

SCs and STs (PoA) Act 1989 as amended in 2015

An Instrument for Social Reform



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Eradicating Social Evils through Legislations

18th and 19th century country was not free from social evils. Several reformers fought. As a result many social evils were removed through several legislations.

- **Sati System** was abolished.
- **Female Infanticide** disappeared.
- **Child marriage** has been declared illegal.
- **Widow marriage** has been made legal.
- **Inter Caste marriages** has been performed.
- **Devdasi system** has been declared illegal.
- **Dowry system** has been prohibited.
- Lands reforms and **abolition of zamindari system**.
- Engaging a person as **Bonded labour/Child labour** has been made **illegal**.
- Effort have been made to remove **Manual Scavenging** and is made illegal.

Affirmative Actions

Advancing socio – economic development of SCs and STs

- **Art. 16 (4)** – Reservation in government services, civil service, public companies, statutory bodies.
- **Article 15 (4)**- Special provision for the educational advancement of SCs and STs.
- **Art. 330, 332 and 334**- Seats in the Central legislature and State legislatures.
- **Art. 73rd and 74th** – Reservation in Panchayats and Municipalities

What is the Impact of the measures...

- Considerable increase in the share of SCs and STs in **government employment and educational institutions.**
- The number of SC and ST employees has also **increased significantly in public sector undertakings, nationalized banks, and public insurance companies.**
- **Reservations in the legislature have also provided a space for SCs and STs in the executive and in the decision-making process.**
- The formal reservation policy in the government sector, and the general developmental and empowerment measures in the private sector, have also **contributed to an improvement in the human development of SCs and STs.**
- The evidence indicates that there has been a **large increase in enrolment of SCs and STs** in education institutions.
- **Clear improvement in human development indicators** among SCs and STs.

THE SCs & STs (POA) ACT TOWARDS SOCIAL REFORM...

- **Atrocities against SCs and STs can be traced back to 19th century-** Systemic practice of 'untouchability' challenged by the 'Untouchables'.
- **Committee toured British India in the 1920s to review the working of the *Government of India Act 1919* noted-** atrocities were committed against the 'Untouchables', but were going unnoticed and unpunished because witnesses would not come forward to give evidence.
- **Dr Ambedkar, then MLC of Bombay, in his submission to the Indian Statutory Commission (Simon Commission) on behalf of the *Bahishkrita Hitakarini Sabha* on 29 May 1928-** Cited some early instances of atrocities against Dalits.

Recognition to prevalence caste system and untouchability practices and atrocities...

- Caste based discrimination, social exclusion and atrocities against SCs continues
- Caste, Class and Gender -Inter sectional
- Preventing SCs & STs from accessing civil, political, economic and cultural rights in:
 - Private and public spheres,
 - State and religious institutions,
 - Labour and consumer markets,
 - Private and public corporate sector, etc.
- Gradually asserting their rights powerfully against discrimination and atrocities.
- Resulted in further increase of atrocities against them.

Factors leading to social indignities and atrocities...

- Land and common resources disputes
- Land alienation
- Bonded labour
- Indebtedness
- Non-payment of minimum wages
- Caste prejudice and practice of untouchability
- Political factions on caste lines
- Refusal to perform traditional works such as digging burial pits
- Removing carcasses of dead animals
- Refusal to beat drums.

The deep root for such atrocities is traceable to the caste system, which “encompasses a complete ordering of social groups on the basis of the so-called ritual purity. A person is considered a member of the caste into which s/he is born and remains within that caste until death...”

(Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05, New Delhi, 2005, para 1.2)

Post Independence Era

Major Massacres

- **Assassination of the young, educated Dalit leader Emmanuel Sekaran** in T.N for defying untouchability based interdicts of dominant castes on SCs, resulting in the Ramanathapuram riots of 1957.
- **Kilavenmani massacre** of 42 Dalits in 1968 in Tamil Nadu.
- **Gruesome killing of Dalit Kotesu in Kanchikacherla**, Andhra Pradesh in 1969.
- **Killings of 10 STs by police in connection with a land dispute in Indravalli** in AP in 1978.
- **Massacres of SCs at Belchi** in 1979 and **Pipra** in Bihar in 1980.
- **Massacre following an SC bridegroom riding on horseback** at Kafalta in UP in 1980.
- **Killing of Bacchdas** in Mandsaur district in Madhya Pradesh in 1982.
- **Police shootings that killed 15 STs** at Banjhi in Sahibganj district in Bihar in 1985.

