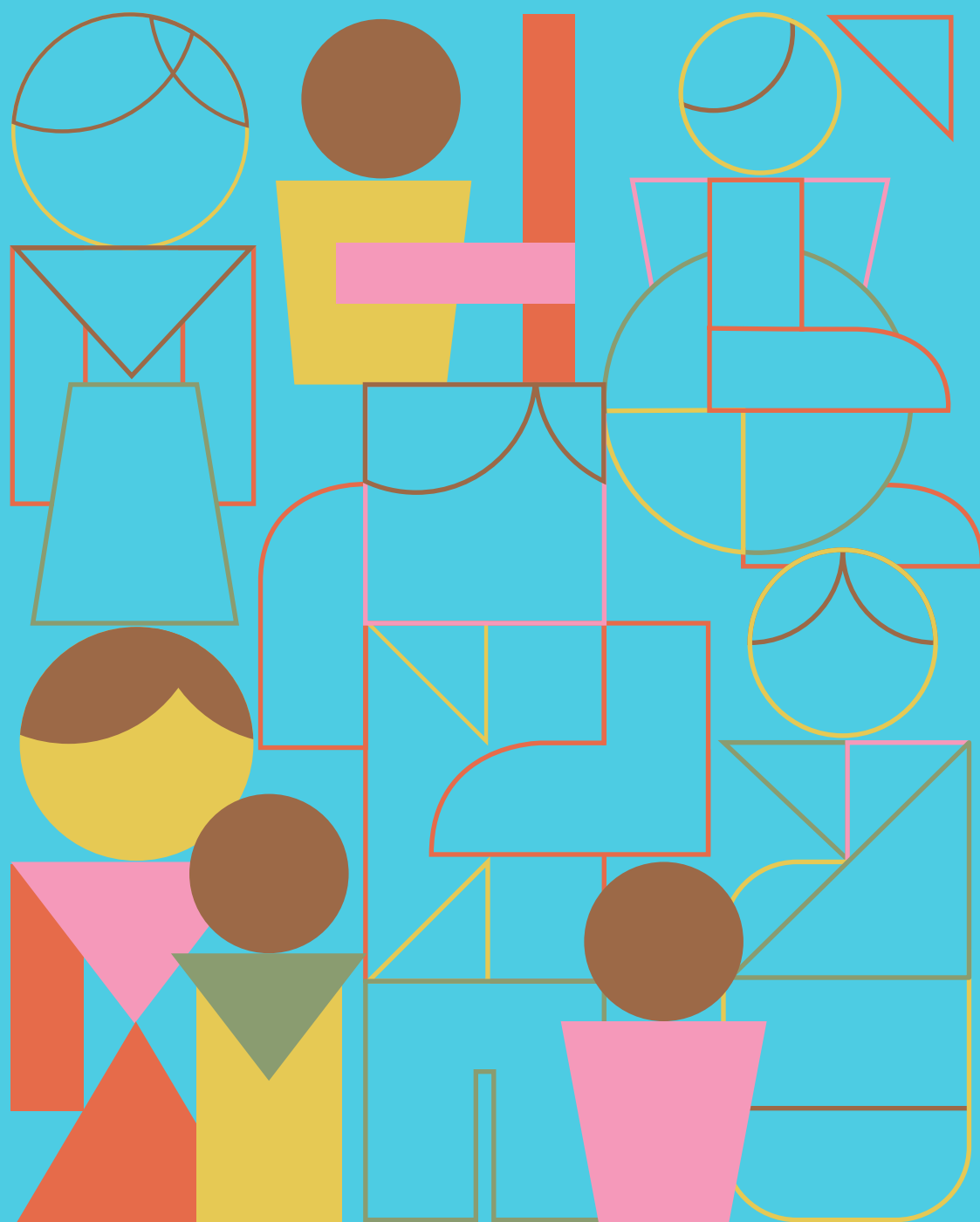


# TACKLING CASTE DISCRIMINATION THROUGH LAW

A Policy Brief on Implementation of  
Caste Discrimination Laws in India



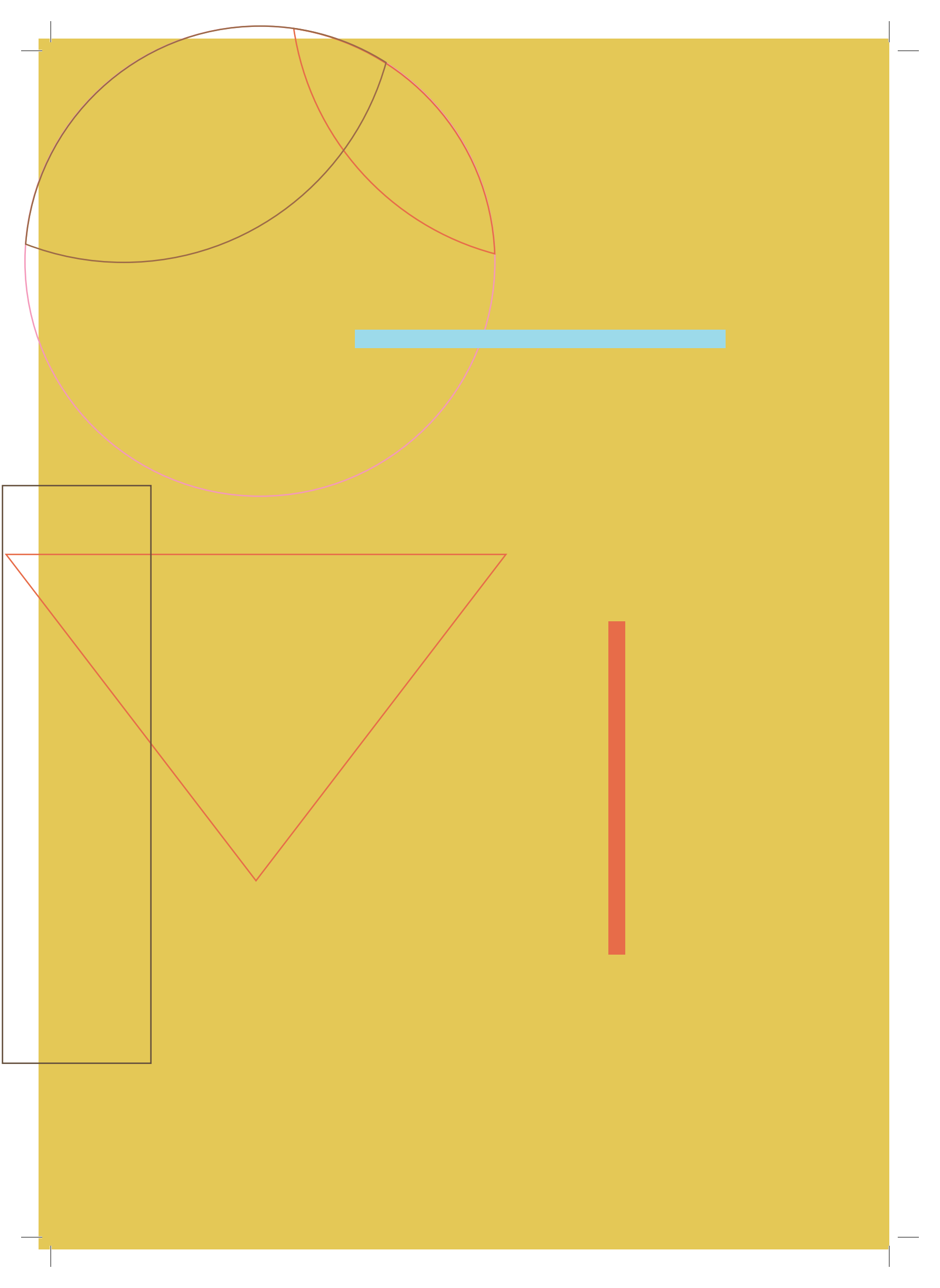
POLICY BRIEF



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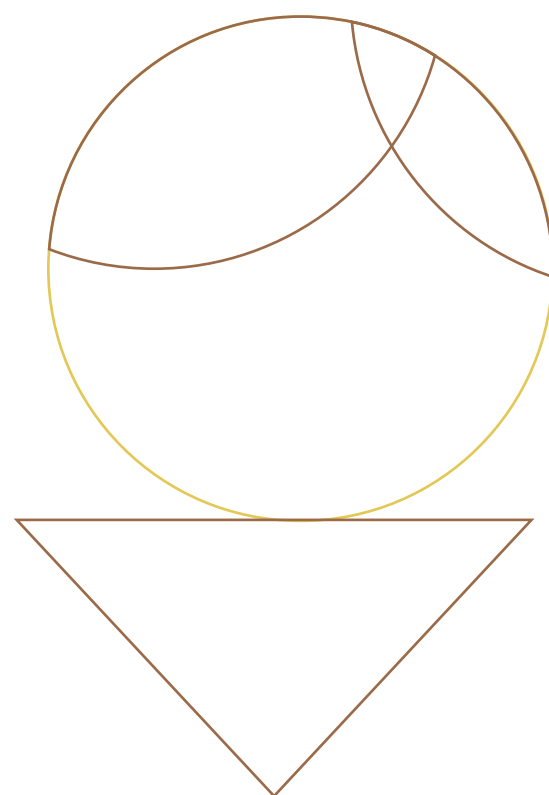
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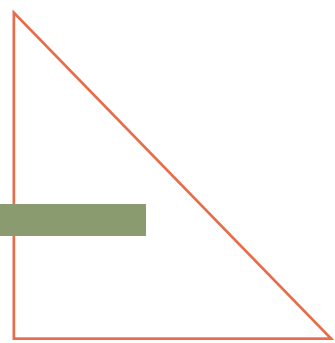
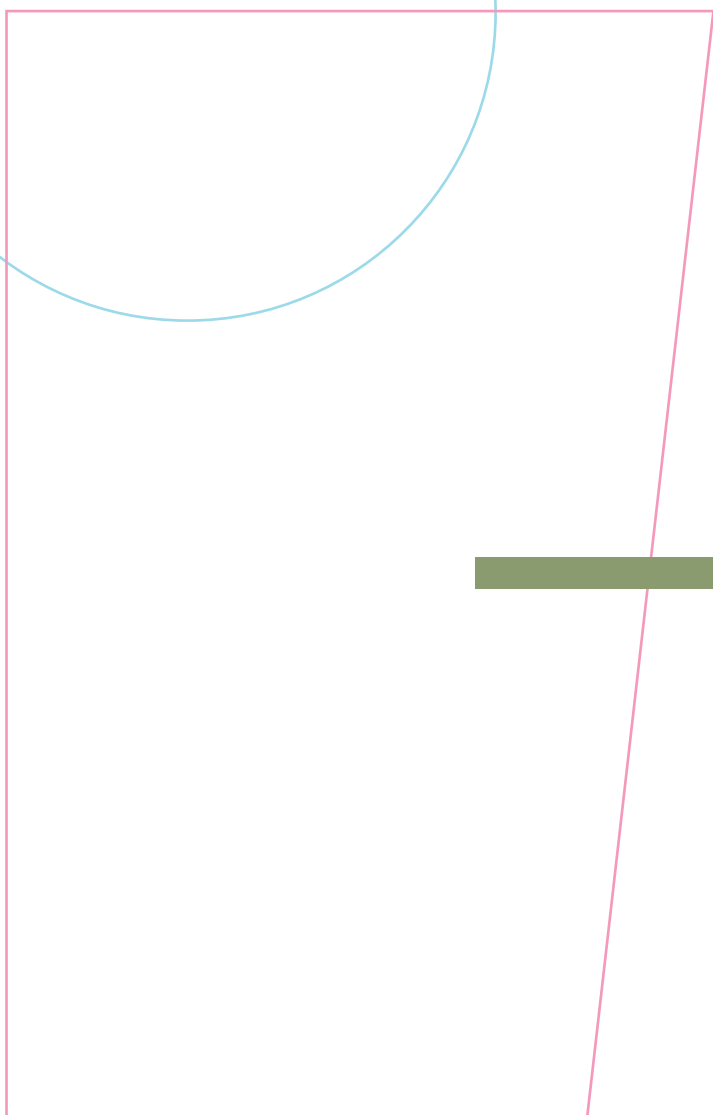
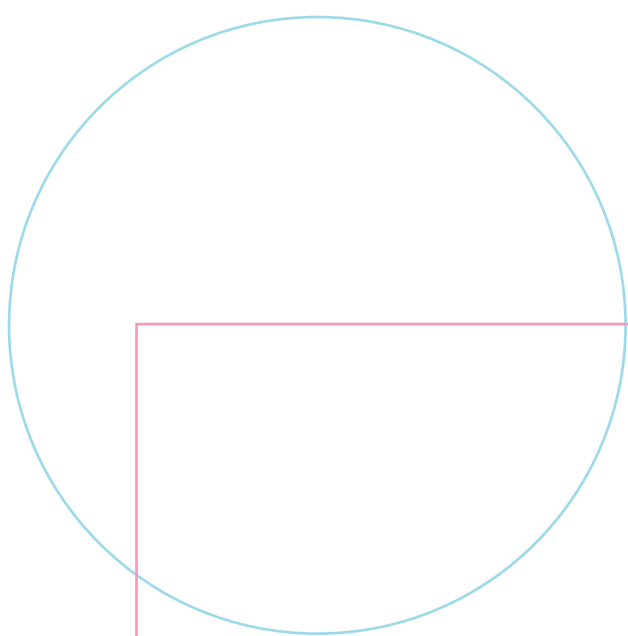
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05

# INTRODUCTION

Caste in India operates to regulate conduct through “exclusion, segregation and atrocity”.<sup>1</sup> Legal solutions to combat caste-based discrimination in India have taken two primary forms. The constitutional framework prohibits caste-based discrimination in Articles 15, 16 and 17. This is mainly through prohibition against “untouchability” under Article 17 and quotas in higher education and public employment. While quotas have attempted to restore balance through increased access to public goods, special legislations have been enacted to combat the most violent forms of caste discrimination.<sup>2</sup>

The Protection of Civil Rights Act, 1955 (‘PCRA’) was a special legislation enacted to enforce Article 17 and to prescribe punishment for the preaching and practice of untouchability. However, with the persistence of untouchability as a practice and the rise in the instances of caste-based collective violence in many parts of the country, there was an urgent need for a more stringent law. In 1989, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (‘PoA Act’), providing higher penalties for caste-based atrocities, was brought into effect. However, almost 30 years since, the incidence of crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) remains high and conviction rates are abysmal.<sup>3</sup> In 2015, the PoA Act was amended significantly to include many more acts of caste atrocities including acts against Dalit women, which were not earlier recognized as aggravated forms of discrimination and violence, with a view to strengthen the law.

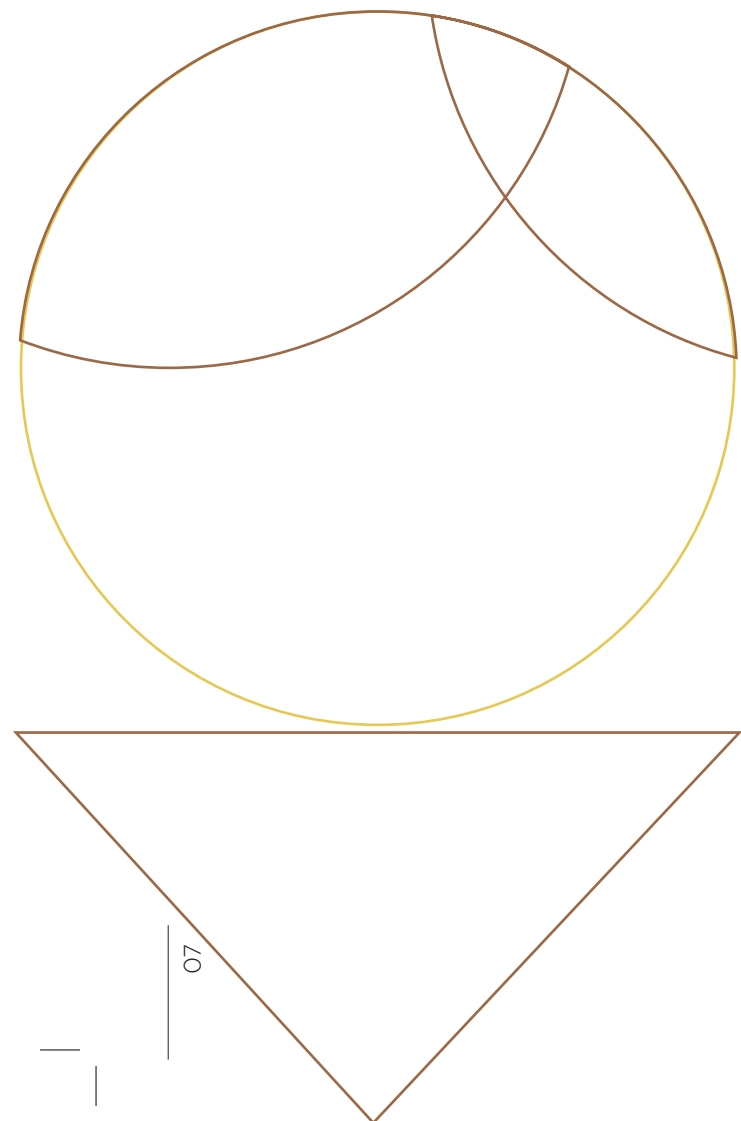
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<sup>1</sup>Kalpna Kannabiran, *Tools of Justice: Non-discrimination and the Indian Constitution* (1st edn, Routledge India 2012) 161; Centre for the Study of Casteism, Communalism and the Law, ‘Evaluation of the Protection of Civil Rights Act, 1955 and its Impact on the Eradication of Untouchability’ (National Law School of India University, Bangalore) 2.

