

## Prevention of Atrocities – Guidelines to Police Officers

### Guidelines to Police Officers Investigating Cases under SC/ST (PoA) Act, 1989 & PCR Act, 1955

Article 17 of the Constitution of India has abolished the practice of untouchability in all forms To give effect to this Article. Parliament enacted the Untouchability (Offences) Act, 1955 and later renamed it as The Protection of Civil Rights Act, 1955 and notified the Rules in 1977 to implement the Provisions of the Act Later, the Parliament passed the [Scheduled Castes and the Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#) which enable the police authorities for taking specific measures to prevent the atrocities to carry out the provisions of this Act, the Government of India notified the [Scheduled Castes and the Scheduled Tribes \(Prevention of Atrocities\) Rules in the year 1995](#). In view of the above, the Police Officers have been entrusted with the noble duty to implement all the provisions of the enactments and in right spirit. In this regard, certain measures which are needed to be taken by the Police Officers, who directly or indirectly deal with the incidents of atrocities or practice of untouchability in their respective jurisdiction are as under:-

- 1) To identify the atrocities prone areas/ villages in order to enable themselves to take adequate preventing measures well in time.
- 2) They should visit the identified areas and review the Law and Order situation from time to time.
- 3) To cancel the Arms licenses of the persons who have misused a licensed firearms for committing atrocities or are likely to commit atrocities.
- 4) To organize Awareness Campaign in the identified areas to educate the SCs/STs about their rights and protections available to them under different enactments.
- 5) To deploy pickets in such identified areas, where there is an imminent danger of reprisal against SCs/ STs.
- 6) In extreme situations Arms licenses may be recommended to be issued to the SCs/ STs to enable them to protect their lives and properties.
- 7) Any complaint of atrocity on SCs/STs by forcing them to eat any inedible substance, causing insult or annoyance, parading them naked/ with painted face, wrongful occupation/ dispossession from their land, house etc.. forcing bonded labour, use of force in casting of vote, institution of false cases, intentional insult in public view, outraging modesty of SC/ST women, refusing access to a place of public resort, expelling SCs/STs from their houses/ village etc. are covered under section 3 (1) of the SCs/ STs (POA) Act Whereas, some of offences like fabricating false evidence, mischief by fire, attempt to cause disappearance of the evidence etc. for which the SC/ST person is likely to be convicted of an offence which is not capital but punishable with imprisonment of (07) years or upwards, would fall u/s 3(2) of the SCs/STs (POA) Act.
- 8) All the cases of atrocities on SCs/STs by non SCs and STs should be registered under the provisions of the SCs/STs (POA) Act, 1989 only, while the cases of enforcing any disability on account of preaching and practicing untouchability should be booked under the provisions of PCR Act. All the concerned officers should clearly understand the provisions of these two enactments and their applicability.

9) If any offence under sec. 3 of SCs/STs (POA) Act is committed by a public servant, he is liable to be prosecuted u/s 3(2) (VII).

10) On receipt of a representation/ complaint pertaining to any offence under the provisions of the SCs/ STs (POA) Act either in writing or orally at the Police Station, the Officers -in-charge shall register a case, as provided under Rule 5(1) of the POA Rules of 1995 r/w 154 Cr.PC and if the Officer – in – charge of the Police Stations fails to do so, it amounts to “willful neglect of duty” which in itself is an offence u/s 4 of the said Act.

11) While registering FIR. it should be ensured that correct Sections and Sub Sections under the appropriate Act are applied Any attempt of burking or minimizing the gravity of the offence shall be treated as “Willful neglect of duty “.

12) All the cases of bogus caste certificates should be booked u/s 420 IPC.

13) The IOs should refrain from becoming parties to the compromises/ out of court settlements in cases of specific accusations as defined under the Acts.

14) All the Cases referred u/s 156 (3) Cr.PC. by the court should be promptly registered and the FIR copies should be sent to court and other concerned officers without any delay If there is any dereliction of duty on the part of the IO, he shall be liable for contempt of court and also for Departmental action

15) FIR copy in every case should be sent to the District Magistrate, to enable him to take decision regarding sanction of relief and rehabilitation measures and a copy of the FIR should also be given to the complainant.

16) FIR copy should also be sent to the CP/ SP promptly with a request to appoint the IO at the earliest, to enable the IO to commence investigation without any loss of time.

17) The Investigation Officer i.e.an ACP/ DSP has to be appointed by the C.P/ SsP. to expeditiously investigate the case booked under (POA) Act. 1989 as envisaged under Rule 7(1) of SCs/STs (POA) Rules of 1995. Non-compliance of the above legal requirement would vitiate the entire investigation.

18) Rule 7(2) stipulates that the investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days.

19) In case the appointed IO is transferred out, any another Dy SP is to be appointed as IO and it has to be done by issuing a fresh Appointment Order by S P/C P. U/Rule 7(1) of SC/ST (POA) Rules, 1995.

