



## SOCIOLOGICAL EVALUATION OF PREVENTION OF ATROCITIES ACT 1989

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**Abstract:** *The Preamble of the Constitution expressly declares that “to secure to all citizens Justice, social, economical and political, liberty of thought, expression, belief, faith and worship – equality of status and of opportunity”. Article 46 comprises both development and regulatory aspects and stipulates that: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation.” As the article falls under the category of directive principles and not fundamental rights \, it cannot be enforced by the state’s courts. Article 15 empowers the state to make any special provisions for the advancement of any socially and educationally backward classes of citizens.*

**Keywords:** *The Untouchability, Discrimination, Constitution, POA 1989, SC&ST.*

### INTRODUCTION

The Traditional Practice of unsociability in India society is attributing of the hierarchical stratification of society in to caste. The Vedic use the term “Varna” (color) to denote caste seems to indicate that the caste system began as a result of racial differences between peoples. The Characteristic feature of the caste system is also its categorization of the pure and the impure based on religious beliefs and division of labor while many authors argue that the concept of an untouchable caste did not exist in the initial stages of the caste system, at some point in history. The concept of untouchability did become “a historical cohort of the caste system but not its essence”. The State also guarantees that “the state shall not discriminate against any citizen on grounds only of religion, race, caste, place and birth or any form”. In the directive principles it adds that “The state shall promote with special care the educational and economic interest of the scheduled castes/tribes and shall protect them from social injustice and all forms of exploitation. The Fundamental Rights have been extended to every citizen of this country to guarantee the basic freedoms extended to individuals. Article 17 of the constitution has abolished the “Practice of untouchability” and severely punishes those who practice it. Article 21 guarantees the right



to life and liberty. The Indian Supreme Court has interpreted this right to include the right to be free from degrading and inhuman treatment, the right to integrity and dignity of the person, and the right to speedy justice. When read with Article 39A on equal justice and free legal aid, Article 21 also encompasses the right to legal aid for those faced with imprisonment and those too poor to afford counsel (Sukdas V/s Arunachal Pradesh 1986).

The Preamble of the Constitution expressly declares that “to secure to all citizens Justice, social, economical and political, liberty of thought, expression, belief, faith and worship – equality of status and of opportunity”. Article 46 comprises both development and regulatory aspects and stipulates that: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation.” As the article falls under the category of directive principles and not fundamental rights, it cannot be enforced by the state’s courts. Article 15 empowers the state to make any special provisions for the advancement of any socially and educationally backward classes of citizens, or for scheduled castes and scheduled tribes. This particular provision has enabled several states to reserve seats for scheduled castes and scheduled tribes in educational institutions, including technical, engineering, and medical colleges. It has also paved the way for reservations in police forces.

In accordance with these constitutional provisions a number of measures have been initiated by the government for providing protection to the untouchables (scheduled castes and scheduled tribe). These measures are in the nature of both protective and developmental. In these measures are in the nature of both protective and developmental. In the ‘protective sphere’ untouchability was legally abolished and its practice in any form foreboded by the anti untouchability act, of 1955 nearly two decades later, in 1976 the 1955 act was reviewed in order to more stringent and effective, and the protection of civil rights act 1955 (“PCR Act”) was enacted. In 1989, the government enacted yet another act, namely the scheduled castes tribes’ prevention of atrocities act in order to act in order to prevent atrocities against members of the SC/ST. The need for this additional act was felt because under the circumstances, PCR 1955 and normal provisions of the Indian Panel Code had been found to be inadequate to provide safeguards to SC/ST against several crimes. Article 330 provides reservations for seats for scheduled castes and scheduled tribes in the



Lok Sabha (the House of the People), while Article 332 provides for reservations in the state legislative assemblies. Article 334 originally stipulated that the above two provisions would cease to have effect after a period of ten years from the commencement of the Constitution. This article has since been amended five times, extending the period by ten years on each occasion (Article 29 Shall Prevent).

## **RESEARCH METHODOLOGY**

### **Objectives of the study**

The present research aims to display below mentioned factors are:

- Interpretation of the Article 17 of the constitution.
- Interpretation Realities and failures of POA.

### **Scope and Limitation of the Research**

The Scope of the research is to extend the study of article 17 and supporting legislation of POA and its enactment only. The limitations of the study are that apart from the broad overview. The researcher has sought to narrow the scope by studying a few key instances in order to give a more comprehensive leer of the practice reality of article 17 and POA 1987 by studying a few key cases lich analyses the loopholes and the reality of untouchability in India

### **Sources of Data**

The researcher has relied on both primary and secondary Sources of information in the course of this Research study. While developing the tools this study has collected reports on atrocities from various human rights organizations NGO's National Commission for SC and ST's to build some case studies to understand the POA. It is also comprise articles, books and High courts, Supreme Court, and Special Criminal trial courts Judgments in Varies cases which come under POA of 1989. And this entire study had been conducted only based on above mentioned secondary Data.