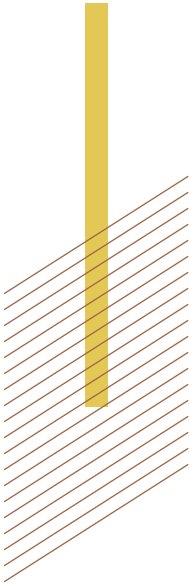
<sup>2</sup>Kannabiran (n 1) 161; *Union of India v. State of Maharashtra & Ors.*, Review Petition (Crl). No. 228 of 2018 in Criminal Appeal No. 416 of 2018.

<sup>3</sup>National Crime Records Bureau, ‘Crime in India Statistics’ (Ministry of Home Affairs, 2014) ch 7; National Crime Records Bureau, ‘Crime in India Statistics’ (Ministry of Home Affairs, 2015) ch 7; National Crime Records Bureau, ‘Crime in India Statistics’ (Ministry of Home Affairs, 2016) ch 7A, 7C.

This Brief examines the reality of the atrocities and crimes against SCs and STs and reviews the status of implementation of these three legislations, focusing specifically on four South Indian States. Andhra Pradesh, Karnataka, Kerala and Tamil Nadu - each of which have a unique history with the struggle against caste discrimination but continue to report high levels of atrocities against members of SCs and STs.



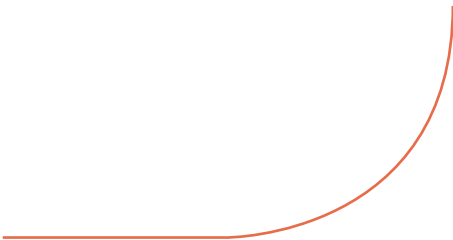


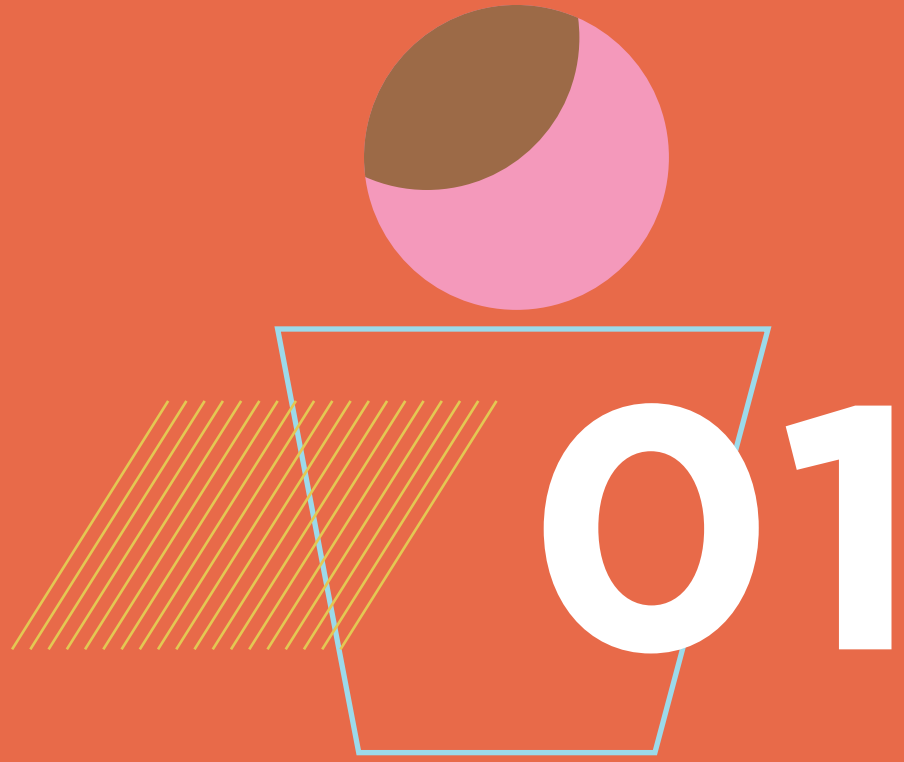


The third significant piece of legislation, which tackles caste discriminatory practices is the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('PEMSRA'). While the Act does not mention caste, the practice of manual scavenging is closely tied to the caste system, and SC / ST persons form a majority of the manual scavenging workforce. The PEMSRA prohibits manual scavenging, prescribes punishments and provides for a range of rehabilitation measures.

In this background, this Brief examines the reality of the atrocities and crimes against SCs and STs and reviews the status of implementation of these three legislations, focusing specifically on four South Indian States - Andhra Pradesh, Karnataka, Kerala and Tamil Nadu - each of which have a unique history with the struggle against caste discrimination but continue to report high levels of atrocities against members of SCs and STs. To review the implementation of these laws, we refer to reports published by the NCRB, the Ministry of Social Justice and Empowerment, data published by other departments of the respective State Governments and independent studies undertaken by civil society organisations. This Policy Brief is limited to reviewing the implementation of the PCRA, PoA Act and the PEMSRA and does not address the other gender specific caste based legislations like the Devadasi laws.

In Chapter I, II and III, we study the status of implementation of the PCRA, the PoA Act and the PEMSRA respectively by reviewing data on incidence and prosecution, the response of the investigating authorities and courts, and compliance with rehabilitative and protective obligations set out in the respective legislations. Finally, in Chapter IV we suggest recommendations for better implementation of all these legislations.








# The Protection of Civil Rights Act, 1955





The Protection of Civil Rights Act (“PCRA”) is a comprehensive law that acknowledges the different ways in which ‘untouchability’ manifests in social, religious, educational, medical, commercial, and other public and private spheres, and prohibits the practice across these spheres.

The PCRA was enacted in 1955 and was named as The Untouchability Offences Act. While the Preamble of the statute states that it prescribes punishment for the practice of untouchability, the nature of offences and other provisions suggest that the statute was not merely geared towards prohibiting untouchability but also intended to create a favourable environment for persons to exercise their civil rights. Following a report of the Elayaperumal Committee in 1972 on the status of its implementation, the statute was amended to increase the number and nature of offences, enhance penalties, and was renamed as the ‘Protection of Civil Rights Act’.<sup>4</sup>

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<sup>4</sup>Centre for the Study of Casteism, Communalism and the Law, ‘Evaluation of the Protection of Civil Rights Act, 1955 and its Impact on the Eradication of Untouchability’ (National Law School of India University, Bangalore) 45-48.

# 1 Main Provisions of the PCRA

In many ways, the PCRA is perhaps India's first equality law,

although it is a criminal statute and not a civil law. The primary objective of the PCRA is to prohibit the 'enforcement of any disability on the ground of untouchability' and defines 'civil rights' as rights accruing to a person as a result of the abolition of untouchability.<sup>5</sup> The term 'untouchability' however has not been defined anywhere in the statute and is an issue of significant concern. In the absence of a statutory definition, 'untouchability' has thus been understood as a social practice which looks down on certain depressed classes, solely on account of their birth and disables them from having any interaction with people from the so-called higher castes or classes.<sup>6</sup>

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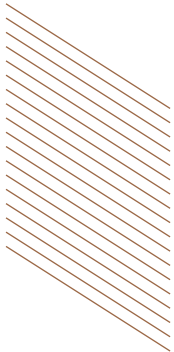
The practice of untouchability is not restricted merely to the refusal or avoidance of physical contact but includes "...any invidious treatment associated with the victim's membership or origin in an untouchable group".<sup>7</sup>

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<sup>5</sup>Protection of Civil Rights Act 1955, s 2(a).

<sup>6</sup>Centre for the Study of Casteism, Communalism and the Law (n 1) 53.

<sup>7</sup>Ibid.



Section 3 of the PCRA punishes the enforcement of religious untouchability such as preventing a person from entering a place of worship or performing a religious service, offering prayers, or bathing or using the waters of any sacred tank, well or any water source in the same manner and to the same extent that is permissible to other persons professing the same religion. Section 4 imposes punishments when any person, on the ground of untouchability, prevents the entry of another to a shop, restaurant, public place, public water body or prevents the practice of a profession, occupation or trade, or the use of or access to any place of public resort which other members of the public have a right to use, including any place which is maintained wholly or partly by State funds, or a charitable place or the occupation of any residential premises, use of jewelry and finery or the use of any social or religious custom. All of these actions are termed as 'social disabilities' under the Act. Section 5 punishes refusal of entry into hospitals, dispensaries, educational

institutions instituted for the public and Section 6 imposes punishments for the refusal to sell goods or provide services to a person on the ground of untouchability. Section 7 prohibits and punishes other offences including molesting, injuring or obstructing a person from exercising their right or boycotting a person for exercising their right, or encouraging another to practice untouchability. Boycott, under the PCRA, is when a person refuses to let another use or occupy any house or land, or refuses to deal with or work for hire, or refuses to do business with and abstains from social, professional or business relations as one would otherwise maintain with such other person. Under Section 7A, whoever compels any person on the ground of untouchability to do any scavenging or sweeping or to remove any carcass or to flay an animal, remove the umbilical cord or do any other job of a similar nature, would also amount to an offence. All offences under the PCRA are cognizable offences.

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## The PCRA mentions Scheduled Castes only in two provisions – Section 7 and Section 12

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Section 7 makes the act of insulting or attempting to insult a member of a Scheduled Caste on the ground of untouchability an offence. Additionally, Section 12 creates a legal presumption that if any offence under the Act is committed against a member of a Scheduled Caste, the court shall presume that the offence was committed on the ground of untouchability.

Hence, though the Act does not apply only to Schedule Caste persons, courts have held Section 7 of the PCRA would be attracted only if the practice of untouchability was against Dalits or persons who espouse the cause of Dalits and not otherwise.<sup>8</sup>

In addition to criminal offences and penalties, the PCRA also imposes positive obligations on the State to tackle untouchability. Section 8 provides that if anyone is convicted of an offence under Section 6, the license of their profession or trade or permit shall be cancelled or suspended. Similarly, if a person who is

convicted is the manager of a place of worship or educational institution, any grant of land or money received from the Government shall be cancelled or suspended. Collective fines can be imposed against all the inhabitants of an area who are abetting an offence, for example of boycott. Section 15A(2)(i) of

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<sup>8</sup>V.G. Mahalingam v State of Tamil Nadu, CrI. OP No. 18093 of 2018 delivered on 20 July 2018 (Madras High Court).

the PCRA imposes positive obligations on the State to provide adequate facilities, including legal aid, to persons subjected to any disability arising out of 'untouchability', and to set up Special Courts and Committees, carry out a periodic survey and identify untouchability prone areas.

## 2 Complaints under the PCRA

Critics of the PCRA have noted that its enactment "gave the status of ex-untouchables to the untouchables" without any significant transformation in their everyday experiences.<sup>9</sup>

Even after several decades since the enactment of the PCRA, untouchability continues to exist especially in marriage, dining, housing and religious life.

Caste-based untouchability continues in urban areas through occupational segregation where members of the so-called untouchable castes are relegated to traditional, discriminatory occupations such as manual scavenging.<sup>10</sup> The PCRA is rarely

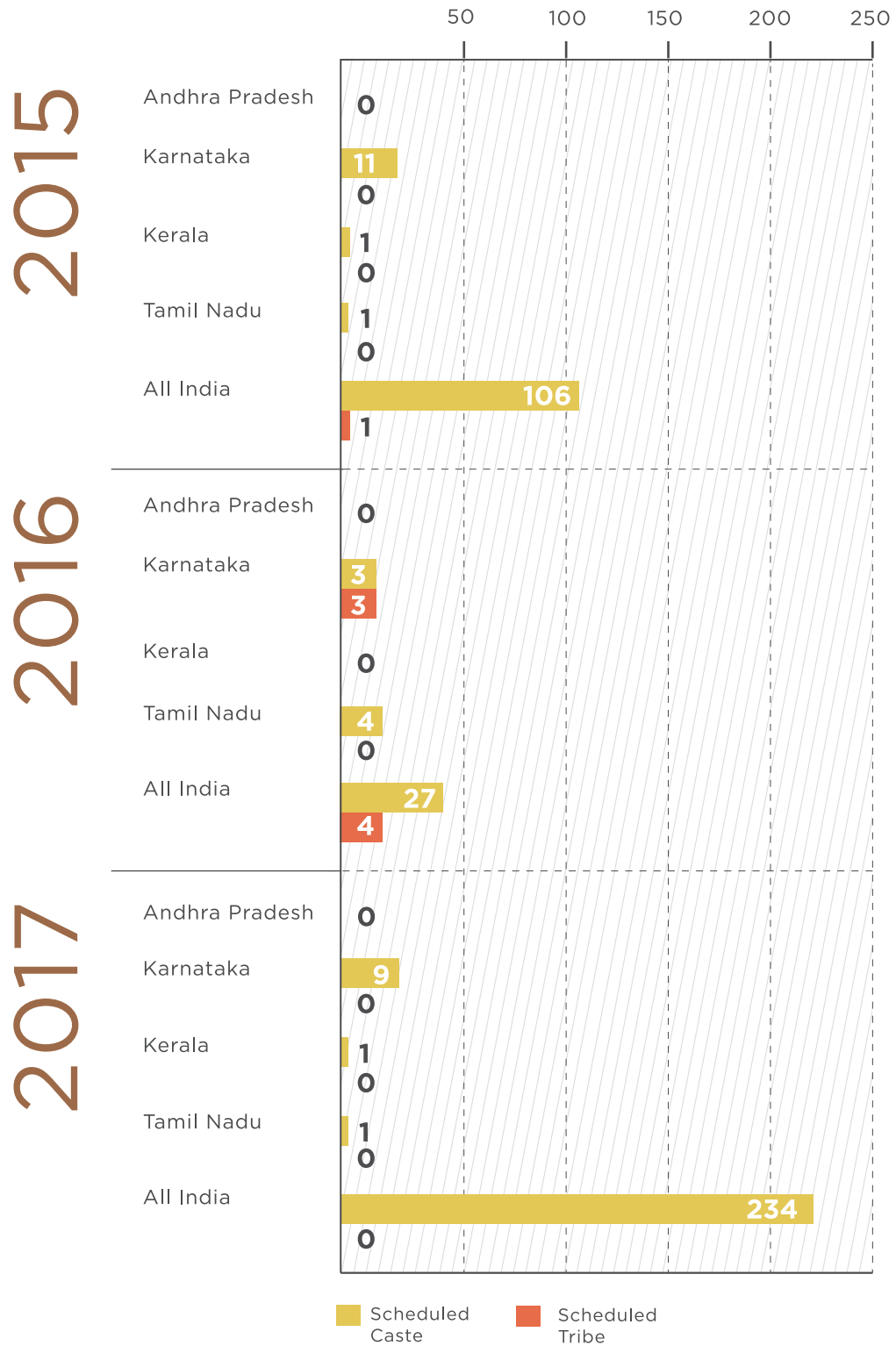
used and is enforced poorly by courts. The glaringly low number of cases registered can be seen through NCRB data from 2015 to 2017 which records crimes registered under the PCRA against SCs and STs.

<sup>9</sup>Paul D'Souza, 'Clean India, Unclean Indians: Beyond the Bhim Yatra' (2016) Vol. 51(26-27) *Economic and Political Weekly* 23.

<sup>10</sup>*ibid.*



Fig A: Incidence of crimes against SCs and STs under the PCRA<sup>11</sup>



<sup>11</sup>National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2015) Table 7.2, 7.8; National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2016) Table 7A.2, 7C.2; National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2017) Table 7A.2, 7C.2.

As seen above, in 2015, there were only 106 reported offences against SCs under the PCRA across India of which just 11 cases were registered in Andhra Pradesh and 1 case in Kerala and Tamil Nadu. In 2016 only 27 cases were registered nationally, 3 cases were registered in Karnataka (against 11 cases in 2015) and 4 cases were registered in Tamil Nadu. In 2017, the number of offences

increased to 234 nationally. In 2015, none of the four Southern States reported even a single crime against STs under the PCRA, and the only case registered that year was in Maharashtra.<sup>12</sup> In 2016, out of 4 offences against STs reported across India, 3 were reported in Karnataka alone. In 2017, surprisingly, no cases of offences against STs were registered across India.

## 3 Pendency and Conviction Rates

We can see from Table 1 that even with such small number of complaints filed, very few cases are even disposed of. In 2015, out of 621 pending cases under the PCRA in India, only 63 trials were completed. Only 3 cases from Tamil Nadu resulted in a conviction and 60 cases resulted in acquittals. In 2016, out of 592 pending cases, trials were completed in 61 cases,

out of which 60 cases resulted in acquittals/discharge of the accused. The only conviction was recorded in Telangana. This trend was consistent in the Southern States as well. For instance, in 2015 out of 40 cases filed in Karnataka, 35 cases remained pending and all the 5 cases which were disposed resulted in acquittals.

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<sup>12</sup>National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2015) Table 7.8.

