

RAPE AS AN ATROCITY: ANALYSIS OF JUDGMENTS DELIVERED BY THE DISTRICT COURT OF BILASPUR, CHHATTISGARH[†]

*Nikita Sonavane**

I. INTRODUCTION

The word ‘Dalit’ comes from the Sanskrit root ‘dal-’ and means ‘broken, ground-down, downtrodden, or oppressed’; in common parlance, it is often used to identify those who have been perceived and treated as the lowest of the low castes in India.¹ The term was initially popularised by Dr B R Ambedkar: he used it as a descriptor for the members of these so-called lower castes who were seeking political assertion and emancipation from historically inflicted violence, oppression and prejudice. Independent India, with the intention of atoning for its past of caste-based violence and discrimination, also defined the term in the Constitution² and laid down a path for the group’s protection.

Though the post-independence era was meant to herald this uplifting, Dalits remain victims of orchestrated violence. Writer and scholar D R Nagaraj, in his analysis of this violence against Dalits, identifies two patterns in the attack against them.³ The first is related to the notion of justice in a village and the second relates to obstructions faced by Dalits in asserting their rights. He observes:

‘[W]hen the behaviour of a single individual or a group of Dalits differs from and challenges traditionally accepted notions of

[†] This article reflects the position of law as on 3 June 2016.

^{*} The author is a student of Government Law College Mumbai, and is presently studying in the final year of the Three Year Law Course. She can be contacted at sonavane.nikita03@gmail.com.

¹ ——— ‘Who are Dalits?’, *National Campaign on Dalit Human Rights*, available at <http://www.ncdhr.org.in/dalits-untouchability/> (last visited 3 June 2016).

² Dalit is often used to refer to the category of Scheduled Castes defined under Article 366(24) of the *Constitution of India* as castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed to be Scheduled Castes for the purposes of the *Constitution of India* under article 341.

³ Doḍḍaballaṅpura Rāmayya Nāgarāj, *The Flaming Feet and Other Essays: The Dalit Movement in India* (2nd edn University of Chicago Press 2010).

morality, norms of social behaviour and rules related to love and sex, the caste-Hindu society takes it as a grave violation of its ethics and punishes the alleged offenders severely. The notions and practices of justice of the rural Hindu society are organically linked to the ethos of the caste system. Equally important is the fact that the structure of justice rests on the consensus of the entire village, which could also mean the unchallenged rule of upper castes.⁴

These notions and practices operate at an intrinsic level of the Hindu society leading to instances of violence that impact the lives of Dalits even in present times. In 2012, among the over 260 million people worldwide who faced extreme forms of discrimination, exploitation, and violence based on caste, there were nearly 167 million Indians, 16 per cent of whom were Dalits.⁵ In 2013, there were 39,327 crimes recorded against members of various Scheduled Castes across all Indian States, with a conviction rate of 23.8 per cent.⁶ The number of these crimes shot up to 47,064 in the year 2014 with a marginal drop in the conviction rate to 23.4 per cent.⁷

The first independent Indian government in its bid to move beyond lip service attempted to use legislation to address this issue. This process began with the enactment of the *Protection of Civil Rights Act, 1955*, which was passed to give effect to article 17⁸ of the *Constitution of India*. It proved to be ineffective and subsequently, led to the passage of the

⁴ *Ibid.*

⁵ ———, 'India: UN Members Should Act to End Caste Discrimination' (2012) *Human Rights Watch*, available at <https://www.hrw.org/news/2012/05/14/india-un-members-should-act-end-caste-discrimination> (last visited 3 June 2016). See generally World Report 2015: India (2015) *Human Rights Watch*, available at <https://www.hrw.org/world-report/2015/country-chapters/india> (last visited 3 June 2016).

⁶ National Crime Records Bureau, 'Crime in India 2013: Statistics' (2014) *National Crime Records Bureau*, available at <http://ncrb.nic.in/StatPublications/CII/CII2013/Statistics-2013.pdf> (last visited 3 June 2016).

⁷ National Crime Records Bureau, 'Crime in India 2014: Statistics' (2015) *National Crime Records Bureau*, available at <http://www.ncrb.gov.in/cii-2014/Table%207.1.pdf> (last visited 3 June 2016).

⁸ Article 17 states: 'Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.'

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act).⁹ The PoA Act, for the first time, classified crimes committed against members of Scheduled Castes and Scheduled Tribes as ‘atrocities’. The PoA Act and such protectionist laws aim to infuse criminal law with constitutional ideals of substantive equality by re-signifying previously stigmatised bodies as bearers of rights.¹⁰

Despite the effective mechanism envisaged under the PoA Act, the conviction rate continues to remain low.¹¹ I seek to understand the causes of this low conviction rate through my research in the Bilaspur district located in the State of Chhattisgarh. As per the 2011 census, the district of Bilaspur is the second most populous district in the State of Chhattisgarh.¹² The total population of the district is 19,61,922, of which 13.8 per cent are members of Scheduled Castes.¹³ The High Court of Chhattisgarh is located at Bilaspur. Until June 2009, there was a Special Court set up in Bilaspur to deal with cases of atrocities. This Special Court was subsequently done away with owing to paucity of cases,¹⁴ and all matters were transferred to the District Court. A separate police station has been set up and the District Court has appointed a Special Public Prosecutor to deal with all the matters under the PoA Act. The Bilaspur district meets all of the procedural requirements laid down by the PoA Act, thus making it the ideal case study.

In the context of this discourse, the violence against Dalit women deserves particular consideration as it takes a unique form at this intersection of gender and caste categories. The gender and caste discrimination that Dalit women face is the outcome of severely

⁹ Girish Agrawal and Colin Gonsalves (eds), *Dalits and The Law* (Human Rights Law Network New Delhi 2005).

¹⁰ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press New Delhi 2014).

¹¹ *Supra* n. 6 and 7.

¹² District Administration, Bilaspur (CG), ‘Statistics: General Information’ (2011) *Bilaspur: The Pride of Chattisgarh*, available at <http://www.bilaspur.gov.in/Statistics.html> (last visited 3 June 2016).

