



“Most often, when a Mushahar or any other Dalit is murdered, the cases are rarely filed, and blame is put on the individual. The ‘accepted’ cause of death is ‘drinking’ or some old ghost of the river being responsible for the death.”

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**Uttar Pradesh &  
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# Strengthening the PoA Act, nuance the implementation

*Vidya Bhushan Rawat<sup>1</sup>*

The PoA Act 1989 has been an eyesore of many, including those in power and those supposed to implement it. Every year, the National Crime Records Bureau (NCRB) brings out statistics of crimes in India, with a separate chapter on crimes by non-Dalits against Dalits (scheduled castes). The statistics indicate the trends, and not reality, as things are much worse than the bureau's statistics can show - as we know that cases are not filed in the police stations. In many states, authorities are asked to file cases only when there is a murder or rape case. The fact is, how rape cases are recorded and disposed-off, are too well known to need description here. Even the 2017 NCRB data showed that there were 5,775 cases of violence against Dalits, of which 3,172 cases are related to insults and humiliations. States which top in the recorded violence against Dalits are Uttar Pradesh, Karnataka, Bihar, Tamil Nadu, Rajasthan, and Madhya Pradesh.

There is an urgent need to analyse why the number of recorded cases are so low and convictions just about 27%:

*“The latest data for three years, starting 2014, shows the conviction rate under the SCs and STs (Prevention of Atrocities) Act is as low as 16.3 percent, said the Ministry of Home Affairs (MHA) report for 2017-18, released on Wednesday. But the number of crimes reported under this Act came down annually in this period – from 8,887 in 2014 to 6005 in 2015 and 5082 in 2016”.*<sup>2</sup>

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<sup>2</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/conviction-in-crimes-against-dalits-is-abysmally-low-mha-report/articleshow/63833473.cms> Conviction rate in crimes against Dalits abysmally low: MHA report by Ananya Das

It is time to carefully look into some specific cases, and suggest points to strengthen the PoA Act. We need to also understand that the Act has its strengths as well as its weaknesses. I will share several cases related to it, and then provide my analysis at the end. These are the cases which I followed up closely. It is with these cases, did I realise the extent of the problems. It is equally important for us to understand that the issues of all scheduled communities are not similar. The PoA Act mostly relates to the issues of caste discrimination, but it does not address the issues of tribal isolation and exploitation with similar rigour.

### **Case 1: Delay in filing FIR and charge sheet actually kills the case**

Chhotu Mushahar,<sup>3</sup> 30 years, s/o Yogendra Mushahar, was found murdered because of some dispute over a fish by two persons of the Udaipura village in Deoriadistrict, Uttar Pradesh, on 28 October 2019. His dead body was found floating at the river Chhoti Gandak, in village Raman Chhapara, about a kilometre from his home. The accused Lav Mishra, s/o Chandra Pal Mishra, and Rikesh Saini s/o Ram Ratan, allegedly beat him mercilessly on the banks of river Gandak where they had asked him to get river fish for them. As Chhotu could not get enough catch, he did not give anything, and in the process got killed, leaving behind his parents, wife Rinku, and three children. Adding to the cruelty, Rinku is pregnant again, and the family lives in a one - room house that Yogendra Mushahar got. Chhotu's father was away in Sikandarabad (Telangana) for work and rushed back to his home when he was informed about the death of his son.

Divers failed to trace the body in the night, and continued their effort in the morning too, but it floated up around 8 pm. The body of Chhotu was recovered from the river, the morning of 29 October 2019. The people found injuries in the body, bleeding on head and blood oozing out of his mouth and ears. The police came in and soon did a 'panchnama' of the body and took it to the District Hospital Deoria for the post mortem. The doctor gave the report within an hour with his 'finding' that the body does not have any injury mark, and the death occurred due to drowning, thus

indicating categorically that he did not consider any foul play or murder in the death of Chhotu. Most often, when a Mushahar or any other Dalit is murdered, the cases are rarely filed, and blame is put on the individual.

