

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

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Evolution of Relevant Law

- Preamble - Art.14-18
- Protection of Civil Rights Act,1955 – originally enacted as the Untouchability (Offences) Act,1955 and amended and renamed in 1976- repeals 21 State enactments like the Madras Removal of Caste Disabilities Act,1938,the Hyderabad Harijan (Removal of social Disabilities)Regulation,1358 F.

Position under IPC, 1860

- **Sec.153-A:** Promoting enmity between different groups on grounds including caste or community etc –punishable with imprisonment up to 3 years [w.e.f. 1972]
- **S.153-B:** Imputations and assertions etc prejudicial to National Integration –punishable with imprisonment up to 3 years [w.e.f. 1972]
- Both provisions rarely invoked by police/government

Background

- Need to abolish untouchability U/A 17 of Constitution
- Vulnerability of SC/STs to indignities, humiliation and harassment
- Spread of education & awareness regarding their rights
- Attempts to cow them down by non-SC/STs
- Inadequacy of protection under PCR Act, 1955 & IPC, 1860

Statement of Objects & Reasons

- To check & deter crimes against SC/ST by non-SC/ST
- To define atrocity & to introduce stringent measures
- To enjoin States/UTs to take specific preventive & punitive measures
- To provide adequate relief and assistance to rehabilitate them

About the Act

- Passed in 1989 & w.e.f. 10 January 1990
- **Scheme** - 23 sections & SC & ST (POA) Rules, 1995
- Stringent legislation
- Provision for Special Courts & Special PPs
- **No-anticipatory bail provision u/s 438, Cr.P.C**
- Provision for imposition of collective fine

About the Act

- No application of Probation of Offenders Act & also **S.360,Cr.P.C.** [release on probation of good conduct or after admonition]
- Provision for immediate relief to victims of atrocity [Rule 12(4) & Annexure]
- Overriding power of the Act [Sec.20]

History of discrimination

- “All the men are born free and equal ... endowed by their creator with certain inalienable rights” - US Declaration of Independence, 1776
- **Position in USA** – Slavery/trafficking of Blacks , 13th Amendment(1865), 14th Am(1868) & 15th Am(1870), Segregation of Whites and Blacks- separate but equal - Plessy v. Ferguson (1896)- Brown v. Board of education (1954)
- **Position in India** – Compartmentalization of society

Meaning of Scheduled Caste and Scheduled Tribe

- **Sec.2(1)(c)** -reference to meanings assigned under Art.366(24) & (25) of Constitution
- **Art.366(24)** – SC means such castes, races or tribes or parts thereof as are deemed to be SCs under Art.341
- **Art.341**- President's power to notify SCs by Public Notification & Parliament's power to include in /exclude from the list [Micro classification of SCs cannot be made by State Legislation -*E.V.Chinnaiah v. A.P, AIR 2005 SC 162*]

Meaning of Scheduled Caste and Scheduled Tribe

- **Art.366(25)** – ST means such tribes or tribal communities parts thereof as are deemed to be STs under Art.342
- **Art.342-** President's power to notify STs by Public Notification & Parliament's power to include in /exclude from the list
- A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) and 16(4), as the case may be. Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. **[Mrs. Valsamma Paul vs Cochin University And Others - 4 January, 1996]**

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- **Sobha Hymavathi Devi v.Setti Gangadhara Swamy and Ors - AIR 2005 SC 800 - Para 12** - we wish to express our dismay at the extent to which a person could go to sustain her seat in the legislature. The appellant brands her five siblings and herself as bastards and her mother a concubine. We desist from making any further observations on this aspect.

Offences of Atrocities

[Ch-II, Ss. 3-9]

- Offences – committed by non-SC/ST members
- Atrocity-offence punishable u/s 3
- Sec.3-refers to about 20 atrocities
- Include Social, Personal, Property/land related, work related, political, official/legal, sexual, health related etc
- **Most common Atrocity** -u/s 3(x) – ‘intentionally insulting/intimidating with intent to humiliate a member of SC/ST in any place within public view’

Offences of Atrocities [contd..]