## **THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT 1989**

Whoever, not being a member of a scheduled Caste and Scheduled Tribe:

- Forces a member of a scheduled caste or a scheduled tribe to drink or eat any inedible or obnoxious substance;



- Acts with intent to cause injury, insult or annoyance to any member of a Scheduled caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;
- Forcibly removes clothes from the person of a member of a Scheduled caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;
- Wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;
- Wrongfully dispossesses a member of a Scheduled caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;
- Compels or entices a member of a scheduled caste or a scheduled tribe to do 'begar' or other similar forms of forced or bonded labor other than any compulsory service for public purposes imposed by Government;
- Forces or intimidates a member of a Scheduled caste or a scheduled Tribe not vote or vote for a particular candidate or to vote in a manner other than that provided by law;
- Institutes false, malicious or vexatious suit or criminal or other proceedings against a member of a Scheduled Caste or a scheduled Tribe;
- Gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of member of a scheduled caste or a scheduled Tribe;
- Intentionally insults or intimidates with intent to humiliate a member of a scheduled caste<sup>4</sup> or a Scheduled tribe;
- Assaults or uses force to any woman belonging to a Scheduled caste or a scheduled Tribe with intent to dishonor or outrage her modesty;
- Being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;



- Corrupts or fouls the water of any spring, reservoir, or any other source ordinarily used by members of the Scheduled Caste or the Scheduled Tribe so as to render it less fit for the purpose for which it is ordinarily used;
- Denies a member of a Scheduled caste or a Scheduled Tribe any customary rite of passage to a place of public resort or obstructs such members so as to prevent him for using or having access to place of public resort to which other members of public or any section thereof have a right to use or access to;
- Forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village, or any other place of residence.

### **THE SILENT FEATURES OF THE ACT POA, 1989**

- Though the Act does not define “atrocities”, Section 3 enumerates the multiple ways through which members of the Scheduled Castes and Scheduled Tribes are oppressed and/or humiliated, which would amount to an offence under the Act. The atrocities listed here include forcing the eating of obnoxious substances, dumping waste matter on land, wrongful occupation of land, dispossession, and bonded labor, intimidation during voting, mischievous litigation, false information, and public information. Outrage of modesty, sexual exploitation, fouling of water resource, obstruction of energy to a public place, eviction from habitation, mischief with explosives, destruction of buildings and suppression of evidence.
- The offences of custodial rape, highway robbery and house breaking by night which carry a minimum punishment of ten years or more, under the Indian Penal Code are punishable with imprisonment for life and withy fine under this Act.
- The Act also provides for forfeiture of property, experiment of potential offenders, and collective punitive fine.
- A public servant, who neglects his duties under the Act, is punishable.
- The Act prohibits the grant of anticipatory bail to the potential accused under the Act and places restrictions on grant of probation to the convict of an offence under the Act.
- The Act makes provision for minimum relief and compensation to the victims of atrocities or to their legal heirs.



- Provisions of the Act are implemented by the State Governments and union territories.
- With a view to expedite the trial of the cases registered under the Act, the State Governments shall set up special courts.
- Section 15 of the Act provides for the appointment of Special Public prosecutor for conduction the cases.
- As per the Rules (The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995), the State Governments are required to set up scheduled Castes and Scheduled Tribes Protection Cell at the State Headquarters. For looking after the implementation of the Act.
- Rule 11 lays down the details for provision of relief, traveling allowance, daily allowance, maintenance expenses, etc. to the persons affected by the atrocities.
- Rule 7 provides that a Police officer not below the rank of a Deputy Superintendent of Police shall investigate offences committed under the Act.

The state Governments and union Territory Administrations are being extended financial support for implementation of the Act, under the centrally Sponsored Scheme implemented by the Central Government.

### **CONSTITUTIONALITY OF THE ACT POA, 1989**

The constitutional validity of the Act was challenged on various grounds in the case of Dr. Ram Krishna Balothia v Union of India. Objections were raised on the grounds that the entire act was discriminatory and therefore infringes on article 15 (1) if the constitution and is not saved by article 15 (4) the punishment of offence committed by a non SC or ST person against a person of those communities s not a measure that would ensure the up ligitment and advancement of those communities provides that a person who provides financial assistance to a person accused offences is presumed to have abetted the offence unless the contrary is unclear, vague and preposterous and creates a premature criminal liability and is therefore violation of article 14 and 31 Section 18 makes section 438 of CRPC inapplicable to offences committed under this Act.

