

**ALL ABOUT SC/ST PREVENTION OF ATROCITIES ACT***By***—K. RAMAKANTH REDDY, Advocate  
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The SC/ST Prevention of Atrocities Act is a legislation made by our Legislature in an attempt to protect them from all sorts of atrocities, suppression and discrimination against the many atrocities have been committed against them since time immemorial.

This legislation can aptly be called as an attempt towards protection of SC/STs as they are still facing the atrocities and discrimination. This Act has been in the talk of the town for all the wrong reasons. Various debates and discussions held before the Supreme Court for its misuse against the innocent persons. As interpreted by the apex Court, this legislation is being used to take vengeance wrongly to satisfy one's vested interest. This Article analyses the recent issue before the Hon'ble Supreme Court and its ruling which has led to so much debate.

There are various crimes/atrocities happen against the SC/ST which has now and then disturbed the law and order and led up to registration of cases under IPC/CrPC rather than the Prevention of Atrocities Act. Many atrocities happen where at the receiving end SC/STs are targeted.

For example, Cow vigilantism is one such atrocity where some Dalit people who are engaged in leather making from the skin of cows are targeted because of their profession/business. The other atrocity happens in the name of Honour Killing where inter-caste marriage has been considered as Taboo for the society. In such crime, the SC/STs are most affected.

Even though the Supreme Court has observed in *Lata Singh v. the State of UP and*

*another*, MANU/SC/2960/2006, that to eradicate the cast system, it is in national interest that inter-caste marriage should be promoted. Honour Killings has also been considered as the "rarest of rare" crime which deserve punishment as death penalty<sup>1</sup>.

The dalits has also been subjected to Social boycott where there are seen as the marginalized group of the society and people tend to ostracize them. Against these kinds of activities and stigma attached to the SC/ST we strongly need an anti-discrimination law in line of the civil rights provided in US-UK.

Though, Government has taken many initiatives on its part to prevent these atrocities against them particularly under the purview of Article 17 of the Constitution of India. In this regard, the most vital is the Prevention of Atrocities Act which is a positive measure taken by the Government but today its implementation has been a big hurdle on its way.

Our Constitution also prescribes various provisions which are stringent and ask for taking serious actions against such atrocities. For example, Untouchability is totally abolished in India<sup>2</sup>. It doesn't only prohibit the physical contact but in a wider aspect all the social sanctions occur against the dalits. SC/STs are also protected from all the social injustice and promote their economic interest.<sup>3</sup>

Article 338 also puts duty on the Government to form the National

1. *Bhagwan Dass Jagdish Chander v. Delhi Administration*, MANU/SC/0092/1975.

2. Article 17 of the Indian Constitution.

3. Article 46 of the Indian Constitution.

Commission for Scheduled Castes whose function is to investigate as well as monitor all the matters which provides legal and constitutional safeguards to the SCs. It also inquires into the specific complaints if there is any deprivation of constitutional or legal rights of the SCs<sup>4</sup>. Article 338-A on the same way prescribes setting up of National Commission for Scheduled Tribes whose function is same as prescribe in Article 338.

In our Constitution, schedules list the castes as well as tribes which are recognized to provide special treatment as they have been subjected to huge discrimination. During the colonial times, these categories were added up in the Government of India Act, 1935 and still continued after the independence. Due to these, many policies made to safeguard the interest of SC/ST, the SC and ST Prevention of Atrocities Act, 1989 and its Rules, 1995 was enacted, to abolish Untouchability (Offences) Act, 1955 enacted. The loopholes in these two acts lead to enactment of Protection Civil Rights Act, 1976.

However, still the provisions in the existing laws are inadequate to eradicate the atrocities against the SC/STs. Be it the IPC or the Civil Rights Act, it has failed to fully check the atrocities against them.

The SC/ST prevention of Atrocities Act, 1989 has prescribed various provisions which has created new kind of offences not as prescribed in the IPC or the Civil Rights Act. It states that atrocities can only be committed by the people belonging to non-SCs and non-STs and any crime by the SC/STs against them would be term as the Atrocity under this Act.

It defines many kinds of the atrocities with the stringent penalties and punishment. It has enhanced the punishment for the public servants and for any neglect of their duties<sup>5</sup>.

Most stringent provision in this Act is the denial of Section 438 of CrPC *i.e.*, anticipatory bail to the accused.<sup>6</sup> It also denies giving probation to the convict<sup>7</sup>. It provides relief and compensation for the atrocious acts to the victim. To implement the provisions, special authorities are established to monitor the Act. It mandates to establish special Courts and public Prosecutor as well as mandatory monitoring on periodical basis at all levels.

Even with such stringent provisions, its implementation is a major setback as we political will is lacking in completely removing the injustices they have faced since time immemorial. Amendment was made in 2015 which has amended the existing categories of offences and added new ones.

In case of sexual exploitation against the SC/ST women, it defines that any act, word or touch which is sexual nature without her consent is termed as sexual exploitation. Now, new offences has been added like—

- (i) Compelling them to carry or dispose human or animal etc.
- (ii) Abuse on their caste in public.
- (iii) Disrespecting or promoting ill-will against them.
- (iv) Garlanding them with footwear.
- (v) Social or economic boycott and threatening.

Many offences has also been added which States that any sort of prevention to SC/STs like—

- (i) Using common resources.
- (ii) Entering publicly open worship place.

