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Government actions against atrocities

Indian Constitution, Indian Parliament, and various state legislatures have stringent provisions against atrocities targeting SCs or STs.

Indian Constitution

- **Article 17** seeks to abolish 'untouchability'.
 - the institution of 'untouchability' refers not just to the avoidance or prohibition of physical contact but to a much broader set of social sanctions.
- **Article 46** – promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
- **Article 338** – National Commission for Scheduled Castes
 - Its functions include among others:
 - investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
 - inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;
- **338-A** – National Commission for Scheduled Tribes
 - Its functions are same as that of NCSC, but with respect to ST than SC

State Actions

- **Schedules listing the castes and tribes** recognized as deserving of special treatment because of the massive discrimination practised against them. This was drawn up in colonial times as **1935 act introduced Scheduled caste and Scheduled tribe categories**
 - After Independence, the same policies have been continued and many new ones added.
- **Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Rules, 1995**
- **Thoratt committee 2007** – first ever committee constituted to study caste discrimination in higher education sector.

SC/ST Prevention of Atrocities Act (POA Act 1989)

- **Article 17** seeks to abolish 'untouchability'
 - Untouchability (Offences) Act 1955 was enacted
 - The lacuna in the above act lead to the passing of **Protection of Civil Rights Act 1976**

normal provisions of the existing laws: Protection of Civil Rights Act, Indian Penal Code, were inadequate to check many dimensions of atrocities meted to SC/ST. This lead to **Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Rules, 1995.**

The Scheduled Castes and Tribes (Prevention of Atrocities) Act is known as POA, SC/ST Act, the Prevention of Atrocities Act, or the Atrocities Act.

The provisions of SC/ST Act can be divided into three categories:-

- provisions of **criminal law**.
 - Creation of **new types of offences** not in the Indian Penal Code (IPC) or in the Protection of Civil Rights Act 1955 (PCRA).
 - Atrocities can be committed only by non-SCs and non-STs on members of the SC or ST communities. **Crimes among SCs and STs or between STs and SCs do not come under the purview of this Act.**
 - Defines various types of atrocities against SCs/STs and prescribes stringent punishments for the same.
 - Enhanced minimum punishment for public servants.
 - Punishment for **neglect of duties by a public servant(Section 4)**
 - Cancellation of arms licenses in the areas identified where an atrocity may take place or has taken place and grant arms licenses to SCs and STs
 - **Denial of anticipatory bail (Section 18)** provided in Section 438 of the CrPC
 - Denial of probation to convict (Section 19).
- provisions for relief and compensation for victims
- provisions that establish **special authorities** for the implementation and monitoring of the Act.
 - Creation of **Special Courts and special public prosecutor**
 - Mandatory, periodic monitoring system at District, State and National level
 - Identification of **atrocity prone areas**

NHRC report on the SC/ST Prevention of Atrocities Act

- The indifference of society, lopsided implementation of the SC/ST (Prevention of Atrocities) Act 1989, lack of political will in removing the historical injustices faced by this section of society has been detrimental to them.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

- Amends existing categories and adds new categories of actions to be treated as offences.
- Offences in case of **sexual exploiting of SC or ST woman**: (i) Using acts, words or gestures of a sexual nature against SC/ST woman. (ii) Touching an SC/ST woman intentionally in a sexual manner without her consent (iii) Practice of dedicating an SC/ST women as a devadasi to a temple...
- **New offences**: (a) garlanding with footwear, (b) compelling to dispose or carry human or animal carcasses, or do manual scavenging, (c) abusing SCs or STs by caste name in public, (d) attempting to promote feelings of ill-will against SCs or STs or disrespecting any deceased person held in high esteem, and (e) imposing or threatening a **social or economic boycott**.
- Preventing SCs or STs from undertaking the following activities will be considered an offence: (a) using common property resources, (c) entering any place of worship that is open to the public, and (d) entering an education or health institution
- **Presumption to the offences**: If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.
- The act specifies the duties of public servants

- Under the earlier Act, a court of Session at the district level is deemed a Special Court
 - Amendment specifies that an Exclusive Special Court and **exclusive Special Public Prosecutor** must be provided at the district level
 - Special courts must be established where offences are less in number
 - cases should be disposed of within **two months**
- Adds a chapter on the **rights of victims and witness**.
- The duty of the state to make arrangements for the protection of victims, their, and witnesses.

