



Constitutional Protection to Weaker Section of Society of India: A Socio Legal Study



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ABSTRACT

In democratic countries laws are based on the principle of “equal protection of law and equality before law.” India is a complex society. Its main feature is caste ridden society. The society is split-up on the basis of caste, religion, wealth or occupation. This practice taking place since time immemorial. The society is polluted by many evil social practices like untouchability. There is certain upper caste who believe some groups of lower caste as untouchable and they do atrocities based on caste on those lower strata people of society. The rays of hope to eradicate this social evil, we have the measures that provided in our Constitution. In order to treat everyone equally, the constitution of India added provision regarding abolishment of untouchability. Further, it is the duty of state and its agencies to safeguards the socio-economic interest of these weaker community of society who are vulnerable of atrocities and exploitation by those constituting strong strata of society. The weaker section of society referred to as tribal population including scheduled caste and scheduled tribes specifically. Even after having such strong constitutional measures of protection, people of weaker section of society are facing cruelty in society so called free India. In order to uplift them in the society or to give equal protection, the parliament has enacted the law known as Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989. This paper will deal with the different laws providing measures of protection from exploitation and atrocities to people of Schedule Caste and Scheduled Tribes. It would also examine Whether this law has achieved the intended objective for which it was enacted? Further the focus of the paper would be to analyse the rationality of amendment Act 2018 with special reference to sec 18A of the Act which authorises automatic arrest of accused without any initial investigation or enquiry of the offence.

Introduction

The term weaker section derived from word weak

which indicates a drawback. The group of people

which falls under weaker section of society faces

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various problems because they are socially, economically and educationally weak. India almost passed its seventy-six years of independence. In India people of different caste, religious believes lives. The aim of the Independent India's leader was the unity and welfare of the people in the country. But there was discrimination against different caste or religions taking place like Schedule Caste or Schedule Tribes. These groups are treated as weaker section and facing discrimination. To eliminate the discrimination in the country, Constitution of India provide some rights or duties to stop atrocities or protect interest of these groups. As number of incidents of atrocities against these groups taking place due to several social, economic, historical reasons. Despite giving rights under the Constitution, it fails to give equality in the Indian society.¹

Statement of Problem

Despite of having various laws for protection of Schedule Caste and Schedule Tribes, gradually the crimes against Schedule Caste and Schedule Tribes are increasing. In 2020, there was 9.4 % and 9.3% increase in cases registered for SC and ST under SC/ST (POA) Act, 1989. Also, according to National Crime Record Bureau (NCRB) Report 2021, the crimes against Schedule Caste and Schedule Tribes kept on increasing as compared to 2020. Under the provisions of Constitution for protection of members of weaker community namely, Schedule Caste and Schedule Tribes law and it is now known as SC/ST (POA) Act, 1989. The main aim of the act is to put check on the offence against the Schedule Caste and Schedule Tribes and also prevent the offence against weaker

section. The Act dealt with the offences of atrocities. The offences listed under this Act are cognizable in nature. The power is given to police regarding arrest of accused without any warrant and also start the investigation without any authority order. In 2018, the amendment was introduced to the SC/ST (POA) Act and inserted section 18A. This section dealt with arrest of the accused. The investigative officer not required any approval for arrest.

Thus, it was justifiable to arrest without investigation whenever the complaint was made against the accused person under Section 18A of the Act. The special courts may deny for anticipatory bail, if there was automatic arrest of accused for offence committed under the act. Further, the rejection of anticipatory bail to the charged individual really helps to prevent the offences of atrocities against these groups. Despite of having provision for protection and upliftment under Constitution of India or special laws, the crime against them is increasing. The provisions of these laws are no sufficient to deals with this situation.

Research Questions

- Whether Schedule Castes & Schedule Tribes community needs statutory protection in India?
- Whether the Scheduled Castes and Schedule Tribes Amendment Act, 2018 constitutionally valid?
- Whether Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 is enough for safeguarding and guaranteeing protection to Scheduled Castes and Schedule Tribes community within India?

Research Gap

The Schedule Caste and Schedule Tribes Act, 1989 was introduced to reduce the offences taking place with SCs and STs groups. The act majorly dealt with the rights of the victims. As the rate of crime towards weaker section “the Schedule Castes and Schedule Tribes” increasing constantly. The amendment was introduced in the act which again focuses on the victims’ rights. The current legislations are not sufficient to provide justice to lower class. It was seen that the amendment regarding automatic arrest against the rights of the accused under Constitution of India or Criminal Procedure Code.