The accepted cause of death is drinking or some old ghost of the river being responsible for the death. In the case of Chhotu, initially rumours were spread that he was drunk but the post mortem report too does not indicate any alcohol in him.

I had written the initial report after meeting the family, and visiting the village Udaipura, which falls under Thana Kotwali, Deoria district<sup>4</sup>. A more detailed report of mine was also published in Hindi by many online portals<sup>5</sup>.

### **The additional district magistrate's findings**

For the last one and a half decades, the Social Development Foundation has worked for the uplift of the Mushahar community and mobilised them. Its coordinator Ms.Sangeeta Kushwaha was trying to help the community from day one. She accompanied them to all the relevant officials but nothing moved. Finally, District Magistrate (DM) Amit Kishore ordered an inquiry by the Additional District Magistrate (ADM) Rakesh Kumar. The ADM visited Udaipura and conducted his inquiry, meeting the victim's family as well as other villagers. ADM Rakesh Kumar submitted his report (No. 3071/aa.li-2019) on 30 November 2019 to the DM. His report acknowledged the Social Development Foundation's request for the inquiry.

Based on his inquiry, the ADM noted that Chhotu died because of terrible beating by rods, stones, and bricks by Rikesh Saini, s/o Ram Ratan and Lav Mishra, s/o Chandra Pal Mishra. Chhotu got injured and then was pushed into the river, where he died of drowning. It was a well-known fact that Chhotu, and for that matter, most of the Mushahars know swimming,

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4 <https://countercurrents.org/2019/11/dalit-man-killed-by-upper-caste-in-uttar-pradesh> on November 2nd, 2019.

5 <https://www.hastakshep.com/old/dalit-killed-for-not-selling-fish-to-dominant-caste-men-2/>

as fishing is a lifeline for them. Perhaps, he died because he was injured and hence could not swim. He could have survived, if he was not pushed into the river. The ADM's report noted that the information of Chhotu's disappearance was given to the local police thana, but the police did not register the FIR. The Panchnama of Chhotu's dead body was not carried out in the presence of Chhotu's family, said ADM's finding.

Instead, the police took the body, misbehaved with the widow of Chhotu, and got the post mortem done without engaging or taking into confidence the family. The report further opines, after speaking to the police-in-charge of the chowki, Jeetendra Kumar Tiwari, that there was a lack of action on the part of the police officers, as they failed to respond to the various complaints by Chhotu Mushahar's family. How can the police not file FIRs or take the matter seriously when all the people, including family members and villagers, were openly suggesting that Chhotu Mushahar was beaten up? The ADM's report put the chowki-in-charge of the Karndi police station in Deoria district under suspicion. The ADM's report categorically states that, prima facie, there is absolute negligence on the part of the police.

### **Police FIR and dereliction**

Even after the ADM's report indicating police inaction, and his suspicion that the local police inspector ignored the pleas for FIR, there has not been any action against the said police-in-charge of the chowki. The police did not want to file the FIR under the PoA Act. However, they had no option after the ADM's report. They resisted at all levels, and insisted that they could not file a case under Section 302 of the Indian Penal Code (IPC), but only under IPC 304. Finally, they filed the FIR on 5 December 2019, after nearly 40 days of the incident. The FIR was filed under Section 3(2)(v) of the PoA Act and Section 304 of IPC 1860.

According to the PoA Act, the police should investigate the matter as soon as it comes to their notice. But police behaviour in this entire case was related to foiling the case. What can you expect when the FIR is filed after 40 days and the charge sheet is not furnished to the victim's family, despite asking

for it. Frankly speaking, the family of the victim and those associating with them, don't know about the case till date, which is nearly nine months. Even the compensation amount came much later, and the family informed the police of being threatened by the accused's family and friends.

