

# Note on SCs & STs (PoA) Act Amendment Campaign

## 1. Why this National Campaign?

Scheduled Castes (SCs) and Scheduled Tribes (STs) are two of the most vulnerable communities in India in terms of discrimination and violence committed against them. Some of the worst forms of violence they face have been officially recognised as atrocities covered under the SC/ST (PoA) Act, attracting higher penalties in order to deter the occurrence of such crimes. These crimes occur *on the basis of* SCs and STs' ascribed caste and ethnic identity respectively and because, inter alia, they are minorities; because they are excluded from full enjoyment of national and state level resources and power; and because the SCs in particular are considered 'untouchables' and hence denied social mobility within the caste system. Women from these two communities are particularly vulnerable to violence due to the intersections between their caste/ethnic and gender identities, and they often bear the brunt of atrocities directed at themselves, their families and/or their communities.

*Parliament awakens, at last:* Over the recent years, however, Dalit and Adivasi communities have been increasingly and powerfully asserting their rights and demanding the entitlements denied to them for centuries, as well as protection of the few entitlements they enjoy. This has resulted in a further increase in atrocities against them, with new forms of caste/ethnicity, class and gender based discrimination and violence emerging over the years. The worsening situation prompted the Indian Parliament to consider the PCR Act 1955 and the normal provisions of the Indian Penal Code 1860 inadequate to check and deter crimes committed by dominant castes against the SCs and STs. Hence, Parliament found it necessary to enact the SCs and STs (Prevention of Atrocities) Act in 1989 and Rules in 1995.

This Act is expansive in its scope in many respects: in the list of offences; in constituting monitoring mechanisms; in identifying officers to perform specific responsibilities; in defining their specific duties; in framing penalties for offences committed; and in assuring relief and rehabilitation measures to the victim-survivors. It has, indeed, promised to address the issue of discrimination and atrocities faced by Dalits and Adivasis. Emerging at the same time is the increasing number of Dalit and Adivasi movements and organizations with the core goals of eradicating caste and ethnicity based discrimination and violence, and annihilating caste itself. Hence, a more powerful Act, more effectively implemented to both prevent atrocities and ensure legal accountability for atrocities, is a vital step towards attaining these goals.

*But national & state government fall short:* Two decades of monitoring the implementation of the Act, however, has provided us with data regarding its low rate of benefits and high rate of failures; that is, the performance of the national and state governments is far from satisfactory. On the part of the police and other concerned government officials, proper and adequate response towards the victims and witnesses of atrocities, as per the law, has often been lacking. In the courts, the judgements in most cases have been in favour of the perpetrators either on technical grounds, or due to the public prosecutors failing to argue the cases properly and effectively. The end result has been high acquittal and low conviction rates under the PoA Act. In sum, clear evidence exists of the lack of state accountability for effective implementation of the Act to ensure security of life to Dalits and Adivasis.

*Civil society is yet to wake up:* A very large part of the civil society, too, has been insensitive and indifferent to discrimination and atrocities faced by Dalits and Adivasis. Dominant caste led group massacres of Dalits, honour killings, systematic sexual violence against Dalit and Adivasi women, forcible denial of forest and land rights to Adivasis, alignment of dominant caste forces in the form of *khap* panchayats, forcible denial of effective political participation to Dalits and Adivasis within the decentralized governance system – all such happenings are indications of the dominant castes attempting to protect and perpetuate the hierarchical caste system and their control over resources and power. The collusion of state institutions and actors with casteist forces in denying justice to the Dalit and Adivasi victim-survivors by silencing them, or suppressing the facts, or bullying them into fear and submission shows how the law and order machinery can be made to bend to the will of the dominant caste groups. But what makes matters worse for Dalits and Adivasis is the voice of the conservative forces in certain quarters who openly decry the relevance, need and importance of the PoA Act itself. In doing so, they clamour for the maintenance of the archaic caste system as against the rights-based democratic order proclaimed by the Indian Constitution.

*So, we demand urgent action:* These are weighty reasons to assess the status of implementation of the Act by national and state governments, to scrutinize the lacunae in the scope of the Act, and to suggest ways to make it a more effective mechanism for guaranteeing security of life to all Dalits and Adivasis. By doing so, we, as a National Coalition of democratic forces upholding the human rights of all, contribute to questioning and ultimately eradicating the unjust caste system that affects each and every Indian citizens' lives, and most negatively the lives of Dalit and Adivasi citizens. The challenges for us therefore are:

- ☞ END UNTOUCHABILITY
- ☞ NO MORE ATROCITIES AGAINST ADIVASIS AND DALITS!
- ☞ ANNIHILATE CASTE!
- ☞ SAVE THE DEMOCRATIC VALUES OF CONSTITUTION!
- ☞ **Therefore, amend the PoA Act Urgently and enforce it effectively!**

