory period provided under Section 167(2) Code of Criminal Procedure.
  - vii. Some of the documents, placed by the accused persons, before Delhi court as evidence were not verified.
- (7) ***Victim and Witness protection arrangements*** – Lack of coordination among the State Governments (whether GNCT of Delhi or State of Haryana) to make victim / witness protection arrangements and bear the expenses for the same.
  - (8) ***Issue of securing the production of the witnesses*** – Lack of coordination among the State Governments (whether GNCT of Delhi or State of Haryana) to secure the production of the witnesses /victims, make arrangements for their stay in Delhi when under examination, and bear the expenses for the same.
  - (9) ***No reporting on the security arrangement/ preventive measures/ witness protection arrangements*** – Lack of reporting to the Special Court on the security arrangement/ preventive measures/ witness protection arrangements undertaken by the State Governments.
  - (10) ***Witnesses turning Hostile under pressure and threats from Dominant Caste community and Panchayats*** – At the time of Prosecution Evidence, it was found that some of the witnesses, due to threats and pressures, turned hostile. Serious threats were given to the close relatives of one of the material witnesses for the prosecution residing in Mirchpur village, which were communicated to the said witness housed at Lampur Seva Kendra.
  - (11) ***Witnesses not given any protection from Haryana to Delhi*** – Some of the witnesses came on their own to Delhi and were not brought under police protection from Haryana. Hence, they were not housed at the Protection Centre in Lampur Sewa Kendra.
  - (12) ***Issue of immediate provision of medical help to the witnesses*** – One of the witnesses fell unconscious outside the Court because of the threats and pressure and intimidating atmosphere of the Court. Therefore, on request of Prosecution was dropped.
  - (13) ***Witnesses turning hostile*** – Many of the witnesses were coerced by the accused persons due to threats and intimidations during the prosecution evidence stage and, therefore, they sought to be discharged by the Public Prosecutor, with permission to recall them at a later stage.
  - (14) ***Special Public Prosecutor not briefing the witnesses before the examination*** – The Special Prosecutors never briefed the witnesses before their evidence/ cross examination. The assisting lawyers on behalf of the victims used to brief them instead.
  - (15) ***Intimidating behavior of Defense Lawyers during Cross-Examination*** – The defense lawyers created a atmosphere of intimidation by asking questions impolitely to the witnesses in cross-examination and thereby putting a pressure on them to turn hostile.
  - (16) ***Intimidating behavior of Defense Lawyers during the examination*** – The defense lawyers used to pass comments and intimidation to the witnesses outside the courtroom in order to coerce them into turning hostile in the Court.

The Additional Sessions Judge, Rohini Special Court, Delhi, in his judgement dated 24.09.2011, held 15 of the 97 accused guilty of various criminal acts

including the case of burning alive a 70-year-old Dalit man and his physically-challenged daughter. Additional Sessions Judge Kamini Lau, however, did not hold any of the 15 accused guilty of murder. The court sentenced three of the 15 convicted to life imprisonment under sections 3(2)(iv) and 3(2)(v) PoA Act. Five others were sentenced to five years' rigorous imprisonment under section 3(2)(iii) PoA Act. All eight men were also sentenced to two years' rigorous imprisonment for rioting and voluntarily causing hurt and also fined Rs.20, 000 each, to be fully awarded to the victims of the riot. Seven others who were convicted were let off on probation for a period of one year. This was because they were not held liable for offences under the PoA Act and the maximum punishment for the other offences against them was two years, with many of them already having spent over a year in judicial custody.

#### ANALYSIS OF THE JUDGEMENT:

- The Rohini Court, Delhi court explicitly attributed the acquittals to investigative problems. The court noted that police suppressed and did not investigate reports of caste violence against dominant caste boys, which sparked false rumours that the SCs killed an 'upper caste' boy and led to the atrocity.<sup>84</sup> The court also criticised the investigating officers for failing to properly identify the burned homes of the Dalits, the owners of the homes, or the extent of the damage.<sup>85</sup>
- The court also acquitted several accused because, "despite a huge police contingent", none of the accused were arrested at the time of the incident; rather, the court accused the police of arresting other suspects at the time, releasing them, and failing to disclose their details.<sup>86</sup>
- The court also found that witness statements to police appeared "mechanical" in content – for example, listing groups of accused in alphabetical order – and were delayed two or three months.<sup>87</sup> The court referred to these investigative problems as failures of the prosecution.<sup>88</sup>

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84 Mirchpur Judgment, p. 932.

