



National Coalition for Strengthening SC & ST PoA Act-1989 and National Dalit Movement for Justice-NDMJ (NCDHR)



BRIEF NOTE

on

Supreme Court verdict dated Oct 01, 2019 Recalling its own verdict dated 20.03.2018 which diluted The SCs and STs (Prevention of Atrocities) Act 1989

On October 01, 2019, a three-judge bench of the Supreme Court of India recalled its own direction in the March 20, 2018 verdict which had virtually diluted provisions of the SCs and STs (Prevention of Atrocities) Act 1989 and Rules 1995. Soon after the March Judgement, National Coalition for Strengthening POA Act (NCSPA) & National Dalit Movement for Justice organized a National Consultation and decided to observe National Resistance Day and file petition in apex court against the March Judgment. Subsequently, NDMJ-NCDHR represented by Dr. V.A. Ramesh Nathan approached the apex court and filed a Intervener petition (I.A No (653596) of 2018 to the review petition filed by Union Government of India. In a remarkable and wide ranging judgment the Court ruled unanimously that 20.03.2018 directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution. This is landmark case, which is likely to set a precedent from further dilution of SCs and STs (PoA) Act 1989 by the other courts in the country.

Background

The dispute arose in 2007, when Bhaskar Gaikwad, a storekeeper in a government college in Karad, Maharashtra, filed a FIRs against Mr. Bhise and Mr. Burade and Mr. Mahajan under SCs and STs (PoA) Act 1989. In August 2016, (Subhash Mahajan approached the Bombay High Court asking for the FIR to be quashed on the grounds that the charges against him were false and frivolous. The High Court not only refused to quash the case but also ruled that "there are sufficient safeguards in the Act itself which guarantee protection against frivolous and false prosecution". He then filed an appeal against this decision in the Supreme Court. The apex court bench consisting of Justice U.U.Lalit and Justice Goel, instead of concerning itself solely with the merits of Mr. Mahajan's appeal, dramatically expanded the ambit of the case and laid down three guidelines on 20.03.2018, that nullify key provisions of this law: it removed the bar on grant of anticipatory bail; even though the Mahajan case only concerns public servants, it ruled that where the accused is a non-public servant, the police may make an arrest only after approval by a senior superintendent of police; and it held that before registering an FIR, the police may conduct a preliminary inquiry to ascertain the veracity of the complaint.

The SC verdict refers the Judgement of the writ petition filed by NCDHR on implementation of PoA Act in 2006

National Campaign on Dalit Human Rights & Ors v. Union of India & Ors. (2017) 2 SCC 432

...Before dealing with submission, we refer to the decisions. In National Campaign on Dalit Human Rights & Ors v. Union of India & Ors. (2017) 2 SCC 432, this Court has considered the report of Justice K. Punnaiah Commission and the 6th Report of the National Commission for Scheduled Castes/ Scheduled Tribes. The NHRC report also highlighted the non-registration of cases and various other machinations resorted to by the police to discourage Dalits from registering cases under the Act of 1989. In the said case this Court had directed the strict implementation of the provisions of the Act of 1989.

Immediately after the 20.03.2018 Judgement the Union Government of India and other intervenors including Mr. V.A Ramesh Nathan, General Secretary, National Dalit Movement for Justice-NCDHR; Dr. Thol. Thirumaavalavan, M.P (VCK Party); Mr. Anand Rao, President, AIDRF; Sh. Ramdas Athawale, M.P; Sh. Ram Vilas Pawan, M.P and others filed individual intervening petitions in the Supreme Court of India against the Judgment. The review petition along with the Intervening Petitions came before the same bench consisting of a Justice U.U Lalit and Justice Goel which, ordered that the matter should be referred to a larger Bench of the Court. Finally on Oct 01, 2019 the matter came upon board for the final deliberation and the Judgment was pronounced in open court. Lawyers on behalf of National Dalit Movement for Justice – NCDHR from the team of Senior Advocate Prashant Bhushan and I Probono took up the challenge and followed the case. The judgment was rendered by a three-Judge Bench of Justices Arun Mishra, MR Shah, and BR Gavai.

Judgment

The Judgment deals in detail, with the Statement and Objects of enactment of SCs and STs (PoA) Act 1989 and Rules 1995, amended provisions of the Act as amended in 2016, data on atrocities. It also considers the difference between the law laid down by the legislature and courts. It contains wide range of case laws and the nature of constitutional rights. Criticisms of the misuse of SCs and STs (PoA) Act are also addressed. The Judgment can be broadly classified in following parts. (1) Submissions made by Union Government of India, (2) Observations made by 3 Judges bench on difference between issuance of guidelines and law laid down by legislators. (3) General Observations of the present three Judges bench (4) Disposal of the guidelines issued on 20.03.2018 Judgment and (5) Verdict.

- 1) **Submissions made by Union Government of India (G.O.I):** The first section of the Judgment deals with submissions made by Union Government of India in support of revoking the controversial guidelines. Arguments points out that only legislature has the power to amend the law and in case of any deficiency the court is supposed to only point out to correct the law. Inference is that the judiciary can refer the deficiency to the legislature to amend and can not encroach upon the legislature. The submissions also talks about the failure of the previous judges to appreciate the objects and Reasons for enactment of the Act. Additionally, the government of India also pointed out because of continuing atrocities the act is amended in 2016. They pointed the reasons for bringing out various amendments in 2016 such as Addition of new offences, establishment of exclusive courts and prosecutors, cognizance, time frame for filing charge sheet and chapter on victims and witnesses, compensation, accountability and monitoring mechanisms). Attorney General of India also pointed out that despite the protective mechanisms under the Act and precedent in National Campaign on Dalit Human Rights vs. Union of India (2006) the act experience low rate of conviction and high rate of acquittal and there are several factors attributed to this such as shoddy investigations etc. Arguments are substantiated by NCRB Data. Thus ends up their arguments by quoting that by diluting the Act it will make it easier for the accused to get away from arrest and the direction issued would cause miscarriage of justice in deserving cases also.
- 2) **Observations made by 3 Judges bench on difference between issuance of guidelines and law laid down by legislators:** Section of the Judgment deals with the difference between issuance of guidelines and law laid down by the legislators. The judges quoted a Para from the Book Salmond and clearly establishes that legislators can lay down rules purely for the future and with out reference to any actual dispute and on the other hand the courts can do so only in application to the cases before them and for their solution. Court should not transgress into legislative Domain of policy making. Court cannot pronounce policy and encroach upon the field reserved for the legislative domain. The bench finally pointed- hence, the directions issued in 20.03.2018 judgement touch the realm of the policy and in the light of the above legal principles advert to directions issued earlier.