On the first grounds of the Act being violation of article 15 (1) the court held that the act to act to be protected under article 15 (4) and in this regard a comment was made that the substance of Article 15 (4) should not be read in a narrow manner and the idea of protective



discrimination which was embodied in this article should be recognized, with regard to advancement it should not be read to mean only social and educational advancement and the idea of advancement brings within it sweep every kind of advancement. Thus advancement under article 15 (4) would include safeguarding the ability of these communities to live with dignity and self respect this would only be possible if they allowed to live free of fear and humiliation and protection against the commission of all norms of atrocities them thus Act fall within the protection of 15 (4)

On the issues of non inclusion of members from within the communities the court has not made any comment, but it is obvious that given the nature and the object of the act and its intentions to provide protection for those who fall within these communities it is however unlikely that the same act would provide for the prosecution of the members. Any Act or atrocities are committed by them will by them will be tried under ordinary procedure in the IPC With reference to 8(1) the court held it was necessary to prevent the rich from encouraging the commission of offences while remaining at a safe distance from the actual commission of the crime further the Act was not held to be arbitrary to the extent that was an process of checks in place to prevent the abuse of the power given by the act.

While the high court conceded the point made regarding anticipatory bail under 18 the matter was taken up by the supreme court on appeal the supreme court in the case of state of MP V Ramakrishna Balothia Which was the appeal sent as a result of the former case, was asked to decide the option of anticipatory bail to a person accused of an offence under this Act. The court reversed the decision of the high court and held the provision to be valid on in light of the larger objectives of the Act. The court argued that while an offence under section 3 arises out of the practice of untouchability, it should be viewed with respect to the larger aim of the Act which was the prevention of atrocities against these people and the provisions of stringent penal sanctions for the commission of such offences thus the exclusion of section 438 with respect to this Act must be viewed in light of prevailing social conditions which give rise to such offences may threaten and intimidate the victims into withdrawing their complaints or obstruct the functions of the prosecution. The court referred to the object of the Act in order to highlight the manner in which the act took cognizance of the crimes committed against those protected under it by others with vested interest and further the trend of retributive interest and further the trend of retrieve



action that follows any attempt made by their victims to assert their rights and seek the redressed of wrong thorough and judicial intervention.

From such circumstances from the denial of anticipatory bail to such persons cannot be considered to attract Article 14 as the offences forma distinct class by them and cannot be compared other offences. The court further held that given the context in which the crimes take place the denial of anticipatory bail cannot be considered to be contravention of Article 21 since it is the only effective method of ensuring the implementation of the law under the circumstances. In the case of Virendra Singh V. State of Rajasthan, the court held that in no person accused of offences under the act may avail himself of the options of anticipatory bail is clearly denied through section 18. The only manner in which such an option would be applicable would be in the event that there exists a doubt regarding whether the offences was committed under section 3 of the Act and this must be gathered by courts through the FIR filed. The courts have merely to ascertain the existence of an accusation which complies with all the requirements for an offence under section 3, the courts will not then go into examine the validity of such an accusation in order to come to a decision regarding the granting of anticipatory bail.

The durability of the Act was also challenged in Ravindran Pillai V. Union of India, which questioned the constitutionality of the Act with reference to its oppressive provisions. The courts examined the constitutional provide for the legislation of Article. The artycle17 which it regarded to be significant from the point of view of social justice and the guarantee of dignity and justice to a vast section of society to whom they were denied for centuries. Further given the nature of the article as well as the object and reasons for the enactment of the legislature and prevailing social conditions, the court concluded that the Act could not be declared unconstitutional on the grounds of being oppressive. The constitutionality of the Act was once again raised in the case of Jai Singh V. union of India, with specific reference to section 3 and 18. In deciding the case the court drew from the preamble to the Act which laid out its objects and reasons which included the protection of certain sections of society from continued oppression and the commission of inhuman practices and continues oppression against them. Article 17 of the Constitution was also examined in this regard and was hailed as a significant provision with reference to equality before the eyes of the law.