What was the response of government on continuing atrocities...

- Avoided addressing basic **contradictions, vulnerabilities and causative factors**.
- Treatment was **symptomatic and palliative** instead of the **required solutions**.
- Under **continued pressure from Dalit MPs and political leaders**, the magnitude and gravity of the **problem was finally recognised by Prime Minister Rajiv Gandhi**.
- In his **Independence Address on 15 August 1987**, he announced **that an Act** would be passed, if necessary, to check atrocities.

What's the response of Parliament towards social indignities and humiliations ?

A new legislation – The POA Act, 1989

- Indian Parliament considered the PCR Act in 1955.
- But the normal provisions of the Indian Penal Code and PCR 1955 found inadequate to check and deter such heinous crimes.
- Recognized the need of incorporating provisions towards reforming the social indignities and humiliations.
- Therefore, **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules 1995 [PoA Act & Rules]. Amendment -2015**

State of the Minister while introducing the Bill in the Parliament

The normal provisions of the existing laws like, the Indian Penal Code and Protection of Civil Rights Act 1955 have been found inadequate to check atrocities continuing the gross indignities and offences against Scheduled Castes and Tribes. Recognizing these, introducing this Act - Scheduled Caste and Scheduled Tribe Prevention of Atrocities) Act' , 1989.

The preamble of the Act states

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

Key Features of the Act

1. Paradigm of the Act lies in the **caste identifications** of both the offender and the victims.
2. Provides **protection** from various activities affecting social disabilities. property malicious persecution, political rights and economic exploitation.
3. Establishment of **Ex special courts, Ex special public prosecutors** to ensure speedy trial
4. Special Courts empowered to take direct **cognizance** of the Act.
5. Investigation in 60 days and Trial in 2 months on day to day basis.
6. Extern potential offenders and attachment of property of accused.
7. The act prohibits grants of **anticipatory bail**.??????
8. Cancellation of **arms licenses** of potential accused and grant of arms license as a means of self defense
9. **Enhanced punishment** for some offences.
10. **Neglect of duties** by a public Servant - liable for punishment.
11. **Compensation** and TA/DA for victims or their legal heirs.
12. **District / Sub Divisional and State Monitoring Mechanisms.**
13. Rights of victims and witnesses.

Offences to check social inequalities in society...

Against Land/Property

3(1)	(b) and (c)	Dumps excreta, sewage, carcasses or any obnoxious substance in the premises or neighborhood of a ST/SC.
3(1)	(f)	Wrongfully occupies or cultivates land belonging to a ST/SC.
3(1)	(g)	Wrongfully deprives a ST or a SC of land including forest rights, water or irrigation facilities.

Employment

3(1)	(h)	Forces <i>beggar</i> or other forms of bonded labour
3(1)	(i)	Forces to dig graves or dispose carcasses
3(1)	(j)	Forces a Scheduled Caste/Scheduled Tribe to do manual scavenging
3(1)	(zb)	Causes physical or mental harm on the allegation of practicing witchcraft or being a witch

Households / Sacred belongings

3(1)	(t)	Destroys objects including statute, photograph or portrait known to be held in high esteem
3(1)	(v)	Disrespects any late person held in high esteem
3(2)	(iii)	Damages property by causing fire
3(2)	(iv)	Damages by causing fire any homes or place of worship used by SC/ST

Electoral

3(1)	(l)	Forces or prevents from voting, or voting for or against a particular candidate, or filing/withdrawing nomination as a candidate
3(1)	(m)	Prevents the chairperson or a member or any other officer holder of a Panchayat or a Municipality belonging to the SC/ST from performing normal duties and functions
3(1)	(n)	Causes hurt or threatens to impose social or economic boycott after the polls
3(1)	(o)	Commits any offence for having voted for/against a particular candidate

