

9th Dr. Asghar Ali Engineer Memorial Lecture

on

**“Why Untouchability, Caste Discrimination and
Atrocities still persists despite Law? Reflections on
Causes for Persistence and Solutions”**

by Prof. Sukhdeo Thorat

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**Why Untouchability and Atrocities Persist Despite Laws?:
What government should do to reduce untouchability and atrocities in the villages in
Maharashtra?**

Sukhadeo Thorat

Shri Dinesh Waghmare, Secretary, Ministry of Social Justice and Special Assistance, Government of Maharashtra, Shri Irfan Engineer, Director, Centre for Study of Society and Secularism and Ladies and Gentlemen

I am grateful to Shri Irfan Engineer for inviting me to deliver the Dr Asghar Ali Engineer Memorial Lecture. It is indeed an honour to commemorate the services rendered by Dr Asghar Ali Engineer in promotion of human right and for the secular character of India, as also to the cause of religious and social minorities such as the Muslims and the Dalits. It is an opportunity for me and to all of us to recall his contribution and draw inspiration to take the cause further.

On this occasion, I thought it would be appropriate time to discuss the issue of human rights with regard to the Dalits of Maharashtra, something that has recently emerged quite prominently in public domain. A number of issues have been raised about both caste discrimination and atrocities, which needs to be urgently addressed.

I will focus on two questions:

Why does caste discrimination and its accompanying atrocities still persists in the villages of Maharashtra, despite there being laws to prevent?

What can the government do to deal with this persistent problem?

The Constitutional Provisions and Legal Safeguards against Untouchability and Atrocities

The Indian Constitution made justice, liberty, freedom, equality and fraternity the cardinal principles of the country's governance. These principles also become the ultimate goals for the State to achieve through the enactment of laws, and policies. The Constitution promises equal rights to all citizens. Article 14 assures equality before the law and also equal protection under the law.

Article 15 prohibits discrimination on the grounds of caste, religion, race, sex or place of birth by the State and private individuals. Article 17 abolishes untouchability and its practice in any form, is forbidden and has been made punishable in accordance with law. The practice of untouchability is treated by the Constitution as a violation of fundamental rights, and has made it a part of a Section on fundamental rights.

The Right to Freedom is another fundamental right which includes freedom of speech and expression, freedom of assembly, freedom to form associations, and the free movement across

the country, and *settle in any part of national territory, practice any profession, or to carry on any occupation, trade or business.*

Article 21 has made the protection of *life and personal liberty a fundamental right*, and states that no person shall be deprived of his/her life or personal liberty except according to procedure established by law. Right to life and the right to live also includes the right to food, water, decent environment, education, medical care and shelter.

While in Part III the Constitution guarantees fundamental rights, in Part IV, which is on the *Directive Principles of State Policy*, it provides for fundamental principles for governance and makes it a duty of the State to enact laws to apply the principles laid therein.

In case of *Scheduled Caste, Scheduled Tribes and other weaker sections*, in Article 46 of the Directive Principles of State Policy, the State is required to make special laws and policies for the promotion of their educational and economic interest.

Article 46 directs the State thus: "The State shall promote with special care the educational and economic interests ... of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation".

In the case of Scheduled Castes, among other things it means protection by law from caste discrimination and untouchability. (Sankarannarayanan, 2014)

Legal Safeguards against Violation of Rights: Untouchability and Atrocity Acts

To give effects to the provisions in the Constitution related to equality and freedom, the Parliament enacted the Untouchability (Offences) Act on May 8, 1955 (put in force on June 1, 1955). It prescribed punishments for those placing restrictions on untouchables in public places and for undermining the human dignity of the individuals from the Scheduled Castes and Scheduled Tribes?The Act was amended in 1976 and renamed as 'Protection of Civil Rights (PCR) Act, 1955.

Thirty-five years later, another Act namely '*The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*', was enacted in 1989. The purpose of this more comprehensive legislation was enunciated when the Bill was introduced in the Lok Sabha:

"Despite various measures to improve the socio-economic conditions of the SCs and STs, they remain vulnerable... They have, in several brutal incidents, been deprived of their life and property... Because of the awareness created... through spread of education, etc., 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 terrorize them. When the SCs and STs try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty..."

Under the circumstances, the existing laws like the Protection of Civil Rights Act 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check and deter crimes against them committed by higher caste and others. It is considered necessary that not only the term 'atrocities' should be defined, but also stringent measures should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect SCs and STs from being victimized and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them”.

The Supreme Court of India too reiterated the significance and importance of the Act:

“The offences of atrocities are committed to humiliate and subjugate the SCs and STs with a view to keep them in a state of servitude. Hence, they constitute a separate class of offences and cannot be compared with offences under the Indian Penal Code.”

Again, *twenty-six years later*, the Act was amended to cover up the gaps which had been observed in the implementation of it since 1995. The amended PoA Act 2015 was passed by the Lok Sabha on 4 August 2015. It made improvement in few areas in the PoA Act 1989. The first important change that the amended Act made was to define the term 'atrocities' more clearly. *Atrocities* is “an expression commonly refer to crimes against Scheduled Castes and Scheduled Tribes by Non-Scheduled Caste and Scheduled Tribes”,... “it denotes the quality of offences being shockingly cruel and inhumane. The Act made some other additions for improvement that includes new types of offences (not covered by the Indian Penal Code or in the Protection of Civil Rights Act 1955 or Atrocities Act 1989), to the existing 19 punishable offences, and increased the number to about 35, establishment of Exclusive Special Courts and Special Public Prosecutors to exclusively try the offences falling under the PoA Act, specifying the 'Rights of Victims and Witnesses', defining clearly the term 'wilful negligence' of public servants at all levels and provision of action for wilful negligence through administrative enquiry.

Questions raised by a section of Maratha's through mass demonstrations?

The Untouchability Offence Act, 1955 is in operation for about 60 years, and the Atrocities Act for about 27 years, and provided some protection to the SC and ST against discrimination and atrocities.

However recently, a certain sections of society have raised questions on the Atrocities Act. They have alleged that the Atrocities Act is being misused by the Dalits, and asked for modifications in the Atrocities Act for inclusion of provisions of punishment for filing false cases. In an atmosphere surcharged with high emotion, some even went to the extent of demanding scrapping of the Act altogether. In return, the SCs, OBC and in some places Adivasi responded by similar mobilization in various towns, countering the demand for modification in the PoA Act and also

asked for strict implementation of the Act. The change in the PoA Act is considered as direct attack on the laws against discrimination and untouchability. This has brought a caste divide in the state for the first-time on the issue of untouchability and caste discrimination, the issue on which a national consensus was developed to include the prohibition of untouchability in Constitution.

In the midst of arguments and counter arguments and the show of strength, it is necessary that the issues are analysed peacefully in an academic manner, to locate the reasons for the persistence of untouchability and the caste system, and take steps to them annihilate together without creating a social divide.

It is necessary to remind ourselves that the State of Maharashtra is recognized as a pioneer in the reform of the caste system and untouchability. Maharashtra gave a lead to the country in the anti-caste and anti-untouchability movement and in the securing of equal rights to ex-untouchables and similar groups. The reformists came from all castes -- Brahmin, Maratha, Backward Castes and Untouchables including some Tribes. To mention a few individuals who contributed to the reform of the Hindu social order in various ways, and at different points in , there were: *from the caste*, Ranade, Dr, Shridhar Tilak (Son of Lokmanya Tilak), Sane Guruji, Agarkar; from the *Maratha and Backward Caste*, Shivaji Maharaj, Mahatma Phule, Sahu Maharaj, Vithal Ramaji Shinde, Gadage Maharaj, Tukdoji Maharaj, Saint Poets, Tukaram, and Namdeo; and *Untouchables* include poet Chokhamela, early social activists Kisan Fagoji Bansode, (Nagpur) Janoba Kamble, (Pune), Bhausahab More, (Marathawada), and later Babashaeb Ambedkar. The Anti-caste movement and the efforts to secure equal rights for untouchables is the proud legacy of Maharashtrian people cutting across all castes and sections.

These efforts, in fact, influenced the Indian Constitution. The provision in the Constitution related to non-discrimination and the ban on untouchability was due to the efforts of Babasaheb Ambedkar (from the 1920s through to the 1950s), who was a towering figure in that glorious galaxy of social reformers from Maharashtra. The ban on untouchability led to the passing of the Untouchability Act 1955, and later to the Atrocities Act 1989. What is important is that the safeguards against discrimination in employment, education and legislature in the form of the Reservation Policy, which were first initiated by Sahu Maharaj in 1902, and later in that chain of initiative, singularly taken up by Babasaheb Ambedkar in 1932, and 1943, were formalized in the Constitution in 1950. This is the outstanding legacy of the anti-caste and anti-untouchability movement which was heralded by people from all social backgrounds, high, middle and low caste and Adivasis in Maharashtra. This had a profound impact on the anti-caste and anti-untouchability in other parts of India. However, we have nearly forgotten this proud legacy and began to believe that laws alone will remove the discrimination and untouchability.

Purpose of the lecture:

In this lecture, therefore, I proposed to discuss some aspects of this issue and to suggest some reform in the present policy to deal with the issue of persistent caste discrimination and atrocities. The issues that I intend to discuss include:

- a) *Why does untouchability still persist? In other words, why do the higher castes continue to oppose untouchables in securing equal citizenship rights which the Constitution guarantees for every citizen?*
- b) *Why have the higher castes used violent methods to oppose those Dalits seeking equal right, and do they not resolve issues through discussion (or democratic or legal means?)*
- c) *Do the Dalits file false cases under the Atrocity, Act?*
- d) *Is the suggestion to provide legal action against false cases in the Atrocity Act legal and morally tenable?*
- e) *Why is the Atrocity Act not implemented properly, resulting into a low conviction rate or high acquittal rate for offenders in Maharashtra?*
- f) *What is the minimum that the government can and should do to reduce caste discrimination and atrocities against Dalits and Scheduled tribes people?*

Progress in eradication of Untouchability

We have seen that the goal of the PCR Act is to secure equal access to the untouchables in public spheres -- social, cultural, religious, political and economic. The PCR 1955 has been in operation since 1955, in other words, for about sixty years.

The relevant question to be asked is: Has there been an improvement in the access to public spheres for the untouchables as mentioned in the Protection of Civil Right Act of 1955? We can examine the situation with the help of the primary survey beginning with 1958 up to 2015, and 52 cases for the year 2013-16 and other sources for the more recent period.

Data base: Researchers in Maharashtra have conducted primary surveys on untouchability. Fortunately, the surveys are available right from 1958 at a regular interval after every decade, that is, 1960s, 1970s 1990s and 2000's and 2015. These include the Wai Taluk Survey, 1958 (conducted in 17 villages by the Gokhale Institute of Political Science and Economics); Gokhale Institute Survey, 1962 (conducted in 25 villages); Harijan Sevak Sangh Survey, 1970 (conducted in 192 villages); Marathwada Survey, 1991 (conducted in 95 villages); and Action Aid Survey, 2000 (conducted in 50 villages). The most recent is the survey of 20 villages and 425 household by the Indian Institute of Dalit Studies focusing on economic discrimination. It is these studies based on the primary surveys which reveal the changes and continuity in untouchability and discrimination.

Wai Taluk Survey, 1958

This survey was conducted in 1958 in 17 villages among the neo-Buddhists (*Mahar* community) of the Satara district in Maharashtra by the Gokhale Institute of Political Science and Economics. This survey was primarily conducted to understand the socio-economic and religious changes in the *Mahar* community (566 families in 17 villages) as a result of their conversion to neo-Buddhism.

The survey revealed the prevalence of untouchability in the realm of public services three years after the enactment of Untouchability (Offence) Act, in 1955. The survey revealed the restrictions faced by Mahars in access to water sources. Water sources were demarcated and the *Mahar* was supposed to access water from their assigned sources only. Temple entry for the *Mahars* was banned; the community faced market discrimination, and access to hotels was regulated (entry to hotels only in one village out of the five villages where the hotels were situated and they were allowed entry into markets only in one village and in the other villages their entry was regulated); inter-caste festivities were also regulated (in all the villages surveyed, it was found that inter-caste community meals were not allowed and there were only a few villages wherein the high castes joined the *Mahars* for an occasional cup of tea, that too on important occasions); and in 16 villages out of 17 villages, the *Mahars* did not have access to common the services of a barber. Thus in 1958 the Mahar did not have access to public spheres such as public water bodies, market and religious places covered under the Untouchability Act, 1955.

Nasik and Buldhana Untouchability Survey, 1962

This survey was undertaken by the Gokhale Institute of Political Science and Economics in 1962 in 25 villages. The study reported the practice of untouchability on a wide scale. It was found that in 85 per cent of the villages, Dalits were residentially segregated; in 80 per cent villages they were not allowed to draw water from common sources; in 65 per cent of the villages, they were denied entry into religious institutions or temples; in 90 per cent of the villages inter-caste community meals were not allowed; they also faced restriction on their stay in hotels. Further, in 80 per cent of the villages, Dalits were denied access to common services such as washermen and barbers etc.

Therefore, it was apparent that in the early 1960s, the incidence of untouchability-related discrimination in the villages from Nasik and Buldana was very high and that Dalits were not only residentially and socially segregated, but simultaneously denied access to public amenities such as water sources, temples, inter-caste meals, hotels and service by watermen.

Harijan Sevak Sangh Survey, 1970, 192 villages

This survey was far more wide-spread in coverage. It covered 192 villages from the north, south and eastern Maharashtra. The survey found that a high degree of untouchability and caste-based

discrimination was practiced in all the 192 villages. Again, the analysis was indicative of a pattern of discrimination that includes residential segregation, denial of access to public services, religious places and markets.

In almost every village, some sort of untouchability was prevalent. In terms of numbers, in 84 per cent of the villages, the Dalits were residentially segregated; 75 per cent of Dalits were not allowed access to common water wells and in some villages, they had to fetch water from a distance, thus increasing drudgery; in 73 per cent of the villages they could not partake in village feasts; in 33 per cent of the villages Dalits could not enter hotels, while in another 13 per cent of the villages separate and segregated arrangements were made for them; and in 66 per cent of the villages, public services like those of washermen and barbers were unavailable to them.

Harijan Sevak Sangh and Gokhale Institute Survey, 1970 in 206 villages

This survey was conducted jointly by the *Harijan Sevak Sangh* and Gokhale Institute of Political Science and Economics in 1970. The scope, nature and magnitude of this survey was even greater than the preceding one (the one conducted by *Harijan Sevak Sangh* in 1970). This survey was comprehensive in a sense that it covered approximately 206 Villages (4,476 families) and included about eight districts of Maharashtra.

It emerged from this survey that in 80 per cent of the villages, Dalit settlements were segregated from the main dwellings of the village. Only in 47 villages (about 22 per cent) out of the 206 villages surveyed, were Dalits allowed to draw water from the common wells (the same was not the case with tapped water sources, where, the extent of untouchability practiced was lower); in 20 per cent villages, Dalits were allowed to enter temples. In other 10 per cent villages, Dalits could enter the temples, but not in the sanctum sanctorum. Conversely in the remaining 70 per cent of the villages, they were completely denied entry to temples. Out of the 70 per cent villages, where hotels were situated, in 30 villages (about 43 per cent) Dalits were not discriminated against. On the other hand, they were discriminated upon in 17 villages in some form or the other, while in the remaining 23 villages (about 30 per cent) they were denied entry into hotels.

Dalits could avail of the services of barbers only in 172 villages out of a total 206 villages. In the case of community feasts, Dalits could participate in only 22 (about 13 per cent) villages, and in the rest of the 184 villages, they were either denied entry or if allowed, separate arrangements were made for them.