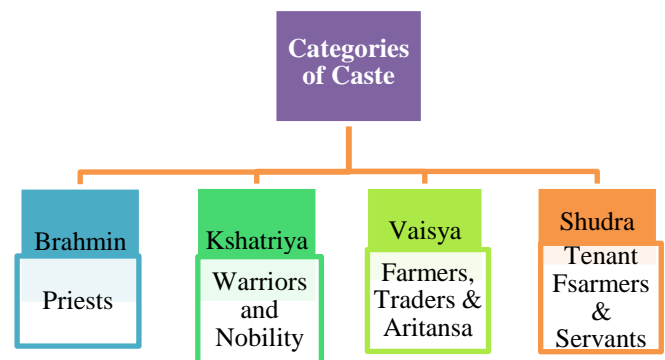
The goals of this study are to determine, whether there is need for more legislation to protect the rights of the lower class. Whether 2018 amendment in Schedule Caste and Schedule Tribes Act, 1989 was violative of fundamental rights. In this work, analysis the decisions of Supreme Court regarding automatic arrest of the accused. Further, analysis the decision of supreme court or High Courts that to what extent bar was imposed to anticipatory bail under Section 438 of Cr.P.C.

Hypothesis

It is hypothesized that the current legislation for protection against atrocities take place against Schedule Castes and Schedule Tribes fails to reduce the crimes rate against lower class.

1. Origin of Caste System

In India, the caste system originated 2,000 years ago. In ancient time the caste system depends on the nature of work done by person and divided into four major categories that are:



Those who doesn't fall under any of above mentioned four categories are known as Dalit or Untouchables. Time passes but the practice of caste prevails in the Indian society and every time has common features that are:

- Marriage: Marriage between different caste forbidden.
- Meal: The person will be polluted if take meal from lower caste person.
- Religious Worships: Higher class people has right to visit the temple. But Untouchable not allowed to enter there.

In 1775, Britishers use the caste system as a tool against people. They collide with the upper caste people exploit the lower groups for their own benefits. But in 1930 and 1940, the British government taken the step against Untouchability. They made laws for the protection of lower caste, untouchable or Scheduled Castes.²

On 15 August 1947, India became independent from Britishers not from the backward thinking. In present time, caste time is still prevalent in India. The government of India enacted numbers of laws on various subjects. Out of the some are for the lower class to give them equal opportunities in the societies or to prohibit discrimination against them.

2. Who falls under Weaker Section?

In ordinary sense if we refer the weaker section of society that section of population who are politically, socially, educationally and economically backward in comparison to other sections of population of the society and faced disabilities in some aspects of life due to backwardness.

As per Government Act, 1935 weaker section refers to those segments of population of society which due to any traditional culture or tribal origin as way of living in tribe or due to other reasons faced educational or economical backwardness or in some other aspects of life.

According to different resolutions of government of India basically categorizes the weaker sections into three parts based on their issues and susceptibility to disabilities faced by them.

These are Scheduled Caste (SC), Scheduled Tribes (ST) and other backward classes (OBC). There are some other susceptible groups such as children, ladies, especially abled, elderly, sexual minorities, migrants or economically weaker people who are also treated as weaker section. The constitution not provides measures for protection of Schedule Caste, Schedule Tribes or Other backward classes only but includes other marginalized groups. But here two major categories concepts discussed i.e., Scheduled Caste and Scheduled Tribes.³

2.1 Scheduled Caste: Concept

The Schedule Caste that segment of population which stood at most bottom step of Indian social ladder. This section of Indian population is socially depressed, economically weak or educational neglected. They are also known as Untouchable or

harijans in Indian society.

According to Indian Constitution, schedule caste is that section of population which are at lowest in Hindu social order and faced the problem of untouchability.⁴

According to D.N. Majundar, Schedule caste refers to those groups of people who faced social or political problems as many of them are given under consistently practiced in culture which are enforced by upper class people.

2.2 Scheduled Tribes: Concept

Generally, the group of people in tribes resides in jungle areas or in small locality and they are educationally weak or completely living within their own community as marriages take place among themselves. They search for food as fruits or roots as their veg food and roasted animal as their non veg food. They are completely unaware of country social, political and economic situation. Further they repel the development and dislike the strangers and educated modern people or community.

As per Gillin and Gillin, A group of people refers a tribe when they live in common areas, speaks common language and follows the common culture.

According to Lucy Mair, Tribes means division of population as independent political that follow a common culture.⁵

2.3 Demography of Schedule Castes & Schedule Tribes

Category	Total Population	Male	Female	% Population in India	Child (0-6)	Sex Ratio
Schedule Castes	201,378,372	103,535,314	9,78,43,058	16.6%	14.50%	945
Schedule Tribes	104,545,716	52,547,215	51,998,501	8.6%	16.01%	990

Table 1: Schedule Castes⁶ and Schedule Tribes⁷ Population in India

State	Maximum Rate of Schedule Castes (%)	State	Minimum Rate of Schedule Castes (%)
Punjab	31.9	Mizoram	0.1
Himachal Pradesh	25.2	Meghalaya	0.6
West Bengal	23.5	Goa	1.7
Uttar Pradesh	20.7	Dadra & Nagar Haveli	1.8
Haryana	20.2	Daman & Diu	2.5

