

# THE DRACONIAN LEGISLATION OF SC/ST (PREVENTION OF ATROCITIES) ACT 1989

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## INTRODUCTION

This Paper aims to examine the provisions of the SC/ST (Prevention of Atrocities) Act 1989 vis-à-vis Fundamental Rights enshrined in the Constitution of India in light of the controversial parliamentary amendment overturning the ruling of the Hon'ble Supreme Court of India diluting the Act. The paper further points out the blatant abuse of provisions under the Act and the arbitrariness of the amendment carried by the Parliament with utter disregard to the repercussions and the destruction of sanctity of the Constitution of India along with undermining the independence of the judiciary for the sake of appeasement of the minority.

## DRACONIAN LEGISLATION

The term 'draconian' is derived from the celebrated lawgiver and statesman of 7th-century Athenian, Draco. Draco was a figure in Athenian history that imposed a harsh legal code. Draco was the first democratic legislator, requested by the Athenian citizens to be a lawgiver for the city-state, but the citizens were fully unaware that Draco would establish laws characterized by their harshness. To this day, the adjective draconian refers to similarly unforgiving rules or laws, in English. As a result, harsh laws, rules, and penalties have come to be called "Draconian".

This is different from Blue laws which are supposititious code of severe laws for the regulation of religious and personal conduct and different from Agrarian laws which do laws for the distribution among the people, by public authority, of the lands constitute the public domain, usually territory conquered from an enemy. These laws were exceedingly severe, and the term is now sometimes applied to any laws of unusual harshness. Even in today's day and modern

age such draconian legislations or provisions exist. The Apex court and the parliament are entrusted with the trident to quash such laws.

## **STATEMENT OF OBJECTS AND REASONS**

The act was primarily constituted to protect the rights and liberties and to prevent atrocities against the dalits. Reference can be made to the SOP enumerated in the Act-

*“An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for 1 [Special Courts and the Exclusive Special Courts] for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.”*

## **ABUSE OF THE PROVISIONS**

The Section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act 1989 as a provision ripe for misuse. This section penalizes anyone who “intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.” Automatic arrests under the Atrocities Act could lead to innocents being framed, crime data indicates that police investigations find such cases to be false 10% of the time.

The vast majority of atrocities cases investigated by the police result in charge sheets being filed. In 2016, the National Crime Records Bureau recorded 40,801 registered cases of atrocities against Scheduled castes and 6,568 cases of atrocities against Scheduled tribes. In addition, the police investigated cases pending from previous years and filed charge sheets in 78% of cases of atrocities against Scheduled castes and 81% of cases relating to Scheduled tribes. Considering that there are in fact clear statistics of misuse of such provision resulting in Arrest and considerable effect on ones image in the society.

In the Indian society Adivasi and Dalits have been oppressed for many centuries and no one can deny the fact. India would not become a developed nation until all Indians irrespective of Caste, Gender, Religion, language would get equal opportunities. The SC/ST ACT has been one of the biggest boon for SC/ST communities and it has played an important role in their

social upliftment. But such laws should be reviewed periodically. The Parliament is entitled to safeguard interest to SC/ST. But there should be some genuine deterrence for filing false cases.

## **SENTIMENTS OVER INDIVIDUAL RIGHTS?**

India is a liberal democracy and this reflected in the Preamble of Constitution of India and reads “*LIBERTY of thought, expression, belief, faith and worship*” and in a liberal democracy or a democratic system of government in which individual rights and freedoms are officially recognized and protected, and the exercise of political power is limited by the rule of law. The ideal situation, in a liberal democracy individual rights should be foremost. However, in India it’s often the case that group sentiments take precedence over individual rights, opening the door to draconian legal provisions and making the individual the most persecuted minority.

This in turn hardens group identities, creates a vicious cycle of prejudice and defeats the project of an equitable society.

Hence, it’s time to give primacy to individual rights and make it the default liberal position. Laws must be reinterpreted accordingly.

