

Unit 48. SC/ST Prevention of Atrocities Act – Recent Issues and Court Rulings



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.



However, the SC/ST act can never be called a successful legislation. Dalits and Tribals still face discrimination. On the other side, there is widespread concern over misuse of the provisions of the Act against innocent persons. As per the Supreme Court of India, the SC/ST act has become an instrument of “blackmail” and is being used by some to exact “vengeance” and satisfy vested interests.

In this post, we will analyse both sides, recent issues, and the court rulings.

Crimes against SC/ST – Atrocities of various forms

Violence against SC/ST is very nuanced in nature, so it is difficult to separate atrocities against SC/ST from law and order problems. So in many instances, the case is registered under IPC or CrPC than PoA.

1. Cow vigilantism

- The term “Cow vigilantism” is used to describe the lawlessness happening under the name of Cow protection.
- Dalits and Muslims are at the receiving end of this vigilantism.
- Since Dalits are concentrated in the occupation of leather making from hides of the cow, they are invariably targeted by vigilantes.
- Cow vigilantism has increased since past two years.

2. Honour killing

- In a society like India, where caste structures are still dominant in the form of endogamy, honour killings are prevalent on a wide scale.
- Dalits are almost always at the receiving end of the violence.
- **In Lata Singh vs. the State of UP**, Supreme Court has opined that inter-caste marriages are in the national interest as they destroy the caste system.
- **Bhagwan Dass v. Delhi** deemed honour killings in the “rarest of rare” category of crimes that deserve the death penalty.

3. Social boycott

- **Khap panchayat – caste panchayat** often acts as an arena for perpetuating atrocities against Dalits by ostracizing them from the society
- **Ambedkar** had recognized the atrocities meting out to Dalits in the form of social boycott. He had often fought against the practice
 - **Mahad satyagraha** for the opening of community tanks for Dalits
 - He proposed an **anti-boycott law**
 - He recognized that discrimination occurs in multiple axes like **boycott-stigmatization-segregation** and try to fight it out on all these axes
- Maharashtra enacted a law against a social boycott: Maharashtra Prohibition of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016.
- Need a **comprehensive anti-discrimination law** in lines of civil rights entitlements in US-UK.
- Law Commission drafted the **Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011** that sought to declare khap panchayats unlawful.

4. Caste clashes

- In rural India, OBC became dominant caste by ousting upper caste due to
 - They were able to convert their numerical strength into political force once universal adult franchise came.
 - Post-Indian rural development model was favourable to them: Land reforms, the green revolution etc.
- On the other hand, Post-Independent development model didn't result in the upward mobility of Dalits. Thus OBCs became the new oppressor of Dalits in place of traditional upper castes.

- Post-1990 reforms, there was a resurgence among Dalits due to
 - reservation policy led to the emergence of middle class among Dalits who spearheaded Dalit movements.
 - Identity politics, from leaders among Dalits themselves, began to express itself.
 - urbanization and other opportunities followed by 1990 reforms lead to improvement in Dalits life
- This resurgence was met with violent clashes among upper castes/OBCs and Dalits.
 - Many scholars like Surinder.S.Jodhka have attributed the increased atrocities to the tensions caused between upper castes and Dalits due to the perceived upward mobility of Dalits.
- But Dalits were at the receiving end of almost all these atrocities like
 - Khairlanji massacre in Maharashtra 2008
 - Bhima-Koregaon violence in Maharashtra 2017
 - Una violence

5. Discrimination in universities

- The suicide of Rohit Vemula in Hyderabad 2016

Examples of atrocities in independent India

- **Kizhavenmani, 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.

Are all crimes against Dalits based on caste discriminations?

There are many nuanced and subtle form of atrocities that are meted out to SC/ST. Since these are highly intertwined with common IPC/CrPC crimes, it is quite complex to dissect caste discriminations from everyday occurrences of violence.

Every passing day there will be one or other incidents of atrocities against SC/ST. In fact, everyday life of them is a struggle against entrenched atrocities, as they are facing discrimination from every facet of life, be it may be in the field of education, employment, in all the limbs of the state and institutions.

