Chapter 4

Meaning of Atrocities under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
"The offences of atrocities are committed to humiliate and subjugate the Scheduled Castes and Scheduled Tribes with view to keep them in a State of Servitude. Hence, they constitute a separate class of offences and cannot be compared with offences under the Indian Penal Code."

...... State of Madhya Pradesh and another Vs. Ramakrishna Balothia and other *

In this chapter an attempt was made by the Researcher to find out the meaning of Atrocities, in what manner these have been committed and being committed? What are the aspects of Atrocities? whether Caste System, Untouchability, Caste differences, Religion, Illiteracy, poverty, Economic Backwardness, cultural backwardness, lack of political will, were or were not the reasons for Commission of Atrocities? What are the special features of 'Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, whether law can play important role in Prevention of Atrocities etc. Another attempt was also done by the Researcher to examine the attitude of different High Courts and Supreme Court of India while delivering judgment on 'Atrocity cases' towards curbing of this Social evil on humanity.

I. MEANING OF ATROCITY: In common parlance, the term 'atrocity' denotes an act of extreme heinous cruelty. The word “Atrocity” has not been defined in law. Even the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act has not defined this term. In the absence of any legal definition, its meaning has been derived from various instruments issued by Government of India from time to time. The State have tended to apply their own interpretations about the term “Atrocity”. Ministry of Home Affairs, has clarified this term as “any offence under the Indian Penal Code committed against members of the Scheduled Castes by any non-Scheduled Caste person. Similarly all offences under the Indian Penal Code committed by non-Scheduled Tribe against the member of Scheduled Tribe are atrocities. Caste consideration as a motive is not necessary to make such an offence in case of atrocity.”

Ministry of Home Affairs has again clarified the term “Atrocity” as “Crimes

* 1995 (2) SCC 22.
which have ingredients of infliction of suffering in one form or the other should be included for reporting.” This is based on the assumption that “where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes, Caste consideration are really, the root cause of the crime, even though Caste consciousness may not be vivid and immediate motive for the Crime.”\textsuperscript{3} In the first report of the Commission for Scheduled Castes and Scheduled Tribes, Atrocity mainly denoted grave offences like murder, rape, arson, and violence resulting in grievous hurt.\textsuperscript{4} It appears that behind the selection of these four particular serious offences as atrocity, mensrea regarding Caste was an important factor. Otherwise, there appears to be no explanation as to why serious offences like dacoity have not been specifically mentioned. Whereas all cases of grievous hurt including the breaking of a tooth which affects a poor person much less than loss of property and the like were considered to be atrocities. It would have been better if all such cases in which Scheduled Castes and Scheduled Tribes were victims and the offenders non-Scheduled Castes or non-Scheduled Tribes and which were treated as specially reported cases were generally enumerated under the heading “atrocity.”\textsuperscript{5}

Thus, there has been controversy on the definition of “atrocity”. If we were to say that the more serious offence should be classified as “atrocities,” we would still be left with problems of defining the notion of “serious” offences. A part from murder and grievous offences one would have to fall back upon the measure of punishment provided by the code in defining what constitute “serious offences.” But this measure can hardly be relied upon: this is so, because the prescribed punishments depend on the nature of the criminal act and not upon the impact of such act on the historically situated victim groups as a whole.\textsuperscript{6}

A Jurist examined, whether violation of the Protection of Civil Rights Act should be considered “atrocity.” He opined that the level of punishments is very low but the

\textsuperscript{3} See, 8\textsuperscript{th} Report of C.F., SC & ST at 35.
\textsuperscript{4} See, 6\textsuperscript{th} Report of C.F., SC & ST at 92.
\textsuperscript{5} Ibid at 143 P.
\textsuperscript{6} See, Baxi, Upendra, Untouchability: Constitution, Law and Plan, Law and Poverty, 1973 at 183 P.
Civil Rights Protection Act deals with a specifically disadvantaged group for whom Constitution shows some special solicitude. To include Protection of Civil Right Act offences in the concept of “atrocities” would be able to accept the impact of the crime upon specific Social groups as a criterion for selection of other offences, under the general penal law of the land, whether in that concept this may not be an easy decision to take? This procedure might be problematic. Also, if the Civil Right Protection Act is vigorously enforced this would enhance, from year to year, the incidence of “atrocities.”

A recent study by the Bureau of Police Research and Development, Union Ministry of Home Affairs, calls for a “Meaningful” definition of the term, which is in “Conformity with the realities of the Situation.” What is meant by this is strikingly borne out by the comment that “in order to Constitute atrocity, there must be an element of cruelty, brutality or wickedness in the Commission of a particular offence or it should have the background of having been committed with a view to teach a lesson to the Harijans.”

This is a sensible suggestion but it does not help us overcome the problem of definition of “atrocities” and its possible scope. The expressions “Cruelty, brutality and influenced no doubt by levels of sensitivity of the group which has to enforce the law and of the wider community.

I.1. Various aspect of atrocities and their impact on victims:

**Personal aspect of Atrocity:**

On commission of atrocity, the victim suffers not only of bodily and mental pain but also imminent feeling of insecurity, which is not present in the victim of any other crime. He thinks himself a very pitiable person. Even after recovery of bodily hurt he continues to suffer mental pain during rest of his life. Sense of insecurity impede him to leave his place of residence, village. He tries to locate any other secure habitable place, which he rarely finds. This everlasting process goes on, which result into

7. Supra Note 6 at 143 P.
8. Ibid at 143 P.
9. Ibid at 143 P.
deterioration of physical, mental, educational, social, economic and psychological status of victim of atrocity. In case atrocity is committed in the absence of others, he tries to that by doing so he will save his reputation. He thinks that if incident of atrocity is known by the public, particularly, his relatives and castemen, his reputation will be lowered in their eyes.

During the process of victimization, the role of the victim is learned through the interaction with the offender or with people in the social vicinity of the victim. The victim is pushed or “Socialised” in to his/her victim role land with time he/she grows accustomed to becoming a victim. The person concerned learns to define him/herself as a victim. And rather often it is the inappropriate reactive process following instances of primary victimization, the so called Secondary victimization, which leads to a lasting internalization of the role of the victim. Such inappropriate reactions of authorities in the field of formal social control as well as of people in the victim’s social vicinity may victimize the primary victim again. Once more he/she is made object. At the end of this process of degradation and stigmatization, the victim adopts a victimal conception of him/herself.\(^\text{10}\)

In explaining the process of learning the role of the victim, reference may also be taken to the theory of learned helplessness. According to this theory, human beings learn from experience that their action may have negative consequences upon which they cannot exert an influence; for if somebody realizes again and again that negative consequences cannot be averted, even by determined action, he/she will become passive. Such a person will then not even try to take promising counteraction against an impending disaster or danger. Persons of that sort tend to give up their resistance. They internalize their impression that even purposeful action will be of no use whatsoever.\(^\text{11}\)

\textbf{I. 2. Physical aspect of Atrocity:} In atrocities, where the victim suffers physical injuries

\begin{enumerate}
\item Schneider, Hans Joachim, the present situation of victimology in the world, especially in the United States and Germany; Eurocriminology, Vol.10, 1996 at 21; Indian Journal of Criminology, Vol.24 (1 & 2) January & July 1996 at 24.
\item Supra, Note 9 at 144 P.
\end{enumerate}
on his body, he undergoes bodily pain according to the nature of injuries. Acuteness and period of bodily pain varies according to grievousness of hurt caused on the body. In many cases of atrocity, even limbs of person are amputated which makes the Victim infirm. His physical strength deteriorated resulting into unfit or less fit in his profession and occupation.

I. 3. Economic aspect of Atrocity: Commission of atrocity also affects the economic position of victim. In some kind of atrocities, such as destruction and damage of properties, etc., victim suffers direct financial losses. In some other kind of atrocities such as bodily injuries, he has to spend lot of money on his treatment. Besides, he loses his earnings during the period of his illness. In addition to this, his wealth is wasted in litigation. Thus, his wealth is minimized which shatters his economic position and he becomes poorer.

I. 4. Social aspect of Atrocity: Not only the victim of atrocity but also society at large, particularly, the persons who are castemen of victim do suffer both by mental pain and sense of insecurity. The status and reputation of the victim is lowered in the society. His castemen also feel insulted and humiliated. Their reputation also goes down in the society. This generates caste feelings, which disintegrate the society and divide them on caste lines.

According to the social structural victimization theory, the social structure and distribution of power within a given society are to be seen as responsible for the extent of victimization as well as for its patterns and reasons. The social structure Constitutes the framework and the basis of all interactions between victims and offenders, which take place within the society in question and which prove to be failures. If minorities are being pushed away or marginalized in society, their people tend to be victims of social structural and cultural victimization, which results from customs, tradition, religion and ideology.12

12. Supra Note 10 at 145 P.
Examples of social structural victimization are the so-called hate crimes which depict the symbolic status of the crime victim. The victim belongs to a social out-group the members of which symbolize what the respective in-group, to which the offenders belong do not want to be. Criminal offences in this contest serve the feeling of solidarity and identity within the in-group and, equally, strengthen the in-group’s self-esteem.  

I.5. Grave aspect of Atrocity: Police is the protector of law and it is one of the duties of the police to save the SCs & STs from commission of atrocities upon them by others. But if police, instead of saving them from atrocities, commit atrocities on them, then the position of atrocity becomes grave.  

A three-month old infant of Dalit stone mason staying in a makeshift shelter with other like families was allegedly tramped to death by six policemen of the ‘Uchahar Police Station in Rai-Bareli. They also severely beat up a number of stone masons at local Railway Station during a searching operation to apprehend the kidnappers of a child. The SHO in a fit of rage trampled the infant under foot. The child began bleeding from the mouth, nose and ear. The other policemen followed the SHO and turned the rage at child who died on the spot.  

Mangolpuri police on charge of stabbing a Head Constable picked up a Harijan Youth. He died in the police lock-up. His mother alleged that the policemen killed him, when she could not fulfil their money demand. The autopsy report found 29 external injuries on his body which, barring two, were inflicted during custody.  

In Morena Jail of Madhya Pradesh, two Scheduled Caste persons were victimized with the connivance of Jail staff. They were beaten mercilessly and unnatural offence and sodomy was committed with them. They were made to lick penis of co-prisoners.  

