

# ATROCITIES ON DALITS IN RAJASTHAN



STATUS REPORT FROM JANUARY 2016 TO MARCH 2017  
ON THE IMPLEMENTATION OF  
SC & ST (PREVENTION OF ATROCITIES) AMENDMENT ACT 2015 AND RULES 2016,  
RAJASTHAN



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(Status Report from January 2016 to March 2017 on the  
implementation of SC & ST (Prevention of Atrocities)  
Amendment Act 2015 and Rules 2016, Rajasthan)

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# Preface

I take this opportunity to present before you the Status Report on the implementation of SC/ST (PoA) Amendment Act 2015 and Rules 2016 in Rajasthan for the period of January 2016 to March 2017 prepared by PAIRVI and Centre for Dalit Rights.

National Crime Records Bureau (NCRB) data shows that crimes against dalits increased from less than 50 (for every million people) in the last decade to 223 in 2015. Among all the states, Rajasthan has the worst record. It has the highest crime rate against the scheduled caste. As per the latest report Rajasthan recorded 573 cases of crime against dalit per million people as against the national average of 223 cases. Rajasthan witnessed the serious violation of rights of the dalits, marginalized and under privileged especially women. Under Article 17 of the Indian Constitution, the untouchability is abolished and its practice in any form shall be an offence punishable in accordance with law. However, dalits are subjected to vulgar forms of violence and discrimination. Rajasthan ranks first in the caste based violence. The SC/ST (Prevention of Atrocities) Act was enacted in the year 1989 and its rules were framed after six years in 1995. This Act was weak and did not cover all sort of offences against dalits and failed to attain to its goals. The apathetic attitude of the law enforcing agencies, the lack of political will and the negligence on the part of police and administration were the main barriers in the path of successful implementation of the Act. Thereafter, the said law was amended in the year 2015 and Rules were notified in 2016. This report takes the stock of the status of implementation of the amended Act.

I hope this report will be the helpful to the State Government of Rajasthan and other agencies to take a note of tardy and half-

hearted implementation of law and denial of access to justice to dalits. I express my gratitude to Centre for Dalit Rights (CDR), Rajasthan for bringing out this status report. I am also grateful to Shri P. L. Mimroth, Chief Functionary of CDR and Shri Satish Kumar, Director, CDR for their guidance in preparing this report.

**Ajay K. Jha**

Director

PAIRVI, New Delhi

# Foreword

It is my privilege to present this Status Report on implementation of SC/ST (Prevention of Atrocities) Amendment Act 2015 and Rules 2016 for the period from January 2016 to March 2017. It is the extract of the experiences gained by the Dalit Rights activists working to remove the barriers to facilitate access to justice to the marginalized groups of the society. SC/ST (Prevention of Atrocity) Act is one of the best pieces of legislations but the lackadaisical approach of the law enforcement agencies characterized by the poor investigation and prosecution of genuine atrocity cases have resulted in the denial of justice to many.

The present status report deals with the provisions of the Act, the lacunas left out at each stage of the case, functioning of the accountability mechanism of the State Government and preventive measures taken by the State to combat the untouchability and caste based violence.

I express my gratitude to PAIRVI and CDR team for their hard work in carrying out this study and giving the final shape of the report.

This report will be helpful for the dalit activists, scholars, media, and advocates. I am sure, this will be read with interest and attention and the purpose of bringing out this report will be served.

**P. L. Mimroth**

Chief Functionary

Centre for Dalit Rights, Jaipur, Rajasthan



# Content

CHAPTER I	<b>Introduction</b>	1
CHAPTER II	<b>Untouchability and Atrocities</b>	6
CHAPTER III	<b>Response of Enforcement Authorities</b>	20
CHAPTER IV	<b>Preventive Mechanism and Its Implementation</b>	44
CHAPTER V	<b>Conclusion and Suggestions</b>	68
ANNEXURE	<b>Status of the 109 cases of crimes against the Dalits from January-March 2016</b>	70





# Introduction

There are more than 260 million people globally who are considered inferior and affected by the caste based discrimination. According to 2011 census, population of dalit community, officially known as Scheduled Caste, is 201 million in india. This figure does not include dalits who have converted to or born and raised in a non-Hindu religious community.

Dalits suffer the most inhuman forms of caste based discrimination including “untouchability-the imposition of social disabilities by reason of their birth into certain low castes, despite the fact that untouchablity was abolished by the Indian Constitution in 1950. They also experience violence and social exclusion caused by state repression, erosion of rule of law, cultural and religious oppression.

They face wide range of abuses like calling by the name of there caste, land grabbing and encroachment, denial of access to natural resources, segregation in the schools where they are forced to sit at the back of classroom, prohibition of rituals such as riding a horse during weddings etc. They are also discriminated in the State-run employment generation and relief programmes. The feudal mindsets prohibit dalit access to public services and places and limit their participation in democratic Institution. Dalits are extremely dependent on dominant caste communities for their livelihood which force them to maintain the silence against untouchability and discrimination. They have very little space in democratically built institutions and are caught up in the unequal and inhuman system. They have miserable life full of extreme poverty and lack of basic amenities.

In Rajasthan, despite existence of very stringent acts like Protection of Civil Rights Act, 1955, SC/ST (Prevention of Atrocities) Act 1989 and SC/ST Amendment Act 2015, culprits are rarely punished under the law of the land. Most of the incidents of the crime against the dalits are not reported because of the fear of reprisal and the refusal to register the cases of the dalit atrocities. Violence against dalits in Rajasthan is normally treated as trivial issue by the society in the name of culture or tradition and so by the law enforcing agencies like police, prosecution, judiciary etc. Caste based crimes are rising in Rajasthan and redressal mechanism have failed to deliver. The conviction rate under SC/ST (Prevention of Atrocities) Act is less than 3 percent and pendency rate is as high as 85 percent.

Dalit women are more vulnerable and prone to discrimination and exclusion than men. It explains the interconnection between caste dynamics, lack of basic amenities and the character of the society. They are placed at the bottom of India's caste, class and gender hierarchy. Dalit women experience endemic gender based discrimination and exploitation from the patriarchal system inside and outside their home. Their socio-economic vulnerability and lack of political voice increases their exposure to potentially violent situations and reduce their ability to escape violence. It presents the clear evidence of wide spread exploitation and discrimination against dalit women subordinated in term of power relation to men in a patriarchal society and also against their communities based on caste.

Dalits are not homogeneous group. They are stratified into different castes that ranked in terms of superiority and inferiority like other castes. Dalit castes and rankings are generally linked to occupation. Traditional Dalit professions include skinning carcasses, collecting garbage, leatherworking, cleaning latrines, collecting "night soil" ("human excrement"), cremating the dead, catching rats, brewing alcohol and cobbling. Many Dalits have "clean" jobs such

as menial laborers and farm workers. Dalit communities comprise roughly one fifth of the total population of Rajasthan.

**Statistics of Dalit population in Rajasthan (2011)**

Total population of Rajasthan	6,85,48,437
Total population of Dalits in Rajasthan	1,22,21,593
Total population of Tribal in Rajasthan	92,38,534

Some of the major Dalit communities in Rajasthan are listed below-

**Meghwal:** This is one of the largest dalit communalities in Rajasthan. They mainly inhabit in the western, southern and central regions of Rajasthan. Most of them are small farmers and farm labourers while some of them are engaged in other manual works and cobbling.

**Chamar, Balai, Bunkar:** These communities too have started calling themselves as Meghwals. They live in the central and north-eastern parts of the State. Some of them are still engaged in leather related work, while the majority is small farmers and laborers.

**Bairwas:** Bairwas are mainly found in Alwar, Sawai Madhopur, Jaipur, Dausa, Karauli, Kota, Ajmer, and Tonk districts. Bairwas are economically better off than many other Dalits of Rajasthan. They are engaged in petty business in urban areas and in rural areas they are mainly marginal farmers and agricultural workers.

**Jatav:** The Jatav community is found in eastern districts of the State, namely Bharatpur, Alwar, Dholpur, Karauli and Sawai Madhopur. Jatavs, who are marginal farmers and agriculture laborers, have become vocal and assertive about their rights.

**Raigars (Jatia):** This community mostly lives in Alwar, Dausa, Jaipur, Ajmer, Sawai Madhoupur, Karauli, Tonk, Jodhpur, Baramer and Pali districts. They are still engaged in shoemaking and while some of them are working as agriculture labour or small farmers.

**Khatik:** This is the richest community among the Dalits. They live mainly in Jaipur, Bharatpur, Alwar, Amer, Bhilwara, Tonk and Kota, and are engaged in cattle business.

Caste system is still very strong in Rajasthan. There is a clear division between the 'upper' and 'lower' castes. The upper castes are economically and socially more powerful groups. They mediate between poor people and the State and also exercise influence in the social affairs at the local level. Caste continues to be significant with regard to social relationships, marriage and occupational pursuits and in influencing people's livelihood choices and strategies. Access to justice and natural capital (including common property resources, water and forests) is highly correlated with caste status in Rajasthan. Thus, across the State, Scheduled Castes have the least land and livestock and the minimal access to groundwater and irrigation sources. The unequal distribution of land, therefore, is exacerbated by differentiated access to water. As drinking water is a scarce and precious resource in the extremely dry parts of western Rajasthan, its management is a source of power that has been exercised by powerful sections of the community to maintain their control over marginalized groups. For example, if the village only has one source of water that is located in the upper castes locality, members of lower castes are often expected to provide free farm labour to the upper castes in exchange of water. In other cases, they are not even allowed to fetch water from the source.

More than a year after enacting the SC/ST (Prevention of Atrocities) Amendment Act 2015 provisions of the Amended Act is not implemented in letter and spirit. The atrocity and violence

against the Scheduled Caste and Scheduled Tribe communities have increased despite stringent provisions provided by the Amendment Act. This paper attempts to bring out the true picture of the nature and extent of atrocities committed against Dalits in Rajasthan and the overall effective implementation of SC/ST (Prevention of Atrocities) Amendment Act 2015.

# Untouchability and Atrocities

## The SC/ ST (Prevention of Atrocities) Act

Though abolished and forbidden by Article 17, the practice of “Untouchability” persists due to its systemic character. Hence, the Indian Parliament enacted the “Untouchability” Offences Act 1955, which underwent amendments and became the Protection of Civil Rights (PCR) Act 1976. Under this Act, “Untouchability” as a result of religious social disabilities was made punishable. However, the Act suffered from legal loopholes. The punishments were less punitive as compared to those under the Indian Penal Code, and the law and order machinery was neither professionally trained nor socially inclined to implement such social legislation. Hence, a more comprehensive and punitive Act was required to protect dalits and adivasi from violence committed by other communities. This led to legislation of the SC/ST (Prevention of Atrocities) Act 1989. The basic objective and purpose of this more comprehensive and punitive piece of legislation was sharply enunciated when the Bill was introduced in the Lok Sabha. The objectives of the Act, therefore, very clearly emphasize the intention of the Indian state to deliver justice to SC/ST communities through affirmative action in order to enable them to live in society with dignity and self-esteem and without fear, violence or suppression from the dominant caste.