## **Case 2: Declaring an entire area as a tribal area deflates the entire act**

This story is from the Jaunsar region of Uttarakhand<sup>6</sup>. This region is declared as a tribal area and hence the PoA Act is not applicable here. It is not really a tribal area. Jaunsar is the location, but the corrupt political leadership converted jaunsar into a tribal ethnic identity, which is factually wrong. Jaunsar is the region bordering Himachal Pradesh, which has diverse communities residing, including Dalits and non-scheduled communities. Once the entire region was declared as being tribal or scheduled tribe, then the jobs for scheduled communities were appropriated by the dominant castes as all became scheduled tribes. The caste system in this area is much more rigid than in the other parts of Uttarakhand. Violence against Dalits is high, and in many temples, Dalits are not allowed to worship even today. A big movement for temple entry of Dalits emerged around 2015-2016, but it was vehemently opposed by the caste forces.

The irony is that no case is, or can be registered against anyone in the Jaunsar region invoking the PoA Act, since all people, including dominant castes, are classified as scheduled tribes. Hence the dominant caste violence against the scheduled communities cannot be filed under the PoA Act, as everyone is declared as a scheduled tribe, and the PoA Act can be invoked only if the violence is by the non-scheduled communities on the scheduled communities. All the reservation is actually appropriated by the dominant castes in the name of scheduled tribes because they are so

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<sup>6</sup> For details: <https://countercurrents.org/2018/09/the-curious-case-of-a-brahmin-becoming-st-in-uttarakhand/>

classified and certified by the government. So, in this particular region, the PoA Act must be implemented in the case of violence against scheduled communities by anyone, and not merely go by the faulty certification, and not exempt them by the logic that it cannot be invoked for violence or crimes by the scheduled castes and scheduled tribes against each other. This is a very specific situation in a specific region. The savarna violence against Dalits and Adivasis must be recorded in Jaunsar region, regardless of the savarna's administrative classification and certification as scheduled tribes. The entire region and its demography needs a relook.

In a curious case, a person posted as a senior functionary in Uttarakhand under the scheduled tribe category, happened to be a Brahmin. Nautiyals in Uttarakhand are Brahmins – a well-known and established fact. But then, if Nautiyal Saheb is a scheduled tribe on a piece of paper duly signed by an officer, then that is what he is. Nautiyal filed a case against a person under the Act suggesting that the person abused him. The accused too happened to be a Brahmin, and challenged Nautiyal doing so under the PoA Act. He said that Nautiyal was a Brahmin but was lying in the court but Nautiyal presented his caste certificate that said Jaunsari tribe. The High Court then imposed a fine of Rs. 200,000 on the litigant for falsely accusing the person and tarnishing his image.

The person has now approached the Supreme Court of India, and unless the court dwells on this in detail, the situation would remain the same. The Supreme Court must look into the Jaunsar case in its entirety, as to how the dominant non-scheduled communities have appropriated everything from jobs to other positions in the name of the Jaunsari Tribe. There is nothing called Jaunsari tribe. It is a misnomer. There are so many castes and communities in Jaunsar. It is a region and not a homogeneous identity. An impression was created, and thanks to the Brahmanical leadership in Uttar Pradesh of those years, a mystique was created. A bill was also tabled in the Parliament in 1969 to include certain communities in the scheduled tribe list, while delisting others but due to pressure of powerful political leadership, it was withdrawn.

Now, we come to the facts of the matter, which will be an eye opener for all those who call for a Bharat Bandh – nationwide general strike – for removing the PoA Act from the statute books. We will show how legislation meant for the benefit of the scheduled communities have been circumvented. The example is from Uttarakhand, but it may be present in other areas too, and the need is to work on them and expose them.

The Government of Uttar Pradesh has never ever properly acknowledged the presence of Adivasis (indigenous and tribal people, scheduled tribes) in the state. With Brahmanical leadership at the helm, they cleverly created certain zones, and declared them scheduled tribe zones. One such zone in Uttarakhand is the Janusar area. Now that the entire area is a scheduled tribe zone, it should come under the Panchayat (Extension to Scheduled Areas) Act, PESA, and other similar Acts. The fact is there is a huge number of Brahmins and Rajputs in the region, who have appropriated all the jobs under the quota meant for scheduled tribes. Tragically, the Dalits (the scheduled castes) don't easily get their caste certificate.