**Table 1: Disposal of cases against SCs under the PCRA between 2015 and 2016<sup>13</sup>**

## 2015

State	Cases Pending	Trials Completed	
		Convictions	Acquittal/ Discharge
Andhra Pradesh	08	00	01
Karnataka	45	00	10
Kerala	00	00	00
Tamil Nadu	06	03	00
All India	621	03	60

## 2016

State	Cases Pending	Trials Completed	
		Convictions	Acquittal/ Discharge
Andhra Pradesh	07	00	00
Karnataka	40	00	05
Kerala	00	00	00
Tamil Nadu	04	00	02
All India	592	01	60

<sup>13</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2015' (Ministry of Social Justice and Empowerment, 2015) 82 < <http://socialjustice.nic.in/writereaddata/UploadFile/arp15.pdf>> accessed 18 November 2019; 'Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016' (Ministry of Social Justice and Empowerment, 2016) 85 < <http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20%20Report-PCR%20-2016%20.pdf>> accessed 18 November 2019.

# 4 Legal Aid

The Ministry of Social Justice and Empowerment publishes an Annual Report compiling the status and level of compliance of the obligations under PCRA by all States in India. In 2016 and 2017 as per the Report of the Ministry of Social Justice and Empowerment, State Governments of all four Southern States claim to provide legal aid to SC/ST individuals but no details are given as to the nature of legal aid provided or its impact.<sup>14</sup> Andhra Pradesh and Karnataka are the only states that have provided data for both 2016 and 2017 while Kerala and Tamil Nadu have not specified the number of beneficiaries in 2016 and 2017 respectively and the numbers are as follows:

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**In 2016 Tamil Nadu has claimed to provide legal aid to 3777 persons**

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**Andhra Pradesh claimed to provide legal aid to 1553 persons in 2017 from a mere 266 in 2016.**

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It is unclear who is being provided legal aid given the extremely low numbers of crimes registered under the PCRA in these States and there is a glaring mismatch. Hence it is not clear as to why the legal aid was provided, since there are no corresponding cases or complaints filed.

<sup>14</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13); 'Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2017' (Ministry of Social Justice and Empowerment, 2017) <[http://socialjustice.nic.in/writereaddata/UploadFile/AR\\_PCR-2017.pdf](http://socialjustice.nic.in/writereaddata/UploadFile/AR_PCR-2017.pdf)> accessed 18 November 2019.

# 5 Special Courts

Under Section 15A(2), the State Government is required to establish Special Courts to exclusively try cases under the PCRA and to appoint officers who will supervise the prosecution of offences. All the four states have established Special Courts empowered to try cases under the PCRA though they do not exclusively try caste-based offences.

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**Andhra Pradesh has established 14 Special Courts for its 13 districts.**

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**Karnataka has set up 8 Special Courts for 8 districts to try cases under the PCRA and the Courts of Session in the remaining 22 districts have been designated as Special Courts.**

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**As of 2016, in Tamil Nadu, 6 Special Courts have been established to handle cases registered under both PCRA<sup>15</sup> and PoA<sup>16</sup> and in the remaining districts existing Sessions Courts have been empowered to try cases under these laws.<sup>17</sup> However, the 2017 report states that Special Courts in all districts take up cases under the PCRA.**

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**In Kerala, in 2017, 4 Exclusive Special Courts have been set up and remaining District Sessions Courts have been designated as Special Courts to try cases under the PCRA<sup>18</sup>**

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<sup>15</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13) 62.

<sup>16</sup>ibid 103.

<sup>17</sup>ibid 62.

<sup>18</sup>ibid 9.

## 6 Vigilance and Monitoring Committees

District and State Level Vigilance and Monitoring Committees have been set up to review the implementation of the PCRA in Karnataka, Kerala, Tamil Nadu and Andhra Pradesh.<sup>19</sup>

The PCRA does not prescribe a minimum number of meetings and the reports indicate the number of meetings held in the 4 States. However, there are no records or minutes of the meetings and updates on monitoring activities under the PCRA. Hence it is unclear as to how effective these meetings are.

## 7 Identification of 'Untouchability Areas'

Section 15A(2)(vi) of the PCRA requires State Governments to identify areas where persons face disability due to the practice of 'untouchability' and adopt measures to remove such disability. The information on 'untouchability areas' received from the Ministry of Social Justice Reports are as follows:

<sup>19</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13); Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2017 (n 14).

**Table 2: Identification of untouchability prone areas in 2016 and 2017**

### Untouchability Prone Areas

State	2016	2017
Andhra Pradesh	09 (217 Areas)	04 (47 Areas)
Karnataka	None	None
Kerala	None	None
Tamil Nadu	Not Mentioned	Not Mentioned

From the above Table 2 we can see that in Karnataka, in 2016 and 2017, no areas were designated as 'untouchability prone'.<sup>20</sup> However in 2017, all 30 districts were declared as atrocity prone areas as per the PoA Act.<sup>21</sup> In Kerala no districts were declared as 'untouchability prone' in 2016 and 2017,<sup>22</sup> although 2 districts, Thiruvananthapuram and Kasargod, were declared as atrocity prone areas under the PoA.<sup>23</sup> In contrast, Andhra Pradesh designated 9 districts as 'untouchability prone'<sup>24</sup> areas in 2016 but brought it down to 4 districts in 2017.<sup>25</sup> Tamil Nadu makes no mention of any 'untouchability prone' area under the PCRA.<sup>26</sup> The statute also provides for a periodic survey in Section 15A(v) and only Kerala and Tamil Nadu conducted a periodic survey in 2017.

<sup>20</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13) 45.

<sup>21</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2017 (n 14) 24.

<sup>22</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13) 63.

<sup>23</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2017 (n 14) 24.

<sup>24</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13) 66.

<sup>25</sup>Report Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2017 (n 14) 24.

<sup>26</sup>Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 13) 66; Report u/s 15A(4) of The Protection of Civil Rights Act, 1955 For The Year 2016 (n 14) 24.

## 8 Role of the Courts

Despite the presumption of untouchability under Section 12 and the infrastructure of Special Courts set up, conviction rates are extremely low and pendency of cases is high.

Courts have also interpreted the offences under the PCRA very strictly, making convictions

difficult. In *Babu v. State of Kerala*, the Kerala High Court, relying on other High Court decisions, held that an insult or attempt to insult a member of the Schedule Caste would be insufficient to attract the offence under Section 7(1)(d) and it should be 'on the ground of untouchability', thus making it even stricter than the PoA.<sup>27</sup>

Several High Court judgements have held that calling a person a 'chamar', which would be insulting a member of a Scheduled Caste, would be a case of insult simpliciter and not of insult on the ground of untouchability.<sup>28</sup>

In *M.S. Sajeev Kumar v. State of Kerala*, the Kerala High Court held in a circular fashion, that even in order for the presumption under Section 12 to operate (the presumption that where an offence under the PCRA is committed against a member of a Scheduled Caste, it will be presumed that it was committed on the ground of

untouchability), the prosecution will first have to prove that the member of a Scheduled Caste was insulted on the ground of untouchability and only then the presumption would arise.<sup>29</sup>

In other cases, courts have taken a more stringent view on the PCRA. Where only fines were imposed

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<sup>27</sup>(2005) 1 KLT 975.

<sup>28</sup>*Phul Singh v. State of Madhya Pradesh*, (1991) CriLJ 2954; *Sita Devi v State*, Cri. MC No. 7185 of 1979 decided on 28 April 1980 (Allahabad High Court); *Chhedi Lal v Ram Ratan*, Cri. Rev. 992 of 1990 decided on 18 July 2014 (Allahabad High Court).

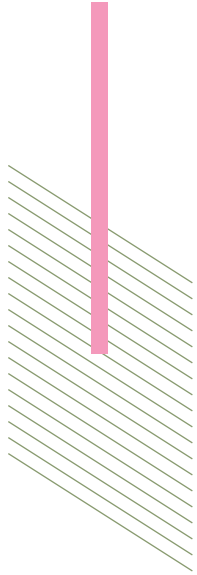
<sup>29</sup>Cri. M.C. No. 5882 of 2013 decided on 8 March 2016 (Kerala High Court).



as punishment, High Courts have held that it would not be permissible as the court is left with no discretion to pass only a sentence of fine and further that in every case where a person is found guilty under the PCRA, the courts are obliged to pass the statutory minimum sentence of imprisonment in addition to the minimum sentence of fine.<sup>30</sup>

On compounding of offences, in *State v. Kudligere Hanumanthappa & Ors.*,<sup>31</sup> the Karnataka High Court did not allow for compounding of offences holding that the PCRA

was a penal statute enacted for the purpose of ensuring that people do not suffer humiliation or prosecution in society merely because of their caste or ethnic origin. It refused to permit compounding of offences on the ground that, *“more often than not, those who had suffered any indignity, suffered humiliation and physical punishment at the hands of those who claim superiority by birth are very often persuaded to accept a truce imposed either by further threats or intimidation or at times being lured with an offer of a measly sum in exchange for their silence.”*<sup>32</sup>



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Therefore, the implementation of the PCRA as a criminal statute by courts has resulted in extremely high standards for conviction on the ground of untouchability. With the PoA Act, which imposes higher punishments and more serious offences, the use of the PCRA as a criminal statute has been rendered infructuous, as police and complainants use the PoA.

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Many people are also just not aware of the existence of this statute which is also another reason for its low use.

<sup>30</sup>*State v Ponnuvel Alias Manivelu*, (1984) CriLJ 1075; *State of Karnataka v. Annappa and Others*, 1992 CriLJ 158.

<sup>31</sup>(1992) CriLJ 832.

<sup>32</sup>*ibid* para 6.

# 9 Conclusion

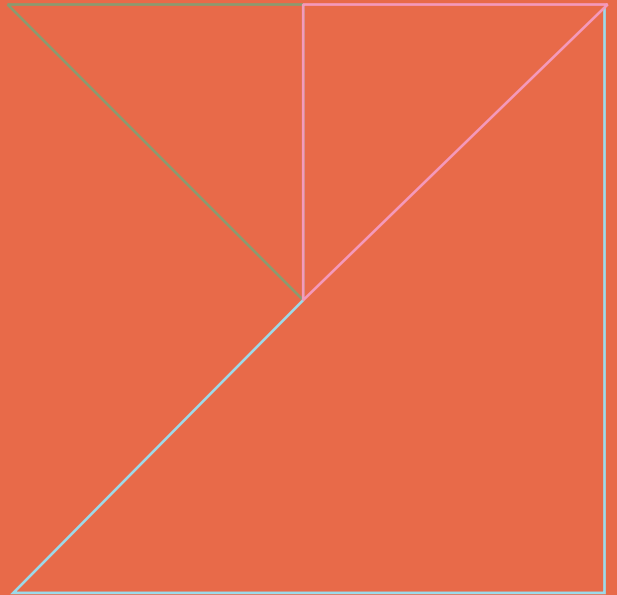
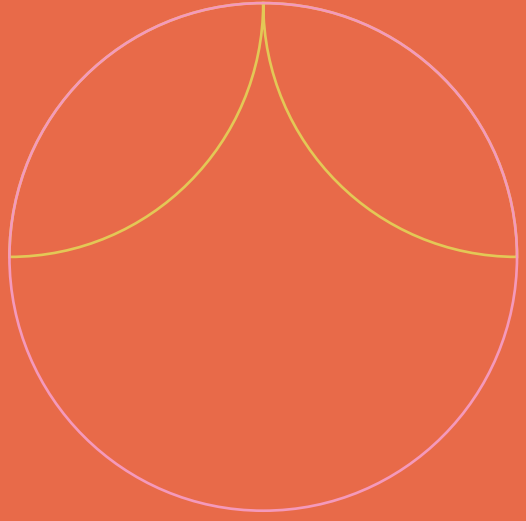
Data overwhelmingly points towards the low numbers of complaints under the PCRA, not just in the four Southern States but nation-wide. Further, while sufficient facilities to address untouchability-related crimes against SC/ST persons have been prescribed on paper, the four States have either done little to seriously implement them or these measures have unequivocally failed. This presents a crucial question: is the poor implementation of the PCRA because of low reporting of offences or has the PCRA run its course in the face of more stringent legislations like the PoA Act?

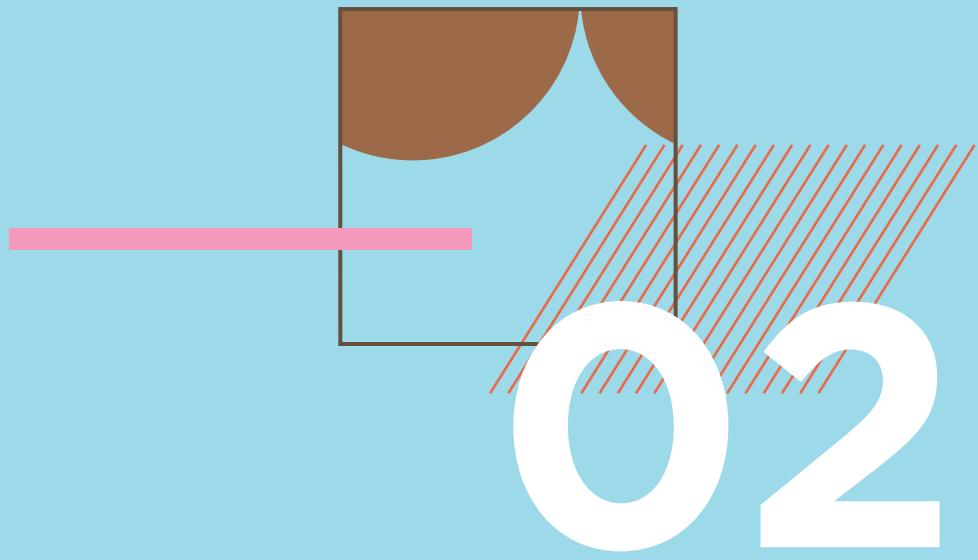
The analysis of the PCRA and its low use shows that because it is a criminal statute, the use of the law and the incentives for using it are low. If this was a civil law where fines would be imposed for indulging in acts of untouchability on the ground that they are discriminatory, the application of the law would be much higher.

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The criminal offences are protected by way of a more stringent law being the PoA, and hence the time for the PCRA has run out. The PCRA needs to be converted into a civil anti-discrimination law that would treat all of the actions of untouchability, boycott and social disabilities as forms of discrimination to be prohibited.

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# The Scheduled Castes & Tribes (Prevention of Atrocities) Act, 1989

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The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“PoA Act”) was enacted in response to the continued rise in the incidence of violence against SC and ST persons and as it was felt that the PCRA “...was ineffective and did not curb the evil practice of atrocities against Dalits”.<sup>33</sup>

The objective of the PoA was to identify, prosecute, prevent, monitor and address atrocities against SC/ST persons by non-SC/ST persons. While the PoA Act is primarily a criminal statute and prescribes punishments for a range of offences or atrocities committed against SC/ST persons, it also provides for measures to rehabilitate victims and witnesses, and monitor the implementation of the statute.

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<sup>33</sup>*National Campaign on Dalit Human Rights & Ors. v. Union of India*, AIR 2017 SC 132.

# 1 Main Provisions of the Law

The PoA Act is a criminal law that provides a whole list of discriminatory acts against Dalits that are termed as 'atrocities' which are recognised as criminal offences. These atrocities are outlined in Section 3 of the PoA. The list of offences that may be committed against SC/ST persons by a person not from an SC/ST community under Section 3 includes (a) putting inedible or obnoxious substances into the mouth or forcing consumption, (b) dumping excreta, sewage, carcass etc. at the entrance of occupied premises, (c) garlanding with footwear or parading naked a person, (d) wrongfully dispossessing of land, wrongfully occupying, cultivating, interfering with the enjoyment of any premises owned or occupied, (e) making a person perform manual scavenging, (f) initiating false, malicious or vexatious litigation, (g) intimidating with an intention to humiliate, and (h) imposing or

threatening social or economic boycott of an individual, family or group etc.

In 2015, the PoA was extensively amended by The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The list of atrocities under Section 3 was increased from 15 offences to 37 offences including a new offence of willful negligence by public servants. The amendment also added under Section 3(k) and 3(w) specific atrocities against SC/ST women - (a) performing or promoting the dedication of an SC/ST woman to a deity, idol or temple as a devadasi and (b) intentionally touching (of a sexual nature) a woman belonging to an SC/ST community, without the consent of the woman or using acts, words, gestures of a sexual nature towards an SC/ST woman knowing that she belongs to such community.

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The specific offences against SC/ST women are indicative that the law recognized the unique vulnerabilities of SC/ST women, who face aggravated discrimination and violence on account of the intersection of their caste and gender.

In addition, the PoA Act punishes other offences against SC/ST women where the PoA Act is invoked along with the IPC.<sup>34</sup> The 2015 amendment revised Section 14 on establishment of Special Courts. The original text of the PoA Act only provided for designating existing Sessions Courts as Special Courts. With the 2015 amendment, Section 14 made it mandatory for State Governments to establish Exclusive

Special Courts for one or more districts to exclusively adjudicate on offences under the PoA Act, and appoint Special Public Prosecutors to try offences under the Act. In addition, State Governments may specify existing Sessions Courts as (Designated) Special Courts in districts having fewer cases under the Act.

An entire chapter on rights of victims and witnesses was included in the 2015 amendments.

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Section 15(A)(1) requires that arrangements be made for the protection of victims, dependents and witnesses against any kind of intimidation, coercion, inducement, violence or threat of violence. Section 15A(11) imposes a duty on the State to frame an appropriate scheme to ensure the implementation of various rights and entitlements of victims and witnesses in accessing justice.

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<sup>34</sup>Section 3(2)(va) provides that any non-SC/ST person who commits an offence in the Schedule to the PoA Act, will be punished with the punishment as provided under the IPC for those offences. This Schedule includes offences like sexual harassment, voyeurism, stalking, assault or use of criminal force with the intent to disrobe etc.