¹³ *Ibid.*

¹⁴ The author, as part of the research, conducted interviews with the District Judge and Special Public Prosecutor of the Bilaspur District Court. Both officials stated this fact in the course of their interviews.

imbalanced social, economic and political power equations.¹⁵ According to anthropologist Leela Dube, in her 1996 work *Caste and Women*, ‘sexual asymmetry (between men and women) is bound up with the maintenance of the hierarchies of caste’. She writes that the principles of caste in fact inform the nature of sexual asymmetry in Hindu society, and simultaneously, the hierarchies of caste are articulated by gender roles. She notes that in contemporary Indian society, ‘[C]aste is not dead. Gender is a live issue ... the boundaries and hierarchies of caste are articulated by gender.’¹⁶

These observations stem from several statistical studies. A three-year study of 500 Dalit women’s experiences of violence across four Indian states shows that the majority of Dalit women report having faced one or more incidents of verbal abuse¹⁷ (62.4 per cent), physical assault (54.8 per cent), sexual harassment and assault (46.8 per cent), domestic violence (43.0 per cent) and rape (23.2 per cent).¹⁸ Another study placed the conviction rate for rapes against Dalit women at under two per cent as compared to a conviction rate of 25 per cent in rape cases against all women in India.¹⁹ The severity escalates in peculiar cases, such as those

¹⁵ All India Dalit Mahila Adhikar Manch *et al*, ‘Violence Against Dalit Women: Input to the UN Special Rapporteur on Violence against Women in connection with her visit to India between 22 April – 1 May 2013’ (2013) *International Dalit Solidarity Network*, available at http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/2013/India_submission_on_Violence_against_Dalit_Women_-_SR_on_VAW_India_2013.pdf (last visited 3 June 2016).

¹⁶ Dip Kapoor, ‘Gendered-Caste Discrimination, Human Rights Education, and the Enforcement of the Prevention of Atrocities Act in India’, (2007) 53 (3) *AJER Online* 273-286, available at <http://ajer.journalhosting.ucalgary.ca/index.php/ajer/article/view/700/678> (last visited 3 June 2016).

¹⁷ Verbal abuse included regular derogatory use of caste names and caste epithets possibly amounting to ‘hate speech’, as well as sexually explicit insults, gendered epithets and threats.

¹⁸ Aloysius Irudayam S J *et al*, ‘Dalit Women Speak Out: Violence Against Dalit Women in India’ (2006) *International Dalit Solidarity Network*, available at http://idsn.org/uploads/media/Violence_against_Dalit_Woment.pdf (last visited 3 June 2016).

¹⁹ —, ‘Dalit Women’ *International Dalit Solidarity Network*, available at <http://idsn.org/key-issues/dalit-women/> (last visited 3 June 2016).

of Devadasis,²⁰ who have been victims of societal ostracism and ritualistic exploitation,²¹ as 93 per cent of them belong to Scheduled Castes and seven per cent to Scheduled Tribes.²²

The inefficacy of the justice delivery system incapacitates it from dealing with the matters of Dalit women. Issues of Dalit women have in any case remained largely unexplored by academia, feminist organisations and other human rights groups in India. The intersection at which Dalit women are placed often creates further challenges to making the issues of violence, especially those of a sexual nature, conspicuous within the mainstream framework of analysis and action.²³ Historically, too, Dalit women have been perceived as inherently incapable of embodying honour; hence, the social meaning of rape loses its power to describe the humiliation that Dalit women face. This stems from the fact that colonial law²⁴ invested upper-caste women with greater modesty or honour as compared to Dalit women in the sphere of judicial interpretation and sentencing.²⁵ Therefore, the PoA Act, by naming the outraging of the modesty of or the dishonouring of a Dalit woman as an atrocity marks a discursive shift and imbues honour or modesty with a newer meaning with regard to Dalit women.²⁶ Given

²⁰ Devadasis are members of a community of women who dedicate themselves to the service of the patron god of the temples in eastern and southern India. Members of the order attended the god by fanning the central image, honouring it with lights, and singing and dancing for the god, as well as for the king and his close circle, who often commanded the devadasis' sexual favours. Because many devadasis engaged in temple prostitution, both the British and the upper-caste Hindus during the period of colonial rule came to hold the devadasis in low social regard. The system was outlawed in 1988. Although the number of devadasis subsequently began to decline, the institution has remained strong—although less open—in the 21st century, particularly in parts of the south. — 'Devadasi' (2015) *Encyclopaedia Britannica*, available at <http://www.britannica.com/topic/devadasi> (last visited 3 June 2016).

²¹ Maggie Black, 'Women in Ritual Slavery', (2007) Anti Slavery International, available at http://www.antislavery.org/includes/documents/cm_docs/2009/w/women_in_ritual_slavery2007.pdf (last visited 3 June 2016).

²² *Ibid*, 3.

²³ *Supra* n. 15, 4.

²⁴ Anupama Rao, 'Caste, Gender and Indian Feminism' (2003) *Gender and Caste* 1–47, available at <http://cscs.res.in/dataarchive/textfiles/textfile.2010-03-11.8248362078/file> (last visited 3 June 2016)

²⁵ *Supra* n. 10.

²⁶ See Dr. Anand Teltumbde, 'Khairlanji Verdict Whither the Atrocity Act?' (2009) *Combat Law*, available at <http://www.combatlaw.org/khairlanji-verdict-whither-the-atrocity-act/> (last visited 3 June 2016).

this context, I decided to further focus my research on cases of sexual violence, specifically rape of Dalit women and the application of the PoA Act in Bilaspur.

At the outset, in Part II of the article, I have analysed relevant sections of the PoA Act to determine its application in cases of rape of Dalit women.

Then, in Part III, I have analysed the 23 judgments delivered by the District Court of Bilaspur between May 2009 and December 2014. These judgments were recorded in Hindi and for the purposes of research and analysis, I translated them into English.²⁷

This article is based on primary and secondary legal research. The qualitative research methodology has been employed to analyse the causes of the low conviction rate in Bilaspur. During the process of collecting judgments the method of quota sampling²⁸ has been used; I have selected only those judgments that involved a charge of rape of Scheduled Caste women. The qualitative method of in depth interview²⁹ has also been relied upon by conducting interviews of prosecutrices in cases pending at the District Court of Bilaspur.

