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# Section 3(1)(r) [formerly S. 3(1)(x)]

## Hitesh Verma v. State of Uttarakhand And Ors. (2020) 10 SCC 710

(Supreme Court of India)

**FACTS:**

The complainant-respondent, a member of a Schedule Caste, alleged that four upper-caste men entered her house under construction and abused her, her husband and workers on-site. She also reported that she received death threats from these men. She alleged that they also took away the construction material.

A charge sheet was filed disclosing offences under S.504, 506, IPC and under S.3(1)(x) of the Scheduled Castes and the Scheduled Tribes Act, 1989 (hereinafter referred to as the Act). [now S. 3(1)(r)], and cognizance was taken of the same.

**PROCEDURAL HISTORY:**

The order of the trial court, taking cognizance of the matter, and the charge sheet were challenged before the High Court by the appellant and an application to quash the charge sheet was filed before the High Court under S.482 of the Code of Criminal Procedure. The High Court dismissed the petition. Hence, the appellant brought this petition before the Supreme Court.

**ISSUES:**

1. Whether the act of the appellant was in a “place within public view” under S. 3(1)(r)?
2. Whether intention is required to commit an offence under S. 3(1)(r)?

**RULE(S):**

S 3(1)(x) of the Act was replaced by s 3(1)(r) by the amendment of the Act in 2016. S.3(1)(r) concerns punishment for insult or intimidation and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in 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 and with fine.”

**ANALYSIS:**

The Court stated that the intention of the Act is to punish the acts of members of upper castes against the lower castes for the reason of belonging to those castes. The two ingredients are: 1) intentional insult and 2) in any place within public view.

In a previous case, the Supreme Court had held that a place can be within public view if some member of the public is present to witness it (barring friends and relatives). Thus, a private place like a building or house can also be within public view. In this case, since the incident took place within the four walls of the complaint-respondent’s own house, with no members of public present, it cannot be said that it was held in a place within public view.

Further, the Court noted that not all insults or intimidations to a person will be an offence under the Act unless such insultor intimidation is on account of the victim belonging to a Scheduled Caste or Scheduled Tribe. The present case was related to the assertion of rights over land by either party and is not due to indignities, humiliations or harassment. Since every citizen has a right to invoke legal remedies, the act of either party comprised an availing of such rights in accordance with the procedure established by law. The Court noted that the action is not for the reason that the respondent belongs to the Scheduled Caste. Hence, the first ingredient could not be satisfied.

**CONCLUSION:**

The Court allowed the appeal and found that the offence under S.3(1)(r) of the Act was not made out in the present case. Therefore, the Court quashed the charge sheet under S.482 of the Cr.P.C.

## Ms. Gayatri @ Apurna Singh v. State & Anr. (2017) SCC OnLine Del 8942)

(Delhi High Court)

**FACTS:**

The case concerns a writ petition filed by the petitioner for the quashing of a First Information Report (FIR) filed by Respondent No.2 under S.3(1)(x) of the Scheduled Castes and the Scheduled Tribes Act, 1989 (hereinafter referred to as the Act). The petitioner and the complainant are co-sisters and were married to brothers. The complaint contained an accusation against the petitioner for harassing and abusing the complainant by posting casteist remarks mocking the ‘Dhobi’ community, to which she belonged, on Facebook. Additionally, the petitioner had allegedly blocked the complainant from viewing these posts.

**PROCEDURAL HISTORY:**

The petitioner filed a writ petition before the Delhi High Court seeking the quashing of the FIR and the proceedings arising therefrom.

**ISSUE:**

Does posting a remark on Facebook constitute “public view” under s. 3(1)(r)? Does changing privacy settings from “public” to “private” change this?

**RULE(S):**

(i) The Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act:

* S.3(1)(x) [now S. 3(1)(r)] concerns punishment for insults and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in 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 and with fine.”

**ANALYSIS:**

The Court began by discussing the arguments made by both the parties. It was submitted by the petitioner that a reading of the FIR did not disclose the commission of an offence under S.3(1)(x) of the Act. Firstly, the petitioner argued that under the concerned provision, it is essential that the accused should intentionally insult a member of a Scheduled Caste or Scheduled Tribe with an intent to humiliate them and that a ‘member’ refers to a particular member and not the generalized community. It was pointed out that the posts made by the petitioner were directed at the female ‘Dhoban’ community at large, and not specifically at the complainant. In order to substantiate this argument, the petitioner also pointed out that the Facebook posts could not refer to the complainant directly as they were not made accessible to her and she had been blocked from reading them. Therefore, the posts did not disclose an intent to insult a member of a Scheduled Caste. Secondly, it was argued that S.3(1)(x) also requires that the insult be made “in any place within public view” and in order to satisfy this requirement, the post should be claimed to have been read by a member of the public. Hence, the Facebook ‘wall’ of the petitioner could not be said to be “a place within public view”, despite the fact that the privacy setting was set to ‘public’, as no member of the public had claimed to have read it.