85 Id. at 1031-32.

86 Id.

87 Id.

88 Id. at 1030.

- The Mirchpur court introduced an additional hurdle for PoA cases: even if an accused referenced a victim's caste, the court evaluated whether the caste reference was "in the context of identification and not derogation."<sup>89</sup> The court accepted that there was violence against a Scheduled Caste and that the accused sought them out and referred to them by caste name, but the court insisted that the caste slogans were merely used to identify the SC boys who were rumored to have earlier killed an upper caste boy. Combining a caste reference with violence should sufficiently render the reference "derogatory", but the subsequent incidents against the SC community were not enough to satisfy the court. A "derogatory" intent requirement does not exist in the PoAA or IPC.
- The Mirchpur court also rejected several witnesses for "improbable or unnatural conduct."<sup>90</sup> For example, they did not believe that one witness was present at the incident, because he did not give that information to police for several months, nor did he accompany his father – who was proven injured in the incident – to the hospital.<sup>91</sup>
- In the Mirchpur case, over 20 prosecution witnesses became hostile.<sup>92</sup> Karan Singh, the prosecution's star witness, and at least four other prosecution witnesses instead testified to the defense's version of events.<sup>93</sup> Several witnesses supported the defense theory that SC boys were the first aggressors in the incident.<sup>94</sup> Prosecutors did not call several other complainants to testify at all, once it became clear the testimony would favor the defense.<sup>95</sup> The court hinted at a social dimension to these reversals – for the sake of community peace – by noting that the former prosecution witnesses "proved that even after the incident they are continuing to reside in the same village without fear."<sup>96</sup>

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89 Id. at 1024-25.

90 Id. at 665.

91 Id.

92 Id. at 1030-31.

93 Id.

94 Id.

95 Id.

96 Id. at 1026-27.

## 2. KHERLANJI RAPE AND MURDER, BHANDARA DISTRICT, MAHARASHTRA<sup>97</sup>

The family central to this case consisted of Bhaiyalal, the family head (age 55), his wife Surekha (40), sons Sudhir (21) and Roshan (14), and daughter Priyanka (17). The family migrated to Khairlanji village 17 years ago with support of land offered by Bhaiyalal's maternal uncle. The dominant castes envied the family's relative livelihood development. The immediate trigger for the violence was the dominant caste villagers' demand for the construction of a road that would pass through Bhaiyalal's land. The family was resisting and contesting this through legal mechanisms, for which they received support from Surekha's cousin, Siddharth Gajbiye. Thus on 3 September 2006, Siddharth Gajbiye was beaten up. Surekha and Priyanka witnessed this incident and a case was registered under the Indian Penal Code and Protection of Civil Rights Act.

After 12 of the 15 accused were arrested and released on bail, a dominant caste mob assembled outside Bhotmange's house at around 6 pm and attacked Priyanka, her brothers and mother. The mob dragged Priyanka and Surekha to the adjacent cattle shed, stripped them, gang raped them and mutilated their genitals. The brothers were violently beaten up. Nude bodies of the victims were paraded through the village before dumping them in the canal by the village. After the framing of charges on 2 March 2007, the Special Court recorded the evidence and statements of 36 out of 74 witnesses between 3 May 2007 and 31 March 2008. It heard arguments from both sides between 21 July and 1 September 2008, and pronounced judgement on 15 September.

### ANALYSIS OF THE JUDGEMENT:

- The Special Court noted that the investigation contained deeply serious problems. At the time of the incident, police officers did not believe complainant Bhaiyyalal Bhotmange and refused to file an FIR until the discovery of his family's bodies the next day.<sup>98</sup> The High Court noted that

<sup>97</sup> Special Criminal Case No. 01/2007 in Bhandara Special Court, Maharashtra.

<sup>98</sup> National Campaign on Dalit Human Rights, Rape and Murder – Kherlanji Fact-Finding Report, 2007, p. 5.



the initial police investigation “was not carried out in a proper direction and indiscriminate arrests were made,”<sup>99</sup> prompting the state government and subsequently the Central Bureau of Investigation to take over investigation of the incident.<sup>100</sup> As a result, the High Court did not count against the prosecution the delays in the FIR and investigation.<sup>101</sup> The trial court closely examined whether the FIR sufficiently contained the elements of the charges, but the High Court was less critical.<sup>102</sup> For example, the High Court accepted that a witness did not disclose all facts in the FIR “because he was threatened by police that if he did not support the police he would be implicated in the case.”<sup>103</sup>

- The Special Court’s decision to acquit the accused, due to lack of caste motive, of all PoA charges was particularly egregious. Scholars and others outside the court widely recognise the caste motive behind the killings, leading to the ironic result that the “world’s most famous caste atrocity” did not qualify in court as an atrocity under the PoA Act.<sup>104</sup> The charge sheet in Kherlanji notes that the accused “abused [victims] by calling the caste name ‘Mahar’” as they threatened to kill them, and uttered “casteist remarks” during the murder itself.<sup>105</sup> But the High Court agreed with the trial court that the “whole object of the accused was to take revenge”.<sup>106</sup> The courts very narrowly interpreted the motive for the killing as retaliation, since two of the victims implicated some of the accused in an earlier assault on another SC member. The courts failed to examine the wider context of why that first attack occurred or why the accused retaliated in such a massively disproportionate manner. To the contrary, the High Court found no discrepancy in the fact that the accused brutally murdered not only their accusers, but also family members, instead ruling that those actions bolstered the likelihood of a revenge scenario.<sup>107</sup> The

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99 Kherlanji High Court Judgment, p. 72.