The survey also observed that discrimination was practiced in government institutions like the *Panchayats* and the Village Cooperative Committees where separate seating arrangements were made for Dalit representatives. It indicated that caste restrictions decreased in about 20-25 per cent of the villages, but it was still prevalent in 75-80 per cent of the villages surveyed. A significant reduction was seen in the availing the services of hotels, washermen and barbers.

If we take the results of *two studies* conducted in 1970s, we get the situation in the early 1970s. In about 85-90 per cent villages, Dalit settlements were outside the main dwellings and residential segregation was a customary and conventional form of exclusion. Further, both the surveys indicated that 70-75 per cent of the villages practiced untouchability in the drawing of water from common resources, entry into temples and at community feasts or social gatherings. The surveys pointed towards less discrimination in case of tapped water. Again, in some villages, though Dalits were allowed entry into village temples, they were not allowed to enter the sanctum sanctorum or touch the deity in such temples. Similarly, in the case of village feasts, Dalits were either not allowed to participate or they had to stand in separate queues, with separate dining arrangements being made for them.

In 60-65 per cent of the villages, the washermen and the barbers did not provide services to Dalits. Dalits could avail of such public services only in 40 villages which were demographically and geographically large. This could probably be due to the size of the villages. Untouchability was found in 30-35 per cent of government institutions such as the *Panchayat*, and Village Cooperative Societies.

Marathwada Survey by –University, 1991, 95 villages

This survey was conducted in 95 villages of the Marathwada region of Beed, Osmanabad, Nanded and Latur (three villages from Jamkhed *Taluka* in Ahmednagar district and Ashti *Taluka* from Beed District each). The study was conducted mainly among the *Mahars, Mangs and Dhors*. Details on the district-wise findings are given in *Annexure-1*.

a. Discrimination in Village Panchayat

With regard to political participation and Dalit representation in village *Panchayats*, diverse sets of results emerged from the study. They range from not being represented in the *Panchayats*; represented, but not invited for meetings (in such places the signatures of Dalit members were taken after the resolutions had already been passed); and being invited for meetings, but given differential and discriminatory treatment (Dalit members were made to sit on the bare floor, when meetings were held, in temples they were denied entry and served tea in different cups in villages).

The survey found that even Dalit representatives such as the village *Sarpanch* (head of the *Panchayat*) face discrimination. The women *Panchayat* members were only occasionally invited to the *Panchayat* meetings and their thumb impressions were taken from their respective homes without providing any explanations.

Discrimination in Access to Water Facilities

With regard to access to civil amenities such as drinking water, it was found that a high degree of untouchability was practiced in the region. Dalits were not allowed access to wells of higher caste villagers, and if their water sources dried up, they had to take recourse to alternative sources other than the wells of the high caste villagers. Often, this would mean increased drudgery or drinking polluted water. This was also the case with tapped water sources, where Dalits were told categorically not to touch the taps.

In Nitali and Ghugi village of district Osmanabad, even though Dalits were called to repair the damaged pumps of the high castes, they could not use the same and taps after the work was complete. The efforts by Dalit to take water from a tap in Patoda Budruk, district Latur, resulted in social boycott.

In 52 (or 54.73 per cent) villages, out of the total 95 villages that were surveyed, Dalits and the high castes shared the same water sources, but in these villages too, the high castes poured water into Dalit pots from a height so as not to defile them and their water source.

Discrimination in Temple Entry

Temple entry was banned in about 77 villages, which approximately amounts to about 81 per cent of the total 95 villages surveyed. Dalit marriages had to be solemnized without performing the proper rituals (as was the case with the *Mang* community).

The survey found that Dalits in rural Marathwada still bear the burden of the caste system by practicing the traditional occupations that the system imposes on them. In more than 50 per cent of the villages surveyed, it was found that the practice of certain caste-based occupations was still prevalent. The *Mahars* were found to be sweeping roads, collecting cow dung, guarding the villages by night and clearing the streets of the carcasses of dead animals.

Practice of Caste-based Occupations

In many villages some degree of occupational mobility was observed among the *Mahars* who had given up their traditional caste-based occupations. However the *Mangs*, another dalit caste, continue to be confined to their traditional occupations.

The Dalit communities still play the band at high caste marriages, play '*Halgi*' (a traditional instrument) outside temples and are forced to work as bonded labourers in the fields of high caste farmers.. Dalits who refuse to work in these fields are beaten up and are refused employment in the village (and there are other forms of social ostracisms that are perpetuated on them, which include refusal of permission to take water etc).

Another practice, which reflects discrimination in no uncertain terms, is the separate burial ground for the Dalits. In some villages the high caste had anchored on the land used for cremation by the dalits.

Untouchability during Social Functions

Apparently, the forms of discrimination included denial of free passage to high caste homes (Dalits were only allowed entry up to the threshold); and the provision of separate cups and saucers, tea stalls etc. for Dalits.

During marriage celebrations, though Dalits were invited along with the entire village, in 70 of the total 95 villages surveyed, they were made to sit separately and were served food after the high castes had finished their meals. Dalits were made to sit either in the stables or on the road and were served food from a height so that the high caste vessels are not made impure by the touch of Dalits and their plates.

On the contrary, while inviting high castes for Dalit weddings, Dalits had to employ the services of a high caste cook who could cook and serve the high caste invitees separately. The strict and rigid caste distinctions were very apparent during social functions such as marriages.

Upper castes often forestalled celebrations of a Dalit festival e.g. Dr. Ambedkar's birth anniversary by resorting to arson or to the cutting of electric supply and imposing bans on rallies.

Action Aid Survey, 2000, 51 villages

This Survey was conducted by Action Aid, Delhi in 2000 and covered about 51 villages across all the 30 districts of the Western, Marathwada and Vidarbha regions of Maharashtra. In the Western region, the survey covered the districts of Solapur, Nashik and Ratnagiri. Similarly, in the Marathwada and the Vidarbha region, it covered the districts of Latur, Aurangabad and Parbhani; and Nagpur, Yawatmal and Wardha respectively.

The public sphere includes access to civil amenities and temples etc and the private sphere includes entry into non-Dalit dwellings and interaction during social functions etc. Besides the village survey, the study gathered information from focused-group discussions. Forms of discrimination in different aspects of village life are presented below: Data on discrimination in various spheres of village are given in *Annexure-2*

Residential Segregation

The survey found that in 37 per cent of the total villages surveyed, Dalits dwellings were located at the periphery of the villages. In the remaining 63 per cent of the villages, though Dalit dwellings were located within the main village, they are separated from locality of the higher castes, and not mixed. The segregation was also found in the houses built under *Indira Awas Yojna* (a Government of India housing scheme). Residential segregation of Dalits assumes importance as it effects accessibility to the facilities that are meant to be available to the entire village, but result in far less access for Dalits to basic civil, social, educational and cultural amenities.

In the Public Services

The public sphere includes access to Government offices, public health services, educational institutions and the services that come under the market sphere.

Public Services

The survey found that in four villages, Dalits faced discrimination when it came to access to the Public Distribution System (PDS) shops. This takes various forms such as avoiding touching the low caste Dalits while exchanging goods and services.

Though the survey did not find the prevalence of untouchability in post offices (the facilities of a post office were available only in 23 of the total 51 villages), it did observe untouchability in the delivery of letters by the postman in 10 per cent of the villages. Such practice was observed in all the three regions -- the Western, Marathwada and the Vidarbha regions.

In the case of treatment meted out to the Dalits at Public Health Centers (PHCs), though Dalits had access to both the PHCs and the doctors' services, they nevertheless experience different treatment in some form or other. Such instances were found to be practiced in some villages of the Western region in Solapur.

With regard to the visits by government health workers, the survey found that untouchability was practiced in three sample villages of the Western region, one in Marathwada and two in the Vidarbha region. In most of the villages, the discrimination assumed different forms. First, the health personnel avoided visiting Dalit colonies. Secondly, even if they visited the colony, they normally avoided entering the home.

The survey found that discrimination was nearly absent in entry into the polling booths. In fact Dalits were accompanied by the high castes to the polling booths so as to assure their votes. Though the survey did not find any instance of direct discrimination as far as entry into the police stations was concerned, Dalits recognise a different treatment in behaviour and attitude towards them, generally the police being less receptive and cooperative.

In terms of access to public transport services, the survey found that the high caste population maintained their distance from Dalits both in queues and also in seating. In the former, the high caste women maintained their distance from Dalit women, and in the latter, the private jeep operators avoid the Dalits from sitting in the front seats of their vehicles.

With regard to the access to high caste localities and homes, the survey found that in 20 per cent of the villages, varying degrees of untouchability-based discrimination was being practiced against Dalits. The high castes did not appreciate Dalits entering their colonies. Further, in Natepute villages (Nagpur), the *Mangs* were not allowed to wear footwear while passing the temple, while in one other village, Dalits were totally forbidden to wear footwear on several occasions.

Apart from the above, in Kusmod, Bavi and Basav Nagar villages (all in Solapur), there were restrictions imposed on Dalits while accessing public roads while taking out processions. Even in the case of funeral processions, as was observed in Darewadi and Tiwatgyal villages (Latur), Dalit processions were not allowed passage through the high caste colonies or near the temples. Similar restrictions were imposed for mother festivities too, such as Dr. Ambedkar Birth Anniversary etc.

On a more positive note, the survey found an increasing trend of political participation by the Dalits. In a number of villages, Dalits were members of the *Panchayats* or even held positions like the *Sarpanch* or Deputy *Sarpanch* in the *Panchayats*. Such forms of mobility were more so because the seats in such *Panchayats* were reserved for Dalits. However, in most of the cases, Dalits were mere nominal representatives (they were not even consulted while taking decisions). In the case of Dalit women being either members or heads of *Panchayats*, they were either just made aware of the majority decisions or they avoided attending the meetings or were controlled through their husband.

In some *Panchayats*, Separate seating arrangements were made for members of the Dalit community. In Surla village (Yawatmal), for instance, it was observed that the Dalits were made to sit on the floor, while in Sakharkheda, (Nagpur), the high caste *Panchayat* members sat at a distance from Dalit members and the Dalits were made to sit on the floor near the doorstep of the *Panchayat* building.

In terms of access to educational institutions like schools, the survey uncovered that discrimination was being practiced in about 10-12 per cent of the villages that include three villages of the Western region and one village each in the Marathwada and the Vidarbha regions respectively. The extent of discrimination prevalent was visible in the case of both Dalit students and Dalit teachers. Separate seating arrangements were made, as in Sulibhanjan village (Aurangabad), and little attention was paid to the Dalit students in the class. In Sindkhed village (Yawatmal), the survey found that high caste children, through the process of socialization, had imbibed certain discriminatory cultural norms from their elders and practiced them on the Dalit students in the school.

The survey also found the practice of caste-discrimination in the distribution of food meant for school children. In Sakharkheda village (Nagpur), the *Anganwadi* worker practiced discrimination in the distribution of food to Dalit children. While the high caste children were given more food, such as milk, eggs and rice, Dalit children were given less items.

Services from various Markets

It was found that in a significant number of villages, there were separate shops for Dalits and separate ones for the high castes, and that the Dalits faced discrimination in the sale of consumer goods, particularly in the sale of milk. The discrimination in purchases by Dalits from high caste shops was Relatively low.

In most of the villages surveyed, Dalits practiced the occupations ascribed to them by the caste system (the local term for practicing hereditary caste-based occupations is '*balutedar?*' system). Discrimination was also observed in the case of services rendered by the barber and waterman.

The Dalits faced restrictions in the entry into cinema halls, hotels and restaurants and also in the hiring for agricultural (20 per cent of the villages) and construction (19 per cent of the villages) jobs etc.

In the Common Sphere

The common sphere includes those facilities that are for the common usage for people in the village, for instance, the access to and usage of civil amenities and entry into temples for worship etc.

The analysis of the common spheres provides us with an insight into how forms of untouchability have percolated into basic public services. By far, the most prevalent practice of this sort relates to the denial of access to drinking water (it was seen to be prevalent in 33 per cent of the villages). While this denial is almost complete in the villages where it is practiced, in some it exists in different forms which include having to wait and not touching the vessels of the high castes etc. The practice was seen to be more prevalent in the Western region, especially in Solapur.

Temple entry was denied to Dalits in about 50 per cent of the villages. Though the high castes denied having restricted the entry of Dalits. They claim that, on the contrary, Dalits either did not enter the temples as a form of protest or voluntarily, as most of them had converted to Buddhism.

Other forms of discrimination include the separation of cremation grounds for Dalits and the high castes (the practice was found to be prevalent in 33 per cent of the villages); restricting access to grazing lands, fishing (found to be prevalent only in Solapur) and irrigational facilities.

Even Self-Help Groups (SHGs) were not devoid of the practice of untouchability (it was found to be prevalent in 11 per cent of the villages). The forms of untouchability practiced in SHGs included maintaining physical distance from Dalit members, refusal of membership to them, and passing casteist remarks etc. The separate community centers for Dalits and the high castes were found in many villages.

c. In Private Sphere

The private sphere pertains to the access to non-Dalit houses, the use of new clothes, and interactions among Dalits and non-Dalits during social functions etc.

In 51 per cent of the villages, Dalits were denied entry into the high caste homes or being allowed entry only till the threshold or up till the courtyard.

With regard to social ceremonies which involve taking the blessings of high caste elders at the time of marriage, it was found that the newlywed couples had to walk barefoot at 12 noon to get the blessings of the high castes. Such discrimination was practiced so that the shadow of the Dalit couple falls only on themselves and not in the higher castes. (found to be prevalent in Sindkhed and Khamgaon villages).

The analysis also indicates that in 12 villages, Dalits and high caste villagers did not dine with each other during festivals, weddings and funerals. Though this practice percolated all the villages surveyed, it was seen to be more profound in Marathwada region (33 per cent of the villages). In the case of high caste people attending the Dalit functions, they only ate food if it was cooked by a non-Dalit. Dalits, on the other hand, were served food separately and in separate containers or had to carry their own utensils and in some instances, they were not invited to upper caste social functions and were sent the leftovers. In Tiwatgyal village (Latur), the high castes did not accept the food cooked at Dalit households, and Dalits were required to send grains (*korda shida*) to the high caste households some days before the social function.

Further, Dalits were even found to be discriminated against and ridiculed if they appeared well groomed and if they wore clean or new clothes. They were also insulted if they wore sunglasses or chewed tobacco in the presence of the higher castes. This was found to be prevalent in Solapur, Parbhani and Yawatmal.

The survey also revealed a high degree of gender bias against Dalit women by high caste persons. Dalit women felt disgraced, humiliated and ill-treated by high caste men. They were also subjected to differential scale of wages and to verbal abuse by their employers (who were generally high caste men). The practice was found to be rampant in Solapur. The survey also found that even high caste women had a contemptuous attitude towards Dalit women.

Untouchability and Caste Discrimination: Based on 52 Cases, 2013-2016

Here we look at more recent evidence in the practice of untouchability from 52 case studies. The 52 cases were primarily based on a civil society organisation's fact finding reports on caste atrocities in Maharashtra.

The information includes spheres where Dalits faced restriction. It includes: (a) restriction placed on the personal freedom of a Dalit boy and a high caste girl to enter into a relationship, (b) sexual harassment of Dalit girls by people of the higher castes (c) efforts by the Dalits and activists to secure justice, (d) objections to celebrating events related to the life of Babasaheb Ambedkar such as a processions, putting up of posters or photos, or playing songs related to Babasaheb Ambedkar or any such activity. (e) issues related to economic rights, land occupation, wages or government schemes, and (f) seeking equal treatment in participation in Village Panchayats.

Thus, the spheres where Dalits faced opposition by high castes include personal freedom to enter into a. relationship, or a relationship of coercion with Dalit women, restrictions on freedom to

celebrate social and cultural events and/or use a public space like a public road for celebrations, freedom to own agricultural land, or other occupation, equal access to government schemes and equal and non-discriminatory treatment to Dalit members of the village Panchayat. We shall see later that the use of these inter-personal, social, cultural, economic and political rights is opposed by various violent means (see, Annexure 3). In this sense, the Dalits do not enjoy the freedom to access citizenship rights on an equal footing despite our Constitutional provisions and rules. This is obviously not a uniform pattern, but something which is practiced in many cases.

