# SUPREME COURT JUDGMENT OVER SC/ST ACT: WAS THE COURT RIGHT?

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#### INTRODUCTION

India is a land of diversities. Diversities abound in religion, culture, communities, language, caste, beliefs, etc. Despite all these diversities, India is a united nation. However, the diversities in caste and communities have always been a bone of contention and breeding ground for atrocity and discrimination. The members of Scheduled Caste and Scheduled Tribe have never been accepted and looked upon with equality. Historically, these communities have been subjected to various atrocities. They have often been subjected to both physical and verbal abuse. They have been subjected to physical abuse in the form of assault, denying access to public places. They have also been the victims of derogatory statements, racial discrimination. Despite having provisions against untouchability under Article 17 of Indian Constitution, these atrocities remain unchecked. It has made the SC/ST communities vulnerable to many other atrocious acts. Therefore in order to curb the growing atrocities against these communities, the Parliament enacted The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. This Act was enacted with the objective to stop the atrocious activity against the SC/ST people and strictly penalize people acting in contravention to this Act.

### ATROCITIES AND THE LEGAL FRAMEWORK IN INDIA

There have been laws against discrimination and untouchability in India since the inception of Indian Constitution. Article 17<sup>1</sup> of the Indian Constitution seeks to abolish untouchability.

Article 17 is concerned with those who are regarded as untouchables in the course of historical development.<sup>2</sup> This means that Article 17 was enacted to privilege the socially oppressed class. The parliament has enacted the Untouchability (Offences) Act, 1955; the Act was later renamed as Protection of Civil Rights Act, 1955. Article 46 also promotes the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation.<sup>3</sup> Article 46 supplements the concept of untouchability under Article 17. The Constitution of India has also provided for creation of National Commission for Scheduled Castes and National Commission for Scheduled Tribes under Article 338 and Article 338A. Article 15(2) of the Indian Constitution also aims to eradicate to untouchability. Abolition of untouchability in itself is complete and its effect is applicable to state action as well act and omission by the individuals, institutions or juristic body of persons.<sup>4</sup> The court has also reiterated that the abolition of the untouchability is the arch of the Constitution to make its meaningful and to integrate the dalits in the national mainstream.<sup>5</sup>

### **RAMPANT MISUSE OF THE SC/ST ACT**

There has been rampant increase in the misuse of SC/ST Act in recent years. As per Crime in India 2016 Statistics, compiled by the National Crime Records Bureau, it was mentioned that 5347 cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases.<sup>6</sup> Therefore in the year, 70% cases resulted in the acquittal, 4% cases were withdrawn and only 26% cases resulted in conviction.<sup>7</sup> According to the report submitted by Department of Social Justice & Empowerment, it was found that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. A dalit family at a village in Aligarh allegedly misused the Act to make money.<sup>8</sup> This claim has also been

- <sup>3</sup> Article 46 of the Indian Constitution, 1950.
- <sup>4</sup> State of Karnataka v. Appa Balu Ingale, AIR 1993 SC1126.
- <sup>5</sup> Id.

 $^{7}$  Id .

<sup>&</sup>lt;sup>1</sup> Article 17 of the Indian Constitution, 1950.

<sup>&</sup>lt;sup>2</sup> State of Madhya Pradesh v. Purachand, AIR 1958 MP 352.

<sup>&</sup>lt;sup>6</sup> National Crime Records Bureau, report on Crime in India 2016, pg 300.

<sup>&</sup>lt;sup>8</sup> Available at https://timesofindia.indiatimes.com/city//sc/st-actfake-cases-in.

validated by Parliamentary Standing Committee report, which sought to safeguard the victims of false complaint. They are of the firm view that the SC/ST Act, being a special law, should be wholesome to the extent that it must contain an inbuilt provision for securing justice for those who are falsely implicated with mala fide under it.<sup>9</sup>

# UNDERSTANDING THE CASE THAT CAUSED TURBULENCE: SK MAHAJAN V. STATE OF MAHARASHTRA

The Supreme Court, in the case of Dr. S.K Mahajan v. State of Maharashtra<sup>10</sup>, has laid down certain guidelines to strike a balance between person's right to life and liberty and provisions of the SC/ST Act. In light of certain instances of false cases being filed under SC/ST Act, the court has laid its emphasis on Article 21 which has to be read with every provisions of the law. Right to life under Article 21 is a fundamental right which is not merely a physical right.<sup>11</sup> Right to life includes right to live with human dignity.<sup>12</sup>