Subhash Kashinath Mahajan vs The State of Maharashtra [Review of SC/ST Prevention of Atrocities Act]

- Supreme Court opined that SC/ST Prevention of Atrocities Act (PoA act) is being misused and checks are needed to prevent such misuse.
 - The act has become a tool to persecute innocents and public servants for political and personal gains.
- Provided guidelines for preventing the misuse of the act.
- **Preliminary inquiry** at the level of DSP is required to verify the authenticity of the case **before registering FIR**.
 - A person can be released on **anticipatory bail** unless a prima facie case of crimes or atrocities is made out.
 - No FIR should be registered against government servants without the approval of the appointing authority.
- PoA act had to be interpreted in a manner which will ensure that “**casteism is not perpetuated**” through the implementation of the law.

Critical analysis of the Judgment in Subhash Kashinath Mahajan Case on SC/ST Prevention of Atrocities Act

- Many law experts are of the view that this judgement is without considering the **socio-cultural realities of caste atrocities**.
- The judgement didn't give any statistical pieces of evidence but relied on several High Court judgements.
- It equated high rate of acquittals to a large number of false cases.
 - But increasing acquittal can't be the reason for the case being false.
 - Entrenched discrimination and prejudice of the establishment are one of the reasons of acquittals.
 - Another reason can be intimidation of victims, their survivors, and witnesses by various means including a social and economic boycott.

The constitutional validity of exclusion of anticipatory bail had been upheld in **Kartar Singh case**.

- The case has clarified that **anticipatory bail is a statutory right** and not comes under Right to Life.
- Section 18 of the PoA act especially excludes anticipatory bail.
- The court while upholding ideals of personal liberty and innocence until pronounced guilty, have ignored the socio-cultural reality of caste system in India.

In **Lalita Kumari vs Government of Uttar Pradesh**, the Supreme Court directed that prompt registration of FIR is mandatory under Section 154 of the Cr.P.C. if the

information discloses commission of a cognisable offence and no preliminary enquiry is permissible in such a situation. Mahajan judgement ignores this precedent.

Dilution of PoA act will have a **crippling effect on social justice**.

- Because of the juxtaposition of the powerful and the powerless in India's caste system in every village, it is very difficult to secure proper investigation and quick and successful trial.
- Delay in investigation and trial result in intimidation of victims and witnesses.
- Will make the act toothless, **roll back social transformation**.

This case trends to break the thin line between **judicial activism and judicial over-reach**.

- Supreme Court in **Rajesh Sharma vs the State of Uttar Pradesh**, assumed misuse of the anti-dowry provision of Section 498A in IPC, but CJI revisited the case remarking that the **court cannot write law but can only interpret a law** that is ambiguous or silent on certain aspects, and not when it is crystal-clear.

SC had earlier directed **national legal service authority** to give legal awareness and free consultation to the community for making most out of the legal safeguards provided to them.

With the perceived upward mobility of SCs, there has been a growing demand among dominant and upper castes to dilute PoA act like that of the demand by Marathas. This judgment can be used as a plank by these castes to further their agenda.

Report of the National Commission for Scheduled Castes for 2015-16 states that there has been an increase in the number of incidence of atrocities but a decrease in conviction rates.

NCRB data: The number of cases of atrocities against SC/St has increased from 2008 to 2016 but there was a decline in conviction rate at the same time.

- But there are instances of misuse of the act by SC/STs, especially against public officials. This has led to many bogus cases under PoA act. This claim has been validated by **Parliamentary Standing Committee report**, which has sought an **inbuilt provision in the PoA act to safeguard those who are falsely accused**.

Recent Protests and the Review Petition against the Supreme Court Judgement

There was a national strike by Dalits against the judgment which turned violent leading to loss of lives. The Center has given review petition against the judgment. However, the Supreme Court has refused to keep in abeyance its earlier order preventing automatic arrests on complaints filed under the SC/ST Act.

Political parties started blame-game and grandstanding, to make mileage out of the issue for 2019 elections. But amidst all this cacophony, the real issue should not be crowded out.

PoA act is a transformative act and a 'Brahmastra' in the arsenal of hapless Dalits to fight their historically asymmetrical war of subjugation. It should be strengthened through proper implementation. But safeguards should also be inserted to protect innocents from being falsely persecuted. This could happen only through debates between all stakeholders.

Subhash Kashinath Mahajan vs The State of Maharashtra judgment should be used as an opportunity to look into this dimension rather than weakening the act. But the most important thing for ending discrimination and improving fraternity is a persistent societal action to

change the entrenched caste rigidity. SC/ST Prevention of Atrocities Act (PoA act) as a tool in this endeavour rather than an end in itself.

Though independent Indian state has introduced many measures to curb the atrocities and usher in socio-economic justice, the results are often not satisfactory. Legislations have been passed repeatedly on this subject is proof of the fact that the law alone cannot end this social practice.