Economic Discrimination: Sample Survey, 2015

The PCR Act considers refusal to sell goods and services in the ordinary course of business, or the economic boycott and the refusal to deal with work for hire, or to do business and abstain from professional or business relations with a Dalit as an offence. The PoA Act 1989 considers wrongful occupation or cultivation of land, or dispossession, destruction of crops and the stopping of irrigation facilities, compulsory or forced labour to carry human or animal carcasses, or to dig graves and manual scavenging as an offence. In other words, refusal to deal with exchange in various markets such as hiring of labour, sale and purchase of land, goods and services, input needed in production and business or credit as offence. It also considers forced labour, particularly in some work as an offence. Thus, it covers most of the economic transactions through various markets. However, since the economic decisions are mainly personal, these can be practiced with impunity.

The study based on the sample of 1713 SC persons from 425 households in 2015 from two taluks, namely Georai and Parali of Beed district revealed the nature of economic discrimination faced by scheduled caste farm and non-farm wage labourers, regular salaried employees, farmers and those engaged in business. (Indian Institute of Dalit Studies, 2015).

Discrimination face by Wage labour: Farm wage labourers faced discrimination in employment and wage earning. About 41 per cent are denied work by the high castes due to their caste background. They are particularly excluded in some work due to their "polluting" status: about 74 per cent in grain processing and 45 per cent in vegetable harvesting. They are especially engaged in doing hard manual labour, (91 per cent say 'yes') hazardous (81 per cent say 'yes') and risky work (76 per cent say 'yes'). Due to discrimination (53 per cent say yes), their employment is reduced. More than half of the total respondents attributed less employment due to caste discrimination.

About 17 per cent reported getting lower wages than a high caste labourer for similar work. About 56 per cent reported working for more than eight hours without being paid. About 47 per cent said that their lower wages were due to their caste background. About 36 per cent of Dalit farm workers reported receiving their wages late. Among those who received late payment, 57 per cent received wages after two weeks. The high caste farm wage labour discriminate against Dalits at the work place, and about 82 per cent reported this discrimination. The discrimination

takes the form of separate sitting areas at meal, time, in serving drinking water and in serving food. They also faced caste abuse by their employers. Discrimination results in the loss of about 64 employment days in a year. The average loss of wage income is about Rs 7450 in a year.

Similar discrimination is faced by Dalit non-farm wage labourers. About 34 per cent reported denial of work due to their caste background. The caste restrictions are mostly in domestic work such as cooking in high caste homes, serving food in a restaurant, occasional work in the construction of a temple and at cultural and religious ceremonies or activities. Like farm wage labourers, Dalit labourers are (compared to non-Dalit wage labour) the ones who are mostly engaged in hard manual, (82 per cent say 'yes') hazardous, (84 per cent say 'yes') risky (82 per cent say 'yes') and traditional caste work (36 per cent say 'yes').

About 93 per cent said that their employment opportunities are reduced due to caste discrimination. The average annual loss of employment in number of days in the survey year was about 76 days. Similarly, compared to the non-Dalit non-farm wage labourers, Dalits received lower wages. About 16 per cent reported this. About 40 per cent reported about work for which they were not paid wages. Caste discrimination is given as the reason for lower wages by about 42 respondents. About 30 per cent said that they received wages after a long gap. At the work place, about 62 per cent of Dalit labourers face discriminatory treatment. A very high proportion of Dalit labourers reported discrimination in terms of separate sitting (84 per cent), drinking water (82 per cent) and in serving food, (57 per cent) including abuse (76 per cent), for late coming and talking with co-workers. The loss of employment in a year due to discrimination is about 53 days. Low income and employment results in reduced food intake, clothing, education of children, health and increased borrowing.

A similar pattern is observed in the case of regular-salary Dalit workers in the private sector. Dalits have reported discrimination in selection, where a high caste person has been selected, even though he is less educated (compared to the Dalit candidate) (39 per cent said 'yes'). There is a preference among employers for high caste recruits (49 per cent say 'yes') even when they are less qualified. (56 per cent say 'yes'). Only 38 per cent said selection is being done on the basis of merit. Discrimination is reported in salaries too and about 46 per cent Dalit employees said that they receive a lower salary compared to a high caste employee for similar work. About 44 per cent said that their salary was lower due to the prevalent caste prejudice. Dalit workers faced discrimination at the work place in the form of being given more work (53.5%), some types of work not assigned to them (47 per cent), and a certain type of work forced on them. About 75 per cent of SC employees reported rude behaviour at the work place by co-workers, 17 per cent reported rude behaviour and 27 per cent to I humiliation by a high caste employer. The discrimination in hiring results in less employment, living on low income, reduced food consumption, clothing, health, education of children, being forced to do odd jobs and to resort to borrowing. The discrimination and humiliation has many consequences, one of which is to leave the job (about 30 per cent mentioned this consequence).

Discrimination in Business: In case of business, three business activities were studied: grocery shops, restaurants or eateries and transport (auto, care, jeep and rickshaw). About 38 per cent of grocery owners said that the high caste refused to buy from their shop, and 21 per cent reported that high caste customers did not buy specific goods, particularly open consumer items. About half of the Dalit grocery owners attribute caste background as a reason for high caste refusal to buy from their shops. About 21 per cent of Dalits said that they faced restrictions when buying from high caste owned grocery shops.

Dalit restaurant owners and eatery operators said that not all consumers are people of their own caste, and some are actually from the high and middle castes. But they also said there are high caste people who avoid eating from their eatery. About 78 per cent of Dalit restaurant /eatery owners reported that their caste background was the reason why high caste people refuse to eat at their outlets.

In the case of transport, about 54 per cent said that people of high caste avoid using their transport, and the average annual loss of income is about Rs 11200/-. According to the respondents, the discrimination has negative consequences that include closing down of the business (15 per cent), operating with a low profit margin (92 per cent), and about 60 per cent said that it results into high loan debts.

Discrimination in Farming: We now look at the farming sector. Farming involves the purchase and sale of land, farm output and also purchase of inputs for operation. The study indicates discrimination faced by Dalits in market and non-market transactions.

In the case of purchase of land for agriculture, 86 per cent of the respondents said that the high castes avoided or refused to sell land to Dalit farmers and almost 57 per cent mentioned caste discrimination as the reason for not selling the land to them. And those who purchase land (about 80 per cent) from the high castes end up paying more than the market price, (due to caste background, 86 per cent), for land which is less fertile, away from village, away from the public canal, or without a tube well. In the case of sale of land by a Dalit, (about 60 per cent sold to high castes and 32 per cent to Dalits), 80 per cent said that they had to sell at lower than the market price.

About 97 per cent said that there are restrictions on buying land for constructing a house in a high caste locality. About 70 per cent also mentioned the restrictions on renting a house in a high caste locality.

Thus, caste discrimination is highly prevalent and wide-spread in the market for agricultural and residential land. Dalits face restrictions by high caste for purchase of land for farm and residential use or renting of houses in a high caste locality. In purchasing the land for farm, they end up paying high price, and buying land which is less fertile, land without irrigation facility, canal or tube well irrigation and away from village.

In case of farmers, about 77 per cent of the respondents reported that they faced discriminatory treatment at cooperatives when purchasing seeds, including untimely and low supply, and high price but poor quality seed. About 8 per cent reported direct caste discrimination. About half of the respondents reported refusal by private person to sell seeds in one way or another. To another question, about 78 per cent Dalit respondents also reported facing various difficulties when they bought seeds from high caste sellers, include, high price, less quantity, untimely and poor supply. Only 22 per cent reported being treated in a manner similar to non Dalit buyers.

About 73 per cent respondents also experienced difficulties in the purchase of fertilisers and pesticide from cooperatives. About 8 per cent mentioned caste discrimination as a direct reason. About 80 per cent mentioned discriminatory treatment when buying fertilizer from high caste sellers, which extends as reported by 23 respondents, to the purchase of manure from high caste individuals who refuse to sell to them most of the time. Moreover, the refusal of irrigation water from a tube well owned by a private person is reported by 60 per cent respondents. And about 30 per cent mentioned caste as the direct reason for refusal. About 40 per cent said that they never experienced discrimination. About 15 per cent also reported being denied the use water from public tank, canal, or government tube well and pond. In the case of private tube well owners, about 80 per cent reported that Dalits faced discriminatory treatment which takes the form of higher charges, untimely supply, including supply at night. In case of public tanks and canals, about 60 per cent also reported discrimination in the form of high charges, untimely supply and odd time. As for their dealings with money lenders, Dalits are charged higher interest rates and under-valued mortgage deals, as reported by 60 per cent of the respondents

The untouchables also faced discrimination in the sale of their output inside and outside the village. About 18 per cent mentioned low caste status and pollution as reasons for people not buying their products. About 90 per cent reported that high caste buyers either offered low prices, or refrained from buying when Dalits most needed to sell their crop.

The discrimination and differential treatment in purchase of seed, fertilizers, irrigation water, and credit and sale of output affects both input use and productivity. This also increases the cost and income and reduces profit. Thus, the caste discrimination faced by Dalits adversely affects their income and farming as a business enterprise.

This analysis throws light on the new forms of discrimination in the economic spheres. Dalits face denial in hiring and wage earning, discrimination at the work place, including forced labour both in farm and non-farm employment. Dalits also face discriminatory treatment in both hiring and salary in regular salaried jobs. The Dalit business person engaged in grocery, restaurant/eatery and transport service faces discrimination in which the sale of their good and transport services are less used by the high castes, which affects their income and profitability. Farmers faced discrimination in the purchase of inputs and in the sale of output and in getting credit.

Low employment and wages, low sale from grocery shops, restaurants or eateries and less use of transport services by the high castes, and the discrimination faced by farmers in the buying of inputs and sale of outputs, all result in low income and high poverty. In this sense, economic discrimination becomes the source of high poverty and deprivation of the Dalits.

The survey also indicates discrimination, both direct and indirect, in the access to various government schemes related to public employment, input subsidies to farmers, housing schemes, health services by ASHA workers, food from fair price shops, services from primary health centres, midday meals in school and in anaganwadis by village panchayat.

Although both the PCR and PoA Acts brought some economic discrimination in their ambit, the Acts do not specially mention about the type of discrimination faced by Dalits in the way the spheres are specially identified with regard to social, cultural, political and religious matters. Hence, there is a need to amend the present PCR and PoA Acts to incorporate, more specially, the violations of rights in economic spheres.

Summary on Change and continuity in Caste discrimination and Untouchability: 1958-2015

To sum up, based on the evidence of the study till 2000 and most recent study is 2015 and case studies for 2013-16 for the rural Maharashtra some trend emerged which could be presented in some generalized form. It is necessary to realize that changes in social relation between Dalits and high caste in rural area assume relational forms which are difficult to capture through quantitative data. However, with this limitation, we present the nature of change and continuity that emerged from the 2000 and 2013-16 . They are as follows:

(a) There has been a considerable improvement in access of Dalits in some spheres without much discrimination. These include mainly post office, entry in pooling booth and voting, entry and sitting in public transport, and in police station. Therefore, these are some of the spheres where the Dalits have gained fairly equal access, which we may describe *as access with less discrimination and/or no discrimination.*

(b) There are other spheres where the access to Dalit is fairly open, but in sizable cases, the discrimination is practiced in one form or another. This situation may be described as *access with differential treatment, if not in all cases, but in some sizable cases.* These also include access to temple, well, stream, purchase of goods from grocery shop owned by high caste, participation in cultural function, community dinner and religious function. These include delivery of letters by post men in Dalit locality, behaviour in primary health centre, in treatment by Health workers like ASHA, behaviour of non-SC teachers and students towards Dalit students in the schools, sitting arrangement in class room and eating together in the school. These also include number of market and non market transactions which dalits have fairly open access but with differential treatment. This also include separate sitting in panchayat and drinking tea from separate cups

.Thus, by and large, in all these spheres there is fairly open access in majority of the villages, but in most villages the Dalits receive access with differential treatment.

(c) Another important sphere where there has been an improvement in access is economic rights by the Dalits. This includes access to various markets, for land, jobs, business, credit, purchase and sale of outputs and services. However, the discrimination still persists in many spheres, if not all, which includes, in purchase of land for farming and houses, renting of houses from high caste, employment in farm and nonfarm activities, and wages, farming for buying of various inputs and business, particularly sale of goods and services.

(d) Dalits also face differential treatment in direct and indirect form in access to various government schemes related to public employment, input subsidies to farmers, housing schemes, food from fair price shops, services from primary health centre, mid-day meal in school and anaganwadi and less participation in the decision of the village panchayat. These fall under the category of access with differential treatment.

(e) Unlike the open access and access with differential treatment, there are some spheres where dalit face *complete denial of access*. These vary from region to region and from village to villages .These include some of the spheres mentioned above that include entry to temple, use of well, community hall, shops owned by high caste, use of road by Dalit for cultural function, marriage procession and for other purposes such as procession related to celebration of any event related to Babasaheb Ambedkar and others.

(f) There are other spheres where there is no change or little improvement, and that include mainly the personal and private domain of the high caste, where the interaction of Dalit is extremely limited. This includes inter-dinning, inter caste marriages, inter personal or family relations and mix residences of Dalit and high caste. Thus, we see physical and social isolation, which is not having social interaction between Dalit and high caste for dinning, marriage and normal family relations. These are private spheres, and the law has limited influence.

(g) In case of individual rights, in some cases Dalit faced restriction or humiliation in wearing new clothes, shoes, umbrella, or riding bicycle and other personal liberties.

Thus, the process of change in the practice of untouchability is mixed. At the risk of generalization, one may say that it varies from fairly open access without discriminatory treatment, to access with differential treatment, to complete denial of access in the public spheres identified by PCR, 1955 and POA, 1989 in rural are of Maharashtra.

Incidence and Pattern of Atrocities: 1995 to 2015

We have seen that Dalits face opposition from the high castes when seeking their rights in rural areas. However, the opposition by the high castes is not peaceful, through discussion and negotiation, but involves violence: physical attacks, verbal abuse, humiliation, mental hurt, and

social and economic boycotts. Based on these experiences, the Atrocity Act of 1989 treated about 19 violent acts or behaviour of high castes as a violation, which is punishable. We can discuss the incidents and the pattern of atrocities based on official data from the Crime in India report and also supplement it with other evidence.

Analysis based on Crime Report Data

The Crime in India report, by the National Crime Records Bureau (NCRB), Government of India, provides the cases registered by the Dalits under PCR Act 1955 and PoA Act, 1989, and the IPC against SC and ST (that invite punishment for ten years and above) and total of the three. (National Crime Records Bureau 1995-2015,)

The data shows that during the 21 years from 1995 to 2015, the SC registered a total of 22,253 incidents of crimes, which average out to 1060 cases per year in Maharashtra (Table1).

In 1995, the first year of enforcement of the regulation, 1622 cases were reregistered. The annual number of cases reduced from 1655 in 1995 to 865 in 2005. However, the number began to increase after 2005 to over a thousand cases per year. The number reached 1678 in 2013, 1768 in 2014, and 1816 in 2015. Thus, atrocities on Dalits have been on rise since 2005 (Graph 1).

Between the cases under PCR and POA the number and ratio of those under the PCR Act has declined, while those under the PoA Act have increased. In 2014 and 2015, in fact, most of the cases were registered under the PoA. This indicates that opposition to the Dalits has increasingly taken a violent form -- from simple opposition to the one which involves physical and mental violence that involves hurt, abuse and humiliation. The share of cases under PoA has increased from 21 per cent in 1995 to 99 per cent in 2014 and 98 per cent in 2015.

