*Christ University Law Journal*
2019, Vol. 8, No. 1, 103-114
ISSN 2278-4332X | https://doi.org/10.12728/culj.14.5

# Case Comment

# S K Mahajan v. State of Maharashtra: Supreme Court's Failed Attempt at Curbing the Misuse of the SC/ST Act and its Impact

Swapnil Tripathi*

## 1. Introduction

Recently, India witnessed a country wide "Bharat Bandh" (closure and strike). This bandh was called in protest to a verdict of the Hon'ble Supreme Court, regarding the Prevention of Atrocities to Scheduled Caste and Scheduled Tribes Act, 1989 (Atrocities Act). The bandh witnessed loss of lives, property and spreading of communal hatred across the country. Such a wide scale reaction in response to a judgment raises several issues. It is vital to probe into the extent of the judgement that invoked a bold and infuriated reaction from the public, which alleges error by the Court.

In the case, the Court in a petition dealing with the Atrocities Act, laid down certain guidelines which, as per popular opinion, renders this beneficial Act ineffective. On the contrary, those in favour of the judgment contend that given the possibility and practice of misuse of the Act, such guidelines were crucial. It is within this divided school of thought, that the author shall present his case and analyse the judgment as a neutral party, identifying where the approach of the Court fell short and where it was right. This shall be concluded with suggestions and the steps to be taken in the future. The author shall also provide the reader with the history and objective behind the said legislation, to give the reader

* National Law University, Jodhpur, India;
swapnil.tripathi221@gmail.com

a contextual understanding regarding the special nature of the statute.

## 2. Special Protections to the SCs and STs

Traditionally, the Indian sub-continent had heavily followed the *Varna* system, in its domestic affairs. The *Varna* system provided for the division of society into four groups i.e. Brahmin (priests), Kshatriya (warriors), Vaishya (businessmen and traders) and Shudras (sweepers and cleaners).[1] The relevance and standing of these groups was in a hierarchy, wherein Brahmins were the superior most, followed by Kshatriya and so on. This standing also reflected in the treatment meted out to the people of these groups. Brahmins were venerated, whereas the Shudras were treated with contempt and humiliation because they were considered impure.[2] It is these traditional Shudras who are identified as Scheduled Castes and Scheduled Tribes, in the modern scenario. Although, the *Varna* system was legally abolished with the passage of time, its presence still persists in the functioning of society.

The impact of such a presence was that members of these communities were excluded from the mainstream society, denied basic resources and discriminated in all areas of life.[3] They were denied access to public places, basic necessities to life (i.e. water, food etc.) and were tortured by the upper classes. India's first law minister and the Father of the Constitution i.e. Dr. B.R. Ambedkar, who himself belonged to this community, was thrown out of his village when he was young and was considered an untouchable throughout his life, only because of the community he belonged to. It is in this backdrop that when the Constitution of India was being drafted, there were certain special protections that were given to the members of these communities to undo the wrongs meted out to them and bring them at par with the society.

---

[1] Huffington Post, *The Caste System of Hindu Society,* (Apr. 18, 2018, 8:30 PM), https://www.huffingtonpost.com/pankaj-jain-phd/varna-and-caste-system-of_b_877981.html

[2] *Id.*

[3] 4TH REPORT, PARLIAMENTARY COMMITTEE ON THE WELFARE OF SCS AND STS, para 1.4 (2005).