A Police officer raped a daughter of Scheduled Caste man in his presence and he

13. Ibid. at 145 & 146 PP.  
died with shame committing suicide, as he could not bear this inhuman act.\textsuperscript{17}

A co-probationer humiliated a young I.P.S. probationer by calling him a ‘chamar’.

He lost his job as he was discharged from service.\textsuperscript{18}

Police in Mumbai shot dead 11 and injured 27 Scheduled Castes person in police firing.\textsuperscript{19}

It is said that police has become a tool in the hands of unscrupulous, self-seeking politicians.\textsuperscript{20}

Station House Officer of a local Delhi Police Station and the former Councillor of the area allegedly called a Scheduled Caste Doctor a ‘Chamar.’ Instead of taking action against Councillor, the Station House Officer berated him and repeatedly called the Doctor an ‘Untouchable’\textsuperscript{21}

Police also commit atrocities on the SCs by implicating them in false criminal cases.\textsuperscript{22} These instances show that police sometimes by their acts of Commission and sometimes by implicating SCs in false criminal cases commit atrocities on them.

It is disgusting that the protectors of law, who are entrusted with the duty to save and safeguard SCs commit atrocities on them.

\section*{II. THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT: ITS NECESSITY AND OBJECTIVES}

Despite the right to non-discrimination on the basis of race or caste enshrined in Article 15 of the Indian Constitution, discrimination against Scheduled Castes and Scheduled Tribes is pervasive. Though abolished and forbidden by Article 17, the practice of ‘Untouchability’ persists due to its systematic character. Hence, the Indian

\begin{thebibliography}{99}
\bibitem{17} Sethi, Lokpal, “Raped in Custody, Father Kills Self” The Hindustan Times, December 20, 1994 at 1, C-1.
\bibitem{18} Bhatnagar, Ramesh, “SC denies Leniency to IPS probationer,” The Times of India, April 29, 1991 at 3, C-7.
\bibitem{21} News Items, “Untouchable takes SHO to High Court”, The Hindustan Times, January 27, 1997.
\bibitem{22} See, Committee on the Welfare of Scheduled Castes and Scheduled Tribes (10\textsuperscript{th} Lok Sabha) (1992-93) 23 Report at 13; See, also 1\textsuperscript{st} Report of National Commission on Scheduled Caste and Scheduled Tribes at 104, 130 and 131; See, also infra, note 42 at 234.
\end{thebibliography}
Parliament enacted the Untouchability Offences Act 1955 which underwent amendment and renaming in 1976 to become the protection of Civil Rights (PCR) Act. Under this Act, 'Untouchability' as a result of religious and Social disabilities was made punishable. However, due to legal loopholes, the levels of punishments being less punitive as compared to those of the IPC, and the law and order machinery being neither professionally trained nor socially inclined to implement such social legislation, a more comprehensive and more punitive Act was required to protect Scheduled Castes and Scheduled Tribes from violence committed by other communities. This gave rise to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

The basic objective and purpose of this more comprehensive and more punitive piece of legislation was sharply enunciated when the Bill was introduced in the Lok Sabha.

Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable... They have, in several brutal incidents, been deprived of their life and property. Because of the awareness created...through spread of education, etc., when they assert their rights and resists practices of Untouchability against them or demand statutory minimum wages or refuses to do any bonded and forced labour, the vested interests try to cow them down and terrorise them when the Scheduled Castes and Scheduled Tribes try to preserve their self-respect or honour of their women, they becomes irritants for the dominant and the mighty....

Under the circumstances, the existing laws like the 'Protection of Civil Rights Act 1955' and the normal provisions of the Indian Penal Code have been found to be inadequate to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes.... "It is considered necessary that not only the term 'atrocity' should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect Scheduled castes and Scheduled Tribes from being victimized and, where atrocities are committed to provide adequate relief and assistance..."
to rehabilitate them. The objectives of the Act, therefore, very clearly emphasize the intention of the Indian State to deliver justice to Scheduled Caste and Scheduled Tribe Communities through affirmative action in order to enable them to live in Society with dignity and self-esteem and without fear, violence or Suppression from the dominant castes.

III. THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT AND RULES: SOME SPECIAL FEATURES

When compared with “Protection of Civil Rights, 1955” The Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has some distinct features. They are:

1. **Nature of offences:** The ‘Act’ enlarges the area of criminal liability by identifying new types of offences, thereby including several acts of omission and Commission not covered under the Indian Penal Code or protection of Civil Rights Act.

   * Protects Scheduled Castes and Scheduled Tribes from various kinds of atrocities relating to Social, disabilities, property, malicious persecution, political rights and economic exploitation.

2. **Victims and perpetrators:** This ‘Act’ for the first time categorically defines an atrocity crime by sole reference to caste identification of the offender should be non-Scheduled Caste on non-Scheduled Tribe member and the victim should be Scheduled Caste or Scheduled Tribe member.

3. **Investigation Procedure under the Act:** The ‘Act’ specifically ensures that investigation offers are police officers not below the rank of Deputy Superintendent of Police with experience and ability to investigate such cases. The ‘Act’ mandates the completion of police investigations within 30 days of occurrence of the atrocity. Prohibits grant of anticipatory bail to persons accused of offences under the Act.

24. NHRC, Report on prevention of Atrocities against Scheduled Castes, New Delhi, 2002,
4. **Setting up of Special Courts for the trail of ‘atrocity’ cases:** The ‘Act’ makes arrangements for setting up Special Courts and grants special powers to them to ensure speedy trials of atrocity cases, and for Special Public Prosecutors to conduct the cases.

5. **Nature of punishment:** Impose exemplary punishment at a scale much higher than under the IPC for atrocities on SCs/STs, except for the offence of rape. A public servant accused under the Act also has been made liable to a higher minimum punishment, and importantly, neglect of official duties has been deemed punishable.

6. **Relief & Rehabilitation Measures to the victims:** Provides legally justiciable rights to the victims of atrocities by way of a scale of graded financial assistance and provision of relief and rehabilitation, apart from travel and maintenance allowances for victims and witnesses during investigation and trial, etc.

7. **Setting up of National & State level Monitoring Mechanisms:** Setting up SC/ST Protection Cell at the State Headquarters under the charge of Director/Inspector General of Police for supervision of various actions taken under the Act.

   Appointing (i) Nodal Officers to coordinate the functioning of District Magistrates and Superintendents of Police or other authorized officers, and (ii) Special Officers at the district level to coordinate with the District Magistrate, Superintendent of Police or other officers responsible for implementing the provisions of the Act.

   Constituting State and District level Vigilance and Monitoring Committees for enhancing accountability and greater political supervision of the implementation of the Act.

   Submitting annual report about measures taken for implementing the Act by the State Government to the Central Government.

   Authorizing the National Commission for Scheduled Castes (NCSC) & National Commission for Scheduled Tribes (NCST):

   (a) to investigate, monitor and evaluate the safeguards provided for SCs/STs;
(b) to inquire into specific complaints by SCs/STs of rights violations;

(c) to discharge such other functions in relation to the protection, welfare and development and advancement of SCs/STs.

8. Preventive Measures to be taken by: Implementing a range of preventive measures, including: preparing a model contingency plain; identifying atrocity prone areas; cancelling arms licences of potential offenders under the Act; granting arms licences to SCs/STs as a means of self defence; setting up awareness camps in atrocity prone areas to educate SCs/STs as a means of self defence; setting up awareness camps in atrocity prone areas to educate SCs & STs about their rights.

IV. DEFINITION OF ‘ATROCITY’ AND THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT 1989

The word ‘Atrocity’ is very vital concept in ‘The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 2(l)(a) of the ‘Act’ defines the expression ‘atrocity’ which is as follows:

“atrocity” means an offence punishable under section 3.”

Meaning of the word ‘Atrocity’:- In webster’s Third International Dictionary page 1391, one of the meaning ascribed to word ‘atrocity’ is “the quality of State of being atrocious”, while the word ‘atrocious’ has been ascribed, inter alia, the following meaning:

“(1) marked by or given to extreme wickedness;

(2) marked by or given to extreme brutality or cruelty;

(3) Outrageous; violating the bounds of common decency; uncivilized, barbaric;

(4) extremely painful, marked by intense distress;

(5) of such a kind as to fill the fright or dismay”.

If we consider the meaning of these words while interpreting section 3 of the Act, we would find that cash one of the acts contemplated by section 3 is atrocious and they aim at punishing the persons who are found guilty of the same.
V. DEFINITION OF SCHEDULED CASTES AND SCHEDULED TRIBES

Section 2(1)(c) defines that "Scheduled Castes and Scheduled Tribes" shall the meaning assigned to them respectively under clause (24) and clause (25) of Article 366 of the constitution i.e., Article 366 clause (24) reads: In this constitution, under the context otherwise requires, the following expression have the meaning here by respectively assigned to them, that is to say; "Scheduled Castes" means such castes, races or tribes or part of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution. Article 366 Clause (25) reads "Scheduled Tribe" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution.

Whether Scheduled Castes and Scheduled Tribes are 'comes under the ordinary meaning of caste? Or not?'

This question was decided by Hon’ble Supreme Court in Bhaiyalal Vs Harikishan Singh25 this Court held that an enquiry whether the appellant there belonged to the Dohar Caste which was not recognized as a Scheduled Caste and his declaration that he belonged to the Chamar Caste which was a Scheduled Caste could not be permitted because of the provisions contained in Article 341. No. Court can come to a finding that any caste or any tribe is a Scheduled Caste or Scheduled Tribe. Scheduled Caste is a case as notified under Article 366 (24). A notification is issued by the President under Article 341, as a result of an elaborate enquiry. The object of Article 341 is to prove protection to the members of Scheduled Castes having regard to the economic and educational backwardness from which they suffer.”

‘Thus’ Scheduled Castes and Scheduled Tribes are not a Caste within the Ordinary meaning of caste.

VI. TEST TO DETERMINE THE OFFENCE OF ATROCITY

Sections 3(1)(i) to 3(1)(xv) explain about 'atrocities. Following are the

'atrocities', committed by a person who does not belong to Scheduled Caste and Scheduled Tribe considered as punishable offences under Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act 1989;

1. Forcing a member of Scheduled Castes and Scheduled Tribes to drink or eat obnoxious substances or dumping waste in the premises or neighbourhood with intention to cause insult or annoyance to him and forcibly removing clothes or parading naked a member of Scheduled Caste and Scheduled Tribe.