With reference to the contention made regarding unconstitutionality on the basis of section 18 and violation of Article 21, the court held that the denial of anticipatory bail was not a denial of the due process of law. Article 21 guarantees that the procedure to be followed in a trial of criminal case must be fair, just and equal. The right of anticipatory bail does not flow from Article 21. The right has been created by a statute and can be denied by another statute enacted by parliament. Article 21 is not intended to be a constitutional limitation on the powers of the legislature. The parliament has the power to deny the application of section 438 of Cr. P.C to a special legislation and given the nature of the content and the purpose of the Act, it may be safely be construed to be a special legislation in this regard. With reference to the contention of unconstitutionality on the grounds of it being a discriminatory legislature the court held that this too could not constitute a valid ground for declaring the statute to be unconstitutional. The constitute petitioners contended that the Act was discriminatory on the grounds that is allowed for the prosecution of offences committed by caste Hindus but not members of the SC and ST community. On this ground the court held that where the object of the Act was the protection of the members of the said communities against the oppression of caste Hindus, there could be no valid basis for prosecuting the same members under the Act.

Thus upon examination of the aforementioned case may draw the conclusion that the bulk of challenges of the Act have been one grounds of discrimination or wrongful classification as well as the violation of the due process of law either on the basis of the denial of anticipatory bail or with regards to the overly oppressive nature of the punishment prescribes under it. An important aspect with respect to punishment is the position regarding mandatory death penalty. This may be compared to Section 303 of the IPC which was declared to be unconstitutional on the basis that it removed all possibilities of judicial discretion with respect to granting of capital punishment. Within such a backdrop the validity of the provision made under this Act for granting of mandatory death penalty maybe questioned.

With regards in a mechanical application of the law one could provide the case of an untouchable mother who might take the punishment in a suit in order to product her son, who by virtue of his paternal lineage would be considered to be a caste Hindu for the purpose of the Act. Would the application of mandatory death penalty to use its discretion



and in keeping with the rarest of rare principles which operates regarding capital cases be allowed to take account of mitigating circumstances? The discussions regarding the constitutionality of the Prevention of Atrocities Act remains an evenly balanced one with argument made for both sides. To date the court seems to take a view that supports the validity of the legislature despite numerous attempts made in the validity of the legislature despite numerous attempts made in the different States, to invalidate the Act on the grounds that it was being abused by the SC and ST community to settle old disputes and vendettas.

### **THE PROVISIONS OF THE ACT POA, 1989**

Article 17 of the Constitution deals with abolition of untouchability which reads thus: "Abolition of untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with the law. The expression "untouchables" has not been defined and is usually used with references to those persons who are born in those castes and communities that are classified as Harijans or outcaste. The expression may also so be interpreted as to include persons who are made untouchables even though they might have been born in a higher caste. In the Hindu Dharma Shastras there was always a sharp distinction between the "Jathi Chandalas" (born untouchables) and "Karamchandalas" (those who became untouchables on account of their own conduct. (Hadibandhu Behera V/s Banamali Sahu.1961.) In *Surya Narayan Choudhary v. State of Rajasthan*, the Rajasthan High Court held that the entry of all devotees for worship into temples would be regulated by the same conditions which apply equally to everyone without any additional conditions for entry being imposed on any Harijans devotee. It was directed that the reported and much published practice of purifications of Harijans alone before allowing them entry into the temples for worship by making them wear "Kanthimala", sprinkling them with "Gangajal" shall be discontinued forthwith since the conditions imposed on "Harijans by Articles 14, 15 and 17 of the Constitution.

The people belonging to higher classes in the society when they refused professional service to "Harijans" on the grounds of his being Harijans seek to perpetuate and enforce disability arising out of untouchability when they offer insults to a Harijan on the ground of his being so, they do the same thing. The acts clearly fall within the inhibition contained in article 17



of the Constitution and clearly offences as described therein (State V Firau 1955). Article 17 of the Constitution which makes the practice of untouchability an offence must be read with Article 35 (a) (ii) which confers upon Parliament excluded to be offence under Part III of the Constitution of India. Article 17 does Practice as it developed historically in India (C.M Lakshmi V Voi 1988).

Even in the present day and age where equality has been granted under the Constitution to every citizen, there are atrocities being committed every day against the weaker section of society. Even though the implementation of the Civil Rights Act, 1955 there has still been flaws in the system to ensure everyone enjoys his or her fundamental right extended to him. The prevention of Atrocities Act, 1989 was passed unanimously in both house of Parliament to ensure the Atrocities against the SC/ST come to a halt and the people who committee this Atrocities are punished and justice be render to those abused. The POA has been legislated so as to safe guard the Scheduled Caste and Scheduled Tribe. Section 3rd of the POA deals with punishments for offences of Atrocities. Section 3(1) (i) to(HV) specify the offences of the Atrocities and whoever not being a member of the Scheduled Caste and Scheduled Tribe committees any such offence or offences, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. Section (2) to (vii) specifies the offences and punishments too. To improve the provisions of S.3 of the POA, the first and foremost prerequisite is to establish that the victim belong to the Scheduled Caste or Scheduled Tribe category. The POA does not provide for any presumption to be drawn in favor against any person in this regard.