## **2. Birth and Progress of the Campaign**

- On 25 June 2009, the National Campaign on Dalit Human Rights (NCDHR) initiated a consultation in New Delhi on the status of implementation of the SC/ST (PoA) Act through one of its core units, the National Dalit Movement for Justice (NDMJ). Adivasi, Dalit and human rights organizations and movements, activists and experts from the various states across the country who participated in the consultation formed themselves into the **National Coalition for Strengthening the SC/ST Prevention of Atrocities Act (NCSPA)**.
- The Coalition decided to prepare a position paper and draft an Amendment Bill based on various recommendations given by the National and State Commissions, various civil society organizations and experts, apart from the guidelines issued by the Ministry of Social Justice and Empowerment and the Home Ministry for better enforcement of the Act.
- On 11 September 2009, marking 20 years since the Act received assent from the President of India, the NCSPA organized a National Convention in New Delhi to review the implementation of the Act and the accompanying Rules, and to deliberate on the amendments and strategies required to strengthen the implementation of the Act.
- Since then, a National Campaign has been underway to disseminate information on the proposed Amendment Bill and to mobilize support for it among Dalits, Adivasis, their solidarity partners and all those believing in equal security and empowerment for all Indian citizens. The Amendment Bill has also been presented to the Government of India, with sustained lobbying and advocacy to ensure that it is placed before, and thereafter passed by, Parliament.
- As a further step in the process of ensuring justice and protection to Dalits and Adivasis, on 17-18 May 2012 the Coalition members held a national strategizing meeting in New Delhi in association with the Rajiv Gandhi Institute for Contemporary Studies (RGICS). In this meeting, the members arrived at a consensus as regards the proposed PoA Act amendments. It was further decided to intensify the campaigning with communities at the local level in order to raise political consciousness on these amendments and to build the political will among politicians, bureaucrats and the media to prevent atrocities. This would be done through a nation-wide call for the eradication of atrocities, 'untouchability' and similar discriminatory practices and casteism, starting with the amendment of the PoA Act and its effective enforcement.
- This massive effort of grassroots mobilization will converge on New Delhi for the **National Dalit and Adivasi Sammelan** (Conference) on 23 November 2012. The victims and witnesses of atrocities, community members and leaders, social movements and organizations have shown their willingness to give an unambiguous, determined and decisive call to the nation to end atrocities and strengthen enforcement of the PoA Act.

### 3. Thrust of this National Campaign

- ☞ *Demand* state accountability for the inadequate implementation of the *SC/ST (PoA) Act*.
- ☞ *Insist on* adequate political will to ensure state implementation of the Act *in toto*.
- ☞ *Call for* legislative amendments to the Act to expand and strengthen its scope and provisions, particularly regarding the rights of victims and witnesses.
- ☞ *Speak out for* greater gender focus in the Act.
- ☞ *Ensure* exclusive judicial mechanisms to ensure speedy trials so as to fulfill the deterrence purpose of the Act.
- ☞ *Clamour for* inclusion in the Act the excluded marginalised communities: various tribal and ethnic groups in the country; SCs/STs belonging to religious minority communities especially Muslims and Christians; and SC/ST migrant workers.

### 4. Spread of the Campaign

- ☞ The Campaign covers all the regions of India, including Jammu and Kashmir (which is currently excluded from the Act's operation), although the intensity and the activities of the campaign will vary from one state to the other, based on the differing strength of the respective State Coalitions and their experience of monitoring atrocities for the last two decades of the PoA Act.
- ☞ Currently, the Campaign is active at the national level (Delhi) and in 14 states: Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu and Uttar Pradesh. Representatives from Jammu & Kashmir, Chhattisgarh and the states in the North-East are also present.

### 5. What Has Been Done So Far

Since the beginning, the National Coalition has had two aims:

*One* is to *ensure better enforcement* of the PoA Act and Rules by monitoring the mandatory accountability and monitoring mechanisms provided in the Act. This is primarily to take human rights monitoring beyond fact-finding towards activation of the various preventive and protective mechanisms laid down in the present PoA Act and Rules. *Second* is to campaign to *strengthen the Act and Rules* through necessary and critical legal amendments.

