

A Study about SC & ST Prevention of Atrocities Act

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Abstract – The SC and ST (Prevention of Atrocities) Act, 1989 was formed to prevent offences against the members of the Scheduled Castes and Scheduled Tribes group. It further aims to provide for Special Courts to try people caught in such offences and also to provide relief to the victims of such offences and for matters related to it.

Keywords - SC/ST Prevention of Atrocities Act, Indian Constitution, State Action.

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INTRODUCTION

The significance of the present study is that 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989' which was enacted to prevent atrocities against Scheduled Castes and Scheduled Tribes brought a new vision to Indian Judiciary[1]. The age old Indian Penal Code deals only with crimes and punishments. But the Act, not only deals with punishments for atrocities, but also prescribes comprehensive measures for protection, welfare and rehabilitation of the victims of the atrocities. For the effective implementation of the Act, the government has set up different administrative agencies, right from State level to district levels. They are the establishment of Vigilance and Monitoring Committees, Special Courts, Special Public Prosecutors etc. The government servants are made responsible, if they fail to perform their official duties under this Act. Government Officers are also liable for penal punishment under this Act if they fail to perform their duties assigned to them under this Act. The Governments, more particularly the Central Government are allocating financial resources for implementation of the Act.

Twenty years have passed since the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought by the Government of India. Although the Act aimed to provide protection and eliminate atrocities against the members of the Scheduled Castes and Scheduled Tribes, there has been no mitigation with annual average of Crimes registered against Scheduled Castes and Scheduled Tribes standing at 33,596 and daily average being 93. Despite the Prevention of Atrocities Act being a premier Legislation to protect the security of life for Scheduled Caste and Scheduled Tribe, from 1995 to 2007 less than one - third (30.7%) of Crimes against Scheduled Castes and Scheduled Tribes across

India were registered under the provisions of Prevention of Atrocities Act. Incidentally, there has also been an alarming increase of violence against Dalit women. A study of 500 Dalit women's cases of violence across Andhra Pradesh, Bihar, Tamil Nadu and Uttar Pradesh between 1999 and 2005 revealed that the majority of the women faced several forms of violence from either or both perpetrators in general community and the family. The most frequent forms of violence were verbal abuse (62.4%), physical assault (54.8%), sexual harassment and assault (46.8%), domestic violence (43.0%) and rape (23.2%). According to the National Crime Record Bureau (NCRB) there has been 4,41,424 registered Crimes against Scheduled Castes and Scheduled Tribes during 1995-2007. The breakdown of Crimes include 9,595 cases of murder, 61,168 cases of hurt or grievous hurt, 20,865 cases of rape, 4,699 cases of arson, 4,484 cases of kidnapping and 10,512 cases of 'Untouchability' practices[2]. A large number of cases have been closed by the police for various regions. As per National Crime Record Bureau, police closed a large 21.7% of cases under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, during 1997-2007. Apparently, out of 1,76,397 pending cases, investigation has been performed only on 1,34,534 cases. And out of this, only 97,341 cases the charge sheet has been submitted. Adequate protection and rehabilitation has not been provided to the victims of the atrocities. Victims are being denied the justice enshrined in the Act. Every year official reports and statistics, revealed that there is a constant increase in atrocities against Dalits[3]. The low rate of conviction in atrocity cases and the release of offenders from the cases causing terror among the victims of atrocities. In order to protect the interests of the Scheduled Castes and Scheduled Tribes and to prevent atrocities against

them there is a need to study the provisions of the Act and strengthen the provisions of the Act for the effective implementation of the Act. Now, it is right time to promote a progressive Act like 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by amending from some of the provisions of the Act.

SC/ST Prevention of Atrocities Act (POA Act 1989)

- Article 17 seeks to abolish 'untouchability'
- Untouchability (Offences) Act 1955 was enacted
- The lacuna in the above act lead to the passing of Protection of Civil Rights Act 1976 normal provisions of the existing laws: Protection of Civil Rights Act, Indian Penal Code, were inadequate to check many dimensions of atrocities meted to SC/ST. This lead to Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Rules, 1995.