These include the right of victims and their dependents to receive immediate relief in cash or kind, which is also included in the PoA Rules directing the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate to provide relief in cash or kind or both within seven days. Section 15A of the PoA Act imposes a duty on the State to protect victims, their dependents and witnesses against intimidation, coercion, inducement, and violence.

The State is also mandated to provide complete protection to victims and witnesses to secure the ends of justice, provide travel and maintenance expenses during investigation, inquiry and trial, and undertake socio-economic rehabilitation including relocation during investigation, inquiry and trial.<sup>35</sup> The PoA Act has special provisions which address the duties of police in investigating atrocities. Only the Deputy Superintendent of Police and higher ranked officials are empowered to carry out investigations under the Act.<sup>36</sup>

Anticipatory bail is prohibited<sup>37</sup> and the PoA Act mandates that investigations should be completed within 60 days from the date of the

atrocities.<sup>38</sup> Under Rule 16 of the PoA Rules, the State Government is mandated to constitute a Vigilance and Monitoring Committee of not more than 25 members. The Chairperson of the Committee shall be the Chief Minister, and as per Rule 16(2), the Committee shall meet at least twice a year to review the implementation of the Act. Under Rule 17, the District Magistrate is obligated to set up a Vigilance and Monitoring Committee to review the implementation of the provisions of the Act and the Sub-Divisional Magistrate is obligated to set up a Vigilance and Monitoring Committee at the sub-divisional level. Both committees are required to meet at least once in three months.

Karnataka passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (Karnataka Amendment) Act, 2002, allowing Sessions Courts to take cognizance of offences under the PoA Act as courts of original jurisdiction and to try such offences. Subsequently, through the 2015 Amendment, all Special Courts have been empowered to directly take cognizance of offences under the statute.<sup>39</sup>

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<sup>35</sup>Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, s 15A(6).

<sup>36</sup>Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, r 7.

<sup>37</sup>Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, s 18.

<sup>38</sup>Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, s 4(e).

<sup>39</sup>Prior to the amendment, the procedure for committing offences by the Magistrate's Court to the Sessions Court had to be complied with.

# 2 Crime rates and Cases Registered

In this section, we review and evaluate data on criminal complaints under the PoA Act, the crime rates, conviction rates and other statistics to review the implementation of the law between 2014 and 2017 in the four states of Karnataka, Tamil Nadu, Andhra Pradesh and Kerala. The crime related data is from the National Crime Records Bureau (NCRB) Crime in India Reports.

## A. Crime Rate

Crime rate is calculated on the basis of the population of the relative segment, viz SC/ST persons and tells us about the incidence of crimes against a certain group as a proportion of their population in India.<sup>40</sup> In Fig. B we see that between 2014 to 2017, the national crime rate for offences against SCs and STs has not changed materially. Kerala has among the highest crime rates for offences against SCs and STs and Andhra Pradesh reports a high crime rate against SCs.

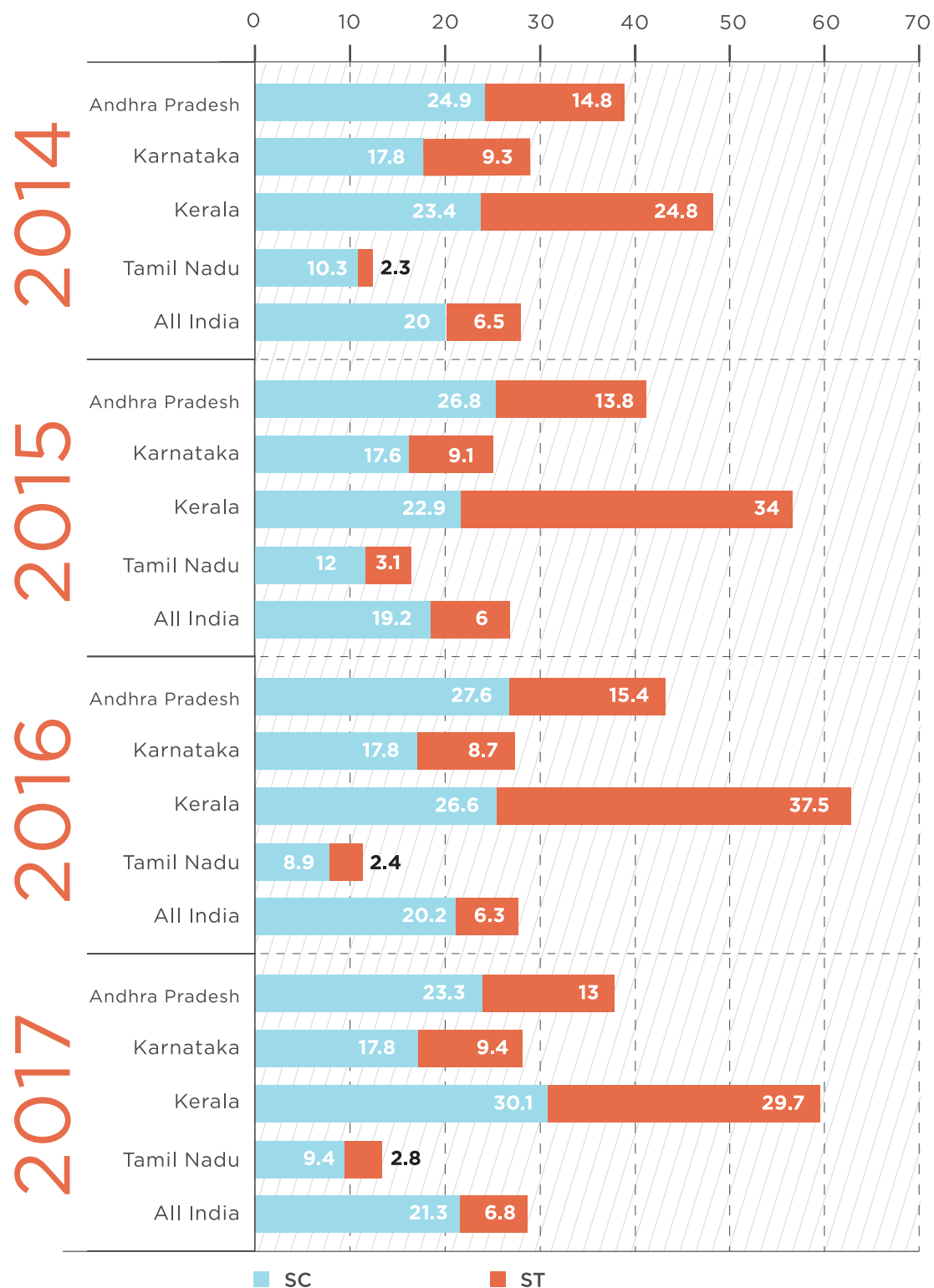
Kerala ranked first in terms of crimes against ST persons in the country<sup>41</sup> despite being home to only around 1.5% of the total ST population in India. The incidence of crimes against STs is appreciably lower in Tamil Nadu than the other states. There are approximately 7.9 lakh ST persons in Tamil Nadu. However, the low incidence does not appear to be a direct function of the low population, as Kerala reports much higher incidence with a lower ST population (4.8 lakh).<sup>42</sup>

<sup>40</sup>Crime Rate = Number of Cases Reported/Census 2011 population (2014, 2015) or Mid-Year Projected Population (2016) \* One Lakh.

<sup>41</sup>National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2014) Table 7.2, 7.8; National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2015) Table 7.2, 7.8; National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2016) Table 7A.1, 7C.1; National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2017) Table 7A.1, 7C.1.

<sup>42</sup>National Crime Records Bureau, 'Crime in India Statistics' (Ministry of Home Affairs, 2017) Table 7C.1. In Andhra Pradesh, there are 26.3 lakh, in Karnataka, there are 42.5 lakh and in Kerala there are 4.8 lakh ST persons as per the 2011 Population Census.

**Fig B: Crime rate against SCs and STs between 2014-17**



While crime rates help place the incidence of crimes in the context of population, the absolute incidence of crimes and actual crime numbers are useful in tracking whether atrocities against SCs and STs have increased.

Between 2015 and 2017, the incidence of crimes against SCs rose by a substantial 31% in Kerala and by around 1% in Karnataka. Incidence fell by around 13% in Andhra Pradesh (which ranks 9 among all Indian States on crimes against SCs) and by almost 22% in Tamil Nadu.<sup>43</sup>

## B. Crimes against Women

To calculate crimes against SC / ST women we took the data from the NCRB Reports on the offences of rape, attempt to rape, outraging the modesty of a woman, kidnapping or abduction to compel for marriage, as there is no separate data on crimes against women.

As we can see in the Fig C, in Karnataka and Tamil Nadu, crimes

against SC women constituted 5-6% of the total crimes against SC persons between 2014-17. Only in 2014 were crimes against SC women in Tamil Nadu around 3% of total crimes. In Andhra Pradesh, the crimes against SC women rose from around 9% to 20% as a proportion of total crimes from 2014 to 2017.

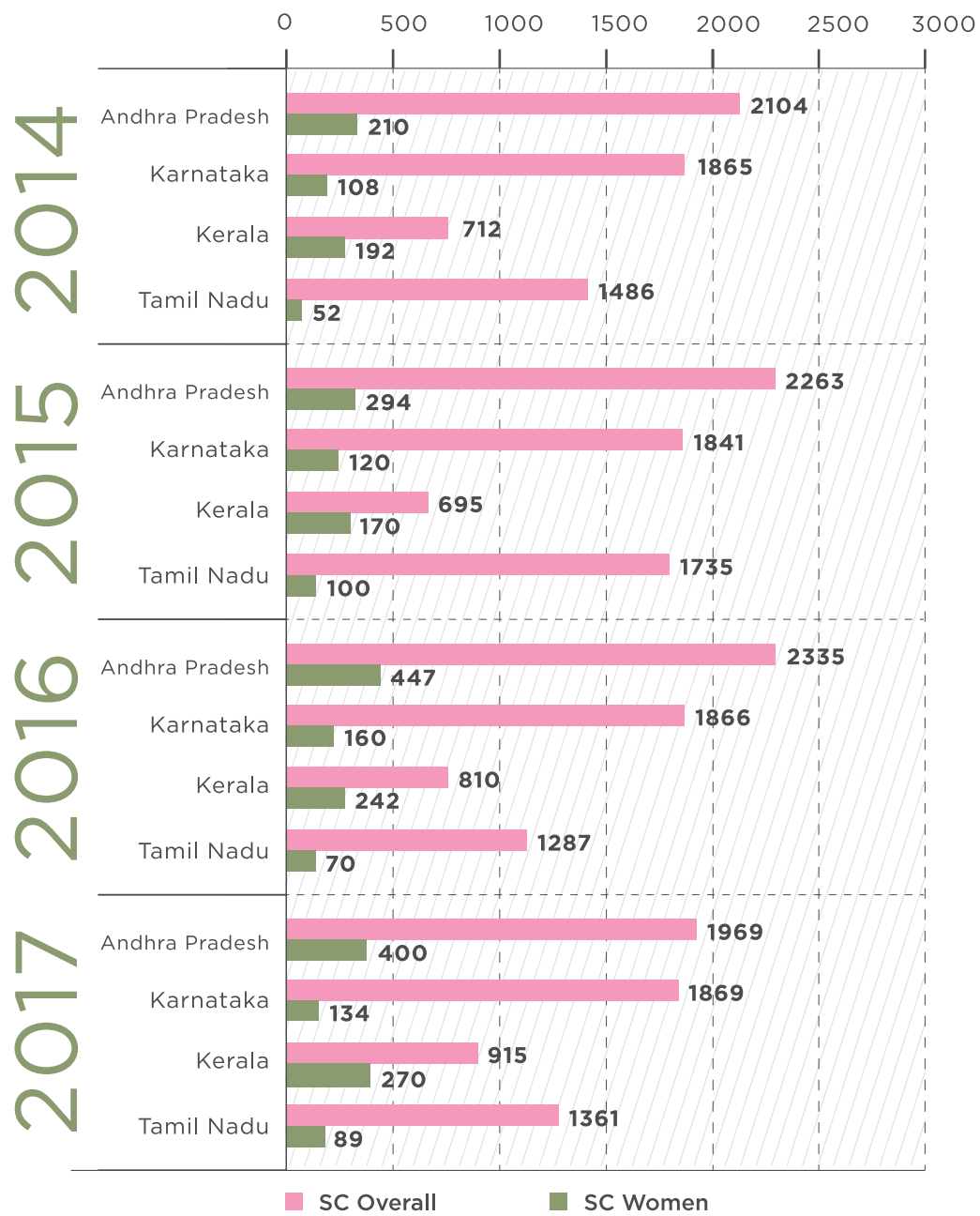
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In Kerala, the proportion of crimes against SC women in 2017 was as high as 29% of the total crimes against SC persons, which shows that crimes against Schedule Caste women are either increasing rapidly or are being reported more frequently.

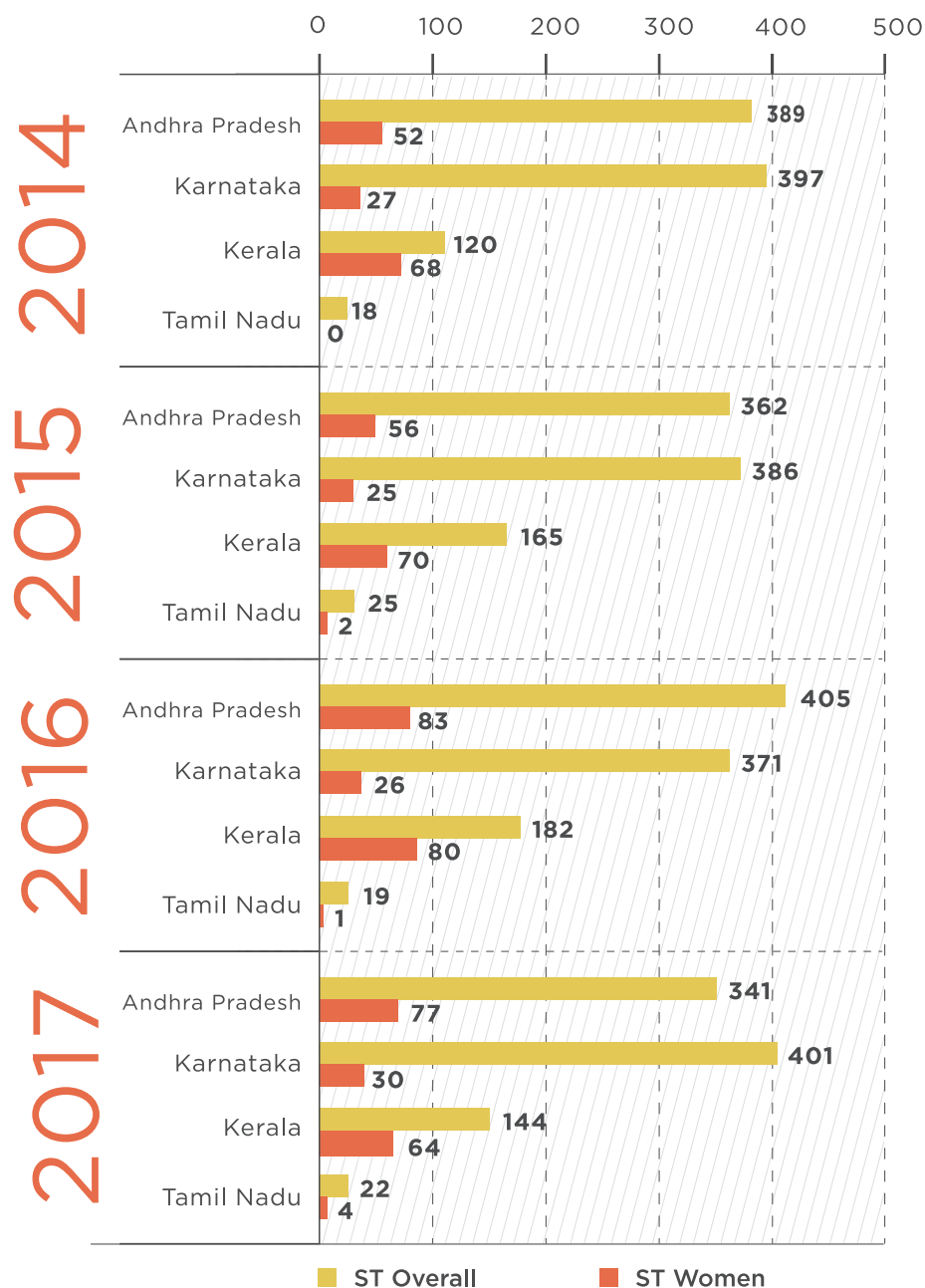
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<sup>43</sup>Crime in India Statistics (n 41).