The most common form of atrocities is physical assault and caste abuse. The physical abuse is also combined with other abuses. Of the total number of crimes, in about one-fourth of the cases, physical assault was accompanied with other forms of atrocities, and in about 10 per cent cases, caste abuse was part of other atrocities. About one-fifth of the cases constitute murder, of which about half are combined with other forms of crime, mainly physical assault and caste abuse. Of the total number of crimes, rape cases constitute about 13 per cent. Other atrocities include issuance of threats, destruction of property, humiliation/harassment/intimidation, arson, kidnapping and abduction and forcing Dalits to perform humiliating acts. Some of the atrocities are committed in combination with each other.

Nature of Atrocities based on 52 cases

The data on 52 cases for the year 2013-16 provides an additional insight into the nature of atrocities. The report on these 52 cases of atrocities included fact findings reports prepared by different CSOs on atrocity cases in Maharashtra.

The atrocities in the social sphere mainly relate to opposition by the high castes to Dalits getting access to public services, or not behaving as per the wishes of high castes, preventing Dalits from lodging complaints under PoA Act, intolerance of the right to protest, resistance to sexual harassment, or to Dalits confronting wrong behaviour / corrupt practices by the high castes, etc.

The incidence in the economic sphere include grabbing the land of Dalits, forcing Dalits to sell land, refusal to pay daily wages, preventing Dalits from farming activities on their own land, dispute over land allotment, allocation of government schemes and taking over Dalits' property forcefully.

In the cultural sphere, the violations of rights mainly include a denial to use a public road for peaceful processions to celebrate events associated with the life of Babasaheb Ambedkar such as his birth anniversary, or play songs dedicated to Babasaheb Ambedkar and or display of photos of Babasaheb Ambedkar.

The violations of rights in the political sphere pertain to preventing Dalits from occupying elected position in the panchayat, being forced to cast votes and objection to questioning the election process.

The opposition to the Dalits to secure social, cultural, religious, political and economic rights by the high castes in most cases takes a violent form. In 96 per cent of the cases, the crimes against Dalits were violent in nature.

The analysis of the 52 cases indicates that the atrocities assume verbal abuse, physical violence, community level violence and sexual violence against Dalit women.

The *verbal violence* includes caste abuse, humiliation, intimidation, threat of violence, forcing Dalits to consume undesirable things such as urinating into their mouths, harassment, making them parade naked in public, removing their moustaches and shaving their heads.

Physical violence takes the form of a physical attack, or abduction, murder, torture, being beaten to death, burnt to death and then cutting the body in to pieces and damaging property.

Community level violence normally takes the form of social and economic boycott, arson, riot, setting fire to Dalit houses and property, or a group attack armed with *lathis*, stones and other weapons.

Sexual violence against Dalit women includes sexual assault, sexual harassment, molestation, rape, gang rape, rape in front of relatives, outraging their modesty, and striping women naked and parading them naked.

These are some of the forms in which the high castes commit atrocities which are heinous and the fall under the category of rarest of rare crimes, to humiliate the Dalits with a purpose to *hurt*

them psychologically where it hurts the most. These kinds of atrocities are rarely to be found anywhere else in the world. The broad categories of violence are presented in Box 1.

Collective and Organized Nature of Atrocities

The new trend that we are now witnessing is the collective nature of the atrocities, as opposed to an individual committing an atrocity. An analysis of 52 atrocity cases (Table 2) reported during 2013-16 reveals that in 86 per cent of the cases, more than one perpetrator is booked for committing the atrocities. While there are 42 per cent of cases where more than one perpetrator is involved in committing atrocities against one victim, in another 44 per cent of cases, more than two perpetrators are involved against two or more victims. The phenomenon of ‘collective’ atrocities is an emerging feature in Maharashtra, which indicates community level animosity against Dalits. The cases also indicate that the collective involvement of high caste members in perpetuating atrocities against the Dalits is much higher in the case of heinous crimes such as physical assault, murder and destruction of property. Some cases of collective atrocities are illustrated in Box 3.

Multiple Atrocities in one incidence

It is a unique feature of the crime against the Dalits that multiple atrocities are committed in one single attack against one Dalit individual. As evident from Graph 5.3, in about 65 per cent of the cases, different forms of atrocities are committed simultaneously or together, one after another. The data also reveals that of the total number of such cases, physical assault is the most common, but in about 80 per cent cases, physical assault is combined with other forms of atrocities. Similarly, in about 40 cases, caste abuse is commonly used along with others atrocities. Understandably, physical assault has a high degree of association with caste abuse.

Further, physical assault and caste abuse are highly associated with atrocities such as murder, threats, destruction of property, humiliation and other gender related atrocities. For example, Dalits face caste abuse and physical assault before murder. Similarly, Dalit women are kidnapped, physically assaulted and raped before being murdered. In another study (IIDS 2011), it was found that in case of heinous atrocities such as murder, rape, kidnapping and abduction in Maharashtra, in about 40 per cent of the cases, these atrocities were committed along with others. The heinous atrocity of murder is usually preceded by physical assault and caste abuse. Some multiple forms of atrocities are delineated below (Box 1). Details are illustrated under other sections while discussing the spheres of atrocities and violent forms of atrocities (see other boxes).

The above discussion underlines the fact that in recent times, caste atrocities have been multi-dimensional in nature. Dalits have to face the wrath of high caste people whenever they raise their voice against any oppression or violation of their rights. Even in the case of trivial matters, any opposition to the high castes invites several atrocities, many times of a violent nature. The

collective and associative nature of atrocities remains a source of major concern, as this has a severe impact on the victim.

Who are the Victims and Who Commit Atrocities?

As per the Atrocity Act 1989, it is necessary that to register the case under Atrocity Act, the victim necessarily has to be from SCs or ST community and the accused a non-SC/ST. The studies that we have used in this analysis do not provide the sub caste of the victims and accused. However, the study conducted by the Rural Development Centre (RDC), Beed in Marathwada region, provides the sub-caste of the victims and the accused. Table 3 provides the sub-caste of the victims and sub-caste of the accused for the atrocity cases registered during 1990 to 2008 for all districts in Marathwada regions (Rural Development Centre, 2010, Beed).

It emerged that of the total number of 3014 atrocity cases on which information on the sub-castes of victims was available, the maximum number of victims were Mahar (1752) accounting for about 58 per cent of the cases. The next most targeted groups were the Matang with 822 (27 per cent), and the Chambar with 174 cases (6 per cent) (Table 3). These three castes namely Mahar, Mang and Chamber, thus, account for almost 91 per cent of the atrocity victims. Other sub-castes include Paradhi (93 cases), Bhill (57 cases), Dhor (23 cases) and Mahadev Koli (22 cases), constitute about 3, 2 and 1 per cent each respectively.

Who committed the atrocities? It emerged that all castes commit atrocities against the untouchables. However almost 44 per cent of the atrocities were committed by Marathas, and 6 per cent by Vanjari, three per cent by Dhangar and one per cent each by Marwadi and Brahmin (Table 3). Thus, among the Hindus, the Marathas are the main sub-castes that commit atrocities and violence against the Dalits. In some cases they are joined by Vanjari and Dhangar. Since crimes committed against Dalits include non-SC/ST, the violence committed by religious minorities such as Muslims have also been registered under some provisions of the PoA Act, often combined with some provision of IPC. The data shows that about 9 per cent of atrocity cases are committed by the Muslims.

Shortcomings in the Implementation of the Atrocity Act in Maharashtra

After having discussed the actual incidence of caste discrimination that falls within the domain of the PCR Act and the persistence of atrocities covered under the PoA Act 1989, we can now examine the implementation of these two Acts.

Following the enactment of the Prevention of Atrocities Act 1989; the government notified the PoA Act Rules in 1995 for the proper implementation of various provisions of the Act by the State administration. These Rules provide specific guidelines to the administration responsible for the use of the Rules. The provisions of the Rules can be broadly categorised into the following:

- i. A Time frame for registering an FIR, completing the investigation and submitting the charge sheet;
- ii. Provisions for relief and compensation for the victims of atrocities, and
- iii. Provisions of Special Courts and Special Prosecutors to deal with the atrocity cases.

In the following sections, we examine the administration of the Atrocities cases. The analysis is based on four sources, as follows:

(i) Fact finding reports of 52 atrocity cases in Maharashtra prepared by Civil Society Organisations in Maharashtra (National Campaign on Dalit Human Right, Manuski, and other organisations) during 2013-16; we called this as *CSO reports*.

(ii) Study report of ‘Youth Action for Social Awareness and Development Activities’ (YASADA), based on the judgments of the designated special courts and additional special courts on 33 atrocity cases in Latur districts of Maharashtra during 2008-10; we called it as *YASADA study*

(iii) Details of 54 atrocity cases in Maharashtra during 2007-09 which were presented to the Parliamentary Committee, Ministry of Social Justice and Empowerment, Delhi by the National Campaign on Dalit Human Right; we called it *Parliamentary Committee Memorandum* or *PCM cases*.

(iv) The Report prepared by the Rural Development Centre (RDC), Beed District; based on atrocity cases in the districts of Marathwada region for the period 1990 to 2008. We refer it as *RDC study*

Evidence from all these sources was further supplemented by other literature available on atrocities in Maharashtra. Key observations based on different data sources are discussed under different sections pertaining to the PoA Act Rules which the police administration is required to follow in various stages of criminal justice system.

Late Registration of Complaints

The Registration of an FIR is usually considered to be the starting point of the criminal justice system. An FIR needs to be registered within 24 hours.

The reluctance of the officers to register atrocity cases is brought out by the analysis of 50 atrocity cases (out of 54 cases) that took place in Maharashtra during 2007-09 and submitted to Parliamentary Committee. It was found that in 42 per cent of the cases, there was a delay. Similarly, the analysis of another 33 cases during 2008-10 (YASADA study, 2011) showed that in about 19 per cent cases, the filing of an FIR was delayed. The duration of delay ranged from 2 days to three months. The CSO reports of 52 atrocity cases that took place in recent times also showed that in 36 per cent of the cases, the FIR was registered after 24 hours of incident. In these cases, the duration of delay ranged from 2 days to 28 days. The non-receipt of a copy of the FIR

was also a common complaint. This delay results in the delay in the arrest of the perpetrators, even though the Rules demand that after the lodging of a FIR, the accused should be arrested immediately. The delay provides the accused with an opportunity to use various means to stop the registering of the case or influencing the police officer in charge of the police station and getting him to dilute the information.

Delayed in Spot Investigation and Victims left without Protection

Following an incident of the atrocities and the registration of an FIR, officers not below the rank of Deputy Superintendent of Police need to visit the site of the incident to assess the extent of the atrocity, the number of victims, the extent of damage to the property, and prepare a list of victims entitled for relief and submit a report forthwith to the State Government. The PoA Rules also state that the officer should take effective and necessary steps to provide protection to the witnesses and immediate relief to the victims.

The data on spot visits by higher police officer obtained from 54 PCM cases showed that in 19 cases where the data on spot investigations following an FIR was available, there was no spot investigation in all the 19 cases.

In case of police protection, the analysis of the CSO reports also shows that in as many as 66 per cent of the cases, the initial protection by the police was not provided to the victims. In the case of 54 PCM cases, the data on police protection was available in 24 cases. Of these 24 cases, not in a single case, did the victims receive police protection.

Avoiding Registration Under Relevant Sections of PoA Act 80

Given that the PoA crimes are non-cognizable, in many cases, the atrocity cases are intentionally not registered under the proper sections. The distinction between regular crimes and those covered by the PoA Act is not sharply (IPC) drawn by the police on some pre-text or other. Often the atrocity cases are registered under the weaker provisions of the IPC rather than the stronger provisions of the PoA Act. The National Crime Record Bureau data indicates that about two-third of the crimes in Maharashtra during 1995-2013, barring 2014-15, were not registered under any section of the PoA Act.

An analysis of 21 cases, out of the 52 CSO reports, with detailed information on the registration under different sections, revealed that only in 29 per cent cases, registration of FIR was done under the proper section of the PoA Act. The analysis of the 54 PCM cases also indicated that the majority of the cases were registered under improper sections of the PoA Act. Similarly, the YASADA study indicates that while all 33 cases deserved to be PoA cases, and were supposed to be booked under one or more sections of the PoA Act, the vast majority of cases were also booked under one or more sections of the IPC. The charges-wise distribution under different sections showed that 49 per cent cases were booked under both the PoA Act and IPC, while the other half of the cases were booked under the PoA Act along with the PCR and BP (Bombay

Police) Act. Not a single case was registered exclusively under the provisions of the PoA Act (Table 5)

Of the cases booked under the PoA Act, a large majority, that is, 85 per cent were booked under the section 3(1)(x) only indicating ‘offence of caste abuse and insult’ (Table 6) which invites a less severe punishment.

An analysis of 45 registered atrocity cases selected from the cases used by the YASADA study and CSO reports (based on detail information about various sections) indicated that despite the different nature of crimes asking for several sections out of the total of 22 PoA sections, overall only four sections of the PoA Act {i.e. 3(1)(x), (xi) & (v) and 3(2)(v)} were used in all cases (Table 7). Of the total number of cases, in 70 per cent of them the section 3(1)(x), pointing to cases of ‘caste abuse and insult’ was used. While this section was used along with other sections of IPC, it was not jointly used with other a few other sections of PoA, despite the fact that the cases were considered under the PoA Act which included many offences at a time.

Similarly, only 9 of a total of 37 IPC sections were used in many cases of atrocities. There are sections (e.g. 323, 504, 506) which were more frequently used, such as hurt, criminal intimidation, insult etc. compared to other sections such as 147, 148, 324, 143, 149 and 34 under IPC. A crime that includes hurt, criminal humiliation and insults invites less punishment as compared to the others mentioned above. These are the ones used by the police more frequently so as to provide protection to the high caste accused.

It may be mentioned that keeping in view the nature of offences in 45 cases, (based on the YASADA Study and CSO Reports) several offences which should have been booked under the other 22 sections of the PoA Act were not booked by police officials. Moreover, as was evident in case of 33 court cases (YASADA study), courts also did not alter or add to the original sections despite the coverage of several other offences in 33 cases.

A study of over 3000 atrocity cases, over the years in eight districts of the Marathwada region of Maharashtra (RDC study) revealed that of the 15 sections under the Clause 3 of the PoA Act, Section 3(1)(x) was used in about 67 per cent cases, the Section 3(1)(xi) was used in about 16 per cent of the cases, whereas in 3 per cent of the cases, both the sections were used together. In 2 per cent of the cases, section 3(1)(xi) and 3(2)(v) were used. Along with the PoA sections, the PCR sections were used in 6 per cent cases.

The analysis of the 54 PCM cases revealed that the Section 3(1)(x) of the PoA Act was used in 36 per cent of the cases, followed by Section 3(1)(xi) in 30 per cent of the cases. Among the IPC sections, Section 506 and 323 were used in a higher number of cases. Among twelve PCR cases, Section 7(1)(D) was applied in the majority of cases.

It must be noted that not registering an FIR under the PoA Act or under an improper section of the Act has implications on the nature of the punishment. Such cases attract a more lenient

punishment for the accused, and he/she is likely to be released on bail easily. When a case is registered under the IPC or PCR, the victim(s) do not receive any relief and compensation. This also influences the decision of court. The Parliamentary Committee on the Welfare of SCs and STs (2005) states that, “Correctly registered FIRs will certainly help in pursuing cases strongly in the courts and getting the accused convicted

Late Arrest of the Accused

As per the PoA Act Rule 12(2), once a written complaint is made by the victims of an atrocity, the FIR should be registered immediately and the offender should be arrested within 24 hours of the registration of an FIR, and without any court approval. This is prescribed in order to prevent any attempt by the accused to interfere with the investigation process or to use any pressure tactics on the victims. However, these provisions are not enforced, due to either the insensitive attitude or the negligence of the law implementing agencies.