The Section.3rd and 4rd of Act33 of 1989 provide for several punishments it cannot be said that the POA is ultra vireos on that ground. Where the applicability of Act of 33 of 1989 itself is doubtful accused can be enlarged on anticipatory bail. [Pankaj Suthar V State of Gujrat, 1992.] As it was held in Rupabhai v. State Gujrat,[1997] the court is empowered to compound offences by invoking inherent powers under Scheduled Cast and Scheduled (POA) Act, and the Protection of Civil Rights Act, 1995. These seem to be no arbitrariness in the omission of means real in most of the offences under S.3.[Matasevak V State of UP,1996] Where there is no order appointing the Civil Judge and C.J.M as Additional Sessions Judge by High court under S.9 of the Code of Criminal Procedure, Learned Civil Judge acting as in charge Sections Judge has no power to grant bail.[ST of Karnataka V



CHANNABASAPPA,1992] Cognizance of offence on the basis of report under S.173 CR.P.C, has to be taken by the Magistrate and it is not up to the discretion of the Police Commissioner under S.96 of the Bombay Police Act,1951.In the absence of proof whether the complaint belongs to Scheduled Caste or Scheduled Tribe, the accused cannot be convicted.[p J VeerannaVstofAP,2003].

### **AMENDMENTS REQUIRED IN THE ACT POA, 1989**

It was held in Ramesh L. Aneja and R.L. Aneja v. State and Anr, [AIR 1960 sc 154] the proceedings before the Metropolitan Magistrate had been initiated on a complaint under S.3(x)of The SC ST (POA) Act,1989 against the petitioner, on receipt of the complaint report was failed signed by the Hari Singh. As per the regulations of the Act an enquiry was conducted, it was found that the petitioner had actually not committed any offence and that the complaint had been filed in order to pressurize the petitioner to deter him from proceeding against the complainant who failed to deposit Rs.59,670 in the bank handed over to him by the petitioner for depositing in the bank.

It is contended by the respondent that the FIR had been registered by then. Further it is connected that as per the rules framed under the Act the investigation must be complaint within one month of the registration of the FIR and that if that is not concluded on account of this order the report under Section 173 CR.P.C. pursuant to the FIR will become bad in law it was clarified that the FIR registered will remain in existence despite the order of stay. There is a general lapse in this statute to ensure a member of the Scheduled Caste or Scheduled Tribe does not misuse the rights extended to him. A lot of cases have been quashed on the ground of a member of the SC/ST falsely accusing someone of an act which he had not committed and hence there should be an addition in the Act where if an SC/ST is found of abusing his powers, he should be severely death with.

In Rajaji Hegolji Thakore v. State of Gujarat. [MANU/DE/842/2005] the petitioners was accused of having committed offences punishable under Sections 143,342,395,504 and 506(2) of the Indian Penal Code and S.3(1) (10) of the SC/ST (POA) Act,1989by virtue of an F.I.R. lodged with Bhabhar Police Station. They challenged this petition under Article 226 read with Article 14,16and 21 of the Constitution. Asking for the issue a writ of mandamus or any other writ, directing the Investigating Officer to release the petitioners on bail in the event of their arrest in connection with offences the court held that petition is devoid of



merits and powers under Article 226 of the Constitution are not required to be exercised in favor of the petitioners. The petition was dismissed. Article 226 guarantees a right to a citizen to approach the High Court, the validity of these cases in an abuse on the Fundamental Right of the citizen as this Act encroaches on the right of an individual.

The former Attorney General Solicitor Sorabjee presented the official view with regard to the failure of the judiciary and executive to make use of the provisions of the Act and to protect the untouchables from the commission of Atrocities. He mentioned at the current rate of convictions under the Act, it should be viewed in light of the fact that the Indian criminal jurisprudence is based on presumption any proof beyond reasonable doubt. While accepting that one of the biggest problems with the legislations is the non implementation of the legal provision and the broad interpretation, he adds the caveats that this is not a situation exclusive to Dalits but includes other weaker sections of society. He goes on to argue that there is a need to accept and implement the legal provisions and advance the status of the Dalits and to provide for them with immediate protection against commission of atrocities, one must not ignore the important steps taken by the founding fathers of the Constitution who have made vast attempts in this sphere.