The caste system is pernicious here. It is more pervasive and strictly enforced than in any other region of Uttarakhand. The Dalits are not even allowed to enter into the temple. In fact, I told some of our friends that they should not try to go to these temples, but make them redundant. If you are not welcome in the temple, that means that you are not a Hindu. Just follow Baba Saheb Ambedkar. Many socialist friends wanted to launch a campaign for the temple entry. Another one became a hero claiming to follow Dr. Ambedkar. I said, Dr. Baba Saheb Ambedkar wanted people to come out of the mental slavery, and would not have liked young students to fight for temple entry rights.

One of the most marginalised Dalit communities here is Kolta, but it does not come under any administrative category requiring affirmative action. It does not get a reservation. The other is the Bajagi, who are drum beaters and remain untouchables. In this Yamuna valley of Jaunsar, on the death of

a person, the Bajagis have to beat the drum and if they don't, they face violence and boycott.

Boycott and violence are powerful weapons of the casteist forces. The political leadership knows it well, but will not act. The PoA Act is virtually redundant in the entire Jaunsar area as everybody is counted as scheduled tribe, and hence it is not applicable. This also brings us to two important points. First, it is not merely the PoA Act that needs to be amended, but also the related Acts. Second, an entire area should not be declared as a scheduled tribe area, unless the region has significant tribal population. Jaunsar in Uttarakhand is a regional identity, and not a homogenous tribal identity. This regional identity has been converted into an ostensibly ethnic identity. Even if an area is declared as a scheduled tribe zone, it is important that the PoA Act remains in force in the region. It is important that the Act is used against untouchability and caste discrimination practices, whether done by dominant castes or the scheduled communities. We live in graded inequality and if the PoA Act is not applicable on those practicing caste-based discrimination, then it is bound to fail.

### **Case 3: Social boycott in Bhagana, Haryana - no resolution in sight**

The struggle for social justice and human rights of the Dalits from Bhagana village in district Hisar, Haryana has been going on for over eight years<sup>7</sup>. The entire village dominated by the Jats, turned against them since May 2012. On 21 May 2012, they were evicted from the village by economic boycott by the dominant castes. The Jats had demanded that the Dalits move out of the Shamlat i.e., the village commons, where the Dalits had been residing for years.

Over the years, Haryana's powerful Jats have benefitted highly from the soaring land prices, as agricultural land soon turned into booming real

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<sup>7</sup> For Bhagana, Haryana complete story <https://www.countercurrents.org/rawat190815.htm>

estate. Therefore, the land-sharks in the villages, with active support of the powerful politicians, were grabbing Shamlat land meant to be distributed to Dalits and other landless people of the region. Bhagana had over 250 acres of Shamlat land, which was promised to the Dalits once upon a time, but the Jats felt that once the land went to the Dalits, they would assert their rights and refuse to work on their fields as landless laborers.

In May 2012, all the 450 odd Dalit families of Bhagana were forced to leave their village by the land owning Jats, who never wanted them in the first place. Most of these families moved to Hisar's mini-secretariat and stayed in tents and other makeshift shelters. About 150 of them walked bare chested to Jantar Mantar, Delhi when the temperature was nearly 45 degrees Celsius. At the time, they demanded redistribution of land and action against those who wanted to evict them. In Delhi, we were together, and I saw them meeting various leaders, ministers, and Members of Parliament (MPs) but nothing happened. Most of them remained at their tents and some would go back to their place and work.