In response to this, the complainant argued that at the current stage, during which the investigation was in progress and the charge sheet had not been filed, the truthfulness of the allegations should not be examined by the Court and only the prima facie existence of a cognizable offence was to be proved. Firstly, it was claimed that the concerned posts were directed against the respondent herself as she belonged to the ‘Dhobi’ caste, was the sister-in-law of the petitioner and they had an acrimonious relationship with each other, due to which she harboured an ill-will against the ‘Dhobi’ community. Secondly, it was argued that the petitioner was aware that the complainant could gain access to the posts by viewing the petitioner’s Facebook page and that the privacy settings had been deliberately changed to ‘public’ to enable members of the public to read the remarks.

S. 3(1)(x) requires that (1) there should be an intentional insult made by a person who is not a member of a Scheduled Caste or a Scheduled Tribe, (2) the insult must be made with an intent to humiliate the member on the basis of their caste status, implying that the accused had knowledge of the caste of the victim, and (3) the insult should have been made in any place within the view of the public.

In *D P Vats v. State* it was held that ‘a member’ referred to a specific individual that the insult must be directed against and not against a group of persons or a crowd who may belong to the Scheduled Caste. Applying this to the present complaint, the Court found that the complaint itself showed that remarks made by the petitioner were not directed against the complainant specifically but at the community at large. The knowledge of the caste status of the complainant and the personal relationship between her and the petitioner was insufficient to demonstrate that the posts were intentional insults with an intent to humiliate her.

“Public view” need not necessarily require a public space and should be interpreted to mean a place where public persons are present, who are independent and have no interest in either party involved in the case. The Court observed that the writings of a person on their Facebook ‘wall’ may be accessed by those befriended by them, regardless of privacy status. Therefore, an insult posted on the ‘wall’ of the complainant may be read by befriended members and would constitute “public view”. Moreover, S.3(1)(x) did not state that the insult must be made in presence of the complainant and remarks behind their back would also qualify under the provision.

However, to demonstrate public view, members of the public in whose presence the remark was made must also be shown in the complaint. Applying this to the present case, the Court noted that the complaint had not satisfied this test as the complaint did not claim that the remarks were made in full public view or that there were witnesses who had come across the post.

Since the three elements required under S.3(1)(x) of the Act had not been satisfied, the FIR did not disclose the commission of the offence and could be quashed.

**CONCLUSION:**

The Court admitted the petition and ordered the quashing of the FIR as well as the proceedings against the petitioner under S.3(1)(x) of the Act.

## Arumugam Servai v. State Of Tamil Nadu (2011) 6 SCC 405

(Supreme Court of India)

**FACTS:**

On 1.7.1999, there was an argument between the appellant and the two complainants in a temple festival regarding the methods of tying bullocks in the Jallikattu. Arumugam Servai, the appellant, insulted the first complainant by calling him a ‘pallan’, and accusing him of consuming cow beef. After that, the accused also attacked him with sticks, causing him severe injuries on his left shoulder. The second complainant intervened to protect the former but he was also attacked by the accused with sticks and received a fracture on his head. The accused belong to the `servai' caste which is a backward caste, whereas the complainants belong to the `pallan' caste which is a Scheduled Caste in Tamilnadu.

**PROCEDURAL HISTORY:**

The appellant approached the Supreme Court against the judgement and order of Madras High Court upholding the judgement of the learned Additional District and Sessions Judge, Madurai.

**ISSUE:**

Whether using the caste name in a derogatory way is sufficient to constitute and offence under S. 3(1)(x) [now S. 3(1)(r)]?

**RULE(S):**

(i) The Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act:

* S.3(1)(x) concerns punishment for insults and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in 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 and with fine.”

**ANALYSIS:**

The Court explored the social backgrounds of the parties and noted that the accused belonged to the ‘servai’ caste, a Backward Caste, and the complainant belonged to the ‘pallan’ caste, a Scheduled Caste in Tamil Nadu. Although ‘pallan’ particularly denotes a caste, it is also used in a derogatory sense with an intent to insult a member of the Scheduled Caste, thus constituting an offence under S.3(1)(x) of the Act. Applying this to the present case, the Court found it evident that the word ‘pallapayal’, as well as the reference to beef consumption, was used by the accused to insult Paneerselvam. Hence, it constitutes an offence under the act.

The Court referred to Swaran Singh & Ors. v. State, where the word ‘Chamar’ was deemed as a word of insult, abuse and derision as it was not used to denote a specific caste but to intentionally insult or humiliate that person. Hence, while interpreting S.3(1)(x) of the Act, it was stated that the Court should take into account the popular meaning of the word ‘chamar’ which is acquired by usage and not the etymological meaning. The intent to insult or humiliate which is mentioned in using such terms depends upon the context in which they are used.