Regarding use of public places and public resources

3(1)	(x)	Corrupts or fouls any spring, reservoir or any other source of water
3(1)	(y)	Denies or obstructs right of passage to a place of public resort
3(1)	(z)	Forces to leave the village or other place of residence
3(1)	(za)	Obstructs or prevents from using common property resources including:
)	<ul style="list-style-type: none"> ✓ Burial or cremation ground ✓ River, stream, well ✓ Tank, water-tap, cistern ✓ Road or passage ✓ Bathing ghat
		Obstructs or prevents from doing any of the following:
		<ul style="list-style-type: none"> ✓ Mounting or riding bicycles ✓ Wearing footwear or new clothes in public places ✓ Taking out wedding procession ✓ Mounting a horse or any other vehicle during wedding procession
	(zc)	Imposes or threatens a social or economic boycott of any person or family belonging to a Scheduled Caste/Scheduled Tribe

Against the person

3(1)	(a)	Forces to eat or drink an offensive or indelible substance
3(1)	(d)	Garlands with footwear or parades naked/semi naked
3(1)	(e)	Forcefully shaves of head or removes moustache or paints face or body or similar acts
3(1)	(p)	Subjects to false legal proceedings
3(1)	(q)	Gives false information to a public servant in order to injure or annoy
3(1)	(r)	Intentionally insults or humiliates in any place within public view
3(1)	(s)	Deliberately insults or humiliates by caste name in public view
3(1)	(u)	Promotes feeling of enmity, hatred or ill-will through words or signs
3(1)	(v)	Disrespects any late person held in high esteem by members of the SC/ST
3(2)	(i)	Gives false evidence that results in a SC/ST member getting convicted for an offence punishable with death sentence, and/or subsequently executed
3(2)	(ii)	Gives false evidence that results in a SC/ST member getting convicted for an offence punishable with seven years or more imprisonment

Offences related to woman

3(1)	(k)	Performs or promotes devadasi by dedicating a Scheduled Caste or a Scheduled Tribe woman to any religious institution
3(1)	(w) (i)	Intentionally touches a Scheduled Caste or Scheduled Tribe woman without her consent
3(1)	(w) (ii)	Uses words or gestures of a sexual nature towards a Scheduled Caste or Scheduled Tribe woman
3(1)	(k)	Performs or promotes devadasi by dedicating a Scheduled Caste or a Scheduled Tribe woman to any religious institution

Rights of victims and witnesses- 15A

- ❑ **Right to complete protection** - against intimidation, coercion or inducement or violence or threats of violence, TA/DA, rehabilitation during investigation, relocation.
- ❑ **Right to be informed** - reasonable, accurate, and timely notice of Court proceeding including bail proceeding. SPP or State Government shall inform the victim about proceedings.
- ❑ **Right to apply for summons-** to parties for production of documents or witnesses or examine the persons present.
- ❑ **Right to be heard-** Bail , discharge, release, parole, conviction, or sentence , arguments and file written submissions on conviction, acquittal, or sentencing.
- ❑ **Non disclosure**—name & address in orders, Judgements or records.
- ❑ **Right to immediate action** - complaint relating to harassment of a victim, informant or witness.
- ❑ Proceedings relating to offences under Act to be **video recorded**.
- ❑ **Right of the atrocity victims or their dependents to take assistance from the NGOs, social worker or advocates**

Have the atrocities stopped ?

