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**STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT
(2014 -15)**

(SIXTEENTH LOK SABHA)

**MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
(DEPARTMENT OF SOCIAL JUSTICE AND
EMPOWERMENT)**

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES
(PREVENTION OF ATROCITIES)**

AMENDMENT BILL, 2014

SIXTH REPORT



LOK SABHA SECRETARIAT

NEW DELHI

December, 2014/Agrahayana, 1936 (Saka)

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(PREVENTION OF ATROCITIES)
AMENDMENT BILL, 2014**

Presented to Lok Sabha on 19.12.2014

Laid in Rajya Sabha on 19.12.2014



LOK SABHA SECRETARIAT

NEW DELHI

December, 2014/Agrahayana, 1936 (Saka)

CONTENTS

		PAGE(s)
COMPOSITION OF THE COMMITTEE		(iv)
INTRODUCTION		(vi)
CHAPTER - I	INTRODUCTORY	1
CHAPTER - II	CLAUSE BY CLAUSE ANALYSIS OF 'THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT BILL, 2014.	7
CHAPTER - III	OBSERVATIONS AND RECOMMENDATIONS.	33

ANNEXURES

*I.	THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989.	40
*II.	THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT BILL, 2014.	50
III.	MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON TUESDAY, 30 TH SEPTEMBER, 2014.	67
IV.	MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 17 TH DECEMBER, 2014.	71

* [Will be available later on.](#)

**COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND
EMPOWERMENT (2014-2015)**

SHRI RAMESH BAIS - CHAIRMAN

**MEMBERS
LOK SABHA**

2. Shri Jasvantsinh Sumanbhai Bhabhor
- *3. Chh. Udayan Raje Bhonsle
4. Kunwar Bharatendra
5. Shri Dilip Singh Bhuria
6. Shri Santokh Singh Chaudhary
7. Shri Jhina Hikaka
8. Shri Prakash Babanna Hukkeri
- **9. Sadhvi Niranjana Jyoti
10. Shri Bhagwant Khuba
11. Shri Sadashiv Lokhande
12. Smt. Maragatham K.
13. Shri Kariya Munda
14. Prof. A.S.R. Naik
15. Shri Asaduddin Owaisi
16. Sadhvi Savitri Bai Phule
17. Dr. Udit Raj
18. Smt. Satabdi Roy
19. Prof. Sadhu Singh
20. Smt. Neelam Sonkar
21. Vacant

**MEMBERS
RAJYA SABHA**

22. Smt. Jharna Das Baidya
23. Shri Ahamed Hassan
24. Smt. Sarojini Hembram
25. Shri Prabhat Jha
- #26. Shri. Avtar Singh Karimpuri
27. Smt. Mohsina Kidwai
28. Shri Praveen Rashtrapal
29. Shri Nand Kumar Sai
30. Smt. Vijila Sathyananth
31. Smt. Wansuk Syiem

* Chh. Udayan Raje Bhonsle ceased to be a Member of the Committee w.e.f. 7.10.2014.

** Sadhvi Niranjana Jyoti ceased to be a Member of the Committee w.e.f. 9.11.2014 consequent upon her appointment as Minister.

Shri. Avtar Singh Karimpuri ceased to be a Member of the Committee consequent upon his retirement from Rajya Sabha w.e.f. 25.11.2014.

LOK SABHA SECRETARIAT

1. Shri Ashok Kumar Singh - Joint Secretary
2. Shri Ashok Sajwan - Director
3. Shri Kushal Sarkar - Additional Director

INTRODUCTION

I, the Chairman of the Standing Committee on Social Justice and Empowerment having been authorized by the Committee to submit the Report on their behalf, do present this Sixth Report of the Committee on "The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014" pertaining to the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment).

2. The Bill was introduced in Lok Sabha on 16.7.2014 and was referred to the Committee by the Hon'ble Speaker, Lok Sabha on 16.9.2014 under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) and Ministry of Tribal Affairs.

4. The Committee took oral evidence of the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) and Ministry of Tribal Affairs on 30.9.2014. The representatives of the Ministries of Law and Justice (Legislative Department) and Home Affairs were also present at the meeting held on 30.9.2014.

5. The Committee considered and adopted the Draft Report on "The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014" at their sitting held on 17.12.2014.

6. The Committee wish to express their thanks to the officials of the Ministries of Social Justice and Empowerment (Department of Social Justice and Empowerment), Ministry of Tribal Affairs, representatives of Ministry of Law and Justice (Legislative Department) and Home Affairs for their cooperation in placing before them their considered views and perceptions on the provisions of the Bill and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

7. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

**New Delhi;
17 December, 2014
26 Agrahayana, 1936 (Saka)**

**RAMESH BAIS,
Chairman,
Standing Committee on Social Justice and
Empowerment.**

REPORT

CHAPTER 1

INTRODUCTORY

1.1 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) {PoA} Act, 1989 (**Annexure-I**) came into force on 31 January, 1990 with a view to preventing atrocities against the members Scheduled Castes (SCs) and Scheduled Tribes (STs), to provide for Special Courts for the trial of such offences, and for the relief and rehabilitation of the victims of atrocities. The Act was widely acknowledged as a landmark legislation in the journey to end injustice, violence and atrocities against members of SCs and STs. Despite the deterrent provisions of the Act, atrocities against the members of SCs and STs continue at a disturbing level besides having high acquittal rates, low conviction rates and poor coordination between the enforcement authorities at the State and district level. As per the data of the National Crime Records Bureau (NCRB), the number of cases registered under the PoA Act in conjunction with the IPC, increased from 38,449 in 2010 to 46,114 in 2013. More so, the legal justice also remains difficult for a majority of the victims and the witnesses as they face hurdles virtually at every stage of the legal process – from registration, investigation and charge-sheeting of the cases. The pendency rate of such cases too increased from 79.1% in 2010 to 84.1% in 2013. The implementation of PoA Act, 1989 mainly suffers due to (i) procedural hurdles such as non-registration of cases; (ii) procedural delays in investigation, arrests and filing of charge-sheets; and (iii) delays in trial and low conviction rate.

As the Parliament was not in session, an immediate action was required to amend the PoA Act for providing necessary provisions therein to prevent the commission of offences of atrocities against the members of the SCs and STs, Government promulgated an Ordinance on 4th March, 2014 to amend the Act. Later on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 (**Annexure-II**), to amend the PoA Act, was introduced in the Lok Sabha on 16.07.2014.

1.2 The objects and reasons of the Scheduled and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 are as follows:-

- (i) to amend the long title of the Act so as to provide for the establishment of the “Exclusive Special Courts” in addition to the Special Courts for the trial of the offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes;
- (ii) to amend section 2 of the Act and insert certain new definitions like “economic boycott”, “Exclusive Special Court”, “forest rights”, “manual scavenger”, “public servant”, “social boycott”, “victim and witness”,
- (iii) to amend section 3 of the Act relating to “Punishments for Offences of Atrocities” so as to provide some more categories of atrocities in the said section for which the same punishment as provided in the said section may be imposed;
- (iv) to substitute section 4 of the Act relating to “Punishment for neglect of duties” so as to impose certain duties upon the public servant and to provide punishment for neglect of the duties specified in the said section;

- (v) to amend section 8 of the Act relating to “Presumption as to offences” and to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise;
- (vi) to substitute section 14 of the Act relating to “Special Court” so as to provide that the State Government shall, with the concurrence of the Chief Justice of the High Court, establish an Exclusive Special Court for one or more districts to try the offences under the Act;
- (vii) to amend section 15 of the Act relating to “Special Public Prosecutor” so as to insert a new sub-section requiring the State Government to specify an Exclusive Public Prosecutor or appoint an advocate as an Exclusive Special Public Prosecutor for the purpose of conducting cases in Exclusive Special Court; and
- (viii) to insert a new Chapter IVA relating to “Rights of Victims and Witnesses” to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence.