There is clear evidence of a delay in the arrest of the perpetrators. The CSO reports revealed that of the total 21 cases where information about an arrest was available, in 48 per cent of the cases, the accused were not arrested immediately. In the remaining 52 per cent of cases where the arrests were made on time, not all the accused were arrested, even though the rule requires that all the accused be arrested. In about 36 per cent of the cases, just a few of the accused were arrested. Similarly, the analysis of the 54 PCM cases revealed that in 86 per cent cases, there was an immediate arrest. However, a large majority of the accused who got arrested came out on bail within short period of time. As found in PCM cases in all the arrested cases, the accused were released on bail.

Delay in Filing of Charge sheets

The PoA Act Rule prescribes immediate investigation in the case of atrocities and its completion within 30 days of the occurrence of the incident, by an officer not below the rank of a Deputy Superintendent of Police. The submission of the investigation report beyond one month of the filing of the FIR would indicate the lack of proper implementation of the law. Despite this procedural rule, in some cases, the investigations are carried out by officers of a lower rank than DSP. In some cases, while on the record the investigation was shown to be done by an office of DSP rank, in reality, the investigation was done by a lower ranking officer, though it was signed by officer of DSP rank. The investigation by an officer of lower rank affects the quality of the investigation.

The gap between the registration of the FIR and completion of the investigation revealed a delay in the completion of investigation and submission of the investigation report that goes beyond the stipulated time period of one month.

The YASADA study revealed that out of the 30 cases for which data was available, in 9 cases (30 per cent), the charge sheet was filed in court as per the PoA Act Rule (i.e. within 30 days). In

21 cases (70 per cent), there was a delay in the completion of the investigation, and hence, the charge sheet was not filed within the stipulated period.

The analysis of the 54 PCM cases showed that of the total of 27 cases where information on the time of filing of the charge sheet was available, in 88 per cent of the cases, the charge sheet was not filed within 30 days of the FIR. The analysis of fact findings reports on recent atrocity cases (CSO reports) revealed that out of 27 cases for which the information on duration of investigation and submission of charge sheet was analyzed, in one-third of the cases, the charge sheet was filed within 30 days which means that in two-third of cases, there was a delay in the submission of charge sheets to the courts. The delay in charge sheets ranged from 30 days to 200 days.

Thus, there is a vast difference between the Rules that set a time-frame for an investigation and charge sheet and how it is actually applied in atrocity cases.

The inordinate delay in investigation has larger implications not only for the submission of investigation reports and further charge-sheets, but also for the victims who face relentless pressure from the accused and other members of the community, leading to persistent suffering and harassment for the victims. The delay in preparing the charge sheet also has implications on court judgment. It affects the direction of the court to a large extent, where courts let off the accused solely on the grounds of such a delay.

Untimely and Inadequate Relief Measures

The norms of compensation for the victims are laid down in the PoA Act Rule. Accordingly, the victim of an atrocity or his/her dependents under the Act, are entitled to different support measures that include financial assistance, relief and rehabilitation, apart from travel and maintenance allowances for victims and witnesses during the investigation and trial etc.

In some cases, full compensation or relief measures are extended only after the conclusion of the trials. In serious and heinous crimes such as murder, rape, massacre etc., part of the compensation is provided after post-mortem, FIR/medical examination and the other half after the conviction. Most of the compensation is granted after conviction. In many cases, the victims or dependents are supposed to receive the compensation at an early stage or after the filing of the charge-sheet in the case of murder, arson, rape etc.

Delays in the investigation and filing of the charge sheet mean an automatic delay in compensation/relief. The dilution of the provisions of the PoA Act in charge sheets also leads to a reduction in the compensation amount that should actually be paid. The courts add insult to the injury of the victims by postponing court trials, allowing trials to linger on and by granting acquittals in many cases.

The CSO cases clearly indicate that not in all cases do the victims receive compensation immediately after filing an FIR. In two-thirds of the cases, monetary compensation was received by the victims as per the rule. In case of the PCM Cases, in only in 15 per cent of the cases, did the victims receive compensation immediately. However, in all the cases under analysis, the issue of non-payment of TA/DA during the investigation process was a major problem. It must be noted that when a large majority of atrocity cases end with an acquittal of the accused, receiving full compensation always remains a distant reality.

High pending Rate

An equally important issue is the high pending rate of atrocity cases in the courts. Many times, the delayed trials of cases result in low conviction rates, as the witnesses change their statements or the victims are not in a position to deal with the pressure of such delay, or if the statement given in the court deviates from the first statement. The National Crime Record Bureau data indicates that the rate of pending cases is quite high. On an average, about 88 per cent of the cases in Maharashtra remained pending for trial from 2001-13. This was relatively higher than the average national pending rate during the same period.

Moreover, Maharashtra had higher pending rate than the states known for a higher number of registered cases of atrocities like Uttar Pradesh, Rajasthan, Madhya Pradesh and Andhra Pradesh.

The YASADA study (2011) found that after filing the charge sheet in a court, duration of pending cases in the JMFC and Sessions Courts is extremely high. In one-third of the cases, there was a pending period of 6-12 months; in 37 per cent of the cases, it was 1-2 years; and in another 26 per cent of cases, it was more than 2 years.

The Reasons for high Acquittal rate or low Conviction rate

The most disappointing feature is the very low conviction rate of those charge-sheeted in cases in the state of Maharashtra. According to the NCRB data, during 2001-13, the conviction rates in Maharashtra varied from the lowest of 1.8 per cent in 2001 to the highest of 8.2 per cent in 2008. The average conviction rate for 2001 -2013 was just 4.7 per cent. It was significantly lower than the national average of about 30 per cent for the same period. In 2013 the all-India conviction rate was 24 percent, And it was 54 percent U.P., 46 percent in Rajasthan/ Uttarakhand, 30 percent in M.P/Jharkhand and 37 percent Chattisgarh, compared with 6 percent in Maharashtra .

Reason for High acquittal rate: Acquittal More on procedural ground rather than substantial grounds

What are the reasons for low conviction rate in Maharashtra? One of the arguments of the anti Dalit agitators is that the conviction rate in atrocity cases is low, and the acquittal rate is high, is because of The filing of false cases by Dalits.

What is the truth? Is the low conviction rate, which is only about 6 per cent in 2013, due to the so called ‘false’ cases by Dalits, or due to other reasons?

It emerged from the discussion based on the three empirical studies that the extremely low conviction rate in atrocities cases can be attributed to the loopholes left by the police officials coupled with *wilful negligence* to in order to help people of their own social strata, which eventually leads to the high acquittal rate by the court on procedural grounds.

The Standing Committee of the Ministry of Social Justice and Empowerment pointedly observes:

“the officials attempted to dilute the spirit of the (PoA) 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 the stipulated time, not giving relief and compensation to the victims, not providing protective and preventive measures etc.”

Evidence confirms that there is a huge deviation from the Rules by officials. These loopholes then help the Judges to grant an acquittal based on the procedural grounds. The procedural lapses which result in a high rate of acquittals are as follows:

- (a) Delay in the filing of the FIR after the incident of atrocity, which is considered by the Court in its decision. The delay provides an opportunity for the accused to use various means to stop registering the case or influencing police officer in charge of the police station to dilute the information, and also to the Judges to name procedural loopholes as a ground for acquittal.
- (b) Not conducting an on-the-spot investigation in the majority of cases.
- (c) Appointment of officers below the required rank in some cases, if not all, or getting the investigation is done by lower rank officer, with the report bearing the signature of a higher officer.
- (d) Avoiding registration of the cases under the PoA Act or in relevant sections of the Act purposely. Only a low proportion of cases are registered under the PoA Act alone and they are combined with sections of the IPC. Those cases registered under the Act are placed under clauses where punishment is milder, like insult and intimidation. The registration under the weaker provisions of the IPC is one more reason. In the case of multiple crimes, registering the cases under IPC is done to avoid to using a relevant section of the PoA Act or milder clause of the Act.
- (e) Arrest of accused is the necessary provision; however, these provisions are not enforced fully due to negligence by the law implementing agencies. Delayed investigation of atrocity cases and filing charge sheets in less than 30 days, there by violating the rule and guidelines.

There is a vast difference between the Rules on timeframe for investigation and charge sheet and its applicability in atrocity cases. These then are used by Judges for acquittal, or milder penalty.

(f) **Judicial Process:** There are three issues at the level of judicial process which affect the conviction rate adversely, and these include: not setting up special court, high proportion of pending cases and decision of the court based in many cases, if not all, on the procedural lapses or short coming, left by the officials in charge sheet, rather than on substantial ground in term of the seriousness of atrocity and the merit of the case, all add to high level of acquittal.

Therefore, the combined role of official through willful negligence, the Court and the accused add to the high acquittal rate in Maharashtra.

False Cases are not the reason for the high acquittal rate

A section of Agitators charge that Dalits have misused the Atrocity Act, by filing false cases. Ironically, the high acquittal rate or low conviction rate is given as proof of misuse by the Dalits. It is clear from the above empirical evidence that wilful negligence by officials and Courts and their bias are the main reasons for the high acquittal under the Atrocity Act. Moreover, the coercive and intimidating role of high caste accused, particularly through the filing of false counter-cases, also plays a part in creating conditions for a high acquittal rate. There is no evidence in the studies and data to prove that Dalits played a role in the filing of false cases against the high caste accused.

About 9 per cent of the cases in Maharashtra are dropped at the initial stages by the police, due to insufficient evidence. Thus, charge sheets are filed only in those cases that the police consider appropriate. The remaining 90 per cent of the cases, which are filed with evidence got by the police, therefore, cannot be treated as 'false' cases. The police consider 90 per cent cases to be eligible for filling a charge sheet. This shows that there is no evidence in support of the allegation of false cases by the Dalits. The cases with insufficient evidence are dropped right in the initial stage, and only cases with proper evidence are considered for filling a charge sheet.

Is the suggestion to insert a provision of punishment for false cases in the Atrocity Act legally and morally justified?

Is there a legal and moral basis for the inclusion of a penal provision for so called false cases by dalit in the Atrocity Act , 2015.

The question of false cases was also addressed to the Standing Committee on Social Justice and Empowerment - 2014-15, Ministry of Social Justice and Empowerment, set up to provide an opinion on the SC and ST (Prevention of Atrocities) Amendment Bill 2014. In reply, the Ministry of Social Justice and Empowerment had rejected the suggestion to include penal provision for false cases .The Ministry responded by saying that”

'The object of the PoA Act is to prevent the commission of offences of atrocities against the members of the scheduled caste (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. 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.

Thus Ministry argued that it would, simply 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. In fact this is also not justified on any ground, legal or moral.

The argument to insert “false / misuse of the law” into the Act against a victim that the very law argues to protect, is grossly misleading. No rule should determine its own annihilating measures. If it does so, then what is the purpose of having the rules in the first place? Arguing for the misuse clause is just a strategy intended to negate the justice that the Act intends to secure for the untouchables.

If misuse is a genuine concern then, there are existing provisions under the ambit of the court. If the court discovers that the law was misused to harass someone from a particular community, then the court has complete autonomy to take required action. This has been done in the past and can continue to be done. There already exists a provision for dealing with 'false' cases in the IPC.

Besides, there is a moral question: Who needs more protection, the weak or the strong? Usually, the misuse of law appears in the context of non-applicability of the law. Depriving the intended groups of their rights is considered misuse. Misuse of the law by the victims is just plain rhetoric. Scores of scholarly research and legal analysis have put the emphasis on the misuse of law on the perpetrators and not the victims. The victim's position is not one of privilege. A gruesome act of violence damages the victim's human personality. This new 'misuse' clause theory, deters the victim instead and removes the burden of proof from the offender .The untouchables are in a minority and dependent up on the high caste majority. Neither their population strength nor economic strength permits them to misuse the PoA Act. In fact the cases registered by the SCs and STs with reference to the criminal acts committed against them remain scant. Everyday harassment and normalized caste offenses go unpunished. If the Penal provision proposed by the upper caste is accepted, Dalits would not have the courage even to register these heinous crime, given the strength of the higher castes, and the attitude of the administration involved in the delivery of social justice.

What is the experience of other countries, which have a similar Act against discrimination? Do they have a penal provision for so called misuse of the law? Countries like the USA, Brazil, South Africa, and Canada? That there has to be a law intended to compensate and to strengthen the protection of the vulnerable is acknowledged by the above noted progressive states. Nowhere in these countries, do the progressive legal remedies demand to emphasise the misuse of the

same law. Even the United Nations universal human rights documents that cover several vulnerable groups do not decree a provision for the misuse of law. Thus, it can be argued that the 'misuse' clause is not justified on any grounds, and needs to be rejected outright, as it is an attempt to put a check on the efforts by Dalits to seek legal justice.

What is the Motive behind the Discrimination or Denial of Equal Right to Dalits?

If we wish to address the issue of caste discrimination, it is necessary to locate the reason for its persistence.

What is the ultimate purpose behind the denial of equal right to Dalits? Literature tells us that the motives are both economic or material and high social status. It must be mentioned that discrimination is something which is also observed in other societies that are divided on the basis of race, colour, ethnicity, gender or religion. Racial discrimination is the main issue in the USA. Therefore, social scientists there have tried to look into the causes of racial and gender discrimination. Way back in 1956, the Nobel laureate economist Gary Becker argued that the whites discriminate against the black because they derive *psychological satisfaction or utility from discrimination*. People have a tendency to prefer people similar to them in colour or race as they derive psychological satisfaction from this situation.

Blumber (1958) and Darity et al (2006), however argued that the main reason behind race discrimination is *economic gains and high social status*. In fact, psychological satisfaction and high social status are derived from economic gains. According to this view, there are four basic types of feelings or attitudes that are present in discrimination by a dominant group against a subordinate group. The group which discriminates is normally a dominant group and the group that is discriminated against is subordinate. The dominant group holds the view that they are superior, and that the subordinate group is different from them, that dominant group, being superior, has special economic and social privileges and advantages over the subordinate group. And the most important thing is that the dominant group develops a feeling of fear that the subordinate group may take away their privilege and advantages.

Thus, discrimination or denial of rights to a subordinate group serves to maintain real (material) economic interests and a high social status which gives the dominant group psychological satisfaction. The dominant group then develops norms (a pattern of expected behaviour), values (a notion of right and wrong, and what is important in life), and an ideology (a set of beliefs held by a particular group, that influences the way people behave) or even a philosophy (a set of beliefs or an attitude to life that guides behaviour) to justify their economic privileges and the advantages of high social status. The discrimination, which involves denial of equal rights and social status to subordinate group, is an instrument in the hand of dominant group to retain their economic and social privileges.

What is the motive behind *caste discrimination* and denial of rights to untouchables? The caste system is based on the unequal distribution of economic, social, cultural and religious rights. The

high castes have traditionally enjoyed more economic and social rights than untouchables. The high castes have more rights at the cost or denial of the same to the untouchables. What then is the motive behind the denial of equal rights and equal status to untouchables by the high caste in the villages? According to Babasaheb Ambedkar, the motive is economic or material benefits and high social status for the high caste. The caste system provides massive economic and social privileges to high castes. The higher castes monopolized property, education and social rights and denied the same to the untouchables. The high castes have more rights because the untouchables have no rights. The high castes enjoy more rights at the cost of fewer rights to untouchables.

Given this background, it is not difficult to understand the reason for the continuing denial of equal economic rights and equal social status to Dalits. The opposition to them having equal rights, despite the guarantee of equal rights by Constitution is therefore is. The opposition to untouchables seeking equal rights, is to preserve the traditional economic privileges and high social status for the high castes. The fear of losing the traditional economic and social rights and high social status indeed is the root cause of perpetual opposition to the efforts by untouchables to seek equal social, political and economic rights. Clearly, the motive is economic or material privileges and high social status.