2. Forcing or compelling a Scheduled Caste and Scheduled Tribe to do beggar (forced labour) or bonded labour, wrongful occupation or cultivation of land belonging to Scheduled Castes and Scheduled Tribes, wrongful dispossession from land or interference with the enjoyment of rights over any land, premises or water and forcible causing of a Scheduled Caste and Scheduled Tribe to leave his house or village.

3. Preventing a Scheduled Caste and Scheduled Tribe person from voting or forcing him/her to vote for a particular candidate or vote in a manner prohibited by law.

4. Instituting a false suit or criminal proceeding against a Scheduled Caste and Scheduled Tribe person.

5. Giving false information to any public servant and thereby compelling him to use his power to cause injury, harm or harassment to a Scheduled Caste and Scheduled Tribe person.

6. Insulting or intimidating a Scheduled Caste and Scheduled Tribe person in public with the intention of humiliating that person.

7. Dishonoring or outraging the modesty of any woman belonging to a Scheduled Caste and Scheduled Tribe.

8. Polluting the water of a spring or reservoir ordinarily used by members of Scheduled Castes and Scheduled Tribes so as to make it unfit for use.
9. Using any custodial or dominant position to sexually exploit a woman belonging to Scheduled Castes and Scheduled Tribes.
10. Denying a Scheduled Caste and Scheduled Tribe person a customary right of passage to public resort or preventing him/her from using public places accessible to others.

VII. JUDICIAL INTERPRETATIONS AND THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

The object of the Act: The object of Act 33 of 89 is to prevent atrocities against members of Scheduled Caste and Scheduled Tribe and this has to be taken into account while interpreting the Act.26 Penal provisions are to be construed strictly.27

In *Arunugum Servai Vs State of Tamil Nadu*,28 Honourable Supreme Court of India by Markandey Katju and Gyan Sudha Misra JJ. Prounced that “Discrimination on the ground of caste is illegal and punishable. Similarly, honour killing is barbaric and illegal.

Markandey Katju, J.

“*Har Zarre par ek Qaifiyat-e-neemshabi hai Ai saaki-e-dauraan yeh gunahon ki Ghadi hai*”

----- Firaq Gorakhpluri

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator by certain inalienable rights, that among these are life, liberty and the pursuit of happiness.”

----- American Declaration of Independence

Over two centuries have passed since Thomas Jefferson wrote those memorable words, which are still ringing in history, but a large section of Indian society still regard a section of their own country men as inferior. This mental attitude is simply unacceptable

26. *Jai Singh Vs. Union of India*, AIR 1993 Raj 177
in the modern age, and it is one of the main causes holding up the country's progress. The word 'pallan' no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word 'chamar' denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a 'pallan', if used with intent to insult a member of the Scheduled Caste, is, in our opinion, an offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. To call a person as a 'pallapaya' in Tamilnadu is even more insulting, and hence is even more an offence. Similarly, in Tamilnadu there is a caste called 'parayan' but the word 'parayan' is also used in a derogatory sense. The word 'paraparayan' is even more derogatory. In our opinion uses of the words 'pallan', 'pallapaya' or 'paraparayan' with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words 'Nigger' or 'Negro' are unacceptable for African-Americans today (even if they were acceptable 50 years ago).

In the present case, it is obvious that the word 'pallapaya' was used by accused No. 1 to insult Paneerselvam. Hence, it was clearly an offence under the SC/ST Act.

In the modern age nobody's feelings should be hurt. In particular in a country like India with so much diversity as held by Bombay High Court in Kailas Vs. State of Maharashtra.29 We must take care not to insult anyone's feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong.

*In Swaran Singh & Ors. Vs. State through Standing Counsel & Another*30, this Court observed: Today the word 'Chamar' is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person 'Chamar'today is nowadays an abusive language and is highly offensive. In fact, the word 'Chamar' when used today is not normally used to denote a caste but to intentionally insult and humiliate someone. It may be mentioned that when we interpret section 3 (1)(x) of the Act we have to evident from the Statement of Objects and reasons of the Act

Hence, while interpreting section 3(1)(x) of the Act, we have to take into account the popular meaning of the word ‘Chamar’ which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody’s feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word ‘Chamar’ when addressing a member of the Scheduled Caste, even if that person in fact belongs to the ‘Chamar’ caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity – so many religions, castes, ethnic and lingual groups etc. – all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

In our opinion, calling a member of the Scheduled Caste ‘Chamar’ with intent to insult or humiliate him in a place within public view is certainly an offence under section 3 (1)(x) of the Act. Whether there was intent to insult or humiliate by using the word ‘Chamar’ will of course depend on the context in which it was used.”

We would also like to mention the highly objectionable two tumbler system prevalent in many parts of Tamilnadu. This system is that in many tea shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons. In our opinion, this is highly objectionable, and is an offence under the SC/ST Act. And hence those practicing it must be criminally proceeded against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits.

The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest
as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter/caste or inter-religious marriage they can do is that they can cut off social relations with the son or the daughter, but they can not give threats or commit or instigate acts of violence and can not harass the persons to undergo such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stem action is taken against such persons as provided by law.

VII. 1. The Supreme Court of India held that “Need to give proper and due respect and place to tribal people”:

In Kailas & Others Vs. State of Maharashtra TR. Taluka P.S., Markandey Katju and Gyan Sudha Misra, JJ. pronounced that this appeal furnishes a typical instance of how many of our people in India have been treating the tribal people (Scheduled Tribes or Adivasis), who are probably the descendants of the original inhabitants of India, but now constitute only about 8% of our total population, and as a group are one of the most marginalized and vulnerable communities in India characterized by high level of poverty, illiteracy, unemployment, disease, and landlessness. As already mentioned, the conviction under the provisions of the IPC have been upheld but that under the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been set aside.

We are surprised that the conviction of the accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hyper technical grounds that the Caste Certificate was not produced and investigation by a Police Officer of the rank of Deputy Superintendent of Police was not done. These appear to be only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, we are not going into it. This was a shameful act on the part of Dronacharya. He had not even taught Eklavya, so what right had he to demand 'guru dakshina', and that too of the right thumb of Eklavya so that the latter may not become a better archer than his favourite pupil Arjun?

Despite this horrible oppression on them, the tribals of India have generally (though not invariably) retained a higher level of ethics than the non-tribals in our country. They normally do not cheat, tell lies, and do other misdeeds which many non-tribals do. They are generally superior in character to the non-tribals. It is time now to undo the historical injustice to them.

Instances like the one with which we are concerned in this case deserve total condemnation and harsh punishment.

VII. 2. To constitute an offence under the ‘Act’ of 1989, Intention and knowledge for commission of offence on part of accused, were essential ingredients.

In M.L. Ohri & Others Vs Kanti Devi32, Justice Mahesh Grover, J of Punjab and Haryana High Court held that to constitute an offence under section 3 (1)(x) of The Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989, intention and knowledge for commission of offence are essential ingredients. The complaint against the petitioners has been initiated pursuant to the provision of Section 3(1)(x) of the Act which are reproduced herein for ready reference:

“Section 3(1) – Whosoever, not being a member of a Scheduled Caste or a Scheduled Tribe

1. to (ix) ....

32. 2010(1) Crimes 926 (P & H).
(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste of a Scheduled Tribe in any place within public view,

(xi) to (xv) ....

Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

A perusal of the aforesaid provision of law makes it abundantly clear that intention and knowledge to commit the aforesaid offence are essential ingredients of the offence. It is also imperative that a person who allegedly commits such an offence is attributed the knowledge of the person so abused with the offensive words as belonging to the Scheduled Castes/Scheduled Tribes. When a complaint is initiated against a person, these two ingredients automatically form essential bed-rock of the allegations and if the complaint is lacking in these prima facie the Court cannot record a conclusion that a case has been made out sufficiently so as to warrant summoning of an accused under the aforesaid provisions of law. The Court is not expected to act mechanically and summon an accused and it necessarily has to apply its mind to the averments made in the complaint and reconcile them with the provisions of law and if the averments made in the complaint satisfy the essentials of law then necessarily summon the accused and not otherwise. Offence so alleged against a person has to be manifest from the allegations in the complaint. In the instant case, if the entire complaint is perused there is not even a single word mentioned by the complainant that show belongs to Scheduled Caste and that the petitioners intentionally and knowing her to be a member of the Scheduled Caste had uttered the words attributed to them so as to insult her.

When there is no averment in complaint that complainant belonged to Scheduled caste and that petitioners intentionally and knowing her to be a member of Scheduled Caste utter the words attributed to them so as to insult her. Thus, complaint liable to be quashed.

VII. 3. Under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, “When evidence did not show that accused was not a member of
Scheduled Caste or that victim was intentionally insulted or intimidated by accused with intent to humiliate, conviction under SC and ST Act could not be sustained.

In Ram Babu Vs. State of Madhya Pradesh, the Madhya Pradesh High Court held that on giving my thoughtful consideration to the above rival arguments advanced by learned counsel for both the parties, I find substance in the argument advanced on behalf of the appellant. According to Section 3 (1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the complainant (PW1) ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and that she was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. When the basic ingredients of the offence are missing in the complaint and the evidence that was produced by the prosecution, the conviction against the appellant for offence under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained. Reliance in support of this view is placed on a judgment of the Hon'ble Supreme Court in Gorige Pentaiah V. State of Andhra Pradesh.

In view of the foregoing, this appeal is allowed. The impugned judgment of conviction and order on sentence passed by the trial court against the appellant is hereby set aside. The appellant is acquitted of the charge under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His bail bonds are cancelled.

VII. 4. To constitute an offence under the 'Act' of 1989 a part from intention and knowledge for commission of offence, the accused, had knowledge that complainant belonged to Scheduled Caste or Scheduled Tribe.

This point of Law was held by Justice M.M.S. Bedi, of Punjab and Haryana High Court in Joginder Singh Vs State of Haryana and others. That is there must be specific averment in complaint that accused had knowledge that complainant belonged to

33. 2011 (2) Crimes 193(M.P.
34. (2009)1 SCC (Cri.,) 446.
Scheduled Caste or Scheduled Tribe.