20) On receipt of the appointment order from the SP/C.P the appointed IO should take up investigation from the stage of FIR. If the initial investigation has been done by an incompetent officer, it is an irregular investigation and mere verification of such investigation by the Dy SP is void and irregular under the Law.

21) In case, the incompetent officer has filed the charge sheet after his investigation, it is null and void and hence the specially appointed Dy.SP should seek permission of the court by filing petition u/s 173(8)Cr.PC and proceed with further investigation from the initial stage i.e from the FIR stage after obtaining the permission of the Court.

22) Since, the investigation in cases under POA Act need to be completed within 30 days, the IO must ensure that the witnesses to be examined u/s 164 Cr.PC are examined within the stipulated period. Tendency to get 164 Cr.Pc statement done after months together should be put to an end. as such practice is found to be against the interest of the victim/ complainant.

23) The IOs should refrain from getting the statements of witnesses recorded u/s 164 Cr.PC if it is likely to weaken the case of prosecution. As per established Law. such statements only should be got recorded u/s 164 Cr PC which are likely to strengthen the case.

24) In cases of bogus caste certificates, the IO should also invariably investigate into the conduct and character of the certificate issuing/ inquiring authorities for their prosecution if so required and write to the concerned department for initiating departmental action against the accused officers, while furnishing the relevant material required to be relied upon by the appropriate authority.

25) The IO after recording the statements of witnesses u/s 161 Cr.PC must hand over a copy of the same to the concerned witnesses under acknowledgement on the original copy as it would help in ensuring the truthfulness of the statements and the witness may refer to the same prior to his examination in the court. It would also stop the IOs from doing table investigation and that too at his convenient time.

26) The IOs should not hesitate to arrest the accused promptly when they are likely to tamper with the evidence by way of threatening or winning over the witness or terrorise the complainant or they are likely to abscond etc. It should also be ensured that the non-arrest of the accused does not result into commission of series of offences against the victims. Hence, the timely arrest goes a long way in preventing the offence and to enthuse confidence in the victims and the community.

27) On knowing that Anticipatory Bail petition has been filed in the Sessions Court or High Court by the accused, the IO should immediately meet the concerned APP/Spl PP/ PP and apprise him of the facts of the case, to enable him to oppose the bail. However, if the court entertains such petition, the IO/Spl PP/PP/ APP should rely upon Section 18 of SCs/STs (POA) Act.

28) The Investigation Officer should examine the important and relevant witnesses only, as that would help him to unearth the truth and complete the investigation within a period of 30 days.

29) It is noticed that some of the accused are getting counter cases registered against the SC/ST complainants. In this regard, the IOs must ensure that the investigation in both the cases is completed within 30 days and that the false case is closed. Undue delays in this regard are viewed with suspicion by the public and victim in particular.

30) Adequate care should be taken by the IO to complete the investigation within the stipulated period i.e. 30 days and submit the report, lest on this ground the entire investigation may be held as null and void by the court being violation of Rule 7(2) of SCs/STs(POA) Rules.

31) In the cases booked against public servants, the concerned IOs should obtain permission of the Govt. to prosecute the accused u/s 197 Cr.PC before laying the charge sheet.

32) It is a well-established principle that the evidence of the complainant alone shall be sufficient for laying the charge sheet in the Court if it is capable of inspiring the confidence of the court. The tendency to close the cases as False/MF, on the basis of the evidence of unimportant witnesses while ignoring the evidence of the complainant needs to be put to an end.

33) The IO must furnish the required number of copies of the relevant material to the accused and promptly produce the accused in the court to get the charges framed early in the designated Sessions Court.

34) In these cases, the IO must make an attempt to gather evidence to the effect that the accused were aware of the victim's caste at the time of committing the offence,

35) After completion of investigation, the IO should file the charge sheet in the concerned ACJM Court for committal sake and not at all in the Special Court.

36) The IOs should send Memo of Evidence incorporating List of Documents, List of Material Objects and also List of Witnesses along with Charge Sheet and obtain acknowledgement for the same.

37) The IO should enclose injury reports, FSL Report, Medical opinion etc. along with the Charge Sheet while filing in the Court.

38) Any attempt on the part of the accused to threaten the witnesses or to tamper with the evidence etc. the IO should bring it to the notice of the Court and seek denial or cancellation of the bail as the case may be.

39) The IO should proceed u/s 82 & 83 Cr.PC against the sureties, where the accused are absconding and NBWs issued against them.

40) The IO should take prompt and effective steps in consultation with the PP to get the stays vacated by approaching the Superior Courts.

41) The Investigating Officer should produce the witnesses before the APPs for refreshing their memory before they are produced before the court. The witnesses or whose 164 statements are already recorded must be warned of action u/s 193 IPC if they turn hostile in the court.