**2.1 Constitutional Protections**

The Preamble to the Indian Constitution, lists, social, economic and political justice as the pillar of governance for this country.[4] Similar thought is echoed in the provisions of the Constitution, which aim at meting out justice to the members of the communities, for the wrongs done to them in the past. Under the Indian Constitution, there can be no discrimination on the basis of race and caste.[5] Further, the practice of untouchability is expressly prohibited[6] and so are other activities which were primarily carried on by the members of these communities.[7] The framers of the Constitution also ensured that there were certain remedial provisions as well, which uplifted the community from social depravation. For instance, the state was vested with the directive principle of making legislations, which uplifted and promoted educational interests of the SC's and ST's.[8] In order to ensure adequate representation from the community, provisions allowing reservation of seats for the members in matters of government posts were incorporated[9] and the state was also allowed to make such reservation in other spheres as well.[10] However, despite such constitutional safeguards, the members of the communities suffered due to poor implementations. Additionally, since the provisions of the Constitution can only be enforced against the state, if a private citizen committed an atrocity on the members of the community, they were not punished due to lack of provisions.

[4] INDIA CONST. Preamble.

[5] INDIA CONST. art. 15 cl. 1.

[6] INDIA CONST. art. 17.

[7] Article 23 prohibits trafficking of human beings. Article 24 prohibits employment of child labor in factories and other establishments. Article 24(2)(b) provides for the right to access to temples and prohibits denial on grounds of religion and caste.

[8] INDIA CONST. art. 46.

[9] INDIA CONST. art. 243D (reserving seats for members of SCs an STs in Village Panchayats), art.164 cl. 1 [reserving seats in Ministerial positions], and art. 330 (reserving seats in the House of People).

[10] INDIA CONST. art. 16 cl. 4. Reserving seats in public services for members of backward classes which are inadequately represented.

Therefore, to enforce the above constitutional principles, certain beneficial statutes were passed as well.

### 2.2. Statutory Protections

Despite the Constitution providing robust protection to the community, crimes and atrocities refused to die down. To address this, the government brought in the Untouchability (Offences) Act, 1955 [later renamed as the Protection of Civil Rights Act, 1955 (**"PCR Act"**)].[11] The PCR Act, made untouchability as a result of religious and social disabilities, punishable.[12] The Act however, failed to reach its intended goal due to legal loopholes and lack of deterring provisions. Therefore, the need for a more comprehensive and more punitive Act was felt.[13] The Parliament thereby passed the current Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 **["Atrocities Act"].[14]**

The Statement and Objects Clause of the Act explained its scope and purpose. It stated,

"Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Cates and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes…"[15]

The salient features of the Act were:

- It enlarged the criminal liability by identifying new types of offences not covered under the Indian Penal Code. These offences were created after observing the derogatory acts committed on the members of the communities. For instance, offences like parading a member naked in public,

---

[11] Protection of Civil Rights Act, 1955 (India).

[12] § 3 and § 4, Protection of Civil Rights Act, 1955 (India).

[13] FIRST REPORT, NATIONAL COMMISSION FOR SCS AND STS, para 222 (2006).

[14] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (India).

[15] Statement of Objects and Reasons, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (India).

throwing excreta on a member, stripping them in public, shaving and tonsuring of heads etc (provided in Section 3 of the Act) .

- The Act provided for investigation of complaints to be undertaken by senior police officials who had to complete the investigation within 30 days.
- The Act created Special Courts, which were vested with special powers to ensure speedy trials.
- The victims were provided legally justiciable rights, by way of scale of graded financial assistance and provisions of relief.

Prior to analysing the judgement, it is important to comprehend the complaint procedure under the Atrocities Act, as that was a major bone of contention before the Court. Under the Act, a member of the community, on the commission of an atrocity, (defined under Section 3) can approach a police station and register his complaint. The police officials are under a statutory obligation to register the complaint, read it out to the victim and provide him/her a free copy of the same. Subsequently, the official has the authority to arrest the named accused and interrogate him. However, a person does not have the remedy of moving the Court for grant of an anticipatory bail, if he believes he might be falsely accused. This entire process of inquiry into the alleged offence has to be completed by the officer within 30 days. During the course of the investigation, the victim is entitled to certain financial safeguards namely,[16] travel allowance, attendant allowance, daily allowance, dietary allowance and essential allowance.