Table 2: Ratio of Schedule Castes in States⁸

State	Maximum Rate of Schedule Tribes (%)	State	Minimum Rate of Schedule Tribes (%)
Lakshadweep	94.8	Uttar Pradesh	0.6
Mizoram	94.4	Tamil Nadu	1.1
Nagaland	86.5	Bihar	1.3
Meghalaya	86.1	Kerala	1.5
Arunachal Pradesh	68.6	Uttarakhand	2.9

Table 3: Ratio of Schedule Tribes in States⁹

According to data given under Statistics of 2011, in India the entire citizens of Schedule Castes is 201,378,372 which means it contributes 16.6% to the total population. The percentage of total population of Schedule Castes in Statistics 2001 is 16.2% of Total Population in India. Out of total Schedule Castes population 38,50,562 people resides in rural areas while 4,75,27,524 resides in metropolitan areas. The states who have maximum schedule caste ratio are West Bengal, Haryana,

Himachal Pradesh, Uttar Pradesh and Punjab. Also, Delhi out of Union territories have maximum ratio. Further the states who have minimum number of Schedule caste are Daman and Diu, Goa, Mizoram, Meghalaya, Dadra and Nagar Haveli. The State have no population of Schedule Castes are Lakshadweep Islands, Andaman and Nicobar Islands, Nagaland and Arunachal Pradesh.

According to data given under Statistics of 2011, in India the entire group of Schedule Tribes is 10,42,81,034 which means it contributes 8.6% to the entire population of the country. The percentage of total population of Schedule Tribes in Census 2001 is 8.2% of India's Total Population. Out of total Schedule Tribes population 9,38,19,162 which is 11.3% people reside in rural areas means while 1,04,61,872 which is 2.8% resides in metropolitan areas. The states who have maximum Schedule Tribes ratio are Lakshadweep, Mizoram, Nagaland, Meghalaya and Arunachal Pradesh. Also, Delhi out of Union territories have maximum ratio. Further the states who have minimum number of Schedule Tribes are Uttar Pradesh, Tamil Nadu, Bihar, Kerala, Uttarakhand. The State have no population of Schedule Tribes are Punjab, Haryana, Chandigarh, Delhi and Puducherry.

2.4 Condition of Schedule Castes & Schedule Tribes in India

• **Economic Problem:** In India from members of Schedule Caste 91% percent falls under below poverty line. The main feature of members of Schedule Caste poor economic condition. The Plethora welfare scheme also not able to uplift their

living condition. As they faced rejection from society effect their socio-economic development.

Further, the condition of Schedule Tribes also good. They fall below the poverty line as many times they eat mango seeds, wild root, wild mushrooms. They have less sources of income so can't afford the expenses of modern living style.

• **Health Problem:** Health means physical and mental wellness. As most of the people belong to Schedule Caste and Schedule Tribes are illiterate. They face number of health problems and the most common diseases found in them are Malaria, TB, Typhoid, malnutrition led Anemia. They are careless about their health due to their poor standard of living. Also, there poor diet makes them exposed to number of physical disabilities. Due to their poor economic condition, they can't afford modern health needs. Number of Tribal people face malnutrition because of poor living conditions. Rather going for modern techniques of treatment they follow black magic and other traditional methods.

• **Education Problem:** The education contributes to the development of person and society. But from past upper-class people denied the admissions to member of Schedule Caste to schools or education. Which led to illiteracy in members of Schedule Castes. If they got access to school, they face rude and unnatural behaviour of the teacher and other communities' students. Further the tribal people faced most problems in education system as compared to other communities. They are that section of society which has unique style of living which separate them from society language, culture and values. There is huge gap in present education

system and their living style which led to many problems in their approach to education.¹⁰

• **Literacy Rate:**

Sections of Population	Change in Literacy Rate	Literacy Rate in 2011
Total	8.2	73
Men	5.6	80.9
Women	11	64.6
SC Population	11.4	66.1
Males	8.5	75.2
Females	14.6	56.5
ST Population	11.9	59
Males	9.4	68.5
Females	14.6	49.4

Table 4: Literacy Rate of SC/ST¹¹

Out of total population of India the literacy rate of SC/ST always remain low. From 2001 to 2011 the education level in members SC and ST risen at middle, secondary higher level in spite of having so many problems to these groups in schools. During 2001 to 2011, there is decline in percentage share at primary level along with improvement at higher levels education in country. During this period the rapid progress was made by SC and ST groups women. There was 14.6% increase in education among these groups. Further, the literacy rate among mem of SC and ST also risen to 9.4 and 8.5 as compared to non-SC/STs just 4.8%.

In 2001 the literacy rate of ST women is low 34.8% but in 2011 it risen 50%. And the literacy rate of SC women in 2001 is 42% which come up to 56.5%. Among SC and ST men the literacy rate came from 66.6% to 75.2% and 59.2% to 68.5%.

