



SC/ST (PREVENTION OF ATROCITIES) ACT 1989: TOOL FOR SOCIAL JUSTICE OR WEAPON OF VENGEANCE

***Dr. Neha Bhartiya**

Assistant Professor, Amity Law School, Amity University, Jaipur

ARTICLE INFO

Article History:

Received 27th February, 2018
Received in revised form
10th March, 2018
Accepted 09th April, 2018
Published online 31st May, 2018

Key Words:

Dalits, SC/ST Act,
Social Justice,
Caste Discrimination.

ABSTRACT

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.

Copyright © 2018, **Neha Bhartiya**. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Dr. Neha Bhartiya, 2018. "SC/ST (Prevention of Atrocities) Act 1989: Tool for Social Justice or Weapon of Vengeance", *International Journal of Development Research*, 8, (05), 20633-20635.

INTRODUCTION

Dalit dilemma in India reads like an entire data sheet of tragedies. According to a 2010 report by the National Human Rights Commission (NHRC) on the Prevention of Atrocities against Scheduled Castes, a crime is committed against a Dalit every 18 minutes. Every day, on average, three Dalit women are raped, two Dalits murdered, and two Dalit houses burnt. According to the NHRC statistics put together by K.B. Saxena, a former additional chief secretary of Bihar, 37 per cent Dalits live below the poverty line, 54 per cent are undernourished, 83 per 1,000 children born in a Dalit household die before their first birthday, 12 per cent before their fifth birthday, and 45 per cent remain illiterate.

***Corresponding author: Dr. Neha Bhartiya,**
Assistant Professor, Amity Law School, Amity University, Jaipur.

The data also shows that Dalits are prevented from entering the police station in 28 per cent of Indian villages. Dalit children have been made to sit separately while eating in 39 per cent government schools. Dalits do not get mail delivered to their homes in 24 per cent of villages. And they are denied access to water sources in 48 per cent of our villages because untouchability remains a stark reality even though it was abolished in 1955. We may be a democratic republic, but justice, equality, liberty and fraternity—the four basic tenets promised in the Preamble of our Constitution—are clearly not available to all. Dalits continue to be oppressed and discriminated against in villages, in educational institutions, in the job market, and on the political battlefield, leaving them with little respite in any sphere or at any juncture of their lives. All this even while there has been no dearth of political rhetoric, or creation of laws, to pronounce that Dalits must not get a raw deal.

The Protection of Civil Rights Act, 1955, and the SC/ST (Prevention of Atrocities) Act, 1989, prescribe punishments from crimes against Dalits that are much more stringent than corresponding offences under the IPC. Special courts have been established in major states for speedy trial of cases registered exclusively under these Acts. In 2006, former Prime Minister Manmohan Singh even equated the practice of "untouchability" to that of "apartheid" and racial segregation in South Africa. In December 2015, the SC and ST (Prevention of Atrocities) Amendment Bill, passed by Parliament, made several critical changes. New activities were added to the list of offences. Among them were preventing SCs/STs from using common property resources, from entering any places of public worship, and from entering an education or health institution. In case of any violation, the new law said that the courts would presume unless proved otherwise that the accused non-SC/ST person was aware of the caste or tribal identity of the victim.

Context and background: There is a widespread resentment in the Dalit community regarding the recent judgment of the Supreme Court related to SC/ST Prevention of atrocities act. The court has adjudicated that arrest on the basis of first report is unjustified. The center has moved a petition in court to rethink its judgment but the court upholding its decision asserts that it has not even touched the SC/ST Act and the judgment only tries to protect the innocent and maintained the balance. On the other hand the dalit community has taken this judgment as detrimental to the protection of the interest of the already marginalised sector of the society as it will result into increased crime against the dalits. Delivering its verdict in the case of Dr. Subhash Kashinath Mahajan vs. Maharashtra Government, Bombay High Court order refuse to quash the First Information Report (FIR) for his adverse remarks against a scheduled caste employee, the top court said the accused would not be arrested automatically based on the FIR. "There is need to safeguard innocent citizens against false implication and unnecessary arrest," said a bench of Justices AK Goel and UU Lalit as they lay down that arrest is not at all mandatory in cases under the SC/ST Act. For a public servant, the court said, permission of the appointing authority will be a must to make arrest whereas for others, written permission of the Senior Superintendent of Police or DSP will be necessary.