The subject matter is intended for an audience of victim-survivors, scholars, researchers, practitioners, local community members, and policy makers.

Part IV deals with the role of investigating agencies in implementing the PoA Act to understand the process by which the prosecution's case is marred and injustice is consequently aggravated when the investigating agencies fail to perform their duty upon the registration

²⁷ The author has accurately translated and transliterated the original judgments into English, to the best of her knowledge and having made every possible and reasonable effort. Discrepancies, if they arise, may be attributed to the limitations of translation and language.

²⁸ Natasha Mack *et al*, 'Qualitative Research Methods: A Data Collector's Field Guide' (2005) *Family Health International* 360, available at <http://www.fhi360.org/sites/default/files/media/documents/Qualitative%20Research%20Methods%20-%20A%20Data%20Collector's%20Field%20Guide.pdf> (last visited 3 June 2016).

²⁹ *Ibid.*

of a First Information Report (FIR).³⁰ As part of my research, I sought information, under the *Right to Information Act, 2005* (RTI Act) from the Scheduled Caste and Scheduled Tribes Police Station located at Sarkanda in the Bilaspur district regarding the number of complaints registered.

In Part V of the article, I have analysed the *Khairlanji* massacre, which is a recent and archetypal instance of shoddy investigation in caste crimes.

Finally, in Part VI of the article, I conclude by analysing the amendments to the PoA Act that came into force in January 2016 and the changes, if any, that these amendments would bring about.

II. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

A. *Object and Definitions*

Coming nearly four decades after the Indian Constitution, the PoA Act has been the most important measure to address the commission of atrocities against Dalits.³¹ Unlike its predecessor, the *Civil Rights Act 1955*, which only concerned itself with superficial humiliations such as verbal abuse, the PoA Act is a tacit acknowledgement by the State that caste relations are defined by violence, both incidental and systemic.³² However, 25 years later, the PoA Act remains one of the most underutilised provisions of law especially in the face of rampant violence against Dalits.

The object of the PoA Act is as follows:

‘An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for

³⁰ Teesta Setalvad, ‘Caste Crimes’ (2005) *Communalism Combat*, available at <http://www.sabrang.com/cc/archive/2005/mar05/cover.html> (last visited 3 June 2016).

³¹ Anand Teltumbde, *The Persistence of Caste: The Khairlanji Murders and India’s Hidden Apartheid* (Zed Books London 2010).

³² *Ibid.*

the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.’³³

The PoA Act aspires to address and curb everyday and extraordinary caste-based violence against the Dalits and the Adivasis. However, when listing the offences punishable therein, the PoA Act uses the phrase ‘whoever not being a member of a Scheduled Caste or Scheduled Tribe’ to indicate that its provisions come into play when the offender is not a Dalit or Adivasi. In other words, a Dalit man cannot be prosecuted for raping tribal women under the PoA Act and such a charge must be prosecuted under the *Indian Penal Code, 1860* (IPC) alone.

Further, the term ‘atrocities’ has not been defined under the PoA Act. Section 2(1)(a) of the PoA Act merely states that the term ‘atrocities’ means an offence punishable under section 3 of the PoA Act.

B. Atrocities against Dalit Women

Two sections of the PoA Act apply to the offences of assault, rape or sexual humiliation of Dalit women.

Section 3(1)(xi) of the Act states:

‘Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty; shall be punishable with imprisonment for a term which shall not be less than six months or which may extend to five years with fine.’³⁴

Further, Section 3(1)(xii) of the Act states:

‘Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed; shall be punishable with imprisonment for

³³ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, preamble.

³⁴ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, sub-section (1)(xi) of section 3.

a term which shall not be less than six months but which may extend to five years with fine.’³⁵

In order to attract section 3(1)(xii), the sexual exploitation must have taken place because of the offender’s position of dominance. The term ‘sexual exploitation’ has not been defined in the PoA Act, nor has it been used in the IPC. These words can, therefore, be interpreted to have the same meaning as normally accorded to them in the English language. The word ‘otherwise’ is significant, and clearly indicates that the exploitation must be with the agreement of the woman, where she would not have agreed but for the offender’s position of dominance. This section has been included in the PoA Act to deal specifically with sexual violence committed in the dynamic of a master-servant relationship.

Relatedly, for certain offences against Dalits, section 3(2)(v) of the PoA Act provides for the enhancement of the punishment that is available under the IPC. This becomes applicable when an offender commits a crime against a Dalit, but there is no specific section of the PoA Act addressing that particular crime. The accused is then charged with the appropriate section under the IPC with enhanced punishment as per section 3(2)(v) of the PoA Act. This section reads as under:

‘Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life with fine.’³⁶

The rape of a woman is punishable under section 376 of the IPC with imprisonment of either description that may extend to a term of ten years or for life. If, however, the woman in question is a member of a Scheduled Caste or a Scheduled Tribe, section 3(2)(v) of the PoA Act is

³⁵ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, sub-section (1)(xii) of section 3.

³⁶ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, sub-section (2)(v) section 3.

attracted and may provide for greater punishment. However, crucially, in order to attract the enhanced punishment prescribed by section 3(2)(v) of the PoA Act, it is necessary to prove that the woman in question was raped on the ground that she was a Dalit or a tribal.

This requirement that the rape must have been committed ‘on the ground’ that the woman was a member of a Scheduled Caste or Scheduled Tribe gives the judges a wide room to exercise their discretion. The threshold that must be met for proving the commission of the atrocity is, therefore, quite high. The burden rests on the prosecution to prove that the accused not only had prior knowledge of the victim’s caste, but also that he acted on the basis of such knowledge in the commission of the crime.