In 2004 Ismail Kalubhai Gharasia v. State of Gujarat [MANU/GJ/2004] the accused here was sentenced under Section. 3rd (2) of the POA to 7 years rigorous imprisonment for the act of committing rape of a 9 year old Scheduled Caste girl by the Special Courts. The accused then challenged this in the High court where he was found to be not guilty of any charges as the evidence of the girl dint not match the identity of the man. The powers vested with the Special Courts which have been setup under the section 33 of the 1989 Act are vast and inherent to the bases that speedy Justice be rendered and can try offences under IPC committed in course of the transactions as long as they are read with Section 3<sup>rd</sup> of the Act. The fact being in most of the judgment passed by the Special Court has been over ruled by the higher courts as there has been a discrepancy in the system of Justice rendered which tilt in the balances of the SC/ST. Although the Prevention of Atrocities Act is a powerful weapon on paper, in practices it has suffered from a near-complete failure in implementation.

In G. Krishnan S/o Govindan, Kumutha v. Union of India [MANU/TN/2005] by means of this writ petition, the petitioner had challenged S.3 and 18 of the SC/ST (POA)Act,1989 as ultra



virus the Constitution. The challenged the same on the grounds that they were falsely accused by a member of the Scheduled Caste and a criminal case under Sections 323/427 of the IPC and S.3(1)(10) of the SC/ST (POA) Act 1989. The petitioner applied for anticipatory bail under Section 438 of CR.P.C. But that application was dismissed by the District and Sessions Judge, in view of Section 18 of the SC/ST (POA) Act, 1989. As regard the validity of Section 18 of the POA, that has already been upheld by the Supreme Court in State of M.P .and Anr.v.Ram Krishna Balothia and Anr. [AIR,1995] the Court took into consideration the validity of S.3 of the Act. It is the constitutional obligation of the State to protect the interests of the Scheduled Castes and Scheduled Tribes from social injustice. The object of the Act is to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes, who have been oppressed and downtrodden for thousands of years in our country. In Sanjay Narhar Malshe v. State of Maharashtra [MANU/MH/2005] A question of law, important and interesting which is sought to be raised in this Petition relates to the powers of the Judicial Magistrate in respect of the grant or refusal of the bail to accused persons in cases which are exclusively tribal either by the Sessions Courts or Special Courts established under a special statute. Petitioner that thought the provisions of SC/ST (POA) Act, 1989 under which the charge-sheet has been filed, specifically provide under Section 18 thereof that the provision of Section 438 of the Code is not applicable to the cases arising under the said Act, yet there is no bar under Section 209 of the CR.P.C or under any other provision of law including under the said Act for grant of bail to the person accused of offences punishable under Section 3 of the said Act while the matter is being committed to the Special Court. referring to the of the apex court in 2003 Gangula Ashok and Anr V. State of A.P. [2003] wherein it has been ruled that a special court under the said Act is not empowered to take cognizance directly of the offence committed under the said Act it has to be only after committal of the by the magistrate in exerciser of powers section 209 of the code, it is necessary for the magistrate to commit the proceedings to special court in order to special court to take cognizance of the said proceedings arising from the police in relation to the offence in question. It is further submitted that in the interregnum period there is absolutely no justification for detention of the petitioner of the petitioner, not it has been the case of the investigating agency that such detentions necessary. Besides, there is no statutory provision debarring the Magistrate refuse bail in the course of the committal



proceedings. However considering the normal practice followed by the Magistrate in committal proceedings, it is necessary for this court to give direction to the court of Magistrate to exercise their powers in relation to the grant of bail even in such cases including the one petitioner.

Meanwhile the interim relief granted to the petitioner to continue till the appropriate order is passed by the magistrate In G Raja Sundera Babu and Ors. V. Government of Andhra Pradesh and ors [2005]. The petitioners contend that in view of these the area be declared as “PRONE TO ATROCITIES” within section 17 of the act. Parliament enacted the act with a view to provide security to the persons belonging to scheduled castes and scheduled tribes. Procedure was prescribed and stringent measures were indicated for violation of the rights of the persons belonging to the said categories. It is true that the implementation of the provisions of the act has gone a very long way in containing the atrocities against the Dalits. However, instances are not lacking, where the provisions of the Act are grossly misused by persons other than the genuine the genuine victims, to advocate their political or personal causes. It is too difficult to generalize the issue either way. Misuse of the provisions of law is not something uncommon. However, because of the stringent measures provided for under the Act, the impact felt by the victims of misuse of the process of the Act is substantial. Hence, the court held it did not find any basis for claim of the petitioners. The petition was dismissed.