The court said it has been judicially acknowledged that there are instances of abuse of the law by vested interests against political opponents in Panchayat, municipal or other elections, to settle private civil disputes over property, money, employment and seniority. "Innocent citizens are termed as accused, which is not intended by the legislature, which never intended to use the Atrocities Act as an instrument to blackmail or to wreak personal vengeance," the court said. The law should promote constitutional values of fraternity and integration of the society and not result in perpetuating casteism which would have an adverse impact on integration of society and constitutional values, the bench said. Noting that harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution and that the court must enforce such a guarantee, the bench made it mandatory for the police to conduct a preliminary investigation, not exceeding a week, to arrive at a decision whether an FIR deserves to be registered under the parameters of the law. The Court also said that, a mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as

enough to deprive a person of his liberty without an independent scrutiny.

One has to understand the judgment made by the court in the light of following points

- The court has only limited the power of the police to arrest; it has not limited the Act by any means.
- The provisions for compensation are as it is as mentioned in the Act.
- The power to arrest is derived from the IPC, not from the act. The court has defined the procedural law not the SC/ST Act in itself.
- The court has expressed his concern over arrest of innocent Individuals who are already in the jails.

SC/ST Act: Tool for Social Justice: The SC/ST (Prevention of Atrocities) Act 1989 is devised to check the proclial nature of Indian Society and free it from Superstion and illogical tendencies. to protect the interest of the dalits in society primarily the Untouchability (Offences) Act, 1955 was envisaged but due to its various shortcomings and weakness the government has to underwent a change and enacted Protection of Civil Right Act. 1976. Under this *Act*, 'untouchability' as a result of religious and social disabilities was made punishable. Despite several measures to improve the socio-economic status of Scheduled Castes and Scheduled Tribes, their situation remained miserable. They are being humiliated and oppressed. Whenever he wanted to use his rights against untouchability, the incidents of suppressing and terrorizing him were revealed. Special courts constituted to prevent the persecution of Scheduled Castes and Scheduled Tribes and take action against the guilty, it was considered necessary. Providing relief and rehabilitation to the victims of harassment was a major challenge. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was made under Article 17 in this background. The clear objective of this act was to bring justice to the Scheduled Castes and Scheduled Tribes communities with active efforts so that they could live in dignity in the society. This Act has made its provisions more rigid by amending 2015. Currently it has five chapters and 23 streams.

New crimes against Scheduled Castes and Scheduled Tribes include the following

- Garlanding any SCs and STs with foot wears.
- Compelling to do manual scavenging or dispose carry animal or human carcasses.
- Abusing SCs/STs in in public by caste name
- Disrespecting any deceased SCs/STs person held in high esteem or attempting to promote feelings of ill-will against SCs/STs.
- Threatening or imposing economic and social boycott.
- Using acts, words or gestures of a sexual nature against SC/ST woman.
- Touching an SC/ST woman intentionally in a sexual manner without her consent Practice of dedicating an SC/ST women as a devadasi to a temple.
- Preventing any SCs/STs from using common property resources, entering any places of public worship that is open to the public, and entering an education or health institute.

- Force members of Scheduled Castes and Scheduled Tribes to leave their homes and dwellings.
- Distorting the sacred objects of Scheduled Castes and Scheduled Tribes Sexual abuse against members of Scheduled Castes and Scheduled Tribes, touching them with sexual abuse and using language.

Crimes such as hurting, torturing, threatening and abducting people belonging to Scheduled Castes and Scheduled Tribes under the provision of punishment for less than 10 years were included in the Act as a crime. It was considered to be an offense punishable with cases of torture of Scheduled Castes and Scheduled Tribes on 10 years and above in the pre-Act.