1.3 The salient features of the Scheduled and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 are :-

In addition to the 19 offences listed in the PoA Act, new offences have been incorporated like:-

- (i) Tonsuring of head, moustache, or similar acts which are derogatory to the dignity of members of SCs and STs, garlanding with chappals,
- (ii) Denying access to irrigation facilities or forest rights,
- (iii) Dispose or carry human or animal carcasses, or to dig graves, using or permitting manual scavenging,
- (iv) Dedicating SC and ST women as devadasi, hurting the modesty of a SC/ST woman by removing her garments, touching a women or use of words, acts or gestures of a sexual nature against women, perpetrating witchcraft atrocities,
- (v) Abusing in caste name, imposing social or economic boycott, preventing SC and ST candidates from filing of nomination to contest elections, forcing to leave house, village or residence, defiling objects sacred to SCs and STs,
- (vi) Before amendments in the PoA Act, only those offences listed in IPC as attracting punishment of 10 years or more and committed on members of SCs and STs were taken as offences falling under the PoA Act. As such number of commonly committed offences like hurt, grievous hurt, intimidation, kidnapping etc. got excluded from the PoA Act. This provided loopholes for the perpetrators of crime to escape from being punished for such crimes. To plug these limitations, a Schedule of list of such IPC offences has been provided in the Bill.
- (vii) Establishment of Exclusive Special Courts and Special Public Prosecutors to exclusively try the offences falling under the PoA Act, to enable speedy and expeditious disposal of cases.

- (viii) Power of Exclusive Courts to take cognizance of offence and completion of trial in 2 months. Courts so established or specified shall have power to directly take cognizance of offences under the PoA Act and the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.
- (ix) Addition of a chapter on the 'Rights of Victims and Witnesses'. The existing PoA Rules recognized a few rights of the victims and witnesses, which were insufficient. Therefore, many other essential rights have been covered in the Bill, so as to impose duty and responsibility upon the State for making arrangements for the protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence.
- (x) Defining clearly the term 'willful negligence' of public servants at all levels, starting from the registration of complaint, and covering aspects of dereliction of duty under the Act. Before amendments in the PoA Act, its Section 4 did not clearly define what constituted 'willful negligence' of public servants. Nevertheless, in the Bill, 'willful negligence' has been defined by listing specific transgressions of law, for example, police officers not putting down accurately in writing the victim's complaint, not reading out to the victims what had been recorded prior to getting their signature, not registering FIR under the Act, not registering it under appropriate sections of the Act; etc.

- (xi) Addition of presumption to the offences – If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.
- (xii) Appeals would ordinarily be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from. Nevertheless, the High Court may entertain an appeal after the expiry of ninety days but no appeal would be entertained after the expiry of the period of one hundred and eighty days. As far as possible such an appeal would be disposed of within a period of three months.

CHAPTER II

CLAUSE BY CLAUSE ANALYSIS OF 'THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT BILL, 2014

Amendment to Long Title

2.1 In the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the principal Act), in the long title, for the words “Special Courts”, the words “Special Courts and the Exclusive Special Courts” shall be substituted.

2.2 Under Section 14 of the Principal Act, a Court of Session at the district level is deemed a Special Court to provide speedy trial for offences. Under Section 15, a Special Public Prosecutor is appointed to conduct cases in this Court.

The Bill substitutes this provision and specifies provisions for speedy trial such as Exclusive Special Courts and Exclusive Public Prosecutors, day-to-day trial, cognizance of offences by courts, etc. under Section 14(1) and Section 14A(1). **Section 14(1)** is regarding establishment of Exclusive Special Courts with power to directly take cognizance of offences under this Act, disposal of cases within a period of two months as far as possible on day-to-day basis for the date of filing of the charge sheet. **Section 14A(1)** is regarding the procedure and disposal of appeals in the High Court within ninety days extendable to one hundred eighty days or satisfaction of the higher courts after the judgment, sentence or order. **Section 15** deals with appointment of exclusive Special Public Prosecutors for every Exclusive Special Court.

2.3 When the Committee sought to know the number of cases registered under PoA Act, 1989 in conjunction with the IPC in various States/ UTs during the years 2011, 2012 and 2013, the Ministry of Social Justice and Empowerment furnished the following data :-

S. No.	States/UT	Cases registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, in conjunction with the IPC.								
		2011			2012			2013		
		SC	ST	Total	SC	ST	Total	SC	ST	Total
1	2	3	4	5	6	7	8	9	10	11
1.	Andhra Pradesh	4006	802	4808	3048	666	3714	3264	672	3936
2.	Arunachal Pradesh	0	34	34	0	10	10	0	1	1
3.	Assam	0	2	2	4	0	4	8	0	8
4.	Bihar	3623	97	3720	4821	119	4940	6721	91	6812
5.	Chhattisgarh	253	336	589	262	344	606	242	331	573
6.	Goa	4	1	5	9	1	10	11	9	20
7.	Gujarat	1061	153	1214	1026	221	1247	1190	224	1414
8.	Haryana	408	0	408	252	0	252	493	0	493
9.	Himachal Pradesh	91	4	95	126	3	129	144	2	146
10.	Jharkhand	636	309	945	696	287	983	978	396	1374
11.	Karnataka	2473	281	2754	2594	373	2967	2555	521	3076
12.	Kerala	760	231	991	810	124	934	756	135	891
13.	Madhya Pradesh	3245	1284	4529	2875	1218	4093	2945	1296	4241
14.	Maharashtra	1133	321	1454	1086	307	1393	1657	407	2064
15.	Manipur	0	1	1	0	2	2	1	2	3

16.	Meghalaya	0	0	0	0	0	0	0	0	0
17.	Mizoram	0	0	0	0	0	0	0	0	0
18.	Nagaland	0	0	0	0	0	0	0	18	18
19.	Odisha	1455	484	1939	2265	688	2953	2592	790	3382
20.	Punjab	90	0	90	71	0	71	126	0	126
21.	Rajasthan	5177	1263	6440	5559	1351	6910	6475	1651	8126
22.	Sikkim	9	8	17	5	4	9	6	17	23
23.	Tamil Nadu	1379	23	1402	1638	27	1665	1844	23	1867
24.	Tripura	22	30	52	76	29	105	48	24	72
25.	Uttar Pradesh	7702	35	7737	6201	44	6245	7078	25	7103
26.	Uttarakhand	32	0	32	33	3	36	34	2	36
27.	West Bengal	59	41	100	85	91	176	115	122	237
28.	A & N Islands	0	7	7	0	4	4	0	1	1
29.	Chandigarh	2	0	2	2	0	2	4	0	4
30.	D. & N. Haveli	1	2	3	0	4	4	0	7	7
31.	Daman & Diu	0	0	0	0	0	0	1	1	2
32.	Delhi	28	0	28	44	0	44	52	0	52
33.	Lakshadweep	0	0	0	0	0	0	0	0	0
34.	Puducherry	3	0	3	4	0	4	6	0	6
	Total	33652	5749	39401	33592	5920	39512	39346	6768	46114

Note:- Act does not extend to State of Jammu & Kashmir. The above information is based on NCRB data.