The POA is a powerful piece of legislation if only the many voices professing to be working on behalf of the dalits of India could work effectively to make sure that the central government was held accountable to its promises and more importantly to the fundamental principle enshrined in the constitution available to every citizen of the nation only then will the rate of convictions be justified when compared to the amount of cases that appear before the judiciary for it is time that the judiciary also lived up to its constitutional mandate of being an “impartial judiciary” and show that justice done and can be seen to be done.

## **AMENDMENTS PROPOSED FOR ADDITION OF NEW TYPES OF OFFENSES UNDER THE ACT OF POA 1989**

- Dispossesses a member of a Scheduled caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or



water; or prevents to take possession, use or enjoyment of the land or the produce; takes away the produce without his or her consent in writing (Ch. II Sec. 3(1) (V)).

- Compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'Begar' or other similar forms of forced or bonded labor other than any compulsory service for public purposes imposed by Government on persons in general exclusively on Scheduled Castes or Scheduled Tribes or refuses to pay wages in accordance with the minimum wages prescribed by the government or contract wages for the labor, such contract wages not less than the minimum wages fixed by the government (Ch. II, Sec 3(1)(VI)).
- Forces or intimidates or attacks or humiliates and mentally or physically assaults a member of a Scheduled caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law or after the poll causes injury, insult or commits any offence under this Act against a member of Scheduled caste and Scheduled Tribe for voting or not voting to a particular candidate or for voting in a manner provided by law (Ch .II, Sec 3(1)(VII)).
- Institutes false, malicious or vexatious suit, or criminal or other legal proceedings, against a member of a Scheduled caste or a Scheduled Tribe or files cases against the victims of atrocities or his/her relatives shortly before or after the offence of atrocity to force them to desist them from making complaint or withdraw a complaint, or files cases against the witnesses or his/her relatives shortly before and after the offence of atrocity to prevent them from deposing evidence or to force them to depose false evidence in any case of atrocities.(Ch .II, Sec. 3(1)(VIII)).
- Causes hurt or grievous hurt or putting any member of a Scheduled castes or a Scheduled Tribes, in addition to the any of the offences mentioned under Section 3 of the Act (Ch. II, Sec. 3(1)) (XVI)).
- Abducts, or kidnaps, or wrongfully restrains any member of Scheduled Castes or Scheduled Tribes; (Ch, II, Sec. 3(1) (XVII)).
- Discriminates against or humiliates any children or any other member of Scheduled Castes or Scheduled Tribes in Anganwadis or mid day meals programme in schools or any other educational institutions; (Ch .II, Sec. 3(1) (XVIII)).





- Whoever commits rape against any woman, who is a member or a Scheduled caste or scheduled Tribe, Shall be punished with imprisonment for life or for a term not less than years and shall also liable to be fine (Ch. II, Sec. 3(2)(I)).
- Whoever commits rape against any woman who is a member of a Scheduled Caste or Scheduled Tribe, when she is under eighteen years of age; or
- Whoever commits gang rape against any woman who is a member of a Scheduled caste or Scheduled Tribe,
- Whoever commits mass rape against women belonging to a member of a Scheduled Caste or Scheduled Tribe by more than one person shall be punished with rigorous imprisonment for life.
- Whoever commits murder or mutilates or murder thereof on the allegation of practicing witchcraft of a member of Scheduled Caste or Scheduled Tribe Shall be punished with rigorous imprisonment for 10 years etc, in addition to IPC offences.
- Whoever commits mass/multiple murder of members of Scheduled Caste or Scheduled Tribe shall be punishable with rigorous life imprisonment. (Ch .II, Sec. 3(2) (II)).
- Commits mischief by fire or any explosive commits mischief by fire or any explosive substance thereby causing destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property or by a member of Scheduled Caste or a Scheduled Tribe or any form of disrespect or disfigurement or damage to the statues of Babasaheb Dr. B.R. Ambedkar shall be punishable with imprisonment for life and with fine (Ch. II Sec. 3(2)(IV)).
- Imposes social or economic boycott or blackmail or abets or supports such boycott or blackmail of any person or a family or group of Scheduled Caste or a Scheduled Tribe; shall be punishable with imprisonment for life and with fine (Ch. II, Sec.3 (2) (IV A)).
- Destroys livelihood systems, causes ransacking of household items, food grains, agricultural produce, destruction of movable or immovable property, of a member of Scheduled Castes or Scheduled Tribes and further, or persons aids or abets such



commission of atrocities is said to commit the offence within the meaning of this sub-section (Ch .II, Sec.3 (2)(IV B)).

