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Citation for published version:

Fuchs, S 2022, 'Rethinking the atrocities act: Proving prejudice and interpreting evidence in Rajasthan', *South Asia Multidisciplinary Academic Journal (SAMAJ)*. <<https://journals.openedition.org/samaj/7884>>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

Published In:

South Asia Multidisciplinary Academic Journal (SAMAJ)

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South Asia Multidisciplinary Academic Journal Preprints

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Electronic version

URL: <https://journals.openedition.org/samaj/7884>

ISSN: 1960-6060

Publisher

Association pour la recherche sur l'Asie du Sud (ARAS)

Electronic reference

Sandhya Fuchs, "Rethinking the Atrocities Act: Proving Prejudice and Interpreting Evidence in Rajasthan", *South Asia Multidisciplinary Academic Journal* [Online], Preprints, Free-Standing Articles, Online since 02 May 2022, connection on 03 May 2022. URL: <http://journals.openedition.org/samaj/7884>

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Rethinking the Atrocities Act: Proving Prejudice and Interpreting Evidence in Rajasthan

Sandhya Fuchs

- 1 A recent outbreak of violent attacks against Dalits (ex-untouchables), and the release of discouraging statistics on caste atrocities, have brought India's judicial struggles to advance social equality and prevent discriminatory violence into sharp focus. The brutal fate of Manisha Valmiki, the 19-year-old gang-rape victim from Harthras, Uttar Pradesh, who succumbed to her injuries in September 2020, incensed Dalit communities across the country. The news of the cruel attack, and of the dubious subsequent police investigation, emerged just as data released by the National Crime Record Bureau (NCRB), showed that violence against Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis) had increased significantly in many parts of India (Rupavath 2020). This lack of a transparent and consistent judicial response to identity-based violence is especially concerning since India instituted a unique legal safeguard against so-called hate or bias crimes over thirty years ago: the 1989 Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.
- 2 The Prevention of Atrocities Act (PoA) is one of the most ambitious examples of protectionist criminal legislation in India and worldwide. As India's only hate crime law (Citizens Against Hate 2018a), the PoA delineates enhanced punishments for certain crimes under the Indian Penal Code of 1860 (IPC) when they are committed against Dalits and Adivasis. Furthermore, the act outlaws specific discriminatory and untouchability-related offences or "atrocities" and imposes "positive duties" on public officials in atrocity investigations (Human Rights Watch 1998). However, the original authors of the PoA also articulated a broader socio-political vision for the act. P.S. Krishnan, Special Commissioner for SC/ST, former Secretary to the Ministry of Welfare, emphasized the act's unique, "socially transformative antidiscrimination agenda." He stressed that the aim of the PoA was to alleviate violent and discriminatory practices based on caste and indigenous identity in everyday Indian life.¹

- 3 While India's constitution banned the practice of untouchability in 1950, the Atrocities Act represents the first law to explicitly define all verbal, physical, and "political, ritual or symbolic violence" (Rao 2009:174) against Dalits and Adivasis as criminal offences or "atrocities." However, three decades after its implementation, and despite multiple amendments, the act has failed to generate fundamental social change (Express News Service 2020). Pointing out that most cases registered under the Atrocities Act never make it to court and only a negligible number lead to conviction, scholars have proposed that ingrained caste bias within police and judiciary, and deep-seated corruption within India's criminal legal system, have paralyzed the act and rendered it ineffective (Swadhikar 2015; Rameshnathan 2018; Nathan and Thorat 2020). These issues came to the political forefront in 2018 when the Indian Supreme Court declared the Atrocities Act a vehicle for "false accusations" and warned that rather than eliminating casteism the act was in danger of promoting it (Fuchs 2018).
- 4 However, these critiques of the Atrocities Act, still beg fundamental questions. First, if judicial bias is one of the main reasons for the destabilization of the act, how is such a bias expressed or legitimized in everyday legal practice, and which conceptual legal challenges do these legitimizations indicate? In what ways is caste prejudice institutionally obscured, and how does this shape the legal engagements and hopes of atrocity survivors?
- 5 Second, criticisms of the Atrocities Act typically discuss the law as an *Indian* policy riddled with distinctly Indian problems of caste, hierarchy, and corruption (Mangubhai and Singh 2014; George 2018; Khora 2018; Nawasagaray 2018; Saxena 2018). Yet, as a hate crime law, the PoA is part of a global movement, which has increasingly framed historically and culturally diverse practices of discrimination as problems to be solved through legislative means. Consequently, ongoing political struggles against inequality have been poured into a format of isolated cases, which are debated in judicial forums (Swiffen 2018), through fixed legal procedures and terminologies (Menon 2004). While there is no consistent legal definition of "hate crime" across jurisdictions, scholars largely agree that at a basic level, hate crimes—or in India "atrocities"—are symbolic acts of harm fueled by the perpetrator's aim to uphold hegemonic power structures and asymmetrical social hierarchies (Perry 2001; Chakraborti and Garland 2015). To what extent, then, are the institutional and social processes, which have caused the Atrocities Act to "fail" (The Wire 2018) either specific to the Indian context, or indicative of structural contradictions inherent in the very concept of hate crime legislation?
- 6 Third, and most importantly, what does failure signify in relation to the PoA specifically, or hate crime legislation more broadly? What does it really mean for laws aimed at combatting discrimination and hate to be successful? How do definitions of success vary among different institutional and non-institutional actors, and to whose definition of success is the Atrocities Act accountable?
- 7 This article explores these questions with reference to atrocity cases in the north Indian state of Rajasthan. Between 2016 and 2018, I conducted eighteen months of multi-sited ethnographic fieldwork with Dalit survivors, police, judiciary and human rights NGOs in Rajasthan's Jhunjhunu, Nagaur and Udaipur districts. I chose Rajasthan as my field site for two reasons. First, Rajasthan had registered the second highest number of caste-based atrocities in India between 2013 and 2015 (Sharma 2016),² a trend that was reaffirmed in recent data released by the National Crimes Record