2.4 When further asked to furnish State/UT-wise number of cases under the PoA Act in conjunction with the IPC, disposed by the courts during the years 2011, 2012 and 2013, the Ministry furnished the following information:

State/UT wise Number of cases under the PoA Act in conjunction with the IPC, disposed by courts during the years 2011, 2012 and 2013.

State/UT	Year	Number of cases:											
		in courts including brought forward		disposed off		ending in conviction		ending in acquittals		compounded or withdrawn		pending with the Courts at the end of the year	
		SC	ST	SC	ST	SC	ST	SC	ST	SC	ST	SC	ST
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Andhra Pradesh	2011	6445	1449	2185	512	256	41	1929	471	73	10	4187	927
	2012	5672	1274	1928	448	175	19	1753	429	243	5	3501	821
	2013	5151	1242	1817	536	138	18	1679	518	45	3	3289	703
Arunachal Pradesh	2011	2	283	0	21	0	16	0	5	0	1	2	261
	2012	2	276	0	8	0	4	0	4	0	2	2	266
	2013	2	267	0	0	0	0	0	0	0	0	2	267
Assam	2011	135	139	24	17	1	1	23	16	0	0	111	122
	2012	127	132	37	39	2	1	35	38	0	0	90	93
	2013	92	94	74	73	0	0	74	73	0	0	18	21
Bihar	2011	11476	245	1857	57	196	12	1661	45	0	0	9619	188
	2012	13830	328	1778	93	221	13	1557	80	145	12	11907	223
	2013	16515	285	1560	36	204	0	1356	36	67	3	14888	246
Chhattisgarh	2011	1488	245	395	57	109	12	286	45	18	0	1075	188
	2012	1291	1908	235	518	73	184	162	334	291	309	765	1081
	2013	1062	1421	204	211	75	69	129	142	6	5	852	1205
Goa	2011	8	1	2	0	0	0	2	0	0	0	6	1
	2012	11	2	1	0	0	0	1	0	0	0	10	2
	2013	25	3	1	1	0	0	1	1	0	0	24	2
Gujarat	2011	8805	1750	655	96	14	4	641	92	5	6	8145	1648
	2012	9141	1856	855	95	65	6	790	89	7	3	8279	1758
	2013	9386	1978	1160	159	29	8	1131	151	2	1	8224	1818
Haryana	2011	830	0	262	0	34	0	228	0	0	0	568	0
	2012	782	0	302	0	24	0	278	0	0	0	480	0
	2013	833	0	329	0	48	0	281	0	0	0	504	0

Himachal Pradesh	2011	228	2	34	0	2	0	32	0	2	0	192	2
	2012	284	7	32	3	3	0	29	3	18	0	234	4
	2013	339	5	53	0	9	0	44	0	5	0	281	5
Jharkhand	2011	1056	584	241	172	66	38	175	134	1	1	814	411
	2012	1087	568	263	117	58	40	205	77	7	7	817	444
	2013	1255	630	352	155	105	52	247	103	2	1	901	474
Karnataka	2011	7339	884	1504	169	105	7	1399	162	19	0	5816	715
	2012	7770	1002	1491	224	72	7	1419	217	3	1	6276	777
	2013	8425	1119	2037	218	71	4	1966	214	31	8	6357	893
Kerala	2011	1455	367	195	39	17	6	178	33	2	0	1258	328
	2012	1632	424	170	48	7	6	163	42	6	2	1456	374
	2013	1843	468	204	80	22	7	182	73	2	1	1637	387
Madhya Pradesh	2011	13227	4755	2826	119	891	301	1935	893	124	52	10277	3509
	2012	13110	4726	2580	104	911	409	1669	639	293	116	10237	3562
	2013	12997	4793	2402	108	767	310	1635	773	221	59	103374	3651
Maharashtra	2011	6333	2133	777	201	45	8	732	198	8	2	5548	1925
	2012	6475	2194	693	223	39	18	654	205	8	1	5774	1970
	2013	7063	2278	662	198	43	11	619	187	2	8	6399	2072
Manipur	2011	0	0	0	0	0	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	0	0	0	0	0	1
	2013	0	3	0	1	0	1	0	0	0	0	0	2
Meghalaya	2011	0	0	0	0	0	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0	0	0	0	0	0
Mizoram	2011	0	0	0	0	0	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0	0	0	0	0	0
Nagaland	2011	0	0	0	0	0	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0	0	0	0	0	0
	2013	0	4	0	0	0	0	0	0	0	0	0	4

Odisha	2011	7516	3133	1192	469	105	43	1087	426	0	0	6324	2664
	2012	7776	3159	1356	423	85	41	1271	382	0	0	6420	2736
	2013	8161	3416	1118	383	51	28	1067	355	0	0	7043	3033
Punjab	2011	230	0	43	0	9	0	34	0	0	0	187	0
	2012	218	0	43	0	6	0	37	0	0	0	175	0
	2013	241	0	74	0	13	0	61	0	0	0	167	0
Rajasthan	2011	11840	2423	1195	491	772	126	923	365	211	51	9934	1881
	2012	12107	2407	793	153	325	37	468	116	41	7	11273	2247
	2013	13700	2860	1815	52	844	10	971	42	207	3	11678	2805
Sikkim	2011	20	15	8	10	1	7	7	3	1	1	11	4
	2012	19	10	9	4	6	2	3	2	0	0	10	6
	2013	16	23	15	15	13	7	2	8	0	0	1	8
Tamil Nadu	2011	3653	74	797	6	293	0	504	6	0	0	2856	68
	2012	4030	102	670	15	119	0	551	15	0	0	3360	87
	2013	4624	99	843	7	106	1	737	6	0	23	3781	92
Tripura	2011	18	38	5	12	1	1	4	11	0	0	13	26
	2012	89	52	29	12	6	0	23	12	0	0	60	40
	2013	108	73	20	12	0	0	20	12	0	0	88	61
Uttar Pradesh	2011	25721	60	6523	8	384	6	2675	2	14	0	19184	52
	2012	23854	94	3593	5	184	2	1746	3	55	0	20206	89
	2013	25519	111	3267	10	176	4	1502	6	52	0	22200	101
Uttarakha nd	2011	175	0	42	0	26	0	16	0	0	0	133	0
	2012	147	1	44	1	24	0	20	1	0	0	103	0
	2013	125	2	47	0	22	0	25	0	0	0	78	2
West Bengal	2011	70	71	8	4	0	0	8	4	0	0	62	67
	2012	167	150	16	9	1	0	15	9	0	0	151	141
	2013	239	210	31	12	0	1	31	11	0	0	208	198
A & N Islands	2011	0	26	0	0	0	0	0	0	0	0	0	26
	2012	0	26	0	0	0	0	0	0	0	0	0	26
	2013		30	0	3	0	3	0	0	0	0	0	27