42) If the witnesses in attendance in courts are to be sent back without examination by the Court on the request or due to absence of the accused, the Prosecuting Officers should insist on the examination of such witnesses or insist on payment of cost to the witnesses by the accused, as provided u/ Rule 11 of SCs/STs (POA) Rules. 1995.

43) The SsP must ensure that the District Magistrate do prepare a panel of Senior Advocates for conducting cases in the Special Courts as Spl PP and send the same to the Government to notification in the official gazette. The District Magistrate may also be requested to review the performance of the Special PP at least twice in a year and in case he has not conducted the cases with due care and caution, his name may be sent for de-notification.

44) The Commissioner of Police/ Superintendents of Police Unit Officers may also recommend to the District Magistrate, if so desired by the victims, to engage an eminent Senior Advocate for conducting the cases in Special Court.

45) Summons on the Police Officers to give their evidence should be served promptly and it should be ensured by the supervisory officers that they do attend the Court to give their evidence.

46) Police should assist the Courts in bringing forward the witnesses/ accused promptly to ensure smooth and expeditious trial of the case.

47) The dilatory tactics adopted by the accused should be effectively and honestly countered by

way of formally opposing the applications for adjournments u/s 309 Cr.PC and also request the Court to go ahead with the trial as provided u/s 317 (1) Cr.PC.

48) The Commissioners of Police/ Superintendents of Police should ensure that Special PPs are appointed in every Special Court meant for handling such cases.

49) The cases are getting abnormally delayed mainly due to non-attendance by the accused, non-attendance by the witnesses, lack of commitment on the part of the IOs/ APP/Spl.PP/PP etc. It can be countered by formally opposing the exemption from attendance petitions and obtaining NBWs against such accused. The IOs should also sincerely execute the NBWs/ BWs against the accused and witnesses to ensure speedy trial and also to proceed u/s 82 and 83 Cr.PC against them if situation so warrants.

50) In cases where some of the accused are not attending the court for a long time, the IO/APP /Spl.PP/PP should get the case split up against the absconding accused, who are not likely to be arrested in near future. as provided u/s 317 (2) Cr PC.

51) Where there is no likelihood to secure the presence of the accused in near future after framing of the charges, the IO/APP/Spl.PP/PP should request the court to examine the witnesses u/s 299 Cr.PC.

52) The Commissioners of Police/ Superintendents of Police must initiate appropriate disciplinary action against the IOs for the lapses pointed out in the Judgment and in cases of lapses on the part of Special PPs the same may be addressed to the District Magistrate/ Director of Prosecutions/ Ld Legal Remembrancer, Government of West Bengal.

53) The Commissioners of Police/ Superintendents of Police West Bengal must actively liaise with the District Magistrate for effective functioning of District Vigilance & Monitoring Committee by way of causing critical review of cases for their expeditious disposal, organizing Awareness Campaigns, seeking involvement of NGOs review of relief and rehabilitation measures, formulation of Model Contingency Plans for preventing disputes and caste related social disturbances, etc.

54) The stringent provisions of the Act including neglect of duty by public servant, forfeiture of property, internment of persons from Scheduled and Tribal areas, imposition of collective fines, if judiciously implemented would create deterrent climate.

55) In all the acquittal cases, the judgment copies should be obtained from the court at the earliest to send the same to the concerned SP or Inspector General of Police-1, CID, West Bengal along with the opinion of APP/ Spl.PP/PP within (20) days for scrutiny and to enable them to take decision regarding filing an appeal or otherwise.

56) The Commissioners of Police/ Superintendents of Police should personally review the Final Reports and take appropriate decision at their level keeping the following points in view among other things.

- a) Whether the IO has explained the delay in lodging the complaint, if any
- b) Whether the IO has examined all the eye witnesses specially those who have been cited in the complaint.
- c) Whether the IO has collected the Caste Certificate of the complainant and accused
- d) Whether valid appointment orders are placed in the CD file.
- e) Whether opinion of the concerned A.P.P /Spl. PP/ PP has been obtained

f) Whether the Investigation Officer so appointed under Rule 7 (1) of SC/ST (POA) Rules, 1995 had completed the investigation on top priority within 30 days as required under Rule 7(2) of SC/ST (POA) Rules, 1995.

57) The District Superintendents of Police/ Commissioners of Police are requested to take action against any Police Officer u/s 4 of SCs/STs (POA) Act, 1989 who willfully neglects his duties required to be performed by him under this Act.

58) The copies of Judgments in all acquitted/ convicted cases also should be sent to Inspector General of Police – I, CID, West Bengal.

The above instructions should be communicated to all the Officers – in – charge of Police Stations (including I/C's) and Investigating Officers.

This issues with the approval of DGP, CID, West Bengal.

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