Bureau in 2020 (Singh 2020). Second, the state's unique feudal history (Zutshi 2009) has produced splintered and moderate movements for Dalit assertion compared to states such as Maharashtra or Tamil Nadu (Rawat 2017). Though regional pockets of Dalits within Rajasthan have recently become more conscious of their rights and vocal in their demands, this has not resulted in large-scale political mobilization (Bhatia 2006).

- 8 Following in the footsteps of anthropologists who have examined how people experience legal conflict (Merry 1990; Kelly 2006), my research prioritized an analysis of the social life of the Atrocities Act from *below* over judicial narratives from *above* (Naval 2014). During my fieldwork I traced the fate of forty caste atrocities committed against Dalits (primarily of the Meghwal *jati*) from their communities of origin to Rajasthan's courts.³ I analyzed how Dalits in Rajasthan perceived, mobilized and resisted the Atrocities Act in the aftermath of violence, which permanently called their sense of belonging into question (Das 2006). On the flipside, I examined how these engagements and perspectives interacted with the legal and political visions of the PoA that circulated among different legal stakeholders.
- 9 The first part of the paper draws on ethnographic material from police stations and courts in Rajasthan and examines how caste bias finds expression through selective translational and interpretative processes that produce official records of "false complaints" in atrocity cases. Further, it explores how experiences of legal failure, and of having one's "truth" institutionally denied, shape the agencies of Dalit atrocity survivors. The second section of the paper puts my own fieldwork findings in conversation with the global literature on hate crime law to illuminate how the legal challenges facing Dalits in India are contiguous with, or distinct from, those facing marginalized communities in other parts of the world. The final part of the paper then carefully analyzes how different stakeholders view success and failure in atrocity cases. It asks to what extent legal measurements such as conviction rates can capture the complex societal changes induced by hate crime law.
- 10 On the one hand, the narratives I present reveal that as an *Indian* law, the PoA is haunted by the deeply ingrained, habitual dynamics of (caste) prejudice, oppression, and hierarchy, which still shape interactions in all areas of Indian society. Thus, the act is indeed caught "in the very field of power [it is] meant to address" (Baxi 2014:284). On the other hand, the struggles of Dalits, who try to mobilize the Atrocities Act to prove experiences of caste-based violence legally, also reflect the main conceptual and practical difficulty that lies at the heart of *global* controversies around hate crime legislation: The *social purpose* of hate crime laws—the type of societal transformation they are meant to engender, and the "truths" they are accountable to—have never been clearly defined. When it comes to atrocity cases, "success" and "failure" are themselves deeply contested assessments among Dalit atrocity survivors, legal actors, families, activists, and politicians. Yet, despite these problems, the possibilities and hopes the Atrocities Act stimulates remain real and encouraging.

1. Interpretative Battles

- 11 In May 2017 I conducted an interview with a notable police official at the Jaipur Police Commissionerate, who belonged to the high-ranking Rajput caste. My interlocutor openly admitted that he ignored most complaints filed under the Atrocities Act. He was convinced, they were either based on false accusations, or were attempts to gain the

upper hand in village squabbles. “The only thing that will make us [the police] pay attention to a complaint under this Atrocities Act is media pressure,” he admitted, “I mean unless there is actually a massacre or something.” I soon learned that his openly neglectful attitude was no exception. Most police officers, court clerks and even district judges I spoke to, articulated their conviction that the PoA had become a “tactical law,” riddled with “false complaints.”

- 12 In Rajasthan, these attitudes mirror the social narratives or rumors (Eckert 2012) that actively shape everyday judicial interpretations in atrocity complaints. Yet, the persistent myth of the false case stood dramatically at odds with my own research data and the experiences of Dalit activists, who rarely encountered “false cases.” “If you live in rural villages as most of Rajasthan does and people know your every move, it isn’t easy to make up accusations,” Geeta,⁴ a lawyer at the Centre for Dalit Rights in Jaipur told me, “plus people don’t like dealing with the legal system, especially if they are poor or illiterate like many Dalits in Rajasthan still are. So, this false case story is just that: a story.”
- 13 Here, I use the myth of the false case as an entry point to explore how case failures are procedurally generated in atrocity complaints and how legal disappointments shape the agencies and hopes of Dalit complainants. The persistence of the false case narrative, and the active way it is perpetuated, can reveal much about the way (un-)conscious caste prejudice is obscured, or even legitimated, through the everyday work of Rajasthani law enforcement and courts. The translational processes legal actors must engage in (Cunningham 1992) to turn personal narratives of discrimination into legal “cases,” often create invisible pathways of interpretative discretion. These pathways allow police officers and judges to demand particular linguistic or bodily performances, or make selective requests for evidence, in line with their own social attitudes (Jauregui 2016), thus (re-)contouring Dalit stories of violence. In this process caste bias is not only made invisible, but actually gains the appearance of procedural legitimacy. Consequently, “true” experiences of caste discrimination can enter the record as “false cases.” Meanwhile, atrocity survivors are left with the administrative burden (Brodkin and Majumdar 2010) of producing the “right” evidence or actively pursuing legal transparency (Mathur 2012) in a public struggle, which often (re-)creates doubts of their credibility.
- 14 This vicious circle is produced at three institutional and affective levels: 1) Translational refusals by police at the initial complaint filing stage prevent many atrocity survivors from “getting” a court case. 2) The social and political embeddedness of “evidence-producing” institutions such as hospitals, government offices or forensic labs makes it difficult for atrocity complainants to produce legal “truth,” when cases do go to court. 3) The feelings of humiliation, which hostile attitudes by legal actors engender, cause many atrocity survivors to doubt their own experiences or blame themselves for their own legal disappointments.