In the present case, the word that was used by the appellant was considered to be derogatory as per the S.3(1)(x) of the Act when viewed in the context of the incident and the insult was made in a temple festival, in the purview of public view, with an intent to humiliate. Therefore, the charge under S.3(1)(x) of the Act is attracted.

**CONCLUSION:**

The Court dismissed the appeal and held the appellant liable.

## Daya Bhatnagar and Ors. v. State MANU/DE/0085/2004

(Delhi High Court)

**FACTS:**

Petitioners and Complainants were neighbours. Due to some dispute between them two cross cases were registered, one under S. 3 (1) (x) of the SC/ST PoA Act and other under S. 354/34 of the IPC. The prosecution case was that on two separate days, Babu Lal and his wife Meena Kumari were humiliated and insulted on the basis of their caste.

Prosecution case was that Babu Lal lodged a report to the police complainant that while he was sitting in an adjoining flat along with five others, Mrs. Veena Das, Madhu Srivastava and Prem Shankar Madan came there and called him "Chura Chamar Babu Lal Chura Chamar" without any reason. This complaint was signed by Babu Lal, as well as four witnesses. On the next day, Babu Lal's wife Mrs. Meena Kumari lodged another report alleging that while she was present at her flat, along with her children, when a group of 25-30 ladies came there and banged the door, saying "Churi Chamari come out of the house, you are not up to our standard and you cannot live in this block". She was humiliated and insulted on the basis of her caste; she became unwell and had to go to the doctor to take medicine.

The stand of the Petitioners was that when they had gone to collect unpaid monthly subscription from Babu Lal, he came out in his underwear and proceeded to make sexual advances towards the women. They further argued that in the report by the complaiant, the ingredient of “public view” for S. 3(1)(r) was not fulfilled. The petitioners filed a petition seeking quashing of the FIR under SC/ST PoA.

**PROCEDURAL HISTORY**

There was a difference of opinion between the Division Bench of the High Court over whether the ingredients of the offence under SC/ST PoA are fulfilled. One judge held that while there were no public persons in Mrs. Meena Kumari’s report, there were public persons present in Babu Lal’s report and so, trial Court was directed to proceed with the trial. The other judge found that the persons present with Babu Lal were his friends and not independent members to constitute “public.” On the above difference of opinion, the matter was placed before the Chief Justice of the High Court.

**ISSUE:**

Does the presence of persons having close ties with the complainant constitute “public view” under S. 3(1)(r)?

**RULE(S):**

(i) The Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act:

* S.3(1)(x) concerns punishment for insults and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in 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 and with fine.”

**ANALYSIS:**

In this case, the Court considered the meaning of the expression "public view" occurring in Section 3(1)(x). The Court held that the legislature required intention as an essential ingredient for the offence of "insult", "intimidation" and "humiliation" of a member of the Scheduled Caste or Scheduled tribe in any place within "public view". Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3 (l) (x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.

It held that the expression within "public view' occurring in Section 3 (l) (x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way.

It also held that a witness cannot be termed to be "interested', "biased' or "partial' merely because he is made an accused in the counter FIR, unless attending circumstances, prima facie, suggest the same, like simultaneous lodging of cross FIRs, where both the parties are injured or where there is previous enmity or other strong motive for false implication. Lodging FIR against the complainant or the witnesses of the offence under Section 3 (l) (x) of the Act, at the belated stage would not be enough. Otherwise, whenever an offence is alleged to have been committed under Section 3 (1) (x) of the Act, the accused would be always eager to get a counter FIR registered against the complainant or the witnesses by hook or by crook, to defeat the earlier FIR against him. This cannot be permitted in law.

There was nothing to even prima facie show that the four witnesses mentioned in the complaint had any business, or commercial, or any other link with complainant, or that they had other vested interest, so as to deprive them of the status of being independent persons within the meaning of the expression "public view". From the mere fact that witnesses were present at the house of the complainant when the offending words were allegedly used, by itself, is not enough to conclude that they were complainant's associates or not independent persons. No such presumption could be raised,

**CONCLUSION:**

Petition for quashing of the FIR was liable to be dismissed.

# 

# Section 3(2)(v)

## Asharfi v. State Of U.P. (2018) 1 SCC 742

(Supreme Court of India)

**FACTS AND PROCEDURAL HISTORY:**

Appellant Asharfi and one Udai Bhan broke into the house of victim and committed rape. The neighbours raised an alarm after which they fled. FIR was registered in 1996.

The Trial Court confirmed all the charges under the Indian Penal Code (IPC) and sentenced the appellant to life imprisonment with a fine of Rs.10,000 under S. 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act). The appellant then approached the High Court of Allahabad, which confirmed the conviction by the Trial Court. The present appeal was filed to ascertain whether the conviction order passed by Lower Courts was maintainable.