VII. 5. Asking a member of Scheduled Caste Community whether he was suffering from depression or had any problem because he is a Scheduled Caste, does not in any way amount to either intentional insult or intimidation of a Scheduled Caste with an intent to humiliate him and it does not constitute any offence.

This was held by Justice Ashim Kumar Roy of Calcutta High Court in Rajat Kumar Bandyopadhyay Vs State of West Bengal and others.36

VII. 6. Simply addressing a person by his caste without any intention to insult or intimidate does not constitute offence under Section 3(1)(x) of SC & ST Act.

In Pappu Singh Vs. State of Uttar Pradesh, U.S. Tripathi, J pronounced that the judgment of the trial court itself shows that there was nothing in the statement of Ashok Kumar (PW1) to show that the applicant intentionally insulted or intimidated him with intent of humiliate him. However, he stated that the applicant and his companions used ugly words relating to his caste. What were those ugly words have not been specified. Unless the words uttered by the applicant have come in the evidence, it can not be ascertained that those words amounted to insult or intimidate the witness.

The other witnesses Ram Nandan Prasad, (PW2) stated that two or three persons accompanying Pappu Singh (applicant) had used words “CHAMARIYA” when they proceeded near the garage of uncle of Pappu Singh. Accused Pappu Singh again started beating but he could not identify at that place. He did not use ugly words relating to his caste. Assuming that the applicant had used word “CHAMARIYA” and addressed the complainant with the said words, it can not make out the offence punishable under section 3(1)(x) of the Act, as simply addressing a person by his caste without any intention to insult or intimidate does not constitute the offence under said section. Moreover this witness has stated that the applicant had not used ugly words relating to the caste of the complainant. In this way there was no evidence on record to make out

36. 2010 (1) Crimes 1030 (Cal.).
recorded by the learned Special Judge was without evidence and was thus perverse. A perverse finding of fact can be interfered with in the revision. As such there was no justification in convicting and sentencing the applicant under section 3(1)(x) of the Act. Thus the revision succeeds.

VII. 7. Merely by calling someone by his caste name does not attract provisions of the Act.

Justice M.P.Chinnappa, of Karnataka High Court in Chandra Poojari Vs State of Karnataka held that the petitioner not aware of fact that complainant belongs to Scheduled Caste. Merely by calling someone by his caste does not attract provisions of the Act.

The Allahabad High Court also expressed the same view that the accused therein called the complainant as 'Chammar' and in actual fact the complainant also belonged to that caste. Therefore it is held merely calling someone by his caste does not attract the provisions of this Act.

The Madras High Court expressed the same opinion on this point in Rajulu and others Vs State of Tamil Nadu that merely calling a person by his/her caste name does not constitute any offence of atrocity under the SC/ST (POA) Act, 1989.

Scheduled Castes and Scheduled Tribes (PoA) Act, 1989 causing of atrocities under Section 3(1)(x). Allegation that accused caused atrocity to complainant by calling him in name of his castes. Alleged occurrence of abusing took at place where no person was present to listen abusing filthy language and before whom complainant was insulted or humiliated – can it be said that the ‘alleged abuse’ amounts to an act of ‘atrocity’.

To this question of Law the Madhya Pradesh High Court, Indore Bench in Premnarayan Ramprasad Vs State of Madhya Pradesh held that “Learned Counsel for the appellant drawn attention of this court towards the judgement passed by a Single Bench of this Court in case of Jashrat Singh Vs State of Madhya Pradesh in which it

38. 2007 CRI. L.J. 2124.
40. 2005 MPLJ (IV) P.363.
has been held that “mere calling a person from the caste name without proof of any intention of insulting or humiliating him does not constitute the offence punishable under Section 3 (i)(x) of the SC/ST Act”. In that case the words were “Chamar Panchayat Ho Rahi Hai, Chamar meeting Karne Lege Hain etc”. Whereas in the facts of the present case the words and were “Bhangad Hamari Barabri Karta Hai.” These words were also used at the place where no person was present to listen the abusing filthy language and before whom complainant was insulted or humiliated considering from all angles in the facts of the present case the prosecution failed to prove beyond all reasonable doubts that any act of insult or humiliation towards the complainant who belongs to Scheduled Caste.

VII. 8. To attract the provisions of Act No.33 of 1989 it is not sufficient if the assailant is a non Scheduled Caste or non Scheduled Tribe and the victim is a Scheduled Caste or Scheduled Tribe, but offence must be made on victim on the ground that he is Scheduled Caste or Scheduled Tribe but offence must be made on victim on the ground that he is Scheduled Caste or Scheduled Tribe.41

VII. 9. Christians could not fall under Scheduled Castes. So as to attract the provisions of Act.42

Mala Aryans, converted into Christianity are not treated as members of Scheduled Caste or Scheduled Tribe43

VII. 10. Atrocities on Caste basis: The caste system is a great evil and must be destroyed quickly and ruthlessly if our country is to progress. There may have been some utility of the case system at a certain stage of our nation’s historical development as it introduced a rudimentary kind of division of labour in society at a certain stage of our social development. However, something which may have been useful at one time may become an evil subsequently. Today there can be no manner of doubt that the caste system is a great evil in our country and must be destroyed. In the modern age of science and technology the division of labour in society cannot be on the basis of birth but must be on

42. Dr. Palika Srinivasa Kumar Vs. State of A.P., and Another, 2007 (2) ALD (Crl.) 37 (A.P.).
43. C. Mohanan Vs. S.I. of Police, 1996 AIHC 5513
the basis of technical skills. The caste system is, therefore, totally outmoded and redundant in society and in fact it is a great obstacle to our nation’s progress today.

It may be mentioned that the basis of the caste system was the feudal occupational division of labour in society. In our country in the feudal age every profession became a caste. Thus washerman (dhobi) became a caste, and similarly Badhai (carpenter) became a caste, Kumbhar Chamar (People who do leather work) became a caste, etc. Thus in feudal society one had no choice to choose one’s profession, but had no follow his father’s profession. The son of a dhobi had to become a dhobi, the son of Badhai had to become a badhai, and so on. This was obviously because in the feudal middle ages there were no technical or scientific institutes and hence the only way to learn a craft or trade was to sit with one’s father since childhood and learn it. However, in the modern age there are technical institutions, engineering colleges, etc., and hence the caste system based on the feudal occupational division of labour in society has today become totally outmoded and is a great hindrance to our nation’s progress.

As a matter of fact what we have witnessed in our country over that last 50 years or so its that the very basis of the caste system, namely, the feudal occupational division of labour in society has been largely destroyed due to the advance of technology. Thus today the son of a Dhobi does not become a dhobi. He comes to the city and may become an electrician or motor mechanic or get employment in some establishment or factory, or having got education may become a lawyer, doctor or engineer. Similarly the son of Badhai does not nowadays become a badhai. The son of a Lohar does not become a lohar now-a-days. Thus sons are no longer following the profession of their fathers, and hence the basis of the caste system has already been largely destroyed in our country. However, the caste system is being artificially propped up by certain vested interests for vote bank politics, etc., which is very harmful to the country. Of course, these attempts to perpetuate the caste system is doomed to failure because it is only artificial and in fact in Indian, the feudal occupational division of labour in society has already been largely destroyed. All patriotic and modern minded people must oppose the caste system
everywhere so that this evil can be destroyed as early as possible.  

VII. 11. Scheduled Castes and Scheduled Tribes are not a caste within the ordinary meaning of a caste

In *Bhaiyalal Vs. Harikrishan Singh*, the Court held that an enquiry whether the appellant there belonged to the Dohar caste which was not recognized as a Scheduled Caste and his declaration that he belonged to the Chamar Caste which was Scheduled Caste could not be permitted because of the provisions contained in Article 341. No Court can come to a finding that any caste or any tribe is a Scheduled Caste or Scheduled Tribe. Scheduled Caste is a caste as notified under Article 366(24). A notification is issued by the President under Article 341, as a result of an elaborate enquiry. The object of Article 341 is to prove protection to the members of Scheduled Castes having regard to the economic and educational backwardness from which they suffer.

In *Miss. Padma Mythilli Vs. the A.P. University of Health Sciences* the Hon’ble A.P. High Court held that *Konda Kapus are sub division of Kapus and in determining the Social status of a candidate his sir name is irrelevant*.

In *Ramani Vs. Sub-Collector*, the Hon’ble Supreme Court held that *where a child of non-tribal parents was brought up by a tribal, it can be said that the child belongs to the tribal community*.

In *Swapna Jacob Vs. State of Kerala* the Hon’ble Supreme Court held that *the status of Scheduled Caste can not be conferred on children of inter-caste marriages on the strength of a Government Order that had extended concessions given to Scheduled Castesto children of such marriages*.

In *Goverdhanlal Vs. State* the Supreme Court held that *under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 where accused*
was not aware of the fact that the victim belongs to Scheduled Caste, he can not convicted under the Act.49

In Kothapalli Veeranna Vs. State of Andhra Pradesh,50 the Andhra Pradesh High Court held that under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to convict an offender, the offender must aware of the fact that the victim belongs to Scheduled Castes or Scheduled Tribes, otherwise he can not be convicted.

In Pallavolu Ramamohana Reddy Vs. State of Andhra Pradesh,51 the Andhra Pradesh High Court held that where under the provisions of SC & ST (PoA) Act, where accused was not aware of the fact that the victim belongs to Scheduled Caste or Scheduled Tribe, he can not be convicted.

Again in Nandikanuma Lakshmamma Vs. State of Andhra Pradesh,52 the Andhra Pradesh High Court held that under the provisions of SC & ST (PoA) Act 1989 to convict an accused, the accused must have knowledge about the fact that the victim belongs to Scheduled Caste or Scheduled Tribe, otherwise he can not be convicted.

In Nataru Govinda Reddy @ Govindu Vs. State of Andhra Pradesh,53 the Andhra Pradesh High Court held that where accused was not aware of the fact that the victim belongs to Scheduled Caste, he can not be convicted.