The Scheduled Castes and Tribes (Prevention of Atrocities) Act is known as POA, SC/ST Act, the Prevention of Atrocities Act, or the Atrocities Act.

- The provisions of SC/ST Act can be divided into three categories:-
- provisions of criminal law.
- Creation of new types of offences not in the Indian Penal Code (IPC) or in the Protection of Civil Rights Act 1955 (PCRA).
- Atrocities can be committed only by non-SCs and non-STs on members of the SC or ST communities. Crimes among SCs and STs or between STs and SCs do not come under the purview of this Act.
- Defines various types of atrocities against SCs/STs and prescribes stringent punishments for the same.
- Enhanced minimum punishment for public servants.
- Punishment for neglect of duties by a public servant(Section 4)
- Cancellation of arms licenses in the areas identified where an atrocity may take place or has taken place and grant arms licenses to SCs and STs
- Denial of anticipatory bail (Section 18) provided in Section 438 of the CrPC

- Denial of probation to convict (Section 19).
- provisions for relief and compensation for victims
- provisions that establish special authorities for the implementation and monitoring of the Act.
- Creation of Special Courts and special public prosecutor
- Mandatory, periodic monitoring system at District, State and National level
- Identification of atrocity prone areas

NHRC report on the SC/ST Prevention of Atrocities Act

The indifference of society, lopsided implementation of the SC/ST (Prevention of Atrocities) Act 1989, lack of political will in removing the historical injustices faced by this section of society has been detrimental to them[4].

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

- Amends existing categories and adds new categories of actions to be treated as offences.
- Offences in case of sexual exploiting of SC or ST woman: (i) Using acts, words or gestures of a sexual nature against SC/ST woman. (ii) Touching an SC/ST woman intentionally in a sexual manner without her consent (iii) Practice of dedicating an SC/ST women as a devadasi to a temple...
- New offences: (a) garlanding with footwear, (b) compelling to dispose or carry human or animal carcasses, or do manual scavenging, (c) abusing SCs or STs by caste name in public, (d) attempting to promote feelings of ill-will against SCs or STs or disrespecting any deceased person held in high esteem, and (e) imposing or threatening a social or economic boycott.
- Preventing SCs or STs from undertaking the following activities will be considered an offence: (a) using common property resources, (c) entering any place of worship that is open to the public, and (d) entering an education or health institution

Presumption to the offences: If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the

caste or tribal identity of the victim unless proved otherwise.

- The act specifies the duties of public servants
- Under the earlier Act, a court of Session at the district level is deemed a Special Court
- Amendment specifies that an Exclusive Special Court and exclusive Special Public Prosecutor must be provided at the district level
- Special courts must be established where offences are less in number
- cases should be disposed of within two months
- Adds a chapter on the rights of victims and witness.
- The duty of the state to make arrangements for the protection of victims, their, and witnesses.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018 was introduced in Lok Sabha by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot, on August 3, 2018. It seeks to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Act prohibits the commission of offences against members of the Scheduled Castes and Scheduled Tribes and establishes special courts for the trial of such offences and the rehabilitation of victims[5].

- In 2018, the Supreme Court stated that for persons accused of committing an offence under the Act, approval of the Senior Superintendent of Police will be required before an arrest is made. Further, the Deputy Superintendent of Police may conduct a preliminary enquiry to find out whether there is a prima facie case under the Act.
- The Bill states that the investigating officer will not require the approval of any authority for the arrest of an accused. Further, it provides that a preliminary enquiry will not be required for the registration of a First Information Report against a person accused under the Act.
- The Act states that persons accused of committing an offence under the Act cannot apply for anticipatory bail. The Bill seeks to

clarify that this provision will apply despite any judgements or orders of a court that provide otherwise.