It has been learnt from our experiences that the new forms of the atrocity are coming into existence which need to be included into the law and some new safety measures need to be incorporated in the legislation. The current safeguards appear not be sufficient enough to prevent the new forms of atrocity. The innovative and sturdy provisions are required to make the preventive and

accountability mechanism of the Act more active, effective and punitive. After repeated demands and effort of civil society organisations Ministry of Social Justice and Empowerment tabled the Amendment Bill to the Parliament on 12th December 2013. On December 21, 2015, the Rajya Sabha unanimously passed the SC and ST (Prevention of Atrocities) Amendment Bill, 2015 and got the assent of President on 31st Dec. 2016. The Amendment Act came into force from the date 26th January, 2016 and Rules on 14th April 2016.

This Act is a very significant and progressive law, ever enacted for protection of the most under privileged, deprived, marginalized, vulnerable and forgotten section of the society of the India. Considered as ritually impure, dalits have been physically and socially excluded from mainstream society, denied basic resources and services and discriminated against in all walks of life. Besides the discrimination and denial of the basic human rights, this section has been subjected to all forms of the violence. Because of the acute poverty, lack of representation in the politics, powerlessness, social backwardness and deep rooted caste based mentality, it was almost impossible to get the justice. This law is the first ever reformative law rather than a punitive law contrary to other existing legislations. There are some salient features of this Act which make it different and extraordinary which are given below -

## Offences

- It enlarges the areas of criminal liabilities by identifying new types of offences, thereby including several acts of omission and commission not covered under either the IPC or Protection of Civil Rights Act.
- It Protects dalits and adivasis from various kinds of atrocities relating to social disabilities, property, malicious prosecution, political rights and economic exploitation.



## Victims and perpetrators

- It defines an atrocity crime by sole reference to caste identification of the offender (non-SC/ST member) and the victim (SC/ST member)

## Investigation

- The Act ensures that investigating officers are police officers not below the rank of Deputy Superintendent of Police with experience and ability to investigate such cases.
- It mandates the completion of police investigations within 60 days of occurrence of the atrocity.
- It prohibits grant of anticipatory bail to persons accused of offences under the Act.

## Judicial process

- It mandates setting up Special Courts or Exclusive Special Courts and grants power to ensure speedy trials of atrocity cases and take cognizance into the matter of SC/ST atrocity cases. It also mandates to appoint Special Public Prosecutors to conduct the cases.

## Penal Action

- It imposes exemplary punishment at a scale much higher than under the IPC for atrocities against the member of scheduled caste and scheduled tribes, except for the offences of rape. A public servant accused under the Act also has been made liable to a higher punishment, and neglect of official duties has been deemed punishable.

## Relief and Rehabilitation measures

- It provides legally justifiable rights to the victims of atrocities by way of a scale of graded financial assistance and

provision of relief and rehabilitation, apart from travel and maintenance allowance for victims and witnesses during investigation and trial, etc.

## National and State level Monitoring Mechanism

- Setting up SC/ST Protection Cell at the State Headquarters under the charge of Director/Inspector General of Police for supervision of various actions taken under the Act.
- Appointing (i) Nodal Officers to coordinate the functioning of District Magistrates and Superintendents of Police or other authorized officers, and (ii) Special Officers at the District level to coordinate with the District Magistrates, Superintendents of Police or other officers responsible for implementing the provisions of the Act.
- Constituting State, District and Divisional level Vigilance and Monitoring Committees for enhancing accountability and greater political supervision of the implementation of the Act.
- Submitting annual report about measures taken for implementing the Act by the State Government to the Central Government.
- Authorizing the National Commission for Scheduled Caste (NCSC) and National Commission for Scheduled tribes (NCST) to investigate, monitor and evaluate the safeguards provided for SC/ST and to inquire into the specific complaints by SC/ST of rights violation and to discharge such other functions in relation to the protection, welfare and development and advancement of SCs/STs.

## Preventive Measures

- Implementing the range of preventive measures, including preparing a model contingency plan, identifying the atrocity prone areas, cancelling arms licences of potential offenders

under the Act, granting arm licenses to the SCs/STs as a means of self defence, setting up awareness camps in atrocity prone areas to educate SCs/STs about their rights.

The SC/ST (Prevention of Atrocities) Amendment Act introduced the more extensive, progressive and stringent provision to ensure justice delivery system to be more accountable and it provided justice, relief and rehabilitation to the member of scheduled caste and scheduled tribes. Amending the Section 3 of Principle Act following new offences have been made punishable under the Amendment Act -

1. Harassment of member of scheduled caste and scheduled tribes by garlanding footwear's, forcing to parade nakedly, tonsuring of head, removing moustaches, and painting face or body.
2. Compelling the member of scheduled caste and scheduled tribe to dispose or carry human or animal carcasses, or to dig graves.
3. Compelling the member of scheduled caste and scheduled tribe for manual scavenging or employs or permits the employment
4. Performing or promoting to dedicate a scheduled caste and scheduled tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits such acts.
5. Threatening, humiliating and creating hurdles in discharging the duties of the SC/ST Sarpanch, Pradhan, Chairperson and members of the Panchayati Raj Institutions (Panchayat, Zilla Parishad, Municipality)
6. After the poll, causing hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a SC/ST or prevents from availing

benefits of any public service

7. Destroying, damaging or defiling any object generally known to be sacred or in high esteem by members of the SC/ST.
8. Intentionally touching a woman belonging to a SC/ST, knowing that she belongs to a SC/ST, when such act of touching is of a sexual nature and is without the recipient's consent;
9. Uses of words, acts or gestures of a sexual nature towards a woman belonging to a SC/ST, knowing that she belongs to a SC/ST.
10. Obstructing or preventing a member of a SC/ST from using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage.
11. Obstructing or preventing a member of a SC/ST from mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions.
12. Obstructing or preventing a member of a SC/ST from entering any place of worship or taking out, any religious, social or cultural processions including yatras; entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment.
13. Obstructing or preventing a member of a SC/ST from practicing any profession or the carrying on of any occupation, trade or business or employment in any job.
14. Causing physical harm or mental agony of a member of a SC/ST on the allegation of practicing witchcraft or being a witch.
15. Imposing or threatening a social or economic boycott of any person or a family or a group belonging to a SC/ST.

## Duties to the Public Servant

To make the public servants more accountable and efficient, the Act provides certain mandatory advisory to them -

- To read out the information given by the victims orally and jot it down by the officer in charge of the police station, before taking the signature of the informant.
- To register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act
- To furnish a copy of the information so recorded forthwith to the informant.
- To record the statement of the victims or witnesses;
- To conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing
- To correctly prepare, frame and translate any document or electronic record
- To perform any other duty specified in this Act or the rules made there under.

## Rights of the Victims and Witnesses:

The most important feature of this new Act is the rights of the victims and the witnesses which are as follows -

- It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.
- A victim or his/her dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special

Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

- A victim or his dependent can file written submission on conviction, acquittal or sentencing
- All proceedings relating to offences under this Act shall be video recorded
- It shall be the duty of the concerned State to provide a copy of the recorded First Information Report at free of cost, and immediate relief in cash or in kind
- To provide information to victims or their dependents or associated organizations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost
- To provide information to the victims or their dependents or associated organizations or individuals, regarding the relief amount
- To provide information to victims or their dependents or associated organizations or individuals, in advance about the dates and place of investigation and trial
- To give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organizations or individuals and to provide the legal aid for the said purpose
- To protect the rights of victims or their dependents or associated organizations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.
- It shall be the right of the victims or their dependents, to take assistance from the Non-Government Organizations, social workers or advocates

The section 10A of the Protection of Civil Rights Act 1955 has also been incorporated in this Act which speaks about the collective fine. Under the Rule 17 of the Principal Act there is a provision of constitution of Monitoring and Vigilance Committee

under District Magistrate. Same committees shall be formed at the SDM level under the amended Act in which the members will be local officials, MPs, MLAs and organizations. Sub Divisional Magistrate will be the chairperson of the Committee and Block Development Officer will also be the member. The quarterly meeting of this committee will be mandatory. Apart from this, there is an important provision of the Special Court at District level that will take the cognizance in the atrocity cases.

## Nature of Discrimination and “Untouchability” Practices

Caste as a social system provides a framework for social relations and a system for division of labour. The rules and norms of this system were laid down to regulate the vital economic life of individuals in Indian society, including property right, occupations and wages. The same is true for educations, and religious and cultural practices. The system also allows and legitimizes exploitation and marginalization in every sphere of life. This results in slavery and bondage. “Untouchability” and caste-based discrimination are at the core of this system. Untouchability as a social mechanism, and the resulting practice of discrimination, restricts civil, political, economic and cultural freedoms for dalits. They, thereby, are prevented from enhancing their individual freedom in all spheres of life- land, labour, employment, education, political participation, religious and cultural expressions and practices.

The nature of discrimination that Dalits experience in their daily lives can be grouped under the following categories of violation of rights:

**Violation of Civil Rights:** Dalits in Rajasthan have been facing different forms of the violence which affect their substantive freedoms and rights to life with dignity and honour in the society. Inhuman practice of untouchability is quite prevalent in Rajasthan

particularly in rural areas where Dalits are not allowed to enter inside the temples, practice their religious beliefs, and access to water resources. Dalit bridegrooms are not allowed to ride on horse. They cannot wear cloths of their choice in certain pockets of Rajasthan. Their water resources are polluted by throwing human excreta. The barbers refused to render their service to the Dalits., They cannot wear good clothes and turban and are prohibited to enter into the house belonging to the dominant castes. Dalits are denied to access to health centres. The Anganwadi and health workers do not enter in the locality of Dalits and refrain to touch the Dalit patients. Dalits are denied the use of the common village cremation grounds etc. Dalit children are still growing with the stigma of being from inferior and untouchable class. In many places the Dalit students are ask to do manual work in the school and to sit in the last row of the class room and in many places they are served mid-day meal separately from other children.

**Violation of Political Rights:** In the State of Rajasthan, the Dalits are denied the right to vote or forced to cast their vote in the favour of particular candidate. Dalits are not allowed to contest the election, denied free and fearless campaigning, forced to withdraw their candidature etc. If they exercise their political right, they are subjected to physical assault and other heinous forms of the violence. Dalits are discriminated even after being elected. They are forbidden to exercise their rights and participate in the policy making and decision making process. The 73rd Constitutional Amendment provided the space to the Dalit men and women in the Politics, but it has not been implemented to that extent to fulfil its purpose. It could not prevent the undue interference and influence of the dominant caste people in the local Governance and it also could not be able to give the full space to the Dalits in the politics. The influence of the dominant caste people remain the same in local Government in Rajasthan. The Dalit Panchayat



head in the State cannot sit on the chair, and are not allowed to speak in the Panchayat meetings. Dalit heads cannot keep the Panchayat records and even cannot discharge their duties as the Panchayat heads. It is also observed that in some Panchayats in Rajasthan, the Panchayat Secretaries keep the passbook, seal and the other important documents with him. If the Dalit Panchayat head tries to exercise his/her duty and rights as the Sarpanch, he/she is subjected to all sorts of violence, physical assault, verbal abuse, discrimination and humiliation.