Chandigarh	2011	4	0	0	0	0	0	0	0	0	0	4	0
	2012	8	0	2	0	0	0	2	0	0	0	6	0
	2013	8	0	2	0	0	0	0	0	0	0	6	0
D & N Haveli	2011	4	26	0	0	0	0	0	0	0	0	4	26
	2012	5	27	0	4	0	0	0	4	0	0	5	23
	2013	5	23	1	1	0	0	0	1	0	0	4	22
Daman & Diu	2011	0	1	0	0	0	0	0	0	0	0	0	1
	2012	0	1	0	1	0	0	0	1	0	0	0	0
	2013	0	0	0	0	0	0	0	0	0	0	0	0
Delhi	2011	61	0	14	0	3	0	11	0	0	0	47	0
	2012	70	0	14	0	5	0	9	0	0	0	56	0
	2013	111	0	11	0	0	0	11	0	0	0	100	0
Lakshadweep	2011	0	0	0	0	0	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0	0	0	0	0	0
Puducherry	2011	15	0	2	0	1	0	1	0	0	0	13	0
	2012	17	0	2	0	1	0	1	0	0	0	15	0
	2013	16	0	1	0	0	0	1	0	0	0	15	0
All India	2011	108154	2049	21286	391	680	755	14485	3159	478	157	89390	16427
			8		4	1							
	2012	109721	2072	16936	349	407	789	12861	2702	111	465	91668	16771
		7			1	5				7			
	2013	117861	2143	18100	324	432	534	13775	2712	642	92	99119	18099
			7		6	5							

The above information is based on NCRB data.

Amendment to Chapter II – Offences of Atrocities - Insertion of certain new definitions

2.5 In Section 2 of the principal Act, in sub-section (1),-

(i) after clause (b), the following clauses shall be inserted, namely :-

'(bb) "dependent" means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;

(bc)" economic boycott' means –

- (i) a refusal to deal with, work for hire or do business with other person; or
- (ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or
- (iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or
- (iv) to abstain from the professional or business relations that one would maintain with other person;

(bd) "Exclusive Special Court" means the Exclusive Special Court established under sub-section (1) of section 14 exclusively to try the offences under this Act;

(be) "forest rights" shall have the meaning assigned to it in sub-section (1) of section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act,2006;

(bf) "manual scavenger" shall have the meaning assigned to it in clause (g) of sub-section (1) of section 2 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013;

(bg) "public servant" means a public servant as defined under Section 21 of the Indian Penal Code, as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in

his official capacity under the Central Government or the State Government, as the case may be;

(ii) after clause (e), the following clauses shall be inserted, namely:-

‘(ea) “Schedule” means the Schedule appended to this Act;

(eb) “social boycott” means a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others;

(ec) “victim” means any individual who falls within the definition of the ‘Scheduled Castes and Scheduled Tribes’ under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;

(ed) “witness” means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;

2.6 In addition to the offences listed in the PoA Act, the following new offences have been proposed in the Bill, which are broadly mentioned in following five categories :-

(i) **Offences related to Dignity** – putting inedible or obnoxious substance into the mouth; garlanding with footwear, removing clothes, tonsuring of head, removing moustaches, painting face or body; compelling to dispose or carry human or animal carcasses, compelling to dig graves; manual scavenging; abusing in caste name; disrespecting any late persons held in high esteem by members of SCs and STs; attempting to promote feelings of enmity, hatred against members of SCs and STs; imposing social or economic boycott.

(ii) **Offences related to atrocities against women** - touching a women belonging to a SC or a ST or using words, acts or gestures of a sexual nature against women; causing physical harm or mental agony on the allegation of practicing witchcraft atrocities; dedicating a SC or ST woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(iii) **Offences related to land and housing** – dumping sewage in premises, or at the entrance of the premises; denying access to irrigation facilities, destroying the crops or taking away the produce therefrom.

(iv) **Offences related to franchise** – preventing SC or ST candidates from filing nomination to contest elections or proposing the nomination; forces or intimidates or obstructs a member of a SC or a ST, who is a member or a Chairperson or a holder of any other office of a panchayat under PART IX of the Constitution or a municipality under PART IXA of the Constitution, from performing their normal duties and functions; after the poll, causes hurt or grievous hurt or assault or

imposes or threatens to impose social or economic boycott or prevents from availing benefits of any public service; commits any offence under this Act against SCs or SCs for having voted or not having voted for a particular candidate or for having voted in a manner provided by law.

(v) **Offences related to untouchability in public sphere** – preventing from using common property resources, or burial or cremation ground or using any river, stream, spring, well, tank, preventing from mounting or riding bicycles or motor cycles or wearing footwear in public places or taking out wedding procession, entering any place of worship; entering any educational institution, hospital, dispensary, primary health centre, shop; or practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

Addition of relevant IPC offences as punishable offences

2.7 Section 3(2)(v) of the principal Act defined offences punishable for more than ten years under IPC as atrocities. This excluded several offences such as assault, kidnapping, hurt, etc. which are punishable for less than 10 years under IPC.

2.8 A new sub-section has been added in the Bill as 3(2)(v)(a) without enhancement of punishment. Under a separate schedule in the Bill, new IPC sections are enlisted such as punishment for criminal conspiracy, unlawful assembly, rioting, hurt; grievous hurt;

throwing acid; wrongful restraint; assault or criminal force to women; sexual harassment; kidnapping; abducting and wrongfully confinement; criminal trespass; criminal intimidation etc.

2.9 It has been stated that presently the offences defined in IPC attracting punishment of 10 years or more, committed on SCs and STs are defined as atrocities under PoA Act, 1989. This formulation has excluded a number of commonly committed offences against SCs and STs which are committed along with other offences as listed in PoA Act, such as hurt, grievous hurt, assault, rape, wrongful confinement, kidnapping etc. Such omission provides loopholes for the perpetrators of crime to escape as the case will never be registered under the sections of PoA Act. Therefore, all relevant IPC offences attracting punishment for less than ten years have also been included as offences in the Bill.

2.10 When asked whether the following acts can also be considered as punishable offences under the Act so as to treat them too as atrocities against the SC and ST people/community :-

- (i) Registration of false cases;
- (ii) Depriving *bona-fide* candidates by acquiring false SC/ST certificates for claiming reservation benefits in jobs, admissions etc ;
- (iii) Misusing and diverting funds meant for Tribal Sub Plan and Special Component Plan;
- (iv) Misusing inter-caste marriage for land grabbing and fighting election;

In response, the Ministry furnished the following written reply :-

Registration of false cases and depriving *bona-fide* candidates by acquiring false SC/ST certificates for claiming reservation benefits in jobs, admissions etc ;

"The object of the PoA Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes(SCs) and the Scheduled Tribes(STs), to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. It would, thus, not be in consonance with the intent of the PoA Act to provide for punishment for members of SCs and STs for registering cases falsely. Relevant sections of the IPC can, however, be invoked for dealing with specific false cases.