Examples of Atrocities in Independent India

- Kizhavanmani, Tamil Nadu (1958) in which 44 SCs were burnt to death in a confined building because SC agricultural labourers sought a little raise in their very low wages. The high court acquitted all the accused.
- Karamchedu, Andhra Pradesh, 1984: Five SCs were massacred. The trial court convicted many of the accused. The high court acquitted all. The Supreme Court upheld the trial court judgment – a clear example that acquittals do not mean false cases.
- Tsundur, Andhra Pradesh, 1991: Eight SCs were massacred. The trial court convicted the accused in 2007. The high court acquitted them in 2014. The Supreme Court has admitted a special leave petition (SLP) of the surviving victims and survivors of victims.
- Six cases of Bihar including the Bathani Tola (1996) and Laxmanpur Bathe (1997). In most of these, the trial court convicted the accused. In all of these, the high court acquitted the accused. Appeals are pending in the Supreme Court.
- Kambalapalli, Karnataka. The prime witness in this case, who is the sole survivor and head of the family whose other members were massacred, turned —hostile due to a threat of life, resulting in the acquittal of all the accused.

Resistance from Dalits against atrocities against them

- One notable change during present times is the resistance cropping from among the Dalits itself rather than being passive recipients of atrocities as in earlier times. Bhim army is one such example.
- Also, many youth leaders from the community are cropping up, inspired by and reinventing Ambedkar, since the 1990s. Jignesh Mevani is an example.
- As the community is exerting their independence and resisting against injustices, PoA act is the main tool in their arsenal. But judicial observation in Kashinath Mahajan case may prove detrimental in this respect by impinging a

final nail in the coffin of the act, which was always accused of being misused since its inception.

Government actions against atrocities

Indian Constitution, Indian Parliament, and various state legislatures have stringent provisions against atrocities targeting SCs or STs.

Indian Constitution

- Article 17 seeks to abolish 'untouchability'- The institution of 'untouchability' refers not just to the avoidance or prohibition of physical contact but to a much broader set of social sanctions.
- Article 46 – promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
- Article 338 – National Commission for Scheduled Castes Its functions include among others: investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working; inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;
- 338-A – National Commission for Scheduled Tribes
- Its functions are same as that of NCSC, but with respect to ST than SC

State Actions

- Schedules listing the castes and tribes recognized as deserving of special treatment because of the massive discrimination practised against them. This was drawn up in colonial times as 1935 act introduced Scheduled caste and Scheduled tribe categories .After Independence, the same policies have been continued and many new ones added.
- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Rules, 1995
- Thoratt committee 2007 – first ever committee constituted to study caste discrimination in higher education sector. HRD ministry fails to implement Thorat committee recommendations.

Sexual Violence on Dalit Women

Rape, murder, and maiming of dalit women by upper caste men, as retaliation for aspirations of the community for economic and social progress, still continues in the villages and towns of independent India. Lower caste women are raped as part of caste customs and village traditions and are forced to have sex with upper caste landlords and the police. Rape is often used as a form of retaliation to suppress movements demanding payment of minimum wages. These are not isolated incidents but routine occurrences. One hears of several such examples of maintaining the social hierarchy of gendered citizenship. For instance, during the period of 1,300 days from Dec 7, 2003 to June 30, 2007, 1,217 gang rapes were reported in the Madhya Pradesh as per the State Assembly records. Out of these, 362 cases were of women from scheduled castes, 310 were of women from scheduled tribes, and 381 were of women from other backward castes.