**Fig C: Crimes against SC women v. Crimes against SC persons between 2014-17**



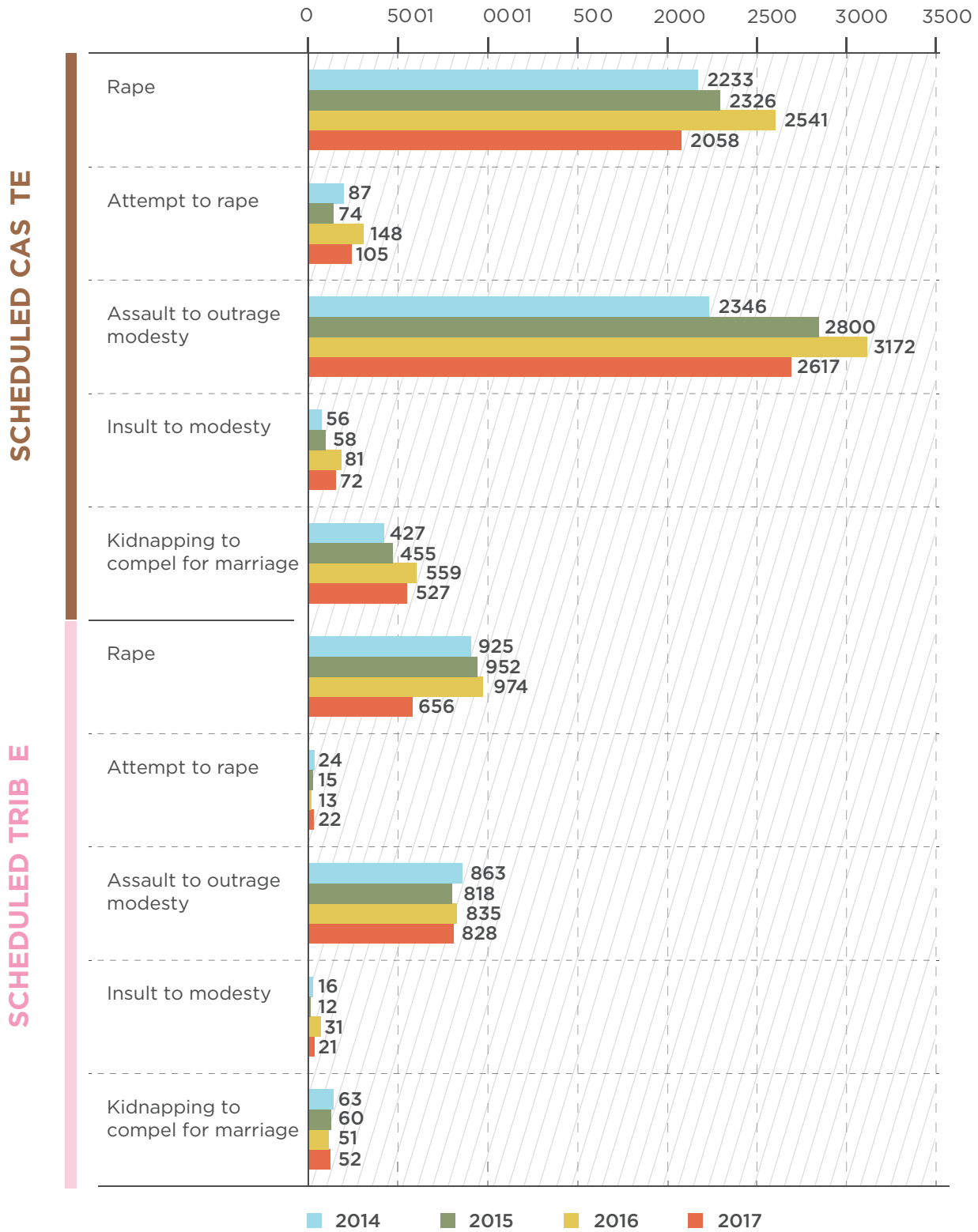
**Fig D: Crimes against ST women v. Crimes against ST persons between 2014-17**



From Fig. D above we can see that crimes against ST women were exceptionally high in Kerala and constituted around 45-50% as a proportion of total crimes against STs.

Even in Andhra Pradesh, crimes against ST women increased between 2014-17 from 13% to 22% as a proportion of total crimes.

**Fig E: Specific Offences against SC / ST women between 2014-17**



In Karnataka, crimes against ST women constituted between 5-7% of the total crimes against ST persons. However, in Tamil Nadu, we were unable to make a clear assessment as the total number of crimes against ST persons was very low.

The incidence of various crimes against SC and ST women at the national level in Fig E shows that rape, followed by assault on SC/ST women to outrage their modesty (which includes various offences like assault against women, assault with an intent to disrobe, stalking, voyeurism, sexual harassment) were the highest offences.

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Thus sexual violence is the most dominant kind of atrocity perpetrated against SC women. This is unsurprising as sexual violence is just another means by which people “assert the violability of lower castes”.<sup>44</sup>

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## C. Conviction Rates

In the NCRB reports, for the years 2014 and 2015, there is no State-wise data on conviction rates. Only from 2016 onwards, conviction rates are given according to State. Hence the figures given below are only for the years 2016 and 2017.

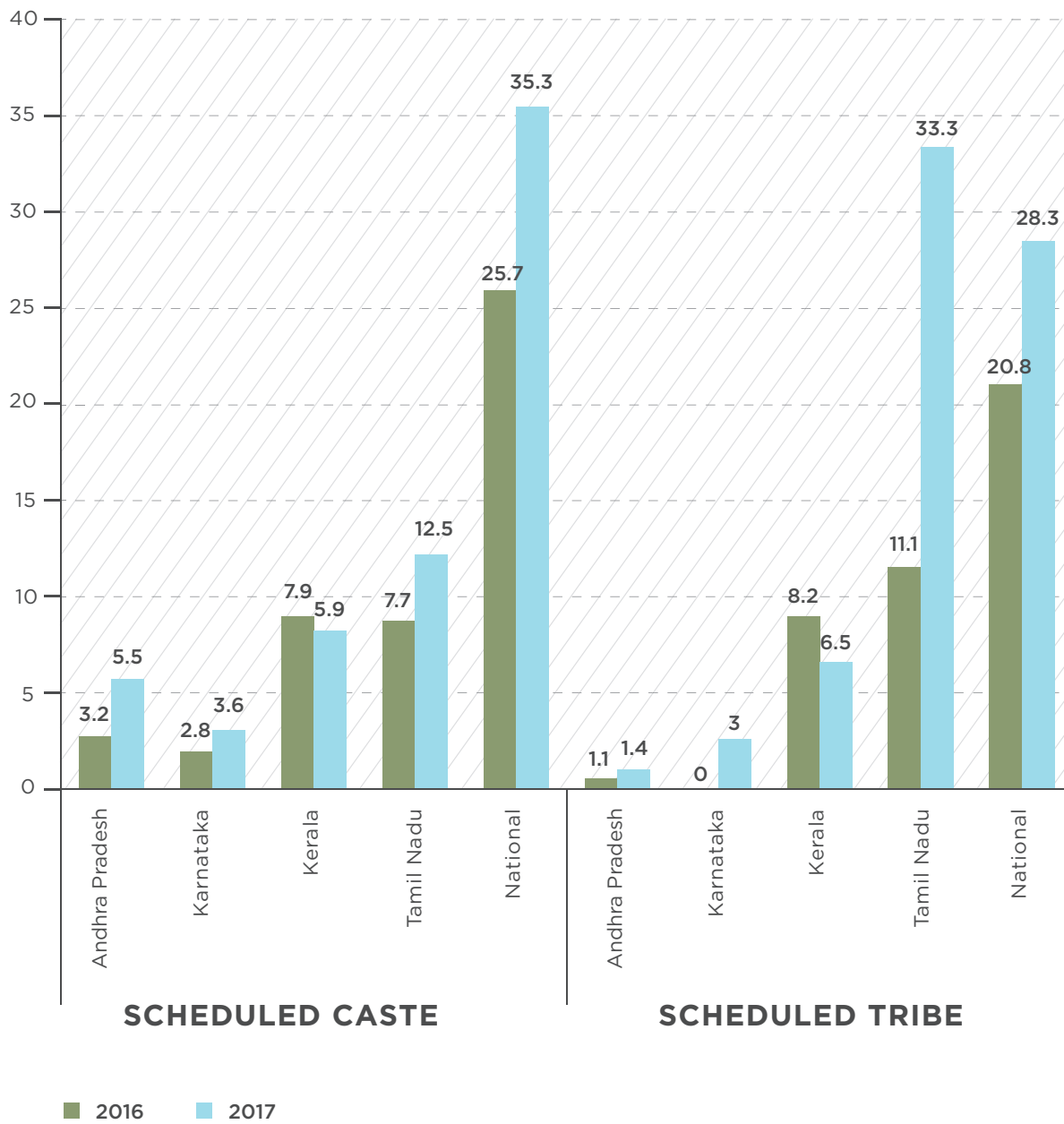
From Fig F, we note that the national conviction rate in 2017 for crimes against SCs (35.3%) and STs (28.8%) is much higher than that of the four Southern States. Among the four States, Karnataka has consistently reported the lowest conviction rate of only around 3%. In 2017, Tamil Nadu reported a conviction rate of 12.5% for offences against SCs and a significant 33.3% for offences against STs.

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<sup>44</sup>Sanya Dhingra, ‘Sex crimes against SCs/STs rising since 2014, experts say it’s power play’ (*ThePrint*, 26 December 2017) <<https://theprint.in/report/rape-sc-st-women-often-power-crime-statistics-show/24739/>> accessed 22 November 2019.



**Fig F: Conviction rates for crimes against SCs and STs in 2016 and 2017**



## D. Special Courts

The data on implementation of the PoA Act with respect to setting up the institutional framework is obtained from the Ministry of Social Justice and Empowerment annual reports.

As we can see in Table 3, Andhra Pradesh has set up 14 Special Courts in 13 districts, with 2 courts being set up in Srikakulam District.<sup>45</sup> In Kerala, the 2016 Report of the Ministry of Social Justice and Empowerment<sup>46</sup> claimed that all Sessions Courts have been designated as Special Courts and 3 Exclusive Special Courts have been set up in 3 districts. Yet, in 2017, the Report<sup>47</sup> merely states that all Sessions Courts have been designated as Special Courts and no mention has been made of the 3 Exclusive Special Courts. In Tamil Nadu,<sup>48</sup> 6 Exclusive Special Courts are formed and Principal Sessions Courts in the States have been designated as Special Courts in the remaining districts.

## E. Identification of 'Atrocity-Prone Areas'

Under Rule 3 of the PoA Rules, the State Government has been tasked with the responsibility to identify 'atrocity prone areas' where it has reason to believe that atrocities may take place and thereafter set up awareness centres and organize workshops in these areas.

As we can see from the Table 4, in Kerala, only 2 districts have been identified as atrocity prone,<sup>49</sup> despite the consistently high incidence of atrocities against ST persons. Karnataka has identified all 30 districts as atrocity prone areas. Only in Tamil Nadu, awareness programmes have been reported to have been carried out.<sup>50</sup>

<sup>45</sup>Courts have been set up at Chittoor, Guntur, Nellore, Kurnool, Prakasham at Ongole, Kadapa, Krishna, East Godavari, Ananthapur, Srikakulam, Vizianagaram, Visakhapatnam, West Godavari and Lakshimpeta of Srikakulam district, available at [http://socialjustice.nic.in/writereaddata/UploadFile/SOCIAL%20JUSTICE%20ENGLISH%2015\\_16.pdf](http://socialjustice.nic.in/writereaddata/UploadFile/SOCIAL%20JUSTICE%20ENGLISH%2015_16.pdf) on page 33.

<sup>46</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2016 (Ministry of Social Justice and Empowerment, 2016) 69 <<http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20Report%20-PoA-2016636583494050069100.pdf>> accessed 22 November 2019.

<sup>47</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2017 (Ministry of Social Justice and Empowerment, 2017) 66 <<http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20Report-PoA-2017636988121973975658.pdf>> accessed 22 November 2019.

<sup>48</sup>*ibid* 99.

<sup>49</sup>*ibid*.

<sup>50</sup>*ibid*.

**Table 3: Special Courts in the four Southern States as of 2017<sup>51</sup>**

State	Number of Districts	Number of Special Courts
Andhra Pradesh	13	14 (13 Exclusive and 1 Designated)
Karnataka	30	30 (8 Exclusive and 22 Designated)
Kerala	14	17 (3 Exclusive and 14 Designated)
Tamil Nadu	32	6 Exclusive Special Courts covering 12 districts and in remaining districts existing courts are designated.

**Table 4: Number of atrocity prone areas in the Southern States as of 2017<sup>52</sup>**

Atrocity Prone Areas	Number of Areas	Number of Districts
Andhra Pradesh	47	4
Karnataka	7	30
Kerala	0	2
Tamil Nadu	211 (Villages)	31

<sup>51</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2016 (Ministry of Social Justice and Empowerment, 2016) <<http://socialjustice.nic.in/writereaddata/UploadFile/Annual%20Report%20-PoA-2016636583494050069100.pdf>> accessed 22 November 2019.

<sup>52</sup>ibid.

## F. Vigilance and Monitoring Committees

None of the four Southern States have complied with the meeting requirements of the State and District Vigilance and Monitoring Committees (SVMC and DVMC) as prescribed under the Act and the Rules. They are required to meet atleast once in 3 months.

Tamil Nadu and Andhra Pradesh have not held a single SVMC meeting since 2014. In fact, only 3 out of the mandated 42 meetings of the SVMCs have been

conducted since its establishment in Tamil Nadu.<sup>53</sup> Karnataka held one meeting in 2017 while Kerala conducted 1 SVMC meeting in 2014 and 2017.

From the Annual Reports of the Ministry of Social Justice, it is not possible to tell which DVMCs have met during the year. What is evident is that apart from Kerala, none of the other Southern States have reached even the half-way mark in holding DVMC meetings.

## G. Rehabilitation and Legal Aid provided

The four Southern States seem to have broadly adhered to their obligations to provide legal aid. In Andhra Pradesh, there is no income limit for eligibility for legal aid, which is provided to SC/ST persons through the Sub-Divisional Level Legal Aid Committee.<sup>54</sup> Karnataka's annual income limit for legal aid is Rs. 25,000/- and aid

is disbursed through the State and District Legal Services Authorities, High Court and Taluk Legal Services Committees.<sup>55</sup> In Tamil Nadu, the 2017 Report merely states that all cases requiring legal aid for SC/ST persons is brought under the Free Legal Aid Scheme that is implemented through the Tamil Nadu Legal Service Authority.<sup>56</sup>

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<sup>53</sup>SCs and STs (Prevention of Atrocities) Act: A Review of implementation in Tamil Nadu 2016-17 (Institute of Human Rights Advocacy and Research, April 2018) <<https://www.slideshare.net/hrfchennai/review-of-implementation-of-the-scs-and-sts-prevention-of-atrocities-act-in-tamil-nadu-2016>> accessed 22 November 2019.

<sup>54</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2017 (n 47).

<sup>55</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2017 (n 47).

<sup>56</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2017 (n 47)

**Table 5: Number of District Vigilance Monitoring Committee meetings since 2014**

State (Districts)	2014	2015	2016	2014
Andhra Pradesh (13)	18	23	27	34
Karnataka (30)	58	71	95	110
Kerala (14)	54	55	54	54
Tamil Nadu (32)	69	80	53	13

**Table 6: Data on rehabilitation from the four Southern States in 2017<sup>57</sup>**

State	No. of persons provided with travel & maintenance	No. of persons provided with relief and rehabilitation	Legal Aid
Andhra Pradesh	249	1069	1311
Karnataka	374	2451	764
Kerala	169	509	132
Tamil Nadu	1260	2067	Not Mentioned

<sup>57</sup>Report U/s 21(4) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 For the Year 2017 (n 47).

## H. Victim Compensation and Protection

Witness and victim protection measures are not being implemented at all to any satisfactory extent. Victims often have to approach the courts for implementation of witness protection.<sup>58</sup> The amounts for victim compensation in Karnataka were substantially increased through Government Order dated 20 June 2016 issued by the Social Welfare Department where the compensation in the broad range of Rs. 2 lakhs to Rs. 8.25 lakhs may be awarded to the victim depending on the offence committed.<sup>59</sup> While broadly victim compensation is paid under the PoA Act, no data is being maintained by the State

Government on the exact figures. Often victims have to approach the courts to seek the release of victim compensation amounts.<sup>60</sup> In Kerala, it was reported in 2018 that the State Government had failed to pay victim compensation to ST victims of atrocities from 2014 onwards.<sup>61</sup> The Investigating Officers who were interviewed alleged that the Department of Scheduled Tribe Development owed around Rs. 40 lakhs to 30 victims of atrocities in Kasaragod<sup>62</sup> and candidly stated that the delay in paying relief amounts to victims had a direct effect on convictions as poor witnesses turned hostile during trial.

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<sup>58</sup>*In K. Rukmini v. State of Tamil Nadu & Ors.*, W.P. (MD) No. 16628 of 2016 (Madras High Court, Madurai Bench), the Government of Tamil Nadu gave an undertaking before the Madras High Court to depute one police official to the house of the victim till the conclusion of trial.

<sup>59</sup>Enhancement of Monetary Relief to the victims of atrocities belonging to SCs/STs under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules (*State of Karnataka*, 20 June 2016) <<https://sw.kar.nic.in/WebPages/PDF2016/file4.pdf>> accessed 22 November 2019.

<sup>60</sup>*P. Satish v. State of Tamil Nadu*, W.P. No. 10602 of 2019.

<sup>61</sup>Kerala: Adivasi victims of crime not compensated since 2014, officers say delay in providing monetary relief taking a toll on conviction rate' (*New Indian Express*, 24 April 2018) <<http://www.newindianexpress.com/states/kerala/2018/apr/24/kerala-ativasi-victims-of-crime-not-compensated-since-2014-officers-say-delay-in-providing-monetary-relief-1805867.html>> accessed 22 November 2019.