In Kailash Gupta Vs. State54 where complainant along with leader went to petitioner- accused for putting forth grievances and petitioner is said to have scolded him that he was in NALCO service showing Scheduled Caste and Scheduled Tribe certificate, It was held that there was no intention to insult complainant on ground of caste and hence Proceedings are liable to be squashed.

In M. Ramesh Babu Vs. State of Andhra Pradesh,55 it was held that for the offence

49. 2004 Cr. LJ 3966.
54. 2004 (3) Crimes 301.
whether these provision are attracted or not.

In Enagu Ganga Reddy Vs. State of Andhra Pradesh, it was held that to convict the accused under the provisions of the Act, particularly under Section 3 of the Act it is to be seen whether these provisions are attracted or not.

In Prashanth Kumar Vs. State of Andhra Pradesh, it was held that for attracting the offence under Section 3 (2) (v) of the Act is not enough that an offence was committed against a member of Scheduled Castes or Scheduled Tribe and such offence should be committed against the person belonging to Scheduled Caste or Scheduled Tribe on the ground that such a person was a member of Scheduled Caste or Scheduled Tribe.

In Dasika Ramamohana Rao Vs. State of Andhra Pradesh, it was held that to invoke the provisions of Section 3 of SC and ST (PoA) Act 1989, the first and foremost pre-requisite is to establish that the victim of the said offence is a person belonging to Scheduled Caste or Scheduled Tribe. The Act does not provide for any presumption to be drawn in favour of, or against any person in this regard.

In Ashokan Nambiar Vs. State of Kerala, it was held that Under Section 3(1)(x) of the Act what has to be established is intentional insult and humiliation. How the victim/perceiver understood and appreciated the alleged acts is also of crucial importance.

In Balkeshwar Maurya Vs. State Uttar Pradesh, it was held that abusing “Pasi” by caste and must be Begari, a form of slavery being prohibited by Article 23 of Indian Constitution, no case to quash F.I.R.

In Yaswanth Vs. State of Maharashtra, it was held that under Section 3(1)(v) of the Act and Section 482 of Code of Criminal Proceedure, where allegations were made against the accused that not only he assaulted complainant, a member of Scheduled Caste but also asked him to leave the land, the said acts fall within the mischief of Section 3 (1)(v) of the Act and hence can not be squashed.

59. 2005 (1) A.L.T. (Crl.), 144 (Ker.)
60. 2002 All. L.J 2269.
61. 2003 Cr. Lj. 2765.
VII. 12. Merely calling a person as Idiot, nonsense which have no reference to the community and from those words it cannot be inferred that the intention or intimidation are with reference to the community to which the complaint belongs.

This judgment was pronounced by Justice I.P. Rao of Madhya Pradesh High Court in Ravindra Kumar Mishra Vs State of Madhya Pradesh. It is further held that words of abuse attributed to petitioner against complainant having no reference to community.

VIII. ATROCITIES COMMITTED BY CASTE HINDUS MADE PUNISHABLE UNDER THE ACT AND THE SAME NOT APPLIED TO MEMBERS OF SC AND ST, EVEN IF THEY COMMITTED ATROCITIES AGAINST THEIR OWN PEOPLE. WHETHER IT SHOWS ANY HOSTILE DESCRIMINATION?

To this point of law the Rajasthan High Court (Full Bench) in Jai Singh and another petitioners Vs Union of India and others held that Counsel for the petitioners urged that while it is possible to punish a caste Hindu for the offences under Section 3 of the Act, it cannot be applied to Shudras or Scheduled Tribes. Consequently, the contention was that there is a hostile discrimination in between the persons belonging to caste Hindu and those who did not. The submission of the petitioners counsel is not correct. The accused belonging to one caste or other, they represent one class and they are treated alike or similarly and no discrimination is to be found in the matters of punishment.

The Act was enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. It is in the light of this preamble, Section 3 has to be interpreted. The legislature thought that enough time had already been wasted, but the socio-economic equality had not been brought by the legislature. The persons of superior class Hindu behaved in the same manner as before the independence.

If the history is kept into account while interpreting Section 3 of the Act, the interpretation made by the petitioners would have no merit. What has been prescribed is that caste Hindus should not indulge in activities which may be considered as having not treated the Shudras or persons of Scheduled Tribes on unequal level.

VIII. 1. Section 3 (2)(v) of "The Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989 does not constitute substantive offence".

This view was held by Allahabad High Court in Narain Trivedi and others Vs State of Utter Pradesh. From the language used by the legislature in Section 3 (2)(v) SC/ST Act, it is clear that this section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Penal Code punishable with imprisonment for a term of ten years or more against a person or property on ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member, then enhanced punishment of life imprisonment would be awarded in such case, meaning thereby that conviction and sentence under section 3(2)(v) SC/ST Act simpliciter is not permissible and in cases where an offence under the Penal Code punishable with imprisonment for a term of ten years or more is committed against a person or property on ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, then in such case the accused will be convicted and sentenced for the offence under Penal Code read with Section 3 (2)(v) SC/ST Act with imprisonment for life and also with fine.

The same view was reiterated by the same Allahabad High Court in Mijaji Lal & others Vs State of Utter Pradesh that Section 3(2)(v) does not constitute any substantive Offence and under section 3(2)(v) simpliciter is wholly illegal.

This view was held by Full Bench of Bombay High Court in Mrs. Pushpa Vijay Division Bench holding that the view taken by the another Division Bench in Anant

64. 2009 Cri. L.J. 1686.
65. 2009 Cri. LJ. N.O.C. 824 (ALL).
Bonde etc. Vs The State of Maharashtra\textsuperscript{66}. The order of reference dated 21\textsuperscript{st} January, 2009 which has occasioned the constitution of this Full Bench, has been passed by the Vasantlal Sambre Vs. State of Maharashtra\textsuperscript{67} decided on 20\textsuperscript{th} April, 2001 and in the judgment of the learned single Judge in the case of Manohar Martandrao Kulkarni V. State of Maharashtra and Ors.,\textsuperscript{68} needs reconsideration. In these judgments the learned Judges have observed that it is a requirement under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act") that the complainant should disclose the caste of the accused in the complaint itself and if there is no such disclosure the complaint cannot be registered and if it is registered, it is liable to be quashed.

In the present writ petition it is contended by the petitioner-accused that nowhere in the complaint, the complainant has disclosed the caste of the petitioner-accused and it is a requirement under section 3 of the Atrocities Act that the offence should be committed by a person who does not belong to a Scheduled Caste and Scheduled Tribe. It is further contended that since there is no such assertion made in the complaint or the report it is liable to be quashed. It would be advantageous to reproduce the order of reference dated 21-1-2009 passed by the Division Bench for better appreciation of the question referred to the Full Bench: “One of the grounds agitated in this writ petition challenging the FIR registered under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is that the FIR does not disclose the caste of the accused. The petitioner relied on the Division Bench Judgment of this Court in the case of Anant Vasantlal Sambre V. State of Maharashtra in Writ Petition No.49 of 2001 decided on20\textsuperscript{th} April, 2001, and the judgment of the learned single Judge in the case of Manohar Martandrao Kulkarni V. State of Maharashtra & Ors., According to these judgments, learned Counsel for the petitioner submits that it is a requirement under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 that the complainant should disclose the caste of the accused in the complaint itself.

\textsuperscript{66} 2009 CrL J. 3204.
\textsuperscript{67} Writ Petition No.49 of 2001
\textsuperscript{68} 2006 (1) Bom CR (Cri) 778: (2005 Cri. LJ (4653)
From bare perusal of the judgment of the Supreme Court in *Ashabai Adhagale’s case*,\(^{69}\) it is clear that the question referred to the Full Bench is no longer res-integra and stands squarely answered. Thus, we hold that merely because the caste of the accused is not mentioned in the FIR stating whether he belongs to Scheduled Caste or Scheduled Tribe, it cannot be a ground for quashing the complaint. After ascertaining the facts during the course of investigation it is always open to the Investigating Officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe as observed in *Ashabai Machindra Adhagale’s case*.

In the result we hold that it is not a requirement under Section 3 of the Atrocities Act that the complainant should disclose the caste of the accused in the complaint. In other words if there is no mention of the caste of the accused in the FIR, that cannot be a ground for either not registering the offence under Section 3 of the Atrocities Act or for quashing such complaint. Thus, the law laid down in *Anant Vasantlal Sambre and Manohar Martandrao Kulkarni’s cases* is no more a good law to that extent. On the same point of Law the Bombay High Court in *Nathabai Tukaram Gavale and Others Vs. State of Maharashtra and other\(^ {70}\)* held that under Section 3 (1) (x) of SC & ST (PoA) Act “where the caste of the complainant and/or accused is not contained in the body of the FIR, there can be no registration of a crime under the Atrocities Act and all investigation and further court proceedings on the basis of such FIR cannot be maintained in Law.

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70. 2008 (4) Crimes 665 (Bom.).
VIII. 3. To attract the provisions of SC & ST Act, the caste of complainant's father, and not the mother, shall be taken into consideration.

The Andhra Pradesh High Court in *M. Ramesh and others Vs State of A.P.* held that once the father of the deceased, who was examined as P.W. 2 though stated that he is a Madiga by Caste, admitted in his cross-examination that his father is Chengaiah and his father belongs to Balija community. When once the father of P.W. 2 is a Balija by caste, P.W. 2 will not get the status of Madiga. In fact, this was admitted by P.W.1 i.e., the wife of P.W. 2. In her cross-examination she has categorically stated that L.W. 2. K.Murali Swamy is Balija by caste and he is her husband. Of course, she has stated in the chief-examination that she belongs to Madiga community. Even in an inter-caste marriage, the offspring gets the status of father, but not that of the mother. When once the father of the deceased is admitted to be a member belonging to Balija caste, it cannot be said that the deceased is a Madiga by caste, so as to attract the provisions of the Act.

VIII. 4. Under the 'Act' Verbal threat would not amount to use of force or assault and it could not constitute offence of ‘atrocity’.

This was held by Bombay High Court, Bench Nagpur, in *Gajanan B. Mehetre Vs State of Maharashtra* that prosecution case not showing that there was assault or use of force throughout the incident and verbal threat would not amount to use of force or assault.

VIII. 5. Complainant belonging to the Scheduled Caste cannot lose her/his right of prosecution under Scheduled Caste and Scheduled Tribe Act merely because she/he married a person who belonged to a backward class community.