Nearly a year later, on 23 March 2013, four minor girls of the community were gang raped in the village. They were abducted in a Maruti car when they had gone out to defecate in the evening, and taken to Bhatinda, a city in Punjab nearly 100 kilometres away. They were drugged and raped. As the community came to know about it, they approached one panchayat leader who happened to know about it, and accompanied the families to Bhatinda. While coming back he threatened them not to reveal the incident to the family. There was outrage in the village, and families protested in both Hisar and Delhi. They met officials, the National Human Rights Commission (NHRC), the National Commission for Scheduled Castes, and the National Commission for Women. Yet nothing happened. We protested in front of the parliament so many times. We had candle light marches and whatever was possible to claim as a peaceful democratic protest, yet the end result was nothing.

## Embracing Islam in desperation

What can one do when none of the state mechanisms is ever ready to support when justice is needed? There are many implications of this, including anarchy, disturbance, and absolute cultural slaughter of the community. For over two years, the community was living in camps at Jantar Mantar, they lost everything, yet there were no tears shed for them. The Government of India offered Kashmiri Pandits land in Jammu and in Delhi, but neither the Government of Haryana nor the Government of India could make a promise to the Dalits of Haryana. Where do people go when all the roads are blocked for them? Let us see the turn of events in Bhagana for the past three years.

The desperation was clear. The villagers did not want to go back to the village, where they are unwanted and their life security was threatened, hence they called a meeting on 8 August 2015 in Delhi, and nearly 150 people embraced Islam at Jantar Mantar, while it was reported that others did so, in Hisar.

Things have not changed in 2020 too. Now people have even lost the right to protest in Delhi. They have been forcibly evicted from Jantar Mantar in Delhi, and are now out of the capital. A few have been sitting in Hisar's mini-secretariat, as it is difficult for them to return to their home in Bhagana. Nobody knows the status of the case. Not a single conviction happened so far. Dalits are on the roads while the perpetrators of the crime enjoy full protection, and political patronage.

## Case 4: Shivam never got justice

Eight-year old Dalit child Shivam's<sup>8</sup> left arm was crushed on 28 December 2015 in sugarcane crusher by a Brahmin family in Janupur in Uttar Pradesh. The entire family was suffering from humiliated, courtesy the Jaunpur

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8 For Shivam's story read the following <https://www.countercurrents.org/rawat280116.htm5>. Other cases of how caste atrocities goes unreported and unpunished. My report from Gujarat <https://www.sabrangindia.in/article/stories-change-makers-kutch-gujarat>

police which refused to file an FIR in the case when the incident happened. The police officers scolded the mother of Shivam when she went along with two local human rights defenders, Ms Shobhna Smriti and Ms Renu Singh, both of whom were responsible for getting the FIR filed in the Maharajganj police station.

The SP of Jaunpur actually insulted the two women activists asking them as if they were middle women. It is shameful that the Jaunpur police and high officials, rather than admitting their own grave mistake, are trying to cover up things and humiliating those who are trying to help the vulnerable family.

The people in village GauraKhurd of Maharajganj district are tight lipped, as both the police as well as the local feudal lords have made their life difficult. The family of Shivam has gone to an undisclosed location, as they know that the police are not helping them, and that they will not get justice anywhere. Most of the Dalits here are landless, and work on the land, of either the Brahmins or Thakurs. Hence, the communities are tight lipped on the issue due to economic dependency, as none want to lose their livelihoods.

I followed up this case with NHRC, which finally closed the case as they claimed, the Uttar Pradesh police was following the case. One can imagine how things move in India. The police on their part actually attempt to force a compromise.

### **A review of two districts in Uttar Pradesh**

Deoria and Kushinagar are two districts in eastern Uttar Pradesh with a large population of Mushahars. Kushinagar is a famous Buddhist town, where Buddha died and it was part of district Deoria before Ms Mayawati declared it a separate district. Mushahars are one of the most marginalised and politically non-represented communities among the Dalits. One of my colleagues, Ms Sangeeta Kushwaha, filed an RTI with both the Deoria and Kushinagar district police to find out the cases filed under the PoA Act and the convictions in the last five years. And to our utter dismay, there is not a

single conviction in the cases filed under the PoA Act in the two districts. In many cases, even the charge sheets have not been filed. We are still in the process of evaluating the data from local communities, but one fact stands out: most of the marginalised people are unable to reach the police station. There is a lot of pressure on them to compromise with the accused. Caste loyalties have been visible among the police

