

Punishment for Offences of Atrocities under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

Prashant Kumar Baghel¹ And Dr. Anindhya Tiwari²

¹Ph.D Research Scholar, MATS Law School, Raipur, Chhattishgarh, India

²Head Of The Department, MATS Law School, Raipur, Chhattishgarh, India

Abstract:-

The existing law like the Protection of Civil Rights (PCR) Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check the crimes of atrocities on the Schedule Castes and the Schedule tribes. A special Legislation to check and deter crimes against them committed by non-Schedules Castes and non-Scheduled Tribes has, therefore, become necessary. In this Act term "Atrocities" has not only been defined in details but stringent measures have been introduced to provide for higher punishments for such atrocities. This Act came into force on 30th January 1990 as Act 33 of 1989.¹

Another remarkable feature of this Act is that it applies not only to the people of Scheduled Castes but also to the Scheduled Tribes. It, however, exempts officers belonging to SC and ST from the guilt of neglecting to enquire into or investigate the offences, for which the officers are responsible. Lastly, a very strong deterrent for the prospective offenders is laid down by prescribing that the Court trying any case under this Act may attach the property, movable or immovable or both, during the period of the trial and may forfeit it if the trial ends in conviction for the purpose of realisation of any fine imposed in the case.

Introduction:

THE SCs/STs (PREVENTION OF ATROCITIES) RULES 1995 promulgated on 31' March 1995 prescribed many detailed rules which cast responsibility on the state level and district level administration for monitoring the implementation in the Act and for providing immediate relief in cash or in kind or in both to victims of atrocities, their family members and dependents in accordance with a scale as laid down in Schedule I of the Rules. Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport

¹ Protection of Civil Rights ACT, 1955

facilities and other essential items necessary for human beings. Such relief shall be in addition to any other right to claim compensation under any other law in force.²

Some important provisions of this Act and Rules are discussed below:-

Section 3 - punishment for offences of atrocities

This section is in two parts. In the first part, detailed description of the type of atrocities committed by persons who do not belong to the SC or ST castes has **been** given and a mandatory punishment of imprisonment for a term not less than six months (which may extend to five years) with fine has been prescribed for these offences. In the second part, more serious types of offences have been mentioned and the minimum punishment (including death penalty) have been detailed against each. The two parts are discussed separately.³

The text of the first part of the Act is quoted below: -

Section 3. PUNISHMENTS FOR OFFENCES OF ATROCITIES -

- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, —
- i. forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;
 - ii. acts with intent to cause injury, insult or annoyance to any member of Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;
 - iii. 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;
 - iv. 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;
 - v. wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with enjoyment of his rights over any land, premises or water;
 - vi. compels or entices a member of Scheduled Caste or a Scheduled Tribe to do 'begar' or any other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
 - vii. forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or

² scs/sts (PREVENTION OF ATROCITIES) RULES 1995

³ Section-3 Punishment for offences of Atrocities.

- to vote to a particular candidate or to vote in a manner other than that provided by law;
- viii. institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or Scheduled Tribe;
 - ix. 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 a member of a Scheduled Caste or a Scheduled Tribe;
 - x. intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
 - xi. assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;
 - xii. *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;*
 - xiii. *corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;*
 - xiv. *denies a member of a Scheduled Caste or a Scheduled tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;*
 - xv. *forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years with fine.*

The text of the second part of this section is as follows:-

(1) *Whoever, not being a member of a Scheduled Casts or a Scheduled Tribe*

- (i) *gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;*
- (ii) *gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;*

(ii) *Commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*

(iv) *Commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause 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 by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;*

Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(v) Knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vi) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Several of the above noted Acts of atrocities are looked upon as hateful Acts of indignity to human beings in which a person of ordinary understanding and morals will not indulge. The occasional perpetration of such inhumane acts is the result of a frenzy created by caste prejudices prevalent in the rural areas amongst illiterate or socially ill-adjusted communities. There are, on the other hand, certain acts of atrocities to which the people of higher social and educational status are attracted.