The Trial Court confirmed the charges under the relevant sections of both the IPC and the Act and accordingly convicted the accused. Aggrieved by the conviction, the accused approached the High Court. Both courts were concurrent in their findings of the rape charges levied. The case was brought before the Supreme Court on appeal.

**ISSUE:**

For a case of S. 3(2)(v) before the 2016 amendment, does the law require mere knowledge of the victim being SC or is a further intention also required?

**RULE:**

(ii) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:

* S.3(2)(v) of the Act (before the 2016 amendment) concerned the punishment for an offence against a person belonging to Scheduled Caste/Scheduled Tribe and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.”

* Note: Amendment Act 1 of 2016 emphasizes mere knowledge of the caste status of the victim and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.”

However, since the offence in this case took place prior to the amendment, the court decided this case on the basis of the pre-amendment version of s 3(2)(v)

**ANALYSIS:**

The evidence did not show that the victim had been raped specifically on the ground that she belonged to SC. For a case after the 2016 amendment, merely having knowledge that a woman belongs to SC is sufficient for it to be considered an offence under S. 3(2)(v) when the offending act is performed. However, for a case before the 2016 amendment, S. 3(2)(v) only applies if it is proved that rape was committed on the grounds that the victim belonged to SC. Since evidence of this was not present, the Court held that S. 3(2)(v) would not apply.

**CONCLUSION:**

The conviction of the appellant under S.3(2)(v) of the Act and the sentence of life imprisonment thereunder were set aside. Since the accused had already undergone more than 10 years of imprisonment under S.376(2)(g), the Court ordered his release.

# Section 15A

## Hariram Bhambhi v. Satyanarayan & Anr. (Criminal Appeal No. 1278 of 2021)

(Supreme Court of India)

**FACTS:**

Appellant lodged a report stating that his younger brother was allegedly thrown out of a vehicle and since the deceased belonged to a Scheduled Caste, offences punishable under the SC/ST (PoA) Act, 1989 were added.The respondent instituted an application before the Special Judge, SC/ST (Atrocities Prevention Cases) Ajmer for grant of bail which was rejected. The respondent appealed to the High Court, which ordered for his release on bail. No notice was issued to the Appellant under S. 15A of the SC/ST Act Appellant moved the HC u/s 439 (2) of CrPC for cancellation of bail.

**ISSUE:**

Is cancellation of bail of respondent possible without giving notice to the appellant under S. 15A (3) of the SC/ST Act?

**RULE(S):**

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2016:

* Section 15A (3) concerns the rights of victims and witnesses:

“A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.”

* Section 15A (5) concerns the rights of victims and witnesses:

“A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.”

**ANALYSIS:**

The Court reiterated that the SC/ST Act had been enacted to effectuate a salutary public purpose of achieving the fulfilment of constitutional rights of the Scheduled Castes and Tribes. Section 15A which came under Chapter IV-A titled ‘Rights of Victims and Witnesses’ was introduced by way of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. This chapter was inserted to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence.

Section 15A of the SC/ST Act contains important provisions that safeguard the rights of victims of caste based atrocities and witnesses. Sub-section (3) of Section 15A confers a statutory right on the victim or their dependents to reasonable, accurate, and timely notice of any court proceeding including a bail proceeding. Sub-section (5) of Section 15A provides for a right to be heard to the victim or to a dependent. The requirement of issuing a notice facilitates the right to be heard. The requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A (3), in order to provide them an opportunity of being heard is mandatory. The Court also reiterated that the notice served upon victims or their dependents is at the first and earliest possible instance. If undue delay is caused, the victim or their dependents would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defence of the accused.

**CONCLUSION:**

Appeal was allowed and the impugned order of the Rajasthan HC was set aside.

# Section 14

## Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari (Criminal Appeal No. 967 of 2021)

(Supreme Court of India)

**FACTS:** Three police officers came to the village of the complainant and injured her, utterred caste-based abuses, beat her son, took away her husband, ransacked the house and threatened to cause further hurt. The complainant tried but was unable to get her formal complaint lodged and therefore lodged the same with the Magistrate. The Magistrate issued an order taking cognisance of the alleged offences. The accused appealed to the High Court arguing that a Magistrate is not a Special Court and hence not competent to take cognisance of a case under the SC/ST Act.

**PROCEDURAL HISTORY:** The High Court quashed and set aside entire criminal proceedings under various sections of the IPC and under Section 3 (1) (x) of the Atrocities Act. The complainant preferred an appeal before the Supreme Court.

**ISSUE:** In a case where cognizance is taken by the Magistrate and thereafter the case is committed to the Special Court, whether the entire criminal proceedings can be said to have been vitiated considering second proviso to Section 14 of the Atrocities Act?