4. Article 338 of the Indian Constitution.

5. Section 4 of the SC/ST Prevention of Atrocities Act, 1989.

6. Section 18 of the SC/ST Prevention of Atrocities Act, 1989.

7. Section 19 of the SC/ST Prevention of Atrocities Act, 1989.

- (iii) Entering any health or educational institution.

It also draws presumption that if the accused know about the family of the victim that means it will be presumed that the accused already know the caste or tribe of the victim unless contrary proved.

Further, it specifies about the duties entrusted on the public servants. Earlier, a Court at the district level would be deemed to be special Court but now it specifically provides for the setting up an exclusive Court which would be a special Court for which an exclusive Public Prosecutor at the district level will be appointed. It puts a limitation period on the disposal of cases which is 2 months. It gives duty to the State authorities to protect the victims and the witnesses from any threat or hostility.

In the *Subhash Kashinath Mahajan v. The State of Maharashtra*, MANU/SC/0275/2018, the Supreme Court has observed that many of the provisions of the Atrocities Act has been misused and needs serious check from the authorities against any such misuse.

Supreme Court opined that SC/ST Prevention of Atrocities Act (PoA Act) is being misused and checks are needed to prevent such misuse. It has become a mechanism to take vengeance from innocent people in the name of atrocities. It has targeted more on the public servants for their own political gains.

The apex Court has provided many guidelines for legitimate use of the provisions-

- (i) An inquiry like Preliminary is required at DSP level to check the authenticity before any registration of the FIR.
- (ii) Anticipatory bail can be granted to the person until a case is not *prima facie* made out against that person.

- (iii) No registration of FIR against the public servant without taking approval from its appointing authority.

Supreme Court further opined that this Act should be interpreted in such manner that casteism should not be promoted in any manner. The Atrocities Act should be implemented on the basis that inequality should not prevail for any one, be it the SC/STs or the person against whom FIR is lodged.

If we critically analyze the decision of *Subhash Kashinath Mahajan's* case (supra), it was debated that this decision has without taking into account the realities of the social and cultural caste atrocities has passed this judgment. It has relied upon various High Court judgments and equated the very high probability of acquittals because of many false cases. But false cases is not the only reason for high rate of acquittals, due to various discrimination, prejudices, intimidation of witnesses, victims and other reasons lead to acquittals.

In the *Kartar Singh v. State of Haryana*, MANU/SC/0108/1978, the Supreme Court has upheld the constitutional validity of anticipatory bail stating that it can be excluded as it comes under statutory right and not a fundamental right deriving its validity from the Right to life under Article 21 of Constitution of India. The Act specifically denies the anticipatory bail to the accused<sup>8</sup>.

The apex Court has given more preference to the principle of personal liberty of a person and providing opportunity to prove its innocence until proven guilty. The Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh*, MANU/SC/1166/2013, has directed the police authorities to promptly register the FIR in every circumstance and Section 154 of CrPC is a mandatory

8. Section 18 of the Constitution of India.

provision where any information discloses the commission of the cognizable offence, registering FIR is mandatory. Preliminary Enquiry is not required in such situation; direct registration of the FIR is the rule. However, in this Mahajan matter on Prevention of Atrocities Act, the Supreme Court ignores this principle laid down in the *Lalita Kumari's* case (supra).

It can be said that these preliminary enquiry before registration of FIR may cause uncalled delay especially in village areas where quick and secure investigation requires time which can lead to victims and witnesses being intimidated.

In *Rajesh Sharma v. the State of Uttar Pradesh*, MANU/UP/3069, the Supreme Court has already confined the power of the Supreme Court when the misuse of the Section 498-A was in question taking into account its anti-dowry aspect. The Hon'ble Supreme Court held that the Courts should not rewrite the law when it is already crystal clear. Its only duty is to interpret the law when it is ambiguous or needs clarification if silent on some aspects.

But we also cannot deny the fact that many bogus and illegitimate false cases have been filed against the public servant for one's own political and personal gain. This aspect needs to be addressed to safeguard an innocent accused falsely foisted in a case. This has also been highlighted by the report of Parliament's Standing Committee where it was recommended to make an inbuilt provision in Atrocities Act to protect the innocent from the false cases.

This recent judgment of *Mahajan's* case (supra), has been protested by many and Review petition has been filed against this

decision. The protest by Dalits and Tribals has taken an ugly turn as widespread violence has been contributed which led to taking lives of many. Against this judgment, the center has initiated the review petition but the Supreme Court is adamantly against the automatic arrest of any accused without any preliminary enquiry for any complaint filed under the SC/ST atrocities Act.

The real issue still not solved even after so much uproar and violence leading to loss of lives. The political parties are now taking advantage of this situation by playing their caste card.

Still, we can say that Prevention of Atrocities Act has marked a major change to protect the Dalits and tribals from oppressive atrocities in the hands of the upper caste. It is really a need of the hour which calls for proper implementation to strengthen this transformative piece of legislation. However, it should also safeguard the rights of an innocent from the falsely foisted cases. These two aspects can only be cleared by a thorough debate between all the stakeholders concerned with this issue.

The Hon'ble Supreme Court's judgment of *Subhash Kashinath Mahajan v. State of Maharashtra* (supra), should be taken as a golden opportunity to analyze this matter in different angle/dimension instead of incapacitating the whole act. At the end, we can say that it still comes down to our mindset and society's action as a whole to bring new changes of eradicating casteism in the society. This legislation is just an instrument/mechanism to protect the dalits and tribals and not an end. Legislation alone cannot do full social justice, the change has to come within the society itself and changing out perspective/practice towards the SC/STs.