**Violation of Economic Rights:** In Rajasthan, the economic condition of the Dalits is very pathetic and miserable. The main reason behind this apparent poverty is the little access to the economic resources and market which result in non attainment of livelihood rights and entitlements. A few of Dalits have their own occupation and agricultural land. Most of them are daily wage labourer in the fields of the dominant caste. The State Government initiated a number of the campaigns and schemes and allocated the agricultural lands to the Dalits to improve their economic condition, but their access to scheme is very limited. They don't have possession of the allotted land. Their economic rights are being violated by various means viz. Dalits are subjected to low or discriminatory wages, doing bonded labour or free labour, being prohibited from drawing water from common wells, tanks, streams and bore-wells, rendering humiliating services like carrying animal carcasses and dead bodies, drum beating at death and funerals, cremating or burying the dead, or doing manual scavenging. According to the Socio-Economic Caste Census, 56,226 Dalit families are engaged in manual scavenging in Rajasthan (Rajasthan Patrika 17/8/2012). Despite legislations like Rajasthan Tenancy Act and Land Ceiling Act, the land of the Scheduled Caste and Schedule Tribes is being transferring under illegal Benami transactions in the name of the non-scheduled Caste and non-scheduled tribe members. In

some areas of Rajasthan, the Dalits are being prevented to plough their fields and even having possession over their residential and agricultural lands.

**Violation of Cultural rights:** Dalits are often prohibited and restricted from exercising their religious beliefs, traditions, practices and celebrations. They are subjected to severe form of violence and social boycott if they dare to ride on the horse in the marriage procession or pass from the dominant caste localities riding on the horse. They are not allowed to carry the dead body of the Dalit fellows in public place. Segregated seating in the cultural fests and festivals is quite a normal phenomenon. Sometimes, Dalits are not allowed to participate in the fests. In some areas of Rajasthan, it is learnt that, there are separate temples of the Dalits. The Dalit women are subjected to very heinous and most humiliating practice of witch hunting which is widely prevailing in the rural areas of Rajasthan. The Dalit women branded as witch is subjected to sexual and physical violence.

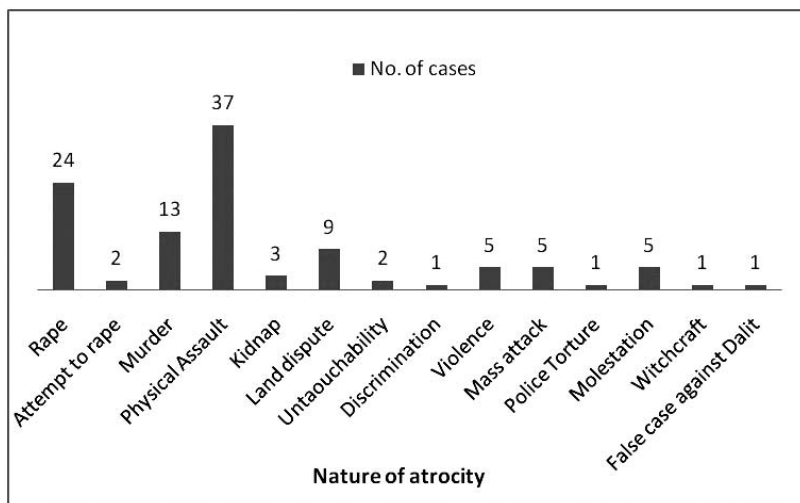
**Educational Rights:** As per the Article 21A of the Constitution of India, all children aged 6-14, have the right of free and compulsory education but in practice, dalit students are deprived of this very essential right. They are denied this basic right by way of discrimination imposed against them in the school by the teachers, school administration and co-students from the dominant caste. The children are forced to seat at the back of the classroom, and are not allowed to use the school facilities or equipments like other children rather are humiliated or de-motivated from learning, assigned discriminatory non-acceptable tasks in schools, not allowed leadership positions, not given opportunities to participate in school activities, and not provided early education in ones language. There is segregation in eating, drinking water or seating arrangement in classrooms in public schools. There are also

cases where Dalit students are served from a distance, and several students bring their own plates for fear of utensils being touched by Dalit classmates. Girls from socially excluded communities face more inhumane forms of discrimination and exclusion.

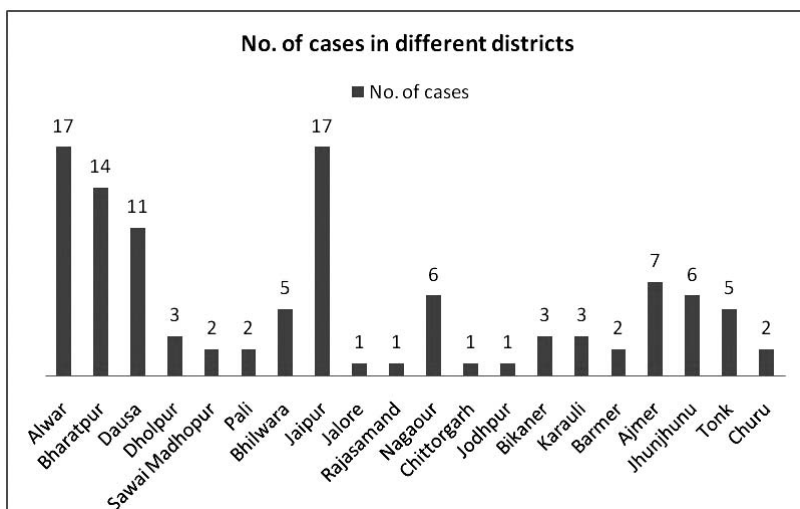
## Extent of Atrocities

Rajasthan with scheduled caste population of 122.2 lakh ranks number two in terms of crime rate against dalits followed by Madhya Pradesh while ranks number three in total number of cases followed by Uttar Pradesh and Bihar. According to National Crime Record Bureau 5134 cases of crime against scheduled castes were reported in year 2016 while 5911 cases were reported in year 2015 and 6735 cases had been reported in year 2014. However, these are the number which came into the notice of police and the Dalit victims have dared to approach police for justice but there are a number of the cases which remain unreported. Despite decades-old-laws criminalising untouchability, it appears to be practised by nearly two third of rural Rajasthan. A survey on social attitudes in the country conducted by University of Texas and Jawaharlal Nehru University indicates that close to two-thirds(66 per cent) of population in rural Rajasthan practises untouchability.

In this report 109 cases of atrocities against the Dalits from January 2016 to March 2017 in 20 districts of Rajasthan have been analyzed. Dalits suffer from different atrocities like rape, physical assault, murder, kidnapping, mass attack, molestation etc. No. of cases registered as per the nature of atrocity are shown in the graph below. Physical assault, rape and murder are the most common form of atrocities Land dispute also emerged as one of the important reason of crime against dalits. Cases of police torture, untouchability, false case against Dalit and violence were also reported.



Out of 20 districts Jaipur and Alwar registered the highest number of crimes against Dalits. Bharatpur and Dausa are no better. The following graph shows number of cases in different districts.



# Responses of Enforcement Authorities

## Complaint and Registration of FIR

### **Rule 5: Information to Police Officer in-charge of a Police Station**

- (1) *Every information relating to the commission of an offence under the Act, if given orally to an officer in-charge of a Police Station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.*
- (2) *A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant.*
- (3) *A person aggrieved by a refusal on the part of an officer in-charge of a police Station to record the information referred in sub-rule (1) may send the substance of such information, in writing and by the post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by the police station.*

**Registration of the cases as a rule:** According to the above mentioned Rule, any information concerning the commission

of an offence, if given orally to an officer in-charge of the police station, must be registered in the police station and the copy must be given to the informant. Unfortunately, this rule is flouted in various ways.

**Non-registration of cases in practice:** There are various reasons behind the non-registration of a case. Sometimes, it comes on the part of the police and sometimes it happens because of the undue pressure. The Dalit victims are generally threatened and pressurized not to make any complaint. The police deliberately refuse to register the complaint to dilute the matter, to shield the accused from being prosecuted or to save them from the punishment. In addition, the police also force the Dalit victims to enter into 'amicable' compromise with the accused, withdraw the case, mislead the victims by registering the cases in the Station House Diary (SHD) instead of in FIR, foisting the false cases against the Dalit victims at the behest of the perpetrators so as to pressurize them to compromise. This is motivated by the caste biased mentality of the police officials which forces them to stay apathetic towards the Dalits victims and keep their complaints unregistered

### **Case study:**

*Mr Hanuman Bairwa s/o Ramsukh Bairwa resident of village Dhamana, Police Station Phagi, District Jaipur filed a complaint in 2015 of alleged brutal physical assault in the year 2015. The case is under trial in the Special Court, Jaipur. On 7/12/2016, the accused attempted to murder the son of the victim. Despite the fact that the victim approached the police station Phagi repeatedly the police did not file the FIR. The representations were also submitted before the concerned authorities by the Centre for Dalit Rights, Jaipur but no action had been taken. Finally, an FIR has been lodged through the private complaint {156(3)}.*

**Improper registration:** police must register the FIR under SC/ST (Prevention of Atrocities) Act when victim is dalit and accused in non-dalit. However, in majority of such cases police deny to register case the Act, and impose the sections of IPC with lesser punishment.

### **Case Study:**

*Mr Lekhraj came to Jaipur from Dausa 20 years ago and started working as construction worker. He constructed one house at plot no 16, Dev Nagar, Kankhon ki Dhani, Rampura Road, Sanganer, Jaipur. He also started a small provision store at his residence where his other family members also used to attend the customers. He lived with his wife, three sons and mother. The accused Brajesh Sharma, lives in a house opposite to the victim, also runs a provision store at his residence. The victim's family is the only dalit family in the area. The accused motivated with caste concerns and business rivalry would abuse the victim's family with caste names, humiliate them and allegedly threaten to death. The victim made the complaint in the police station but the police did not take any action. The accused Brajesh reportedly called his brother-in-law to kill Lekhraj. When Lekhraj was coming back from the construction site around 5:30 in the evening on his motorbike on 30 January 2016, the accused allegedly shot him dead. The deceased was immediately brought to the hospital where he was declared brought dead. The accused ran away from the spot after hiding their bike in a plot. The FIR no. 100/2016 was lodged in the Sanganer police Station u/s 302/34 IPC dated 30-1-2016. The DCP (South), Jaipur was approached several times to seek the reasons behind avoiding the SC/ST Act in the FIR. The police did not mention provision of SC/ST Act.*

**Delay in registration:** Police should register the FIR within 24 hours of receiving a complaint. By and large it has been observed that the police do not obey this rule when perpetrators have good rapport with the

**Undue Pressure to victims** - victims are pressurized and threaten to withdraw the case. They are returned back to police stations without registering the case. The political pressure on the police to settle the matter and to make the compromise results in delay registration or non-registration of the FIR. The undue pressure of the caste Panchayats (Khap panchayats) upon the dalit victims or community also cause delay in the FIR. In most of the cases FIRs are registered after intervention of the human rights activists and/or orders from the superior officers.