The Ministry of Home Affairs (MHA) *vide* their letter no. BC 120125/1/83-SC&BCD-IV, dated 29.06.1982 addressed to the Chief Secretaries of all State Governments/Union Territory Administrations had referred to their earlier letter no. BC 12015/3/78-SCT-I, dated 29.03.1976 addressed to the Chief Secretaries of all State Governments/Union Territory Administrations, requesting them to take deterrent action against officials who issued certificates carelessly or deliberately without proper verification. Such officials were also to be informed of the action that would be taken against them under relevant provisions of the Indian Penal Code (Section 420 etc.), in addition to action to which they were liable under the appropriate applicable disciplinary rules. In the said letter dated 29.06.1982 of the MHA,

the States/UTs were also requested to take strict measures to detect such cases of non-SC and non-ST persons holding false SC/ST certificates, deprive them of the benefits they were not entitled to and take legal action against them and against those who were responsible for the issue of such certificates. Acquiring false SC/ST certificates does not amount to an atrocity and may not be covered within the ambit of the object of the PoA Act.”.

Misusing and diverting funds meant for Tribal Sub Plan and Special Component Plan

“It would not be appropriate to treat misuse/diversion of Scheduled Castes Sub Plan/Tribal Sub Plan funds, as an atrocity.”

Misusing inter-caste marriage for land grabbing and fighting election

“The MHA vide their letter no. 35/1/72-R.U. dated 02.05.1975 in regard to ‘Claims through marriage’ had clarified as under:-

‘The guiding principle is that no person who was a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or a Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Castes or a Scheduled Tribe.

Similarly, a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe.’

Wrongful dispossession of land or premises etc. of a member of a SC or a ST by whoever, not being a member of a SC or a ST is already an offence

under section 3(1) (v) of the PoA Act, 1989. In the amended Act, it will be Section 3(1) (g).

There is no necessity, therefore, to include such a provision in the Bill”

Strengthening State accountability by clearly defining the term ‘willful negligence’.

2.11 Section 4 of the principal Act says “Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year”.

2.12 The original section 4 of the principal Act has been now divided into three sub-sections. New sub-sections inserted as sub-section 4(2) and 4(3). Section 4(2) is about the duties of public servant to read out an informant the information given orally and reduce it to writing, to register FIR under the Act with appropriate sections, to furnish a copy of FIR to the informant, to record the statement of victims or witnesses, to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of 60 days, to correctly prepare, frame and translate any document or electronic record, to perform any other duty so specified under the Act or Rules. While section 4(3) is regarding cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.

Persons held in high esteem

2.13 During the course of evidence on the Bill, the representatives of the Ministry of Home Affairs while drawing attention towards clause 4(1)(v) of the Bill, viz., “by words either written or spoken or by any other means disrespect any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes” stating it to be somewhat vague and if quantified or defined properly would help in implementing the provisions more effectively.

In this context, the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) in their written reply submitted as under:

“India is a large country, with diversity. This is a matter to be decided in each case by the investigating agency/courts, depending on the facts and circumstances of the case. As such, it is deemed neither practical nor even desirable to uniformly clarify/quantify the category of such persons”.

2.14 Since the punishments proposed in section 4 of the Bill are quite stringent, what are the safeguards available for the ‘accused’ who might be implicated knowingly in false, malicious or vexatious suit and which comes to light during the trial or at appeal stage and what would be the penalty for such litigants and under which law and which sections, the Ministry in the written reply furnished that :

“... relevant sections of the IPC can be invoked for dealing with specific false cases. The object of the PoA Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes (SCs) and the Scheduled Tribes (STs), to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. It would, thus, not be in consonance with the intent

of the PoA Act to provide for punishment for members of SCs and STs for falsely implicating the accused”.

As regards penalties for such litigants and under which law and which sections, the Ministry stated that, “IPC sections like 191 (related to false evidence), 192 (fabricating false evidence), 198 (using as true a certificate know to be false), 211 (false charge of offence made with intent to injure), 420 (cheating) 499 (defamation), 503 (criminal intimidation) may be some of the relevant sections of the IPC. The punishment have been prescribed in the IPC”.

2.15 On being asked about the desirability of application of sections 191 to 211 of the IPC in respect of section 4(1)(q) of the Bill for strengthening it, the Ministry in their written reply stated :-

“This is an existing provision at section 3(1)(ix) of the Principal Act, to punish those who give false and frivolous information, which sets the Government machinery into motion to the detriment of concerned members of Scheduled Castes and Scheduled Tribes. The clause serves as deterrent to ill-intentioned person who would tend to harm innocent members of SCs and STs, by providing false and frivolous information to public servants. Nevertheless, the public servants are expected to perform their official duties with diligence and application of mind. Their impartial and prudent decision taking should not be adversely affected. As such there is no necessity to have any apprehension about it.

It is noteworthy that the Supreme Court of India in their Judgment dated 06.02.1995 in Civil Appeal No. 1343 of 1995 (Arising out of S.L.P (C) No. 10874 of 1994) (State of M.P. & Anr. Versus Ram Krishna Balothia & Anr.) has held that, “The Offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity ... Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a State of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.”

2.16 When asked whether inclusion of officers of the level of Inspector/Sub inspector, besides existing provision of Deputy SPs/SPs in conducting investigation will not help in

securing higher conviction rate under the Act, the Ministry in their written information stated as under :-

“Neither the principal Act nor the amendment Bill has any section prescribing level of investigating officer for investigation of offences under the PoA Act. Nevertheless, this has been done in Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which specifies as under:-

‘An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government /Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time’.

It is necessary go into the genesis of this enactment as enshrined in the Statement of Objects and Reasons appended to the Scheduled Tribes (Prevention of Atrocities) Bill, 1989 which clearly indicated the purpose of the Act. The following extracts are relevant : -

‘Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary’.

Further the Hon'ble Supreme Court of India in their Judgment in Civil Appeal No. 1343 of 1995 (Arising out of S.L.P (C) No. 10874 of 1994) (State of M.P. & Anr. Versus Ram Krishna Balothia & Anr.) had held that:-

'The Offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a State of servitude'.

The position explained above is indicative of the special significance of this special legislation and the particular care that is needed for investigation of the cases booked under the POA Act, 1989. Rule 7(1) of the POA Rules, 1995 had thus, appropriately stipulated that investigation of cases under the POA Act be done by a police officer not below the rank of a Deputy Superintendent of Police and the Officer should be appointed by after taking into account his past experience, sense of ability and justice to perceive the implications of the case.

In the past when this matter was deliberated, the Ministry of Home Affairs (MHA) vide their O.M. No..19/6/98-Jul 1, dated 17.08.1998 had opined as under :-

'The framers of law have provided for investigating officer of higher rank in the case of atrocities against the SCs/STs. This might have been done keeping in view the sensitivity of cases to be investigated by an officer, who has higher sense of responsibility, objectivity, more responsiveness, sense of responsibility and justice to perceive the implication of the case, Ministry of Home Affairs oppose the proposal to provide for investigation by an office of the rank of Inspector of Police.

This issues with the approval of Minister of Home Affairs'.

The MHA vide their O.M. No. .15011/10/2003-SC/ST Cell, dated 25.08.2003 had further opined as under:-

'... Considering the special nature of the POA Act, its social context and the gravity of the offences that are perpetuated against members of these communities from the human rights point of view, it is not recommended that there be any dilution in the prescribed rank of the Investigating Officer...'