III. ANALYSIS OF JUDGMENTS DELIVERED BY THE DISTRICT COURT OF BILASPUR

In this part, I have analysed the 23 judgments delivered by the District Court of Bilaspur in cases where the accused was charged both with the commission of rape under the IPC³⁷ and of an atrocity under the PoA Act between June 2009 and December 2014. Until May 2009, a Special Court, as mandated by the PoA Act, dealt with cases under the Act. However, after the Special Court was removed, all cases were transferred to the District Court, which now performs the functions of the Special Court. I have, first, analysed judgments delivered in 18 cases wherein the accused have been acquitted under section 376 of the Indian Penal Code (IPC) thereby leading to an acquittal under the PoA Act by default. Then, I have analysed six judgments wherein the accused have been convicted under section 376 of the IPC, but have been acquitted under section 3(2)(v) of the PoA Act; ie, they were found guilty of rape under the IPC, but not found guilty of having committed an atrocity against a Dalit woman under the PoA Act. Lastly, in this part, I have examined the sole case in which the accused is convicted under the PoA Act for the atrocity of raping a Dalit woman.

³⁷ *The Indian Penal Code, 1860* as it existed before the *Criminal Law (Amendment) Act of 2013* came into force, applies to all of the judgments in this article.

A. Cases of Acquittal under the IPC and the PoA Act

This sub-part deals with 18 cases wherein the accused were acquitted under the IPC and therefore, by default, also acquitted under the PoA Act, as the accused cannot be found guilty of the atrocity of raping a Dalit woman if he is not found guilty of the rape in the first place.

These cases have been divided into three sub-categories on the basis of the patterns emerging in them.

1. Promises of Marriage

The following eight cases have been analysed hereunder:

- (i) *State of Chhattisgarh v. Raghu alias Raghvendra Vaishnav*³⁸
- (ii) *State of Chhattisgarh v. Rakesh Yadav and Others*³⁹
- (iii) *State of Chhattisgarh v. Kamal Yadav*⁴⁰
- (iv) *State of Chhattisgarh v. Rakesh Soni alias Mintu*⁴¹
- (v) *State of Chhattisgarh v. Prabhu Panika*⁴²
- (vi) *State of Chhattisgarh v. Rajkumar Dubey*⁴³
- (vii) *State of Chhattisgarh v. Vinod Katela Jain*⁴⁴
- (viii) *State of Chhattisgarh v. Satish Gupta*⁴⁵

Most of these cases have nearly identical facts wherein the accused established sexual intercourse with the prosecutrix by promising to marry her, but subsequently refused to do so. In these cases, the prosecutrixes sought to take recourse to section 376 of the IPC, which lays down the offence of rape, and section 90, which negates consent obtained under a misconception of fact or fraud. As the prosecutrixes

³⁸ District Court of Bilaspur Special Case (Atrocities Act) No 35/2010.

³⁹ District Court of Bilaspur Special Case (Atrocities Act) No 25/2010.

⁴⁰ District Court of Bilaspur Special Case (Atrocities Act) No 15/2010.

⁴¹ District Court of Bilaspur Special Case (Atrocities Act) No 23/2010.

⁴² District Court of Bilaspur Special Case (Atrocities Act) No 35/2009.

⁴³ District Court of Bilaspur Special Case (Atrocities Act) No 18/2013.

⁴⁴ District Court of Bilaspur Special Case (Atrocities Act) No 32/2007.

⁴⁵ District Court of Bilaspur Special Case (Atrocities Act) No 25/2012.

all belonged to a Scheduled Caste, the accused in all cases were also charged under section 3(2)(v) of the PoA Act, which provides for enhanced punishment for certain offences committed under the IPC against a member of a Scheduled Caste or Tribe, along with sections 3(i)(xi), 3(i)(xii), or both of the PoA Act, which deal with the assault, rape or sexual humiliation of Dalit women.

In the case of *State of Chhattisgarh v. Vinod Katela Jain*, for instance, both the prosecutrix and the accused were public servants. The prosecutrix was the subordinate of the accused. The accused invited the prosecutrix to his house for his daughter's birthday party. On reaching his house, the prosecutrix discovered that the accused was alone and that the birthday party was a ruse to engage in sexual intercourse with her. She resisted but the accused had sex with her against her will. Following this incident the accused and prosecutrix began a romantic relationship. The accused promised to marry the prosecutrix despite already being married and continued to engage with her sexually on the basis of this promise.

Since the prosecutrix belonged to the Ganda caste, which is a Scheduled Caste, the accused was charged under section 3(2)(v) of the PoA Act, which provides for enhanced punishment for rape. The relationship between the accused and the prosecutrix was that of a master and a servant, ie, the accused was in a position to dominate the will of the prosecutrix. This dynamic should therefore have led to the framing of a charge under section 3(1)(xii) of the PoA Act, as well. However, surprisingly, the accused was not so charged by the investigating authority, nor did the Court frame a charge under this section. The prosecution, which has the authority to *suo moto* frame a charge by an application to the Court, also failed in its duty to do so in this case. Thus, the accused was never tried under section 3(i)(xii) of the PoA Act.

The accused was acquitted under section 376(2)(b) of the IPC as well as section 3(2)(v) of the PoA Act. The Court held that section 90, which negates consent obtained under a misconception of fact or fraud, did not render non-consensual the sexual intercourse that was initiated on the basis of the accused's promise of marriage; thus, there was no rape. This was held because the prosecutrix was (or should have been) aware that she and the accused belonged to different castes and that their families would object to such a marriage. The Court also held

that the prosecutrix was a consenting party since she was an educated woman who was aware that the accused was a married man who could not have legally married her and yet, continued to engage with him sexually.

The Court also relied on this rationale in the case of *State of Chhattisgarh v. Satish Gupta*⁴⁶ where it was held that the prosecutrix, who was 25 years old at the time of the commission of the offence, was well aware that she and the accused belonged to different castes and that, consequently, it was not possible for them to marry. It was further stated that the prosecutrix continued to engage in sexual intercourse with the accused despite knowing this, and thus, could not be accorded the benefit of a 'misconception of fact' under section 90 of the IPC. The Court also held that the medical examination proved that the prosecutrix was habituated to sexual intercourse, and found that she had engaged in it consensually with the accused. Therefore, the accused was acquitted under sections 376 and 506 of the IPC as well as section 3(2) (v) of the PoA Act. The remaining judgments are on similar lines.