1.1. Police Translations

- 15 In the summer of 2017, I interviewed Choti Lal Meghwal, a Dalit laborer from a remote village in Rajasthan’s Udaipur district. Choti Lal told me about his attempt to pursue a case under the Atrocities Act against the upper caste Rajput council in his village. The council had denied Choti Lal the right to attach a balcony to his newly constructed

concrete house. When he refused to comply, they announced a social boycott and ostracized Choti Lal and all other Meghwal Dalits from the village. Though Choti Lal went to the police station to file an atrocity complaint, he soon became deeply disillusioned. The police barely investigated his complaint before proclaiming it false. “Apparently,” Choti Lal told me, “for something to be declared an atrocity under the Atrocities Act you need to have the right words. But people like me don’t have them! The police see what they want, and people like us usually don’t get a case.”

- 16 To understand Choti Lal’s disillusionment one has to consider the dynamics that unfold as a complaint under the PoA is filed. When a Dalit arrives at the local police station (*thanna*) to register a complaint, the police officer on duty files an initial police report called a First Information Report (FIR), which includes the complainant’s statement and personal details. This report lays the foundation for the subsequent police investigation, which must be concluded within thirty days. Stabhir Khora (2014) has drawn attention to the role the FIR plays in the legal fate of atrocity complaints and suggested that scholars need to critically analyze the power dynamics that define the FIR filing stage.
- 17 When registering the First Information Report, the police officers on duty are required to complete a feat of abstraction: they must take the particular circumstances described by the complainant and decide how to legally code them, matching up the reported incident with one of the offenses under the PoA. Hence, the police make a narrative legible to the law through a preliminary and discretionary act of translation. Following the investigation, the superior officer can either submit a charge sheet to the district court or issue an alternative form called a Final Report (FR). While the submission of a charge sheet implies that the police investigation has substantiated the claims in the FIR and deems them serious enough for court proceedings, a Final Report declares the complaint unworthy of a hearing and marks the conclusion of the matter.
- 18 Choti Lal Meghwal, the Dalit laborer who could not “get” a case, had experienced the interpretative discretion of the police first-hand. When Choti Lal went to the police station to accuse the Rajputs of systematically ostracizing the resident Meghwal community, he told his story by employing a local metaphor, which the Rajputs had used to announce the boycott. Rather than directly telling the Meghwals that they would be excluded from village life, the Rajput council had announced that Meghwal laborers who worked on Rajput fields would from now on be allowed to defecate only in their own fields. Choti Lal explained to the police that everyone in the area knew that the small Meghwal plots were miles away from Rajput fields, and, thus, inaccessible when nature called. Some Meghwals did not even own any land. Therefore, the Rajput announcement effectively amounted to a prohibition on work—and for Meghwals to forgo their main source of income. Choti Lal also argued that the announcement foreshadowed further social ostracism. He was soon proven right as Meghwals were systematically cut off from all essential medical and transport services in the village.
- 19 Choti Lal told the story of a “social boycott”—which is listed as an offence under section 3(1) of the current version of the PoA—without ever using this specific term. Instead, he described a series of actions, which he interpreted against the backdrop of the local socio-economic and cultural landscape. Yet, the police officers he spoke to made no effort to translate his idiom. After a brief investigation, during which the police interviewed the Rajput council almost exclusively, the officers issued a Final Report,

which stated that “no Rajput ever used the word social boycott.” Thus, the report insinuated that Choti Lal Meghwal had made a “false accusation.”

- 20 Choti Lal was shaken. On the one hand, he was angry because the police had refused to engage with his social reality and translate his experience into law. “Of course, no one will tell you “I am boycotting you!””, he told me, “but the whole village understands what is meant by certain instructions!” On the other hand, he blamed himself for not possessing “the right words” to make his situation evident to the police (Fuchs 2020a).
- 21 Choti Lal’s story shows how police refusal to engage with local metaphors when “naming” experiences legally can cost atrocity complainants a case, while giving the impression of evidentially correct procedure. The police report did not lie: the Rajput council had (deliberately) never declared a social boycott specifically. However, Choti Lal had correctly interpreted the situation based on his local knowledge. Culturally and economically his complaint was “true.” Yet, police’s refusal to translate his experience rendered it “false.”