**RULE(S):**

Proviso to Section 14 of the SC/ST (Prevention of Atrocities) Act after amendment provides for:

“For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act

**ANALYSIS:**

Second proviso to Section 14 of the Atrocities Act confers power upon the Special Court to directly take cognizance of the offences punishable under the Atrocities Act. The purpose of this power is to provide a speedy trial. Considering the object and purpose of the insertion of proviso to Section 14, it cannot be said that the proviso is in conflict with the Sections 193, 207, 209 of the CrPC. It cannot be said that it takes away jurisdiction of the Magistrate to take cognizance and thereafter to commit the case to the Special Court for trial for the offences under the Act. The wording of the proviso does not say that *only* the Special Court can take cognisance. The Courts analysed the words used in the section and state that it conspicuously omits “only”. If the intention of the legislature would have been to confer the jurisdiction to take cognizance of the offences under the SC/ST Act exclusively with the Special Court then the wording should have explained that.

The Court stated that it is advisable that the Special Court under S. 14 directly take cognizance of the offences under the Atrocities Act. But merely on the ground that cognizance of the offences under the Atrocities Act is not taken directly by the Special Court constituted under Section 14 of the Atrocities Act, the entire proceedings cannot said to have been vitiated. The argument of the respondent in this case, hence fails.

**CONCLUSION:**

The bench set aside the High Court order.

# Section 18 and 18A

## Union of India v. State of Maharashtra (2020) 4 SCC 761

(Supreme Court of India)

**FACTS:**

A 2-judge Bench of the Supreme Court in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra,* observing that provisions of the SC/STPoA were bring frequently misused issued several directions to remedy this. These were:

* Arrest of a person can only be after approval of appointing authority
* Reason for arrest must be scrutinised by Magistrate
* Preliminary investigation must be conducted by Deputy S.P. to find if case is frivolous
* There would be no bar against anticipatory bail

The Court had held that such misuse was against Art. 21. The present petition was filed for a review of said judgement.

In the present case, a 3-judge Bench of the Supreme Court, reviewed the judgment passed in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra.*

**ISSUE:**

Whether guidelines issued by the Court in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra* are contrary to the objective and provisions of SC/ST PoA?

**RULE(S):**

Section 18, SC/STPoA excludes anticipatory bail from applying on accused under the Act.

**ANALYSIS:**

The Court modified the above-mentioned guidelines noting that they were against the purpose of the legislation i.e., to prevent discrimination and improve the standing of SC/STs. If false reports are filed, the cause is not the person’s caste but the person herself. To presume that SC/ST people are prone to filing false cases is against dignity.

The Court observed that it was common for SC/STPoA cases for a police officer to conduct preliminary enquiries before filing FIRs. The Court found this to be a discriminatory practice, since it would lead to FIRs being filed by SC/ST persons to be registered only after a preliminary investigation. Whereas, a report by upper-caste has to be registered immediately and arrest can be made forthwith under the CrPC. This would be opposed to the protective discrimination for SC/STs under the PoA and Art. 15, 17 and 21. It would also be contrary to the judgment of the Supreme Court in *Lalita Kumari v. Govt. of U.P*. which had held that a preliminary enquiry is only to be made if the officer feels that a cognisable case can be made out. In case a cognisable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made.

The Court also noted that in the circumstance the Court’s past judgments have held that where a *prima facie* case could not be made out under the Act, the bar on anticipatory bail would not apply. This was seen as an adequate safeguard against the misuse of the provision. This includes delay in making the arrest and the possible arbitrariness in the grant of approval, which could be used to misuse the Act to the disadvantage of persons from the Scheduled Caste and Scheduled Tribe. It was also noted that the decision on whether a *prima facie* case was made out and arrest could be made was the responsibility of the Court and a direction on part of the appointing authority would lack a statutory basis.

All offences under the Act are cognizable. Permission of the appointing authority to arrest a public servant was found to not have been statutorily envisaged in the CrPC or the SC/ST Act. The power of sitting over an FIR in case of a cognisable and non-bailable offence is not present in either statute. The Court in the impugned judgment was overreaching into a legislative function. It would also be impractical since it would consume a lot of time, and may lead the investigation to not being complete till the arrest is made. It is not within the powers of the appointing authority to look into the specifics of the case and then decide whether an arrest is to be made. It would also frustrate the purpose of the SC/STPoA by discouraging SC/STs approaching the police.

**CONCLUSION:**

The Court recalled the guidelines issued in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra.*

## Prathvi Raj Chauhan v. Union of India and Ors. (2020) 4 SCC 727

(Supreme Court of India)

**FACTS:**

A Public Interest Litigation was filed before the Supreme Court wherein the petitioners questioned the constitutional validity of S.18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act). It was argued that this section nullifies the directions issued in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra.* Due to the invocation of Art. 21 in said judgment, the petitioners argued that such amendment was arbitrary, unjust, irrational and violative of Art. 21; that no curtailment on the right to anticipatory bail was possible.