In these cases, not only were the accused not found guilty of a caste atrocity against the prosecutrices, but the impossibility of an inter-caste marriage was also used as a ground to acquit the accused of rape. The Court is in fact upholding the archaic practice of marrying within one's own caste. This is a conscionable blunder on the part of the Court and runs counter to the ethos of the Indian Constitution, and the aspirations of one of its primary makers, Dr B R Ambedkar, who deemed inter-caste marriage to be the real remedy to defeat castiest dogma.⁴⁷

2. Cases of Prosecutrices Turning Hostile

The accused were acquitted in the following cases as a result of the prosecutrices turning hostile and denying the prosecution's versions of the incidents:

- (i) *State of Chhattisgarh v. Purshottam Kumar Soni and Others*⁴⁸

⁴⁶ *Ibid.*

⁴⁷ Dr B R Ambedkar, *Annihilation of Caste* (3rd edn Pradbuddha Bhart Pustkalya Nagpur 2011).

⁴⁸ District Court of Bilaspur Special Case (Atrocities Act) No 26/2012.

- (ii) *State of Chhattisgarh v. Jaykumar Sahu*⁴⁹
- (iii) *State of Chhattisgarh v. Samarth Lal alias Chotu*⁵⁰
- (iv) *State of Chhattisgarh v. Jogeshwar Rathore and Others*⁵¹
- (v) *State of Chhattisgarh v. Jawahar Soni*⁵²
- (vi) *State of Chhattisgarh v. Ashutosh Singhal*⁵³
- (vii) *State of Chhattisgarh v. Deepu alias Deepchand*⁵⁴

A study conducted on the performance of the former Special Courts set up under the PoA Act found that the prosecutrices were compelled to turn hostile due to their economic dependence on the upper and dominant castes and their state of insecurity.⁵⁵ It also concluded that a hostile witness was the main reason for the high rate of acquittals in such cases.⁵⁶ During the course of the interviews I conducted with the prosecutrices in pending cases in the District Court, I discovered that they were subjected to immense societal pressure to withdraw their cases. In one of the cases, the prosecutrix was raped by a man who lived in the same locality as her. The majority of the people living in the locality belonged to the same (upper) caste as the accused, and the prosecutrix was hounded by taunts and snide remarks on a regular basis. This harassment, coupled with the financial burden that the litigation imposed on her family, was making it difficult for her to prosecute the case.

⁴⁹ District Court of Bilaspur Special Case (Atrocities Act) No 1/2012.

⁵⁰ District Court of Bilaspur Special Case (Atrocities Act) No 11/2013.

⁵¹ District Court of Bilaspur Special Case (Atrocities Act) No 36/2009.

⁵² District Court of Bilaspur Special Case (Atrocities Act) No 12/2009.

⁵³ District Court of Bilaspur Special Case (Atrocities Act) No 27/2013.

⁵⁴ District Court of Bilaspur Special Case (Atrocities Act) No 32/2010.

⁵⁵ Centre for Study of Casteism, Communalism and Law (CSCCL), National Law School, Bangalore, India, 'Study on the Performance of Special Courts Set up under the SC ST Prevention of Atrocity Act' *International Dalit Solidarity Network*, available at http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/Performan_of_courts_SCST_act-Study.pdf (last visited 3 June 2016).

⁵⁶ *Ibid.*

3. Other Cases of Acquittal

The remaining three cases of acquittal did not fall into either of the preceding categories. In *State of Chhattisgarh v. Jaleshwar Kashyap*,⁵⁷ the Court, while acquitting the accused, noted that the prosecutrix had earlier filed a rape complaint against one Neil Prakash, and that that matter had been resolved when the villagers convinced both parties to enter into a compromise. This history was one of the grounds relied upon to acquit the accused under section 376 of the IPC and under section 3(2)(v) of the PoA Act.

Similarly, in *State of Chhattisgarh v. Gaurishankar Tiwari and another*,⁵⁸ the Court noted that the prosecutrix had admitted to having previously had an affair with a man named Ram Singh, and that she had filed false complaints in the past against different people. It used this as a ground to doubt the veracity of the prosecutrix's statement. This, coupled with other facts, led to the acquittal of the accused under the IPC.

Finally, in *State of Chhattisgarh v. Narendra Kumar Dubey*,⁵⁹ the accused was acquitted on the ground that the prosecutrix's testimony was in some way 'marred with suspicion' and that the medical evidence was unreliable because she was married and thus, habituated to sexual intercourse. Strangely, the judgment does not reveal a charge framed under section 3(2)(v) of the PoA Act, which is a necessary corollary in a case alleging the rape of a woman belonging to a Scheduled Caste. The accused was acquitted under section 3(1)(xii) of the PoA Act along with sections 376 and 506 of the IPC.

B. Cases of Conviction under the IPC and Acquittal under the PoA Act

In the following sub-part, I analyse the six cases in which the accused were convicted of rape under section 376 of the IPC but were acquitted under the PoA Act. In each case, the Court held that there was no evidence on record to prove that the prosecutrix was raped by the accused specifically on the ground that she was from a Scheduled Caste. This was the basis for the acquittal of the accused in *State of Chhattisgarh*

⁵⁷ District Court of Bilaspur Special Case (Atrocities Act) No 31/2010.

⁵⁸ District Court of Bilaspur Special Case (Atrocities Act) No 5/2008.

⁵⁹ District Court of Bilaspur Special Case (Atrocities Act) No 27/2009.

v. *Mukku alias Mukesh Yadav*,⁶⁰ *State of Chhattisgarh v. Nepal Singh*,⁶¹ *State of Chhattisgarh v. Rajkumar Patel*,⁶² *State of Chhattisgarh v. Chaitu alias Chaitram*,⁶³ and *State of Chhattisgarh v. Keshav Lal*.⁶⁴

In *State of Chhattisgarh v. Chaitu alias Chaitram*,⁶⁵ an FIR was lodged under sections 376 of the IPC and 3(2)(v) of the PoA Act. The Court held that the prosecution did not present any evidence to prove that the rape took place because of the prosecutrix's caste. Therefore, the accused was acquitted under section 3(2)(v) of the PoA Act. The phrase '*abhiyukt ne prarthiya ko choddh diya*', a vulgar pejorative to describe sexual intercourse in Hindi, was repeatedly used in the judgment to describe the act of rape committed. While the official Devanagari translation of the IPC provides that the term '*laingik sambhog*' can be used to describe sexual intercourse, the deliberate use of crude language by the judge in describing the heinous act of rape begs the question of whether a judge who displays such coarseness should be considered capable of dealing with sensitive issues such as rape and caste. It also raises doubts about the fairness of the trial being conducted in this case. The absence of the term '*laingik sambhog*' in describing the act of rape is conspicuous in all judgments analysed for the purpose of this article.