- 3) **General Observations of the three Judges bench:** Third section of the Judgment contains general observations of the three judges bench on the status of Dalit's and Adivasis in the country substantiated by NCRB Data. The courts well recognized the sufferings of the Dalit's and Adivasis for centuries and how they are still making a struggle for equality and for exercising civil rights. Remain unequal and vulnerable. They are Out caste socially. Untouchability has not vanished in 70 years. The court also pointed out that there can be no presumption that SCs and STs may misuse the law. For lodging a false report, it can not be said that the caste of a person is the cause. (human failing not the caste factor). SCs/STs in fact hardly muster the courage to lodge FIRs. If case is found to be false it is due to faulty investigations and other factors. The bench substantiated their arguments based on the alarming increase of atrocities as per NCRB Data and said that it can not be said that this is due to outcome of misuse of provisions of act.
- 4) **Disposal of the guidelines issued on 20.03.2018 Judgment:** The three judges bench in the fourth section dealt with the each of the aspect of the guidelines.
- (a) **Anticipatory bail:** The three judges bench taken the position on this aspect as contained in State of M.P Vs. R.K. Balothia and said that the consistent view of this court that if prima facie case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above.
 - (b) **Sanction of the Appointing Authority:** The bench quotes Section 41, Cr.PC which authorises every police officer to carry out an arrest in case of a cognizable offence and the very definition of a cognizable offence in terms of Section 2(c) of Cr.PC is one for which police officer may arrest without warrant. In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High Court for quashing the FIR under Section 482 While issuing guidelines mentioned above approval of appointing authority has been made imperative for the arrest of a public servant under the provisions of the Act in case, he is an accused of having committed an offence under the Act of 1989. Permission of the appointing authority to arrest a public servant is not at all statutorily envisaged; it is encroaching on a field which is reserved for the legislature. The direction amounts to a mandate having legislative colour which is a field not earmarked for the Courts.
 - (c) **Approval of arrest by the SSP in the case of a nonpublic servant:** The bench considered that that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable.
 - (d) **Requiring the Magistrate to scrutinise the reasons for permitting further detention:** As the bench did not approve the approval of arrest by appointing authority /S.S.P, this guideline was dismissed as was consequential to the above guideline.
- 5) **Verdict:** Finally the bench observed that the 20.03.2018 directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. Resultantly, direction Nos.(iii) and (iv) and (v) issued by this Court on 20.03.2018 deserved to be recalled and vanishes. All the pending applications regarding intervention etc. stand were disposed of.

Further Action


1. Monitoring and Enforcement of SCs and STs (PoA) Act 1989 and Rules 1995 as amended in 2018 at the grassroots level.
2. Demand for inclusion of SCs and STs (PoA) Act 1989 and Rules 1995 as amended in 2018 in Schedule (ix) of the Constitution of India so that the act is not diluted further.
3. Enforcement of the SCs and STs (PoA) Act 1989 and Rules 1995 as amended in 2018 in the state of Jammu and Kashmir after revocation of Article 370 A of the Indian Constitution.

Dr. V. A. Ramesh Nathan

National Convener

National Coalition for Strengthening the POA Act and Its Implementation (NCSPA)

& General Secretary, National Dalit Movement for Justice (NDMJ)

<p>रजिस्ट्री सं० डी० एल—(एन)04/0007/2003—18 REGISTERED NO. DL—(N)04/0007/2003—18</p> <p> भारत का राजपत्र The Gazette of India असाधारण EXTRAORDINARY भाग II—खण्ड 1 PART II—Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY</p> <p>सं० 39] नई दिल्ली, शुक्रवार, अगस्त 17, 2018/ श्रावण 26, 1940 (शक) No. 39] NEW DELHI, FRIDAY, AUGUST 17, 2018/SHRAVANA 26, 1940 (SAKA)</p> <p>इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.</p> <p>MINISTRY OF LAW AND JUSTICE (Legislative Department)</p> <p><i>New Delhi, the 17th August, 2018/Shravana 26, 1940 (Saka)</i> The following Act of Parliament received the assent of the President on the 17th August, 2018, and is hereby published for general information:—</p> <p>THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018 NO. 27 OF 2018 [17th August, 2018.]</p> <p>An Act further to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.</p> <p>BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—</p> <p>1. (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> <p>Short title and commencement.</p>	<p>2 THE GAZETTE OF INDIA EXTRAORDINARY [PART II— SEC. 1]</p> <p>Insertion of new section 18A. No enquiry or approval required.</p> <p>2. After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely:—</p> <p>“18A. (1) For the purposes of this Act,— (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.</p> <p>(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.”</p> <p>DR. G. NARAYANA RAJU, Secretary to the Govt. of India.</p> <p>UPLOADED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI-110002 AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-110054. MGIPMRND—1670G(S3)—17-08-2018. MANOJ KUMAR</p>
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