### **Case study:**

*The four Dalit girl students of Kasturba Gandhi Residential School, Sojat city in Pali district had been allegedly sexually harassed by a teacher from the dominant caste during the examination. He touched them, pinched them on thighs, made them touch his private parts, hold their hands and twisted their hands. The girls shared it with the head of the school Ms Shobha Chauhan who assisted them to register the case under SC/ST Act. Ms Shobha Chauhan and the poor parents of the girls faced threats from the supporters of accused teacher. It is alleged that the victim girl students were harassed and pressurized to make statements in favour of the accused. They were also forced to leave the school forever. FIR No. 83/2016 was lodged in Sojat City under section 7 & 8 POCSO Act and 3(1)(III)(XI) SC/ST (PoA) Act. Though, the case was serious, due to the influence of the accused, the case could not be prosecuted effectively. This incident took place 12 & 14th March, 2016 and FIR was lodged on 20th March.*



**Irrelevant information in FIR:** Dalit victims, because of lack of education and awareness, provide information to the police orally which is subjected to manipulation. This unfair act of the police can protect the accused from trial and punishment and can block the relief and compensation to the victim. Dalit victims are prone to misleading and threats by the local politicians, police officials and perpetrators become unable to reveal the facts. This is particularly observed in the cases of sexual violence.

Some gaps observed in enforcement at the stage of FIR -

- Showing apathy, negligence and passivity towards the SC/ST victims.
- Discouraging SCs/STs from registering cases and calling them to come for 'amicable' settlement.
- Pressurizing victims/complainants to compromise for money.
- Threatening victim or even inflicting violence on them.
- Refusing to register cases under SC/ST Act to avoid punitive measures against perpetrators.
- Failing to register the cases under proper sections of the SC/ST Act.
- Registration of the FIR under the old sections of the Act.
- Unnecessary details in FIR (facts, figures, deleting or not including name of the perpetrators, words and weapons used, etc.)
- Misleading victims by registering cases in the station house diary (SHD) instead of in a FIR
- Not providing FIR copy to the victims as per the Act.
- Foisting false cases against victims at the behest of the perpetrators to pressurize the victims to enter into the compromise.
- Accepting bribes from perpetrators to drop the victim's cases.
- Declaring perpetrators innocent without following the due process of law.

- Beating and /or reprimanding victims without pursuing any process of formal justice
- Delayed arrival at the scene of the atrocity.
- Faulty, unscientific and partial investigation conducted by investigation officers to save perpetrator.

**FIR in the sub-sections of the Previous SC/ST Act:** Though the cases of violence against Dalits, got registered under the SC/ST Act, but the appropriate sections of the SC/ST Act were not being invoked in the FIR. It can happen deliberately or unknowingly when the police officials, concerned authorities and police station in-charge do not know or understand the SC/ST Act thoroughly. For example; for serious crimes such as murder, rape, destruction of the property, dispossession of the land, fouling drinking water resources, etc, the police may cite 3(1)(X) of the Act which is related to insulting or intimidating a SC/ST person. This is done with the objective to save the perpetrators from the stern legal actions and restrict the victim from getting the relief and compensation. The undue political pressure is also one of the big reasons of avoiding the proper and relevant sections of SC/ST Act .One of reasons for police to commonly cite this section was that this is related to the most minor offence under the Act and generally attracts the least punishment or to do away with the punishment. Majority of the cases registered under this Act were never brought within the purview of the law at all due to police failure/refusal to register the case thereby neglecting their official duties and colluding with the perpetrators of atrocities.

Now, the SC/ST Act has been amended but it is seen that the police and law enforcing authorities especially, the Station House Officers are not aware of the new law and its provisions. The sections of the old law are still in practice. Very few officers invoke the sub-sections of the amended act. Even after, several representations and memorandums to the top level police officials

and state government, no action has been taken so far to educate the police personnel about the new act.

**Police refrain to register the case under Amended Act. Out of the 109 cases the Amended Act has been imposed only in 18 cases which is less than 17 percent of the total cases. In 10 cases, the FIR is registered under IPC and other Acts. In rest of the 81 cases FIR is either registered under the old sections of the Prevention of Atrocities Act or simply SC/ST Act is mentioned.**

### **Case Study:**

*Mr Kailash Chidiwal, a Dalit journalist and Human Rights Defender, resident of village Daulatkeda, Police Station Mangaliawas, District Ajmer used to raise the voice against all antisocial practices, incidents of violence against dalits and human rights violations in his area. He, his wife and father were attacked by a mob of local dominant class. In this particular instance the local police initially chose to lodge a complaint under section 107/15 CrPC against the perpetrators instead of filing a FIR under the SC/ST Act for providing immediate medical aid to the injured and arresting the perpetrators. Later on, after consistent efforts from civil society the FIR 3/2017 was lodged under sections 143, 451, 323, 341 IPC and 3(1) (X) SC/ST Act. In this incident, the brutal physical assault was committed against the woman and other family members. In this incident, the wife of the victim was badly injured and got stitches in the head.*

**The counter cases against the Dalit complainants:** To dilute the seriousness and gravity of the incident, the perpetrators of the Prevention of Atrocities Act file the cross FIR against the Dalit victims. The dominant caste accused sometimes register the case against the Dalit victims just after the commission of the offence

and sometimes the cross FIR is lodged soon after the case registered by the Dalit complainant. It is also observed that if the perpetrators are not aware of this tactics, the police officials advise them to do so. Many a times the Dalit victims are badly tortured by police colluding with accused person in filing false counter cases.

### **Case Study:**

*Mr Bhagwan Singh S/o Ramkhiladi, resident of village Guthakhar Police Station Weir, District Bharatpur is a Dalit Human Rights Defender. He was assisting a poor landless Dalit Sh Lakshamn Singh Jatav from the same village who lost both of his legs after a series of attacks by a dominant community. Mr Bhagwan Singh was instrumental to lodge the FIR of Lakshan Singh against the accused. He pursued the case continuously at all levels. Consequently, six perpetrators got convicted and were awarded seven years of imprisonment from the Special Court, Bharatpur. Later on, the accused obtained bail from the Rajasthan High Court. The accused also filed a criminal case in the court of SDM, Weir alleging that Bhagwan Singh had attacked the Timan Singh (main accused) and others while he was in Weir area. But in fact Mr Bhagwan Singh never visited and attacked the accused persons. The sole object of the false case was to obstruct the physical presence of Mr Bhagwan Singh before the SDM Court. Mr Bhagwan Singh has been facing continuous threats from the perpetrators and he had to leave the village. At present, the SDM Weir has issued the arrest warrant against the Dalit victim. The requests to provide police security to the Dalit victim to enable him to appear before the court could not be succeeded. In this case, the perpetrators filed the case in the SDM Court just to force the victim appear before the Court with the help of the local police. The police, instead of helping the Dalit victim, is supporting the accused of dominant caste.*

**In 7 cases, out of 109 sample cases, the counter cases and the FIRs have been registered against the Dalit victims by the people from the dominant caste.**

**FIR through the courts under section 156(3) CrPC:** It is observed that in most of the atrocity cases, the police refuse to register the case. Therefore, the cases are being registered through the courts under section 156(3) of CrPC by the Dalit victim. Little access to the police station, humiliation in the police station, non-registration of the incidents of atrocity in the police station and threats and pressure by the police compel the dalit complainants use the case through court. This is common in the cases of sexual violence. The women of the Dalit community disrespected and maltreated by the Police choose to reach the court to register the case.

**14 FIRs out of the 109 cases have been registered through the Courts (Private complaint) under section 156(3) CrPC. It indicates the apathy on the part of the implementing agencies that right to register the FIR has been denied.**

### **Case study:**

*Ms. Sushila w/o Sh Mani Prakash Bairwa resident of plot no. 286, Maruti Nagar, Opposite Airport, Sanganer, Jaipur East, Rajasthan had a domestic dispute with her mother-in-law and brother-in-law. One of the family members of her mother-in-law called police. Police reportedly broke into house and started beating the complainant. The police damaged the household items and broke the main gate of the house. The husband Mani Prakash and another brother-in-law Ashok run away from the house and their sister Mamta hide herself in the neighbouring house. Police arrested Sushila and brought to the police station. Police arrested her at night without lady constable. She was kept in the police station for the whole night. When police was*

*approached for registering the FIR, it was strictly denied by the police. The same was registered through the court under section 166A, 34, 342, 354B, 427, 455, 458, 447 120B, 441, 444 IPC and SC/ST (Prevention of Atrocities) Amendment Act 2015 against the police.*

### **What are the implications for not registering FIRs under proper sections of the SC/ST (Prevention of Atrocities) Act?**

- Lesser punishment ensured for perpetrators by diluting seriousness of the cases.
- Victim loses higher compensation if case is registered under less serious sections.
- Encourages police to neglect their duties in successive cases.
- Also encourages police collusion with dominant caste perpetrators of atrocities in future

Source- (National Coalition for Strengthening of the PoA Act Report Card on 20 Years Scheduled

## Investigation and Charge Sheet

### What the Act and Rules Says

#### **Rule 7: Investigation Officer**

- (1) *An Offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the cases and investigate it along with right lines within the shortest possible time.*
- (2) *The investigating officer so appointed under the sub-rule (1) shall complete the investigation on top priority submit the report to the*

*Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the Officer in charge of the concerned police station shall file the charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge sheet).*

- (2A) *the delay if any, in investigation or filing of charge sheet in accordance with sub-rule 2 shall be explained in writing by the Investigation Officer*
- (3) *The Secretary, Home Department and the Home Secretary, Scheduled Castes and Scheduled Tribes Development Departments (the name of the department may vary from state to state) of the concerned State Government or Union Territory Administration, Director of Prosecution, the Office In charge of Prosecution and the Director general of Police, or the Commissioner of police in charge of the Concerned State of Union Territory shall review by the end of every quarter the position of all investigations done by the investigating officer.*

The issues to be considered under Rule 7 are how the task of investigation of atrocities is undertaken, who should hold responsibility for such investigation, and a review of how the investigating authorities have fulfilled their responsibilities. There have been failures of the police at the stage of FIR registration and investigation.

**Investigation not conducted by DSP:** Due to the failure of the police to include a charge under the Prevention of Atrocities Act, the investigation is not conducted by an officer with the rank of Deputy Superintendent of Police (DSP) or higher, as mandated by the Prevention of Atrocities Act in order to ensure competency in investigation.

It is seen that practically the investigation of an atrocity case is conducted by the reader or the subordinate officer of the DSP and the investigation report is signed and verified by the DSP. Therefore, it is not possible to depict it by any case example. This is the paradox that the laws are concrete and strong but the implementation by the law enforcement agencies is pathetic and unaccountable.

**Pendency in investigation:** According to Rule 7(2)(1) of the Amendment Act, the investigating officer shall complete the investigation within 60 days and submit the report to the Superintendent of Police, who in turn will immediately forward the report to the Director- General of Police of the State Government. But the investigation officers do not take the Dalit atrocity cases; therefore, a number of the cases are pending at the stage of investigation. In some cases, the investigation officers spend the sufficient time to destroy or manipulate the facts to protect the perpetrators from punishment and prosecution and justice to the Dalit victims. One of the reasons of the pendency in the investigation of the Dalit atrocity cases is the undue political pressure and interference in the cases.