## 3. The Verdict

The present case arose out of a complaint by one Bhaskar Karbhari Gaidwad [**"Gaikwad"**] against his superior. The superior (a non-SC/ST) had prepared the Annual Confidential Report of Gaikwad,

[16] § 15A, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Acts of Parliament, 1989 (India).

wherein he made certain adverse remarks against him.[17] Aggrieved by the same, Gaikwad approached the head of the institution to allow filing of a case under the Atrocities Act. On refusal to do so, he approached the police, seeking an action against both the superior and the head of the institution. The Bombay High Court was subsequently moved by the accused, for seeking an anticipatory bail and quashing of proceedings alleging misuse of the Act. The Court refused to intervene, aggrieved by which the parties filed an appeal before the Hon'ble Supreme Court.

The arguments that followed before the Court can be divided into two parts i.e. (i) arguments on arrest and liberty and (ii) arguments on misuse of the Act.

**3.1 Arrest and Liberty:**

The special nature of the Act, and the difficulties it raises, was an aspect that was vehemently argued before the Court. The first aspect that was raised was the power of immediate arrest vested with the officers under the Act. The *amicus curiae* emphasised on the importance of liberty and how wrongful arrest violates liberty as enshrined in Article 21 of the Constitution.[18] The position of law in India requires arrest to be made only when there is credible information and the officer is convinced that such arrest is necessary,[19] was highlighted.[20] It was argued that the Atrocities Act goes against this settled principle, by allowing immediate arrest on mere complaint.

The second aspect was regarding the denial of anticipatory bail under the Atrocities Act.[21] The *amicus* undertook a comparative study of similar statutes having an embargo on anticipatory bail. The conclusion put forward was that such a bar existed in statutes dealing with terrorism and related activities namely the Terrorist and Disruptive Activities (Prevention) Act, 1985; Unlawful

[17] S.K. Mahajan v. State of Maharashtra, ¶ 4, Crl. Appeal No. 5661 of 2017 [hereinafter 'Mahajan']

[18] Mahajan, para 12.

[19] § 41(1)(1)(b), Code of Criminal Procedure, 1973 (India).

[20] Mahajan, para 12.

[21] Mahajan, para 62.

Activities (Prevention) Act, 1967; the Maharashtra Control of Organized Crime Act, 1999; Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, by disallowing an anticipatory bail under the Atrocities Act, the accused is treated similar to an accused booked under the Acts dealing with terrorism.

### 3.2. Misuse of the Act

A common thread of argument that runs throughout the judgment is regarding the misuse of the Act. It was vehemently argued before the Court, that given the stringent nature of the Act, it is heavily misused by the community to file false cases against honest citizens and public servants. A special case was made against public servants to show that, the possibility of such false cases being filed, threaten the public servants from performing their *bona fide* duty. In support, reliance was placed on the National Crime Records Bureau data which showed a low conviction rate, according to which it was concluded that this was due to false cases being filed.

## 4. The Judgement: An Analysis

The Court's final judgment ran over fifty six pages wherein it laid down stringent guidelines regarding the application of the Act. The Court's final directives were:

(i) "There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

(ii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant, after approval by the S.S.P., which may be granted in appropriate cases, if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

(iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned, to find out whether the allegations make out a case under the

Atrocities Act and that the allegations are not frivolous or motivated.

(iv) Any violation of the above direction will be actionable by way of disciplinary action, as well as contempt."[22]

The author has previously discussed the aftermath of the judgment and the social impact it had. However, there were also legal infirmities in the judgment. The analysis undertaken by the author, in this regard, shall be solely socio-legal and not political.

### 4.1. Selective Reading of the NCRB Data

The Court placed heavy reliance on the data prepared by the NCRB. In the opinion of the Court, out of the total 56,299 cases filed under the Atrocities Act, the conviction rate was 25.7 %. The Court, reading these statistics, assumed that the low conviction rate was due to a high number of false cases being filed. The author feels that this interpretation is erroneous. The very data the Court relied on, in the next column, mentions the deplorable state of police investigation in cases under the Atrocities Act. It states that the investigation suffers from poor collection of evidence, witnesses turning hostile, delay in verdicts etc. As per the NCRB, these are factors that also contribute towards low conviction. However, the Court erroneously concludes that low conviction means a high count of false cases.