This point of law was decided Madras High Court in *Kaliya Perumal Vs State* The Court observed that the complainant Thenmozhi who acquired the status of a Scheduled Caste woman by her birth right cannot lose her right of prosecution under the

73. 1998(1) Crimes 165.
relevant sections of the SC & ST Act against the petitioner merely because, she married a relative of the petitioner, who belongs to a backward class community. Hence, the grounds urged in this petition by the petitioner fail and accordingly, this petition is dismissed.

VIII. 6. In order to give ‘conviction’ under the ‘Act’ there shall be circumstantial incriminating evidence on record lending corroboration to evidence of eye witness.

This point of law was settled by Gujarat High Court (Division Bench) in Dahyabhai Khushalbhai Ahir and others Vs State of Gujarat74 that when the prosecution case ultimately depends upon the evidence of the solitary eye witness, it would be simply risky and hazardous to record the order of conviction and sentence when the circumstances throw thick cloud of suspicion around his credibility as a truthful witness.

VIII. 7. “Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 Section 3(1)(xii)-offence of atrocities would not be attracted merely on ground that victim happens to be a member of Schedule Caste or Schedule Tribe.”

This point of law was decided by Chattisgarh High Court in Praveen Kumar Sahu Vs. the State of Chattisgarh75 that ‘A bare perusal of provisions of S.3(1)(xii) of Act would show that the first condition for attracting the aforesaid offence would be that the accused must be in a position to dominate the will of a woman who belongs to a particular caste or tribe and he uses such position to exploit the victim sexually to which she would not have otherwise agreed i.e. to say that if a person is not in a dominating position and the facts of the case show that there was some element of free consent, from the side of the victim and a prima facie possibility of which is not fully ruled out, the provisions of S.3(1)(xii) would not be attracted only on the ground that in such case, the victim happens to be a member of Scheduled Castes or a Scheduled Tribes, by chance.

VIII. 8. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1) (x) – FIR alleged to be bereft of vital details such as whether complainant is

74. 1996 (4) Crimes 283.
75. 2007 CRI. L.J. 1134.
member of Scheduled Caste or that accused does not belong to Scheduled Caste—whether court can quash F.I.R.? The answer is "NO"

This point of Law was explained by Kerala High Court in *Alex & others Vs State of Kerala & Another*\(^76\) that where a total reading of the First Information statement leaves no semblance of doubt that the crux of the allegation is that the complainant who belongs to the Scheduled Caste was assaulted and insulted by the petitioners, the FIR is not liable to be quashed though a specific statement that the victim/complainant does belong to the Scheduled Caste is not specifically made. First Information Statement is not an encyclopaedia. It is not to be reckoned as part of the pleadings of parties before Courts. An FIR is the natural and spontaneous reaction of a victim to a crime committed against him. He is not a legal expert. He cannot, in a complaint given by him to the police with the intention of triggering the police to take action, be expected to narrate all the ingredients of the offences especially in complicated and technical offence committed. Petitioners have no contention that they do also belong to the Scheduled Caste. It is crucially relevant that the petitioners have no case that the complainant does not belong to any Scheduled Caste. In these circumstances, it would be incorrect, improper and myopic to quash the FIR for the short reason that the complaint has omitted to narrate all legal ingredients of the offence carefully in the complaint filed by him. In the instant case First Information Statement, was lodged by the victim who was undergoing treatment in the hospital. It is for the police officer to question him closely and bring out all the relevant details to justify the registration of the FIR under the appropriate sections. If the police officer who recorded the First Information Statement has committed default in discharging that duty, that cannot, at any rate, persuade a Court to invoke its extraordinary inherent jurisdiction under S. 482 of the Cr. P.C. It may be the yard stick which a Court may employ when it considers averments in a complaint or the final report submitted by the police after investigation. Court declined to quash FIR.

VIII. 9. To constitute an offence under section 3(2)(v) of Act, "there shall be some material showing that accused persons assaulted the complainant party on the ground that

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\(^{76}\) 2007 CRI. L.J. 2835.
they belonged to Scheduled Caste community” or else conviction liable to be set aside.

In *Koki Prabhakara Reddy & etc. V. State of Andhra Pradesh* the Andhra Pradesh High Court held that having given our anxious consideration to the entire evidence, we come to an irresistible conclusion that the prosecution failed to bring home the guilt of the accused. Further, the alleged confession attributed to A1 by P.W. 10 as recorded by him in Ex.P.17 is suspicious. In view of the same, it is not safe to base the conviction on the doubtful extra-judicial confession and the doubtful testimony of P.W.10. Similarly, when the prosecution miserably failed to prove about A2 committing rape on deceased, as she was a member of SC community, the proviso to S.3(2)(v) of the Act does not attract.

Under Section 3(2)(v) of ‘The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, to constitute an offence the accused shall commit an offence “on ground that such person is member of Scheduled Caste or Scheduled Tribe.” These words clearly implies that there must be element of intention on part of accused for commission of offence only on ground that victim belongs to Scheduled Caste or Scheduled Tribe. This ‘point of Law’ was decided by Karnataka High Court in *Hanamath & Others Vs State of Karnataka* held that Sec.3(2)(v) reads thus:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years 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.”

This Act was enacted to prevent atrocities against members of Scheduled Castes and Scheduled Tribes and to provide special Courts for trial of such offences. “Atrocity” is defined in Sec. 2(1) (a) to mean an offence punishable under Sec.3. This Section creates independent offences relating to such atrocities and they stand by themselves. To attract Sec. 3(2) (v) the following ingredients must be established:

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77. 2007 CRI. L.J. 263.
78. 2006 CRI. L.J. 1844.
1) the offender should not be a member of a Scheduled Caste or a Scheduled Tribe:
2) he must commit an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more;
3) the commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;
4) the offence must have been committed on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe.

All the above ingredients must be established by the prosecution before requesting the Court to enter a conviction under this Section.

We rarely come across a society, in which crime is not committed by a person an another. There are number of penal laws to punish the offenders of such crimes. Such laws apply to every offender, irrespective of his caste or creed. However, taking into consideration the indignities to which persons belonging to a scheduled caste or scheduled tribe were and are subjected to and atrocities committed on them only on the ground that such persons belonged to such castes, the Parliament has enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to prevent atrocities on the persons belonging to Scheduled Caste or Scheduled Tribe. The object behind clause (v) of Section 3(2) of the Atrocities Act is to punish the persons, who commit offences under the Indian Penal Code punishable for a term of ten years or more, against a member of a Scheduled Caste or Scheduled Tribe on the ground that such person belongs to Scheduled Caste or Scheduled Tribe or such property belongs to such person, by higher and severe punishment.

The words “on the ground that such person is a member of Scheduled Caste or Scheduled Tribe” used in Section 3(2) (v) of the Atrocities Act clearly imply that there must be an element of intention on the part of the accused for the commission of the offence only on the ground that the victim belongs to a Scheduled Caste. If there is no such mens rea then the provisions of Section 3(2)(v) of the Atrocities Act are not attracted.
By looking into the aims and objects of the Atrocities Act as we have stated, Section 3(2)(v) is not a separate offence, but it provides only higher degree of punishment than the one awarded for the offence under Indian Penal code covered by Section 3(2)(v) of the Atrocities Act.

The Supreme Court of India in *Dinesh alias Buddha Vs State of Rajasthan*\(^7\) held that *sine qua non for application of section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes*. In the instant case no evidence has been led to establish this requirement. *It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste.*

The Andhra Pradesh High Court accepted the same ‘Principle of Law’ in *Gangula Venkateswara Reddy and others Vs State of Andhra Pradesh*\(^8\) and held that in *Masumsha Hasanasha Musalman Vs. State of Maharashtra*,\(^9\) the Supreme Court held that *to attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe*. *In the absence of such ingredients, no offence under section 3(2)(v) of the Act arises.*

In *Ramdas V. State of Maharashtra*,\(^10\) the Supreme Court held that *the mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act.*

**VIII. 10. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-**

**Under Section 3(2)(v) offence must have been committed because the victim is a member of a Scheduled Caste or a Scheduled Tribe – cause for offence must contain an element of racial prejudice.**

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79. 2006 CRI. L.J. 1679.
It is not enough if victim is a member of a Scheduled Caste or a Scheduled Tribe. This question of law was decided by Kerala High Court in Ramachandran Vs State of Kerala\textsuperscript{93} held that "For convicting an accused for an offence U/S 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is not enough if the victim is a member of a Scheduled Caste or a Scheduled Tribe as the offence must have been committed because the victim is a member of Scheduled Castes or a Scheduled Tribe.

The Madhya Pradesh High Court (Indore Bench) in Kumersingh & Others Vs State of Madhya Pradesh\textsuperscript{84} held that the same opinion that on perusal of the statements of the eye witnesses we do not find sufficient material to hold that the appellants assaulted the complainant party on the ground that they belonged to Scheduled Caste community under section 3 (ii)(v) of the Scheduled Castes & Scheduled Tribes/Prevention of Atrocities) Act 1989.

On the same point Uttaranchal High Court in Vinayak Bihari alias Vinayak Sharma Vs State\textsuperscript{85} held that "Bare reading of the aforesaid provision would reveal that the conviction under section of the aforesaid Act is altogether a different thing as the aforesaid provision clearly indicate that the offence under IPC should be established by the prosecution to have been committed on the ground that the injured person should be a member of either but further it is required to be proved that the offence has been committed on the ground of victim being a member of Scheduled Castes or Scheduled Tribes. In absence of this material merely because the injured/prosecutrix happens to be Scheduled Castes or Scheduled Tribes, automatically the offence under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out.

VIII. 11. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 under S.3(1)(x), the act of atrocity should be visible and audible to the public.

\textsuperscript{83} 1996 (3) Crimes 169.
\textsuperscript{84} 2007 CRI. L.J. 1349.
\textsuperscript{85} 2005 CRI. L.J. 2452.
This point of law was settled by Bombay High Court (Auraungbad Bench) in *Uday Singh Ramsingh Pawar Vs State of Maharashtra & Another* that under Sec.3(1)(x) Act amounting to insult or humiliation to members of Scheduled castes and Scheduled Tribes should visible and audible to public otherwise it would not amount to offence. *The Alleged incident of insult or intimidation took place inside the house of applicant and not in the public place. Hence it is not an offence.*

"Scheduled Caste and Scheduled Tribes (PoA) Act, 1989, offences of atrocities under sections 3,4,5. Allegations that petitioners entered house and abused complainant and his family members. Entire occurrence had taken place within bounded area of house of complainant and not in any place within public". Whether this can be treated as an offence under sections 3,4,5. ‘NO’.