## **HON’BLE SUPREME COURT’S DECISION**

The ruling was passed by a bench of Hon’ble Justices A.K. Goel and U.U. Lalit on an Appeal filed by Mr. Subhash Kashinath Mahajan<sup>1</sup> against a Bombay high court ruling that refused to quash the FIR lodged against him for offences alleged under the SC/ST Act. The primary objective was to “avoid false implication of an innocent person”. The Hon’ble Apex Court has clarified that it was not trying to stand in the way of the rights of SC/ST people and was trying to ensure that the liberty of the accused is not taken away without due procedure. On 20<sup>th</sup> March 2018, the Supreme Court interpreted certain provisions regarding automatic arrests made on complaints under provisions of the SC/ST Act. Supreme Court put some restrictions on certain provisions of this Act. As per the Judgment a government officer could now be arrested only after approval from the appointing authority. For others, the senior superintendent of police would have to give approval.

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<sup>1</sup> CRIMINAL APPEAL NO.416 OF 2018, Supreme Court of India.

The Supreme Court is the guardian of rights and curator of justice, if it decides that the SC/ST ACT is being misused it is only after considering statistics and facts and relying on hard evidence put before them.

But the one lacuna the ruling holds is that it is not the only act/law being misused by the people. In much legislation there are substantive loopholes which are frequently exploited for ones benefit.

Introducing reforms such as:

- 1) If there is a malicious case registered against a person of the general category then stick action shall be bought against such person fraudulently filing the complaint.
- 2) Categorically fix the compensation or punishment awarded for such malicious and fraudulent action.
- 3) Periodical review of the status of such communities included in the act which should be conducted state wise.

This should bring about a positive impact to the people and the cases being registered in the SC/ST act would substantially decrease in number.

## **RESTORING ORIGINAL SC/ST ATROCITY LAW**

After the Hon'ble Supreme Court's decision the nation erupted with anger. This matter being of very sensitive nature had caused a lot of unrest and a sense of disharmony in the country. The Parliament Passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018 which overruled the decision by the Hon'ble Supreme Court. The center justified the amendment as quote

*“would delay registration of First Information Report (FIR) and will impede strict enforcement of the provision of the POA Act. It may also be difficult to get the preliminary inquiry conducted within seven days as sufficient number of Dy. S.P level officers are usually not in place. Typically, the Dy. S.P. are located at the district level and not at taluk/block level.*

*Other repercussions of the said directions of the Hon'ble Court are that delay in registration of FIR would result in delay in payment of admissible relief amount to the victims of atrocities admissible only on registration of FIR.*

*All this would adversely affect the very objective of the Act to prevent commission of atrocities against members of SC and ST and be severely detrimental especially in heinous offences like sexual exploitation of SC/ST women including rape, gangrape, acid attacks and murder etc”*

The law was amended to overturn the Apex Court Ruling. The Bill rules out any provision for anticipatory bail for a person accused of atrocities against SC/STs, notwithstanding any court order. It provides that no preliminary inquiry will be required for registering a criminal case and an arrest under this law would not be subject to any approval. The ruling party and opposition succumbed to the pressure of the minority community.

### Elucidation

The petition filed in the Hon'ble Apex court also dealt with the respective contentions.

*“The taste of anything can be changed. But poison cannot be changed into nectar.”*

– Dr. B.R Ambedkar

The Constitution of India speaks about sovereign, socialist, secular, democratic republic, it also grants equality, but the tyranny of this society even now there is no equality.

The part III of the Constitution which talks about the fundamental rights tried to abolish this caste system but failed because of political system of our country and our law makers only emphasizing to strong the vote bank not inclined to eradicate the caste system or to fill the gap between the lower and upper caste. Article 14 which talks about right to equality before law, according to this article every person is equal in the eyes of law, it emphasized on prohibition of discrimination on grounds of color, race, religion, caste, gender, place of birth, etc. That, the Parliament placed this constitutional amendment in the atrocity act with a sole intention to appease a particular section of society before elections.

The great German novelist Johanne Wolfgang von Goethe had said, “A clever man commits no minor blunder.” With the amendment bill to reinstate the original provisions of SC/ST Act, this government too has done a major blunder of the tenure.

India is a diversified country both in social as well as in economic terms. In some part one community is at the helm in social structure while in another part another community enjoys the higher status. The general community of this country is living in this country as second grade citizens which don't have any rights for last 800 years, when Muslim rule came in power for over almost 600 years, all Hindus were treated like second grade citizens. It doesn't matter whether they are of high caste or low caste, in the same manner as the Britishers did with us over 200 years. So on an average general community has also faced the same problem as the others faced, after the independence of the country it was in mind that those having a progressive mindset would be allowed to live in a better environment but the government has failed to secure equality before the law. Instead of taking onus of failure the government started appeasing some sects of the communities which resulted in caste, religion or region based politics.