Recent Protests and the Review Petition against the Supreme Court Judgement

- There was a national strike by Dalits against the judgment which turned violent leading to loss of lives. The Center has given review petition against the judgment. However, the Supreme Court has refused to keep in abeyance its earlier order preventing automatic arrests on complaints filed under the SC/ST Act.
- Political parties started blame-game and grandstanding, to make mileage out of the issue for 2019 elections. But amidst all this cacophony, the real issue should not be crowded out.
- PoA act is a transformative act and a 'Brahmastra' in the arsenal of hapless Dalits to fight their historically asymmetrical war of subjugation. It should be strengthened through proper implementation. But safeguards should also be inserted to protect innocents from being falsely persecuted. This could happen only through debates between all stakeholders.
- Subhash Kashinath Mahajan vs The State of Maharashtra judgment should be used as an opportunity to look into this dimension rather than weakening the act. But the most important thing for ending discrimination and improving fraternity is a persistent societal action to change the entrenched caste rigidity. SC/ST Prevention of Atrocities Act (PoA act) as a tool in this endeavour rather than an end in itself.

- Though independent Indian state has introduced many measures to curb the atrocities and usher in socio-economic justice, the results are often not satisfactory. Legislations have been passed repeatedly on this subject is proof of the fact that the law alone cannot end this social practice.
- By socio-cultural upliftment of SC/ST through their meaningful integration into society, by giving adequate capacity building opportunities through education, employment etc. must be the end of this struggle.

LITERATURE REVIEW

Jyothi Guntaka (2014) et. al. In view of the increasing violence against the downtrodden people in India, the Government of India has enacted one Act to prevent against the weaker section people in the country in 1989. In India, the weaker section people are known as Scheduled Castes and Scheduled Tribes. Since the existence of the caste system in the country, the Scheduled Caste and Scheduled Tribe population are vulnerable and are untouchable. Therefore, the government of India has promulgated the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (POA) Act in 1989 to prevent atrocities against these people. Even after two decades since the enactment of the Act, the condition of these people remains unchanged. Against this background, the present study aims at exploring the reasons for such pathetic conditions of the weaker sections in spite of the POA Act. The study also discusses whether it is boon or bane to these weaker section people. The study is based on primary data collected from 300 sample respondents, who are selected randomly, using interview schedule. The sample respondents are those who are the victims of the atrocities and approached the courts under the POA Act. The study is carried out in Andhra Pradesh of India. The study finds that most of the weaker section people in the study area are illiterates. They depend upon daily wages. They report that approaching the courts causes in losing of their earning days. As a result, they are leaving the cases in the middle. Further, the dominated castes people influence in each and every stage of the case. No one is standing besides the victims to fight against the atrocities. Therefore, most of the respondents felt it as the bane rather than boon in view of losing of income and further deterioration of their economic condition.

It is suggested that special courts should be established for speedy trials in case of atrocities against scheduled castes and scheduled tribes. Further, these courts should be directed to take up certain cases as suo moto as the study finds that most of the scheduled castes population due to their illiteracy and unawareness are either unable to approach the courts or unable to stand till the

completion of the court proceedings. Further, it is suggested that serious offences such as rapes and murder against the weaker sections be dealt with the help of the National SC and ST Commissions and NGOs. The government should launch rigorous awareness programmes to educate the weaker section people about their entitlements through the POA Act.

Dr. Neha Bhartiya (2018) et al. Indian society is a highly caste ridden society. The stratification of the society here is rigid and hereditary in character. Caste system orders the different castes into a hierarchy that is 'inflicted by birth, sanctified by religion and glorified by tradition', and because this hierarchy is an institutionalized part of Indian society. Some groups often referred to as untouchables or Dalits, their preferred name, lie at the very bottom of the theoretical social hierarchy and have long suffered from social stigma. Because Dalits are theoretically ritually impure, they also have traditionally been ostracised. In order to make up for this longstanding deprivation, the Constitution of India enshrined the duty of the state 'to promote with special care the educational and economic interest of the weaker section of the people and, in particular, of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation'. The groups referred to as 'Scheduled Castes' (SC) or 'Scheduled Tribes' (ST) encompass both the former untouchables and the tribal populations, who although not equivalent to untouchables have also suffered from a similar kind of stigma and ostracism. SC/ST (Prevention of Atrocities) Act, 1989 is devised to deliver social justice to marginalized section. Recently the Supreme Court expressed concern over misuse of the Act and ruled against automatic arrest of the booking of accused under the law. Though the act aimed at protection of the dalits from further discrimination, recent data shows that there are number of fake cases registered based on revenge. The present article aims at exploring the current relevance and usefulness of the act and whether it has achieved the desired goal for which it was envisaged.