No

Extent of Atrocities

- **Atrocities against SCs have increased by 5.5%** in 2016 (40,801) over 2015 (38,670).
- **Atrocities against STs have increased by 4.7% in 2016** (6,568) over 2015 (6,276).
- Total of 56299 cases of atrocities against SCs came for **investigation** at the beginning of 2016. Similarly 9096 Cases for investigation came for the STs.
- 39629 cases for SCs and 6490 Cases for STs were **disposed off by police**.
- **Charge sheeting percentage** for the atrocities against SCs ended with 78% and 81.3% for STs.
- A total of 144979 cases of atrocities against SCs and 23408 cases of atrocities against STs came for trial in the court. Out of these in 14615 cases **trials were completed** for the cases against SCs and 2895 cases for STs.
- **Conviction percentage** under the SCs and STs (PoA) Act in conjunction with IPC remained at 25.7% for SCs and 20.8% for STs.
- The **acquittal percentage** ended with 74.2% for SCs and 79.2% for STs.
- At the end of the year 89.6 % of cases for SCs and 87.1% for STs **remained pending trial**.

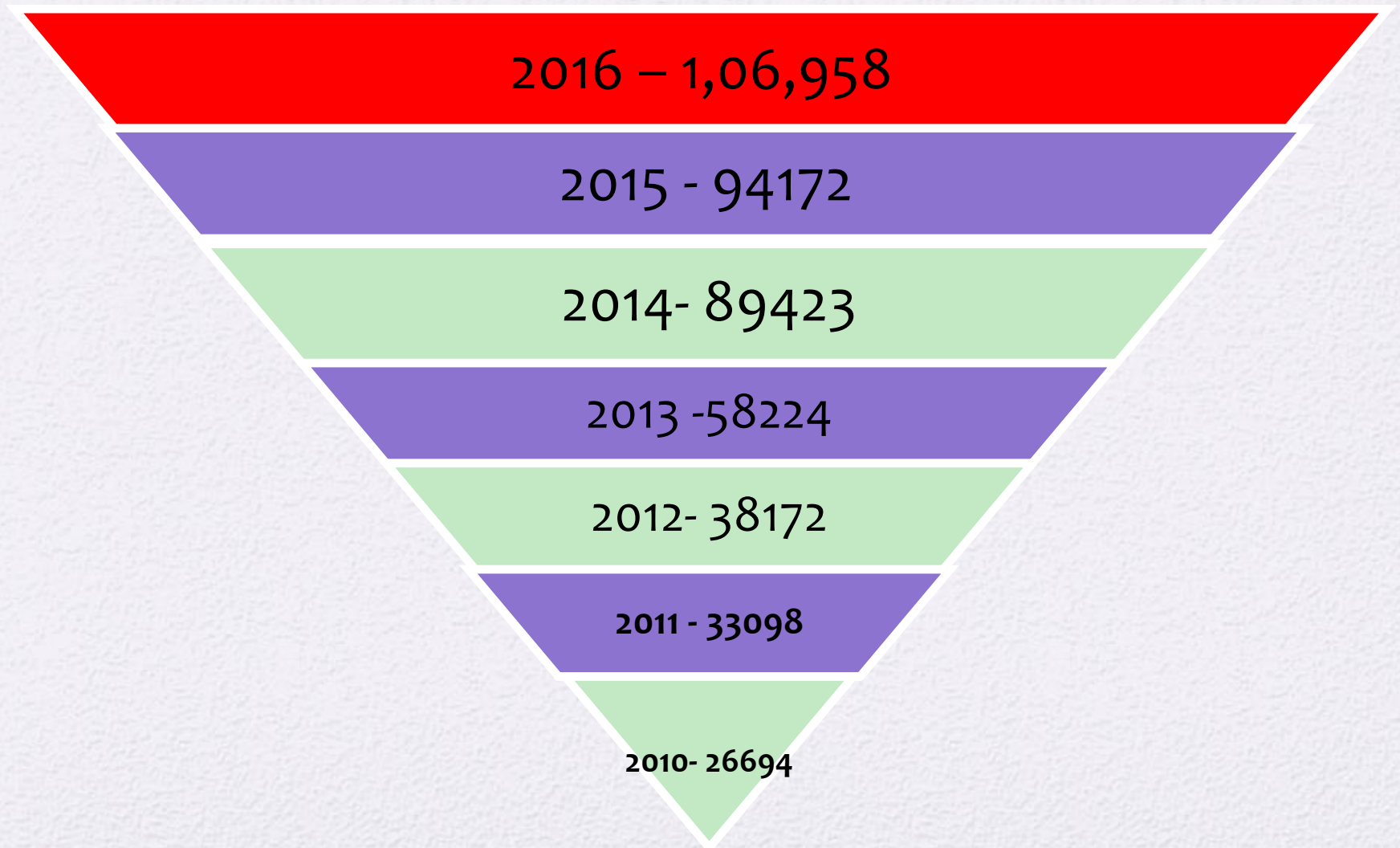
Forms of Atrocities registered in 2016