<sup>62</sup>*ibid.*

# 3 Role of the Courts

## The courts have played a significant role in the weakening of the PoA Act.

The most recent example of the courts diluting the PoA were by the Supreme Court. In the case of *Subhash Kashinath Mahajan v. State of Maharashtra & Anr.*,<sup>63</sup> the Court quashed a complaint under the PoA Act. In the judgement however, the Court appears concerned that the PoA may perpetuate casteism and threaten the constitutional goal of a 'cohesive, unified and casteless society'. Hence it was keen to assert the court's power to issue appropriate orders or directions to protect the fundamental rights of those falsely accused under the Atrocities Act. The Court stated that there was widespread

abuse of the Act and held that a preliminary inquiry was necessary before a complaint is registered under the PoA Act and further that written permission of the appointing authority is required for public officials and of the District Superintendent of Police for all other persons. It further held that Section 18 (prohibition of anticipatory bail) was limited only to cases where a prima facie case is made out. Soon after, the Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 to restore status quo. The Amendment Act was challenged shortly after.

In a review of *Subhash Kashinath Mahajan*, the Supreme Court took note of data on crimes against SCs and STs and recalled its previous directions holding that the directions placed serious fetters on the powers to file FIRs and arrest.<sup>64</sup>

<sup>63</sup>AIR 2018 SC 1498.

<sup>64</sup>*Union of India v State of Maharashtra & Ors.*, Review Petition (Crl). No. 228 of 2018 in Criminal Appeal No. 416 of 2018; 'Legality of SC/ST Act Amendment' (*SCObserver*, 2019) <<https://www.scoobserver.in/court-case/challenge-to-sc-st-atrocity-act-amendment/legality-of-sc-st-amendment-plain-english-summary-of-judgment-in-review-petition>> accessed 18 November 2019.

Further, in its decision upholding the constitutionality of Section 18A of the Amendment Act, the court held that the considerations that informed the enactment of the PoA Act far outweigh concerns that individuals might be subjected to arbitrary processes of investigation and the court noted that “The right to a fair trial, with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.”<sup>65</sup> In other instances, courts have given a restricted interpretation to the PoA.

The AP High Court has held that the PoA Act only applies to Hindus, Sikhs and Buddhists and that if an SC Hindu converts to any religion apart from Sikhism or Buddhism, he or she will cease to be a member of the Scheduled Caste and cannot invoke provisions of the PoA Act.<sup>66</sup>

Several judgments have held that courts are empowered to compound offences under the PoA Act as well as the PCRA by invoking their inherent powers under Section 482 of the CrPC.<sup>67</sup> Significantly, cases are often compounded under the PoA even though there are no provisions for compounding.<sup>68</sup> In *Dhananjay Gopalrao Bahergaonkar and Ors. v State of Maharashtra*<sup>69</sup> the Bombay High Court held that “if two sects of the society have decided to settle the dispute to maintain harmony between them, in such

*cases this Court has to exercise the powers vested in the extra ordinary jurisdiction of this Court. Considering these aspects, this Court is of the considered view that though there is no express provision to compound the offence punishable under the Atrocities Act, yet this Court in the extra ordinary powers vested in it under Section 482 of the Criminal Procedure Code, to secure ends of justice and to maintain harmony between two sects of the society, can compound the offence”.*

<sup>65</sup>*Prathvi Raj Chauhan v. Union of India & Ors.*, W.P. (C) No. 1015 of 2018 delivered on 10 February 2020.

<sup>66</sup>*Chinni Appa Rao v. State of Andhra Pradesh*, Criminal Petition No. 2036 of 2013 decided on 7 December 2015 (Andhra Pradesh High Court).

<sup>67</sup>*Dhanraj v. State*, (1986) Cr. L.J. 284 (Madras High Court).

<sup>68</sup>National Crime Records Bureau, ‘Crime in India Statistics’ (Ministry of Home Affairs, 2017) Table 7A.6; National Crime Records Bureau, ‘Crime in India Statistics’ (Ministry of Home Affairs, 2017) Table 7A.6. Notably, in 2016, Madhya Pradesh compounded 342 cases under the PoA Act in spite of no state amendment permitting compounding of offences under the CrPC.

<sup>69</sup>(2010) 3 BomCR (Cri) 270.



Where crimes were committed against persons from an SC community, courts have acquitted the accused persons under the PoA Act if caste prejudice was not proved. In *State of Karnataka v Irappa Dhareppa Hosamani*,<sup>70</sup> the High Court of Karnataka held that “...it is essential to show that the accused is not a member of Scheduled Caste/Scheduled Tribe and that the victims are the members of Scheduled Caste/Scheduled Tribe and that the accused, intentionally knowing that the victims belonged to a member of Scheduled Caste, insulted or intimidated them as

*being members of the Scheduled Caste.”* In *State of Karnataka v. Mahantappa and Ors.*,<sup>71</sup> the accused were found guilty of rape and criminal intimidation under IPC provisions, but were acquitted of offences under the PoA Act as the prosecution had failed to submit evidence that the accused was aware of the victim’s caste.

In cases relating to crimes against SC/ST women where there was no evidence to show that the crime was committed solely due to the victim’s caste status, convictions under the PoA Act have been set aside.<sup>72</sup>

In fact, in non-gendered offences as well, courts have laid emphasis on proving that the offence was committed with caste prejudice, for instance by establishing that the accused was aware of the victim’s caste.<sup>73</sup>

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<sup>70</sup>2001 CriLJ 3566.

<sup>71</sup>AIR 1999 SC 314.

<sup>72</sup>*Stephen Joseph v. State of Kerala*, CrI. A. No. 1951 of 2009 decided on 1 March 2013 (Kerala High Court); *Asharfi v. State of Uttar Pradesh*, (2018) 1 TLNJ 45 (Criminal).

<sup>73</sup>*Ashwin Kumar v. State of Karnataka*, Criminal Revision Petition No. 1062 of 2017 decided on 3 November 2017 (Karnataka High Court); *Daya Bhatnagar & Ors. v. State*, 109 (2004) DLT 915.

In some cases, the Supreme Court has played a positive role. In *National Campaign on Dalit Human Rights v. Union of India & Ors.*<sup>74</sup> where specific directions on the implementation of different aspects of the PoA Act were sought,

the Court observed that the constitutional goal of equality for all citizens of the country could be achieved only if the rights of SCs/STs are protected.

However, while noting the indifferent attitude of State authorities and their failure to comply with the provisions of the PoA Act and Rules, it passed only a simple direction to State Governments “...to strictly enforce the provisions of the Act... The National Commissions are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority is requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of Scheduled Castes and Scheduled Tribes.”

In the context of honour killings of inter-caste couples, in *Arumugam Servai v State of Tamil Nadu*,<sup>75</sup> the Supreme Court directed administrative and police officials to take strong preventive measures. Significantly, with respect to negligent officers, the Court

directed the State Government to immediately suspend the District Magistrate/Collector and District Superintendent of Police, and initiate criminal and departmental action against officials who fail to prevent an incident despite having knowledge of it, or do not promptly apprehend the culprits and institute criminal proceedings where an offence has occurred.

The only reported judgment which in fact resulted in the prosecution of an Inspector of Police under Section 4 of the PoA Act was in *M.P. Mariappan v The Deputy Inspector General of Police and Ors.* where the Madras High Court held that the complaint was not dealt with properly and investigation was done by an incompetent officer. A complaint under Section 4 was registered against the Superintendent of Police for failure of duties.<sup>76</sup>

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<sup>74</sup>(2017) 2 SCC 432.

<sup>75</sup>AIR 2011 SC 1859.

<sup>76</sup>(2014) 1 CWC 599 (Madras High Court).

# 4 Conclusion

The PoA Act is the most extensively used statute which addresses caste discrimination in the four Southern States. However, as we see from the statistics above, implementation of the PoA is not at all adequate. Registering a criminal complaint, getting the police to do the investigation properly and securing a conviction at the end of a trial does not take place in majority of cases. In fact the police are reported to be the “greatest violator(s) of Dalits’ human rights”.<sup>77</sup> The most common reasons for the high rate of acquittals under the PoA Act is the failure of the prosecution to adduce sufficient evidence, faulty

investigation by the police and<sup>78</sup> delays in filing FIRs.<sup>79</sup>

In a recent incident in Karnataka, Dharani S., who was a Dalit advocate had attempted to file a police complaint against certain persons, including a corporator, who were harassing her and her mother over their property in 2018 and she committed suicide due to the harassment.<sup>80</sup> The Karnataka High Court noted that the police failed to arrest the accused on her complaint and instead registered a counter-complaint lodged by the accused persons on the same day as the complaint made by the deceased.<sup>81</sup>

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<sup>77</sup>Hidden Apartheid: Caste Discrimination against India’s “Untouchables” (*Human Rights Watch*, February 2007) 56 <[https://www.hrw.org/reports/1999/india/India994-04.htm#P550\\_72244](https://www.hrw.org/reports/1999/india/India994-04.htm#P550_72244)> accessed 22 November 2019.

<sup>78</sup>*State v. Gopalappagouda and Ors.*, CrI. App. No. 3506 of 2008 decided on 17 June 2016 (High Court of Karnataka, Kalaburagi Bench); *II Additional District and Sessions Judge (PCR), Tirunelveli and Ors. v. Sankaranarayanan and Ors.*, R.T. (MD) No. 1 of 2017, CrI. A. (MD) No. 222 of 2017 and CrI. M.P. (MD) No. 5826 of 2017 decided on 24 April 2018 (Madras High Court).

<sup>79</sup>*Rudrappa Kareppa Dhudali v. State of Karnataka* CrI. App. No. 2700 of 2009 decided on 13 October 2015 (High Court of Karnataka).

<sup>80</sup>Lawyer Suicide: Corporator on run lands in police net’ (*Times of India*, 24 March 2019) <<https://timesofindia.indiatimes.com/city/bengaluru/lawyer-suicide-corporator-on-run-lands-in-police-net/articleshow/68541257.cms>> accessed 22 November 2019.

<sup>81</sup>*Advocates Association v. Central Bureau of Investigation*, Writ Petition No. 6067 of 2019 order dated 19.03.2019 (High Court of Karnataka).

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There is a lackadaisical approach to investigation of atrocities under the PoA and failure by the police to adhere to the mandated timelines, which is coupled with the failure to take cognizance of offences under Section 4 of the PoA Act.

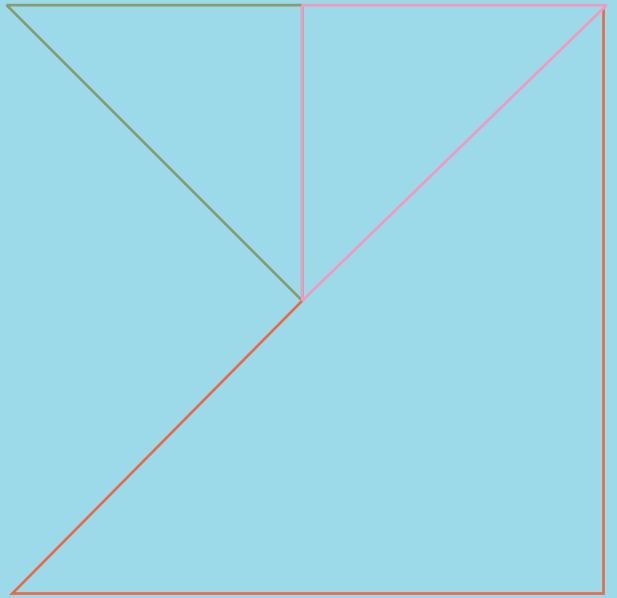
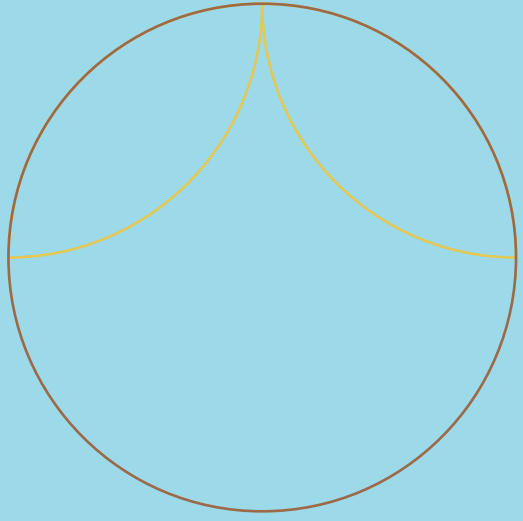
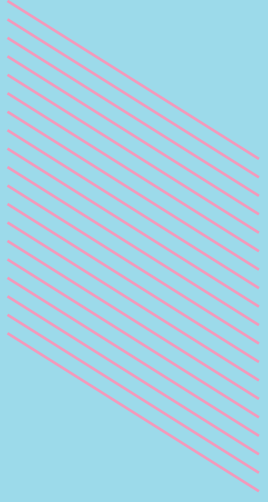
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The low levels of reporting of crimes under the PoA Act, especially against STs, is also a matter of concern. The entire system of recourse for an aggrieved SC/ST person - from filing a police complaint to receiving timely and complete victim compensation, freely testifying in court and securing a conviction - is daunting. As trials take several years to conclude and invariably result in acquittal in all four Southern States, the prospect of receiving 'justice' in any form appears to be poor.

Further, the Ministry of Social Justice and Empowerment reports on the implementation of the PoA Act across India are available only till 2017 and do not provide detailed explanations of measures taken, nor any analysis of the impact or efficacy of any of the measures.

Overall, the implementation of the PoA Act is riddled with inadequate documentation, reporting, prosecution and prevention of atrocities against SC/ST persons.





03



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# **The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013**

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('PEMSRA') was enacted to eradicate the practice of unsafe cleaning of insanitary latrines.

The practice of manual scavenging in India is largely hereditary, inextricably linked to the caste system, and is performed almost exclusively by members of the Dalit community in India, a majority of them being women.<sup>82</sup> Despite the strong link of the practice of manual scavenging with caste, it is surprising that the PEMSRA makes no mention of caste in any of its provisions.

Prior to the PEMSRA, the previous legislation in force was the Employment of Manual Scavengers and Construction of Dry Latrines, 1993, whose scope was limited to dry latrines. The PEMSRA is the most recent and by far the most detailed legislation on the prohibition of manual scavenging and rehabilitation of persons involved in manual scavenging.

It lays out concrete offences, and together with the Rules, sets out clear responsibilities and obligations of different state authorities and specific officers', provides for the establishment of infrastructure to carry out surveying and monitoring activities, and outlines comprehensive relief and rehabilitation measures for affected persons.

<sup>82</sup>Shaileshkumar Darokar, 'Manual Scavengers: A Blind Spot in Urban Development Discourse', (2018) Vol. 53(22) *Economic and Political Weekly*; Rajeev Kumar Singh and Ziyauddin, 'Manual Scavenging as Social Exclusion: A Case Study', (2009) Vol. 44(26-27) *Economic and Political Weekly*.



# 1 Main Provisions of the Law

Under the PEMSRA, a manual scavenger is a person who has been employed to manually clean, dispose of and handle human excreta in insanitary latrines, open pits, railway tracks and other premises.<sup>83</sup> It includes persons engaged on a regular or a contract basis. An “insanitary latrine” is defined as any latrine that requires human excreta that is discharged or flushed into an open drain or pit into which excreta is discharged or flushed to be manually cleaned before the excreta fully decomposes.<sup>84</sup>

Under Section 4(1)(s) of the Act, every local authority is mandated to carry out a survey of existing insanitary latrines in its jurisdiction and publish a list of insanitary latrines within 2 months from the date of commencement of the Act. Thereafter the local authority is required to give notice to the occupier to demolish the same and convert it into a sanitary latrine

within a period of 3 months. It is also the responsibility of the local authority to construct within 9 months of the commencement of the Act such number of sanitary latrines as may be required to eliminate the practice of open defecation.

Section 5 states that no person shall construct an insanitary latrine or engage or employ a person either directly or indirectly as a manual scavenger. Every person engaged as a manual scavenger shall be discharged immediately from any work of manual scavenging. Every insanitary latrine is required to be demolished and converted into a sanitary latrine whether with assistance from the State government or by the local authority and at the cost of the occupier, if occupier fails to do so by themselves.

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<sup>83</sup>The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, s 2(g).

<sup>84</sup>The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, s 7.

Under Section 6, a person engaged as a manual scavenger is no longer required to perform those tasks and a contract or agreement engaging a person as a manual scavenger will be void and inoperative. Crucially, the statute also provides that a person employed as a manual scavenger on a full-time basis must be assigned other work for at least the same compensation by the employer and cannot be retrenched. Under Section 7, no person can be engaged for the

hazardous cleaning of a sewer or a septic tank. Sections 8,9 and 10 lay down the punishments and penalties for the violation of Sections 5, 6 and 7. Engaging a person as a manual scavenger is punishable with imprisonment of up to two years with fine. Other offences are punishable with imprisonment of up to one year with fine, and up to two years with fine for subsequent convictions. All offences under the Act are cognizable and non-bailable.

## Survey and identification of manual scavengers

Section 11 mandates that there should be a survey and identification of persons engaged as manual scavengers.

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The Chief Executive Officer of the municipality or municipal corporation is required to undertake a survey to identify persons engaged as manual scavengers.

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This could be done by house-to-house visits and obtaining information of manual scavengers from the households which have insanitary latrines. This stage is followed by verification by an enumerator who is usually an employee of the Municipality or the State Government who is to visit households of manual scavengers and verify the information. In order

to ensure that the identification process has been carried out comprehensively, the guidelines also provide for sample checks by supervisors. Thereafter, a provisional list of manual scavengers is to be prepared and published, inviting objections from the public. Claims and objections, if any, can be received within the above period of two weeks with documentary evidence. During this time, individuals who are engaged as manual scavengers can also file declarations seeking to be included in the list. Thereafter all claims and objections would be examined and a final list of persons found to be manual scavengers within the municipality would be published and with the publication of the final list, all the persons in the list would be discharged from all obligation to work as manual scavengers.