The impact of this politics is that the innocents are suffering. Although the general caste people are now habitual of all these discriminatory acts made by the Legislature, moreover after amendment in SC/ST act, this government also tried to snatch the fundamental rights provided by the Constitution of India. Enforcement of fundamental rights is a basic feature of the Constitution.

This Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 represent the foundational values which form the basis of the rule of law. Contents of the said act have to be struck down in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty has to be protected against any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of Legislation has also to be consistent with the fundamental rights.

i. Instrument To Blackmail

While the intention of the act was good, however after new amendment, its structure is inconsistent with basic principles of liberty and accountability. The anti-atrocities law, which protects Scheduled Castes and Scheduled Tribes from casteist slurs and discrimination, has

become an instrument to “blackmail” innocent citizens and public servants. The past three decades have seen complainants — who belong to the marginalized sections of society — use the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 to exact “vengeance” and satisfy vested interests. The Atrocities Act is also prone to misuse on account of monetary incentive being available merely for lodging a case under Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Such incentive may encourage not only genuine victims but, there being no safeguard even against a false case being registered only to get the monetary incentive, such false cases may be filed without any remedy to the affected person. 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. Public servants find it difficult to give adverse remarks against employees for fear that they may be charged under the Act. It may unfairly damage the personal and professional reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other. In support of the above said submissions, there are several judgments wherein the courts also have acknowledged the misuse of law.

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ii. Amendment In Act Is Arbitrary, Unjust And Irrational And Violate The Fundamental Rights By Restricting Anticipatory Bail, Which Is Against The Article 21

The object of Article 21 is to prevent encroachment upon personal liberty in any manner. Article 21 is repository of all human rights essential for a person or a citizen. A fruitful and meaningful life presupposes life full of dignity, honour, health and welfare. In the modern “Welfare Philosophy”, it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens; while invoking the provisions of Article 21. It is one more discriminatory amendment (in that it only applies to some groups of people – indeed, it perpetuates the caste system); it violates the fundamental rights of the accused. (Section 438 (of the Criminal Procedure Code) does not to apply to persons committing an offence under

the Act.- Nothing in section 438 of the code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act). Where “verbal abuse” is reported, which may prove false, hence it should clearly be bailable offence. In *Rini Johar v State of Madhya Pradesh & Ors*<sup>2</sup> this Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates Article 21 of the Constitution and thus the victim of arrest was entitled to compensation. This Court noted the observations and guidelines laid down against wrongful arrests in *Joginder Kumar*<sup>3</sup>, *D.K. Basu*<sup>4</sup>, *Arnesh Kumar*<sup>5</sup> and other cases and held that since the arrest is in violation of guidelines laid down by this Court and is violative of Article 21, the person arrested was entitled to compensation; liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty The Gujarat High Court in *Pankaj D Suthar*<sup>6</sup> considered the question whether Section 18 of the Atrocities Act excludes grant of anticipatory bail when on prima facie judicial scrutiny, allegations are found to be not free from doubt, the relevant abstract of judgment is reproduce here for mere perusal-

*“Section 18 of the Atrocities Act gives a vision, direction and mandate to the Court as to the cases where the anticipatory bail must be refused, but it does not and it certainly cannot whisk away the right of any Court to have a prima facie judicial scrutiny of the allegations made in the complaint. Nor can it under its hunch permit provisions of law being abused to suit the mala fide motivated ends of some unscrupulous complainant. In this case also if indeed this Court been satisfied with the story revealed by the complainant as truthful and genuine, then anticipatory bail would have been surely rejected right forth as a matter of course, but since the submissions of Mr. Pardiwala have considerable force, this Court has no alternative but to accept the same in the larger interests of justice to see that merely on the count of the firsthand prejudice attempted to be caused by allegations in the complaint, the petitioner-accused is not denied his precious right of the anticipatory bail. 6. In view of the aforesaid discussion, though in a way the learned A.P.P. is absolutely right when he submitted that no anticipatory bail can be granted to the petitioner-accused because of Section 18 of the Atrocities Act, in the opinion of this Court, his submission fails because at this stage it is too difficult to rule out the*

