

*Briefing Note*

**Compilation of Standards on Investigation and Protection of Victims and  
Witnesses in instances of Caste Atrocities**

**Commonwealth Human Rights Initiative**

*And*

**National Dalit Movement for Justice – NCDHR**

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Commonwealth Human Rights Initiative  
4<sup>th</sup> floor, 55A, Siddhartha Chambers, Kalu Sarai  
New Delhi, India – 110016

Tel: +91 11 43180200

Fax: +91 11 26864688

Website: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

Twitter: @chri\_INT

National Dalit Movement for Justice - NCDHR  
7/58, South Patel Nagar, 1<sup>st</sup> Floor, New Delhi  
India – 110008

Tel: +91 11 25843569

Fax: +91 11 25842251

Website: [www.ncdhr.org.in/](http://www.ncdhr.org.in/) [www.atm.org.in](http://www.atm.org.in)

Twitter: @DalitRights

## Introduction

This brief reiterates the legal standards and norms to be followed to investigate caste atrocities and the rights of victims and witnesses laid down in law. This is in response to the horrific attack on a Dalit family in Gujarat which took place on 11 July 2016. This was a brutal assault brazenly carried out in full public view. The police failed to respond promptly and effectively to prevent the violence from escalating. As the state of Gujarat witnesses widespread protests against the incident, we stand committed to justice and accountability. Considering the damage done to the social fabric and the immense public anger, the need now is to ensure the case is properly investigated and the rule of law is restored. This brief summarises the known facts of what happened that day drawing from civil society fact finding reports, looks at the serious gaps in police response, and lays down the norms and standards that must be followed for proper and credible investigation of any caste atrocity. We draw upon the following for the purpose:

- ✓ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 1989 Act)
- ✓ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (1995 Rules)
- ✓ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (2015 Act)
- ✓ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016 (2016 Rules)
- ✓ National Human Rights Commission Guidelines for the Effective Implementation of Protection of Civil Rights Act 1955 and SC/ST (POA) 1989 and Rules 1995
- ✓ Ministry of Home Affairs, Advisory on Crime against Scheduled Castes/Scheduled Tribes, 1 April 2010
- ✓ The Bombay Police (Gujarat Amendment) Act 2007

## The Attack

On 11 July 2016, seven members of a Dalit family, including women, were beaten in their house in the village of Mota Samadhiyala (Una taluka, Gir Somnath district) on the allegation of skinning a dead cow. The attack was allegedly carried out by a group of gau rakshaks (cow protectors) who first beat the family in the house, stripped off the shirts of four male members, and then drove them up to Una town 20 km away. An independent fact finding report notes that while on the way to the town, the car was stopped by a police vehicle but was allowed to continue.<sup>1</sup> Presumably, the police would have seen that Dalit men had been badly beaten, yet they did not intervene. On reaching the town, the four men were chained to the back of the car and beaten with iron rods and wooden sticks in full public view. A leaked video of the beating shows a crowd gathering but no one intervenes to stop the attack. The beating reportedly went on for hours after which the four Dalit men were left at the Una police station.

## Registration of FIR and Arrests made so far

One of the victims registered a case at the Una police station which mentions names of six accused. The accused have been booked under IPC sections 307 (attempt to murder), 395 (dacoity), 324 (causing hurt by dangerous means or weapons), 323 (causing hurt), and 504 (intentional insult to provoke breach of peace), and relevant sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 2015.<sup>2</sup> According to the fact finding report, the police did not register the FIR until six hours after the

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<sup>1</sup> "Gujarat Police chose not to stop assault of Dalit tanners, alleges independent fact-finding report," *Scroll*, 22 July 2016: <http://scroll.in/article/812166/gujarat-police-chose-not-to-stop-assault-of-dalit-tanners-alleges-independent-fact-finding-report>.

<sup>2</sup> "NCSC seeks report on Dalits beaten up for skinning cow," *the Hindu*, 14 July 2016: <http://www.thehindu.com/news/national/other-states/ncsc-seeks-report-on-dalits-beaten-up-for-skinning-cow/article8849820.ece>.

beating stopped, and only six men are named as accused when a much larger mob participated in the assault. Media reports indicate nine people have been arrested so far including three of the accused.<sup>3</sup>