1.2. Substantive Obstacles

- 22 Even when atrocity complaints are registered in line with local and personal perceptions, survivors often find themselves caught up in a complex web of legal evidence production. The rules that regulate processes of proof in Indian criminal law are shaped by the standards and expectations of politically powerful elites (Galanter 1969). Skepticism about the Atrocities Act among the judiciary often finds articulation through silent refusals to abide by evidential guidelines, or, on the flipside, through an excessive insistence on what many judges refer to as “proper procedure.”
- 23 Many judges in the Jaipur High Court, and in lower courts in Jaipur and Jhunjhunu, insisted on one contentious evidential detail: they argued that they had to abide by the criminal principle of *mens rea*, which requires proof of intent, when convicting accused parties in “alleged caste atrocity cases.” This admission is problematic since intention is not clearly defined under the Indian Penal Code (Kaur 2020). Indeed, most judges I interviewed, indiscriminately applied the term *mens rea* to the evidential category of intent (a conscious willingness to carry out a particular offence), and the concept of motive (the underlying reasons behind the willingness to commit an offence), which are distinct in criminal law.
- 24 Aware of the difficulties of proving discriminatory mindsets and directed hateful action, the original authors of the PoA introduced a special section—8 c)—,which specifies that in atrocity complaints a “court shall presume that the accused was aware of the caste or tribal identity of the victim” (SC/ST Prevention of Atrocities Act, amended in 2016). In 2018, the High Court of Andhra Pradesh ruled that in conjunction with section 3(2)(va) of the PoA—which prescribes enhanced punishments for certain offences under the Indian Penal Code (IPC) when they are committed against Dalits or Adivasis—section 8 c) “make[s] it clear that ... unless the contrary is proved” (Rajasthan Judicial Academy 2020:12), courts should assume that the accused was aware that the complainant belonged to a Dalit or Adivasi community.⁵
- 25 The presumption of casteist motive was formulated specifically to facilitate the often-impossible task of legally proving “guilty minds,” which poses one of the main challenges to the effective application of laws aimed at combating discrimination (Somek 2011:6; see below, section 2.1.). However, many of my conversations with upper

caste judges in Rajasthan revealed that the presumption clause was typically not applied, or even reversely interpreted. When disposing of a case involving the rape of a Meghwal girl at the hands of two Jat men, the presiding judge (a Brahmin) at the Jaipur sessions court, told me:

I have to abide by the principle of mens rea. It applies to all criminal law and now that we are talking about caste conflicts as atrocities, we have basically criminalized all disputes involving Dalits. So, intent should apply because it is the overarching principle of criminal law. And in accusations of casteism, intent and motive are really the same. There is no evidence that they raped her because she is a Meghwal. They just raped her.

- 26 His statement is reminiscent of Pratiksha Baxi's (2014) finding that judges often efface the caste nature of sexual violence by drawing a distinction between caste- and lust-motivated rape without considering the power dynamics that have historically shaped sexual violence in India (p. 284). The judge also intentionally conflates intent and motive to justify his own reading of the law.
- 27 Witnessing court hearings for atrocity cases showed me how judges in Rajasthan project their own worldviews onto the "rules," thereby essentially "[defining] the legal norms they are supposed to secure ..." (Dubois 2018:39). This has created extreme confusion about the "right" types of evidence for Dalit complainants, which has had far-reaching consequences.

1.3. "I have lots of evidence that I have no evidence"

- 28 In March 2017, I visited the village of Puranapura in Rajasthan's Jhunjhunu district. Economically and socially Puranapura is dominated by members of the Jat caste, a farming community, which has profited disproportionately from the post-independence land reforms in Rajasthan (Alha 2018). Jats constitute the single largest caste group in Puranapura village and control almost 70% of fertile agricultural land. Puranapura also claims a significant Dalit population (20%), over half of which belong to the Meghwal community. Many Meghwals make a living as agricultural laborers and have become increasingly dependent on Jat landowners who control access to agricultural employment.
- 29 That day I met a man who had experienced the consequences of this dependency first-hand: Rajendre Meghwal, son of the recently deceased Phula Ram Meghwal. In February 2016 Phula Ram had been found dead on the field of his Jat employer, L. Katheria in the aftermath of a wage dispute. According to Rajendre, his father's body had borne the marks of torture and there were witness statements to suggest that Katheria had been responsible for Phula Ram's brutal passing. A Meghwal friend of Rajendre's called Vivek had overheard Katheria verbally abuse someone the night Phula Ram died, followed by strange cries.
- 30 Armed with this knowledge, Rajendre had filed a complaint at the police station. The case was correctly registered under sections 120 and 302 of the Indian Penal Code (IPC), accusing L. Katheria of conspiracy and murder. However, the police initially had refused to file the complaint under the PoA. When Rajendre insisted, the officers finally obliged, although they incorrectly listed the incident under a section of the PoA that merely indicates caste-based hate speech. Hence, the report failed to capture the gravity of the accusations levelled against Katheria.