100 Id. at 12-13.

101 Id. at 72, 93, 107.

102 Id. at 113-14.

103 Id. at 72.

104 Teltumbde, Anand, 2009. ‘Khairlanji verdict: Whither the Atrocity Act?’, 8 *Combat Law* 38 at p.39.

105 Kherlanji Charge Sheet, p. 79, 87.

106 Kherlanji High Court Judgment, p. 114.

107 Id at 114-15.

trial judge even listed “no caste hatred for these killings” as a mitigating factor at sentencing.<sup>108</sup>

- The Kherlanji judgments are also troubling for failing to find any “outrage of modesty” against the mother and daughter victims.<sup>109</sup> Despite witness accounts of gang-rape – post pre- and post-mortem – and photos of genital mutilation, the official post-mortem exam did not find evidence of rape.<sup>110</sup> A fact-finding report blamed this disparity on the failure of medical officers to follow procedure and preserve evidence, as well as the police’s failure to investigate the possibility of rape despite obvious bruising on the female victims’ bodies.<sup>111</sup> In addition, the trial court did not find any “outrage” despite noting that that the accused stripped the daughter’s dead body in order to “to get satisfaction to their sexual eyes.”<sup>112</sup> Rather than further discussing this motive, the high court instead emphasized that revenge was the primary reason for the attack.<sup>113</sup> The High Court failed to explain why a) there could not be multiple motivations in an attack, or b) why a motive of revenge could not manifest as an outrage of modesty. Even the police charge sheet recognized that removing the female victims’ clothes was an outrage of modesty.<sup>114</sup>
- The Kherlanji attack meets the standard for “outrage of modesty” discussed in the recent Supreme Court case of Tarkeshwar Sahu vs. Bihar. In this case, the Court upheld a conviction for outrage of modesty for a man who kidnapped with intent to rape a seven-year-old child.<sup>115</sup> The Court described the test for outrage of modesty as “when the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.”<sup>116</sup> The decision focused on the intent of the accused rather than the reaction of the wom-

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108 Id. at 123, 126.

109 Section 354 IPC.

110 National Campaign on Dalit Human Rights, Rape and Murder – Kherlanji Fact-Finding Report, p. 5.

111 Id. at 6-7.

112 Kherlanji High Court Judgment, pp. 122-23.

113 Id. at 115.

114 Kherlanji Charge Sheet, p. 87.

115 Tarkeshwar Sahu vs. State of Bihar, Criminal Appeal No.277 of 1999 (decided 29 Sept. 2006).

116 Id. See also Legal Correspondent, 2006 (3 Oct.). ‘Outraging modesty: culpable intent the crux’, *The Hindu*.

an, noting for example when an accused touches a sleeping woman.<sup>117</sup> Under this analysis, there is no question that stripping a female deceased for sexual satisfaction would shock the decency of a woman.

- Kherlanji court rejected evidence of spontaneous confessions by two of the accused to strangers/acquaintances, noting that it was “highly improbable” that the accused would admit criminal activity to someone other than a close friend.<sup>118</sup>

### 3. TSUNDUR MASSACRE, GUNTUR DISTRICT, ANDHRA PRADESH<sup>119</sup>

On the morning of 6 August 1991, a Dalit youth, Ravi went to a cinema theatre in Tsundur. There, he rested his foot on a seat in front, which was occupied by a dominant caste boy Kurri Srinivas Reddy. A minor altercation ensued between Ravi and Srinivas Reddy, when the latter abused the Dalit youth using his caste name. In the following days, both the Dalit boy and his father were subjected to harassment by the Reddys as a measure of retaliation. On 9 July, the dominant caste Reddys and Telagas decided to enforce a social boycott of the Dalits (Malas). The social boycott led to caste tensions and section 144 Cr.P.C was promulgated in the village. Then on the morning of 6<sup>th</sup> August, the dominant castes, with the alleged connivance of the police officials present in the village, attacked the Dalits. Eight Dalits were murdered and many more injured.

The case went to trial and 21 accused were sentenced to life imprisonment and 35 others to one-year rigorous imprisonment and a penalty of Rs.2000 each. Delivering the judgment, the Special Judge felt it was not the rarest of the rare cases, which attracted the death penalty. In the country's first-ever Special Court set up to try a case under the PoA Act at the scene of the offence itself, the judge acquitted 123 out of the 179 accused. In the case of 41 accused, the Court did not find any evidence, while 62 of them were released

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117 Tarkeshwar Sahu vs. State of Bihar, Criminal Appeal No. 277 of 1999 (29 Sept. 2006).

118 Kherlanji High Court Judgment, pp. 96, 99.

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

on the benefit of doubt. Another 20 accused were let off due to omission of evidence or having only single witnesses.

## ANALYSIS OF THE JUDGEMENT:

- The Special Court, for the most part, did not fault the prosecution for investigative failures. The court was harshly critical of the police for practices such as registering failing to register conspiracy charges against the accused or to take custody of armed persons gathered in front of the police station.<sup>120</sup> The court directly stated that if police had responded to the incident in a timely manner the killings would have been averted entirely.<sup>121</sup> The court acknowledged that a defective investigation could “naturally” lead to “contradictions and omissions” from prosecution witnesses.<sup>122</sup> Therefore it accepted a certain amount of omissions in witness statements, noting, “Every omission is not a contradiction.”<sup>123</sup> But the court did not clarify where to draw the line, other times granting acquittals in part due to omissions – about seeing a particular accused at the scene of the crime – in the original witness statements to police.<sup>124</sup>
- The court acknowledged that caste motivation existed, but did not impose a separate sentence under the PoA Act.<sup>125</sup> The court ruled that the Special Public Prosecutor “amply proved” a “speedy succession” of 14 previous disputes between SCs and dominant caste communities leading up to the massacre.<sup>126</sup> The court also agreed that the disputes were clearly defined as between those two groups and showed the upper caste’s domination and influence in the village.<sup>127</sup> Nonetheless, the court concluded that sentencing solely for IPC offenses, not PoA Act, would be sufficient for the interests of justice. Despite the clear caste motivation, the court did not view the PoA Act offences as separate social crimes worthy of enhanced accountability.