3. Provisions for protection of Schedule Castes & Schedule Tribes

3.1 Constitutional Provisions

• **Equality:** Every person must treat equally before law or equal protection should be given irrespective of its class. It is the duty of the State to prohibit to do the act which are biased in nature act. Also, there must be no privilege or special treatment available to any class of people which means no one is above the law, every needs to follow the rules and regulation made.¹²

• **Prohibition on Discrimination:** There are certain grounds given under the Constitution of India basis on which discrimination among people is prohibited. That grounds are caste, religion, sex, race or place of birth. But discrimination on some other grounds such as education can take place. Which means the different treatment does not there is discrimination.

Further, there are availability certain thing for the public use such as shops, hotels, restaurants or entertainment places, roads, wells, bathing ghats. In India every person has right to use the facilities made available by the government irrespective whether male or female and to which religion or caste they belong.

It is not treated as discrimination if any benefit is given to women, children, SC and ST. As they neglected class of the society so for their empowerment if any advantage given to them doesn't fall under discrimination.¹³

• **Equal Opportunities:** There should be equality in opportunity available during appointment or employment. It deals with the services that only fall with the domain of State. The government has power to make rules and regulation qualifications criteria for the employment. The qualification criteria will deal with the necessary qualification,

mental capacity, physical fitness. There should be no discrimination of the basis of caste, religion, sex, birth, colour, etc. for appointment in government office. The state has power to make law for employment in offices of state. While making law regarding reservation there should be reasonable criteria followed and it should not exceed 50% limit.

Further when it's came to state knowledge that particular class is not adequately represented in public office then it has power to make rules of reservation.¹⁴

• **Untouchability:** The idea of "Untouchability" is completely abolished under Indian Constitution and any type of it practice is punishable under law. But there is no definition of Untouchability given in the Constitution. The Untouchability deal with caste-based untouchability.¹⁵

• **Educational Rights:** There should be no denial to accept any person based on of religion, caste, language in academic institution which is maintained by government or receiving any aid out of Government of India funds.¹⁶

• **Educational Interest:** It is duty of State to focus towards weaker sections of the society regarding educational and economic interest. According to the provision of Constitution there is need to take step for Schedule Castes, Schedule Tribes and Other Backward Class provide them equality in the society.¹⁷

• **Reservation in House of People:** In House of People the seats are reserved for weaker section of society namely Schedule Caste, Schedule Tribes according to the provisions of Constitution of India.¹⁸

- **Reservation of Seats in Legislative Assemblies:**

Also, Constitution provides reservation of seats for SC & ST in the Legislative Assemblies of the States. It states as there must be seat reserved for Schedule Castes and Schedule Tribes.¹⁹

- **Establishment of Commission:** Under the provisions of Constitution there need to establish National Commission for Scheduled Castes (NCSC) and National Commission for Schedule Tribes (NCST). Its composition as follow chairperson, Vice Chairperson or three other members. The rules or regulation regarding appointment or term will be determined by President. The primary function of the commission is to safeguards the Scheduled Castes and Schedule Tribes. Also, to conduct inquiry into complaints file for violation of rights, to guide regarding process for socio economic development and some other functions for protection and development of Scheduled Castes and Schedule Tribes.²⁰

3.2 Special Legislations

When the provisions under Constitution guaranteed equality and guarantees abolishment of untouchability fails to fulfils it. Then needs to enact special law came into picture. That time Untouchability (Offences) Act 1955 as there are several loopholes in the act which bring another legislation. Then below mentioned laws comes up:

3.2.1 Protection of Civil Rights Act, 1955

- Earlier the Act was known as The Untouchability (Offence) Act, 1955. It is a federal law. The came into picture on 8th May, 1955.
- Under Section 2 it defines the Civil Rights as rights accruing as Article 17 of Indian Constitution due to abolish the practice of untouchability.²¹

- Initial Act does not give fruitful result but passage of time making difference in society.

- It defines the punishment for practicing untouchability.

- **Objective:** As the discrimination against lower class people increasing so there need to bring some changes in law. This act aims to remove to the difference between castes and practicing taken place due to caste system. It gives rights to lower class to live their life while exercising the rights given to them.

- **Provisions of PCR Act, 1955:** If any individual restricts any person to visit the temple on the basis of caste, then he will be punished.²²

- On the basis of caste discrimination, if any individual restricts any person to enter a public place such as hotels, restaurants dharamshala, sarai or musafirkhana then he will be punished under this Act.²³

- If any person does discrimination on caste basis and restrict any other person to enter a hospital, dispensary, hostel or institution on the basis of caste discrimination, then he will be punished.²⁴

- The person will be punished under this act if restricts any individual to sell or provide services to other person on the basis of untouchability.²⁵

- If any individual practicing untouchability and on its basis kept any person as slave then he will be punished with three-month imprisonment not more than six months.²⁶

- Offences under this Act punished with one month imprisonment fine Rs. 100 but not more than six months imprisonment and fine Rs. 500.