**ISSUE:**

Whether S.18A of the act was arbitrary, unjust, irrational, and violative of Article 21 of the Constitution of India?

**RULE(S):**

* Section 18A, SC/STPoA, 1989 states that a preliminary enquiry shall not be requirement for a FIR, approval for arrest would not be needed and that irrespective of the judgment of any Court, S. 438 of the Crpc regarding anctipatory bail would not apply.
* Art. 21, Constitution of India, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

**ANALYSIS:**

The Court iterated its holding in *Union of India v. State of Maharashtra* wherein the directions issued in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra* were recalled. It also emphasised that if a *prima facie* case is not made, then anticipatory bail can be available and Section 18 and 18A would not apply. Further, that in exceptional cases, a Court can exercise its powers under S. 482 CrPC to prevent misuse.

In his concurring judgement, Justice Ravindra S. Bhat pointed out the duty of the High Court to balance the two interests when considering an application for pre-arrest bail and to ensure that the power was used sparingly to avoid converting the jurisdiction under the Act to that exercised solely under S.438, which provides for anticipatory bail in the case of general offences.

**CONCLUSION:**

The Court disposed of the petition and formally upheld the constitutionality of the 2018 amendment, which had inserted S. 18A into the Act.

# Miscellaneous

## State of Kerala v. Chandramohan (2004) 3 SCC 429

(Supreme Court of India)

**FACTS:**

The case involves a complaint made by Ramachandran against the respondent, Chandramohan, alleging that he had taken an eight-year-old girl named Elizabeth P. Kora to the classroom in the Patambi Government School, with an intent to dishonour and outrage her modesty. The complaint was filed as an FIR under S.509 of the Indian Penal Code and upon finding out that the father of the victim belonged to the Mala Aryan community, a Scheduled Tribe in the State of Kerala, the investigating officer filed another complaint under S.3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act).

**PROCEDURAL HISTORY:**

The High Court quashed the charges framed against the respondent under S.3(1)(xi) of the Act on the grounds that the victim’s family had embraced Christianity, ceasing to be members of the Scheduled Tribe. The State of Kerala preferred the appeal by way of a Special Leave Petition against the judgement.

**ISSUE:**

Whether a person continues to be a member of a scheduled tribe despite conversion to another religion?

**RULE(S):**

(i) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

* S.3(1)(xi) concerns punishment for assault against women and states the following:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

**ANALYSIS:**

A person must fulfill the condition of being a member of a Tribe and continue to be a member of the Tribe. If by reason of conversion to a different religion a long time back, he/ his ancestors have not been following the customs, rituals and other traits, which are required to be followed by the members of the Tribe and even had not been following the Customary Laws of Succession, Inheritance, Marriage etc., he may not be accepted to be a member of a Tribe. The Customary Laws of a Tribe not only govern his culture, but also succession, inheritance, marriage, worship of Gods, etc. The characteristics of different tribes despite the fact that they have been living in the same area for a long time are different. They indisputably follow different Gods. They have different cultures. Their customs are also different.

In the present case, according to the respondent, the victim's family had converted to Christianity two centuries ago. The Court emphasised the customary habits and traditions followed by the tribe and affirmed the appellant’s argument that a person does not cease to be a member of their tribe by reason of conversion. Referring to the definition of caste laid down in C.M. Arumugam v. S. Rajagopal, the conception of caste as a social combination governed by rules and regulations beyond religion was upheld by the Court. Therefore, the Court held that the law indicated that a change in the religion of a person does not mean that he ceases to be a member of a Scheduled Tribe and the question in issue was dependent on the specific facts of each case.

**CONCLUSION:**

The Court set aside the order under the appeal and remitted it to the Sessions Court, Palakkad, to proceed in accordance with the law. Therefore, the appeal was allowed.

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## Ashabai Machindra Adhagale V. State Of Maharashtra And Ors. (2009) 3 SCC 789

(Supreme Court of India)

**FACTS:**

The appellant here filed a First Information Report (FIR) under S.154 of the Code of Criminal Procedure, 1973, alleging the commission of an offence punishable under S.3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) against the respondent. After that, a petition was filed under S.482 of the Cr.P.C. by the accused in the Bombay High Court. The petition claimed that the caste of the accused was not mentioned in the FIR due to which the proceedings could not be continued and that it deserved to be quashed.

**PROCEDURAL HISTORY:**

The Bombay High Court had allowed the petition of the respondent under S.482 of the Cr.P.C. and against this, the present petition was filed by the appellant in the Supreme Court.