Based on these two aims, the following are some of the activities undertaken by the Coalition at different levels to carry forward the campaign:

1. **Preparation of Amendments:** The Coalition formed a Working Group consisting of experts and activists, who prepared a Position Paper and Draft Amendments to the PoA Act and Rules, based on the experiences of implementation of the Act over the last 20 years. They obtained suggestions from the National Coalition Partners and various civil society organizations, conducted advocacy meetings with the Ministry of Social Justice & Empowerment and the Law Ministry, interacted with policy makers and advisors, and had consultations with the National Commission for Scheduled Castes, before finalizing the proposed set of amendments to the Act and disseminating them among the wider public.
2. **Preparation of Report Card and translation into regional languages:** The Coalition reviewed the implementation of the SCs and STs (PoA) Act for the past 20 years (1989 to 2009) and produced a '**Report Card**' to document the status of its enforcement. This Report Card was translated into many vernacular languages such as Hindi, Oriya, Telugu, Tamil, Marathi and Kannada, printed and then released through visible programmes in the respective States.
3. **Expanding the scope and use of the Act:** Aware of the prevalent perception in certain areas/circles that the PoA Act is only useful for SCs and not STs, the Coalition has had a series of consultations with different Adivasi movements and organizations in order to elicit support for greater engagement in the amendments based on their experiences of atrocities, and in monitoring the enforcement of the Act. The Coalition has also started building alliances with organizations and networks working on different socio-economic cultural rights – education, health, employment, livelihood, etc. – by organizing consultations at national and state levels.
4. **Consultations with CSOs, Judges, Police Officers and Academics:** Consultations were organized in various states with civil society organizations and movements and different experts to extensively discuss the proposed amendments before finalization for undertaking advocacy. The Coalition has also collaborated with different Academic and

Administrative Institutions such as the National Judicial Academy (Bhopal), Mumbai University Law Department (Mumbai), Dr. K.R. Narayanan Centre for Dalit & Minority Studies (Delhi) and Centre for the Study of Social Exclusion & Inclusive Policy, Ambedkar University (Lucknow) in organizing various symposiums, consultations and public hearings in order to garner public support among the various sections of civil society towards the proposed amendments.

5. **Advocacy with MPs, MLAs, Parliamentary Committees and Commissions:** Several consultations have been held with MPs, MLAs, the National Commission for Scheduled Castes and the Parliamentary Committee on the Welfare of SCs and STs in order to garner their support and, in the case of MLAs, to sensitize them as to their roles and responsibilities in properly monitoring and implementing the Act in their respective States. As a result, MPs and MLAs have raised various questions in Parliament and in the State Assemblies, based on model questions drafted by the Coalition, and specified the amendments proposed by the Coalition.
6. **Discussion with the Ministry of Social Justice & Empowerment (MSJE):** Since 2009, the National Coalition has had discussions with the MSJE to share about the proposed amendments and findings of the Report Card. The Ministry agreed and prepared a concept note to amend the Act, which was sent to all State governments and commissions. Based on this concept note, we also made interventions with the concerned ministries at the state level and briefed them regarding our proposed amendments to ensure that they have their feedback to the MSJE along the same lines. More recently, in 2012, the Coalition has had detailed discussions on the draft amendments with the MSJE.
7. **Advocacy with the Media:** In order to ensure that public opinion is kept alive, National Coalition partners have ensured that the (mal-) implementation of the PoA Act is being covered in the media at various levels, including cover stories of major national magazines and journals. Consequently, **Frontline** (2009, vol. 26, no. 24) and **Hindi Outlook** (2009) have brought out special issues on the PoA Act and Rules, which contained interviews from the concern ministries.
8. **Public Actions:** Around 30 January 2010 – the 20th anniversary of the Act coming into force – the Coalition Partners organized public actions in various States to strengthen our demand for review and amendment of the Act.
9. **Monitoring implementation of the Act & Rules through RTIs and PILs, and Preparation of People's Report:**
  - In order to widen the participation of the public in monitoring the implementation of the Act, trainings have been conducted for activists on the various monitoring mechanisms available under the Act.
  - Major atrocity cases such as the Mirchpur carnage in Haryana have also been followed up at various levels including the court, media and Parliament, in order to understand the systemic discrimination and gaps in the Act.
  - Numerous RTIs have also been filed with enforcement authorities to sensitize them as to their responsibilities, as well as to gather information about the enforcement of the Act's provisions.
  - Based on the responses to the RTIs, a **People's Report on Implementation of PoA Act (2009 to 2011)** was prepared in line with Section 21(4) of the Act.
  - In addition, the process of strengthening state accountability has been enhanced through the filing of public interest litigation petitions (PILs) in the High Courts of Bihar, Madhya Pradesh, Andhra Pradesh and Maharashtra, and in the Supreme Court of India.
  - We are also in the process of filing PILs in Tamil Nadu, Odisha, Rajasthan and Uttar Pradesh.
10. **Advocacy with National Advisory Council (NAC):** The NAC has organized a series of consultations based on the Coalition's proposed amendments, along with Rajiv Gandhi Institute for Contemporary Studies (RGICS). The NAC has further asked the National Law School, Bangalore to provide justification for the proposed amendments, which the National Law School has since completed.