- **Punishment for neglect of duties:-** any public servant (non SC/ST) willfully neglecting his duties under this Act- punishable- with min. 6 months & max. 1 year imprisonment
- Attachment/Forfeiture of property of accused/Convicted person [S.7]
- Presumption by Spl. Court ,of abetment/commission of offence by accused, unless contrary is proved – [S.8]
- **Externment:** on complaint by police-by Spl. Court -Max. for 2 years[S.10 etc]
- Spl.Courts & Spl.Public Prosecutors [Ss.14 &15]

Other special provisions

- State Govt's power to impose collective fine [S.16 .Also ref.to s.10-A of PCR Act,1955]
- No anticipatory bail [s.18]
- No benefit of P.of Offenders Act,1958 for convicted(<18 years) [s.19]
- Protection of action taken in good faith [s.22]

Investigation

- **Investigating officer** : by a police officer not below the rank of DSP [R.7]
- App. by DGP/SP considering his past experience, sense of ability to do justice to perceive implications of the case etc
- Completion of investigation - on top priority & within 30 days & forward report to DGP

Rehabilitation

- **S.21**-Duty of Govt. to ensure effective implementation of Act,1989-provision for economic and social rehabilitation
- **Rule 12**: Measures to be taken by District Administration- relief and rehabilitation facilities shall be provided by DM/SDM/other Ex. Magistrate in acc. with scales provided in Schedule.
- **Annexure-I**: Norms for relief amount

Essential Conditions to be fulfilled for prosecution under the Act

-the acts amounting to insult or humiliation to the member of Schedule Castes or Schedule Tribes should be visible and audible to the public, otherwise, it would not amount to an offence under the said provision of law.
-the incidence of insult or intimidation has to occur in a place accessible to and in presence of the public.
- The presence of both these ingredients would be absolutely necessary to constitute the offence under the said provision of law. [Pradnya Pradeep Kenkare and another V. State of Maharashtra, reported in 2005(2) Bom.C.R.(Cri) 431 and V.P.Shetty, Chairman of Industrial Development Bank of India Ltd. V. Sr. Inspector of Police & another, 2005(2) Bom. C.R. (Cri) 891. See also Udaysingh Ramsingh Pawar vs The State Of Maharashtra on 14 January, 2009 (Bom. HC Aurangabad Bench-Alleged uttering of "Tinpat", "Nalayak" and "Halkat".)

Crime against Scheduled Castes/Scheduled Tribes

- Crime against Scheduled Castes/Scheduled Tribes as per NCRB Report 2007
- | INCIDENCE | | RATE | |
|---------------|--------------|------------|------------|
| SC | ST | SC | ST |
| 2006 : 27,070 | 2006 : 5,791 | 2006 : 2.4 | 2006 : 0.5 |
| 2007 : 30,031 | 2007 : 5,532 | 2007 : 2.6 | 2007 : 0.5 |
- Uttar Pradesh reported 20.5% of total crimes against Scheduled Castes (6,144 out of 30,031) and Madhya Pradesh reported 27.1% of total (1,501 out of 5,532) crimes against Scheduled Tribes in the country.
- Rajasthan reported the highest rate of crimes (6.5) against Scheduled Castes as compared to the National average of 2.6. Arunachal Pradesh reported the highest rate of crime against Scheduled Tribes (2.7) as compared to the National average of 0.5.
- The rate of crime against Scheduled Castes increased from 2.4 in 2006 to 2.6 in 2007 while rate of crime against Scheduled Tribes in 2007 remained 0.5 - the same as in 2006.

Conclusion

- The Law- to be used for preventive and Punitive purposes in case of real atrocity
- Possibility of misuse – high
- I O s- must be cautious in investigation
- **Desirability of using the Law- more as a shield and not as a sword for extraneous considerations**