- 31 The police told Rajendre that Phula Ram's body would be examined at the local hospital as part of the official investigation and then be sent to Jaipur for an autopsy. However, two weeks later, Rajendre was informed that the police investigation had shown his father's death to be from natural causes. Consequently, the case was closed with a Final Report (FR), which effectively declared it a "false accusation." The police file Rajendre gained access to through a legal aid NGO, contained a statement from the local hospital that declared heart failure the likely cause of Phula Ram's sudden passing. But there was no autopsy report. Incensed, Rajendre travelled to Jaipur to procure it himself. He was told that the report was still pending. This made little sense as the police investigation was closed.
- 32 After seeing his father's injured body, Rajendre knew that the medical report was a lie. But he couldn't prove it. Vivek, who overheard the screaming in the fields, refused to testify. "Katheria has so much influence and money," he told Rajendre, "I say something and my family finds *my* body in the fields!" Soon, it became an open secret that Katheria paid the police to drop the investigation into Phula Ram's case. However, Rajendre believed that money wasn't even necessary. "Katheria's brother-in-law was a Member of Rajasthan's Legislative Assembly (MLA)," he said, "the family is still very powerful in local politics. Police won't mess with them."
- 33 When I met Rajendre, he already had a veritable mountain of documents relating to his father's death: copies of the FIR and the Final Report, the dubious medical report, newspaper clippings, a call for action circulated by the NGO, even a letter from the hospital in Jaipur regarding the pending status of the autopsy. "Basically," Rajendre told me,
- I have tons of evidence that I have no evidence! The problem is that the evidence courts want is the kind of proof a man like me can never get. Because proof (subut) is only available to the right people (sahi log)!
- 34 Rajendre's father's case is now one of the many "false cases," cited by the Supreme Court. Yet, his story unveils the fact that India's arena of legal evidence is hardly an even playing field. Documents can be manipulated in ways that call narratives of "universal legal rationality" (Kelly 2006:92) into question, and the evidence men like Rajendre need is far from objective.
- 35 In atrocity cases legal files containing the right evidence act as carriers of truth, even though documents are shaped by the very relations of power the Atrocities Act is meant to change. This reality can turn the PoA, a law meant to address discrimination and hate, against itself. Rajendre's story illustrates that the lack of social and economic capital that defines the lives of historically marginalized groups (Guru 2016), is precisely the reason legislation aimed at outlawing discrimination and prejudice fails to unfold its transformative potential. The insight that legal proof is only available to the "right [upper caste] people" shows that centuries of marginalization have put Dalits at loggerheads with the institutional procedures that shape legal outcomes. These institutions are themselves founded in systems of social and political power (Derrida 1992), which, in India, are irrevocably intertwined with caste hierarchies (Galanter 1969). Hence, the "technologies of truth" (Merry and Coutin 2014) Dalits must rely on when pursuing justice through the PoA, are often inaccessible to them.
- 36 This paradox raises urgent questions about the social potential of the Atrocities Act specifically, and hate crime law more broadly. How can the social promise of hate crime legislation—to punish those who commit violence to uphold hegemonic power

structures—be realized, when such laws operate within truth regimes (Foucault 2000), designed according to the logics of the powerful groups who commit hate crimes?

2. Hate Crime Legislation and the Atrocities Act

- 37 The Prevention of Atrocities Act occupies a distinct space within the growing landscape of hate crime legislation. Its unique conceptual framing around atrocities—a term that denotes genocide and war-related offences under international law (Myers and Radhakrishna 2017)—aims to starkly highlight the everyday, socially destructive practices and hegemonic power structures, which motivate and normalize attacks against historically marginalized groups like Dalits and Adivasis (Mendelsohn and Vicziany 1993). However, the act is also part of a wider historical process, whereby formal law has become a central mechanism to address issues of structural inequality (Hirschl 2008; Eckert et al. 2012).
- 38 Recent decades have witnessed the migration of social and political conflicts to the courts (Comaroff and Comaroff 2006), a process that is often analyzed as the *juridification* of politics. Originally introduced in the writings of late 20th century political thinkers (Sinzheimer 1976; Kirchheimer 1981; Habermas 1987), social scientists have recently revitalized the concept to analyze the growing societal importance of formal law. Blichner and Molander (2008) propose that *juridification* is effectively an umbrella term, which designates a series of related socio-legal phenomena. On the one hand, *juridification* describes a mounting tendency among state governments to subject social, political and intimate activities to legal regulation, and to increasingly differentiate between different areas of judicial reasoning (p. 42). On the other hand, *juridification* also refers to a resulting propensity among ordinary people, to view “themselves as belonging to a community of subjects with equal legal rights and duties” (p. 47).
- 39 The proliferation of hate crime legislation since the 1980s reflects these concurrent developments. Hate crime law is essentially an attempt to differentiate and specify criminal law to counteract social and political inequalities and hierarchies (Hall 2013). Such laws communicate state intolerance towards targeted violent practices against (historically) oppressed groups (Perry and Alvi 2011). Simultaneously, hate crime laws are intended as a strategic shorthand to allow these subjugated communities to translate their unique grievances into a recognized language of crime and punishment (Perry 2020). Thus, hate crime legislation is a symbolically potent (Jaoul 2015) tool, which helps hitherto silenced voices articulate demands for equal treatment, status and protection.
- 40 Ironically, the adoption of rigid legal frameworks in the fight against identity-based violence, can lead to internal contradictions: the way marginalized groups, name and categorize experiences of discrimination and hate may be at odds with the ways legal rules and evidentiary processes identify, prove, and punish identity-based violence (Walters, Owusu-Bempah, and Wiedlitzka 2018; Hardy and Chakraborti 2020). Similarly, scholars of caste and law in India have remarked that the Atrocities Act is at once pragmatic (Jaoul 2015), radical (Rao 2009), and haunted by processual contradistinctions and translational obstacles, which pit experiences of violence against the categories of criminal law (Fuchs 2020a). Hence, the next section, highlights

that the problems atrocity complainants encounter in India are neither unique to the South Asian context, nor necessarily specific to the issue of caste.