- If commits offence second time then punished with six months’ imprisonment fine Rs. 200 but not more than one year imprisonment and fine Rs. 500.
- If commits offence third time then punished with one to two years imprisonment and fine Rs. 500 to 1000.
- If any person commits offence third time, then imprisonment will be from one to two years along with fine Rs. 500 to 1000.

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

When Protection of Civil Rights Act, 1955 along with IPC provisions fails to reduce the gap between upper and lower class. For the protection of the Scheduled Castes and Scheduled Tribes, on 1st September, 1989 the Parliament passed the SC/ST Act. On 30th January 1989 came into force in whole country. The enacted with to prevent the discrimination or restrict the atrocities take place SC/ST community. While taking into consideration the safeguards given under constitution the act enacted such as under Article 15 there should no discrimination, Article 17 states abolition of untouchability and under Article 21 deals with right to right.

- **Objectives:** The SC/ST was the primary laws to stop crimes against scheduled caste and scheduled tribes.
- The main objective to provide justice to peoples of lower class so they live with dignity in the society without fear and suppression from upper class.
- Under this act special courts were setup to deal with individual against whom charges for committing atrocities filled.

- Also, legal help will be given to victims of atrocities.
- The present act provide support to lower group to become essential part of the society and guard their rights when offences against them violate their socio-economic rights.²⁷

4. The protection required for SC & ST

The Schedule Castes and Schedule Tribes required a protection of laws as crime against them increasing day by day concluded from recent incidents and as per below given data:

4.1 Status of crime against Schedule Castes and Schedule Tribes

S. No.	State/UT	Schedule Caste		Schedule Tribes	
		2020	2021	2020	2021
1	Andhra Pradesh	1950	2014	320	361
2	Arunachal Pradesh	0	0	0	1
3	Assam	28	15	10	16
4	Bihar	7368	5842	94	103
5	Chhattisgarh	316	330	502	506
6	Goa	2	4	2	5
7	Gujarat	1326	1201	291	341
8	Haryana	1210	1628	0	0
9	Himachal Pradesh	251	244	3	7
10	Jharkhand	666	546	347	250
11	Karnataka	1398	1673	293	361
12	Kerala	846	948	130	133
13	Madhya Pradesh	6899	7214	2401	2627
14	Maharashtra	2569	2503	663	628
15	Manipur	0	0	2	0
16	Meghalaya	0	0	0	0
17	Mizoram	0	0	0	0
18	Nagaland	0	0	0	0
19	Odisha	2046	2327	624	676
20	Punjab	165	200	4	0
21	Rajasthan	7017	7524	1878	2121
22	Sikkim	0	2	0	1
23	Tamil Nadu	1274	1377	23	39
24	Telangana	1959	1772	573	512
25	Tripura	2	3	2	0

26	Uttar Pradesh	12714	13146	3	4
27	Uttarakhand	87	123	13	6
28	West Bengal	109	108	90	92
	Total sates	50202	50744	8268	8790
29	A&N Islands	0	0	2	3
30	Chandigarh	3	0	0	0
31	Daman & Diu	1	0	0	3
32	Delhi	69	136	1	5
33	Jammu & Kashmir	7	13	0	1
34	Ladakh	0	0	0	0
35	Lakshadweep	0	0	1	0
36	Puducherry	9	7	0	0
	Total UT	89	156	4	12
	Total all India	50291	50900	8272	8802

Table 4: Crime/Atrocities against Schedule Castes and Schedule Tribes 2020-2021²⁸

As stated in National Crime Records Bureau, crimes report on 29th August 2011. The above mention table shows data year 2020 and 2021 of the crime against schedule castes and schedules tribes in each State/UT. From report it was found that in 2021 the crime against Schedule Castes is increased by 1.2% as compared to 2020. The highest rate of crime against SC/ST found in 2021, the highest number crimes against Schedule Caste taken place in Uttar Pradesh which is 25.82%. Then Rajasthan stood at second highest place with 14.7% rate and after its Madhya Pradesh with 14.1% rate. Further, in 2021 the crimes/atrocities against Schedule Tribes also increased by 6.4%. In this Madhya Pradesh shows highest rate of crimes with 29.8% and second highest is Rajasthan with 24%.²⁹

4.2 Recent Incidents of Discrimination

• Discrimination in Midday Meals in Schools:

There was complaint filed before National Commission for Schedule Castes that in some schools of Rajasthan while serving midday meals,

discrimination done between children. For children belong to Schedule Cases different seating arrangements was made for having midday meals. There is rise in atrocities against Dalits in Rajasthan. It was decided by commission that it will hold evaluation meeting of various departments of State.³⁰