The Ministry of Tribal Affairs(MTA) in their O.M. No. 16015/6/2000-TD(Coord)TA(RL), dated 19.06.2003 had also not supported the proposal to appoint an Inspector of Police instead of Deputy Superintendent of Police as Investigating Officer in case atrocities against SCs and STs and mentioned as under:-

'It has also been proposed to amend Rule 7(1) of SCs & STs (POA) Rule, 1995 to provide that instead of DSP being the investigating officer, the inspector could be made the investigative officer. In this regard, the Ministry of Home Affairs had opposed a proposal earlier in 1998 on the ground that the framers of Law had provided for it consciously keeping in view the sensitivity of cases to be investigated and a DSP has higher sense of responsibility, objectivity, more responsiveness, sense of ability and justice to perceive the implication of the case. We may also endorse the views of the Ministry of Home Affairs and not agree to the proposal'.

In view of the position explained above, the present system of investigation of cases under the POA Act by a DSP level officer should remain unaltered”.

Metis-rea for crime

2.17 When asked why the words such as 'intentionally touches a woman belonging to SC or ST, knowing that she belongs to SC or ST, used in clause 4(w) are missing in sub-sections a to z(c) of the clause 4 of the Bill, and the implications of not maintaining uniformity in using or not using such words/expressions in clause of the Bill when the penalty for all the categories of offences is same *viz.* 'punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine', the Ministry in their written submission stated as follows :-

“During discussion on the Bill, it was pointed out that in many cases it becomes very difficult for the prosecution to prove the intention, even though the action, in itself, reflects it. Due to this technical reason some of the accused get free. A differential approach, therefore, has been undertaken. The characteristic of the referred offences in sub-sections (a), (b), (d) to (q), (s) to (v), (x) to (z) of Clause 4 of the Bill is such that mens-rea gets reflected in the action itself. Mens-rea does not require to be specifically proven in respect of these offences. The Supreme Court of India in its judgment dated 01.12.1992 in the case of State of Karnataka

vs Appa Ballu Ingale and Others (AIR 1993 1126) has, inter-alia, held that, “Metis rea” is not an essential ingredient in social legislations is the settled law.”

2.18 On being asked what is or what would be the criteria in determining “personal knowledge of the victim or his family, the Ministry stated that the ‘personal knowledge’ would be determined on the basis of evidence adduced by the victim/prosecution to the satisfaction of the investigating agencies/courts. Generally, frequent interactions, and intimacy between the parties in the case would be a good criterion.

Expanding the scope of presumption to minimize loopholes in the applicability of the Act

2.19 Section 8 of the PoA Act states that if in a prosecution for an offence, it proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing an offence, the Special Court shall presume, unless the contrary is proved, that such person had, abetted the offence, and if a group of persons committed an offence and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

2.20 The amendments proposed to the above section now, to a limited extent, also recognize that the court shall presume that the accused was aware of the caste or the tribal identity of the victim if the accused had personal knowledge of the victim or his family, unless the contrary is proved.

2.21 When asked whether complaints can be filed in any trial courts other than the Special Court or Exclusive Special Court as proposed in the Bill and whether under the principal Act, there is any bar on the victims or the accused appealing against the orders of the Special Courts/Exclusive Special Courts, the Ministry in the written submission furnished as follows:-

“Section 193 of the Code of Criminal Procedure, 1973 states that, ‘Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code’. This provision is applicable to the PoA Act also. There were complaints that committal of trial to the Session Courts used to take a very long time, thus, delaying the judicial process. Therefore, an amendment has been proposed in section 14 of the PoA Act and provide that special courts and exclusive special courts shall have the power to directly take cognizance of offences under the Act (Clause 8 of the amendment Bill refers), to accelerate the process of trial. Thus no court other than a Special Court or an Exclusive Special Court will take cognizance of an offence under the PoA Act.

Though there is no explicit section on ‘appeals’ in the principal Act, yet the relevant sections of Chapter XXIX of the Code of Procedure, 1973 would presently hold good in the matter of preferring appeals in regard to cases under the Principal PoA Act. Thus, there is no bar on the victims or the accused appealing against the orders of the special courts/exclusive special courts”.

Special Courts

2.22 Section 14 of the principal Act deals with Special Courts for providing speedy trial. This section is proposed to be substituted so as to provide that the State Governments shall, with the concurrence of the Chief Justice of the High Court, establish an Exclusive Special Court for one or more districts to try the offences under the Act.

2.23 Section 15 of the principal Act relating to 'Special Public Prosecutor' is also proposed to be amended so as to insert a new sub-section requiring the State Governments to specify an 'Exclusive Public Prosecutor' or appoint an advocate as an 'Exclusive Special Public Prosecutor' for the purpose of conducting cases in Exclusive Special Court.

Special Courts for women

2.24 When asked whether opening of special courts with women judges for rape victims of SC/ST communities, particularly in rural areas as due to pressure, fear and shyness these women feel hesitant in deposing before the court proceedings which are conducted in male dominated atmosphere, the Ministry in their written submission stated :-

“As per proposed substitution in section 14 of the Principal Act, in clause 8 of the amendment Bill, the setting up of Special Courts and Exclusive Special Courts by the concerned State Government is to be done with the concurrence of the Chief Justice of the High Court. Thus, it is for the Hon'ble Court to take a view in the matter”.

Rights of Victims and Witnesses (Chapter IVA)

2.25 The principal Act and Rules only recognize, to a limited extent, the entitlements of victims and witnesses in accessing justice, as for example : a free copy of the recorded

FIR, immediate relief in cash or in kind, necessary protection, relief in respect of death/injury/ or damage to property, entitlement of food/water/clothing/shelter/medical aid/transport facilities, daily allowance, maintenance expenses to the victim and his/her dependents and witnesses but does not talk about the rights of victims and witnesses under the Act.

2.26 The Bill provides for a separate chapter on rights of victims and witnesses which includes their protection, access to case documents, information on case status and right to relief, compensation and rehabilitation as well as rights during the trial. Proposed amendments mandate States to make arrangements for the victims, their dependence and witnesses. It also mandates State Governments to specify a scheme to ensure implementation of rights of victims and witnesses for which a comprehensive section has been enlisted in the Bill to include information about their rights at the time of making complaints and registering FIRs, protection from intimidation and harassment, information on the status of investigation and charge sheet, rights at the time of medical examination, information regarding compensation, rights to get Public Prosecutor, copy of documents, right to take assistance from NGOs, social workers or advocates, etc.

2.27 While drawing the attention of the Ministry to Clause 15A(6) regarding rights of victims and witnesses and asked about the rationale for incorporating two sets of legal rights (under two different sub clauses) which are basically same or complementary to each other, what would be the nature of social economic rehabilitation during investigation, inquiry and trial and relocation [sub clause (c) under 15A(6)] and what would be the criteria followed by the Court in awarding the rehabilitation package to the victims during the trial. The Ministry in their written submission furnished as under :-

“Whereas the proposed sub-clause (6) of clause 15A in the amendment Bill, is related to the specific functions to be performed by the Special Court or the Exclusive Special Court during investigation, inquiry and trial in sub-clause (11) specific duties have been assigned to the concerned State for comprehensive rehabilitation of the victims.

These aspects would be decided in consultation with the concerned agencies while amending Rules, which would commence after amendments in the Principal Act have been enacted. The States/UTs have been mandated in clause 15A(11) to formulate scheme for the relief/rehabilitation of the victims. Orders of the courts may be in consonance with these schemes”.