Section 13 provides for rehabilitation of persons identified as manual scavengers in the final list. The District Magistrate is responsible to rehabilitate manual scavengers. Within one month of identification, the person must be issued a photo identity card with all details of his / her family members and dependents, and an

initial one-time cash assistance. Other rehabilitation measures include livelihood and skill training along with payment of monthly stipend of at least Rs. 3,000/- for the period of training, provision of subsidies and concessional loans for taking up alternative occupation, scholarships for children of manual scavengers, allotment of residential plots and financial assistance for construction of provision of one-time cash assistance, house or a ready-built house and legal assistance.

The Act further lists out local authorities' responsibilities, establishes vigilance committees and provides for the appointment of inspectors. Additionally, the National Commission for Safai Karamcharis Act, 1993 provides for the establishment of a National Commission for Safai Karamcharis (NCSK) and State Commissions for Safai Karamcharis to monitor the implementation of the statute and to perform other functions.<sup>85</sup>

The NCSK has also conducted its own surveys in various States to identify manual scavengers.

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<sup>85</sup>The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, s 31.

In the following sections, we review the data on incidence of manual scavenging and of specific offences under the Act in the four Southern States.

## 2 Insanitary Latrines

The data on the numbers of insanitary latrines is varied. There are no surveys undertaken by the municipal authorities as mandated under the PEMSRA which can give us detailed numbers of insanitary latrines.

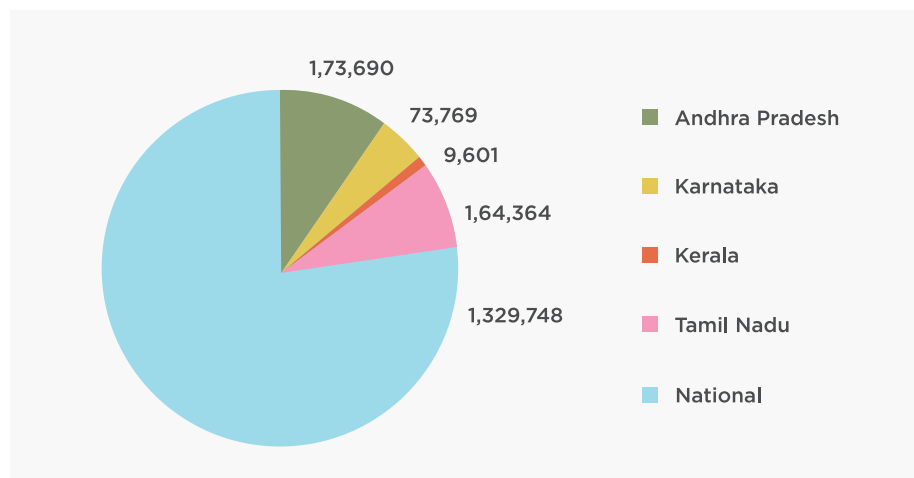
As per the National Safai Karamcharis Finance and Development Corporation (NSKFDC) 20th Annual Report (2016-17), there are 26 lakh insanitary latrines in the country, of which 13.29 lakh are in urban areas and 12.71 lakh in rural areas.<sup>86</sup>

Under the Census 2011, based on a house-to-house survey, the numbers of insanitary latrines in the 4 Southern States are as follows:

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<sup>86</sup>20th Annual Report 2016-17, (National Safai Karamcharis Finance & Development Corporation, 2016-17) 20 < <https://nskfdc.nic.in/en/content/annual-reports-0>> accessed 22 November 2019.

**Fig G: Number of insanitary latrines identified in the four Southern States and nationally in urban areas as per the 2011 Census**



As we can see from the Fig G as per the Census 2011, in Andhra Pradesh, there were 1,73,690 insanitary latrines in 6,77,8225 urban households; in Karnataka, there were 73,769 unsanitary latrines; Tamil Nadu had 164,364 insanitary latrines; and Kerala had only 9601 insanitary latrines.<sup>87</sup>

In Tamil Nadu, the State Government claimed before the National Commission for

Scheduled Castes that it had surveyed 664 urban local bodies, identified 90,538 insanitary latrines<sup>88</sup> and demolished 9,117 insanitary latrines.<sup>89</sup> No local authorities in Tamil Nadu have published the list of insanitary latrines except the Municipal Corporation of Tiruppur<sup>90</sup> and Hosur,<sup>91</sup> which identified and published the list of 226 and 56 insanitary latrines respectively in the year 2014.

<sup>87</sup>State/UT-wise no. of Insanitary Latrines - Urban Areas <<http://mssurvey.nic.in/UI/StatewiseInsanitaryLatrine.aspx>> accessed 22 November 2019.

<sup>88</sup>Minutes of the Meeting of the National Commission for Scheduled Castes, New Delhi headed by Dr. P.L. Punia, Hon'ble Chairman held with Tamil Nadu Government' (*National Commission for Scheduled Castes*, 9 July 2015) <<http://ncsc.nic.in/files/TN%20minutes.pdf>> accessed 22 November 2019.

<sup>89</sup>Minutes of the Meeting organised by NCSC on 'Monitoring the Implementation of Constitutional Safeguards for Scheduled Castes' (*National Commission for Scheduled Castes*, 24 June 2015) <[http://ncsc.nic.in/files/Minutes%20of%20the%20Meeting%20organized%20by%20NCSC%20on%20%2024\\_06\\_2015.pdf](http://ncsc.nic.in/files/Minutes%20of%20the%20Meeting%20organized%20by%20NCSC%20on%20%2024_06_2015.pdf)> accessed 22 November 2019.

<sup>90</sup>Insanitary Latrines identified in Tiruppur Municipality (30 September 2014) <<http://cma.tn.gov.in/cma/en-in/Downloads/Toilet%20details.pdf>> accessed 22 November 2019.

<sup>91</sup>Insanitary Latrines identified in Hosur Municipality (15 September 2014) <[http://cma.tn.gov.in/cma/en-in/Downloads/Hosur\\_Manual%20Scavenging%20Survey-Annexure.pdf](http://cma.tn.gov.in/cma/en-in/Downloads/Hosur_Manual%20Scavenging%20Survey-Annexure.pdf)> accessed 22 November 2019.

# 3 Persons identified as Manual Scavengers

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There is no data available from the four States as to whether the local bodies have carried out the survey as required under Sections 11 and 12 of the PEMSRA to identify persons engaged in manual scavenging.

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As of 31 March 2017, the report of the NSKFDC, established by the Ministry of Social Justice and Empowerment, 12,742 manual scavengers identified in 13 states all over India.<sup>92</sup>

These numbers do not match the high numbers of insanitary latrines reported and shows that there is a serious denial of the practice of manual scavenging.

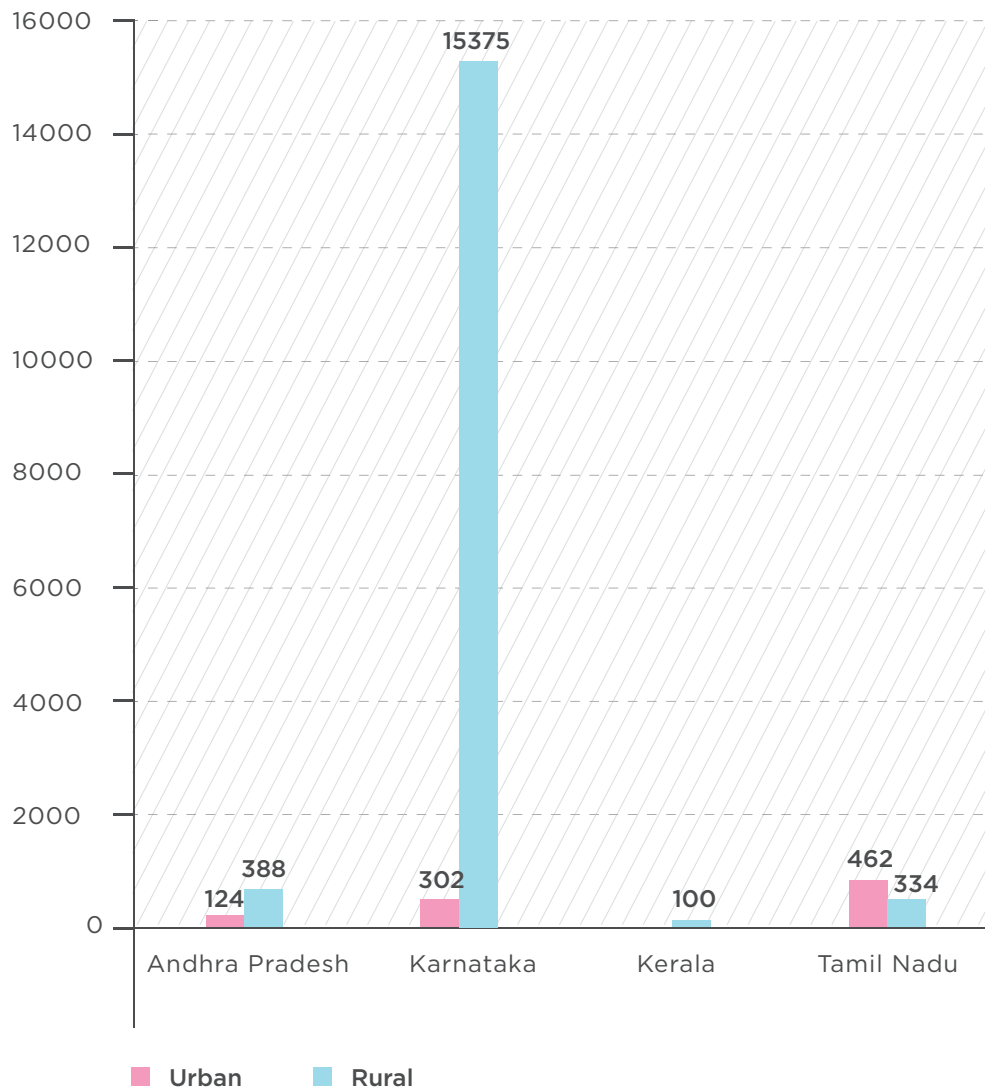
In 2018, an inter-ministerial task force set up by the Niti Aayog identified 54,130 manual scavengers from 121 districts in India as of 18 July 2019.<sup>93</sup> All of this data is by national bodies and not by municipalities and municipal corporations as required under the PEMSRA.

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<sup>92</sup>20th Annual Report 2016-17, (National Safai Karamcharis Finance & Development Corporation, 2016-17) 20 < <https://nskfcd.nic.in/en/content/annual-reports-0> accessed 22 November 2019.

<sup>93</sup>Unstarred Question No. 3639, 'Survey Regarding Manual Scavenging' (Government of India, Rajya Sabha, 24 July 2019).

**Fig H: Manual Scavengers identified in urban and rural areas as per the Socio-Economic Caste Census 2011<sup>94</sup>**



From Fig. H above we can see that the Socio-Economic Caste Census 2011, identified 1,82,505 persons as manual scavengers nationally in rural areas and 12,226 manual scavengers were identified in urban areas based on the surveys conducted so far. Out of these, in rural areas, 388 manual scavengers were identified in Andhra Pradesh, Karnataka had the highest of 15375

manual scavengers, Kerala had 100 and Tami Nadu had 334. In urban areas, the numbers were lower and the details of the survey conducted are not available – only 302 manual scavengers were identified in urban areas of Karnataka, 124 in Andhra Pradesh and 462 in Tamil Nadu. No information is available for Kerala.

<sup>94</sup>'Manual Scavenging', (Press Information Bureau, 15 December 2015) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=133286>> accessed 29 January 2020.

There are other studies which provide data on manual scavenging which are also important to note.

**01** Karnataka: The State Government has not released any data, but as per the data provided by the National Safai Karamacharis Andolan, Karnataka, it found 1720 manual scavengers in Karnataka in 30 districts.<sup>95</sup> There have been 68 manual scavenging deaths in Karnataka since 2008.<sup>96</sup>

**02** Kerala: The State of Kerala has denied the very existence of the practice, stating that there were no manual scavengers identified in urban areas. However, a 2018 state-level survey conducted by the Suchitwa Mission, the nodal agency for sanitation, has found that there are 600 manual scavengers in the region. The survey-cum-identification camp conducted by the mission under the direction of NSKFDC covered the four districts of Kollam, Ernakulam, Alappuzha and Palakkad. Kollam district has the highest number of manual scavengers - 274, followed by Ernakulam - 155, Alappuzha - 96, and Palakkad - 75.<sup>97</sup>

**03** Tamil Nadu: A 2013 survey carried out by the National Commission for Safai Karamcharis identified 3032 manual scavengers in eight districts alone.<sup>98</sup> Tamil Nadu has the highest number of manual scavenging deaths in India with 144 deaths reported over the last 5 years.<sup>99</sup>

<sup>95</sup>Pilot survey shows 1,720 manual scavengers in six Karnataka districts' (*Times of India*, 26 February 2019) <<https://timesofindia.indiatimes.com/city/bengaluru/karnataka-pilot-survey-shows-1720-manual-scavengers-in-six-districts-alone/articleshow/68172100.cms>> accessed 22 November 2019.

<sup>96</sup>68 manual scavengers died in Karnataka since 2008' (*The Times of India*, 8 January 2018) <<https://timesofindia.indiatimes.com/city/bengaluru/68-manual-scavengers-died-in-karnataka-since-2008/articleshow/62406966.cms>> accessed 22 November 2019.

<sup>97</sup>Chithira N. Raju, 'Kerala's South has 600 scavengers' (*Deccan Chronicle*, 23 June 2018) <<https://www.deccanchronicle.com/nation/in-other-news/230618/keralas-south-has-600-scavengers.html>> accessed 22 November 2019.

<sup>98</sup>'Survey will be taken to evaluate the status of manual scavengers in Tamil Nadu: NCSK Chairman' (*Mirror Now*, 22 January 2019) <<https://www.timesnownews.com/mirror-now/society/article/survey-will-be-taken-to-evaluate-the-status-of-manual-scavengers-in-tamil-nadu-ncsk-chairman/351959>> accessed 22 November 2019.

<sup>99</sup>TN tops list of shame, has highest number of manual scavenging deaths in India' (*The News Minute*, 13 February 2019) <<https://www.thenewsminute.com/article/tn-tops-list-shame-has-highest-number-manual-scavenging-deaths-india-96668>> accessed 22 November 2019.



# Women in Manual Scavenging

Another glaring issue where data is lacking is on the number of women manual scavengers. Studies have found that a majority of the 5,353 manual scavenging workforce in India are women. However, data on the number of women who are in fact engaged as manual scavengers in each State is missing.

## 4 Rehabilitation

The biggest hurdle for rehabilitation of persons is the identification of persons as manual scavengers. Only once persons are identified under Section 11 and 12 as manual scavengers and are given an identity card, can they seek rehabilitation benefits thereafter. We can see from the data above, that the identification exercise is not done or completed in most of the 4 Southern States

and hence the rehabilitation of manual scavengers is negligible.

The Government of India introduced the Self-Employment Scheme for Rehabilitation of Manual Scavengers in 2007 under which a one-time cash assistance of Rs. 40,000/- is provided to identified manual scavengers.<sup>100</sup>

The data as to the extent rehabilitation measures are being is very minimal.

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<sup>100</sup>“Self-Employment Scheme for Rehabilitation of Manual Scavengers’ (Ministry of Social Justice and Empowerment, 2007) 3 <<http://socialjustice.nic.in/writereaddata/UploadFile/SRMSFinalScheme.pdf>> accessed 29 January 2020.

## KERALA

In Kerala there is no data on the measures taken for rehabilitation of manual scavengers.

In Kerala's Kollam district, the Chakliyan community has been working as manual scavengers for centuries but are denied recognition by the State Government on the ground that they are migrants from Tamil Nadu.<sup>101</sup> Persons from the Arunthathiyar caste, who also work as manual scavengers, are denied recognition and as a result, also denied rehabilitation.<sup>102</sup>

## TAMIL NADU

The Tamil Nadu Government has also claimed that no person has come forward to access the various rehabilitation schemes in place for manual scavengers. Activists on the other hand have refuted this claim and highlighted the hostile attitude of officials towards individuals who come forward to identify as manual scavengers.<sup>103</sup> The NSKFDC reports that a one-time cash assistance of Rs. 40,000 was provided to 170 persons in 2015-16 and 120 manual scavengers in 2016-17.<sup>104</sup>

<sup>101</sup>Rejimon K., 'Society Needs Us, But Only for Cleaning Others' Dirt' (*The Wire*, 19 July 2018) <<https://thewire.in/caste/kerala-manual-scavengers-sanitation-chakliyan-sc>> accessed 22 November 2019. The State Government does not issue them SC certificates.

<sup>102</sup>Rashmi Binoy, 'Ground realities' (*The Hindu*, 8 December 2019) <<https://www.thehindu.com/entertainment/movies/Ground-realities/article16772009.ece>> accessed 22 November 2019.

<sup>103</sup>Tamil Nadu Officials Claim No Manual Scavenger Had Come Forward to Avail Rehabilitation Benefits, Activists Term it has False' (*NewsClick*, 6 July 2018) <<https://www.newsclick.in/tamil-nadu-officials-claim-no-manual-scavenger-had-come-forward-avail-rehabilitation-benefits>> accessed 22 November 2019.