**The SC/ST Amendment Act 2015 places a fundamental duty on the police to register a FIR upon receiving information of an atrocity, and any delay or refusal to do so amounts to wilful negligence of duty under Section 4 which is punishable by imprisonment up to 1 year. The MHA advisory further emphasizes that there should be no delay in registering FIR in cases of crimes against SCs/STs. It is equally important that an incident of caste atrocity be registered under appropriate sections of the SC/ST Act along with relevant sections of the Indian Penal Code and other special laws if need be. This will place an obligation on the police to follow the specific standards regarding investigation and protection of victim and witnesses as prescribed under the SC/ST Act. In addition, this will enable the victims to avail of several other entitlements throughout the judicial process.** The Una incident clearly amounts to a caste atrocity as defined under the SC/ST Act, and must be investigated as such. Relevant provisions of Section 3 under the 2015 Act read as follows:

- 3 (1). Whoever, not being a member of a Scheduled Caste or scheduled Tribe
- d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;
  - e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person...which is derogatory to human dignity;
  - s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name on any place within public view;
- shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years with a fine.

## Standard for Investigation

Having registered the case, the police must adhere to the procedure prescribed under above mentioned Acts, Rules and Guidelines in ensuring prompt and thorough investigation, adequate protection to witnesses and victims, and guarantee protection of safeguards to the victims. Specifically, the police must ensure:

- ✓ That the **investigation of the incident is done by an officer of the rank of Deputy Superintendent of Police** appointed by the government taking into account past experience and sense of ability and justice (Rule 7, 1995 Rules);
- ✓ That the **investigation is completed on top priority and charge sheet filed within the mandatory deadline of 60 days of the complaint being registered** (Section 5, 2015 Act);
- ✓ Any delay in investigation or filing of charge sheet shall be explained in writing by the investigating officer (Section 4(a), 2015 Act);
- ✓ Upon completion, the investigating officer shall forward the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police (Rule 7(2), 1995 Rules). *The purpose of this requirement is to enable close supervision of the status of investigations of crimes against the Scheduled Castes.*

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<sup>3</sup> "9 arrested in connection with attack on Dalits in Una, Rajnath Singh tells Lok Sabha," *The Times of India*, 20 July 2016: <http://timesofindia.indiatimes.com/india/9-arrested-in-connection-with-attack-on-Dalits-in-Una-Rajnath-Singh-tells-Lok-Sabha/articleshow/53298399.cms>.

## Rights of Victims and Witnesses with regards to Investigation

The 2015 Act introduces an entire chapter on *Rights of Victims and Witnesses* (Chapter IVA) which emphasizes the state's obligation to "make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence". This is absolutely crucial to ensure that the victims and witnesses are not threatened, coerced, or harmed further during investigation and trial. Specifically, the state must guarantee:

- ✓ That necessary protection is provided to the atrocity victim, their dependents and witnesses (Section 15A [11(h)]);
- ✓ That information about the status of investigation and copy of the charge sheet is provided to the victim or their dependents free of cost (Section 15A [11(i)]);
- ✓ That arrangement of legal aid is made for the victim or their dependents in order to allow for adequate briefing and preparation for trial (Section 15A [11(m)]);
- ✓ That all proceedings including investigation are video-recorded (Section 15(10)).

## Monitoring and Reporting Requirement

Some guidance has been laid down on proper supervision at different levels. These include:

- ✓ the district SP together with the District Magistrate to review investigations involving criminal cases under the SC/ST Act on a monthly basis with the investigating officers and provide guidance on timely collection of evidence (MHA advisory);
- ✓ the SC/ST Protection Cell constituted at the police headquarter is responsible for monitoring investigations, reviewing the position of cases registered under the Act and making enquiries about the wilful negligence of duty (1995 Rules).

## Accountability for Police Negligence

Finally, along with properly investigating the incident, it is equally important to review apparent police lapse. **That the incident went on for hours in full public view reportedly near a police station exposes the total apathy of the local police. Given that the men were paraded through the town, the group is likely to have crossed several police station jurisdictions. Reports indicate six police officers stand suspended for the moment. It is unclear who these officials are. Be that as it may, suspension alone will not suffice. There can be no excuse for allowing the violence to continue for so long.** Three immediate steps are necessary:

1. **Departmental Inquiry:** The department must take note of the police lapse and initiate a departmental inquiry to
  - a) identify all the police stations whose areas were crossed by the group;
  - b) review steps taken by each concerned police station to prevent the incident including reasons for allegedly not intervening despite stopping the car carrying the beaten Dalit men and allowing it to continue to the town;
  - c) review reasons for the delay in registering FIR;
  - d) determine whether the district Superintendent of Police or the Deputy Superintendent of Police conducted a spot inspection on receiving information about the atrocity committed to assess the extent of atrocity, as required under Rule 6 of the 1995 Rules; and
  - e) if a spot inspection was conducted, whether following steps such as preparing a report on the extent of atrocity, loss and damage to the victims; ordering intensive police patrolling in the area;

taking steps to provide protection to the witnesses and relief to the victims, as required under Rule 6, 1995 Rules, were taken or not.