Why the high castes use violence to deny the equal rights to the Dalits

The high castes not only deny equal rights to Dalits in order to preserve their privileges, while denying the same to Dalits, but also use violent means to do. They use violent means because their religion sanctions the use of violence, physical and psychological, to stop Dalits from violating caste rules and codes. *In Babasaheb Ambedkar's view*, one of the features of the caste system as specified in the Shastras, namely the Manu Smriti, is the provision of a community level mechanism of punishment for violation of caste rules and codes. This punishment involves excommunication as well as penalties of various types. The penalties are both for high castes who violate the caste code and for the untouchables. The penalties for the high castes normally include temporary excommunication, and *prayaschit*. But violent means are not used.

However, the penalties for Dalits who violate caste rules and codes are far more harsh. The high caste community works like enforcement group, in fact, more effectively than the police. It will be useful to mention some of the penalties prescribed in the Manu Smriti as many of these penalties are still used by the high castes in rural area in a modified form. Although they are not supported by our country's laws, they are a part of norms, values and customs as well as the mindset of the high castes, as part of the living legacy of the past.

Babasaheb Ambedkar in his essay "Triumph of Brahmanism", and another essay, "Essential Features of Caste System", described some of the punishments prescribed in Manu Smriti. Here are a selected few:

Punishment for defamation

"A soldier, defaming a priest, shall be fined a hundred panas; merchant thus offending, a hundred and fifty, or two hundred; but for such an offence a servile man shall be whipped."

Offence of insults

"A Shudra who insults a Dvija with gross invectives, ought to have his tongue slit for he sprang from the lowest part of Brahma."

"If he mentions their names and classes with contumely, as if he says, 'Oh Devadatta, thou refuse of Brahmin'; an iron style, ten fingers long, shall be thrust red into his mouth."

"Should he, through pride, give instructions to Brahmins concerning their duty; let the king order some hot oil to be dropped into his mouth and his ear."

Punishment for the offence of abuse.

"A Vaishya and a Shudra must be punished exactly in the same manner according to their respective castes, except the slitting of the tongue of the Shudras. This is the fixed rule of punishment."

Punishment for the offence of assault.

"With whatever limb a Shudra shall assault or hurt a Dvija that limb, of his shall be cut off."

Punishment for the offence of arrogance

"A Shudra who shall insolently place himself on the same seat with a man of high caste, shall either be branded on his hip and be banished or the King shall cause a gash(meaning cut) to be made on his buttock."

"Should he spit on him through pride, the king shall order both his lips to be gashed; should he urinate on him, his penis, should he break wind against him, his anus."

"If he seizes the Brahmin by the locks or likewise if he takes him by the feet, let the king unhesitatingly cut off his hands, or by the beard, or by the throat or by the scrotum."

Punishment for the offence of adultery

"A man who is not a Brahmin who commits actual adultery ought to suffer death; for the wives, indeed of all the four classes must ever be most especially guarded."

"A Shudra who makes love to a damsel of high birth, ought to be punished corporally; but he who addresses a maid of equal rank, shall give the nuptial present and marry her, if her father desires it."

“A Shudra having an adulterous connection with a woman of a twice-born class, whether guarded at home or unguarded shall thus be punished in the following manner; if she was unguarded, he shall lose the part offending and all his property; if guarded everything even his life.”

“For adultery with a guarded Brahmin a Vaishya shall forfeit all his wealth after imprisonment for a year; a Kshatriya shall be fined a thousand panas, and he (shudra) be shaved with the urine of an ass.”

“But if a Vaishya or Kshatriya commits adultery with an unguarded Brahmin, the king shall only fine the Vaishya five hundred panas and the Kshatriya a thousand.”

“But even these two however, if they commit that offence with a Brahmani not only guarded but the wife of an eminent man, shall be punished like a Shudra or be burned in a fire of dry grass or reeds.”

“If a Vaishya approaches a guarded female of the Kshatriya or a Kshatriya a guarded Vaishya-woman, they both deserve the same punishment as in the case of an unguarded Brahmin female.” (which is lose the part offending and all his property; if guarded everything even his life)”

“But a Brahmin, who shall commit adultery with a guarded woman of those two classes, must be fined a thousand panas, and for the offending with a Shudra woman the fine of a thousand panas on a Kshatriya or Vaishya.”

“For adultery by a Vaishya with a woman of the Kshatriya classes, if guarded, the fine is five hundred; but a Kshatriya for committing adultery on a Vaishya woman must be shaved with urine or pay the fine just mentioned.”

Thus the Manu Smruti prescribed whipping, slitting of the tongue, thrusting of an iron rod into mouth, hot oil into mouth and in ear, cutting the limb, cut on buttock, lips to be gashed; urinating on part of the body, cutting of hands, death penalty; corporal punishment, cutting the offending part of body and destruction of property, burning on a fire, shave with urine and other punishments for the violation of customary caste codes.

This explains the use of violent means, even today, by the high castes against the untouchables for violation of traditional caste codes. We have presented the various ways in which atrocities are committed by the high castes in rural Maharashtra based on several set of studies from 2000 to 2015. *It assumes heinous forms that include verbal violence, caste abuse, humiliation, intimidation, threats forcing to consume undesirable substances like urinating into the mouth, parading naked in public view, removing moustache and shaving the head. Physical violence, includes physical attacks, abduction, murder, torture, being beaten to death, burnt to death, cutting off a part of the body, and damaging property. At the community level physical violence*

includes social and economic boycott, arson, riot, setting fire to houses and property, group attacks armed with lathis, stones and other weapons. Sexual Violence, takes the form of sexual assault, sexual harassment, molestation, rape, gang rape, rape in full view of relatives, outraging the modesty of women and striping them naked and parading them in public.

If we look at the punishments prescribed by Manu Smruti and the atrocities and violence, both verbal and physical, perpetrated by the high castes in rural areas at the present time, one is not at all surprised at the close similarity between the two.

The traditional methods of punishment as stated in the Manu Smruti are etched in the memory and mind of the people as a legacy of the past, which makes them follow the practices prescribed in Manu Smruti. The past is not past, it comes alive in the present in the form of violent punishment, which the Supreme Court described as, *the quality of being shockingly cruel and inhumane*. In other words, social behaviours of the high castes continues to be influenced by the traditional code of the caste system. Although the Constitution and the country's laws prohibit the use of traditional methods of punishment, the high caste selectively use traditional methods in new and modified forms.

Solution: What should the Government Do?

The key question, therefore, remains: what can be done to secure equal rights to the Dalits and eliminate violence against them'. In other words, what reforms are necessary to reduce the gap between the Constitutional promises of equal rights and their violation in practices, so that Dalits can enjoy the same rights which others enjoy?'

We should therefore, discuss the current measures and their limitations and in conclusion, make suggestions for reforms in the current measures and also suggest new measures.

Need effective Implementation of laws but also Social Conscience in favour of the laws

The laws are necessary to provide safeguards for Dalits against the denial of equal rights. But we have seen that despite the operation of laws, their impact has been limited. Babasheb Ambedkar had emphasized the need of legal safeguards against discrimination. *Indeed, he worked hard to enact the Untouchability Act 1955.*

But he was clear about the limitation of the law in a situation where the entire community is opposed to equal rights for Dalits. In a famous lecture, which he delivered in 1943 at the Gokhale Institute, Pune, (at which Ranade, Gandhi and Jinnah were present?) Babasaheb Ambedkar observed:

“The idea of making a gift of fundamental rights to every individual, no doubt, is laudable. The question is how to make them effective? The prevalent view is that once rights are enacted in a law, then they are safeguarded. This again is an unwarranted assumption. And experience proves that rights are not protected by law but the social and moral conscience of society. If

social conscience is such that it is to recognise the rights which law chooses to enact, rights will be safe and secure. But the fundamental rights are opposed by the community. No Parliament, no Judiciary can guarantee them in the real sense of the words. What is the use of fundamental rights to the Negroes in America, to the Jews in Germany, and to the Untouchables in India? As Burke said, "There is no method found for punishing the multitude. Law can punish a single solitary recalcitrant criminal. It can never operate against a whole body of people who are determined to defy it. Social conscience –is the only safeguard of all rights fundamental or non-fundamental." (Ambedkar 1943)

However in the Hindu social order, there is a near absence of social conscience supportive of equal rights. The continuing denial of equal rights to the Dalits is thus the outcome of the absence, or the limited presence, of a social conscience in favor of the laws that secure equality. This is the explanation for the persistence of untouchability despite our laws. If an individual violate a law, it can be dealt with by the law, but if the whole community denies equal rights to the Dalit, a law cannot do much. In a village setting, the entire high caste community is opposed to giving equal rights to Dalits, and the laws have limitations when it comes to punishing the entire community.

Therefore there is a need to change the principles and norms which still permit the high castes to deny equal rights to Dalits.. *The social reform agenda must help people discard notions of inequality and gradually adopt attitudes which are supportive of laws, and develop a social conscience that would be supportive of equality laws. This is the key to social change.* This is the social reform ideal that Maharashtra has a great legacy of, and one which we have neglected for too long. There is a need to revive that great legacy of changing the social and moral conscience of society in favour of equality in practice .This involves purposeful efforts for change in the norms of behaviour that would support equal rights and equal status for,Dalits.

Unfortunately, this aspect of the solution has received much less attention than it deserves in government action. The focus has been on the *victim that is the sufferer*, which is of course necessary. But equal focus is necessary on the *accused*, those who practice discrimination, for a change in their social behaviour towards Dalits, which is in fact the source of discrimination. There is no engagement by the government with the people who practice untouchability and oppose equal rights to untouchables. Why do the high castes continue to practice discrimination? Why do they use violence against Dalits? And how does one transform them through a proper program to make their behaviour supportive of the equal rights of Dalits? This is the challenge which the government should tackle through its policies and schemes?

Untouchability and atrocities in the village: Economic and demographic power of high caste make it difficult

While the lack of a social conscious that is supportive of equality laws is the general reason, the economic and demographic condition of Dalits in villages, where most of the atrocities happen,

make social justice for Dalits nearly impossible. Babashaheb Ambedkar made it clear in his book *Gandhi and Emancipation of the Untouchable* in 1944, and again in *State and Minority* in 1946, that economic and population strength of Dalits vis-a-vis the high caste in the rural area make it nearly impossible for Dalit to seek their rights in villages . In the villages, the Dalits are in a minority and the high castes are in a majority. Economically the Dalits are mainly wage labourers and depend for their living on the land-owning high castes, who can easily crush any attempt by Dalits to seek equal rights. In 1942 Babasaheb Ambedkar observed:

“A perpetual war goes on every day in every village between the Hindus and the Untouchables... The existence of grim struggle between the touchable and untouchable is a fact... Under the village system the untouchable has found himself greatly handicapped in his struggle for free and honorable life. It is a contest between the Hindus who are economically and socially strong and the untouchables who are economically poor and numerically small. That the Hindus most often success in suppressing the untouchables due to many causes..., the chief weapon in the armory of the Hindus is economic power which they possess over the poor untouchables living in the village.”

What Babashaheb Ambedkar described in 1946 holds true even today. In the rural area of Maharashtra, the Dalits account for about 15 per cent of the population, while the population of high castes in villages is more 75 per cent. Economically in 2012-13, of the total number of Dalit households, about 60 per cent were wage labourers who depended on the high castes for their livelihood. Thus the economic and demographic situation of the Dalits and the high castes in a village is such that it does not allow the Dalits to secure their equal rights, despite having laws in their favour. The Dalits and high castes live in close proximity on demographically and economically unequal terms. Therefore, Babasaheb Ambedkar suggested a geographical and economic disconnect between the high castes and the Dalits, and argued for a separate settlement or village for Dalits away from the high castes, with an independent means of income. The suggestion of Dr Ambedkar to Dalits to move to the cities was part of that strategy.

This is how Babasaheb Ambedkar argued the case for separate villages and economic independence as a solution to the problem of untouchability and atrocities in villages.

“It is the close knit association of the untouchables with the Hindus living in the same village which marks them out as untouchables and which enables the Hindus to identify them as being untouchables. ... so long as the village system provides an easy method of marking out and identifying the untouchables, the untouchables have no escape from untouchability. ...the untouchable therefore demands that the nexus should be broken and the untouchables who are as matter of fact socially separate should be made separate geographically and territorially also, and be settled into separate villages exclusively of untouchables in which the distinction of the high and low and of touchable and untouchable will find no place.” (Ambedkar, 1943, and 1947)

Babasaheb Ambedkar goes on to argue the need for economic independence

“The second reason for demanding separate settlements arises out of the economic position of the Untouchables in the village. That their condition is most pitiable – they are a body of landless labourers who are entirely dependent upon such employment. In the village they cannot engage in any trade or occupation, for owing to untouchability no Hindu will deal with them. It is therefore obvious that there is no way of earning a living which is open to the untouchables so long as they live in a Ghetto as a dependent part of the Hindu village.” (Ambedkar, 1943, and 1947)

Babasaheb Ambedkar continues by saying that:

“That the Hindus most often succeed in suppressing the untouchables is due to many causes ... the chief weapon in the armory of the Hindus is economic power which they possess over the poor untouchables living in the village... ‘and he goes onto justify the proposal by observation that, the proposal may be dubbed as escapism. But the only alternative is perpetual slavery.” (Ambedkar, 1943, and 1947)

All that Babasaheb Ambedkar had said in 1947 has come true. In the struggle to secure equal right and dignity, Dalits fight an unequal battle, face atrocities and violence, and also social and economic boycotts. Babasaheb Ambedkar’s demand for separate villages for Dalits with independent economic means of livelihood is more relevant today than ever before.

Also, based on experience, his suggestion for migration by Dalits to cities and towns is also equally relevant today.

Proposed Reforms in Present Policies

In the light of the above discussion, we suggest new initiatives for the government to implement. We suggest steps on a few fronts that include:

- (1) High priority to the issue of Eradication of Untouchability by the Government,
- (2) Survey on the practice of untouchability every five years,
- (3) Steps for effective implementation of the PCR and POA Act,
- (4) Introducing an approach of ‘Healing, and Reconciliation,
- (5) Responsibility for enforcing the laws, PoA and PCR to be put on the Village Panchayat,
- (6) Settlement of Dalits in separate villages -- to begin with, in village where the population of Dalits is small and the district or taluka is declared to be atrocity prone,
- (7) Separate program to help settle Dalits in cities and towns,

- (8) Program for economic empowerment of the new settlers in cities and towns
- (9) Program of education against untouchability and caste discrimination by the State government.

We can now discuss these new measures in detail below.

High Priority to the Problem of Untouchability and Atrocities in Government Policy

Presently, the problem of untouchability and atrocities has been given a low priority in the government agenda. The removal of untouchability has not become a State level issue of prime concern, importance and priority, like poverty. The practice of untouchability means the denial of citizenship rights to a vast section of the population. If poverty is the daily experience of hunger, discrimination results not only in poverty, but it is a daily experience of humiliation and contempt. It is the day-to-day experience faced by Dalits under suppression and dominance.

If close to one fifth of our population suffers from the denial of citizenship rights, dignity and high poverty and deprivation, it should be a matter of great concern and engagement for the government.

Therefore, eradication of untouchability and caste discrimination must become the main issue to be placed on a high priority on the government's list of policies and programmes, which at present it is not. It should be a matter of urgency. The government of Maharashtra has not been sensitive to this problem. Babasaheb Ambedkar was concerned about the lack of sensitivity of the government, and in fact asked for safeguards against the bias attitude of the government itself.

Some of the new initiatives and modifications in the present policies are presented below.

Survey on the Status of Untouchability every five years

The first thing that the State government should do is to undertake a survey to study the persistence of untouchability and discrimination, and make it a regular practice to conduct a survey every five years, along with the National Sample Survey as a *Citizenship Rights Survey: Untouchability and Caste Discrimination* in rural and urban areas.