Sl.No.	Forms of Atrocities	SCs	STs
1	Murder	786	139
2	Attempt to Murder	733	93
3	Grievous Hurt	1071	144
4	Assault on Women to outrage her modesty <i>(Assault, sexual harassment, Intent to disrobe, voyeurism, stalking, insult to modesty)</i>	6425	1701
5	Rape	2541	974
6	Attempt to Rape	148	13
7	Arson	168	13
8	Others	29829	3493

Violence against Women

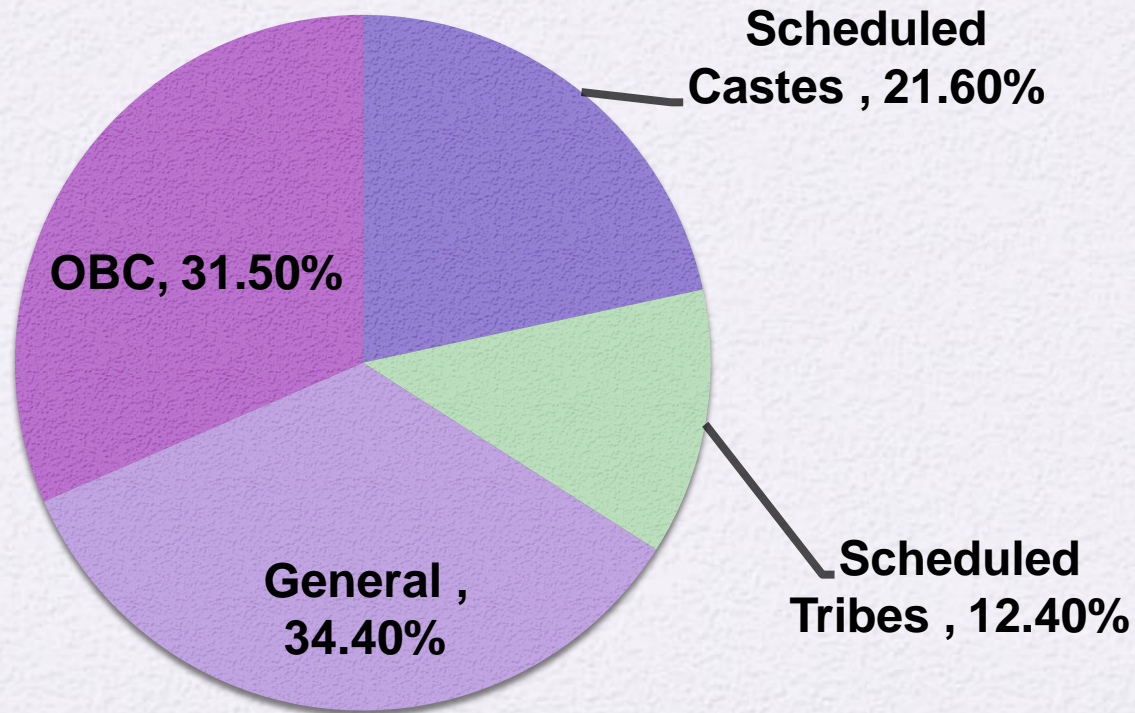
- Top two reported crimes committed against Dalits – or 14% of all crimes against Dalits are
 - (i) ‘assault on woman with intent to outrage her modesty’ (Penal Code offence classification), comprising sexual and physical assault, sexual harassment, stalking, forced disrobing, voyeurism and
 - (ii) rape.
- ***Assaults on women with the intent to outrage modesty***, at 7.7% (3172 cases), reported the highest number of cases of atrocities against SCs, followed by rape with 6.2% (2541 cases) during 2016.
- 90% of Manual Scavengers are Dalit Women – UN High Commissioner for Human Rights
- 90% of Devadasi / Jogini women forced into Temple prostitution are SC Women
- 2,500 women have been killed of the suspicion of practicing witchcraft in the past 15 years