2.1 Proving Prejudice

- 41 Rajendre's story above already illustrates one of the primary challenges in the implementation of hate crime laws. Criminological scholarship has repeatedly emphasized that, given the procedures and legal statutes available in a court room, hateful or discriminatory impulses and motivations behind criminal acts are "notoriously difficult to prove" (Kok 2008:446). Proving motive can effectively amount to the impossible task of proving a person's thoughts (Brax and Munthe 2012; Brax 2016). The challenge of substantively proving discrimination has even haunted the highest human rights courts (see Dembour et al. 2021, on the European Court of Human Rights).
- 42 In many parts of the world this dissonance between lived realities of discrimination and legal procedures of identifying and proving prejudice or hate has created a justice gap. Research on racial discrimination in the UK has revealed that, despite training, many police officers and judges are often unwilling to interpret crimes against people of color in racial terms unless there is explicit verbal evidence (Walters et al. 2018); and unfortunately, perpetrators of hateful and discriminatory action rarely announce their prejudicial mindset through slurs or targeted insults (Lopez 2017).
- 43 Perhaps one of the most problematic consequences of repeated failures to legally prove discrimination lies in the cycle of self-blame it gives rise to (Fuchs 2020a). My interlocutors frequently felt that their cases would be successful if only they were able to understand "legal things" (*kanooni cheez*). One Dalit man of the Jatav caste, whose case involved a land dispute, appeared at his first hearing in the Jaipur sessions court, only to be snapped at by the judge. "Speak clearly," the judge barked at him, "and tuck in your shirt." After his case was dismissed, the Jatav man felt embarrassed. "I should have presented myself better," he told me, "it's my fault that I didn't win my case (*meri galati hai*)." His words shine the spotlight on the power of legal settings to produce anxiety among structurally disadvantaged and historically violated communities (Conley and O'Barr 1998). Accusations of sloppiness or of being uneducated can fall on fertile ground when complainants have already undergone humiliating encounters with legal personnel and fear the publicization of their own vulnerabilities (Guru 2009).

2.2. The Normality and Invisibility of Hate

- 44 The difficulty of proving discriminatory motivations is tied to a second challenge, which has been highlighted in the global literature on hate crime law and antidiscrimination policies: the assumption that hate crimes are individual events, which can be easily identified and translated into legal cases, is at odds with the fact that hate is a social and political process, which escalates at particular moments in time and is difficult to recognize (Bowling 1993). South African legal scholar Anton Kok (2008) has argued that the ability of the law to address discrimination is, paradoxically, predicated on the assumption that violence of a racist (or in the Indian case a casteist) kind is an abnormal event that can be isolated through a legal case. Yet, structural racism (or casteism) is so tightly woven into the fabric of social life, that

hateful actions are normalized, Consequently, discriminatory experiences are difficult to pinpoint as illegal or amoral within the society that produces them. In relation to South Africa's *Promotion of Equality and Prevention of Unfair Discrimination Act*, Kok (2008) writes: "To put it bluntly, law cannot cope with ... 350 years of colonialism, patriarchy and apartheid ..." (p. 448). The same can be said of the PoA, which is asked to operate in a political and social system, where the actions identified by the act as casteist, do not register as exceptional or wrong in the eyes of the accused, or even of those tasked with applying the law (Waghmore 2018). Hence, the Atrocities Act faces a challenge common to hate crime laws across jurisdictions: the presumption that caste violence is easily isolated and named through legal formats (Felstiner, Abel and Sarat 1980/81) runs counter to the fact that caste oppression is an invisible organizing principle of Indian social life (Ambedkar 1979).

- 45 The discrepancy between multi-faceted experiences of identity-based violence and legal discourses of rights, duties and punishments has also been carefully explored in Indian feminist literature. Nivedita Menon (2004) proposes that efforts to bring India's women's movement to the courts in the 1980s, and to mold it into a language of rights, simplified culturally complex problems of patriarchal mindset and habit. Paradoxically, efforts to legislate against gender-based violence made the ongoing oppression experienced by Indian women, and their own moral visions, irrelevant and illegible in judicial practice. India's Dowry Prohibition Act of 1961, which aims to make the giving and receiving of dowry illegal, perhaps best illustrates this process. The legislative focus on dowry obscured how dowry disputes were tied to everyday patriarchal processes and oppressive gender norms (Agnes 1992, 2019). Furthermore, the legal formalization of dowry gave rise to the myth of the "disgruntled wife" (Jaising 2014:34), who files "false" cases for revenge.
- 46 The parallels between the judicial and public debates around the Dowry Prohibition Act and the Atrocities Act are especially striking at the Supreme Court level. India's highest court has systematically pursued the "false case" narrative in relation to both laws. In 2017 the Supreme Court pointed to the high acquittal rate in dowry complaints to express concern that angry wives were misusing the dowry act to "frame their husbands and relatives" (Arora 2019). The following year, in 2018, the court used a similar argument regarding the Atrocities Act when it argued that Dalits and Adivasis were using the law to blackmail upper castes.
- 47 Discouraging as these developments are, the common legislative challenges encountered by caste and gender equality struggle, also highlight important concerns. They show that the evidentiary formats and temporal lenses criminal law employs to identify and prove discrimination are regularly at odds with the way marginalized groups, and those who perpetrate violence against them, perceive and name acts of identity-based violence.

2.3. Divisive Laws

- 48 This exposes a final point of continuity between the PoA and hate crime laws outside India: despite the inherent potential these laws hold for social transformation, they are deeply politically and socially divisive. Anupama Rao (2009) has argued that the Atrocities Act has inextricably linked Dalit lives with ideas of untouchability and a history of special protection. This has permanently marked Dalits as "other," and

evokes the idea of Indian law as an institution in service of a particular community, which might produce further identity-based hostility.

- 49 Similar questions repeatedly rear their heads in global debates around hate crime law (Dixon and Ray 2007). In his study of right-wing extremists in the United States, Michael Kimmel (2018) shows that the increased political and legal attention racial minorities receive in the USA has engendered a victim complex among economically challenged white men, who now see African Americans as overly protected state subjects. Meanwhile, Amy Swiffen (2018) proposes that LGBTQ communities in Canada are increasingly resisting hate crime legislation because they fear increased victimization at the hands of legal actors.