• **Discrimination regarding Drinking Water in Karnataka:** Incident took place in Heggatora village of Chamarajanagar district of Karnataka, where a Dalit woman drink water located near Krishnadevaraya temple from water tank. After two days the water tank was purified by villagers because Dalit woman drank water from it. The tank was drain by the village and then purified with using cow urine. The compliant got registered by authorities under provisions of the SC/ST Act.³¹

• **Discrimination against Professors and Students in AIIMS:** The discrimination was faced by doctors or students at AIIMS in Delhi. In institute out of 1,111 posts for assistant professor 275 post and 92 for professor are vacant. The doctors were eligible for post or they have experience but still not appointed as they belong to Schedule Caste and Schedule Tribes. Further the students who belong to Schedule Caste and Schedule Tribes graded in biased manner. Number of times students performed well in theory exam but they didn't clear the practical exam this shows biasness towards SC/ST community students.

The admission of students belongs to these communities in undergraduate or post graduate in All India Institute of Medical Science were less to required quota as in 15% Schedule Castes and 7.5 % Scheduled Tribes.³²

• **Discrimination against Students in School:** The school in Mainpuri district of Uttar Pradesh does discrimination between children on the basis of caste. The children belong to Schedule Caste forced to keep their utensils for midday meal separate from other communities' children. The staff to cook midday meal also refused to touch the utensils of children belong to Schedule Castes.³³

• **Discrimination for entering to Temple:** On 4th September 2021, the Dalit family belong Channadasar community offering prayers for his child birthday. Child while offering prayers enter into the temple. On 11th September 2021, members of upper caste imposed fine Rs. 25000 on father. The amount of fine will be used for homa-havana to purify the temple.³⁴

5. Validity of SC/ST (POA) Amendment Act, 2008

The Constitution give power under Article 368 to parliament to make amendment in any particular law. However, it cannot make changes to the basic structure of the constitution. That on 17th August 2018 parliament amended the existing law named SC/ST (POA) Act, 1989 and added Section 18A which states that:

- For filing FIR under SC/ST Act, no preliminary enquiry will be conducted,
- No pre approval required by Investigative Officer to arrest the accused under this act
- That no anticipatory bail will be granted to any prosecuted under this law.³⁵

The Constitutional validity of the above-mentioned amendment was challenged in *Prathvi Raj Chauhan v. Union of India*³⁶ on the grounds that:

- Arrest of any person without any enquiry will be violative of “Right to life and personal liberty”.
- The bar on anticipatory bail of accused booked under this act, violates its Right to Equality or Right to Life and Personal Liberty.
- Further it violates the safeguards provided under Section 41 and 41A of the CrPC to accused.

The judicial review power granted under Article 32 of Indian Constitution to Supreme Court. Under which Supreme Court checks and analysis the validity of various laws and other judicial pronouncement.

On 10th February 2020 the Supreme Court approve the validity Section 18A of the of SC/ST Act amendment Act, 2018. The preliminary enquiry not to be conducted in every case but only in certain cases and it required as it depends on facts and circumstances. The list of cases in which preliminary enquiry need to be conducted are given in *Lalita Kumari v. Government of Uttar Pradesh*³⁷, that are Commercial offences Matrimonial disputes, Corruption cases, family disputes, medical negligence cases, Corruption cases and where there is slow criminal prosecution. Example, for reporting the matter there was delay of three months without giving adequate reasons for delay.

In context to anticipatory bail court states that there will be no absolute bar anticipatory bail, if the case was not at first appearance made under provisions of the SC/ST Act, 1989. Further the Section 18A was not violative of Article 14 and 21 of Indian

Constitution if we see the objectives of the amendment as it was made to provide safeguards to SC/ST community. Even there are number of socio-economic steps were taken for upliftment of SC/ST community in the society but still they are treated as lower class and they are not provided various civil rights. And crimes against kept on increasing and the rate of arrest under this act was quite low. Whenever the members of SC/ST community try to exercise their rights or demand statutory protection, they are threatened by other communities. According to the data given by National Crime Record Bureau, reflects those aggregate crimes against SC and ST take place 50291 and 8272 in 2020 and 50900 and 8802 in 2021. It was reflected from annual data of 2016-2017 by Department of Social Justice & Empowerment, and Ministry of Social Justice and Empowerment of Government of India that 15,638 cases decided by courts out of which 11,024 cases were of release and 495 cases were taken back. Further the data of NCRB (National Crime Record Bureau) of 2015 revealed that after investigation for both SC and ST category out of total cases 75% cases result in withdrawal or acquittal. So, there should be no anticipatory bail available to persons who commit offences under said act. The denial of anticipatory bail should not be treated as violative of 'Right to Equality' under Constitution.