In *State of Chhattisgarh v. Krishna Kumar Sahu*,⁶⁶ the accused was convicted under section 354⁶⁷ of the IPC for outraging the modesty of a woman but acquitted under the corresponding section 3(1)(ix) of the PoA Act. Despite the prosecution being exempt from fulfilling the threshold laid down under Section 3(2)(v), which applies only to cases punishable with ten years or more under the IPC, the accused has been acquitted under Section 3(1)(ix). The accused ought to have been

60 District Court of Bilaspur Special Case (Atrocities Act) No 33/12.

61 District Court of Bilaspur Special Case (Atrocities Act) No 43/09.

62 District Court of Bilaspur Special Case (Atrocities Act) No 18/2013.

63 District Court of Bilaspur Special Case (Atrocities Act) No 23/2009.

64 District Court of Bilaspur Special Case (Atrocities Act) No 12/13.

65 District Court of Bilaspur Special Case (Atrocities Act) No 23/2009.

66 District Court of Bilaspur Special Case (Atrocities Act) No 14/13.

67 Assault or criminal force to woman with intent to outrage her modesty—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

convicted by default under the PoA Act owing to his conviction under section 354 of the IPC. In failing to do so, the Court has committed a gross error in the application of law.

C. *Sole Case of Conviction under the PoA Act*

The case of *State of Chhattisgarh v. Manik Lal Tandiya*⁶⁸ is the only case in which the District Court convicted the accused under the PoA Act. The prosecutrix was a 30-year-old married woman who, on 16 June 2012, went to the fields for her ablutions. Suddenly, the accused came to the field, pushed her to the ground and began raping her. When she screamed, he threatened to kill her. The prosecutrix's house is located approximately three–four metres from the area of the crime scene. When she reached home, she narrated the incident to her in-laws and her husband. Her husband called the *sarpanch* following which they filed a report at the police station.

The Court held the accused guilty under section 376 of the IPC. As the accused had threatened to kill the prosecutrix when she protested against the rape, the Court held that the prosecutrix's consent was obtained in consequence of such fear, and was covered by section 90 of the IPC.

The prosecutrix was examined, and the medical report stated that the prosecutrix was habituated to sexual intercourse and had been sexually active around 24–48 hours prior to the examination. However, the medical examiner also opined that there were no external signs of injury on the victim's body and that the white vaginal discharge could also be due to a reason other than that related to rape. Therefore, it could not be concluded beyond all reasonable doubt that the prosecutrix was raped.

The Court held that since the prosecutrix was a married woman in her 30s, the medical examiner's opinion was unimportant as no married woman would put her honour at stake by falsely accusing a man of raping her. In this case, the Court seems to have adopted a liberal view by not placing any reliance on the medical examiner's opinion, unlike previous cases wherein reports of the medical examiner have impacted the outcome of the cases.

⁶⁸ District Court of Bilaspur Special Case (Atrocities Act) No 19/2013.

The caste certificate presented to the Court stated that the prosecutrix belonged to the Gond caste, which falls under the Scheduled Caste category. In his statement made to the Court under section 313 of the *Code of Criminal Procedure, 1973* (CrPC), the accused admitted to knowing that the prosecutrix belongs to the Gond caste, which is a Scheduled Caste, and admitted to being a member of the Panika caste, which does not fall under the Scheduled Caste category. The accused and the prosecutrix were also neighbours. The Court held on this basis that the accused was aware that the prosecutrix belonged to the Scheduled Caste and that the crime was committed because the prosecutrix belonged to the Scheduled Caste. Thereby, the accused was convicted under section 3(2)(v) of the PoA Act.

As per section 3(2)(v) of the PoA Act, the knowledge of a woman's caste must be the ground for the commission of the crime. It is for this reason that many of the acquittals in the previous sections were obtained, owing to the difficulty inherent in proving that the rape was specifically committed because the woman belonged to a Scheduled Caste. However, there is nothing to distinguish this case from the previous ones. There is nothing that proves that the accused committed the crime because the woman was a member of the Gond caste. The absence of any distinguishing feature unique to this case fails to explain the rare conviction, when so many other cases with similar factual matrices resulted in an acquittal. It suggests a certain degree of arbitrariness in the judgments. It is interesting to note that, during my interaction with him, I was made aware of the fact that the judge presiding over this case also belonged to a Scheduled Caste. Some may opine that this judgment is tainted with personal bias, but one cannot simply assume the legal soundness of the previous cases to debunk the irregularity in *Manik Lal Tandiya*, as the entire lot of them are highly susceptible to well-conceived criticism. I firmly believe that the arbitrary and unfettered discretion conferred on the Court in such matters has led to a failure in the deliverance of justice.

During my interaction with the court staff, lawyers and police, I was explicitly told several times that the Bilaspur District was devoid of caste prejudice. It was morbidly ironic to see the same authorities being entrusted with the responsibility of bringing to justice those responsible for committing caste atrocities in Bilaspur.

IV. ROLE OF INVESTIGATING AGENCIES

Investigating agencies form the backbone of the criminal justice system. A sound and objective investigating agency is crucial to the process of securing the ends of justice. Objectivity in the process of investigation is beleaguered when room is provided for individual prejudices to trickle in, the possibility of which is amplified in matters of rape and caste.