**ISSUE**:

Whether it is necessary to mention the caste of the accused while filing a complaint under S .3(1) of the Scheduled Caste and Scheduled Tribes (Prevention Of Atrocities) Act 1989?

**RULE(S):**

(i) The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

* S.3(1)(xi) concerns punishment for assault and states:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

(iii) The Code of Criminal Procedure, 1973:

* S.482 of the Cr.P.C. concerns the inherent powers of the High Court and states:

“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

**ANALYSIS:**

The appellant argued that the offence had been committed against her because of her caste status and the onus to prove that the accused did not belong to a higher caste lay on the accused, as a matter of evidence. It was further argued that the FIR had made indirect reference to caste by invoking S.3(1)(xi) of the Act. Nevertheless, the non-mentioning of the caste in the FIR cannot be held to be the ground to quash the proceedings as the FIR is not an encyclopedia of all the events and the basic ingredients of the offence have been clearly incorporated.

On the other hand, the respondent argued that since S.3(1)(xi) itself provides that the offence should have been committed by a person who is not a member of a Scheduled Caste or Scheduled Tribe and unless this fact is specifically mentioned, an offence cannot be made out under the provision.

The Court began by clarifying the scope of contents to be included in an FIR and relied onSuperintendent of Police and CBI v. Tapan Kumar Singh, where it was held that the FIR is not an encyclopaedia that should disclose all the facts and details related to the offence. The report only serves the purpose of disclosing the commission of a cognizable offence and the true test of validity is whether the information furnished provides a reason to suspect the commission of an offence. If it does, then the police officer must investigate the case through the power conferred upon him under S.156 of the Cr.P.C.

The Court then examined the scope of the power conferred upon the High Court under S.482 of the Cr.P.C. and the categories of cases where the High Court may exercise its inherent power. In the *State of Haryana v. Bhajanlal*, it was noted that the power of the High Court under S.482 of the Cr.P.C. is very wide and the Court must use this power in rare cases based on sound principles. It should not be used to obstruct a legitimate prosecution and the High Court should refrain from giving a prima facie decision in a case where the facts of the case are incomplete.

The Court noted the officer must investigate the case and record the caste of the accused when the investigation of the case is in the process. Even if the charge sheet has been filed, at the time of the consideration of the charge, it is open to the accused to bring to the notice of the court that he belongs to Scheduled Caste or Scheduled Tribe and that the Act cannot be applied to him because S.3 states that the perpetrator of the offence must not belong to a Scheduled Caste or Scheduled Tribe. Therefore, the Court made an observation that the question of whether the accused belongs to a Scheduled Caste or a Scheduled Tribe can be determined at the later stage of investigation and need not be mentioned in the FIR. The charges framed against the accused and the applicability of the Act can be subsequently determined by the Court hearing the matter.

With respect to the specific facts at hand, the Court applied these observations to conclude that the FIR was not capable of being quashed under S.482 of the Cr.P.C. on the grounds that the caste of the accused had not been mentioned. This question was to be determined during the stage of the investigation, based on which the Court trying the matter could frame the charges and apply the Act if the accused is not a member of a Scheduled Caste or Scheduled Tribe.

**CONCLUSION**:

The Court allowed the petition and held that there is no need to mention the caste of the accused in the FIR to make out an offence under S.3(1)(xi) of the Act. It is open to the respondent to show that he belongs to a Scheduled Caste or Scheduled Tribe during the investigation or at the time of framing of charge in order to rule out the applicability of the Act.

**Note:** The logic of Ashabai was taken to its conclusion by the Aurangabad Bench of the Bombay High Court in *Dagadu Gorakh Patil and Ors. vs. Shivaji Jethiya Walvi (Criminal Writ Petition No. 275 Of 2013)*, where it was held that the caste of the victim is not a prerequisite for filing an FIR under the Atrocities Act.

## National Campaign On Dalit Human Rights And Ors. v. Union Of India And Ors. (2017) 2 SCC 432

(Supreme Court of India)

**FACTS:**

The petitioners, who are voluntary organisations, filed a petition aggrieved by the non-implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act), and the Rules made thereunder. The petitioners prayed to the court to issue a writ of mandamus or any other appropriate writ or order directing the Central and State Governments to ensure proper implementation of the Act through the appointment of special, nodal officers, identification of atrocity-prone areas, framing of a rehabilitation package and filing of status reports on pending compensation.

**PROCEDURAL HISTORY:**

The present petition was filed by the petitioners/voluntary organisations under Article 32 of the Constitution of India before the Supreme Court.