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120 Tsundur Judgment, p. 126.

121 *Id.*

122 *Id.*

123 *Id.* at 140.

124 *Id.* at 173-74.

125 *Id.* at 226.

126 *Id.* at 83-84.

127 *Id.* at 125.

- The Special Courts discredit witness identifications both when witnesses did not know the accused as well as when witnesses had connections to the victim (labeling them ‘interested witnesses’),<sup>128</sup> resulting in a very narrow field of acceptable witnesses. The Tsundur court’s standards for witness identifications were unclear, for example when it discredited a witness because he did not know the accused father’s name.<sup>129</sup> The court noted elsewhere in its credibility assessment that two witnesses did not know the accused but “simply identified them in the court.”<sup>130</sup> The court found no merit to in-court witness identification, noting, “Mere identification in the court not carry any weight. . . . [S]imply identifying the accused in the court is unreliable and does not inspire any confidence.”<sup>131</sup> While knowing the accused can bolster witness identification, as it did in the Kherlanji case,<sup>132</sup> the Tsundur Special Court did not explain why not knowing the accused would automatically damage credibility.
- In addition, the Special Court for the Tsundur case several times dismissed evidence that came solely from the testimony of one witness. : “Basing on the sole testimony of [witness], which is not corroborated by any other evidence, it cannot be believed” that a particular accused was part of the unlawful mob that murdered the SC victims.<sup>133</sup> The court also discarded witness statements when they included facts outside of the witnesses’ earlier statements to police (where the earlier statement did not mention that a particular accused was in the unlawful mob): “They have not state before the police in their 161 Cr.P.C., statements, therefore, their evidence cannot be believed.”<sup>134</sup> But the court did not clearly explain why some omissions were damaging and others not. In the same judgment, the court noted that lack of corroboration by itself is not enough to discredit: “Every omission is not a contradiction. Only such omission which disproves the version of the witness may amount to contradiction.”<sup>135</sup>

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128 Haan, Max, 2005. *Justice Delivery System and Dalits: Analysis of Special Court Judgements*. Secunderabad: Sakshi Human Rights Watch, A.P.

129 Id. at p. 168.

130 Tsundur Judgment, p. 173.

131 Id. at 168.

132 Kherlanji High Court Judgment, p. 71.

133 Tsundur Judgment, pp. 174-75.

134 Id. at 172, 181.

135 Id. at 140.

- The Court also evaluated credibility based on unexplained perceptions of expected natural conduct by the victims, witnesses, or accused. The court discredited a witness who failed to report the incident to the police, even though witnesses often fail to report crimes.<sup>136</sup>

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<sup>136</sup> See, for example, Tsundur Judgment, p. 172 (“The unnatural conduct of [witness] is that after the alleged incident he did not give any report to the police about this witnessing the incident.”).

# ANNEXURE 8

## Table of 21 Judgements from the Special Courts

S. No.	Citation, Name of Judge, Cause Title & Judgement Date	Sections of Law under which Charged	Brief facts of Case	Judgement (grounds for acquittal or conviction)
1.	Sessions Case No – 161/2010 R. Krishnamoorthy, Sessions Judge, Villupuram State represented by the Deputy Superintendent of Police, Kallakurichi Sub Division Vs Rajendiran and others	<i>Sec. 3(1) (x) SC/ST (PoA) Act Sec. 354, 324, 506 (ii) IPC</i>	On 24.07.2009 at around 8.30 am, the accused persons put up a ridge over the land in dispute between the complainant Lakshmi and Karuppayee and when the same was objected by them accused pulled down Lakshmi and Karuppayee and tore her blouse and outraged their modesty. They assaulted Lakshmi with a spade and also assaulted Karuppayee. They also abused them in abusive language referring to their caste.	In this case the court came to conclusion that the prosecution has proved the guilt of first accused punishable under 324 IPC and u/s 3(1)(x) PoA Act. The court further concluded that none of the prosecution witnesses has spoken about the outraging of modesty by the accused persons. <i>Even the material witnesses have stated that only during the occurrence the blouse came to be torn and neither of the accused did pull her blouse. Hence the offence of outraging the modesty not proved.</i> The court also concluded based on the facts that it was alone accused no-1 who used the filthy language referring to the caste and not accused -2. <i>Prosecution has failed to prove beyond reasonable doubt the allegations against accused no-2 with sufficient evidence. Hence entitled for acquittal under PoA Act.</i>