Further, this amendment was not violative of 'Right to Life and Personal Liberty' as the practice of untouchability and the attitude towards the Schedule Castes and Schedule Tribes community which led to commission of number of offences against them. There is no justification in providing

the right of anticipatory bail as the persons who commits under the SC/ST Act. They will start misusing the liberty as on anticipatory bail they will threaten the victims and try to interfere in investigation.

*In Raghunathrao Ganpatrao v. Union of India*³⁸, the stress was given on the idea of fraternity. It was mentioned that Schedule Castes and Schedule Tribes Amendment Act was the best example of idea of fraternity. There is no need to place any type of restrictions on the application of the said Act.

Further, for the protection the fundamental rights of the individuals of Schedule Castes and Schedule Tribes. The amendment was made by Parliament. The main aim of Section 18-A is that members of said community get fair change to file complaint against discrimination taking place against them. The decision taken in *Prathvi Raj Chauhan v. Union of India*³⁹, provides the justice to the weaker section of society and helps in fulfilment of objective of the amendment done by parliament. It was held by court there may no presumption against Schedule Castes and Schedule Tribes that they misuse the provisions of the Act as done by higher class of society. In context of filing false complaint, court states that it was fault of human being not of caste. No caste or community is no answerable for this type of act. Additionally, people belong to Schedule Castes and Schedule Tribes hardly have courage to file complaint so less chances to file fake complainant. In case any complaint is found to be fake which is due to several reasons such inadequate research or different motives to file complainant there is no

factor caste involve in this. Through this judgement Supreme Court desiring to protect and uplift the dignity of lower class in the society.⁴⁰

6. Whether SC/ST (POA) Act is enough to guarantee protection to weaker section?

After analysis the provisions of SC/ST (POA) Act and status of offences against Schedule Castes and Schedule Tribes. It is found that in spite having special laws for protection of this community the crimes are still increasing. There are special courts setup for speedy justice but still there was increase in pending cases or investigation.

The Schedule Castes and Schedule Tribes Act was in 1989. It also known as Atrocities Act. The act was enacted to protect and uplift the SC/ST community in the Society. The said Act contains total 23 sections divided into five Chapters. It contains the list of offence falls under atrocities along with punishment for it. Under this act, for expeditiously trial special court are setup which deals with crimes committed under this act. Also, this act contains rights of the victims of cruelty.

The SC/ST (POA) Act, 1989 mainly focus on three parts which are as follow: firstly, which act are offences against these groups which led to criminal liability along with punishment; secondly, the provisions which provides the reliefs or compensation to victims of the incidents and thirdly, the provisions under which the special courts are established and implementation of the act and fulfils its objectives.

6.1 Summary of Provisions of Act

- The word atrocity define under section 2(a) atrocities means those offence which denies social, political and economic rights, discriminate or abuse

the person belong to SC/ST community by person who does not belong to this community.⁴¹

- Section 3 of the Act contains total 22 offence which are treated as crimes against the Schedule Castes and Schedule Tribes. The act discourages acts like sexual exploitation, forcefully removing clothes, forcefully eating or drinking fruits, force injuries, forceful beggary, bonded labour, denial the use of public place, wrongfully occupy the land and other social, economic crimes against SC/ST.
- The offences against SC/ST under said act are cognizable and non bailable in nature. Further, there is bar on anticipatory bail against offences of atrocities. If person not belong to Schedule Castes and Schedules Tribes commits any types of violence against member of Schedule Caste and Schedule Tribe will be treated as crime and will be penalize with imprisonment of six months but not more than five years and fine.
- If any person gives false evidences which cause member of Schedule Castes and Schedules Tribes to be sentence by any law which punished for life and fine if that person of Schedule Castes and Schedules Tribes is innocent and got convicted fine then the person who gives provide incorrect proof will be punished with death.
- If any person gives incorrect proof which cause member of Schedule Castes and Schedules Tribes to be sentence by any law which punished for seven years or more than a person who has given misleading evidence will be penalised with an imprisonment of six months to seven years including fine.
- If person not being member of Schedule Castes and Schedules Tribes, knowingly or intentionally

commits any misconduct by fire or explosive with destroy the property of member of Schedule Castes and Schedules Tribes will be punished with imprisonment of six months but not more than seven years and fine.

- If person not being member of Schedule Castes and Schedules Tribes, knowingly or intentionally commits any misconduct by fire or explosive with destroy the premises which is used as holy place or human residence place or place for keeping property of member of Schedule Castes and Schedules Tribes will be punished with imprisonment of six months but not more than seven years and fine.

- If person not being member of Schedule Castes and Schedules Tribes committed offence against person or property of Schedule Castes and Schedules Tribes under Indian Penal Code which penalise with imprisonment of ten years and fine.

- This act also punished the public servant for willfully not fulfilling his duties will be penalise with imprisonment of six months extend to a year.⁴²

- For speedy disposal of cases, the state government with consultation High Court setup the extraordinary court in districts. Also appoint public prosecutor (advocate) who has experience not less than seven years.