2.28 As regards the modalities in place of proposed for seeking assistance from NGOs, social workers or advocates, the Ministry in their written reply stated as under :-

“Modalities for seeking assistance of the Non-Government Organisations(NGOs), have been given in the PoA Rules, 1995. Rule 3(viii) of the PoA Rules, 1995 specifies that with a view to prevent atrocities on the members of SCs and STs, the State Government shall encourage NGOs for establishing and maintaining Awareness Centres and organizing workshops and provide them necessary financial and other sort of assistance. Likewise Rule 10(iii) specifies that the Special Officer in the identified area is responsible for co-coordinating with the NGOs and provide them necessary facilities, financial and other type of assistance for maintaining centres or organising workshops. Rule 15(1) further specifies that the State Government shall prepare a model contingency plan for implementing the provisions of the PoA Act and it should, inter-alia, specify the role and

responsibility of NGOs. In regard to taking assistance of advocates, Rule 4(5) specifies that the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts on such payment of fee as he may consider appropriate”.

Externment - removal of persons likely to commit offence

2.29 Section 10(1) of the principal Act states that where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in ‘Scheduled Areas’ or ‘tribal areas’, as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to, return to that area from which he was directed to remove himself for such period, not exceeding two hears, as may be specified in the order. The Bill proposes to substitute the words “two years”, with the words “three years”.

CHAPTER III

OBSERVATIONS AND RECOMMENDATIONS

Amendment to Long title of the Bill

3.1 The Committee find that the Principal Act is silent on the provision of cognizance by Special Courts due to which offences are only taken into cognizance by Magistrate Court before remitting to Special Court which causes delay not only in the beginning of the trial but also delay in delivery of justice. At present the Special Courts are devoid of powers to take cognizance of the offence directly. The Committee note that the Bill proposes provisions for the speedy trial by setting up Exclusive Special Courts and Exclusive Public Prosecutors, day-to-day trial, cognizance of trial by courts, etc. under Section 14(1) and Section 14A(1). The Committee strongly feel that this amendment was necessary as it will reduce the delay in the beginning of the trial and the length of time being consumed between the committal of the case to the Magistrate and then to the Special Court. The Committee appreciate the proposed amendment as it specifies the roles and powers of Courts to exclusively try offences falling under the PoA Act with the specific objective of speedy and expeditious disposal of cases.

Amendment to Chapter II – Offences of Atrocities - Insertion of certain new definitions

3.2 The Committee note that present Act lists only 22 offences under Section 3(1) and (2) as atrocities. The Bill provides for some more categories of atrocities in

this Section for which the same punishment as provided in the said section may be imposed. These new offences broadly relate to the dignity of members of Scs and STs (viz. putting inedible or obnoxious substance into the mouth, garlanding with footwear, removing of clothes, tonsuring of heads, removing clothes, carrying human or animal carcasses etc.), offences relating to atrocities against women (viz. touching a woman, using words, acts or gestures of a sexual nature against women, causing physical harm or mental agony on the pretext of practicing witchcraft etc.), offences relating to land and housing, offences related to franchise (viz. preventing SC or ST candidates from filing nominations to contest elections etc.) and offences relating to untouchability in public sphere. The present Act does not cover these offences due to which police officials are unable to register complaints.

The Committee are of the firm view that the proposed amendment to include new offences in the Bill will not only address the major problem of non-registration of cases but will also limit the scope of misinterpretation of the sections either by the general public or the enforcement agencies.

The Committee also find that there are incidents of registration of false cases, depriving *bona-fide* candidates by acquiring false SC/ST certificates claiming reservation benefits in jobs, admissions etc. and misusing inter-caste marriage for land grabbing and fighting elections. The Committee while fully agreeing with the proposed amendment of the Ministry to include new offences, recommend that these may also be included as punishable offences under the Act.

Addition of relevant IPC offences as punishable offences

3.3 The Committee note that Section 3(2)(v) of the principal Act defines offences punishable for more than ten years under IPC as atrocities but excludes several offences which are punishable for less than 10 years under IPC.

The Bill seeks to add a new sub-section as 3(2)(v)(a) without enhancement of punishment. Under a separate schedule in the Bill, all relevant IPC offences such as, punishment for criminal conspiracy, unlawful assembly, rioting, hurt, grievous hurt, throwing acid, wrongful restraint, assault or criminal force on women, sexual harassment, kidnapping, abducting and wrongfully confinement, criminal trespass, criminal intimidation etc., attracting punishment for less than 10 years and committed against SC and ST community have also been included as offences. The Committee concur with the amendment proposed.

Strengthening State accountability by defining the term ‘willful negligence’.

3.4 The Committee observe that section 4 of the principal Act does not clearly define as to what constitutes ‘willful negligence’ by public servants, due to which enforcement officials easily find loopholes to skip from the duties imposed on them by the Act. The Committee have been informed that in the past, the Ministry of Home Affairs (MHA) and Ministry Social Justice and Empowerment (MSJE) attempted to detail the term ‘willful negligence’ by issuing advisories to various State Governments which were based on the experience of the survivor – victims, activists and organizations. The police also were too often found to dilute the spirit

of the Act at every stage – from non-registration of case, failure to investigate according to due process of law, not filing the charge sheet in court within stipulated time, not giving relief and compensation to the victims, not providing protective and preventive measures etc. until the judicial process. Hence, the essential elements of those advisories of MHA and MSJE have been proposed in the Bill as duties of the public servant which will be seen as duties enjoined on them as obligatory and therefore, liable to invite prosecution and punishment. The Committee are in full agreement with the amendment proposed.

Expanding the scope of presumption to minimize loopholes in the applicability of the Act

3.5 The Committee note that one of the shortcomings in the Act is the emphasis on establishing that the offence was committed on ground that the victim was SC or ST which often showed to prejudice the actions of the police, the prosecution and the judiciary as the complainant could not establish that the identity of the victim was the ground for committing the offence. The Committee feel it justified too that a new presumption, in line with presumptions which already exist in the Protection of Civil Rights Act, 1955, which will ensure that the police and the judiciary do not place the onus on the complainant or prosecution to prove that the accused acted on the basis of caste or tribal identity. The Committee, therefore, agree with the amendment proposed.

Special Courts

3.6 The Committee observe that Section 14 of the principal Act which deals with Special Courts for providing speedy trial while Section 15 which relates to ‘Special Public Prosecutor’ are also proposed to be amended so as to make it mandatory for the State Governments to establish an Exclusive Special Court for one or more districts to try the offences under the Act with the concurrence of the Chief Justice of the High Court and requiring the State Governments to specify an ‘Exclusive Public Prosecutor’ or appoint an advocate as an ‘Exclusive Special Public Prosecutor’ for the purpose of conducting cases in Exclusive Special Court respectively. The Committee welcome the proposed amendments.