2.	Sessions Case No – 181/2008 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh <b>P.S Mominpet</b> <b>Vs</b> <b>Oggu Malliah and Ors.</b> 09-01-2012	<b>Sec. 3(1) (x) SC/ST (PoA) Act Sec. 147, 148, 307 IPC</b>	The present case was filed against the accused with an allegation that in view of the heated discussions between one of the accused and some victims on the issue of parking of car , belonging to accused persons lead to serious attacks. The accused persons formed into unlawful assembly and attacked 8 victims belonging to SC Madiga community. They also abused them in their caste name.	In the present case <i>all prosecution witnesses except the Investigating officer differ from their previous statements and thus denied earlier statements. The main witness also said that he never given any report to police.</i> Therefore there is no case against the accused and they are entitled to an acquittal.
3.	Sessions Case No – 73/2010 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh <b>P.S Mominpet</b> <b>Vs</b> <b>Molla Nuroddin</b> 27-02-2012	<b>Sec. 3(1) (xi) SC/ST (PoA) Act Sec. 324,506 IPC</b>	One Dappu Bichamma R/o Kasaram village, belonging to Madiga community, on 03.08.2008, in the morning left her house to graze the cattle's. While she was grazing her cattle's at the field of Talari Narsimhulu which is near the field of accused- Molla Nuroddin, the accused got annoyed and abused her and insulted her modesty by lifting her sari, beaten her with the handle of an axe.	The main victim in her testimonies deposed that she does not know the accused. <i>She does not know the caste of the accused and she never presented the report to the police.</i> She also said that <i>nobody abused her in her caste name.</i> Hence accused was acquitted in the absence of any material.
4.	Sessions Case No – 211/2008 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh <b>P.S. Shankerpally</b> <b>Vs</b> <b>Bhojja Venkat Reddy</b> 05-01-2012	<b>Sec. 3(i) (x) SC/ST (PoA) Act Sec. 324,342, 506 r/w 34 IPC</b>	The victims were residents of the Ravulapally village and belong to Scheduled Caste community. Prior to the date of alleged incident there were several thefts in the village and offenders have removed the service wires of the current motors that were fixed to agricultural bore wells. On 20.06.2013 the accused persons summoned the victims and alleged that they have commissioned the thefts and abused in their caste name. Tied them to a neem tree and beaten with sticks and made them to confess commission of offence and to execute a bond in favour of the accused They also demanded 2, 00, 000/- towards compensation.	Prosecution <i>not able to explain the delay of 16 days in presenting the FIR. DSP not able to produce any proof about the authorization</i> under which he conducted the investigation. Some of the prosecution witnesses are interested witnesses as they belong to family, hence not reliable. Under these circumstances accused are liable to be acquitted.



5.	Sessions Case No – 135/2008 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh P.S. Malkajgiri Vs Bandari Gouri Shanker and Ors. 13-01-2012	<b>Sec. 3(i) (x) SC/ST (PoA) Act Sec. 324, r/w 34 IPC</b>	On 14.02.2007, in the early hours accused no. 1 demanded money for drink and when victim no-2 refused to pay the amount accused no-2 snatched Rs. 1,000 from his pocket. Therefore there was a quarrel between them. On 16.02.2007 when victim no-1 was proceeding towards her house Accused no- 3 and her daughter dragged her on the ground by holding her hair and beaten her. Later the accused persons abused all the victims and sprinkled chilli powder, beaten with sticks and caused bleeding injuries.	The main victim in her testimonies deposed that <i>she never sustained injuries from the hands of accused. Accused never abused her in the name of caste. She never presented the report to the police.</i> One other witness claimed that he does not know anything about the case. Hence accused persons were acquitted in the absence of any material.
6.	Sessions Case No – 59/2012 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh P.S.Dharur Vs Patiolla Buchi Reddy. 19-03-2012	<b>Sec. 3(i) (xii) SC/ST (PoA) Act Sec. 354, IPC</b>	Ms. Boda, belonging to SC Madiga community on 20.01.2007 was attending agricultural operation namely plucking cotton at their fields and went to nearby red gram fields to answer call of nature. Mean while the accused went to her caught hold of her and tried to outrage her modesty.	None of the material witnesses including the husband of the alleged victim did not attribute any such offence to the accused. Hence, the accused acquitted.
7.	Sessions Case No – 14/2010 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh P.S. Peddumul Vs Paryada Rangaiah. 28-03-2012	<b>Sec. 3(i) (xi) SC/ST (PoA) Act Sec. 506, IPC</b>	One B. Mallesham belongs to SC community. Other 2 witnesses were carpenters and resident of the same village. There was a property dispute among Prosecution witness 1 to 3. The accused was supporting the neighbours of Witness no-2 in the said property disputes. On 14.08.2009, witness no-1 went to the house of witness no-2 to discuss about the friends. The accused that was present in front of witness no-2 was abusing him and on noticing witness no-1 the accused abuse witness no-1 in a filthy language. Thereby, witness no-1 questioned the accused as to why you unnecessarily abusing him. Therefore, the accused caught hold of his shirt and abused him in the name of caste.	The material witnesses at the time of trial did not state anything about the alleged offence. They deposed they do not know anything about the incident. Hence the accused persons are liable to be acquitted.