To expedite the disposal of matters, to make special courts specifically to prosecute the offenses under the Prevention of Atrocities Act and specifically to the Special Public Prosecutor. Special courts give power to take direct cognizance of crime and to complete the hearing within two months from the date of filing of chargesheet as far as possible.

Other Constitutional Provisions: In Article 46 of the Constitution, it is expected from the state that keeping in mind the educational and economic interests of the weaker sections of the society especially the Scheduled Castes and Scheduled Tribes, they will protect them from social injustice and exploitation of all kinds. The provision of reservation in educational institutions has been made in Article 15 (4). The provision of reservation in posts and services has been made in Article 16 (4), 16 (4A) and 16 (4B) of the Constitution. In addition to the original rights, in Article 330, 332 and 335 there are immediate provisions for special representation and reservation of seats for these communities in central and state legislatures. Article 338 to 342 and in the fifth and sixth Schedule to the Constitution, work in connection with special provisions for the goals given in paragraph 46. Even after so many years of independence, the discrimination and harassment faced by them at social level can not be accepted in any civilized society.

According to the statistics of NCRB

Every 15 minutes, there is an incident of Dalit persecution in the country. 6 Dalit women are victim of rape every day. In the decade of 2007-2017, cases of Dalit persecution recorded in the country increased by 66%

Cases against dalits

Year	Cases Reported
2014	40,401
2015	38,670
2016	40,801

Source: NCRB Report 2016

The table shows it clearly that despite many stringent provisions and strict rules there is a rise in crime against dalits in the year 2016 as compared to year 2016. There have been many types of psychological violence in the country. In this way, they seem like a SC-ST Act, a tool that can protect them from many types of mental violence. Therefore, making this provision lightly is not acceptable in any way.

SC/ST Act: weapon of vengeance: The human rights organization has always been saying that if any non-cruel crime has the provision of arrest only on the basis of FIR, then it is certain to be misused. The anti-dowry law is a lively example and the same abuse will happen in some cases of the SC-ST Act. There are a number of cases where the allegations are purely motivated by the feeling of hatred and seeking revenge. According to the NCRB data 2015 quoted by the court. In only 5-16% cases the police filed the closure report after the investigation. The 75% of the cases in the court were either abolished, or the accused were acquitted or they were withdrawn. Keeping in view of the above stated data the judgment aims at securing the rights of the innocent. An innocent person cannot be falsely implicated and arrested without proper verification. Instead of blurring caste lines, the Act has been misused to file false complaints to promote caste hatred. The current working of Atrocities Act may even "perpetuate casteism" if it is not brought in line and the court needs to intervene to check the "false implication of innocent citizens on caste lines." The Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by the police for extraneous reasons against other citizens. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This court must enforce such a guarantee. Law should not result in caste hatred.

Conclusion

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is to redress the crimes against Scheduled Castes and Scheduled Tribes. This Act provides for the prosecution of such crimes and relief and rehabilitation for persons suffering from such crimes. The offenses committed under this Act were non-guaranteed, cognizable and unacceptable until the Supreme Court's verdict came. The court believes that these provisions are being misused in this law, so this has been done to maintain balance and reduce the police powers. This is not the first time that any decision of the Supreme Court has been opposed on the roads in this manner. Recently, there was such a fierce situation about the movie 'Padmavat'. It would be ideal situation and the desire for a healthy democracy is also that such decisions were accepted either or the reconsideration petition will be filed against them, as the government did. But the answer to this question has never been easy, if any provision is misused, is the only option to remove it?

REFERENCES

- Dr. Subhash Kashinath Mahajan vs. Maharashtra Government, 20 March 2018
NCRB Report 2016
SC/ST (Prevention of Atrocities) Act 1989
SC/ST (Prevention of Atrocities) Amendment Act 2015
Sc/St Act being used for blackmail, The Hindu, 20 March, 2018
Supreme Court Stands by its Sc/St Act judgement, The Hindu, 3 April, 2018
The Indian Express, 22 March 2018