officials who work under tremendous political pressure. Both the districts are among the poorest in terms of the scheduled communities, and the non-scheduled communities have an almost absolute dominance. Communities such as Mushahars and Doms can't even file the case in the court. In the 17 police stations of Deoria district, we were informed that 568 cases were filed under the PoA Act in the five years from 2015 to 2019, but there has not been a single conviction so far. Similarly, for the same period, Kushinagar district has 754 cases under 13 police stations without any conviction. We are analysing the information received to frame concrete suggestions for the area.

## Conclusion

Based on my experience, my understanding is given below.

- Police discourage the victims from filing cases, and if that fails, delay filing of cases.
- The autopsy is done under the control of the police. Since the family of the victim is not in a position to monitor it, there are strong chances for manipulation. Many a time, the family members are frightened as the police just ask them to get away. The autopsy and the post mortem reports are the most important tools where a case can be easily killed. Many times, people take the victim to private hospitals. But those reports are not acceptable in the court of law. Hence, it is important that these things are known to people.
- The police delay arresting the accused. This often results in instilling fear among the victims and intimidation of the witnesses. It negatively affects the final outcome of the case.

- The PoA Act is to prevent atrocities against the scheduled communities. Hence, it should be made applicable in all areas, and for all violence against the scheduled communities, irrespective of their caste and region status. This will prevent misuse of the provisions as is happening in a particular area.
- The Act is to fight discrimination and untouchability at individual level. In the case of combined onslaught of communities and caste dominance, this Act has remained mute and redundant. Social and economic boycotts are now the biggest tool in the hands of dominant communities against the Dalits and Adivasis. This Act has failed against collective and community based-violence or oppression. There is a dire need to seek amendment in this Act and bring more focus on the issues of mass oppression, mass economic boycott and social ostracisation.
- This Act is mostly related to the scheduled castes as it does not really take into account the issues of Adivasis, which are quite different. Unlike Dalits, Adivasis are victims of the modern developmental system and faced displacement. It is rare that Adivasis are protected by the PoA Act against unmindful and ecologically disastrous development.
- Merely an Act, however well-intentioned, will not work as the bureaucracy and police are heavily politicised and suffer from caste prejudices. It is important to look beyond the Act, and form district human rights commissions everywhere in the country. They should be made accountable to audit the cases in the police and report to the National Human Rights Commission (NHRC).
- Police files related to FIRs, charge sheets, and convictions of the crimes against the scheduled communities must be audited every year. Ideally, it should be monthly, but if that is not possible, the government must order annual audits of these to analyse whether the case has been properly investigated and pursued.
- Every state and district must have a grievance redressal mechanism. Though it exists on paper in every police station, given the nature

of the work that the police officers have, these result mostly in verbal assurances or a compromise between the powerful and the victim. It is essential that an independent body within the police department must be formed from the top to bottom so that victims can complain against their district head, if their grievances do not get resolved.

- The PoA Act permits victims to hire an advocate of their choice, paid for by the government. It is impractical most of the time, particularly if victims are living in far flung and most marginalised areas. The district police must have an efficient government that appoints lawyers from the scheduled communities in their department to prosecute the cases, under the PoA Act. Most of the government standing lawyers and advocates are caste-Hindus, who are appointed due to political connections, and therefore, don't take much interest in the case. Lawyers to represent cases under this Act, must be from the scheduled communities in every district.
- There must be stricter penalties for government servants, if they are found neglecting their duty by delaying filing FIRs, or attempting to prejudice investigations by not following up the cases, or attempting to thwart the justice.
- There must be special benches in the High Courts and in the Supreme Court of India to deal with cases related to the scheduled communities. The special bench should understand the socio and cultural-economic dimensions of these communities. It is equally important that judges are appointed from these communities, so that diversity is maintained in the courtrooms and people have more faith in them.