3. Finding Hope

3.1. Success for All?

- 50 Situating the Atrocities Act within a global landscape of hate crime measures, sheds light on a final, most pressing question: If official law is often ill-suited to cope with the historically layered and deeply ingrained realities of prejudice and oppression, what expectations for societal transformation can be projected onto measures like the PoA? How should success be defined in the context of laws aimed at alleviating structural violence and inequality, and to whose idea of success are they accountable?
- 51 In early 2017, Pinky, a 17-year-old Meghwal girl in Rajasthan's Jhunjhunu district, was gang-raped by four Jat boys from her village. Without Pinky's consent her father called on the local Meghwal Association to register a complaint under the Atrocities Act. The case became a high-profile one, which drew media attention and led to large-scale protests in front of the Jhunjhunu police collectorate. Activists from Jaipur, who were consulting on the case, were pleased and convinced that Pinky's case would lead to a conviction and be "successful." Yet, as the case unfolded it became clear that different actors had drastically different ideas of what success meant and what the purpose of Pinky's case was.
- 52 Pinky's mother considered the public support her daughter's case had garnered a confirmation of Pinky's innocence. She did not want to pursue the case further, but wished to strike an out-of-court compromise (*rajinama*) with the boys' families, as she feared that protracted discussion of her daughter's sexual past would harm her chances for marriage. For her, the purpose of an atrocity case was to scare the upper caste families into submission (see Carswell and de Neve 2015). Success meant restoring her daughter's honor. Meanwhile, her husband wanted a conviction in court to prove that Dalits were now protected by the state and could fight on an institutional level in a manner they had been unable to do before. Success equaled public recognition: to show the world that the tides of hierarchy were turning.
- 53 However, the parents were not alone in the case. The local "big men" from the Meghwal Association, whom Pinky's father had asked for help, envisioned Pinky's case as a pathway towards increased Dalit political power in Jhunjhunu district. They convinced Pinky's father to drop the case and settle out of court (compromise), in exchange for substantial financial compensation for the family, and for Jat electoral

support for a prominent Meghwal leader in the upcoming legislative assembly elections.

- 54 In contrast, Dalit activists and NGOs, who had thrown their support behind Pinky's case, considered the compromise an abysmal failure and a betrayal of the transformation the law could offer. For them, the PoA was a document that symbolized the potential of Indian society to be an equitable place where caste no longer mattered. They felt that the purity of the law had to be protected for its own sake. "The only success," a Jaipur-based Dalit activist once told me, "is when people fight till the end. Compromising means that you have shown you can be bought and that higher castes don't need to take this law seriously. It means we have failed!"
- 55 Pinky herself never knew what to feel or think. She had never been given the time to process, heal and decide. She often felt helpless. The contentions around her case highlight the different way the societal aims of the PoA are defined by the actors involved in atrocity complaints. A case outcome deemed a "failure" by one party is frequently seen as a small, or even substantial, victory by another.
- 56 Pinky's case was not the only one to end in a controversial compromise. In fact, 32 out of the 40 atrocity cases I traced in Rajasthan ended in compromises (80%). On the one hand, the ubiquity of compromises can be seen as an indicator of the ways protectionist laws like the Atrocities Act have their transformative wings clipped by powerful interest groups (Thorat 2018). Members of Dalit legal aid NGOs frequently argued that compromises risked long-term social transformation for short-term personal gain. On the other hand, "good" compromises often hold tangible benefits for survivors. Many of my interlocutors considered compromises better for their immediate future than the best legal process, thereby citing almost verbatim a sentiment expressed by anthropologist Laura Nader (1990): "a bad compromise is better than a good fight" (p. 1). The public apologies and financial settlements that resulted from compromises often granted Dalit atrocity survivors new leverage in the village community, even if they could not take away the suffering.
- 57 One of my interlocutors used a significant financial settlement from a compromise to pay off his debts to a local family of the Jat caste. He sent his daughters to college and built a new home. While he wanted "official justice," he knew it would take forever. The compromise gave him a real opportunity to end his dependence on upper castes in the village and create a better future for his daughters. He also thought that his decision to register an atrocity complaint with the help of influential NGOs acted as a deterrent to future violence, because the Jats now knew he had powerful friends. Moreover, compromises can often help families protect themselves from the social shame that court cases bring. In her analysis of an atrocity case in Gujarat, which ended in compromise, Pratiksha Baxi (2010) shows that extended court cases—especially those involving issues of caste and gender—are seen as a threat to a family's future. She argues that "legality is actually perceived as disruptive of sociality," even though sociality is marked by "caste-based patriarchies" (p. 233). Similarly, my rural interlocutors felt that the village was the only home they had and compromises could help them reintegrate into village life on slightly better terms.
- 58 As a powerful hate crime law, the PoA instills fear in upper caste communities. Hence, it provides new micro-agencies in the aftermath of violence. While compromises cannot undo wider power differentials and structures of inequality, they represent a small step forward for many in the "here and now," and can create new hope.