Crimes against children - NCRB

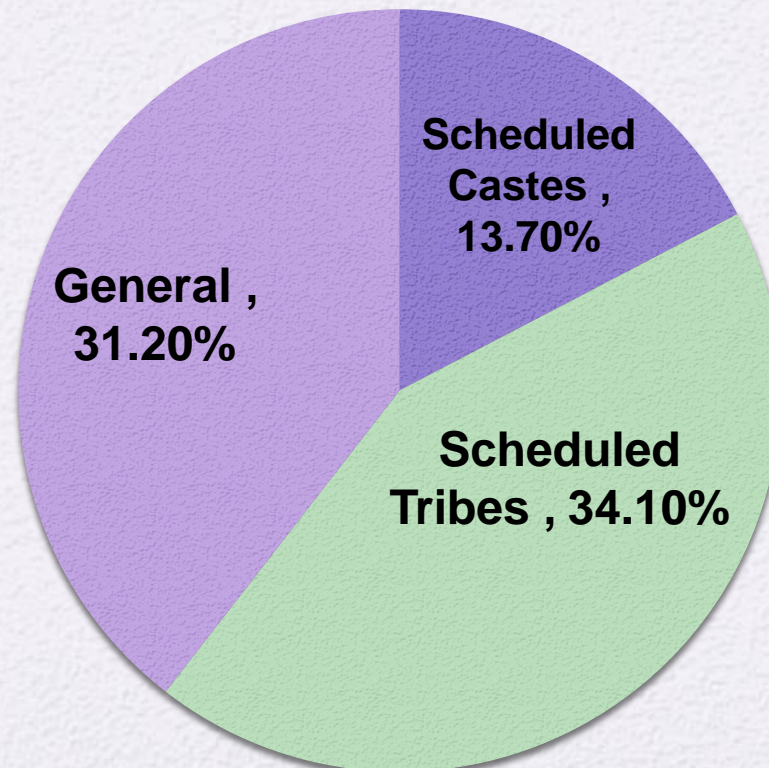


Undertrials and Convicts

**Total Number of Undertrials - 2,82,076
Caste wise (2015)**



Total number of Convicts -1,34,168 Caste wise (2015)



Why more atrocities & less convictions?

More negligence in implementing it!

- Non-registration of cases at all
- Non-registration under the POA Act
- Inadequate and inordinate delays in investigation
- No arrest of the accused
- No protection given to the victim-survivors and witnesses
- Delay in filing charge sheets
- Delay in trial
- Inadequate use of preventive and precautionary measures
- Delay in providing and inadequate relief and rehabilitation to the victims
- Not properly activated and used State and District level Vigilance and Monitoring Committees
- Mandatory reviews not conducted by the State and District level authorities on the performance of Public Prosecutors, position of the cases, relief and rehabilitation measures provided, etc.

No easy access to Judicial Remedy...

- a) Right to a **fair and public hearing** by competent, independent and impartial judicial or administrative tribunals.
- a) Right to **appropriate and prompt reparation**.
- a) Right to **relevant and accurate information**.
- a) Right to the **prevention of reoccurrence** of the violence.

Some common factors leading to acquittals during sentencing .

- **Court citing problems** originating from **pre investigating stages** and the investigation done by the police such as **suppressing information and delay in investigation**
- police failure to **timely arrest** the accused.
- police **delay in gathering witness statements** 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.
- **Proof of motivation**, 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**.
- court insistence on **narrowly interpreting incidents** without greater contextualization of caste tensions.
- court **rejection of evidence** that is **not corroborated with the incident** or other witnesses.
- courts **discrediting witnesses** who do not personally know the accused.