To this question of law, the Punjab and Haryana High Court in *Gorkhi Ram and others Vs State of Haryana and anothers* held that "*perusal of the complaint show that the entire occurrence had taken place within the four walls of the house of the complainant. It was nowhere alleged that any person from the neighbourhood was attracted. No reference was made that Narender Singh, who was residing in the neighbourhood of the complainant came present and witnessed the occurrence or heard the accused using the derogatory remarks.*

VIII. 12. *The basic requirement of commission of an offence under section 3(1)(x) of the Act is that same should be done in any place within public view.* The provision reads as whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled in any place within public view.

In the present case, *the basic ingredients of the offence is missing. The entire occurrence had taken place within the bounded area of the house of the complainant and not in any place within public view. In view of a above, no offence under sections 3, 4 and 5 of the Act, is made out.*

86. 2006 CRI. L.J. 4385
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Appellants were convicted under section 3(1)(xiv). Whether temple was a place of public resort to fall within ambit of section 3(1)(xiv) of the Act?

The Andhra Pradesh High Court in *Vennapusa Gangireddy @ Sadhu Vs State of Andhra Pradesh*\(^87\) held that the objective of the Act is more broader covering the entire gamut of atrocities. It may be contended that if the Legislature intended to include prevention of any member belonging to Scheduled Castes and Scheduled Tribes from having access to a place of worship like temple, the Legislature would have specifically inserted the word 'place of worship' at least in Clause (xiv) of Section 3, as it has employed the same word in sub-section 2 (iv) of the Act. The answer is the word 'place of public resort' is a broader term taking within its ambit all the places where plurality of people gathers. Temple is certainly a place where plurality of people gather. A temple is a place of worship for Hindus. Hindus constitute a major chunk of population in this country. In other words, they constitute a major Section. In Clause (xiv) of Section 3 of the Act, the word 'section' is also carefully inserted. The words employed are 'a place of public resort' to which other members of public or any sections thereof have a right to use or access. Therefore, a place to which a Section of public have access also is a place of public resort. Thus a temple used by a Section of public i.e., Hindus are Section of Hindus also can be termed as a place of public resort. No offence in actions of person insulted attracted u/s 3 (1)(x) of SC/ST (PoA) Act, 1989.

"No offence in absence of person insulted attracted u/s of the Act".

This ‘question of law’ was decided by Kerala High Court in *E.K. Nayanar Vs M.A. Kuttappan*\(^88\) “A reading of section 3 shows that two kinds of insults against the member of a Scheduled Caste or Scheduled Tribe are made punishable – one as defined under sub-section (ii) and the other as defined under sub-section (x) of the said section. A combined reading of the two sub-sections shows that under sub-section (ii) insult can be caused to a member of the Scheduled Caste or Scheduled Tribe by dumping excreta,

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87. 2009 (1) CRIMES 192 (A.P).
88. 1997 (2) CRIMES 119.
waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc. need not necessarily be done in the presence of the person insulted and whereas under sub-section (x) insult can be caused to the person insulted only if he is present in view of the expression "in any place within public view". The words "within public view", in my opinion, referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in sub-section (ii) of section 3 of Act 33/1989. By avoiding to use the expression "within public view" in sub-section (ii), the legislature, I feel, has created two different kinds of offences – an insult caused to a member of the Scheduled Caste or Scheduled Tribe, even in his absence, by dumping excreta etc. in his premises or neighbourhood and an insult by words caused to a member of the Scheduled Caste or Scheduled Tribe "within public view" which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the legislature would have avoided the use of the said expression which it avoided in sub-section (ii) or would have used the expression "in any public place".

Insult contemplated under sub-section (ii) is different from the insult contemplated under sub-section (x) as in the former a member of the Scheduled Caste or Scheduled Tribe gets insulted by the physical act and whereas in the latter he gets insulted in public view by the words uttered by the wrong doer for which he must be present at the place.

The Andhra Pradesh High Court in *E. Tirupem Reddy Vs Deputy Superintendent of Police, Nandyal & Others* 89 regarding the word "Offence should be committed by accused in any place within public view" held that "The learned Counsel for writ petitioner has relied on a judgment of this Court reported in K. Padma Reddy V. Station House Officer, Bellampalli, 90 This judgment is not at all applicable to the present controversy because the utterances were made within the chambers of Municipal Commissioner, which, according to the Court, was not within the public view. Even

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89. 2006 CRI. L.J. 1606.
90. 2003 (2) ALD (Cri) 421:2004 Cri LJ 503.

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otherwise we do not agree with the law laid down in this judgment because what is required under section 3(1)(x) of the SC & ST Act is, "intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

Therefore such an act should have been done by accused in any place within the public view and it is not necessary that such place should be a public place. It can be even in a place which is not a public place, but which would be within the public view. A Collector’s office may not be a public place, but it is a place within the public view where people generally go and at certain times public would be available within the Municipal Commissioner’s office and at some points of time public may not be available at such a place and it depends upon the facts of each case. The legislature, in our view, was conscious of the fact that offence can take place been at a place which is knot a public place. Therefore they did knot say in Section 3(1)(x) of the SC & ST Act that the offence should be committed in a public place. They deliberately used the words “in any place within the public view”. Therefore in our view the judgment of this Court reported in K. Padma Reddy V. Station House Officer, Bellampalli (supra) does not lay down a good law and is overruled.

Reference has also been made to another judgment of this Court reported in Goluguri Ramakrishna Reddy V State of A.P.91 Similarly this judgment has not, in our view, laid down correct law. Again a mistake was committed in taking the term “in a place within the public view” as a “public place”. A public place is a place where the generally are permitted to assemble, but somebody’s office, chamber or residence can never be a public place. The learned single Judge in this judgment has correctly come to the conclusion, while taking the definition of “public” from section 12 of the Indian Penal Code, that public place is a place where ordinarily the public visit for some purpose or other than with uninterrupted regularity though not continuously, but a mistake was committed when the term “within the public view” was taken as synonymous to “place within public view”. For instance, somebody’s residential house is not a public place, but

91. 2005 (1) ALD (Cri) 771 (AP).

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if somebody invites members of public to a wedding in his house, lit becomes, on that count, a place within the public view, though it does not become a public place. The distinction is unambiguous between the terms “public place” and “within the public view”. Private places, as opposed to public places can become places within the public view. The learned single Judge in this judgment also mentioned the definition of “place within the public view” as contained in Words and Phrases (Vol. 35-A Permanent Edition West Publishing Company-2002 Cumulative Supplementary Pamphlet, P51) that the term “in view of the public” has been defined as under:

“When accused exposed himself to a babysitter in his bedroom, he exposed himself to “public view” as required for offense of indecent exposure, since term does not mean a “public place” but “in view of the public”.

With respect to element of indecent exposure requiring that accused exposed a certain part of his body to public view in an indecent manner, “public view” occurs when the exposure is done in a place and in a manner that is reasonably expected to be viewed by another.”

For the reasons given hereinabove, we also do not uphold the views in this judgement concerning the meaning of term “in the view of public”. Wherever public is watching and wherever an incident is viewed by members of the public, it is “public view”, whether it is a private place or a public place.

On the same point the Jharkhand High Court in Vinoda Nand Jha Vs The State of Jharkhand and others92 held that in V.P. Shetty V. Sr. Inspector of Police, Colaba, Mumbai and Anr.,93 the Division Bench of the Bombay High Court observed:

“In various decisions apart from the decision of Bai alias Laxmibai, this Court has time and again held that the expression “within public view” has specific meaning and in order to attract the provision of law under Section 3(1)(x) of the Atrocities Act, the acts amounting to insult or humiliation to the member of Scheduled Castes or Scheduled Tribes should be visible and audible to the public.”

93. 2005 (4) East Cr. C. 544: (2005 Cri LJ 3560) (Bom)
To constitute an offence of atrocity under section 3(l)(x) of SC & ST (POA) Act, the alleged insult or humiliation should have been caused in a place within public view.

The Rajasthan High Court in Amresh Kumar Singh Vs State of Rajasthan and Another\(^9^4\) held that 'so far offence under section 3(i)(x) SC & ST (PoA) Act is concerned, that the alleged insult or humiliation should have been caused in a place within public view.

"Mere fact that FIR was lodged claiming prosecutrix to be a member of Scheduled Caste was not a sufficient material to presume that charge under S.3(l)(xi) was called for".

This point of law was discussed by Madhya Pradesh High Court (Gwalior Bench) in Ram Prashad and another, Applicants Vs State of Madhya Pradesh, Respondents\(^9^5\) held that “The mere fact that the F.I.R. was lodged claiming the prosecutrix to be a member of Scheduled Caste was not a sufficient material to presume that the charge under section 3(1)(xi) of the Act was called for. If the trail court felt that the additional change was necessary then an enquiry was imperative for holding the prosecutrix to have become a member of Scheduled Caste at the time of incident. Without such a finding no additional charge could be framed.

IX. THE CONSTITUTIONAL VALIDITY OF THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT

The Constitutional validity of the some of provisions of 'Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and exclusion of application of provision regarding anticipatory bail under section 438 of Cr. P.C. to this Act, and whether section 18 of SC & ST (PoA) Act is violate of Articles 14 and 21 of constitution were thoroughly discussed by Supreme Court of India in State of Madhya Pradesh and another Vs Ram Kishna Balothia and others.\(^9^6\)

In its judgment the Supreme Court Reversed the Decision of Madhya Pradesh

\(^9^4\) 1998 (3) Crimes 257.
\(^9^5\) 1997 CRI. L.J. 1846.
\(^9^6\) 1995 CRI. L.J. 2076.
High Court Dated 25-3-1994, in Ram Kishna Balothia Vs State of Madhya Pradesh and Approved the Rajasthan High Court Judgment in Jai Singh Vs Union of India97 which relates to the constitutional validity of the said Act.