3.2. New Horizons

- 59 The sense of possibility the PoA may engender in atrocity survivors, despite institutional obstacles, deserves analytic attention. Many of the Dalit families I worked with in Rajasthan were fiercely protective of the Atrocities Act and everything that it represented. Especially those who had lost loved ones to caste-based attacks found a sense of affective validation in the possibilities the act opened up, despite the flawed reality of the legal system.
- 60 In 2016, I met a Meghwal woman from Jaipur, whose son had secretly married a Brahmin girl. When the girl's family found out about the marriage, they captured the young Meghwal man, tortured him brutally and took his wife away from him. Shortly afterwards, the young man committed suicide, leaving behind a letter. He wrote that losing his wife and being treated as if he were worthless made him want to die. His family was devastated. However, they decided to file a case under the Indian Penal Code and the Atrocities Act with the help of a Jaipur-based legal aid NGO accusing the girl's family of "abetment of suicide." Though the case was stalled at every turn and ultimately dismissed by the Jaipur sessions court, the family, and especially the young man's mother, remained determined to fight "the legal way" and appeal the decision in the High Court. "I no longer believe in people," the mother told me, "and I know the legal system is bad, but god gave us this law to fight. And so, I will fight for my son and for a better world."
- 61 The Atrocities Act in its pure textual form represented a horizon of possibility for the deceased man's mother, a fact that reflects Fernanda Pirie's (2013) insight that law-as-text—the particular legal form of articulating entitlements—represents a unique canvas for social imaginations. A woman in Jhunjhunu, whose daughter had died after being raped by two men of the Rajput caste, saw the act as a template for the way the world should be. She told me:
- This law finally shows me on paper that we need not accept these things! It shows the world that those who commit these acts are wrong, even if they don't see it!
- 62 Her words illustrate that for some the possibility of legal victory, however remote, could be a comfort at a time when they had lost all hope in their village communities. For many, the Atrocities Act became a unique way of "imagining" a different reality (see Geertz 1983) and future.
- 63 Even though these hopes and imaginations live alongside many disappointments and continued violence, they are still palpable. They reveal the power of hate crime legislation to generate a new vision of the future, and to inspire a new sense of determination.

4. Conclusion: A Search for Purpose

- 64 So, where do these insights into the complexities, failures, and possibilities of the 1989 Scheduled Castes/ Scheduled Tribes Prevention of Atrocities, ultimately leave us? What can they tell us about the potential and possibilities to promote social equality and an anti-caste agenda through law?

- 65 On a local policy level, perhaps the most important conclusion to draw is that laws such as the Atrocities Act cannot be asked to perform miracles of justice, as long as they are embedded in an institutional landscape that is characterized by the biases and violence they are designed to counteract. In India, one example is the police: a lack of effective accountability mechanisms is arguably one of the biggest issues in Indian policing today. Even though seven directives to “kickstart police reform” were issued by the Indian Supreme Court in 2006, hardly any of them have been implemented (Raman and Paliath 2020). However, without effective police accountability, the Atrocities Act remains stranded on an island without a lifeboat, despite its best intentions.
- 66 These institutional obstacles force us to reflect on the relationship between justice, marginalization and the legal process. Analyses of the social life of the Atrocities Act—a law unique in its form, and representative of the global proliferation of hate crime legislation—crucially showcase how (caste) prejudice can be institutionally and socially reproduced through criminal legal formats and procedures of fact production. Rooted in particular forms of bureaucratic truth (Povinelli 2002), the law is often ill-equipped to accommodate the linguistic, institutional and embodied markers of disadvantage that define marginalized lives (Agnes 2019).
- 67 Hence, we must ask whether judicial pathways to combating equality are here to stay? If so, scholars must possibly explore ways the legal form can be expanded, and legal evidence regimes adjusted, to account for the social and political discrepancies between complainants and accused parties in cases involving groups with histories of oppression and claims of discrimination or hate.
- 68 My conversations with Dalit atrocity survivors in Rajasthan revealed that despite the day-to-day failures of the system, the Atrocities Act has opened up a new, personal horizon of hope. They emphasized that they found hope in the symbolic character of the law and in the micro-agencies it has produced in their daily lives: better compromises, a threat in their back pocket, a vague sense of entitlement.
- 69 And yet, this sense of hope and their conceptualization of “success” in atrocity cases has always been deeply contested. Kok (2008) proposed that one of the central problems facing South Africa’s equality act is that no one is really clear on the type of transformation it is meant to bring. Similarly, my fieldwork highlighted how ideas of failure, ineffectiveness and success diverged radically among different stakeholders in atrocity cases. One party’s failure was often another’s success. Laws like the Atrocities Act are often defined scarcely and imagined plentifully, leaving us to wonder to whose vision of justice they *should* be accountable.

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NOTES

1. Interview on Current State of SC/ST Prevention of Atrocities Act. Gurgaon, Delhi, January, 2018.
2. The highest number of cases was registered in Uttar Pradesh.

3. Throughout this research, I was always accompanied by local Dalit activists or community members.
 4. All interlocutors have been anonymized.
 5. Rajulapati Ankababu v. the State of Andhra Pradesh, 2018.
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ABSTRACTS

India's Prevention of Atrocities Act (PoA), which aims to punish and prevent violence against Dalits (ex-untouchables) and Adivasis (tribals), represents one of the most ambitious hate crime laws in the world. However, concerns regarding its effectiveness in addressing historical oppression dominate Indian public debates. Based on extensive ethnographic fieldwork with Dalit atrocity survivors and police and judiciary in Rajasthan, this article proposes that current critiques of the PoA have neglected to address fundamental questions about the ideas of social transformation that underpin this unique law. This paper analyses how legal evidence regimes can obscure realities of hate. It further examines to what extent the institutional barriers facing atrocity complainants reflect deeper challenges, which haunt hate crime laws and legislative attempts to address inequality on a global level. Ultimately, the article reveals that for the PoA to be "effective," policymakers must first decide to whose definition of justice and success the act is accountable.

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Keywords: caste atrocities, hate crime legislation, India, evidence, hope

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