### **Case Study:**

*A Dalit young doctor Mr Sahul Kundara S/o Mr Shri Narayan Kundara resident of F-13, B Block, Mahesh Nagar, Jaipur decided to marry a dominant caste girl of, Haryana. Both of them married and girl came to Jaipur Rajasthan. When, they apprehended the insecurity from the girl's family, they filed petition in the Rajasthan High Court for the protection which was approved by the High Court and protection was given to the couple. Later on, the marriage was accepted by the girl's family. The girl started living with his husband. Thereafter, the girl's family conspired and took girl to Haryana. Then they*



*called Sahul there and tortured him. He was tied with the chair and beaten up and abused in the name of caste. They allegedly administered him poison. But somehow he survived and went to Chirag Hospital in Gurgaon. The family of Sahul was called and asked to take Sahul with them. When the parents of Sahul went to Gurgaon, the local police asked the parents to give statement that they found him in a good condition and taking him with them. The family did the same. In Jaipur, on 20/2/2016, Sahul committed suicide with a note depicting all the torture he went through. The case was registered in Jawahar Circle Police Station. The case was investigated in a very tardy manner. In order to save the accused the important evidences like suicide note of Sahul Kundara, his mobile in which he had recorded his suicide and statements were not brought into the record by the police. The police in-charge of Rajendra Park police station Gurgaon also tortured him physically and mentally. Till date the matter is under investigation. The Investigation Officer was changed on the appeal of the deceased family but the new Investigation Officer also delayed the charge sheet. The various representations were submitted before the concerned authorities; meetings were conducted with the high police officials but all these could not accelerate the investigation.*

### **NCRB data relating to the investigation 2011-12 in Rajasthan**

Year	Total no. of the cases for investigation including pending cases from the previous year	Cases withdrawn by the Government	Investigation Refused	No. of the cases in which investigation was completed				No. of the cases pending investigation at the end of the year 2011
				Charge found fake/ mistake of fact or law etc	Final report true submitted	Charge Sheet Submitted	Total	
2011	5611	0	0	2989	21	2235	5245	366
2012	5925	0	4	3240	6	2173	5149	502

In the beginning of the year 2011, the total number of the cases for the investigation including the pending cases of the previous year was 5611 in Rajasthan. Out of which 5245 cases went under the process of investigation and the charge-sheet was submitted in the concerned courts only in 2989 cases. At the end of the year 2011, 366 cases were pending for the investigation. In 2012 it was found that out of total 5295 cases; charge sheet was submitted in 2173 cases while 502 such cases remained pending for the investigation.

**If we look at the 109 sample cases, 80 cases are pending during the investigation and charge sheets haven't been filed after the lapse of the 60 days.**

**Delay in filing the charge sheet:** Besides non-registration of cases despite merit, delays in investigation, collusion with the offenders, manipulation of witnesses and evidence contribute in reducing the effectiveness of the legislation of atrocities. It's been observed that filing of charge sheet gets delayed because of the witnesses turn hostile and manipulation of the facts and evidences. It dilutes the gravity and seriousness of the cases. The delay also occurs because the officers get transferred, delay in receiving the medical certificates, collection of the evidences, postmortem reports, delay in arresting the accused etc. Sometimes, the police delays filing of the charge sheet with the intention to file the Final Report (FR) in the case, which gives sufficient time to the offenders to protect themselves and to weaken the case. Therefore delay in investigation, favouritism of I.O. and delayed charge sheet filing is a common feature with regard to the cases relating to Dalits. According to NCRB 5866 cases were investigated by police in the State in year 2016 out of which police submitted charge sheet in 2391 cases only.

The 109 cases taken as the sample for the analysis, reveal the fact that the Rule 7(2) (1) is not being implemented properly

in Rajasthan. As in 7 cases out of total 109 cases, the charge sheets were filed within the stipulated time i.e. within 60 days while in 12 other cases the Charge sheet was filed after the lapse of 60 days. In rest of the 80 cases, it was found that the charge sheet is still pending after the lapse of more than 60 days.

**Filing FR in the cases:** It is observed that after the investigation many cases related to the violence against the Dalits get closed. Dalit complainant enters into the compromise under the pressure, witness changes statement or step back from giving the statement, political interference, unfair and partial investigation by the investigation officer, delay in spot investigation by the police which helps the perpetrator to destroy the evidences etc are the important reasons of closure of cases against the dalits. According to NCRB 5866 cases were investigated by police in the State in year 2016 out of which police submitted final report in 2952 cases in which 2632 cases were declared false, 292 cases mistake of fact and 11 case true but insufficient evidence and 18 cases were declared non cognizable.

Out of total 109 cases, 5 cases were found to be closed by the police after declaring them as false cases.

### **Case study 1:**

*Kr Manju D/o Mr Manmohan Singh Jatav, resident of village Jatav Basti, Bada Mohalla, Kumbher District, Bharatpur, age 9 years was studying in class III in the Government Nehru Higher Secondary School, Kumbher. On 20/7/2016, before the morning assembly, few students were fighting with each other. Manju went to Ms Shobha Gupta, the teacher, to complain against the students. But the teacher was reportedly found sleeping at that time. She woke her up and made the complaint. On this, the teacher got furious and slapped her badly in her left cheek near left eye. She came back to her class room. Since then, she lost her*

*vision in her left eye. The FIR was lodged in the Kumbher Police Station on 06/10/2016. The police investigated the matter and filed FR in the court saying it as false. As per their report, the girl was absent from the school on the day the incident took place.*

## **Case Study 2:**

*On 25th January, 2017, a group of dalit students visited a water body at the village Gavdi. Member of Dominat caste prohibited Dalits to access the natural water resource and physically obstructed and humiliated them. The FIR was lodged by one Human Right defender and social activist against the untouchability practice committed against the students at the pond. The investigation done by the upper caste IO who filed FR stated that the students were doing antisocial act at the pond and confronted with the care taker of the pond. The fact is that only dominant caste people can visit this place. Now, the protest petition has been filed in the concerned court to open the case.*

**Negligence on the part of the public servants in the cases of Dalit atrocities:** It is the right of the victim to get his/her complaint registered on time and seek the appropriate sections as per the law. Dalit victims are deprived of this right. Even if they get their complaint registered, the right and appropriate sections (new amended sections of the Act) are not applied in the FIRs. Their cases are not investigated fairly and the cases are not properly prosecuted by the Special Public Prosecutors. They lack the access of the correct information. In some cases, the medical officers deliberately ignore to mention the right facts of the cases. The rights of the victim and witnesses are violated as prescribed in the Amended Act. The copy of the FIR is not given to the complainant, the adequate police protection is not provided to the victim and witnesses, the NGO's/advocates/associates of the victim are

neglected and mal treated by the police and not given the proper information desired by them. The monetary relief provided by the SC/ST (Prevention of Atrocities) Act is not paid to the victims and many a times delayed. The charge sheet in the atrocity cases shall be filed within a period of 60 days but it exceeds the time limit in most of the cases.

### **Case Study:**

*Ms. Delta Meghwal resident of Barmer District, a Dalit minor girl was studying in the Bikaner residential school. On 28th March, 2016 the father of Delta Meghwal, Mr Mahendra Ram Meghwal, resident of village Trimohi, Gadra Road, Rajasthan left his daughter at the Girls Hostel after the Holi vacation. Around 8 O' clock, in the evening, Ms Delta called her father up and informed him that accused Vijendra Singh, who is a PTI of Jain Girls Teachers Training Institute has sexually assaulted her with the help of Warden Priya Shukla and she did not want to be there anymore. On 29th March, 2016, around 1:30 PM, Mahendra Ram received a phone call from Nokha Police Station informing him about the death of his daughter Delta Meghwal. Despite the agitation, protest and regular advocacy with the State authority, the case was investigated in the line of suicide and not in rape and murder. Presently, the family of the deceased is striving for the justice.*

**Negligence in the Medical Examinations:** Most of the Dalit atrocity victims are not sent for the medical examination. The right facts are not mentioned in the reports. In some serious cases like sexual violence, the facts are being manipulated which led to the injustice to the victims. In age determination, the actual age is being manipulated under the influence of the powerful perpetrators. Because of the undue pressure from the all corners, the medical

examination of the rape victim is delayed with a view to destroy the authentic evidences.

**Delay in recording statement under section 164 CrPC:** It is paradox that despite having a very progressive and strong law like SC/ST Act, the Dalit victims suffer injustice and anguish. With the intention to protect the perpetrators, the 164 CrPC statements do not take place in the Dalit atrocity cases. The police deliberately do not produce the victim before the magistrate to record the statement especially in the case of sexual violence. The Special Public Prosecutors do not assist the victims and they are misled by the police and powerful perpetrators to give the statement in the favour of the perpetrators.

**Removal of SC/ST Act from the Charge sheet:** The investigation Officer plays an important role in criminal justice. He has the power to establish the charges against the perpetrator. In the matter of SCs and STs Violence cases, the registration of the cases in the right Prevention of Atrocities Act section is extremely tough task. If the FIR is registered in the SC/ST Act, the manner in which the Investigation Officer takes this case further remains suspicious. In most of the cases, the IO removes the SC/ST Act from the charge sheet which changes the story. This makes the case out of the consideration in the Special Court and denies Dalit victim any benefit thereafter. Out of the 109 cases, the SC/ST Act is removed from the charge sheets in 4 cases.

**Section of the Amended Act in the Charge sheet:** It has been one year and two months since the Amended law came into force but the police still appear to be completely unaware of this. The FIRs are being registered in the old sections of the SC/ST (Prevention of Atrocities) Act. Similarly, the charge sheets are being filed in the old sections even today.

**Video Recording of the proceedings:** The Act provides the provision of video recording of all the proceedings under the Act but the implementing agencies appear indifferent towards this vital provision and ignore it at large.

## Trial and conviction

Public Prosecutors play the major role in presenting and arguing the case on behalf of Dalit victims and to decide the matter. However, the majority of Public Prosecutors are non-Dalits and sometimes their role is considered as dubious. Cases are made weak on technical grounds and the judgment given is often in favour of the non-Dalit perpetrators. This is only because the Public Prosecutors willfully do not seem to argue the cases properly, take interest in the cases, the victims and witnesses are not produced on time in the courts for the statements. It has also been observed that Public Prosecutors join hands with the perpetrators and weaken the case. The important facts of the cases are not produced before the courts which help to increase the acquittal rate in the Dalit atrocity cases. The offence is proved under the ordinary sections of the IPC instead of Prevention of Atrocities Act and conviction is being done under sections of IPC. In some cases the Public Prosecutors even fail to establish that the victim belongs to Scheduled Caste or deliberately do not produce the caste certificate before the court. The Public Prosecutors do not file the application in the court regarding security and protection to the victims and their family. The next dates of hearing are also not intimated to the victims which results in the absence of the victims in the courts.

**Acquittal and the Conviction:** When analyzing the data on acquittals and convictions, one finds that the cases that had witnesses turning hostile ended more in acquittals than others, as did the cases that faced the regular absence of witnesses. The

victims themselves often recanted their statements out of fear of the perpetrators' retaliatory attacks while out on bail or at the end of trial. This is especially the case since most atrocities cases result in acquittal, or because of threats from the perpetrators' dominant caste community. According to NCRB out of 13811 cases trail were completed merely in 1251 cases out of which accused are convicted in 514 case and acquitted in 674 case. Thus pendency is more than 90 percent.