- Whoever abets any offence, if the act abetted is committed, shall be punished with the punishment provided for the offence (Ch. II, Sec. 4(1)).

## **CONCLUSION**

After examine of the Act and (which Act moron –POA, SC/ST POA or 33 of 1989) the practice of untouchability and the failed attempts made by the legislature to further the constitutional mandate to eradicate such practices in order to achieve the ideal society through justice and equality, it is frustrating at the very least to see that even though somewhat adequate protection has been offered to the SC/ST on paper, there seems to be no adverse effect on the perpetrators. They can still commit atrocities with impunity and escape all the consequences for their actions. This is a clear instance of breakdown of the constitutional mandate and of the law and ruder machinery in society.

Neither the Civil Rights Protection Act nor the far more stringent POA have been successful in achieving it mandate of abolition of untouchability and the practices untouchability continues even to this very date. The failure of the legislature is attributed mainly to ineffectiveness of the legal provisions. Before the coming into force of the present POA, it was a widely held debate that the flaw and the lack of success of curbing the practice of untouchability was due to inherent flaws and lenience in the system. However the same cannot be said for the present Act at it has extremely stringent and at times oppressive provisions regarding the commission of offences under the Act as well as their punishments there by. It is time to accept the fact that no amount of oppressive legislation would succeed without the support of the legislative and executive and strong commitment on its part to enforce and protect the weaker sections of the society. The issue of punishment will only prove to be a deterrent to the offenders and sufficiently redress or protect to be a deterrent to the offenders and sufficiently redress or protect the victim in the event that there are a lot of convocations for the crimes being committed and speedy up the process of investigation and justices.

While the researchers had addressed that there is a sharp debate regarding untouchability of the being violation of Article 14, 15, 19 and 21 of the Constitution, the balance of the arguments are at present evenly matched and the Hon'ble Supreme Court has held in favor



of upholding of the Act. Further while there may be a valid contention raised regarding the possible abuse of the while there may be a valid contention raised regarding the possible abuse of the Act, the cases maintained in the previous chapters show that some measures are being taken to prevent arbitrary and mechanical implementations of the Act. This can be said that regardless of the nature of the Act, attempts are being made in order to escape the accountability regarding its ineffectiveness in implementing the existing cases. The problem may not lie in the nature of the legislation but in the implementation.

Whatever may be one's view regarding the stern provisions, the admittance of the failure of the Act to quash the practice of untouchability has failed, and this is not due to the provisions but more so due to the failure of executive inertia to ensure the same. Until this issue can be resolved when political will backs the stringent enforcement of the Act and perpetrators of the crime are punished, India stands in the dock .It is up to the system now to decide whether India is really for the Indians or for a fragmented population. The time has come for India to be a society of equals. The spirit and letter of the mandate enshrined in Article 17 and to understand at all levels of society that these rights are non deposable.

The intention of this paper explicitly brings out that the entire issue of reducing violence against SCs is not simply one of effectively administering and implementing the Act, but involves massive change and transformation of SC/ST Act with the perspective of victims and witnesses rights, with the social reality in mind, sheered in the social legacy of India. Delay in trial of atrocities amounts to an encouragement for the commission of more atrocities with virtual impunity. Punishment with deterrent rapidity should follow each and every one of the crimes under this Act which are intended to cow down a social category of people subjected since long, and still being subjected, to exploitation, deprivation and humiliating discriminations, and which crimes are resorted to whenever, with rising awareness of their rights, they raise just demands regarding land, wages women s dignity etc. There is a need felt to critically review the performance of the Act. There is a need to understand the changing nature of discrimination and to recognize the victims and witnesses rights from the stage of complaint up to the level judiciary for speedy trial as a right of victims and witnesses.

This set of amendments is suggested for speeding up trials to the point where atrocities against scheduled castes and scheduled tribes are promptly visited by punished with



deterrent rapidity this set of amendments along with the amendments already proposed by the concerned ministries and commissions are essential and indispensable. Hence, having positioned and placing this paper before you all, organizations and experts, to deliver your valuable suggestions for the amendments under the SC/ST (POA) Act, so that judicious amendments in the Act can be brought to make it more binding and strong. This is critical to address for strengthening Act and Rules for which, we need to build up a strong strategy for launching a campaign at the National level and advocacy strategies for the judicious amendments under the SC/ST (POA) ACT.

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