The Protection of Civil Rights Act and Atrocity Act require that the government review the situation, to study the progress in the practice of untouchability from time to time, and to monitor these two Acts. It appears that the government of Maharashtra has not conducted any state level survey since the enactment of Untouchability (Offence) Act in 1955. Therefore, we do not have an idea about the exact magnitude and pattern of untouchability, and the restrictions faced by the untouchables in accessing public amenities and spaces and other social spheres.

This survey should cover all 40,960 inhabited villages in the 35 districts and 355 tehsils of the State. The survey should be conducted by a reputed Research Institute or Institutes with the help of the panchayats, researchers and NGOs.

In addition, the government should conduct a parallel survey to develop an understanding of caste discrimination in *urban areas*.

The urban survey should cover issues such as the discrimination in employment in both the public and private sectors; discrimination faced by Scheduled Caste and tribal employees in government services in terms of their appointments, promotions, and transfers; discrimination in service opportunities; discrimination in urban housing (rental and ownership); and in business and trade.

Based on the findings of the survey, the government should then revise its policies to address the continuing problems of untouchability and atrocities in both rural and urban areas. The government should fix a schedule to ensure access to public amenities, and places and spheres covered in PCR and PoA to Dalits and Adivasis in all villages in a time bound manner and to address discrimination in other spheres.

Implementation of Atrocity Act as per the Rules of 1995 and 2015

It emerged from a review of the Atrocity Act that the implementation of the Act by officials deviates greatly from the rules. In the implementation of the Atrocity Act at various stages in the investigation, several loopholes are left in the charge sheet with 'wilful negligence' by the officials which results in high acquittal rates by the courts. The rules are bypassed with a purpose, which is described by the Standing Committee on SC/ST as '*wilful negligence*'. In a situation where the investigating officials have a self-interest in protecting the accused, it is difficult to enforce the implementation of the Atrocity Act as per the rules. Therefore, this is a real challenge before the government. Nevertheless, it is necessary that appropriate steps are taken so that the Act is implemented as per the rules.

The government should set up a Committee to find out ways and means to enforce the Atrocity Act as per the 1995 and 2015 Regulations, and to cover up the observed gaps and loop holes.

Using a 'Healing, Reconciliation and Unity Approach' on the Pattern of South Africa to Resolve the Issue through Mutual reconciliation

Dr Babasaheb Ambedkar believed that legal safeguards are necessary but they have limitations when the entire community discriminates and violates the law. Although those who discriminate are wrong in observing caste discrimination, it is the outcome of their belief in a religion of caste, which continues to influence and determine their behaviour. In fact they become the 'victims' of a wrong notion of the religion of caste. Given this background, it is useful to provide them with an open space in order to resolve the issue mutually.

In South African, beside the law and the courts, the government has used an approach, which provides scope for healing, remorse, acceptance of wrong, repentance and forgiveness. South Africa passed an Act, which is called 'National Unity and Reconciliation Act, 1995'. Under the Act, a public forum brings victims and accused face to face to discuss the issue. Interaction between the accused and victims in front of the people's representatives creates a space for open discussion. This helps to heal the wounded relations between the victim and accused. When the problems of discrimination and denial of equal right concerns one community vis-a-vis other community, a dialogue and discussion before a third party may help reconciliation and bridge the divide.

It is proposed that the government should set up a Committee to develop a mechanism similar to that of South Africa.

Make Village Panchayats Responsible for Elimination of Untouchability and Avoiding Atrocities

Villages are the place where most of the violation of rights and atrocities occurs. Therefore, the removal of untouchability that is to ensure access of Dalits and Adivasis to various amenities, public places and others included in PCR Act should be Made the responsibility of the Village Panchayat. In addition, it should be the duty of the Panchayat to act in a timely to resolve all issues through discussion, so as to avoid atrocities and potential violence. The Village panchayat is a state institution and is the right place for people of high caste and Dalits to come and work together.

However, for a Village Panchayat to perform this function, it is necessary that the issues of untouchability and atrocity be included explicitly as a necessary function of the Panchayat, and an administrative directive should be issued with regard to this Besides, the Panchayat should be provided with the necessary financial support to carry out othis function. The Village Panchayat should be made accountable for ensuring equal access for Dalits to public amenities, spaces and for their civic rights. A target should be set for Panchayats to make the village *untouchability and atrocity free*.

Appointment in the Village of a Civil Rights Worker or Secretary as a Regular Employee to take the Issues of Untouchability and Atrocities, designated as Civil Right Worker or Secretary similar to that of Gram Panchayat Secretary in the Village or ASHA worker for health services.

Given the widespread practice of untouchability and the perpetual potential for violent atrocities taking place in every village of the State, affecting 25 percent of the population (scheduled castes and scheduled tribes), it is necessary that a dedicated employee be appointed in every village or group of three to five villages with a specific duty, of ensuring equal access to Dalits and tribes to all amenities, spaces and other spheres which come under the purview of the Protection of Civil Rights Act and Prevention of Atrocities Act. To avoid these atrocities and solve issues

through discussion would also be the responsibility of the Civil Rights Worker or Secretary. The Civil Rights Secretary will also maintain the data and fix the target to make the village, untouchability and atrocity free. The Civil Right Secretary should also undertake a program of sensitization about the ills of untouchability and help untouchables to secure equal access and rights. The salary of the Civil Right Secretary should come from Scheduled Caste component Plan and Tribal sub-plan.

Separate Villages with Independent Source of Income to Begin with for Atrocity prone Villages and Villages with Small Population of Dalits

Babasaheb Ambedkar has suggested separate villages with an independent source of income to disconnect the Dalit geographically and economically from the main village, so as to avoid untouchability and its accompanying atrocities. Geographically and socially, Dalits are already separated through separate localities and restriction on social intercourse, but they are in a dependent relationship. The association with the high castes results in both discrimination and atrocities. To begin with, these schemes should be started for villages where the population of Dalits is small, and the villages have proved to be atrocity prone for a considerable period of time. The Dalit population should be settled in separate settlement with the necessary amenities and a suitable means of income, and made economically independent of the high caste settlement. This would mean they work in a job, trade or business. An office of Settlement Commissioner should be set up with the responsibility to re-settle the Dalits in a separate village. The Function of the Settlement Commissioner would be to identify the land, purchase the land and develop the settlement with suitable amenities.

In Maharashtra, the total geographical land is about 307,58000 hectares. Out of this, 21,5700 hectares is cultivable waste, permanent pasture and grazing land. This 21,57000 hectares, nearly 7 per cent of our geographical area in Maharashtra should be used for re-settling Dalits from rural areas into new settlements. Some land can be given to them for agricultural use such as tree, and fruit cultivation and for grazing purposes on which livestock could be raised.

To Settle the Dalits from Rural Areas in 534 Cities and Towns of the State in a Time-bound Manner

This is suggested as part of the scheme to move Dalits from villages to cities, as suggested by Babasaheb Ambedkar. Babasaheb Ambedkar suggested the migration of Dalits to cities and towns, so as to pull them out of the oppressive situation in their villages. It was the view of Babasaheb Ambedkar that living in cities and towns takes away the most oppressive feature of untouchability and its accompanying atrocities, although the discrimination in indirect forms such as in jobs may still remain. But to avoid the most oppressive forms of discrimination and violence in villages, Babasaheb Ambedkar considered the migration of Dalits to cities and towns a viable solution.

Therefore, in line with Babasaheb Ambedkar's suggestion, the government should develop the plan of shifting Dalits from their villages to cities and towns. A ten year plan should be prepared for this shift. The government should identify the towns in each district, and purchase land for the construction of houses for Dalits. The Prime Minister, on the eve of new year 2017, declared a mega housing scheme in cities and towns, and funds have been allocated for this in the 2017 budget. This scheme should be used for providing houses to Dalits and Adivasis from the rural areas in the 534 towns in the State.

The Indian Government already has the experience of settling lakhs of refugees during Partition by allocating land for re-settlement, with providing jobs and money for business. Therefore, what is being suggested is not a new, nor an impossible task. It is possible and we have already done it in 1947.

As suggested by Babashaeb Ambedkar, the post of Settlement Commissioner should be created and to begin with, a fund of rupees 100 crores should be placed at his/her disposal to make a district wise plan for re-locating Dalits in the 534 towns and cities in the state. The Special Component plan could also be used for this purpose. The government agencies which are engaged in the construction of housing can be collaborated with in this task. Simultaneously, an Economic Plan should be prepared to provide the re-settled Dalits with some source of income in the cities in both regular jobs in the public and private sectors and also in trade and business, the way it was done for the Hindu migrants from the Pakistan.

The Corporate Private sector should be involved in the construction of houses, providing jobs, assisting in businesses and other economic opportunities as a part of their activities under Corporate Sector Responsibility and Affirmative Action program implemented by the private sector since 2008.

Program of Public Employment in Cities and Towns, and of Business to Ensure Means of Livelihood to the New Dalit Settlers

The Maharashtra state is a pioneer in the introduction of the Employment Guarantee scheme in rural areas. This scheme was later taken over by the central government which ultimately resulted in MNREGA for the country as a whole. However, there is no scheme on that scale for the unemployed urban youth. Maharashtra state should take some initiative to introduce a scheme under which the government assures employment of some kind to the Dalits of the new settlement colonies according to their educational qualifications. The private sector should be asked to join the scheme under their Corporate Social Responsibility and Affirmative Action Program.

The Government should set up a High Powered Committee to develop the plan and work out the details, including the administrative and financial aspects of the Economic Plan. The first step should be to have a reasonable estimate of jobs available for public works with the different levels of education and skill required for them worked out on the basis of relevant data. After

that, other things can be worked out such as the financial requirements and the share of involvement of both the government and the private sector. The major focus should be on the employment in various types of urban infrastructure activities. The private sector should hire for their work Dalits from these new urban settlements..

Social Education to Change the Continuing use of Customs, Norms and Practices which Result in Discriminatory Behaviour by the High Castes towards Dalits and to move towards the ones which are Supportive of Equality and the Law.

This is the most important program, one that Babasaheb Ambedkar emphasised. The government policies so far have given greater priority to those who experience untouchability and atrocities, namely 'the victim', and less on those who perpetrate them -- 'the accused', namely those who practice untouchability and discrimination. There is hardly any program for changing the caste codes and norms which continue to influence the behaviour of the higher castes, which is discriminatory towards Dalits. This is the permanent and perennial source of persisting untouchability and the accompanying atrocities.

The practice of caste codes that lead to discrimination is not just legacy of the past, but is a way of life that is carried forward to the present. For the general population in a village, the past is not the past, but is very much alive in the present too, in spite of the provisions in the Constitution and in our Laws against it. Therefore, how does one transform these old ideas, norms, customs and practices which permit the high castes to carry on practicing discrimination and untouchability, into new principles, norms and values which will change their behaviour to one that is supportive of equality.

Babashaeb Ambedkar emphasized this greatly and argued that:

“People are not wrong in observing caste, but their belief in Shasta which has inculcated this notion of caste. If this is correct, then we must grapple not the people who observed caste, but the ideology, or belief and norms of caste and untouchability which induce them to follow caste. The real remedy is to destroy these beliefs which continue to mould the belief and opinion of the people. The acts of the people are merely the results of their belief inculcated up on their mind and that people will not change their conduct until they cease to believe in the religion of caste.”

If the views of Babasaheb Ambedkar are correct, which we believe they are, then the Government should develop a program to educate people -- adults, boys and girls -- to accept norms and principles which support the provision of laws of equality.. The countries which face similar problems have used programs of civic education or citizenship education for the youth.

We suggest a scheme of *Civic Learning and Education or Social Education* at three levels in cities and towns; in villages; and in schools, colleges and universities.

The first thing that the Government should do is prepare a *policy document* on Civic Learning and Education to sensitise people on caste discrimination, untouchability and atrocities against Dalits and Adivasis.

The second thing is that the Government, through the Ministry of Social Welfare, should prepare small booklets, handouts, posters and the messages for social media and other means of communication such as TV and radio. These would contain messages against untouchability and caste discrimination. After that, a program of education and sensitization should be launched at three levels- cities and towns, the Villages and educational Institutions.

Unfinished Agenda of Nation Building

This is essential for building the Nation and making it strong. Babasaheb Ambedkar urged:

“A nation is not a country in the physical sense, whatever degree of geographical unity it may possess. A nation is not a people synthesized by a common culture derived from common language, common religion or common race... Nationality is a subjective psychological feeling. It is feeling of corporate sentiment of oneness which makes those who are charged with it feel that they are kith and kin. ...It is a feeling of ‘consciousness of kind’ which bind together those who are within the limits of kindred. It is longing (a strong feeling of wanting) to belonging to one’s own group....This is the essence of what is called a nationality and national feeling.”

Babasaheb Ambedkar goes on to argue:

“The point is that nationality is not primarily a matter of geography, culture or language ... The nation is not a physical thing in which certain objective characteristics, such as commonality of language, race, territory, persists etc. Nation on the contrary, is a spiritual reality binding people into a deep comradeship.”

Ambedkar goes on to urge that:

“Nationality is social feeling of a corporate sentiment of oneness. It is a feeling of consciousness of kind, like mindedness, possessing things in common in life of communication, participation and of sharing with all those who constitute one nation. In this sense nation is a society where there is an unlimited scope for ‘social endosmosis’ Nation is a democracy, a mode of associated living, of conjoined communicated experience.”

The communication, participation and sharing with all those who constitute one nation is a key thing for nationhood. Fraternity and brotherhood makes this possible. Fraternity encourages a mental attitude of fair play and equality towards the co-nationalists. In Ambedkar’s views equality is a pre-condition for the nationhood and feeling of oneness. Ambedkar observed:

“Fraternity and liberty are really derivative notions. The basic and fundamental conceptions are equality and respect for human personality. Fraternity and liberty take their roots in these two

fundamental conceptions. Digging further down it may be said that equality is the original notion and the respect for human personality is a reflection of it. So that where equality is denied, everything else may be taken to be denied.”

Today, Dalits, Adivasis, semi-nomadic and de-notified tribes, women and religious minorities in Maharashtra suffer unequal treatment. Today if Dalits face physical isolation, (living in a separate settlement), and social isolation (from restricted social relations in many spheres of life such as dining and inter-caste marriage), face violence in seeking their rights, and face contempt, then we cannot say that we have met the necessary conditions of making a Nation in the true sense of the term. A place where people truly recognise equality and have respect for every citizen.

We have to recognize that we are a Nation in the making. We are a Democracy in the making. What we have discussed above, indicates that, Dalits are citizens in making. A far greater effort is needed to make Dalits full citizens, enabling them to access all rights that others in our country enjoy.