8.	Sessions Case No – 33/2009 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh P.S. Doma Vs Pilli Mogulaiah 10-01-2012	<i>Sec. 3(i) (x) SC/ST (PoA) Act Sec. 353, 323, 506, IPC</i>	One Ananthaiah r/o. of Dharshampally, a teacher by profession, belongs to SC Mala community. The accused is a residence of the same village and belongs to forward caste. On 20.09.2008 victim approached the accused and asked him to pay the rent which was due from his son-in-law. The accused asked him to go and enquire from his mother. But there was no response from the wife of the accused. Instead, on the same day while he was in his school the accused dragged him from his class room by catching his collar, abused him in his caste name.	The material witnesses at the time of trial did not state anything about the alleged offence. The main witness also deposed that he did not present any report to the police. Hence the accused persons are liable to be acquitted.
9.	Sessions Case No – 66/2008 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh Alwal Vs Kondaparthi Srinivasa Chary 31-01-2012	<i>Sec. 3(i) (x) SC/ST (PoA) Act</i>	The accused is a managing director of Vishwakarma Homes Private Limited. PW-4 got a contract of building work from the said office. In this connection the accused has to pay contract work amount to PW-4. Though PW-4 made continuous demands and requests could not collect the amount from the accused. Therefore he has contacted his friends PW- 3 and informed about the dues. On 18.08.2004 PW -3 along with PW-1,2,4 went to his office asked the money. But the accused abused them in name of caste and threatened them.	The statement of material witnesses is entirely different from his previous and earlier statements before the police. The investigation done by a inspector is also incorrect. Above all the evidence of one of the witnesses is not corroborated by any independent witness and the prosecution witnesses also might have misused the provisions of the PoA Act for collection of money.
10.	Sessions Case No – 31/2010 Samba Siva Rao Naidu, FAC ix Addl. District and Sessions Judge,(FTC) Ranga Reddy, Andhra Pradesh P.S Alwal Vs Reddemaina Ljiaiah 05-01-2012	<i>Sec. 3(i) (x) SC/ST (PoA) Act Sec. 376 IPC</i>	One Poornima belonging to the Mala community, on the pretext of marriage was raped by the accused. Later the accused-Reddemaina, refused to marry her on the basis of caste.	The prosecutrix during her examination did not say anything about the incident against the accused. Hence the accused is acquitted.

11.	<p>Sessions Case No – 35/2010          Shri M. Seetharama Raju Special Sessions Judge (PoA) Act cum Addl. District and Sessions Judge, Ranga Reddy, Andhra Pradesh.  <b>State represented by the Inspector of Police , Basheerabad, Rangareddy District Vs Kurva Sailoo 02-01-2013</b></p>	<p><b>Sec. 3(i) (x) SC/ST (PoA) Act</b></p>	<p>On 24.12.2007, Mr. Rathod Mohan and his son Rathod Ganesh were proceeding into the fields in their double bullock cart near the agricultural well of Laxman Nayak. Mean while Laxman Nayak, the accused came in opposite direction. on seeing this , Mr. Rathod Mohan requested the accused to stop , so as to pass away. Aggrieved by it the accused picked up a quarrel with him and abused him in filthy language and beaten him with a toddy bottle on his head resulting in bleeding injury.</p>	<p>Main witnesses along with other witnesses did not stick to his earlier version as stated before the police. Hence in the absence of any evidence accused is acquitted.</p>
12.	<p>Sessions Case No – 217/2008          Shri M.Venkata Rama Rao, Special Sessions Judge (PoA) Act cum Family Court, Ranga Reddy, Andhra Pradesh.  <b>P.S Kandukar Vs Gorrenkala Krishnaiah @ Krishna 23-11-2010</b></p>	<p><b>Sec. 3(2) (v) SC/ST (PoA) Act Sec.302 IPC</b></p>	<p>The facts of the case are that on 22.08.2008 one Andugula Raju r/o Meerkhanpet village came to Police Station and lodged a complaint that his elder brother Andugula Ramesh went to the Panchayat in connection with a land dispute between Maramoni Anjaiah and Maramoni Bavaiah . They were unable to bear the presence of his elder brother, Ramesh. Mean while noticing Bavaiah beating up Yadaiah intervened to rescue him. Then Gorrenkala had beaten his brother with a stone, below the left chest. Due to which his brother fell down and later died.</p>	<p>As per the medical evidence the death was caused due to the multiple injuries. Out of those injuries only one injury is caused by the accused as deposed by four of the Prosecution witnesses. <i>Whether causing injury on the left side of the chest with stone results in death? No cross-examination is made on this aspect.</i>          The victim was beaten by accused with stone. But in mob the other people also caused injuries. They were not booked by police. But only one accused is booked. No stone is recovered. There is no intention on the part of the accused to kill Ramesh. There is no element of mens rea on the part of accused. Hence, the evidence falls under sec 325 IPC punishable for 7 years, which meant that Sec. 3(2)(v) PoA Act was dropped.</p>