Rights of victims and witnesses

3.7 The Committee note that most of the essential rights and entitlements are not available to the victims and witnesses under the present Act. The Committee find that the Bill provides for a separate chapter on rights of victims and witnesses which includes their protection, access to case documents, information on case status and right to relief, compensation and rehabilitation as well as rights during the trial. Proposed amendments also mandate States to make arrangements for the victims, their dependence and witnesses and to specify a scheme to ensure implementation of rights of victims and witnesses. The Committee further find that a comprehensive section has been enlisted in the Bill to include information about their rights at the time of making complaints and registering FIRs, protection from intimidation and harassment, information on the status of investigation and charge sheet, rights at the time of medical examination, information regarding

compensation, rights to get Public Prosecutor, copy of documents, right to take assistance from NGOs, social workers or advocates, etc.

The Committee appreciate the proposal of the Ministry as it will not only provide protection and information to the victims and witnesses but also give them chance to participate in proceedings through assistance from NGOs and social workers etc. The Committee concur with the amendment proposed.

Special Courts for women

3.8 The Committee are seriously concerned about the rising crimes against women belonging to SC&ST community. Keeping in view the fact that SC/ST women are quite often subjected to sexual harassment and given the pain and trauma they suffer thereafter and due to pressure, fear and shyness these women also remain diffident and hesitant while deposing before the court proceedings which are conducted mostly in male dominated atmosphere. This is more pronounced in the rural areas. The Committee are of the firm view that the need of the hour is to address this vital issue by setting up special courts for them with women judges and women public prosecutors.

The Committee, therefore, recommend trial of the crimes under sections 4(k) and 4(w) of the Bill by special courts for women with a women judges and women public prosecutors preferably belonging to SC/ST community. For the purpose, the Committee suggest insertion of proviso to this effect in the clause 8 of the Bill.

Provision for false, malicious complaint

3.9 The Committee are not inclined to accept the contention of the Ministry that those who are found to be misusing the provisions of the Act can be tried as per normal law of the land under the relevant sections of the IPC. The Committee are of the firm view that the PoA Act, being a special law, should be wholesome to the extent that it must contain an inbuilt provision for securing justice for those too who are falsely implicated with *mala fide* under it. More so, when the law makers have shown such perspicacity in addressing such issues/misgivings when they inserted clause 14 (Punishment for false or malicious complaint and false evidence) in 'The Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

New Delhi;
17 December, 2014
26 Agrahayana, 1936 (Saka)

RAMESH BAIS,
Chairman,
Standing Committee on Social
Justice and Empowerment.

MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON TUESDAY, 30TH SEPTEMBER, 2014.

The Committee met from 1500 hrs. to 1650 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRMAN

MEMBERS

LOK SABHA

3. Kunwar Bharatendra
4. Shri Dilip Singh Bhuria
5. Shri Santokh Singh Chaudhary
6. Shri Jhina Hikaka
7. Sadhvi Niranjana Jyoti
8. Shri Bhagwant Khuba
9. Prof. A.S.R. Naik
10. Sadhvi Savitri Bai Phule
11. Dr. Udit Raj
12. Smt. Neelam Sonkar

RAJYA SABHA

12. Shri Ahamed Hassan
13. Smt. Sarojini Hembram
14. Shri Prabhat Jha
15. Smt. Mohsina Kidwai
16. Shri Praveen Rashtrapal
17. Smt. Wansuk Syiem

LOK SABHA SECRETARIAT

1. Shri Ashok Kumar Singh - Joint Secretary
2. Shri Ashok Sajwan - Director
3. Shri Kushal Sarkar - Additional Director

REPRESENTATIVES OF THE MINISTRY/DEPARTMENT

NO.	SL.	NAME	DESIGNATION
REPRESENTATIVES OF MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)			
1.		Shri Sudhir Bhargava	Secretary
2.		Shri Anoop Kumar Srivastava	Additional Secretary
3.		Shri Sanjeev Kumar	Joint Secretary
REPRESENTATIVES OF MINISTRY OF TRIBAL AFFAIRS			
1.		Shri Hrusikesh Panda	Secretary
2.		Shri Manoj Kumar Pingua	Joint Secretary
REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS			
1.		Shri Anil Goswami	Secretary
2.		Shri Kumar Alok	Joint Secretary (C&PG)
REPRESENTATIVES OF MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)			
1.		Dr. G. Narayana Raju	Additional Secretary
2.		Shri R. Sreenivas	Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the Members and representatives of the Ministry of Social Justice and Empowerment (Department Social Justice and Empowerment), Ministry of Tribal Affairs and Ministry of Home Affairs to the sitting of the Committee. The Chairman drew the attention of the witnesses to Direction 55(1) of the Directions by the Speaker, Lok Sabha. The Committee then took evidence of representatives of the concerned Ministries on "The Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Amendment Bill, 2014".

3. The broad issues which were discussed at the meeting relating to the Bill are as follows :-

- (i) Making provision for punishment under the Act for registering false cases;
- (ii) depriving bonafide candidates by acquiring false SC/ST certificates – *treating it a kind of atrocity under the Act*;
- (iii) misusing and diverting funds meant for Tribal Sub Plan and Special Component Plan;
- (iv) opening of special courts for women with women judges;
- (v) misusing inter-caste marriage for land grabbing and fighting election;
- (vi) exploring possibility of application of Sections 191 to 211 of the Indian Penal Code in respect of Section 4(1) (q) of the amendment Bill for strengthening it;
- (vii) bringing improvement in the Section 4(1)(v) of the amendment Bill by clarifying/quantifying the category of persons to be "held in high esteem"; and
- (viii) including officers of the level of inspector/sub inspector, besides existing provision of Deputy SPs/SPs in conducting investigation, for securing higher conviction rate under the Act.

4. The representatives of the Ministries responded to the queries raised by the Members to the extent possible. The Chairman directed them to furnish written replies to those points which could not be replied to.

5. The Chairman thanked the Secretaries and other officials of the Ministries for giving valuable information to the Committee and expressing their views in a free and frank manner on the issues raised by the Members.

6. The verbatim proceedings were kept on record.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 17TH DECEMBER, 2014.

The Committee met from 1500 hrs. to 1610 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRMAN

MEMBERS

LOK SABHA

2. Shri Jasvantsinh Sumanbhai Bhabhor
3. Kunwar Bharatendra
4. Shri Dilip Singh Bhuria
5. Shri Santokh Singh Chaudhary
6. Shri Sadashiv Lokhande
7. Smt. Maragatham K.
8. Prof. A.S.R. Naik

RAJYA SABHA

9. Smt. Jharna Das Baidya
10. Shri Ahamed Hassan
11. Smt. Sarojini Hembram
12. Shri Praveen Rashtrapal
13. Shri Nand Kumar Sai
14. Smt. Vijila Sathyananth

LOK SABHA SECRETARIAT

1. Shri Ashok Kumar Singh - Joint Secretary
2. Shri Ashok Sajwan - Director
3. Shri Kushal Sarkar - Additional Director

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee and apprised them that the sitting has been convened to consider and adopt the First, Second, Third and Fourth Reports on Demands for Grants (2014-15) of the Ministries of Social Justice and Empowerment (Departments of Social Justice and Empowerment and Disability Affairs), Tribal Affairs and Minority Affairs respectively, Fifth Report on "The Constitution (Scheduled Castes) Orders (Amendment) Bill, 2014" and Sixth Report on "The Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Amendment Bill, 2014".

3. Thereafter, the Committee considered and adopted the above Reports without modifications and authorized the Chairman to finalize these draft Reports and present the same to Parliament.

The Committee then adjourned.