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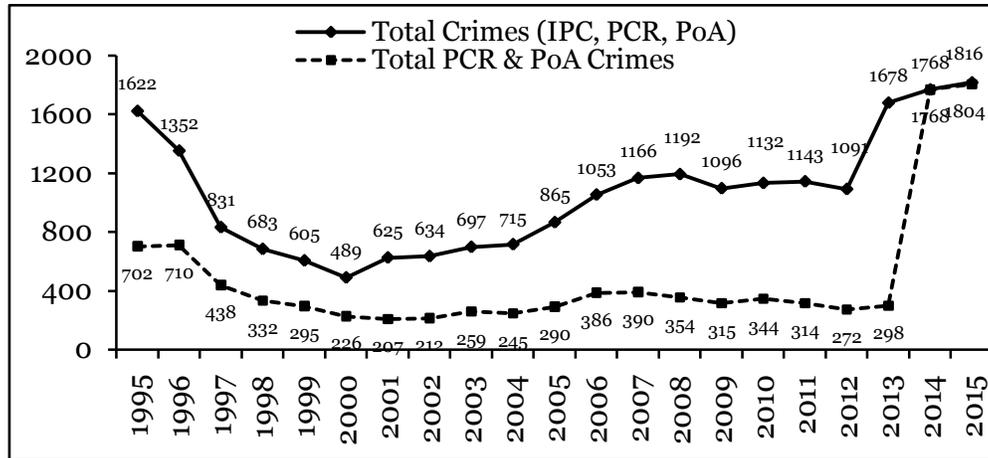
Table 1: Total Crimes, and PCR and PoA Crimes Registered*Against Scheduled Castes in Maharashtra, 1995-2015*

Year	Total Registered Crimes			Total PCR & PoA Crimes
	Total Crime (IPC, PCR, PoA)	PCR Crime	PoA Crime	
1995	1622	359	343	702
1996	1352	345	365	710
1997	831	262	176	438
1998	683	191	141	332
1999	605	135	160	295
2000	489	98	128	226
2001	625	61	146	207
2002	634	76	136	212
2003	697	43	216	259
2004	715	26	219	245
2005	865	32	258	290
2006	1053	36	350	386
2007	1166	20	370	390
2008	1192	20	334	354
2009	1096	24	291	315
2010	1132	25	319	344
2011	1143	10	304	314
2012	1091	5	267	272
2013	1678	21	277	298
2014	1768	5	1763	1768
2015	1816	9	1795	1804
Total (1995-2015)	22253	1803	8358	10161

Annual Ave	1060	86	398	484
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Source: *Crime in India, Various Years, National Crime Bureau Record, MHA, GOI, New Delhi.*

Graph 1: Trend of Total (IPC, PCR and PoA) Crimes, and Total of PCR and PoA Crimes Registered against Scheduled Castes in Maharashtra, 1995-2015



Source: *Crime in India, Various Years, National Crime Bureau Record, MHA, GOI, New Delhi.*

Table 2: Collective Nature of Atrocities

Number of Victims and Accused	% of Cases
One victim and one accused	14%
One victim and more than one accused	42%
Two or more victims and more than two accused	44%

Source: Based on 52 Fact Finding Cases of CSOs

Box 1: A List of Some Multiple Forms of Atrocities

- Physical attack, abduction and murder
- Sexual assault, physical assault and humiliation
- Caste abuse and physical assault
- Physical assault, social boycott, intimidation, threatening of sexual assault and caste abuse
- Physical assault, threatening, intimidation, rape, damaging property and destroying evidence
- Physical assault, damaging property, caste abuse, molestation, robbery and arson
- Caste abuse, physical assault, eve teasing, harassment and threatening,
- Rape, abduction, threatening and murder
- Sexual harassment, threatening and gang rape
- Teasing, physical assault and humiliation (parading in public)
- Physical assault, arson and destruction of property
- Physical assault, caste abuse and arson
- Caste abuse. physical assault and forcing to do something undesirable
- Physical assault, threatening and murder
- Outraging modesty, caste abuse, arson, physical assault, property destruction, threaten and murder
- Physical assault, torture, humiliation and murder (beat to death)
- Rape and murder
- Physical assault and murder
- Abduction and murder
- Physical assault and attempt to murder
- Caste abuse, humiliation and physical assault
- Physical assault, gang rape and damage of property
- Physical assault and social boycott
- Outraging modesty of women and gang rape
- Kidnapping, gang rape and murder
- Physical assault, murder, kidnapping, riot and intimidation
- Caste abuse, physical assault, threatening and attempt to kill

Table 3: Sub-caste of Victims and Those Who are Committing Atrocities

Sub-caste of victims		Sub-caste of those who commit atrocities	
Sub-caste	In Percentage	Sub-caste	In Percentage
Mahar	58.3	Maratha	43.52
Matang	27.4	Vanjari	5.47
Chambar	5.8	Dhangar	3.29
Paradhi	3.1	Brahmin	1.3
Bhil	1.9	Marwadi	1.28
Dhor	0.8	Gavali	0.34
Mahadev Koli	0.7	Others	12
Holhar	0.3	Muslim	9.69
Others	2.1	Not mentioned	23.01
Total	100.00		100.00

Source: Rural Development Centre (RDC), Beed, Marathwada, 2010

Table 4: Time Gap between Incidence and FIR

S. No	Atrocity Cases	As per Rule (Within 24 hours or one day)	Delayed
1	50 cases during 2007-09	58%	42%
2	33 cases during 2008-10	81 %	19%
3	52 cases during 2013-16	64%	36%
	Average	68%	32%

Sources: 1. PCM Cases; 2. YASADA study; 3. CSO reports

Table 5 : Registration of 33 atrocity cases charged under the PoA, PCR, IPC and others.

Cases under different sections of PoA, IPC and others	% of Cases
Cases booked under the PoA, PCR and Bombay Police (BP) Act	51%
Cases booked under the PoA Act and IPC	49%
Cases booked under the PoA Act only	0%

Source: YASADA (2011)

Table 6 : Registration of 33 Atrocity Cases Charged under Different Sections of PoA and IPC.

Registration of atrocity cases under different sections	% of Cases
Cases booked under the section 3(i)(x) of the PoA Act only	85%
Out of the total 22 sections under the PoA Act, sections not used/found	68%
IPC sections covering offence of ‘hurt’	66%
IPC sections covering offence of intimidation, insult and annoyance	69%

Source: YASADA (2011)

Table 7 : Distribution of Sections under the PoA, IPC and other Laws used in Atrocity Cases

Law	No .	Section	Nature of Offences	Based on 45 cases from YASADA study and CSO reports	Based on 41 PCM Cases
				% of cases	% of cases
PoA Sections	1	3(1)(x)	Caste abuse and insult	70.0	36.0
	2	3(1)(xi)	Sexually exploiting or outraging modesty of women	8.0	30.0
	3	3(1)(v)	Wrongfully occupying or cultivating/disposing from land	4.0	4.0
	4	3(2)(v)	IPC offences with punishment more than 10 years	18.0	8.0
IPC Sections	1	323	Hurt	13.5	9.2
	2	506	Criminal intimidation, insult and annoyance	12.6	11.8
	3	504	Criminal intimidation, insult and annoyance	10.7	7.9
	4	147	Offences against public tranquillity	6.5	8.6

	5	148	Offences against public tranquillity	6.5	5.3
	6	324	Hurt	6.0	3.3
	7	143	Offences against public tranquillity	5.6	6.6
	8	149	Offences against public tranquillity	5.6	7.9
	9	34	Acts done by several persons in furtherance of common intention	5.1	4.6
	10	Others (N=28)	Destruction of property, forcing to drink and eat inedible, forcing naked parading, compelling to do something, instituting false suit, fouling water of public sources, denying passage to a place, forcing to leave house/village,etc	27.9	29.9
Others	1	135 BP	Authorizing Police for disobeying an order	25.9	11.1
	2	7(1)(D)	Offence under the PCR Act	74.1	88.9

Sources: YASADA Study, CSO reports and PCM Cases

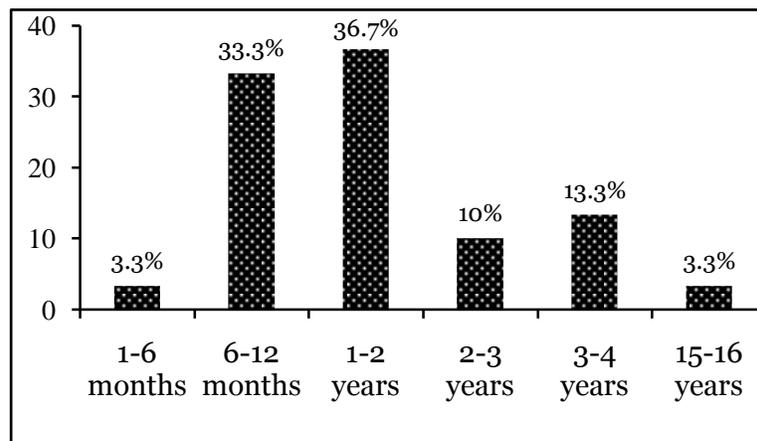
Note: Total 215 sections were used in 45 cases. These mainly included 4 sections under the PoA Act, 37 sections under IPC and 2 sections under other laws

Table 8: Pendency Rate of Crimes against Dalits in Court during 2001-13

Year	Percentage of Pendency
2001	88.3
2002	91.3
2003	90
2004	85.3
2005	91.5
2006	83.2
2007	77.7
2008	88.9
2009	88
2010	86.2
2011	88.1
2012	89.6
2013	90.6
Ave.(2001-13)	87.6

Source: Crimes in India, 2001-13, National Crime Record Bureau, MHA, GoI, New Delhi

Graph 2: Duration of pendency of cases jointly in JMFC & Sessions Courts,
Before trial in Special Courts



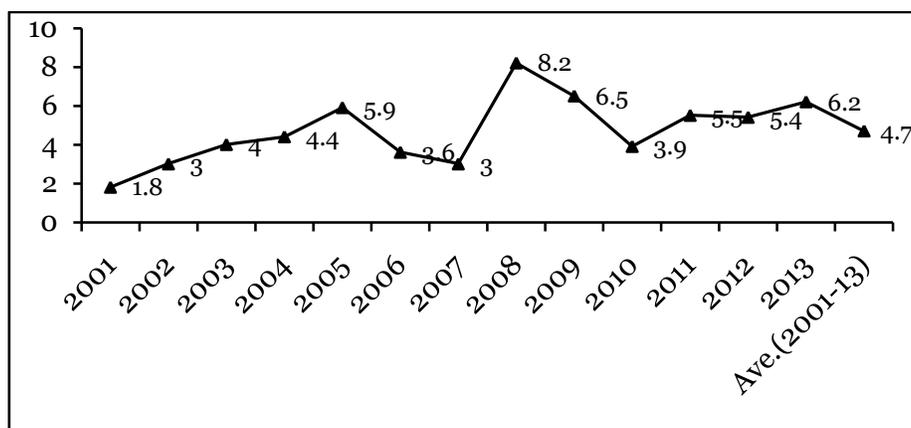
Source: YASADA Study (2011)

Table 9 : Conviction Rate of Crimes against Dalits in Court during 2001-13 in Maharashtra

Year	Conviction Rate
2001	1.8
2002	3
2003	4
2004	4.4
2005	5.9
2006	3.6
2007	3
2008	8.2
2009	6.5
2010	3.9
2011	5.5
2012	5.4
2013	6.2
Ave.(2001-13)	4.7

Source: Crime in India, Various Years, National Crime Bureau Record, MHA, GOI, New Delhi.

Graph 3 : Trend of the Conviction Rate of Crimes against Dalits in Court during 2001-13



Source: Crime in India, Various Years, National Crime Bureau Record, MHA, GOI, New Delhi.

Table 10: Conviction Rate for Total Crimes against Dalits in Major States, 2001-13

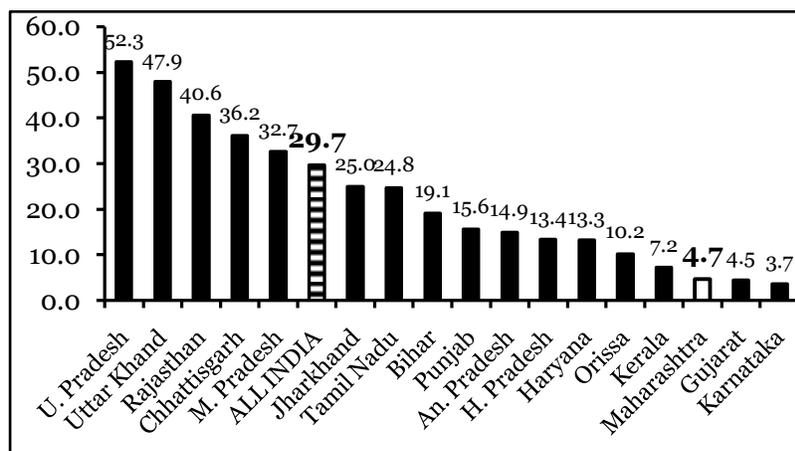
State	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
An. Pradesh	25.6	22.1	16.5	14.2	15.3	15.9	14.7	13.3	12.8	15.0	11.6	9.1	7.6
Bihar	33.0	23.0	28.3	19.1	30.6	22.4	15.0	17.5	11.6	11.5	10.6	12.4	13.1
Chhattisgarh	47.0	45.6	45.4	32.9	31.7	39.9	38.1	34.2	28.7	31.2	27.6	31.1	36.8
Gujarat	3.7	3.2	2.4	2.9	3.9	5.2	6.0	3.5	6.3	9.3	2.1	7.8	2.5

Haryana	5.4	9.4	8.2	13.3	17.1	8.3	23.7	10.6	18.2	23.1	13.0	7.9	14.6
H. Pradesh	21.7	15.0	6.7	5.0	10.0	23.7	7.4	5.6	19.4	25.0	5.4	12.1	16.7
Jharkhand	23.6	24.1	30.4	30.4	19.4	15.3	34.8	16.0	25.5	25.6	27.4	22.1	29.8
Karnataka	6.2	2.6	2.1	2.5	4.0	2.3	3.0	2.8	2.0	4.9	6.8	4.8	3.5
Kerala	4.8	4.0	9.2	4.4	13.9	5.7	4.2	4.3	9.9	9.7	8.7	4.1	10.8
M. Pradesh	35.0	28.8	25.0	26.2	32.1	28.1	39.9	37.0	38.8	35.1	31.5	35.3	31.9
Maharashtra	1.8	3.0	4.0	4.4	5.9	3.6	3.0	8.2	6.5	3.9	5.5	5.4	6.2
Orissa	13.4	8.8	14.9	14.0	11.1	13.6	10.0	11.4	7.2	7.9	8.8	6.3	4.6
Punjab	18.8	6.7	18.0	23.0	11.9	13.3	13.7	16.1	10.3	19.0	20.9	14.0	17.6
Rajasthan	30.2	31.7	37.2	37.0	41.1	40.4	47.3	46.0	43.3	40.4	45.7	41.0	46.5
Tamil Nadu	38.9	33.5	28.3	34.9	25.2	24.2	16.1	16.9	12.5	24.5	36.7	17.7	12.5
U. Pradesh	49.2	46.7	48.2	47.8	49.4	48.0	54.2	54.9	52.6	64.5	59.0	51.4	54.1
Uttarkhanda	38.3	52.1	47.6	44.3	46.9	50.8	35.0	45.7	46.4	52.8	61.9	54.5	46.8
All India	34.1	32.1	28.5	27.1	29.8	27.6	30.9	31.7	29.6	35.0	31.8	23.9	23.8

Source: Source: Crime in India, 2001-13, National Crime Record Bureau, MHA, GOI, New Delhi

Note: Conviction Rate indicates the percentage of cases out of total cases in which trials were completed in a given year., with decision in favor of victims

Graph 4 : State-wise Annual Average of Conviction Rate for the Crimes against Dalits in Major States, 2001-13 (Figures indicates annual average for 13 years)



Source: Crime in India, 2001-13, National Crime Record Bureau, MHA, GOI, New Delhi

Table 11 : Different Grounds for the Acquittal of the Accused

Broad Grounds	Specific Grounds	Percentage of Acquitted Cases
Procedural Grounds	FIR delay	9%
	Investigation not done by proper authority	12%
	Victim does not belong to SC/ST	9%
	Offence not committed on SC/ST ground	51%
	Others	19 %
Substantive Grounds	Personal Stand of Victims (<i>e.g. victim turns hostile, statement is not reliable and statement inconsistent</i>)	45%
	Personal Stand of Witnesses (<i>similar to the stand of victim</i>)	97%
	Other General Grounds: (<i>e.g. place of offence not within public view, accused intention was not to humiliate, problems regarding abusive words and medical evidence, and insufficient evidence</i>)	77%
	Other Special Ground: (<i>e.g. accused caste not mentioned, complainant died during trial, complaint lodge on the ground of enmity/ political rivalry, Counter case/civil case is pending, case settled or compromised and judicial error-wrong formulation of point/issue</i>)	55%

Source: YASADA study

Note: The figures under the Substantive Grounds is based on multiple responses.