Since Dalits are widespread and live in close vicinity to other castes, atrocities against them are more frequent and more visible. Tribals are concentrated in some areas and are more isolated from other sections of society.

The government has introduced many measures for preventing these atrocities, especially under the aegis of Article 17. Most important among them is PoA act, which was and is a watershed act for tilting the power balance of society. Its implementation has seen many stumbling blocks leading to many atrocities against Dalits as shown above. These atrocities are widespread throughout the breadth of the nation.

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.

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 **atrocities 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.

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.

Subhash Kashinath Mahajan vs The State of Maharashtra [Review of SC/ST Prevention of Atrocities Act]

- Supreme Court opined that SC/ST Prevention of Atrocities Act (PoA act) is being misused and checks are needed to prevent such misuse.
 - The act has become a tool to persecute innocents and public servants for political and personal gains.
- Provided guidelines for preventing the misuse of the act.
 - **Preliminary inquiry** at the level of DSP is required to verify the authenticity of the case **before registering FIR**.
 - A person can be released on **anticipatory bail** unless a prima facie case of crimes or atrocities is made out.
 - No FIR should be registered against government servants without the approval of the appointing authority.
- PoA act had to be interpreted in a manner which will ensure that “**casteism is not perpetuated**” through the implementation of the law.

Critical analysis of the Judgment in Subhash Kashinath Mahajan Case on SC/ST Prevention of Atrocities Act



- Many law experts are of the view that this judgement is without considering the **socio-cultural realities of caste atrocities**.
- The judgement didn't give any statistical pieces of evidence but relied on several High Court judgements.
- It equated high rate of acquittals to a large number of false cases.

- But increasing acquittal can't be the reason for the case being false.
- Entrenched discrimination and prejudice of the establishment are one of the reasons of acquittals.
- Another reason can be intimidation of victims, their survivors, and witnesses by various means including a social and economic boycott.
- The constitutional validity of exclusion of anticipatory bail had been upheld in **Kartar Singh case**.
 - The case has clarified that **anticipatory bail is a statutory right** and not comes under Right to Life.
 - Section 18 of the PoA act especially excludes anticipatory bail.
 - The court while upholding ideals of personal liberty and innocence until pronounced guilty, have ignored the socio-cultural reality of caste system in India.
- In **Lalita Kumari vs Government of Uttar Pradesh**, the Supreme Court directed that prompt registration of FIR is mandatory under Section 154 of the Cr.P.C. if the information discloses commission of a cognisable offence and no preliminary enquiry is permissible in such a situation. Mahajan judgement ignores this precedent.
- Dilution of PoA act will have a **crippling effect on social justice**.
 - Because of the juxtaposition of the powerful and the powerless in India's caste system in every village, it is very difficult to secure proper investigation and quick and successful trial.
 - Delay in investigation and trial result in intimidation of victims and witnesses.
 - Will make the act toothless, **roll back social transformation**.
- This case treads to break the thin line between **judicial activism and judicial over-reach**.
 - Supreme Court in **Rajesh Sharma vs the State of Uttar Pradesh**, assumed misuse of the anti-dowry provision of Section 498A in IPC, but CJI revisited the case remarking that the **court cannot write law but can only interpret a law** that is ambiguous or silent on certain aspects, and not when it is crystal-clear.
- SC had earlier directed **national legal service authority** to give legal awareness and free consultation to the community for making most out of the legal safeguards provided to them.
- With the perceived upward mobility of SCs, there has been a growing demand among dominant and upper castes to dilute PoA act like that of the demand by Marathas. This judgment can be used as a plank by these castes to further their agenda.
- Report of the National Commission for Scheduled Castes for 2015-16 states that there has been an increase in the number of incidence of atrocities but a decrease in conviction rates.
- NCRB data: The number of cases of atrocities against SC/St has increased from 2008 to 2016 but there was a decline in conviction rate at the same time.
- But there are instances of misuse of the act by SC/STs, especially against public officials. This has led to many bogus cases under PoA act. This claim has been validated by **Parliamentary Standing Committee report**, which has sought an **inbuilt provision in the PoA act to safeguard those who are falsely accused**.

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.