13.	<p>Sessions Case No – 63/2010 Shri M. Seetharama Raju Special Sessions Judge (PoA) Act cum Addl. District and Sessions Judge, Ranga Reddy, Andhra Pradesh. <b>The State represented by the Inspector of Police , Vanasthali-puram, Vs A. Venkatesh</b> 28-08-2012</p>	<p><i>Sec. 3(i) (xii) SC/ST (PoA) Act Sec. 417 IPC.</i></p>	<p>Kumari Ashalath is a woman home guard (WHG) working at women police station, Saroor Nagar and she is the daughter of the complainant Smt. R. Suguna. The accused is the police constable in Bomb defuses team dog squad, Amberpal. He induced Ashalatha to marry him by saying that he is unmarried. Thereafter, it was found that the accused was already married having two children's. Later the accused informed that his wife is mentally retarded and promised to marry – Ashalatha. Thereafter, they shifted and started living as husband and wife. Later the first wife of the accused committed suicide. Later the accused demanded 3,00,000/- as dowry in order to marry Ashalatha as she belongs to Mala community. Later the accused married another girl in the month of November, 2009.</p>	<p>In the present case the accused was a constable and victim was a home guard. Though a police constable can be considered as superior to home guard but he will not have any supervisory powers to allot duties to home guard. This apart the foundation of the prosecution that by making false promise to marry, the accused is said to have induced and deceived victim. Hence, no offence is made out under Sec 3(1)(xii) of PoA Act. Since he deceitfully had sexual intercourse and never intended to marry her, the accused is punished under 417 IPC.</p>
14.	<p>Sessions Case No – 48/2009 Shri M.Seetharama Raju Special Sessions Judge (PoA) Act cum Addl. District and Sessions Judge, Ranga Reddy, Andhra Pradesh. <b>The State represented by the Inspector of Police , Pahadishareef , Rangareddy Vs Dontharamonj and Ors.</b> 28-08-2012</p>	<p><i>Sec. 3(i) (x) SC/ST (PoA) Act Sec. 324 r/w 34 IPC.</i></p>	<p>On 26.11.2008 near Petrol Pump, Hurshaguda village, accused no-1 and 3 attacked Vartyavath Pandu Naik, a Scheduled Tribe person, by questioning as to why a dead body of their village was buried in their land at Harshaguda and beat him with iron rod on his head causing bleeding injuries and also abused him in caste name.</p>	<p>From evidence it is clear that victim belongs to ST and was abused in the name of caste in place of public view near petrol pump. The version of victim is also corroborated by the contents of the report filed soon after. Hence convicted under sec. 3(1)(x) POA Act and acquitted under sec. 324 IPC.</p>

15.	Criminal Appeal No – 568 of 2012 in SC No. 48 of 2009 Hon'ble Justice K.S. Appa Rao, In the High Court of Andhra Pradesh at Hyderabad, Andhra Pradesh. <b>Dontharamonj Karunakar and Ors Vs State of AP Rep by its Public Prosecutor</b> 25-07-2012	<b>Sec. 3(i) (x) SC/ST (PoA) Act Sec. 324 r/w 34 IPC.</b>	On 26.11.2008 near Petrol Pump, Hurshaguda village, accused no-1 and 3 attacked Vartyavath Pandu Naik, a Scheduled Tribe person, by questioning as to why a dead body of their village was buried in their land at Harshaguda and beat him with iron rod on his head causing bleeding injuries and also abused him in caste name.	None of the prosecution witnesses corroborated the alleged abuses as stated by the victim, it is unsafe to rely on the evidence of solitary witness.
16.	Sessions Case No – 39/2009 Shri M. Seetharama Raju Special Sessions Judge (PoA) Act cum Addl. District and Sessions Judge, Ranga Reddy, Andhra Pradesh. <b>The State represented by the Inspector of Police , Sanathnagar , Rangareddy Vs Birlangi Venkatesa and Ors.</b> 18-12-2012	<b>Sec. 3(i) (xi) SC/ST (PoA) Act Sec. 417 IPC r/w Sec 4 of Dowry Prohibition Act</b>	Sridevi D/o T.Janardhan completed Naturopathy and Yoga Sciences from a government college and belongs to Mala caste. The accused was her classmate. Both of them became close and fell in love. They also decided to marry. But later the accused keep on postponing the marriage. Later he refused to marry her on the pretext of short height and caste. Later he agreed to marry her subject to payment of 2,00,000/- as dowry. One day he insulted her and given a glass of milk due to which the victim was also admitted to hospital.	There is no evidence to show that the victim was insulted or humiliated in a place of public view. There is nothing suggestive of insult or humiliation from the witness evidence.
17.	Sessions Case No – 108/2010 Sh. Ashok Kumar Sharma , RHJS Special Sessions Judge (PoA) Act, Alwar Rajasthan. <b>The State of Rajasthan Vs Shivlal and Ors</b> 26-09-2011	<b>Sec. 3(2) (v) SC/ST (PoA) Act Sec. 363, 366, 376 IPC</b>	On 17.04.2010, victim namely Mausam belonging to SC community was kidnapped. Same day in the morning her father accompanied her to the bus stand for Dholagarh. But she did not reach her destination and was kidnapped and raped by the alleged accused namely – Shivlal, Devisingh and Anil. The victim was taken to Surat, Gujarat and kept their for fourty days. She was raped 10- 15 times.	There is no evidence to show that the victim was kidnapped or raped because she belonged to a member of Scheduled Caste. Hence accused was acquitted.