## 6. The Impact Generated So Far

Through our interventions, the National Coalition has already observed the following major impacts with regard to strengthening the enforcement of the PoA Act and Rules:

1. Civil society as a whole have been continuously discussing and thereby keeping up the pressure to strengthen the PoA Act and Rules.
2. Adivasi peoples' movements and organizations are becoming interested in the enforcement of the PoA Act and Rules, and starting to see its potential as a tool for the protection of their communities.
3. The Parliamentary Committee on the Welfare of SCs & STs, the Ministry of Social Justice & Empowerment, the National Commission for Scheduled Castes and the National Advisory Council are taking up a review of the PoA Act.
4. The National Human Rights Commission has started visiting various states to review the situation of atrocities on Dalits and Adivasis.
5. Numerous Parliamentarians as well as Members of the Legislative Assemblies are raising questions in the Parliament and State Legislative Assemblies respectively as regards the enforcement of the PoA Act.

6. The High Courts of Maharashtra and Bihar, in response to our writ petitions, have questioned the respective State Governments with regard to enforcement of the Act in these two States.
7. Our RTI applications have been instrumental in sensitizing law enforcement officials as to their roles and responsibilities, as well as providing us with a huge amount of information for use in the campaign.
8. Various parliamentarians, media persons, officers in the commissions, law enforcement officials and civil society organizations are calling us to seek information regarding the enforcement of the PoA Act.
9. The Ministry of Social Justice & Empowerment has initiated a consultation process by sending a concept note for amendments to the Act to all state governments and concerned bodies for their feedback.
10. Moreover, the Ministry of Social Justice & Empowerment has had several internal meetings as well as with Commissions and Parliamentary Committees to involve them in this process of reviewing the Act and making it more effective.
11. The National Advisory Council (NAC) has taken up the task of drafting amendments to the Act based on the National Coalition's proposed amendments.
12. The NAC has had a series of consultations with NDMJ-NCDHR as well as with the officials of the concerned Ministries.
13. The NAC has requested the National Law School of India University, Bangalore to work out the rationale for the proposed amendments.
14. The draft amendments of the NAC as well as Ministry of Social Justice & Empowerment are expected soon.

## 7. Our Envisaged Outcomes

***The National Coalition is determined to ensure*** that the Central and State Governments, all political parties and leaders, and all civil society members and organizations take a determined stand:

- ☞ **END UNTOUCHABILITY!**
- ☞ **PUT A FINAL STOP TO DISCRIMINATION!**
- ☞ **NO MORE ATROCITIES!**
- ☞ ***Our goal is zero tolerance to atrocities against Dalits and Adivasis!***

### ***We also want .....***

- ☞ *To promote awareness on the present Act and Rules and public opinion on the proposed amendments among the Adivasi and Dalit communities and organizations working on various socio-economic cultural rights and atrocities.*
- ☞ *To activate and build pressure on various governance systems of the Act at local, district, state and national levels.*
- ☞ *To strengthen the State Coalition with organizations working on Dalit and Adivasi issues and various social, economic and cultural rights of Dalit and Adivasi women, men and children to fight against untouchability, discrimination and atrocities.*
- ☞ *To assist the victims and witnesses in demanding amendments to the SCs & STs (PoA) Act.*
- ☞ *To create greater awareness among the Elected Representatives regarding the SCs & STs (PoA) Act and call on them to endorse the amendments to, and thereby strengthen, the Act.*

From September 2012 onwards, various Coalition partners in the States have been engaged intensively in the tasks of organizing state, district and division level consultations, public meetings, awareness rallies, public hearings, victims and witnesses meetings. These efforts have generated enthusiastic support for the proposed amendments and the outcome is the enormous flow of positive energy and momentum in the country to take this change process forward.

The public visibility and voice manifested in the respective states will have to be repeated now at the national level. The opportune time is the ***National Sammelan*** (Conference) on 23 November 2012 at the Ramlila Grounds in New Delhi. This is expected to be a massive show of Dalit and Adivasi people's power to the nation as a whole - the Central and State Governments, elected MPs and MLAs, Political Parties and the various national and state level Human Rights

Commissions. The occasion will be the winter session of Parliament. The National Coalition Partners and all their supporting civil society networks of Dalit and Adivasi movements and unions, women and human rights activists and organizations, academics and professionals committed to the cause of upholding Dalit and Adivasi rights look forward to the Elected Representatives introducing the amendments in Parliament soon for early debate and deliberations. All the Dalits and Adivasis in this country want Parliament to listen to their voice, their grievances and their demands. The entire governance system has as its supreme duty to ensure the protection and promotion of the right to life and security of life of all the Dalits and Adivasis of this country.

***The idea of hoping to remove untouchability without destroying the caste system is an utter futility. The underlying idea that caste and untouchability are two different things is founded on a fallacy. The two are one and are inseparable... Dr B.R.Ambedkar***