A. *Filing of FIRs*

An FIR is the necessary initial step to commence the legal process when an atrocity takes place or untouchability is practiced, and is also the primary vehicle that the police use to block Dalits from taking recourse to the law.⁶⁹ In 2014, a total of 34,163 charge sheets were filed for various offences committed against the Scheduled Caste community across all States, out of which 1929 were in rape cases.⁷⁰

Amnesty International notes that non-registration of crimes in India is a general problem. Besides the existent constraints, filing an FIR is in and of itself a challenge. Political influence over the police and the caste, class, religious, and gender biases of the police make it particularly difficult for Dalits to file FIRs, especially against influential upper-caste individuals.⁷¹

The Ahmedabad-based Centre for Social Justice (CSJ) conducted a detailed study of 400 judgements delivered by the Special Courts set up in Gujarat in sixteen districts since 1 April 1995. It revealed a shocking pattern behind the main reasons for the collapse of cases filed under the PoA Act within Gujarat: utterly negligent police investigation at both the higher and lower levels coupled with a distinctly hostile role played by the public prosecutors. In over 95 per cent of the cases, acquittals had resulted due to technical lapses in investigation and prosecution, and in the remaining five per cent, court directives were flouted by the government.⁷²

⁶⁹ *Supra* n. 9.

⁷⁰ National Crime Records Bureau, 'Crime in India 2014: Statistics' (2015) *National Crime Records Bureau*, available at <http://ncrb.gov.in/StatPublications/CII/CII2014/chapters/Chapter%207.pdf> (last visited 3 June 2016).

⁷¹ *Supra* n. 16.

⁷² *Supra* n. 31.

By not registering complaints, or registering FIRs under incorrect sections of the law, or leaving out the provisions of the PoA Act, police fail to carry out their official law and order duties as well as abide by the law.⁷³ The case of *Vinod Katela Jain*,⁷⁴ mentioned previously, is one such instance wherein the investigating authority failed to file a charge under the relevant section, thereby resulting in an acquittal.

Botched up investigations weaken the prosecution's case further especially in cases of rape as an atrocity, where the prosecution is already reeling under the weight of proving the accused's intention while committing the crime as warranted by Section 3(2)(v) of the PoA Act. In *M C Prassanan v. the State*,⁷⁵ while dealing with the case of the rape of a minor girl by her teacher, the Calcutta High Court noted the following in its judgment:

'From such delay in framing the charge under section 3(1)(xii) of the Act of 1989 it can be easily presumed that neither I.O. nor the learned Prosecutor nor the learned Sessions Judge nor the learned Chief Judicial Magistrate who committed the case for trial to the learned Sessions Judge was aware of the existence of Act of 1989.'

B. Functioning of Special Police Stations

The PoA Act mandates the setting up of separate police stations in each district to deal with the cases of crimes against Dalits and tribals.⁷⁶ The district of Bilaspur has a separate police force to deal with these cases. On 14 December 2014, I requested information on the number of complaints received and FIRs filed between the years 2009 to 2014 for all offences under the PoA Act at the Scheduled Castes and Scheduled Tribes police station, under the RTI Act.

In the year 2013, 2.65 per cent of the total number of rape cases against Dalit women across all states in the country occurred in Chhattisgarh.⁷⁷

⁷³ *Supra* n. 9.

⁷⁴ *Supra* n. 44.

⁷⁵ 1999 Cri LJ 998, para 25.

⁷⁶ *Supra* n. 9.

⁷⁷ National Crime Records Bureau, 'Crime in India 2013: Statistics' (2014) *National Crime Records Bureau*, available at <http://ncrb.nic.in/StatPublications/CII/CII2013/Statistics-2013.pdf> (last visited 3 June 2016).

The information above reveals that a large number of cases from amongst the total number of complaints received have been settled through compromise. In the year 2011, compromise was arrived at in 71 cases of the 272 complaints received by the police station. This further corroborates the fact that the investigating agencies, besides abandoning their duties, mete out a procedure that jeopardises the interests of the victims.

C. *PoA Rules*

In 1995, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules (PoA Rules) were promulgated. The PoA Rules were intended as an essential corollary to the PoA Act to ensure its effective implementation. For instance, rule 11 provides for travelling allowance, daily maintenance expenses and transport facilities for victims of atrocities, their dependents, and witnesses.⁷⁸ In my interactions with three victims out of the six cases pending at the District Court in 2014, I discovered that none of them were paid any allowance as mandated by the PoA Rules. All the victims stated that approaching the judicial system was in itself a massive step given the stigma they faced. The financial burden acquired during the course of the trial was cited as another deterrent in approaching the Court.

V. THE KHAIRLANJI MASSACRE

When discussing the concerns and vagaries of the justice delivery system pertaining to caste based crimes, particularly rape, it is beneficial to have some understanding of the abject failure of the system, the legal safeguards and even the civic society, embodied in the case of the *Khairlanji* massacre, which remains one of the most gruesome examples of caste based violence since Indian independence.

The victims of the violence in this case were from the Bhotmange family, that consisted of Bhaiyalal Bhotmange (55, at the time of the carnage), his wife Surekha Bhotmange (40), their sons Sudhir (21) and Roshan (19), and daughter Priyanka (17), who originally belonged to Ambagad village, 25 kilometres from Khairlanji. Economic hardship

⁷⁸ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.*

caused the family to move to Khairlanji in 1989. Being members of a lower caste, they were subjected to the villagers' prejudicial harassment.

On 3 September 2006, one Siddharth Gajbhiye was beaten up by 15 people from Khairlanji due to some petty cause. On 16 September 2006, 12 culprits were arrested by the police based on the accounts of the eyewitnesses: Priyanka, Surekha, Sudhir and Bhaiyyalal Bhotmange. This did not go well with the criminals. After being released on bail on 29 September 2006, they incited 40 villagers of Khairlanji, all belonging to the dominant castes, and planned to attack and murder Siddharth Gajbhiye and his brother Rajan Gajbhiye. Somehow, Surekha Bhotmange and Priyanka Bhotmange got wind of this plan and informed Rajan Gajbhiye.

When the villagers could not find Siddharth and Rajan Gajbhiye, and learned that they had been forewarned by the Bhotmange family, they became furious and turned their hoodlums to the house of the Bhotmange family with the weapons of bicycle chains, axes, daggers and sticks. Seeing the approaching mob, Bhaiyalal Bhotmange ran away. Only Surekha and her children were present at home. Both the Bhotmange women, Surekha and Priyanka, were stripped of their clothes. The dreadful photographs show that there was not an inch of these young women's bodies that was not marked by bruises.⁷⁹ Four members of the Dalit Bhotmange family were brutally murdered.