18.	Sessions Case No – 70/2009 Sh. Anoop Kumar Saxena , RHJS Special Sessions Judge (PoA) Act, Alwar Rajasthan. <b>The State of Rajasthan Vs Hakam S/o Chander</b> 12-05-2010	<b>Sec. 3(2) (v) SC/ST (PoA) Act Sec. 363, 366, 376 IPC</b>	On 12.03.2009, victim belonging to SC community was her on way to the agricultural field. She was carrying food for her husband in the night at around 7 p.m. In the mean while on her way the accused namely, caught hold of her and raped. On her shouting her husband Ram Singh and Jagdish Harizan came and rescued her. The accused also beaten her husband and abused him in caste name. They were threatened not to lodge any complaint. Somehow after two days of the incident they lodged a complaint with the police station.	There is no evidence to show that the victim was raped because she belonged to a member of Scheduled Caste. Hence accused is acquitted under provisions of PoA Act and convicted under sec. 376 IPC for the offence of rape.
19.	Sessions Case No – 156/2009 Sh. Ashok Kumar Sharma , RHJS Special Sessions Judge (PoA) Act, Alwar Rajasthan. <b>The State of Rajasthan Vs Sukhlal S/o Jagveer Singh</b> 25-05-2011	<b>Sec. 3(2) (v) SC/ST (PoA) Act Sec. 366, 376 IPC</b>	The prosecutrix belongs to Chamar community and her husband works in Gurgaon, Haryana. One day the alleged accused namely – Sukhlal Singh came to victim's (prosecutor) house. He told her that her mother is sick and he can take her to her mother's house. On this she sat on his motorcycle. In the mean while the accused taken him to a farm house belonging to one Mr. Pizara Singh. Thereafter she was raped by the accused person	There is no evidence to show that the victim was kidnapped and raped because she belonged to a member of Scheduled Caste. Hence accused is acquitted under provisions of the PoA Act and convicted under secs. 366 and 376 IPC for the offence of committing kidnapping and rape.
20.	Sessions Case No – 22/2009 Sh. Ashok Kumar Sharma, RHJS Special Sessions Judge (PoA) Act, Alwar Rajasthan. <b>The State of Rajasthan Vs Bhupinder @ Mirchu S/o Ravi Singh</b> 25-05-2011	<b>Sec. 3(2) (v) SC/ST (PoA) Act Sec. 302, 201 IPC</b>	On 28.11.2008 the complainant – Ramavtar and his brother Jagat Singh (deceased) were drawing water of their well. At around 1.pm in the afternoon accused – Bhupinder came and taken Jagat Singh along with him to Googlekota. He did not return to home till 30th November. On searching one of the villagers of Google Kota informed that he saw Bhupinder (accused) carrying a person, who was lied down in a bullock cart towards the nearby high way. Later the dead body of Jagat Singh was recovered from a well.	There is no evidence to show that the victim was murdered on the ground of being a member of a Scheduled Caste community. Hence accused is acquitted under provisions of PoA Act and convicted under secs. 302 and 201 IPC for the offence of murder.

21.	<p>SC/ST Case No – 9/2011  Sh. Md. Zafar Imam, Additional Session Judge No-1 cum Special Judge, Palamu at Daltonganj, Jharkhand.  <b>The State of Jharkhand Vs Roz Mohammad</b>  30-11-2012</p>	<p><b>Sec. 3(1) (xii) SC/ST (PoA) Act</b>  <b>Sec. 376 IPC</b></p>	<p>The victim Anita Devi w/o Pappu R/o Vaillage – Dhurki belongs to ST community. On 19.07.2011 at about 12 noon she left her home for Sasaram and thereafter reached Nagaruntari by bus and thereafter reached Rehla- Garwha Road Station at 7.00 p.m. by bus. Her husband resides at Karbandiya, where he works in stone breaking. She was going to meet her husband and also for some labour work. She reached the railway station and slept near railway ticket counter and woke up at about 2.00 a.m. Meanwhile, one person came and insisted that since the train is late she could move to his quarter on the pretext of female members being there at his house. After reaching she did not find any female members. He forcibly raped her.</p>	<p>The victim was a member of a Scheduled Tribe and belongs to parahiya caste. The convict committed sexual intercourse by placing her in a helpless condition and taking advantage of her lower social status and by dominating her will by virtue of his social status. Hence, the accused convicted under sec. 3(1)(xii) PoA Act and sec. 376 IPC.</p>
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## National Dalit Movement For Justice (NDMJ)

The National Dalit Movement for Justice (NDMJ) is a democratic, secular, non-party movement of Dalit survivors, defenders, academics and organisations headed by Dalits constituted under the National Campaign on Dalit Human Rights (NCDHR) to address the issues of caste based discrimination and violence, primarily untouchability and atrocities.

Since 2009, NDMJ has brought together around 500 Dalit and Adivasi organisations from 18 states as the National Coalition for Strengthening the SCs & STs Prevention of Atrocities Act (NCSPA), with the aim to campaign for necessary amendments to the SC/ST (Prevention of Atrocities) Act and to strengthen its enforcement.



### **NDMJ - National Dalit Movement for Justice**

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