### 4.2. Emphasizing on 'Misuse' and ignoring 'Use'

The Court stresses extensively on the misuse of the Atrocities Act and issues guidelines towards the same, however, ignores the hurdles a *bona fide* victim faces while using the Act. The Court does not consider a part of the report, wherein the poor implementation of the Atrocities Act is discussed. The implementation suffers from procedural hurdles (such as non-registration of cases), procedural delays in investigation, arrests and filing of charge-sheets; and delays in trial and low conviction rate, all of which contribute to denying the benefit of the Act- an aspect the Court abstains from discussing.

---

[22] Mahajan, para 83.

### 4.3. The fallacy in obtaining the sanction of the Appointing Authority

One of the guidelines issued by the Court was regarding the arrest of a public servant. The Court stated that before such an action is taken, the approval of the Appointing Authority has to be taken.[23] In India, the appointing authority for public servants is the President/Governor who are constitutional bodies with immense workload of running the country/states on their shoulder. Therefore, expecting the President or Governor to sanction every application for arrest of a public servant (from a Deputy General of Police to an Inspector) is impractical. The Court seems to have overlooked this crucial fact while reaching its verdict.

### 4.4. Ignorance of Judicial Precedents

One of the guidelines issued by the Court stated that a police officer has to conduct a preliminary inquiry and only on being satisfied that the case is genuine, shall he/she record the complaint. This guideline of the Court is in clear violation of a binding Constitutional bench decision of *Lalita Kumari* v. *State of Uttar Pradesh.*[24] The Court in Kumari's case had held that registering of a complaint with a police officer is a general right of every citizen, which can only be curtailed in extraordinary circumstances. Therefore, when the present case makes conducting a preliminary enquiry the general rule before a complaint under the Act, it takes away a vested right of a citizen.

Nevertheless, there are certain aspects of the judgement that are commendable, such as the ruling on anticipatory bail. To elaborate on the reasoning behind the aforementioned, a hypothetical scenario must be invoked, wherein there exist two persons A and B. A has been accused of committing a heinous murder, whereas B has been accused of passing a racial slur, which is a punishable offence under the Atrocities Act. Before this verdict, A would have been entitled to an anticipatory bail, while B would not, despite A committing a more heinous offence. This was because of a complete embargo on anticipatory bail under the Act. The Court does away

[23] Mahajan, para 83.

[24] Lalita Kumari v. State of Uttar Pradesh, (2014) 2 S.C.C. 1 (India).

with this inequality by allowing anticipatory bail in cases where there is no prima facie evidence against the accused. Some critics argue, that allowing anticipatory bail to the accused might give them the possibility of tampering with evidence and obstructing justice; however, this argument is erroneous, as regular bail is allowed to the accused and the alleged tampering can take place subsequently.

## 5. Suggested Changes

Shortly after the judgment was rendered, given the violence that ensued, the Government filed a review petition before the Court.[25] The author believes that this review petition presents the Court a new opportunity to undertake a more balanced approach and undo the misdoings of the judgment. In this part of the paper, the author shall present possible suggestions that the Court may ponder upon, in regard to the Review Petition.

### 5.1. Penalizing Misuse

In its quest to curb misuse of the Act, it is believed that, the Court has severely hampered other beneficial provisions of the Act, which made the law useful for a victim. The Court need not have taken this route and could have achieved the desired result through varying approaches. The Court instead of laying down stringent guidelines, which severely hamper a person's chance of filing a genuine case, could have addressed the aspect by simply providing for a penalty if someone files a false or malicious case. This opinion also finds a place in the Report of the Standing Committee of the Parliament.[26]

Currently, the Atrocities Act is silent on sanctions, if one files a false case. It is contended, that this fact makes no difference, as in

---

[25] Shalini Nair, *RPI-A files review petition against Supreme Court order,* Indian Express, (New Delhi)(Apr. 11, 2018, 7:30 PM) https://indianexpress.com/article/india/sc-st-atrocities-act-rpia-files-review-petition-against-supreme-court-order-5132201/.