**RULE(S):**

(iii) Rules of Procedure of National Commission for the Scheduled Castes:

* Rule 8: Refers to the setting up of Special Cells to survey the identified areas, informing of Nodal Officers and Special Officers on the law and order situation in the identified areas, making of inquiries about the investigation and spot inspections, willful negligence of various authorities, and reviewing of the position of cases registered
* Rules 9 and 10: Deal with the appointment of Nodal Officers and Special Officers
* Rule 15(1): Provides for a contingency plan for the implementation of provisions of the Act
* Rules 16 and 17: Provide for the setting up of Vigilance and Monitoring Committees to review the implementation of the provisions of the Act at the State and District level

(iv) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

* S.21(4) concerts the duty of the government to ensure effective implementation and states:

“The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.”

**ANALYSIS:**

The petitioners contended that the implementation of the Act had been ineffective based on the provisions and rules mentioned and that Dalits were still suffering from atrocities in view of the non-compliance of various provisions of the Act. This was supported by the NHRC report which observed that the police machinery in many states had been deliberately avoiding the Act even in heinous cases. The petitioners highlighted the persisting problem of non-registration of cases under appropriate provisions of the Act, delays in filing of charge-sheet, the accused not being arrested, the release of high-risk offenders on bail, and filing of false and counter cases against Dalit victims. They also complained of non-payment of compensation to the victims or their legal heirs. The petitioners showed that Scheduled Castes and Scheduled Tribes did not have access to legal aid and that the various committees contemplated by the Act were dysfunctional.

The Court acknowledged the issues brought forth by the petitioners and traced the legislative origin and purpose of the Act as being to provide adequate measures against the rising trend of atrocities committed against persons from the Scheduled Castes and Tribes. The Court observed that both the Central and the State Governments there had been a failure on part of the concerned authorities at the Central and State level in complying with the provisions of the Act and Rules. The Court thereby directed the Government and the National Commissions to strictly enforce the provisions of the Act.

**CONCLUSION:**

The Court, based on the material on record, concluded the guilt of the authorities concerned and directed them to ensure strict compliance with the provisions of the Act and the Rules thereunder. It allowed the petitioners to approach the concerned authorities and thereafter the relevant High Court for redressal of their grievances.

## State of Madhya Pradesh v. Babbu Rathore & Anr. (Criminal Appeal No(s). 123 of 2020)

(Supreme Court of India)

**FACTS:**

The deceased Baisakhu had gone to the respondent Babbu Rathore regarding unpaid money. Both were inebriated. Dead body of Baisakhu was recovered later and the post-mortem proved death was unnatural and caused by asphyxia due to strangulation. Preliminary investigation confirmed that the deceased was last seen with respondents. Respondents were charged with offences under S. 3(2)(v) of the SC/ST Act and S. 302/304, 404/34 of the IPC.

At an advanced stage of the trial, the present respondents argued that the investigation had been conducted by an officer below the rank of Deputy Superintendent. This violates Section 9 of the SC/ST Act read with Rule 7 of the SC/ST PoA Rules, 1995, which requires that an offence be investigated by an office not below the rank of Deputy Superintendent (DSP).

**PROCEDURAL HISTORY:**

The trial court held that for said violation, the investigation was without authority and accordingly, discharged the respondents from both, the offences under SC/ST PoA Act and the IPC. Appeal is directed against the judgement of the MP High Court confirming order of the trial Judge whereby respondents have been discharged from offences under Sections 302/34, 404/34 of the IPC and Section 3 (2) (v) of the SC/ST (PoA) Act, 1989.

**ISSUE:**

Can an offence under the IPC be quashed if offences complained are both under the IPC and SC/ST PoA, but investigation was conducted by a police officer not competent under the SC/ST PoA, but competent under the CrPC?

**RULE(S):**

Section 3 (2) (v) of the SC/ST (PoA) Act, 1989

Section 9 of the SC/ST (PoA) Act, 1989 provides powers to an “officer” all powers exercisable by a police officer.

Rule 7 of the SC/ST (PoA) Rules, 1995 defines an Investigating Officer as an officer not below the rank of Deputy Superintendent.

**ANALYSIS:**

The Court held that it is settled law that the provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the CrPC when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained against are both under the IPC and the SC/ST (PoA) Act, the investigation which is being made by a competent police officer in accordance with the provisions of the CrPC cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. The proceedings would proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the chargesheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.

In this case, the accused was charged for offences under Section 302/34, 404/34 of the IPC and Section 3 (2) (v) of the SC/ST Act. On the ground that the investigation has been conducted by an officer below the rank of DSP, the HC had quashed the criminal proceedings in respect of offences under both SC/ST Act and IPC.

The Supreme Court agreed with the HC observation to the extent that an officer below that rank cannot act as investigating officer in holding investigation in reference to the offences committed under any provisions of the SC/ST Act. But the offences under IPC shall continue to be governed by the CrPC and a chargesheet under CrPC deserves to proceed.

**CONCLUSION:**

The court held that the High Court erred and that the impugned order was restricted to S. 3 of SC/STPOA. The Trial court was directed to proceed and conclude the trial under IPC.