### Reasons for low conviction ratio and high pendency of cases in courts:

- Non-existence of Special Courts is one of the important reasons of high pendency.
- Designated Courts overburdened: The existing Designated Courts are already overburdened with case other than SC/ST cases; hence, the cases under the prevention of Atrocities Act are not given priority.
- No use of the power to take cognizance of cases: By virtue of section 14(1) of the Amendment Act, the Special Court and Exclusive Special Court have the power to directly take cognizance of the offences under this Act but in practical, no cognizance has been taken so far by the any Special Court.
- Delay in trial: Trial of the cases is not conducted on a daily basis or in a speedy manner in the Special Courts.
- Connected cases are not tried in the same court: The counter cases filed in retaliation to the original complaint by the victim of atrocities are often tried in different courts. Advocates therefore inform about the proceedings of the regular court to the Special Court and take adjournments. Additionally, the courts sometimes wait for the orders of other courts, which finally delay the trial. It is important for the actual facts of the case to be made known if the trial of counter cases is to be conducted in the same court.



- The establishment of Exclusive Special Courts has not brought about any significant change in the expeditious finalization of atrocity cases.
- The workload of judges, prosecutors, investigating officers and court administrative staff, and the delay in finalizing cases, bear a high correlation.
- The insufficient allocation of funds affects the infrastructure facilities available, which in turn affect the speedy trial of cases.
- The irregular and delayed allocation of financial resources to witnesses affects the attendance of witnesses in the courts.

## Relief and Compensation

### What Prevention of Atrocities Act and Rules Say

#### **Rule 11: Travelling allowance, daily allowance, maintenance expenses and transport facilities to the victim of atrocity, his or her dependant and witnesses –**

- (1) *Every victim of atrocity or his/her dependent and witnesses shall be paid to and fro rail fare by second class in express/mail/passenger train or actual bus or taxi fare from his/her place of residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.*
- (2) *The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the investigating officer, Superintendent of Police / Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate.*
- (3) *Every woman witness, the victim of atrocity or her dependents being woman or a minor, a person more than sixty years of age and person having 40 percent, or more disability shall be*

*entitled to be accompanied by an attendant of his/her choice. The attendant shall all be paid travelling and maintenance expenses as applicable to the witness or the victim of the atrocity when called upon during hearing, investigation and trial of an offence under the Act.*

- (4) *The Witness, the victim of atrocity or his/her dependent and the attendant shall be paid daily maintenance expenses for the days he/she is away from the place of his/her residence stay during investigation, hearing and trial of the offence, at such rates but not less than the minimum wages, as may be fixed by the State Government for the agricultural laborers.*

**Rule 12: Measures to be taken by the District Administration –**

- (4) *The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the schedule annexed to these Rules. Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other necessary essential items.*

The experiences related to the TA/DA in the Dalit atrocity matters: As per the Rule 11 of the SC/ST Amendment Act 2015, the Dalit victims and witnesses are entitled to receive the travel allowance and daily allowance but it is learnt that this provision is not being properly implemented. There are various reasons came into the light behind the non implementation of this provision. As the Dalit victims are not aware of this right, the concerned authorities are also unaware of this entitlement if aware they are proved apathetic and neutral towards the Dalit benefit; when the Dalit victims are called by the investigating officers, the information is not given in writing, therefore, in the dearth of the documentary evidences, the claim for the TA and DA become difficult. The insensitivity of

State Government towards the proper propagation and creation of awareness among the Dalit folks of the provisions of the PoA Act and the Dalits are also tangled into the complex legal procedures etc.

## Observations

- In many cases victims of atrocities are not paid compensation at all as prescribed under the Rules. Additionally, in many cases the compensation paid is not proper as prescribed by Rules.
- Compensation is not provided at each and every stage – i.e. registration of FIR, filing of charge sheet and conviction.
- Release of the compensation amount to victims of atrocities is delayed for a long time, or this amount is released only after some amount or percentage of the actual compensation is given as bribes to government officials.
- The government administration is not conducting an enquiry, thereby evading its duty to give relief and compensation to victims, and instead making false promises to give compensation and delaying in distributing cash compensation.
- The district administration ignores social boycotts of Scheduled Castes. These boycotts lead to denial of employment and access to basic necessities like ration shop goods, refusal to buy or sell any goods in the village, etc., to pressure Scheduled Castes into submission and cause intense suffering to them, though no physical violence may take place in the process. The attitude of District Administration in such situations usually ranges from indifference to negligence.
- Victims are not given employment as per the Rules.
- Monthly pensions are not given to the wife of the deceased Dalit victims of atrocities as per the Rules.

- In cases of destruction of houses, brick/stone masonry houses not provided to the victims.
- Victims are not paid travelling allowances and maintenance expenses for their visits to police stations and courts during investigation and the trial.
- Victims are not paid medical expenses immediately after the atrocity.
- In the matter of grave physical injuries, the medical treatment is not being provided by the State as per the Act.

# Preventive Mechanism and Its Implementation

## Declaration of Atrocity-Prone Areas

### What the Act and Rules Say

#### **Section 17: Preventive action to be taken by the law and order machinery**

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

**Declaration of the Atrocity Prone Areas:** As mentioned in above Rule, all state governments are mandated to identify atrocity-prone areas and thereafter to prepare a plan of action for eliminating untouchability practices and reducing incidents of violence. A positive step to check the occurrence of atrocities is to identify atrocity-prone areas and take preventive measures so that incidents of atrocities do not occur in those areas. Till the date,

Rajasthan has identified 17 Districts out of the 33 Districts as atrocity prone, but have not publically declared any District/areas as such. It is generally seen that the districts where the violence and atrocity against the Dalits by the dominant caste people become the tendency, those Districts and areas are not being declared yet as the atrocity prone areas. In declared areas, neither the awareness camps nor meetings are conducted by the State Government and Administration.

**Increase of atrocity incidents in atrocity prone areas:** The geographical distribution of atrocities against SCs/STs may provide an idea of the areas/locations which are particularly prone to such incidents. Taking the preventive and precautionary measures to control the increasing incidents of the atrocity in the atrocity prone areas are important provisions of the Act. However, owing to the non implementation and ineffective implementation of the provisions, nothing has changed at ground in atrocity prone areas.

## Accountability Mechanism

### What the Act and Rules Say

**Rule 17 (1) - In each district within the state, the District Magistrate shall set up a district-level vigilance and monitoring committee to review:**

- The implementation of the provisions of the Act,
- The relief and rehabilitation facilities provided to the victims and other matters connected therewith,
- The prosecution of cases under the Act,
- The role of different officers/ agencies responsible for implementing the provisions of the Act, and
- The various reports received by the District Administration.

**Rule 17 (2) - The district-level vigilance and monitoring committee shall consist of:**

- The elected Members of Parliament and State Legislative Assembly and Legislative Council,
- The Superintendent of Police,
- The three Group 'A' Officers/ Gazetted Officers of the State Government belonging to the Scheduled Castes and the Scheduled Tribes,
- Not more than 5 non-official members belonging to the Scheduled Castes and Scheduled Tribes and not more than 3 members from the categories other than Scheduled Castes and Scheduled Tribes having association with non-government organizations.

**Rule 17 (iii) - The District-level committee shall meet at least once in three months.**

**(i) Formation of DVMC:** In Rajasthan, the District Level Vigilance and Monitoring Committees have been constituted in all Districts. The new public representatives have been elected but the reconstitution of the DVMC does not take place. It is observed that DM appoints the political representatives as member of the committee avoiding the social workers. The provisions of this important Rule are not being implemented effectively and honestly. And the most disappointing factor is that the members of these committees are not known to their jurisdiction and proceedings of the meetings.

**(ii) Committee Meeting:** The Rule that the District Magistrate should conduct the DVMC meetings at least once in three months is widely flouted.

CDR filed RTIs in all the District Welfare Officer (Member

Secretary of each Committee) to get the information regarding the number of the meetings of the DVMC in a year, the number presented members, and information related to the participation of MLAs/MPs and NGO's representatives. We received the responses from the 11 Districts. The meeting details are given below for the year of 2016.

**(a) DVMC meetings conducted during 2016**

S.No	District	Date of the DVMC meeting	Number of the members present	Number of the MP and MLA	Representation of NGO's
1	Jhunjhunu	8 Feb 2016	5	None	No
		25 May 2016	5	1 MLA	No
		11 Jun 2016	6	None	No
2	Bhilwara	03 Feb 2016	3	None	No
3	Kota	15 Mar 2016	5	None	No
4	Churu	06 Jun 2016	3	None	No
		08 Sep 2016	7	None	4
		09 Nov 2016	3	None	No
5	Karauli	16 May 2016	3	None	No
		12 Aug 2016	6	None	5
6	Sri Ganga Nagar	26 Feb 2016	3	None	No
		24 Jun 2016	4	None	No
		29 Sep 2016	9	1 MLA	1
7	Tonk	13 Apr 2016	3	None	No
		19 Oct 2016	6	None	No
8	Dausa	10 Jun 2016	4	None	No
		11 Aug 2016	5	None	No
		10 Nov 2016	4	None	No
9	Hanuman Garh	21 Jun 2016	5	None	No
		29 Aug 2016	6	None	No
10	Nagore	19 Jan 2016	3	None	No



		13 Apr 2016	5	None	No
		28 Jul 2016	6	None	1
		20 Oct 2016	4	None	No
11	Bundi	20 Jan 2016	7	None	No
		17 Feb 2016	7	None	No
		15 Mar 2016	8	None	No
		18 Apr 2016	6	None	No
		16 May 2016	6	None	No
		15 Jun 2016	6	None	No
		15 Jul 2016	5	None	No

The objective of the DVMC meeting is to review the compensation paid to the Dalit victims and the other important assistance and security provided to them, to review the role of different officials, stages of the cases etc. According to the information obtained through RTI, participation of Public representation is insignificant in the DVMC and the NGOs are widely neglected.

**(b) Intimating the information about the meetings:**

The members are not informed formally in writing instead they are called over phone. The meetings are not conducted regularly because of the lack of the monitoring of the DVMC.

**(c) Irregularity of meetings:**

There are irregularities in organizing the meetings of the DVMC. As per the sub rule 3 of the Rule 17 of the Act 1989, the four meetings are mandatory to be held in one year but it is not implemented effectively. In Bhilwara and Kota Districts, the meeting was conducted once in a year. Karauli, Tonk and Hanumangarh are the Districts where two meetings were organized in a year. In Jhunjhunu,

Churu, Shriganganagar and Dausa, three meetings were conducted in the year 2016. Nagaur is the District where four meetings were conducted in a year and Bundi organized 7 meetings of the DVMC. Compensation, investigation and arrest are not discussed in the meetings. The concerned officials refuse to sanction the compensation.

**(d) Representation of the MP's and MLA's:**

According to the sub rule (2) of the Rule 17 of the Act, there is a provision of representation of the MP's and MLA's in the meetings of DVMC. MLA's and MP's never participated in the meetings of DVMC except Jhujhunu and Shriganganagar Districts.