Smriti Sharma (2013) et al. Crimes against the historically marginalized Scheduled Castes and Scheduled Tribes (SC/ST) by the upper castes in India represent an extreme form of prejudice and discrimination. In this paper, we investigate the effect of changes in relative material standards of living between the SC/STs and upper castes - as measured by the ratio of consumption expenditures of SC/STs to that of upper castes - on changes in the incidence of crimes against SC/STs. Based on the hierarchical social structure implied by the caste system, we posit that an improvement in the economic position of lower castes relative to the upper castes is positively correlated with the incidence of crimes committed by the upper castes against the lower castes. Using official district level crime data for the period 2001-10, we find a

positive association between crimes and expenditure of SC/ST vis-à-vis the upper castes such that a widening of the economic gap between groups is associated with a decrease in caste-based crimes. Moreover, this effect is driven by changes in the upper castes' economic well-being rather than changes in the economic position of the lower castes and tribes.

Nitish Nawsagaray (2018) et. al. The Supreme Court in Subhash Kashinath Mahajan v State of Maharashtra has toned down the effectiveness of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 based on incorrect facts and faulty logic. The Court has made the filing of first information reports and arrest of the accused impossible in cases of caste atrocities while simultaneously providing no remedy to members of the SCs/STs against caste discrimination and violence. The Supreme Court judgment may unwittingly turn out to be a licence for upper-caste culprits to violate the law with impunity.

Madhusmita Choudhury (2017) et al. Rajasthan reported the highest rate of crime (52.9) against Scheduled Castes as compared to the national average of 19.6 whereas Kerala reported the highest rate of crime against Scheduled Tribes (27.8) as compared to the national average of 6.5. •Atrocity means a wicked or cruel act involving physical violence. [1]Atrocity is "an expression commonly used to refer to crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) in India". It "denotes the quality of being shockingly cruel and inhumane, whereas the term 'crime' relates to an act punishable by law". It implies "any offence under the Indian Penal Code (IPC) committed against SCs by non-SC persons, or against STs by non-ST persons. Total Crime against Scheduled Castes includes: Murder, Rape, Kidnapping and Abduction, Dacoit, Robbery, Arson, Hurt, Protection of Civil Rights Act, SC/ST (Prevention of atrocities) Act and Other Crimes Committed Against Scheduled Castes. [2] Caste consideration as a motive is not necessary to make such an offence in case of atrocity". It signifies "crimes which have ingredients of infliction of suffering in one form or the other that should be included for reporting". This is based on the assumption that "where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes caste considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime [3] Crime against Scheduled Castes has increased in 2012 to 2013. In 2012 the 33,655 incidence has registered which has increased to 39,408 during 2013, which grows 2.9%. Crime against Scheduled Tribes has also increased in 2012 to 2013. In 2012 the 5,922 incidence has registered which has increased to 6,793 during 2013, which grows 0.8%. Uttar Pradesh reported 18.0% (7,078 out of 39,408 cases), followed by Bihar (17.1%) and Tamil Nadu (16.4%) of total crimes

against Scheduled Castes whereas Rajasthan reported 24.3% of total (1,651 out of 6,793) crimes against Scheduled Tribes followed by Madhya Pradesh 19.1% and Odisha 11.6% in the 4 country during the year 2013.

CONCLUSION

To conclude this article, the atrocities must be done in public view. The SC/ST Act is to provide protection to the members of the Scheduled Castes and Scheduled Tribes and to provide for Special Court and speedy trial of the offences. Dalits (SC) and Tribals (ST) are the most marginalized sections of Indian society. Many atrocities have been committed against them since time immemorial. The SC/ST Prevention of Atrocities Act protects them against discrimination and atrocities.

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