In this context, attention must be focussed on clause (xii) of sub-section 1 According to this clause any person holding a high post from which he is in a position to dominate the will of a woman belonging to SC or ST indulged in a sexual exploitation of such woman is guilty of offence punishable under this clause. It is important to note that the consent or the willingness of the woman involved is irrelevant in such a case. This provision extends a great protection to the women folk of the disadvantaged classes who are at the mercy of their seniors of higher castes at their work places the knowledge of this deterrent legal provision ought to be widely publicised by posters and ads in the magazines and newspapers.

The role of judiciary in the interpretation of "Protective Discrimination" clause is not commendable so as to secure social justice to Scheduled Castes and Scheduled Tribes. Majority of women, Scheduled Castes and Scheduled Tribes are unaware of Constitutional benefits and state welfare programmes due to their ignorance and illiteracy.

In the Case of Balwant Singh Vs. State⁴- Where the parties have filed petition to accept the compromise entered into by the parties and to pass order of acquittal, for ends of justice there would be no impediment accepting the petition and acquit the accused. The case was related compounding of offence in appeal against conviction.

The Fact of the case related to offence of discrimination between SC & ST Person and Non-SC & ST person. Where the use of separate tumblers for serving tea or other drinks to Scheduled Caste Persons and Non-Scheduled Caste Person in tea shops and restaurants is an offence under SC & ST (Protection of Atrocities) Act and, therefore, those practicing it, must be given harsh punishment if found guilty.⁵

In this case Namdev Dnyanaba Agarbar v. State of Maharashtra⁶ Where the prosecution has proved beyond reasonable doubt that the accused, who was not a member of SC & ST, had entered the house of victim/prosecutrix and taking advantage of absence of her family members outraged her modesty by catching hold of her waist and laying down her on the cot and mounting upon her, accused was convicted under section 3 of the SC/ST Act since the victim belonged to SC.

Under Section 3—Requirement of mentioning caste of accused in F.I.R. or complaint.—The F.I.R. or the complaint need not to disclose the caste of the accused who alleged to have committed an offence under the S.C. and S.T. Act. It was open to the I.O. during course of investigation to record the castes of the accused.⁷

Honour Killing- Caste System is related to Section 3 (1) and 3 (2)- Kangaroo Court said that the caste system is a curse on the nation and sooner it is destroyed the better. "Khap Panchayats" (known as Katta Panchayats in Tamil Nadu) which often decree or encourage honour killings or other authorities in an institutionalized way on boys and girls of different castes and religions, who wish to get married or have been married, or interfere with the personal lives of people. This is wholly illegal and has to be ruthlessly stamped out. There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed on account of castes by brutal, feudal minded persons deserve harsh punishment. Moreover, these acts take the law into their own hands, and amount to Kangaroo Courts which are wholly illegal. Hence, the Supreme Court has directed the administrative and police officials to take strong measures to prevent such atrocious acts.⁸

In this case claim of discharge of offence of atrocity cases- The accused who has been alleged to have committed an offence under Section 3(l)(ii) of the S.C. and

⁴ Balwant Singh v. State, (2010) 3 Crimes 344 (P&H).

⁵ Arumugam Servai v. State of Tamil Nadu, 2011 Cri LJ 2899 (SC) : (2011) 2 Crimes 221 (SC).

⁶ Namdev Dnyanaba Agarbar v. State of Maharashtra, 2012 Cri LJ 3946 (Bom).

⁷ Haridas Kisanrao Kharbadkar and others v. State, 2010 Cri LJ 3298 (Bom).

⁸ Arumugam Servai v. State of Tamil Nadu, 2011 Cri LJ 2899 (SC) : (2011) 2 Crimes 221 (SC).