**(e) Representation of the NGO's:**

As per the sub rule (2) of the Rule 17 of the Act, there is a provision of the representation of NGO's in the meetings of the DVMC but in practicality, 31 meetings of DVMC took place in 11 Districts of the State in the period of one year but only 11 members were from the NGO.

**(iii) Agenda of the meetings:** As per the above-mentioned Rule, the DVMC meetings should review the implementation of the provisions of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, the role and functioning of different officers/agencies responsible for implementing the provisions of the Act and various reports received by the district administration. However, none of the meetings discussed these matters.

**Observations:**

- Although DVMCs have been constituted in few districts in Rajasthan, no regular meetings have been held.

- Even when DVMCs have been constituted, hardly any substantive issues are discussed. No attempt is made to bring reputed social workers in their deliberations.
- Although mandated by the Rules, the meetings do not have proper agenda, or they have only limited agenda, to discuss. The members hardly ever discuss the status of prosecution of atrocity cases. Most of the meetings have focused only on the relief and rehabilitation measures and not on the process of investigation; nor have the meetings examined the charge sheet details of the cases which, if done seriously, can lead to immediate prosecution.
- Despite discussing relief and rehabilitation measures, DVMC did not ensure complete provision of relief and rehabilitation measures.
- No review is done of the cases discussed in previous meetings and no follow up is made on the directions given in previous meetings.
- No discussions take place regarding the roles and performance of officers like Welfare Officers, Public Prosecutors, Superintendents of Police, etc.
- The meetings are neither announced in advance, nor properly intimated to the members.
- In certain cases, in spite of intimation, many members do not have any interest in attending these meetings.
- Mostly meetings are not chaired by the District Magistrate and sometimes these officials are continuously absent from the meetings.
- In some districts, the district authorities could not even produce the list of members of the DVMC Committees.
- Many of the members of the Committees are not even aware of their membership.
- Members are mostly unaware of their roles and responsibilities. Consequently, many members are not

able to raise questions in the meetings on the status of implementation of the Act.

- Committees are also not visible and, therefore, are not accountable to the public and various sectors of civil society who are concerned to see the Act implemented.
- The DVMCs rarely attempt to interact with human rights activists and groups, and NGOs working with and for SCs and STs, in order to become informed about atrocities and the status of implementation of the Act and Rules on the ground.

## State Level Vigilance and Monitoring Committee

### What the Act and Rules Say

**Rule 16 (1): The State Government shall constitute high power state-level vigilance and monitoring committee of not more than 25 members consisting of the following:**

- Chief Minister/Administrator-Chairman (in case of a State under President's Rule Governor- Chairman)
- Home Minister, Finance Minister and Welfare Minister-Members (in case of a State under the President's Rule Advisors Members);
- All elected Members of Parliament and State Legislative Assembly and Legislative Council from the State belonging to the Scheduled Castes and the Scheduled Tribes- Members;
- Chief Secretary, the Home Secretary, the Director-General of Police, Director/ Deputy Director, National Commission for the Scheduled Castes and the Scheduled Tribes-Members;
- The Secretary in-charge of the welfare and development of the Scheduled Castes and the Scheduled Tribes- Convener.

**Rule 16 (2):** The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act, scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of section 15A of Chapter IV A of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers or agencies responsible for implementing the provisions of the Act and review of various reports received by the State Government including that of the nodal officer and Special officer.

Rule 16 mandates every state government to set up a state-level Vigilance and Monitoring Committee for the purpose of monitoring the implementation of the Act. This Committee tracks the status of cases registered under the Act, reviewing the relief and compensation measures provided to the victims, and evaluating the role and performance of different officers and agencies responsible for implementing the Act.

**(i) Formation of the Committee:** The State level Committee has been formed in Rajasthan.

**(ii) Reconstitution of the Committee:** As per provisions of the Act, State Vigilance Committees get dissolved at the time of elections in the respective states/UTs and then are reconstituted soon after the election of the new Members of Parliament, the State Legislative Assemblies and State Legislative Councils. Regarding Rajasthan State, the Committee has not been reconstituted in the tenure of the present Government.

**(iii) Committee Meeting:** The Committee is supposed to meet at least twice in a calendar year, in the months of January and July, to review the implementation of the provisions of the Act. However, as per the information received from the RTI, regular

meetings of the SMVC have not taken in Rajasthan and conducted under the chairmanship of Minister of Social Welfare as authorized by the Chief Minister of Rajasthan.

## Observations

- No meeting of SVMC has been convened for last five years at all.
- The Committees in Rajasthan has been constituted, hardly any substantive issues have been discussed and its transactions have not been transparent. No attempt has been made to develop a deliberative process that includes those working for and with SCs/STs, with a view to obtaining useful information for taking meaningful decisions. This lacuna obviously prevents any serious follow-up action with help from these stakeholders.
- The Committee is not reconstituted with newly elected members after the elections in the State as required.
- Committee does not have the proper composition of members, as per requirements of the Rule.
- In Rajasthan, the meetings are not headed by the Chief Minister rather the Minister of Social Justice and Empowerment is being authorized to head the meeting.
- No proper information about the meetings is circulated among the Committee members.
- None of the meetings have the agenda as per the Rule. Instead, the discussions focus mainly on the limited agenda of relief and compensation and not on such important issues as the prosecution of cases as per the mandate of the Act.
- The reports of the meetings are either not published for the benefit of the public or, if published, they do not contain proper information.

### ***Non-functioning of SVMC***

While the setting up of the State-level Vigilance and Monitoring Committees is a good start, their functioning has not been visible and transparent, and their performance has been minimal at best.

- The level of atrocities in the states has not decreased since the passage of the Act. While the number of cases registered under the Act continues to increase, the disposal rate (conviction/acquittal) is consistently poor.
- Effective preventative measures to control the atrocities have not been taken seriously, adequately and promptly, as is evidenced by the consistent increase in the number of cases of atrocities since the promulgation of the Act.
- Public servants continue to deliberately sabotage the Act without fear of being prosecuted under sec. 4 of the Act, as no punishment is meted out through departmental disciplinary action.

## Sub Division Level Vigilance and Monitoring Committee

What the Act and Rules Say

### **Rule 17 A: Constitution of Sub-Divisional Level Vigilance and Monitoring Committee-**

- (1) *In each Sub Division within the State, the Sub Divisional Magistrate shall set up a vigilance and monitoring committee in his sub-division to review the implementation of the provisions of the Act, {scheme for the rights and entitlements of the victims and witnesses in accessing justice, as specified in sub-section (11) of section 15A of Chapter IV A of the Act}, relief and rehabilitation facilities provided to the victims and other matter connected therewith, prosecution of cases under the Act, role of different*

*officers/agencies responsible for implementing the provisions of the Act and various reports received by the Sub-Division Administration.*

- (2) *The Sub-Division level vigilance and monitoring committee shall consist of Member of State Legislative Assembly and State Legislative Council from the sub-division, elected members of Panchayati Raj Institutions belonging to the Scheduled Castes and Scheduled Tribes, Deputy Superintendent of Police, Tehsildar, Block Development Office, not more than two non-official members belonging to the Scheduled Castes and Scheduled Tribes, and not more than two members from the categories other than the Scheduled Castes and Scheduled Tribeshaving association with the Government Organization.*
- (3) *The Sub-Division Magistrate shall be the Chairperson and the Block Development Officer, the Member Secretary, respectively of the sub-division level vigilance and monitoring committee.*
- (4) *The Sub-division level vigilance and monitoring committee shall meet at least once in three months.*

Rule 17A mandates every state government to set up a Sub-Divisional level Vigilance and Monitoring Committee at each sub division to monitor the implementation of the Act. In specific terms, this Committee has the tasks of tracking the position and prosecution of cases registered under the Act, reviewing the relief and compensation measures provided to the victims, and evaluating the role and performance of different officers and agencies responsible for implementing the Act.

**(iv) Formation of the Committee:** Even after the numerous representations submitted before the State and concerned departments, no action has been taken so far for constitution of the Sub-Divisional Level Monitoring and Vigilance Committee even after more than three years of its order.



# Nodal Officers and Special Courts

## What the Act and Rules Say

### **Rule 9: Nomination of Nodal Officer**

*The State Government shall nominate a nodal officer of the level of a Secretary to the Government preferably belonging to the Scheduled Castes or the Scheduled Tribes, for coordinating the functioning of the District Magistrates and Superintendent of Police or other officers authorized by them investigating officers and other officers responsible for implementing the provisions of the Act.*

*By the end of the every quarter, the nodal officer shall review;*

- (i) The reports received by the State Government under sub-rules (2) and (4) of rule 4, rule 6, Cl. (xi) of rule 8;*
- (ii) The position of cases registered under the Act;*
- (iii) Law and order situation in the identified area;*
- (iv) Various kinds of measures adopted for providing immediate relief in cash or kind or both to the victims of atrocity or his or her dependent;*
- (v) The adequacy of immediate facilities like rationing, clothing, shelter, legal aid, travelling allowance, daily allowance and transport facilities provided to the victims of atrocity of his/her dependents;*
- (vi) The performance of non-governmental organizations, the SC/ST Protection Cell, various committees and the public servants responsible for implementing the provisions of the Act.*
- (vii) Implementation of the rights of victims and witnesses specified under the provisions of Chapter IVA of the Act.*

**(i) Nomination of Nodal Officer:** Rajasthan has nominated Nodal Officers to coordinate the functioning of the District Magistrates and Superintendent of Police or other officers

authorized by the State as investigating officers and other officers responsible for implementing the provisions of the Act.

**(ii) Status of Nodal Officer:** As per Rule, the Nodal Officer should be the rank of Secretary preferably of schedule caste. Secretary of Rural and Panchayati Raj Development Department has been appointed as nodal officer in the state.

**(iii) No periodic Review:** As per the Rule, by the end of every quarter, reviews must be conducted. However, periodic reviews are not conducted in the state.

**(iv) Report of Nodal Officer:** The report of the Nodal Officer is important as it contains a summary of the information of three reports -supervision of prosecutions, ground investigations, and on monthly reports of the SC/ST Protection Cells – including the position of cases registered under the Act, the law and order situation and the preventative measures, compensation paid and relief measures provided, instances of willful negligence by public servants, etc. The reality is that the monthly reports that are supposed to be submitted by the PCR Cell and the District Collectors don't contain these issues. Moreover, the biannual reports of the District Collector and Director of Prosecution on the performance of the Special Public Prosecutors are also not being submitted periodically to the Nodal Officer in Rajasthan.

**(v) Improper Report:** The Nodal Officers have not been reporting periodically to the state government as per the Rule. Even when they have submitted their reports, it fails to quote the actual number of crimes against SCs/STs.

# Designated and Exclusive Special Courts

## What the Act and Rules Say

### **Sec. 14. Special Court:**

*For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette establish an Exclusive Special Court for one or more District:*

- *Provided further that the courts so established or specified shall have the power to directly take the cognizance of the offences under the Act.*

*14(3) In every trial in the Special Court or the Exclusive Court, the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the special court or the exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:*

- *Provided that when the trial relates to an offence under this Act the trial shall as far as possible, be completed within a period of two months from the date of filing the charge sheet.*

**(i) Existence of Special Courts:** In Rajasthan, Exclusive Special Courts have been set up in 17 out of 33 Districts.

**(ii) No Speedy Trial through Special Courts:** Even after the Special Courts have been set up in atrocity prone Districts in Rajasthan, there are still a huge number of pending cases before these courts. This vitiates the right of the victims to a speedy trial. Recently, the Government give the additional responsibility to Special Court to try the cases of POCSO Act. Thousands of cases are being transferred to Special Court and purpose of the Special Court has been defeated.