With regard to the question of the anticipatory bail, the court referred to the case of Vilas Pandurang Pawar v State of Maharashtra<sup>13</sup> and asserted that when no prima facie case is made out, there is no absolute bar against anticipatory bail. Thus, in genuine cases anticipatory bail can be granted.<sup>14</sup>

With respect to the question of arrest of a public servant under SC/ST Act, the court reiterated the observation made in Arnesh Kumar versus State of Bihar<sup>15</sup>, which observed that arrest brings casts scars forever. They relied on section 41 Cr.P.C and the recommendations of the Law Commissions, and it was directed that arrest should be made only if there is sufficient credible information to arrest. Power of arrest should be exercised with caution.<sup>16</sup> The court therefore relaxed the procedure of arrest in cases of SC/ST Act cases. The court directed that a

<sup>&</sup>lt;sup>9</sup> Sixth Report (2014-15) of the Standing Committee on Social Justice and Empowerment, Sixteenth Lok Sabha. <sup>10</sup> Dr. Subhash Kashinath Mahajan vs The State of Maharashtra, Criminal Appeal No. 416 of 2018, decided by Supreme Court on 20<sup>th</sup> March, 2018.

<sup>&</sup>lt;sup>11</sup> Maneka Gandhi vs Union of India, 1978 AIR 597, 1978 SCR (2) 621.

<sup>&</sup>lt;sup>12</sup> Id.

<sup>&</sup>lt;sup>13</sup> AIR 2012 SC 3316.

<sup>&</sup>lt;sup>14</sup> Dr. Subhash Kashinath Mahajan vs The State of Maharashtra, Criminal Appeal No. 416 of 2018, decided by Supreme Court on 20<sup>th</sup> March, 2018.

<sup>&</sup>lt;sup>15</sup> (2014) 8 SCC 273.

<sup>&</sup>lt;sup>16</sup> Id.

public servant can be arrested only after taking prior approval of the appointing authority and in case of non-public servant; approval has to be taken by the S.S.P.<sup>17</sup>

The court also opined that the interpretation of the SC/ST Act should be such so as to promote constitutional values of fraternity and integration of the society.<sup>18</sup> This would require check on the false implications of the innocent people.<sup>19</sup> The court also referred to State of U.P. versus Bhagwant Kishore Joshi<sup>20</sup> for discussing the need to have a preliminary enquiry before registering the cases. The court directed that a preliminary enquiry has to be done by the concerned DSP to confirm the allegations.

## CONCLUSION BY ANSWERING THE QUESTION: THE WAS THE COURT RIGHT?

One of the commendable aspects of this judgment is that the court strikes a balance between prevention of the atrocities against the SC/ST and ensures that the Act does not falsely implicate any innocent man. The court laid its emphasis on person's right to life and liberty. The vague language of the Act makes it ripe for misuse. The SC/ST Act had certain strict provisions which are a direct contravention to person's right to life and freedom of speech.<sup>21</sup> The court has to be lauded for removing the absolute bar on anticipatory bail. Absoluteness to the bar against anticipatory bail is not justified. Unless there is prima facie case made out against the accused, there is no absolute bar on anticipatory bail. This is a right approach to acknowledge fair and free judicial procedure.

Another laudable aspect of this judgment is that it emphasizes on the due process of law. Arrest of a person without any substantial proof defeats the due process of law. Earlier this Act

<sup>&</sup>lt;sup>17</sup> Dr. Subhash Kashinath Mahajan vs The State of Maharashtra, Criminal Appeal No. 416 of 2018, decided by Supreme Court on 20<sup>th</sup> March, 2018.

 $<sup>^{18}</sup>$  Id.

<sup>&</sup>lt;sup>19</sup> *Id.* 

<sup>&</sup>lt;sup>20</sup> AIR 1964 SC 221.

<sup>&</sup>lt;sup>21</sup> Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, p. 99.

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allowed the arrest of a person without having sufficient proof merely on the complaint. Now the arrest of a person can happen only when there is substantive proof in the complainant. The court also laid guidelines to prevent any false implication of an innocent under this Act. The court directed to have a preliminary inquiry to verify the authenticity of the case. This would prevent the lodging of false cases and only true cases will be filed.

Therefore, the court was very right in directing some guidelines related to SC/ST Act. The court has tried to remove lacunae in the Act, which earlier gave way to misuse of this Act. The court by its verdict has respected rights of both the communities. It has not diluted but strengthened the Act by removing scope for its misuse.