6.2 Drawbacks of SC/ST Act

- Under SC/ST act, the convictions rate is less. According to NCR 2015 data after investigation for both SC and ST category out of total cases 75% cases result in withdrawal or acquittal.

- There was lack of awareness among the people of Schedule Castes and Schedule Tribes about the legitimate remedies available under the said act.

- To avert atrocities towards Schedule Castes and Schedules Tribes few states implemented the preventive measures.

- In India, mostly misused law is SC/ST (POA)Act. People use this legislation towards settle their private matters or defame the honest people.

There was a smaller number of rehabilitated

Caste	Year	UP	Bihar
Schedule Castes	2018	11,924	7,061
	2019	11,829	6,544
	2020	12,714	7,368
Schedule Tribes	Year	MP	Rajasthan
Schedule Tribes	2018	1,868	1,095
	2019	1,845	1,797
	2020	2,401	1,878

victims.⁴³

6.3 Crimes against Schedule Castes and Schedules Tribes

Table 5: Status Report of Cases against SC & ST: Cases, Probe⁴⁴

Caste	Year	Cases Registered	Chargesheet	Pending Probe
Schedule Castes	2018	42,793	34,838	16,323
	2019	46,961	34,754	17,903
	2020	50,291	39,138	19,825
Schedule Tribes	2018	6,528	5,619	2,603
	2019	7,570	5,918	2,920
	2020	8,272	6,484	3,351

Table 6: Top Two states Cases Registered⁴⁵

From 2018 to 2020, the cases against of Schedule Castes and Schedule Tribes have increased. The cases registered against SC increased from 42,793 to 50,000. In case of ST crime risen from 6,528 to

8,272. From data it was found that number of chargesheet files also increased along with those pending investigation increasing. Also, from 2018 to 2020 highest rate of crimes take place against Schedule Caste in Uttar Pradesh and Bihar. And the crimes against Schedule Tribes increased in Madhya Pradesh and Rajasthan.

Conclusion

In India, according to the builders of the Constitution, it was necessary to provide safeguards SC and ST community for upliftment in the society. The main feature of Indian Constitution that it provides number of safeguards are for protection of members of Schedule Castes and Schedule Tribes. The reservation system was added due to which certain percentage of seats set aside for members of SC and ST community in educational institutions, government institutions and legislative institutions. Also, government launched numerous programmes according to the provisions of Constitution for the protection from discrimination and uplift of the Schedule Castes and Schedule Tribes community in the society. Despite giving rights under the Constitution, it fails to give equality in the Indian population.

As reported by the NCRB, data of 2021 states that the crimes against persons of SC and ST community kept on increasing. The already existing legislation like Criminal Procedure Code and Indian Penal Code inadequate to deal with the offences taking place against Schedule Caste or Schedule Tribes. To deal with it government came with “Untouchability (Offences) Act, 1955” then bring certain amendment in this legislation and introduced “The Protection of Civil Rights Act,

1976.” The steps taken under this law are not adequate to deal with the issue. Which led to ratification of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This act enacted to give the protection to these groups against the discrimination. The main aim of the act is to Schedule Caste and Schedule Tribes and remove ill practices from the society. Further, this act clearly defines the atrocity and what offences falls under this. Then prescribed the punishments for the offences. The most important provision of the act was “Section 18” which denies the right to anticipatory bail to accused.

Again, the difference between upper and lower caste remains in the society. In 2018, amendment was introduced to SC/ST (POA) Act in order to dealt with the number of increasing cases day by day against these groups. In amendment Section 18-A was introduced in there was no need for investigation before arrest required. Along with it there was bar on the anticipatory bail given under CrPC if offence falls under the SCST (POA) Act, 1989.

Suggestions

- a) Government needs to create more awareness among people of Schedule Caste and Schedule Tribes regarding policies made for them.
- b) Before developing new policy for upliftment, the effect of modernization on Schedule Caste and Schedule Tribes should be assessed.
- c) There should be enactment of rules under which authorities will evaluate the implementation of policies.

d) The schools should motivate students of Schedule Caste and Schedule Tribes to actively show their talent so that they grow their skills.

e) The scholarship procedure needs to be simplified.

Endnotes

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¹⁵ The Constitution of India, art. 17.

¹⁶ The Constitution of India, art. 29(b).

¹⁷ The Constitution of India, art. 46.

¹⁸ The Constitution of India, art. 330.

¹⁹ The Constitution of India, art. 332.

²⁰ The Constitution of India, art. 338.

²¹ The Protection of Civil Rights Act 1955 s. 2.

²² The Protection of Civil Rights Act 1955 s. 3.

²³ The Protection of Civil Rights Act 1955 s. 4.

²⁴ The Protection of Civil Rights Act 1955 s. 5.

²⁵ The Protection of Civil Rights Act 1955 s. 6.

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