<sup>104</sup>20th Annual Report 2016-17 (n 86) 25.

## KARNATAKA

In Karnataka, rehabilitation initiatives have been initiated, through training of 143 manual scavengers and through the Safai Karamchari Rehabilitation Programme which provides term loans and subsidies.<sup>105</sup> However, funds for rehabilitation have not reached the intended beneficiaries despite Rs. 120 crores was allocated to the Karnataka State Commission for Safai Karamcharis to provide loans.<sup>106</sup>

## ANDHRA PRADESH

Data from Andhra Pradesh states that in 2014-15, 45 manual scavengers were provided with one-time cash assistance of Rs. 40,000.<sup>107</sup> Expenditure incurred on training and subsidy for self-employment projects was nil.<sup>108</sup>

# 5 Filing of Criminal Complaints

Under the PEMSRA we see that the practice nationally and even in the four southern States, criminal complaints and FIRs are filed mostly only in cases when a person dies during the course of manual scavenging. Manual scavenging cases are then booked under Section 304A of the Indian Penal Code (causing death by negligence, punishable

with imprisonment for 2 years or fine or both) rather than Section 304, which is the more severe non-bailable offence of culpable homicide. The failure of law enforcement to register cases under the appropriate provisions of law is one of the prime reasons for acquittals, and the persistence of manual scavenging in the State.<sup>109</sup>

<sup>105</sup>ibid.

<sup>106</sup>'Pilot survey shows 1,720 manual scavengers in six Karnataka districts' (*Times of India*, 26 February 2019) <<https://timesofindia.indiatimes.com/city/bengaluru/karnataka-pilot-survey-shows-1720-manual-scavengers-in-six-districts-alone/articleshow/68172100.cms>> accessed 22 November 2019.

<sup>107</sup>Rehabilitation of Manual Scavengers (*Press Information Bureau, Ministry of Social Justice and Empowerment*, 25 February 2016) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=136807>> accessed 20 February 2020.

<sup>108</sup>ibid.

<sup>109</sup>Akshatha M, 'Despite 70 civic workers' death in 10 years, manual scavenging continues unabated in Karnataka' (*The Economic Times*, 20 February 2018) <<https://economictimes.indiatimes.com/news/politics-and-nation/despite-70-civic-workers-death-in-10-years-manual-scavenging-continues-unabated-in-karnataka/articleshow/62995013.cms?from=mdr>> accessed 22 November 2019.

# 6 Deaths of Manual Scavengers & Payment of Compensation

Over the past 10 years, frequent deaths of persons engaged as manual scavengers have been reported. Despite at least 416 reported deaths and cases of sustained injuries in India, there have been no arrests, convictions, and punishments.<sup>110</sup>

Between 2008 and 2018, statistics from the Karnataka State Commission for Safai Karamcharis report that 68 manual scavengers died in Karnataka while cleaning manholes, dry latrines and sewage pits<sup>111</sup> without any form of protection or safety gear.<sup>112</sup>

However, the number of deaths is likely to be more, particularly in light of poor reporting of cases. In Kerala, there were 12 reported deaths of manual scavengers as per the data of the Ministry for Social Justice and Empowerment in 2017.<sup>113</sup> Despite this, the Kerala Government continues to deny the existence of manual scavenging in the state. Tamil Nadu recorded 144 deaths of workers while engaging in sewer cleaning during 2013 to 2018.<sup>114</sup>

<sup>110</sup>'Methodology: #Grit' (*The Wire*) <<https://p.thewire.in/stories/methodology-443.html>> accessed 22 November 2019.

<sup>111</sup>'68 manual scavengers died in Karnataka since 2008' (*The Times of India*, 8 January 2018) <<https://timesofindia.indiatimes.com/city/bengaluru/68-manual-scavengers-died-in-karnataka-since-2008/articleshow/62406966.cms>> accessed 22 November 2019.

<sup>112</sup>'Book officials failing to enforce manual scavenging law' (*The Hindu*, 26 June 2018) <<https://www.thehindu.com/news/states/book-officials-failing-to-enforce-manual-scavenging-law/article24256763.ece>; <https://thewire.in/labour/chennai-odf-conservancy-workers>>.

<sup>113</sup>'Justice Denied: Death of Workers Engaged in Manual Scavenging while Cleaning Septic Tank or Sewer' (*Rashtriya Grima Abhyan*) 60 <<https://idsn.org/wp-content/uploads/2018/12/Report-Justice-Denied-Death-of-workers-engaged-in-manual-scavenging-while-cleaning-the-Septic-tank-or-Sewer2.pdf>> accessed 22 November 2019.

<sup>114</sup>'TN tops list of shame, has highest number of manual scavenging deaths in India' (*The News Minute*, 13 February 2019) <<https://www.thenewsminute.com/article/tn-tops-list-shame-has-highest-number-manual-scavenging-deaths-india-96668>> accessed 22 November 2019.

## 7 Role of the Courts

One of the first cases on manual scavenging to go to the Supreme Court was *Safai Karamchari Andolan v. Union of India*.<sup>115</sup> In this judgement the Supreme Court passed a whole range of directions for the implementation of the PEMSRA. It held that for all persons who had died in sewerage work since 1993, a compensation of Rs. 10 lakhs should be given and fixed this amount as compensation in case of all deaths of manual scavengers. Further it passed directions that entering sewer lines without safety gear should be a crime even in emergency situations, that railways should make a time-bound strategy to end manual scavenging on railway tracks, support should be provided for a dignified livelihood for women safai karamcharis, that persons released from manual

scavenging should be given their legitimate dues without any difficulty, and directed all States and Union Territories to strictly implement the law. Following the Supreme Court judgement, all High Courts have been passing orders for compensation of Rs. 10 lakhs in cases of deaths during manual scavenging. The Madras High Court in particular has strictly enforced the payment of compensation of Rs. 10 lakhs even in cases where persons died while engaging in manual scavenging on private premises.<sup>116</sup> In *Ramadevi v. State of Karnataka*,<sup>117</sup> the petitioner was the wife of a deceased sweeper who was working through a contractor, who had died, and was seeking compensation and to provide her appointment on compassionate grounds.

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<sup>115</sup>(2014) 11 SCC 224.

<sup>116</sup>*Secretary to the Government & Ors. v. Valaiyakka & Ors.*, Writ Appeal (MD) No. 550 of 2016 decided on 7 April 2016 (Madras High Court, Madurai Bench); *K.M. Ravichandran v. Commissioner*, Writ Appeal No. 680 of 2016 decided on 13 December 2017 (Madras High Court).

<sup>117</sup>W.P. No. 201021-022/2015 decided on 5 June 2015 (Karnataka High Court).

## In a landmark judgement Justice Narayanaswamy held that the practice of manual scavenging was nothing less than practicing racial discrimination and violation of human rights.

He went on to direct that the petitioner be provided appointment on compassionate grounds, holding that if the deceased was a permanent employee in the State then she would have got all post death service benefits including appointment on compassionate grounds. He went on to further direct that all the City corporations and local administration should take immediate steps to regularize the daily wage sweepers, scavengers or pourakarmikaras within 3 months. This judgment was taken on appeal and the Division Bench of the Karnataka High Court in *State of Karnataka and Ors. v. Smt. Ramadevi and Ors.* upheld the order of compassionate appointment of the petitioner and the payment of Rs. 10 lakhs as compensation to the family of the deceased manual scavenger but set aside the broader directions given to the State Government and the corporations to regularize the services of the daily wage sweepers, scavengers or pourakarmikaras who were working through contractors.<sup>118</sup>

This was unfortunate, because this would have enabled the large number of persons engaged in sweeping and manual scavenging to be regularized and have better working conditions and rights.

In *National Institute of Rock Mechanics v. Assistant Commissioner and Executive Magistrate and Ors.*<sup>119</sup>, the Karnataka High Court in another significant judgement held that by virtue of Section 22 of the PEMSRA, all offences under the Act are cognizable and hence it is mandatory for the police to register an FIR and conduct investigation. The court held that even if the person in question were not shown as manual scavengers by their Union, the registration of the FIR cannot be resisted and even the State Commission for Safai Karamcharis can take up the registration of the FIR with the police for the offence of manual scavenging. Further, the mere failure to include material particulars could not defeat the registration of the complaint under the PEMSRA.

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<sup>118</sup>W.A. Nos. 200391/2015, 200393/2015 and 200384-385/2015 decided on 14 June 2016 (Karnataka High Court).

<sup>119</sup>W.P. No. 25568 of 2017 decided on 17 July 2017 (High Court of Karnataka).

## 8 Conclusion

Thus we can see that the implementation of the PEMSRA in all the four States is highly inadequate. Besides the compensation of Rs. 10 lakhs as mandated by the Supreme Court, no measures are being taken to prevent such deaths. The identification and rehabilitation of persons engaged in manual scavenging, addressing concerns of women scavengers, removal of insanitary latrines, mechanization of cleaning so that no septic tanks are cleaned manually are issues that need to be implemented on a war footing. It has been seven years since the PEMSRA has been enacted and its implementation has not even begun.

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# Conclusions & Recommendations

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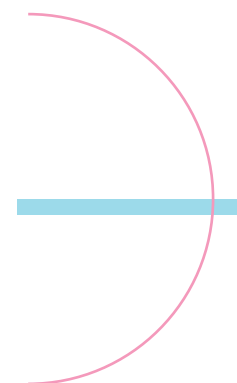
This Policy Brief has documented the status of implementation of three laws addressing caste discrimination in four Southern States, by tracking the implementation of the law in the four States, how courts have interpreted the law and where the challenges in implementation are.

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We have relied on data from government sources where available and on independent studies, media reports and articles that contribute towards filling these gaps in data.

Across all the three caste discrimination legislations there are some common problems. There is poor reporting of offences, high pendency of cases, low conviction rates and lack of implementation of rehabilitative measures. All three legislations impose positive duties and obligations on the government and by failing to carry out these positive obligations such as identifying untouchability areas and atrocity prone areas and failing to identify manual scavengers, State Governments and authorities are attempting to altogether deny the existence of caste discrimination.

Across the statutes, the quantitative data on incidence of offences or of the prohibited practice is either outdated, with the latest data, or incomplete. The Annual Reports submitted by State Governments provide incomplete information regarding the status of implementation of these laws, and since they are often the sole data source for a number of measures under each Act, monitoring and analysis becomes difficult. We give below some specific recommendations for better implementation of each legislation.



## RECOMMENDATIONS FOR THE PCRA

### 01 “Untouchability” not defined:

The term ‘untouchability’ is not defined anywhere in the statute. It needs to be defined keeping in mind that judicial decisions have often taken a very broad view of what untouchability-related acts are. Even public use of caste-based terms like ‘chamaar’ must fall within the scope of offences under the PCRA.

### 02 Application of the PCRA to Scheduled Tribes:

The PCRA needs to define clearly whether it will apply only to SC persons, or whether ST persons can also seek recourse under the Act.

### 03 Reporting and Monitoring:

Systems for meaningful reporting and monitoring need to be developed that go beyond publishing bare and incomplete Annual Reports. Forms for periodic reporting of data on the performance of public prosecutors and committees under PCRA should be developed. These forms should prioritise specificity on various aspects like regularity of meetings, minutes of proceedings, and budgetary considerations and should be made available to the public to ensure transparency and public accountability.

### 04 Civil law on caste discrimination needed:

Finally, it is clear that the discriminatory acts of untouchability and social exclusion listed in the PCRA need a civil remedy. Making such actions as criminal offences particularly after the enactment of the PoA Act has made the PCRA which is a criminal law, almost redundant. The actions of untouchability are too onerous to be proved in a criminal trial, but if recognised as civil wrongs and discriminatory acts with monetary compensation claims and injunctive reliefs, there could be some way to address such caste based discrimination. In this regard CLPR has proposed a draft Equality Bill 2020 framed as a civil law to address discrimination on the basis of caste and other prohibited grounds.

## RECOMMENDATIONS TO STRENGTHEN THE IMPLEMENTATION OF THE POA ACT

### **01 Scope of the PoA Act should be widened:**

The PoA Act applies only to Hindus and Sikhs, and SC/ST persons who have converted to any other religion immediately fall outside the scope of the Act. Since several SC/ST communities who have converted to Christianity and Islam continue to experience caste-based discrimination that follows them even after conversion, the PoA Act must take the same into account and widen its scope accordingly.

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### **02 Complaints against Public Officials:**

Section 4 of the PoA should be strengthened to fulfil its potential of being a strong provision to combat errant public servants who neglect their duties. There should be an option to file complaints under Section 4 of the PoA with a separate official designated for that purpose, or as a private complaint before the Special Court directly, so that victims do not have to interact with hostile police officials when filing complaints against public servants.

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### **03 Crimes against SC/ST women:**

Special attention should be given to crimes against SC / ST women and a victim-friendly procedure must be developed for reporting such crimes. Every single SC/ST Cell should associate themselves with an NGO/CSO that has experience in working on caste-related issues, and all police stations should contain women officers (preferably from SC/ST communities) who are empowered to register these crimes and carry out investigation.

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### **04 Speedy Trials:**

Exclusive Special Courts must be set up to ensure that trials under the Act are concluded within a period of 2 months, especially in atrocity-prone areas which only try offences under the SC/ST Act.

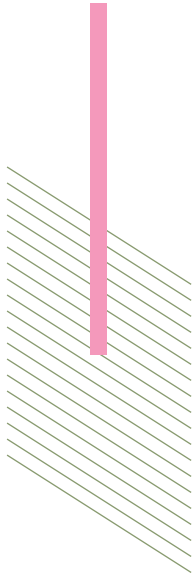
## **05 Standards Operating Procedures:**

State Governments must draft and endorse Standard Operating Procedures (SOPs) to be followed at the police-station level. These SOPs should include registration and investigation procedures, as well as procedures for monetary relief to victims. Mandated SOPs along with complete and periodic reporting will go a long way in ensuring that law enforcement take atrocity complaints seriously and do not use their presently unfettered discretion to disregard complaints.

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## **06 Training of Special Prosecutors, legal aid lawyers and Judges:**

Trials of cases under the PoA Act reveal that ineffective prosecution plays a major role in abysmal conviction rates, both nation and state-wide. They need primers, which can include an overview of offences and penalties in the PoA Act, jurisprudence on opposing bail and compounding in atrocities cases, detailed explanations on the essential legal ingredients of offences to be proved by the prosecution, a list of applications that can be filed on behalf of victims for interim protection and monetary relief and key judgments on the law. Judges also need training and sensitization on caste discrimination and atrocities, especially judges who are the presiding officers in the Special Courts and also at the High Court level.



## RECOMMENDATIONS TO STRENGTHEN THE IMPLEMENTATION OF THE PEMSRA

### **01** Definition and Survey of ‘insanitary latrines’:

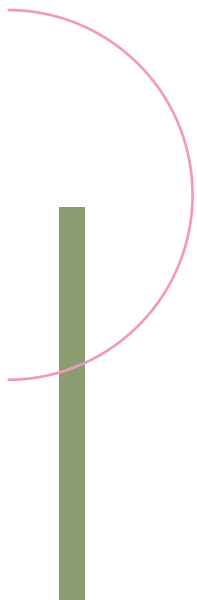
The term “insanitary latrine” should be defined comprehensively under the PEMSRA. This should ensure that all toilets which require any manual cleaning or maintenance will be included within the definition. Once the definition is expanded, an extensive survey of insanitary latrines needs to be carried out in all 4 States.

### **02** Identification of manual scavengers:

The biggest hurdle is that identification of persons engaged as manual scavengers is not being carried out by the authorities as provided under the PEMSRA. This has to be carried out by all local authorities within their jurisdictions and only once this exercise is done comprehensively, will the identified persons be able to claim rehabilitation benefits.

### **03** Rehabilitation to be provided:

Rehabilitation measures under Section 13 of the PEMSRA are both inadequate and also not being implemented. Even the rehabilitation measures included under the law such as the one-time cash amount, vocational training are not being provided to persons identified as manual scavengers. The reliefs of providing land and sites for homes are not being provided. Because of the non-implementation of rehabilitation measures, even persons who have been identified as manual scavengers are going back to doing manual scavenging work as they do not have any other source for their livelihood. Rehabilitation measures of one-time cash amounts are not sufficient as this will not enable persons engaged in manual scavenging to have any sustained or alternate livelihood and there needs to be measures for alternate employment.



#### **04 Loans:**

Despite provisions under Section 13 of the PEMSRA that loans would be provided at concessional rates to persons engaged as manual scavengers, this is not being implemented at all. Loans are not being provided by private banks to former manual scavengers due to the discrimination and stigma attached to their occupation. It is imperative that the National Safai Karamcharis Finance & Development Corporation should be mandated to provide loans to former manual scavengers at a concessional rate, in order to start alternative livelihood ventures.

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#### **05 Measures for children of manual scavengers:**

The children of manual scavengers are an especially vulnerable population, so State Governments should make sure, with the help of NGOs or CSOs, that these children are receiving adequate education, healthcare and other basic facilities to avoid being forced into manual scavenging as a livelihood.

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#### **06 Action against Apartment Owners Associations:**

Despite the law prohibiting manual scavenging, the highest number of deaths occur in the cleaning of septic tanks in apartment complexes. There should be an inspection and survey by local authorities of all apartment complexes within their jurisdictions. Municipal bodies and local authorities should take an undertaking from the apartment owners that they will not hire any person to manually clean STPs and septic tanks and the cleaning would be only through mechanized processes. If there is any violation of such an undertaking the occupancy certificate and building license of the said apartment complex should be revoked.



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