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<sup>2</sup> WP (Criminal) No. 30 of 2015, Supreme Court of India

<sup>3</sup> 1994 AIR 1349

<sup>4</sup> (1997) 1 SCC 416

<sup>5</sup> (2014) 8 SCC 273

<sup>6</sup> (1992) 1 GLR 405



*probability of the accusations levelled by the complainant against the petitioner - accused having committed an offence under the Atrocities Act being false, vexatious and by way of counterblast as stemming from the ulterior motive to humiliate, disgrace and demoralise the petitioner-accused who is a public servant. When that is the result and position, there is no question of bypassing of Section 18 of the Atrocities Act arises as apprehended by the learned A.P.P. Taking in to consideration the facts and circumstances of this particular case, and in view of the aforesaid discussion, this Misc . Criminal Application for anticipatory bail deserves to be allowed and is allowed accordingly”*

In the light of the above, we first consider the question whether there could be an absolute bar to the grant of anticipatory bail. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. It may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered ) under the Atrocities Act, without any protection of law. This cannot be the scenario in a civilized society. Similarly, even a non-public servant can be black mailed to surrender his civil rights.

iii. Legitimate Expectations Of Fundamental Rights Under The Constitution Of India Have Been Frustrated Totally, As To Be Born In A Upper Caste Can't Be A Ground To Face Abuse Of Law Or Presumption Of Guilt

*There cannot be any mandate under the law for arrest of an innocent; Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court.*

In *Noor Aga versus State of Punjab*<sup>7</sup>, it was observed:

*“33. Presumption of innocence is a human right as envisaged under Article 14 ( 2 ) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof, would not militate against other statutory provisions*

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<sup>7</sup> Criminal Appeal No. 1034 Of 2008, Supreme Court Of India.

*(which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).*

*35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld”*

According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

- iv. Prior scrutiny, proper investigation, credible information and reasonable procedure is required before arrest

There can be no dispute with the proposition that 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; referring to Section 41(1)(b) Cr.P.C. it was submitted that arrest could be effected only if there was ‘credible’ information and only if the police officer had ‘reason to believe’ that the offence had been committed and that such arrest was necessary.

Thus, the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41A Cr.P.C. It was submitted that the expression ‘reason to believe’ in Section 41 Cr.P.C. had to be read in the light of Section 26 IPC and judgments

interpreting the said expression. The said expression was not at par with suspicion. In the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.

v. No Safeguard To Prove Innocence, Is Provided Against False Implication, Undue Harassment Under This Act, Also No Penal Provisions Against The Abuse Of Law

The Act should amend in such a manner which promote fraternity and integration of society as the Constitution envisages “a cohesive, unified and casteless society.” the object of the Act shall to prevent commission of offences of atrocities against members of SCs and STs and it must be in consonance with the intent of the Act to provide for punishment for members of SCs and STs for falsely implicating a person. If punishment would not be provided, it means someone from the SC/ST community can get away with a false complaint against a person even if a court of law finds the complaint to be frivolous It was submitted that there is no safeguard against false implication, undue harassment and uncalled for arrest thus, for the innocent citizen of country there shall be amendment in such manner which incorporate safeguards against unreasonable and arbitrary power of arrest in such cases.

## CONCLUSION

The Constitution of India guarantees Life and personal liberty to every individual, a prized possession. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society; referring to the statement of Joseph Addison, “*Better to die ten thousand deaths than wound my honour*”

The Apex Court in *Khedat Mazdoor Chetna Sangath v. State of M.P*<sup>8</sup> posed to itself a question “If dignity or honour vanishes what remains of life?” This is the significance of the Right to

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<sup>8</sup> (1994) 6 SCC 260

Life and Personal Liberty guaranteed under the Constitution of India. The Act has many benefits but outweighs the limitations. Some of the non-societal member tries to make the most use of the legal opportunism and tries to get someone innocent involved in these cases. These fraud cases causes huge defamation of wrongfully accused person and the consequences of such scenarios are long-lasting. The dilution of the Act is necessary to protect the sanctity of the Constitution and its people.