S.T. Act, seek discharge of the offence merely on the ground that no caste name of the accused or the complainant has been given in the first information report.⁹

This case related to the Quashing of criminal proceedings for accused earlier filed a civil suit against the complainant and authorities who were threatening to file false complaint—Alleged dispossession of property allotted to complainant party.- Where the allegations in the FIR do not prima facie makes a case against the accused persons, the criminal proceedings was quashed.¹⁰

This case related to the nature of compoundable offence at atrocity - In this case, the respondent-complainant had buried all his difference against the applicants and they had settled their disputes amicably outside the Court. The complainant stated that he did not wish to prosecute the accused applicants. He further stated that he had no objection if the proceedings of the criminal case against the accused-applicants pending before the Court below were quashed. Accordingly, the respondent-victim was granted permission to compound the offence under Section 3 (1) (iv) (x) of the SC / ST Act.¹¹

This case related to the Quashing of prosecution for offence of dispossessions of" land of member of SC/ST community -Where even if the prosecution story is taken to be true, the ingredients of Section 3(1)(v) of the SC & ST Act are not found in the FIR / complaint, the prosecution of the accused for the said offence was quashed under Section 482, Cr. P.C.¹²

This case is related to Proof of murder.- Mere fact that the deceased, in a case of murder happened to be a member a Scheduled Caste simplicities would not attract the provisions of Section 3(1)(v) of the SC and ST Act.¹³

This case is related to proof of offence of wrongful dispossession of property belonging to complainant member of SC/ST community.- In the present case, from the facts and circumstances it is not found that there was any element of either "wrongful dispossession" or "interference with enjoyment" of the rights of the complainant". If the property was occupied in lieu of certain transactions and the possession was handed over on account of advances for transfer after such transactions, an offence under Section 3(1)(v) of the SC & ST (POA) Act would not be made out and, therefore, the conviction of the accused under this Section could not be sustained.¹⁴

Nand Kishore Vs State and another¹⁵, Court observed - Where the accused had alleged crossed the boundary wall of the complainant and abused him by calling mother's caste name "Dhad Chamar" and the complainant has not mentioned the caste of the accused. It cannot be said that the accused abused or misbehaved in a public

⁹ Hizridas Kisanrao Kharbadkar and others v. State, (2010) 3 (SN) 861 (Bom).

¹⁰ Nerella Veeranjanyulu and others v. State and others, (2011) 4 Crimes (SN) 659 (AP).

¹¹ Avinash Semaltry and others v. State of Uttarakhand and another, 2014 Cri LJ 1069 (Uttara).

¹² Smt. Rajni Juyal v. State, (2012) 1 Crimes 68 (Uttara).

¹³ Laxmi Prasad and another v. State, 2012 Cri LJ 2204 (Chhatt).

¹⁴ Ahwaran and others v. State, (2012) 2 Crimes 521 (Chhatt).

¹⁵ Nand Kishore v. State and another, 2010 Cri LJ (NOC) 487 (Raj)

place or road, the accused could not be convicted under Section 3(l)(v) or under Section 3(1)(x) of the Act.

This case related to Atrocity by institution of false, malicious or vexatious suit etc.- The word “false” is used to cover only unlawful falsehood. In jurisprudence, the word “false” is used to characterize a wrongful or criminal act done intentionally and knowingly indignation does not fall within the ambit of a malicious act. A malicious act has been equated with an intentional act without just cause or excuse. The word ”vexatious” means harassment by the process of law, lacking jurisdiction or with intention to harass. It signifies an action not having sufficient grounds which only seeks to annoy the adversary and subject the other party to inconvenience, harassment and expense.¹⁶

¹⁶ Ravinder Singh v. Sukhbir Singh and others, 2013 Cri LJ 1123 (SC) I AIR 2013 SC 1048 I 2013 (1) Crimes 125 22013 (1) Scale 166 : 2013 (1) JT 515 12013 (6) SCJ 199.