Notably, the Supreme Court of India lays down that in incidents of caste atrocities, “apart from instituting criminal proceedings against those responsible for such atrocities, the State **Government must immediately suspend the District Magistrate/Collector and SSP/SPs of the district** as well as other officials concerned and charge sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.”<sup>4</sup> These actions must be complied with by the Government of Gujarat.

2. **Registration of FIR for wilful negligence of duty:** Notwithstanding the police internal inquiry, the apparent police lapse is ground enough to register a complaint under Section 4 of the 1989 Act for wilful negligence of duty. If found guilty, the concerned police officials are liable for punishment of up to one year imprisonment.
3. **Inquiry by Police Complaint Authority:** Additionally, Gujarat State Police Complaint Authority and the concerned District Police Authority must also take *suo moto* notice of the incident, inquire into police lapse and recommend appropriate action to the state government. Specifically, Gujarat State PCA must look into dereliction of duty on the part of the concerned Deputy Superintendent of Police as mandated by law.<sup>5</sup> And the concerned District PCA must inquire into delay in registering of the FIR as required under law.<sup>6</sup>

Gujarat State Police Complaint Authority is constituted under the Bombay Police (Gujarat Amendment) Act 2007 and consists of four members including a Chairperson who should either be a retired High Court Judge or retired officer not below the rank of Principal Secretary to the Government of Gujarat; the Principal Secretary to the government of Gujarat; an officer not below the rank of Additional Director General of Police nominated by the state government; and a person of eminence appointed by the state government.<sup>7</sup> The District Police Complaint Authorities are required to be constituted for each district and consist of the Superintendent of Police as the Chairperson, Additional District Magistrate of the district to be appointed by the state government, two members of the Gujarat State Legislative Assembly to be appointed by the state government, and the Deputy Superintendent of Police as the Member Secretary.<sup>8</sup>

There is no information available on the functioning of District PCAs in Gujarat. The State PCA has been constituted and consists of the following members presently:

1. Shri G. Subba Rao, IAS(Retired), Chairman
2. Shri P.K.Taneja IAS, Additional Chief Secretary, Home Department Member
3. Shri C.R.Parmar IPS , Additional Director General of Police (Inquiry), Member Secretary
4. Dr. Manoj Soni, P.G. Department of Political Science, S.P. University, Gujarat Member

For more information on the State PCA, visit their website at <http://www.gspca.gujarat.gov.in/Index.aspx>.

<sup>4</sup> *Arumugam Servai versus State of Tamil Nadu*, (2011) 6 SCC 405.

<sup>5</sup> Section 32(G) (1), The Bombay Police (Gujarat Amendment) Act 2007.

<sup>6</sup> Section 32(h) (3) (a), The Bombay Police (Gujarat Amendment) Act 2007.

<sup>7</sup> Section 32 (F), The Bombay Police (Gujarat Amendment) Act 2007.

<sup>8</sup> Section 32(H) (1), The Bombay Police (Gujarat Amendment) Act 2007.

**All these steps must be followed in every instance of caste atrocity so that each case is carefully documented, the investigation into the incident is completed in time, remains credible and unbiased, and police is held accountable for dereliction or violation of duty.**

For more information, please contact Devyani Srivastava at [devyani@humanrightsinitiative.org](mailto:devyani@humanrightsinitiative.org) and Jesintha Mary at [jesi@ncdhr.org.in](mailto:jesi@ncdhr.org.in).

**About:**

*CHRI is an international, independent, non-governmental organization working towards the practical realization of human rights across the Commonwealth. Our main areas of work are Access to Information, Access to Justice (encompassing police and prison reform), and Human Rights advocacy. CHRI's objectives include promoting awareness of and adherence to the 2013 Commonwealth Charter, the Harare Principles, the Universal Declaration of Human Rights and other internationally recognized human rights instruments, as well as domestic instruments supporting human rights.*

*The National Dalit movement for Justice (NDMJ) is a democratic, secular, non-party movement of Dalit survivors, defenders, academics, organizations headed by Dalits to initiate advocacy and involve in mass action to address the issues of caste based discrimination (CBD) and violence (primarily untouchability and atrocities) to ensure dignity, equality and justice. It is one of the four movements that comprise the National Campaign for Human Rights (NCDHR). It has presence in 17 states across India to organize, educate and mobilize the Dalit community, organizations and civil society to promote and protect civil and political rights of Dalits.*