[26] REPORT ON THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES ACT) AMENDMENT BILL, STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2014).

such cases, the Indian Penal Code, can be used for punishment. While this approach is logical, it is against the settled practice of Parliament. The Parliament has always vested special legislations with their own special penal provisions[27] and the absence of such provisions in the Atrocities Act suggests purposive exclusion.

**5.2. Categorization of Offences**

Under the current Atrocities Act, there is no variation in punishment/treatment of different offences. For instance, the punishment for the offence of racial slur is the same as the offence of throwing of excreta or beating up a member. Furthermore, the procedure for investigation is of similar nature. The author proposes that such a class treatment is erroneous as it equates the accused of a menial offence to one of a grave offence. Additionally, the chances of misuse of menial offences like racial slur are the higher than graver offences, but by having the same level of scrutiny, honest cases suffer. The author proposes that the offences must be graded for greater efficiency.

The offences under the Atrocities Act can be graded into Grade A, B and C. Grade A shall include offences relating to human body (committed in front of the public), wherein there is no requirement of sanction from any officer for proceeding with investigation, if prima facie evidence exists. Since, these cases are easier to prove and less often misused, the Court should not have stringent provisions in place governing them. Grade B shall include other offences, but does not include offences of passing racial slurs or spreading feelings of hatred by words. Grade C should only include the offences of spreading feelings of hatred by word. Both Grade B and C shall require a stricter scrutiny, given they are misused the most. A difference in period of sentence should also be introduced wherein offences under Grade A get maximum 5 years, Grade B get maximum 2 years and Grade C get maximum 1 year.

---

[27] *See*, Sexual Harassment of Women at Workplace Act, 2013 (India).

**5.3. Approval of Supervisory Authority**

The Court in its guidelines had laid down the requirement of approval of the appointing authority, prior to the arrest of a public servant. The author has previously discussed the fallacy with this guideline. Therefore, the Court should amend this requirement and replace it with the approval of the Supervisory authority. This means that if a case under the Act is being filed against a sub-inspector, the approval shall be given by the Inspector. Having a supervisory authority instead of the appointing authority, shall eliminate the work burden, as well as delay, which the author raised earlier.

Today, civilised society seems to view issues from a utopian stand point. It might be unimaginable for a resident of an urban city, that atrocities such as throwing of excreta, can be committed on a fellow citizen. However, incidents akin to the murder of a Dalit boy for sitting on a horse,[28] assault on a Dalit girl due to her shadow falling on upper caste men etc.[29] break this utopia and showcase the harsh reality, that crimes on the basis of caste, are still prevalent in the society. Doubtless, there exists another side to this reality, wherein members of these communities misuse the Act for blackmailing the honest citizens of the general public. However, given the backdrop, the approach of the Court seemed to achieve a black and white verdict, in a situation which needed a balancing of two conflicting interests. The Court must capitalise on the opportunity that the Review Petition has presented, in order to strike this balance.

---

[28] IANS, *Dalit man killed for keeping horse,* Indian Express, (Apr. 18, 2018, 5:30 PM) http://indianexpress.com/article/india/dalit-man-killed-in-gujarat-for-keeping-riding-horse-5117422/.

[29] Press Trust of India, *Dalit girl severely beaten as her shadow falls on high caste man,* Indian Express (Apr. 20, 2018, 8:30 AM) http:// indianexpress.com/article/india/india-others/dalit-girl-severly-beaten-as-her-shadow-falls-on-high-caste-muscleman/.