Some problems victims and witnesses facing !

Sharing's of victims and witnesses!

Actions of Accused:

- Dominant caste accused receives more attention in the court because they have more money.
- Harassment/ threats/ continuous pressure from accused to stop case.

Denial of Information:

- No information as to the information on appointment of SPPs of their own choice as per SCs and STs (PoA) Rules
- No information is provided to SC/ST victims/witnesses on the trial dates, especially on important hearing dates.
- SC/ST victims/witnesses are misguided as to the trial hearing dates, even after giving money to the SPP as demanded.
- When judges or the SPP are on leave, the SC/ST victims/witnesses are not informed of the postponement of the trial hearings.
- Summons is issued to the SC/ST victims/witnesses but do not reach them or reach them in time, or only served 1-2 days in advance of hearing.

Seating Arrangements:

- SC/ST victims/witnesses not allowed sitting inside courtroom.
- SC/ST victims/witnesses are made to stand up if accused's side/others need seat inside the courtroom.
- SC/ST victims/witnesses are made to stand in one corner of the courtroom.
- Police sometimes do not let SC/ST victims/witnesses to sit inside the courtroom itself during their trial hearings.

Actions of Court Staff:

- On seeing the physical appearance of the SC/ST victims/witnesses, the court staff treat them differently, as if they know nothing about their cases.
- Court typist is not recording the statements of the victims & witnesses in court properly.

Actions of SPP/ Private Advocates/ Judges:

- SPP does not allow SC/ST victims/witnesses to enter into his chambers, while the accused and accused's advocate are allowed inside.
- SPP charges money to SC/ST victims each time in order to represent them in the court.
- Private advocates charge lots of money to SC/ST victims, saying have to pay SPP, clerk, pleader, etc.
- SPP does not brief/coach the SC/ST victims/witnesses as to how to give their statements before the court.
- SPP does not prepare for arguing the cases on behalf of the victims.
- SPP or judge uses rough words with the SC/ST victims/witnesses in the courtroom.

- During cross-examination, the defence advocate is allowed to twist the statement of SC/ST victims/witnesses and the SPP or judge do not intervene
- Multiple adjournment of atrocity cases, for which SC/ST victims/witnesses are not informed as to the reasons.

Forced Compromises & Counter Cases:

- SC/ST victims/witnesses are forced into compromises or to turn hostile witness.
- SC/ST victims/witnesses face counter cases in court.

Denial of TA/DA:

- SC/ST victims/witnesses do not receive their travelling and maintenance expenses while attending the court; nor are they informed of this right.

What needs to be recognize to End Untouchability ?

Towards bringing social reform through judicial verdicts...

- **Recognise – caste based injustice still exit in all the sphere**
- **Recognize PoA Act is special enactment** with a specific purpose to counter atrocities and remove social indignities.
- To **protect from caste based atrocities** and discrimination.
- **Enacted in pursuance of Article 17** of the Constitution, by which untouchability was abolished and its practice in any form was forbidden.
- **Recognize “The Statement of Objects and Reasons appended to the Bill** of the aforesaid Act while pronouncing **Judicial orders/judgments.**
- **Recognize the reasons leading to hostility of witnesses in the backdrop of their social position vis a vis the dominant caste community.**

- **Recognize that largest number of cases of atrocities pertain to**
 - SCs trying to get possession of lands, legally allotted to them;
 - when others try to capture SC and ST lands;
 - honour of SC and ST women; and
 - resistance to various types of inhuman humiliations & discriminations a number of which have been listed in the Act as offences.
- **Refer to the provisions of the amendments** that have taken place in 2015 and the reasons for the same.
- **Recognize that certain provisions of Cr.P.C are not applicable** for the offences committed under the PoA Act so far as investigation, inquiry and trial are concerned.

**As experience proves,
rights are protected not by law
but by social and moral conscience of the society.
If social conscience is such that it is prepared to recognize
the rights which law proposes to enact,
rights will be safe and secure..**

Dr. B. R. Ambedkar