The FIR (No 56/2006) invoked the following sections of the IPC: 147 (punishment for rioting), 148 (rioting, armed with deadly weapon), 149 (common object), 302 (punishment for murder), and 201 (causing disappearance of evidence of offence, or giving false information to screen offender). None of these had any bearing on the crime committed. The PoA Act was also invoked, but only in its mildest: section 3(1) (intentional insult or clause intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view). Crucially, sections 376 (for rape) and 354 (assault or criminal force on a woman with intent to outrage her

⁷⁹ Brinda Karat, 'Khairlanji Verdict Blind to Dalit Cause' (1 August 2010) *The Times of India*, available at <http://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/Khairlanji-verdict-blind-to-dalit-cause/articleshow/6242212.cms> (last visited 3 June 2016).

modesty) of the IPC were not invoked in the FIR.⁸⁰ Eventually, the Sessions Court held eight out of the 11 accused to be guilty of the offences under the IPC and sentenced six out of the eight to death and two to life imprisonment, and acquitted the remaining three. However, none of the accused were found guilty under the PoA Act.⁸¹

In its judgement delivered on 14 July 2010, the Nagpur Bench of the Bombay High Court commuted the death sentence of all six accused to life imprisonment. While acquitting the accused under the PoA Act, the Court held that the entire object had been to take revenge against Surekha and Priyanka to settle old scores.⁸² The judgment took a parochial view of the motive of revenge, failing to appreciate that the dimensions of revenge against Dalits are quite different from other cases, given the caste-ridden nature of our society.

The *Khairlanji* case is symbolic of all the cases where failure on the part of the investigating agency and the judiciary to perform their duties has resulted in the perpetuation of sexual violence against Dalit women. It is a reminder of the apathetic system in place nationally that render the PoA Act and other legal frameworks meaningless.

VI. CURRENT SCENARIO AND ITS IMPLICATIONS

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 was introduced in the Lok Sabha by the Minister of Social Justice and Empowerment on 16 July 2014. *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015* (the PoA Amendment Act) subsequently came into force on 26 January 2016.⁸³

⁸⁰ *Supra* n. 31.

⁸¹ *State of Maharashtra v. Gopal @ Jitendra 10* (2008) Special Court at Bhandara Special Criminal Case No 01/2007 (Unreported 24 September 2008).

⁸² *Central Bureau of Investigation through DSP, CBI SCB v. Sakru Mahagu Binjewar (Original Accused No. 2) and Others* (2010) High Court of Bombay, Nagpur Bench Criminal Confirmation Case No 4/2008 (Unreported 14 July 2010) alongwith four connected appeals, para 43D.

⁸³ Maneesh Chhibber and Avishek G Dastidar, 'Govt Notifies Amended SC/ST Law' (New Delhi 26 January 2016) *The Indian Express*, available at <http://indianexpress.com/article/india/india-news-india/govt-notifies-amended-scast-law/> (last visited 3 June 2016).

The PoA Amendment Act classifies new offences as atrocities committed against Dalits. In section 3(1)(w), the following offences have been included as atrocities committed against Dalit women:

‘(i) intentionally touching an SC or ST woman in a sexual manner without her consent, or (ii) using words, acts or gestures of a sexual nature, or (iii) dedicating an SC or ST women as a devadasi to a temple, or any similar practice will also be considered an offence.’⁸⁴

The PoA Amendment Act also substitutes the words of section 3(2)(v) of the principal legislation, ‘on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member’, with the words ‘knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe.’⁸⁵ This, ideally, would serve to lower the threshold that has to be met by the prosecution for the accused to be convicted of an atrocity, as it requires only that the accused know that the person is a member of a Scheduled Caste or Tribe, not that the act be committed for that reason and on that basis alone.

It also shifts the burden on the defence to prove the absence of such knowledge in the commission of the crime. But the existence of a threshold howsoever low has no place in a legislation that seeks to eliminate the pervasive evil of caste since the experience of victims-survivors of caste atrocity with the criminal justice system is greatly shaped by their (lower) caste identities. This is particularly true for Dalit women, who not only have to battle societal backlash but also tackle the callousness of the state machinery while striving to obtain justice in cases of sexual violence. A threshold such as this one can only be laid down when we have successfully insulated the criminal justice system from prejudices of caste and gender.

⁸⁴ *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015*, sub-section (i) of section 4.

⁸⁵ *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015*, sub-section (ii) of section 4.

The crimes against Dalits are catalysed by social prejudice and their vulnerability.⁸⁶ Sexual violence against Dalit women has always been used as a potent tool to further marginalise the lower castes. Under the PoA Act, attempts to seek redress were often obstructed by a complex psychosocial blend of external impositions such as threats of retaliation and violence by the caste perpetrators (such as threat of loss of livelihood) and internal patriarchal and cultural understandings.⁸⁷

Chapter IV A has been introduced in the PoA Amendment Act to protect the rights of victims and witnesses. In the absence of any provision for the sensitisation of judges and investigating agencies, this provision lacks teeth. Judges and investigating agencies are assumed to be immune from social prejudice. This is clearly fallacious.

A sensitised judiciary and investigating agency are crucial to the successful implementation of all legislations, especially social legislations such as the PoA Act that are formulated with the intention of remedying deep-rooted social biases. Their absence, coupled with the wide discretion available to judges under the PoA Act, defeats the aim of protecting Dalits against atrocities. Hopefully, the PoA Amendment Act will restrict and reduce this exercise of discretion. But without this sort of sensitisation, this special social legislation will continue to be a mere paper tiger.

⁸⁶ Dr Anand Teltumbde, 'Khairlanji Verdict Whither the Atrocity Act?' (2009) *Combat Law*, available at <http://www.combatlaw.org/khairlanji-verdict-whither-the-atrocity-act/> (last visited 3 June 2016).

⁸⁷ *Supra* n. 16.