**(iii) Power to take Cognizance:** The Special Courts have the power to take cognizance of violence under this Act, but not a single Special Court has taken any cognizance of atrocity cases in the State.

Observations:

- The establishment of Exclusive Special Courts has not brought about any significant change in the expeditious settlement of atrocity cases.
- State failed to enable the Special Courts to function properly.
- Court faces huge pendency and backlog vacancies.
- The insufficient allocation of funds affects the infrastructure facilities at Special Courts, which in turn affect the speedy trial of the cases.
- The irregular and delayed allocation of financial resources affects the attendance of witnesses in the courts.

## Panel of Special Public Prosecutors and Eminent Advocates

### What the Act & Rules Say

**Section 15:** *For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.*

### **Rule 4: Supervision of prosecution and submission of report**

- (1) *The State Government on the recommendation of the District magistrate shall prepare for each District a panel of such number of eminent Senior Advocates who have been in practice for not less than seven years, as it may deem necessary for conducting*

*cases in the Special Courts and Exclusive Special Courts.. Similarly, in consultation with the Director of Prosecution/in-charge of the prosecution, a panel of such number of Public Prosecutors as it may deem necessary for conducting cases in the Special Courts, shall also be specified. Both these panels shall be notified in the Official Gazette of the State and shall remain in force for a period of three years.*

- (2) The District Magistrate and the Director of Prosecution/ in-charge of the prosecution shall review at least twice in a calendar year, in the months of January and July, the performance of Special Public Prosecutors so specified or appointed and submit a report to the State Government.*
- (3) If the State Government is satisfied or has reason to believe that a Special Public Prosecutor so appointed or specified has not conducted the case to the best of his ability and with due care and caution, his name may be, for reasons to be recorded in writing, de-notified.*
- (4) The District Magistrate and the officer in-charge of the prosecution at the District level, shall review the position of cases registered under the Act; the implementation of the rights of victims and witnesses, specified under the provisions of Chapter IV-A of the Act and submit a monthly report on or before 20th day of each subsequent month to the Director of Prosecution and the State Government. This report shall specify the actions taken / Proposed to be taken in respect of investigation and prosecution of each case.*
- (5) Notwithstanding anything contained in sub-rule (I), the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity, engage an eminent Senior Advocate conducting cases in the Special Courts on such payment of fee as he may consider appropriate.*
- (6) Payment of fee to the Special Public Prosecutor shall be fixed by the State Government on a scale higher than the other penal advocates in the State.*

**(i) Appointment of Special Public Prosecutors:** In Rajasthan, the Special Public Prosecutors have been appointed.

**(ii) Panel of Public Prosecutors:** As per the Rule, the state government, on the recommendation of the district magistrate, prepares a panel of certain number of eminent senior advocates in each district in the Special Courts. Rajasthan has the panel of the eminent senior advocates.

**(iii) Challenges in implementation of Section 15 of the Act**

- Victims and witnesses are not informed by Public Prosecutors: There is lack of information to the victims and witnesses by given the Public Prosecutors.
- Public Prosecutors in hurry: Public Prosecutors do not give sufficient and adequate time to the victims to listen to their view on atrocity cases.
- Lack of communication with the victims: There is lack of communication with the victims/witnesses about the date and time of trial.
- Inefficient public prosecutor: Special Public Prosecutors are not efficient in dealing with evidence substantiating the elements of the offences and other provisions of the Act.
- Lack of SC/ST advocates: Special Courts do not have a fair proportion of SC/ST Prosecutors who can perform their duty to protect the rights of SCs/STs.
- Overburdened Public Prosecutors: Public Prosecutors are overburdened with regular cases. Hence, they are unable to give priority to cases registered under the Act.
- No provision for Assistant Public Prosecutors: There is not any provision for Assistant Public Prosecutors in these cases to help the Special Public Prosecutors before the hearing

## Observations:

- Special Public Prosecutors are appointed in the states, but not in all the districts as mandated by the Act.
- Senior Advocates are not included in the panel instead, Special Public Prosecutors are assigned to attend to atrocity cases on ad-hoc basis.
- Special Public Prosecutors are appointed in the states even where Special Courts have not been constituted.
- Special Public Prosecutors appointed to handle atrocity cases are not much experienced.
- The appointment of Special Public Prosecutors is often influenced by political considerations.
- Special Public Prosecutors have not been conducting the prosecution of cases under the Act vigorously and conscientiously.
- Special Public Prosecutors help the accused by not adequately scrutinizing papers before putting up challans in the court,
- Special Public Prosecutors pressurize the victims to compromise for monetary gains.
- Special Public Prosecutors collude with defense lawyers to dilute atrocity cases.
- Certain important witnesses are not examined at the time of trial by the Special Public Prosecutors.
- Special Public Prosecutors do not brief victims and witnesses before and during trials.
- Special Public Prosecutors do not giving sufficient time to listen to and guide the victims and witnesses.
- Special Public Prosecutors do not give proper information to victims/witnesses regarding the dates and times of trials.
- Special Public Prosecutors do not ask the critical questions that establish atrocities as untouchability related discrimination and violence.
- Despite the Act being clear, Special Public Prosecutors

tend to argue that the provisions of the Act and Rules requiring investigation by senior police officers are only recommendatory and not mandatory.

## The Rights and Entitlements of the victim and Witnesses in the amended SC/ST Act and Rules

### What the Rule Says

#### **Section 15A.**

- (1) *It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.*
- (2) *A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.*
- (3) *A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.*
- (4) *A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.*
- (5) *A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.*



- (6) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses-complete protection to secure the ends of justice, the travelling and maintenance expenses during investigation, inquiry and trial, the social-economic rehabilitation during investigation, inquiry and trial; and relocation.*
- (7) *The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.*
- (8) *Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own take such measures including concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public, issuing directions for non-disclosure of the identity and addresses of the witnesses, take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection*
- (9) *It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.*
- (10) *proceedings relating to offences under this Act shall be video recorded.*

- (11) *It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the rights and entitlements of victims and witnesses in accessing justice so as—*
- (a) to provide a copy of the recorded First Information Report at free of cost; 2 of 1974.*
  - (b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;*
  - (c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;*
  - (d) to provide relief in respect of death or injury or damage to property;*
  - (e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;*
  - (f) to provide the maintenance expenses to the atrocity victims and their dependents;*
  - (g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;*
  - (h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;*
  - (i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;*
  - (j) to take necessary precautions at the time of medical examination;*
  - (k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;*
  - (l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;*
  - (m) to give adequate briefing on the case and preparation*

*for trial to atrocity victims or their dependents or associated organizations or individuals and to provide the legal aid for the said purpose;*

*(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.*

*(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organizations, social workers or advocates.*

It is learnt from our experience that the rights of the victim and witnesses are widely violated by the State authorities. The victim and witnesses of the violence under this Act obtains the following rights in the Amendment Act-

- It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.
- A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.
- A victim or his dependent file written submission on conviction, acquittal or sentencing
- All proceedings relating to offences under this Act shall be video recorded
- It shall be the duty of the concerned State to provide a copy of the recorded First Information Report at free of cost, immediate relief in cash or in kind
- To provide information to atrocity victims or their dependents or associated organizations or individuals, on

the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost

- To provide information to atrocity victims or their dependents or associated organizations or individuals, regarding the relief amount
- To provide information to atrocity victims or their dependents or associated organizations or individuals, in advance about the dates and place of investigation and trial
- To give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organizations or individuals and to provide the legal aid for the said purpose
- To execute the rights of atrocity victims or their dependents or associated organizations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.
- It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organizations, social workers or advocates.

# Conclusion and Recommendations

Dalits are facing discrimination and exclusion at all levels in the State. Government machinery, law enforcement agencies and judiciary all have failed to provide protection to the dalit communities. Social legislations and acts are not implemented in letter and spirit. Although SC/ST (Prevention of Atrocities) Amendment Act 2015 is new but does not offer any hope. This Amendment Act is also not executed well in the State. Some suggestions for better implementation of the Act are given below -

- 1. Setup the Special Courts:** the Special Courts must be setup in each District of the state to speed-up the trial. These courts should be dedicated to dalit atrocity cases and dispose the matter within the time frame on the priority basis and they should not hear other general matter.
- 2. Appoint the senior lawyers as Public Prosecutors:** Senior advocates should be appointed as Public Prosecutors.
- 3. Strengthen the State and District Authority:** For the effective implementation of the Act and to monitor its status, State and District Authorities should be established. Monitoring and Vigilance Committees should be constituted immediately in districts and sub districts level.
- 4. Make the investigation mandatory by police officer not below the rank of DSP:** Investigation of atrocities against dalits must be done by Investigating Officers of the rank not below the Deputy Superintendent of Police (DSP) within 60 days time period.

5. **Ensure the video recording of proceeding:** The Act mandates conducting the video recording of the proceedings but in very few cases, this provision is being implemented. This vital provision should be strictly implemented in each case to ensure the justice to the dalit victim.
6. **Check the impunity of police officers:** Section 4 of the Act has not been implemented to curb the illegal and undesirable acts of the police which create hindrance in the effective enforcement of the Act. It should be ensured that the public servants who neglect their duties under SC/ST Act must be punished under the section 4.
7. **Appoint the Judges in Special Court:** Vacant posts of the Judges in the Special Courts should immediately be filled.
8. **Sensitize the people of Dominant Caste:** The Standing committee for Social Justice under Gram Panchayat should carry out community harmony building programme and sensitize the people of dominant caste.
9. **Ensure the mandatory periodic reviews and meetings:** The Government officers concerned must submit the report as per the Act. District Magistrates should conducted monthly review of the status of cases registered under the Act and monthly submission of report to the Director of Prosecution and the State Government. DM is also mandated to conduct half-yearly review of the performance of Special Public Prosecutors and submission of report to the State Government. Director General of Police should conduct monthly review of the status of various provisions of the Act and Rules, and submission of monthly report on the action taken and proposed to be taken. Nodal officer should conduct quarterly review of the implementation of the various provisions of the Act and Rules.

## Status of the 109 cases of crimes against the Dalits from Jan. 2016- March

The table shows progress of the cases registered. It includes status of investigation, charge sheet, compensation, compromise, final report, arrest of accused etc.

	Status	No. of Cases
Investigation done by DSP	Done	97
	Not done	11
	Pending	1
Charge sheet Status	Filed	19
	Not Filed	2
	Pending	82
	Final Report (FR)	5
	Compromise	1
Case Compromised/ Closed	Not Closed	103
	Closed	5
	Compromised	1
Arrest of Accused	Arrested	18
	No arrested	90
	Compromise	1
Compensation	Paid	7
	Not Paid	102

Present Status	Under Trial	17
	Under investigation	86
	Closed	5
	Compromise	1







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