**Brief facts of case:** These appeals by special leave have been filed by the State of Madhya Pradesh and another against the judgment and order dated 25-3-1994 of the High Court of Madhya Pradesh which is the common judgment governing all these appeals. In the petitions which were filed by the respondents here, before the High Court of Madhya Pradesh under Article 226 of the Constitution, the respondents had challenged the constitutional validity of certain provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The High Court, while negating this challenge in respect of some of the sections of the said Act has, however, held that Section 18 of the said Act is unconstitutional since it violates Articles 14 and 21 of the Constitution of India. The present appeals have been filed by the State of Madhya Pradesh to challenge the finding of the Madhya Pradesh High Court in respect of Section 18 of the said Act.

Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is as follows:- "Section 438 of the Code not to apply to persons committing an offence under the Act:- Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

Section 438 of the Code of Criminal Procedure provides for grant of bail to persons apprehending arrest. It provides, inter alia, that when any person has reason to apprehend that he may be arrested on an accusation of having committed a non-bailable offence. He may apply to the High Court or to a Court of Sessions for a direction that in the event of such arrest, he shall be released on bail. We have to consider whether the denial of this right to apply for anticipatory bail in respect of offences committed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, can be considered as isolative of Article 14 and 21 of the Constitution.

97. A.I.R. 1993 Rajasthan 177.
The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as ‘the said Act’) was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences.

Section 438 of the Code of Criminal Procedure does not apply to any case involving arrest of any person accused of having committed any of the above offences.

It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of “Untouchability” and forbids its practice in any form. It also provides that enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3 (1) arise out of the practice of “Untouchability”. It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.

We have next to examine whether section 18 of the said Act violates, in any manner, Article 21 of the Constitution which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The
Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

"we agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised."

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Sessions or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 came for consideration before this Court in the case of Kartar Singh v. State of Punjab, Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 also provides that nothing in Section 438 of the Code of Criminal Procedure shall apply in relation to any case involving arrest of any person of an accusation of having committed an offence punishable under this Act or any rule made thereunder. The language of Section 20(7) is almost identical with the language of Section 18 of the said Act which we are considering. It was argued before this Court in Kartar Singh's Case, that the right of an accused to avail of anticipatory bail is an integral part of Article 21 of the Constitution and its removal from the Terrorists and Disruptive Activities (Prevention) Act, 1987 would be violative of Article 21. This Court referred to the history of introduction of Section 438 in the Code of Criminal Procedure (paragraph 355) and said that there was no such provision in the old Criminal Procedure Code and it was introduced for the first time in the present Code of 1973. This Court also pointed out that Section 438 is omitted in the State of U.P. by Section 9 of the Code of Criminal

99. (1994 Cri LJ 3139) (supra)
Procedure (UP Amendment) Act, 1976, with effect from 28-11-1975. In the State of West Bengal a proviso is inserted to Section 438(1) with effect from 24-11-1988 to the effect that no final order shall be made on an application filed by the accused praying for anticipatory bail in relation to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 7 years, without giving the State not less than seven days’ notice to present its case. A similar provision is also introduced by the State of Orissa. Where a person accused of a non-bailable offence is likely to abscond or otherwise misuse his liberty while on bail, he will have no justification to claim the benefit of anticipatory bail. In the case of terrorists and disruptists, there was every likelihood of their absconding and misusing their liberty if released on anticipatory bail and, therefore, there was nothing wrong in not extending the benefit of Section 438 of them. This Court concluded:

“further at the risk of repetition we may add that Section 438 contains a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21……….”

Its answer was in the negative. Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 was upheld.

Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of “Untouchability” and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences. There is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even “minor offences” under the said Act.
This grievance also cannot be justified. The offences which are enumerated under section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect. Such offense are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

A similar view of Section 18 of the said Act has been taken by the Full Bench of the Rajasthan High Court in the case of Jai Singh V. Union of India, AIR 1993 Rajasthan 177 and we respectfully agree with its findings.

In the premises, Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution.

In K.C. Ravindran Pillai, Advocate, Petitioner V. Union of India and others, Respondents\textsuperscript{100} the Kerala High Court upheld the constitutional validity of the provisions of the ‘Act’ and declared that section 3(l)(x) is not oppressive and not against to the Articles 17 and 35 of Indian Constitution.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent the commission of offences of atrocities against the member of the Scheduled Castes and the Scheduled Tribes, to provide for special Courts for the trial of such offences and for the relief and rehabilitation of the victim of such offences and for matters connected therewith or incidental thereto. The Act was enacted in line with various constitutional provisions giving special privileges and rights to members of the Scheduled Castes and the Scheduled Tribes. Article 17 makes the practice of Untouchability an offence read with Art. 35(a)(ii) which confers upon the Parliament the exclusive power to make law prescribing punishment for those acts which are declared to be offences under Part III of the Constitution. Article 17 is a significant provision particularly from the point of view of equality of law. It guarantees social justice and

\textsuperscript{100} 1997 CRI. L.J. 1231
dignity of life which were denied to vast section of the society for centuries. It is in the wake of above mentioned constitutional provisions that Parliament has enacted the Act, which is an Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes. Therefore there is no legal infirmity in S.3(1)(x) of the Act to hold that the same is oppressive and unconstitutional.

X. PUNISHMENTS UNDER SCHEDULED CASTES AND SCHEDULED TRIBE (PREVENTION OF ATROCITIES) ACT, 1989

The Act provides for the following punishments –

(1) in respect of offences u/s 3(1), the punishment may be an imprisonment for a term which shall not be less than six months but which may extend to five years and with fine,

(2) in respect of offences u/s 3(2), the punishment varies with the nature of the offences that have been committed -

(i) for the offence u/s 3(2)(i), the punishment is death sentence.

(ii) offence u/s 3(2) (ii), the punishment is imprisonment for a term not less than six months but which may extend to seven years or upwards and with fine.

The second offence or any offence subsequent to the second offence, 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.

X. 1. By invoking inherent powers u/s 482 Cr.P.C. the court is empowered to compound the offence under the Civil Rights Act & the Atrocities Act

In Rupabahi Bhalabhai Bharwad Vs. State of Gujarat and another101 the Gujarat High Court held that Undoubtedly, it is true that Section 320 of the Code is silent on the point of compromise so far as the offence under the Civil Rights Act and the Atrocities Act are concerned, as there is no subsequent amendment made to that effect. It is further equally true that both the Civil Rights Act and the Atrocities Act have not made any express provisions for compounding of the offences. It is under these circumstances that

101. 1994 (2) Crimes. 582.
the question rise as to when the “Law” is silent on the point of compromise, whether the “Justice” is also required to maintain tight lips or something should be done by the court which they ultimately bring about peace and harmony between the two classes of the Society which is fundamental pre-requisite for the maintenance of the “Rule of Law”, “Justice” and the overall happy and peaceful society. One can quite understand that the grave and cold-blooded offences like murder, dacoity, rape, child-lifting or any such type of grave offences are not rightly made compoundable. One can as well also understand the cases where the Court feels that composition of the offences arrived at between the parties is not genuine and voluntary but has been brought about by some threats, inducements and coercions, the Court would be justified in refusing the same. But certainly, in cases wherein the offence takes place all-of-a-sudden, in a heat of the moment and comparatively of a mild nature, and ultimately when the wisdom prevails and the passion cools down, if the aggrieved party coming to the senses, on being persuaded by some respectable persons of the area, to compound the offence which they voluntarily agree to do the same, there indeed should not be any difficulty for the Court to grant composition of the alleged offence either prior or even after the order of conviction is recorded. When the aggrieved party approaches the Court praying for compounding of offences and the Court is satisfied that the same was honest, genuine, true and voluntary, and that the same will bring about harmony and peace in the area, setting at naught the caste-hatred and conflicts arising therefrom, then there is indeed no harm in accepting such compromise purshis. Rather, not to accept the same would be indirectly perpetuating the class-hatred, the violence arising therefrom resulting into the disturbance of peace, law and order, etc. etc., and in this way, such refusals would be like adding fuel to the fire and salt to the injury. This court can never be a party to such blind refusal of the compromise between the parties. The courts of law aiming at justice is also supposed to prevent the situation where the things flare-up and the aggrieved person once again becoming victim of the alleged offence, approach the Court for redressal of his grievances. If the prevention is better than cure, such a compromise purshis is certainly more advisable and acceptable than to refuse the same on the technical ground that there is no express provision in the law for the same. When in the facts and circumstances of
the case like the present one, it appears to the Court that the composition of the offences can turn-out to be blessings in the area, it is indeed the duty of the Court to invoke the inherent power for bringing about the real land substantial justice whereby not only the caste-hatred would be buried to some extent but it may further open up an avenue for the die-hard casteists to have sense of togetherness and sympathetic understanding of each other. The climate of such compromise is required to be encouraged not only to solve the problems between the aggrieved complainant and the accused but also it improve the psychological pollution of caste-natured in the Society. Before accepting the composition, this Court has consulted its judicial conscience whether the composition in question would serve the individual and social interest or not, and after deeply pondering over the same, it has reached the considered opinion that it will serve both the purposes. Ordinarily, before accepting such compromise purshis, this Court would have directed the learned APP to handover a copy of the same to the Police Officer of the area concerned to find out a to whether the same was voluntary, genuine and truthful or not, as has been thought advisable and done by this Court in a reported decision in case of the State of Gujarat Vs. Rajput Bhikaji Kaluji and Ors.\textsuperscript{102} But in the facts of the present case, this ordinary practice is not resorted to by this Court for the simple reason that not only the complainant but about 10 to 15 other persons of his community were also present before this Court when compromise purshis was submitted, which indicates beyond any manner of doubt that the same was not brought under any threat, inducement or coercion. Further in order to test the truthfulness and genuineness of the compromise purshis, this Court of its own has put certain questions to the respective sides and reached to the conclusion that the same was indeed voluntary, genuine and truthful, and there was no reason for this Court to doubt the same. It is under these circumstances that the Court is inclined to accept and compromise between the parties. However, by way of abundant caution and in order to rule out the possibility of the aggrieved SC and ST complainant is brow-beaten or coerced to enter into the compromise, it is desirable that such

compromises should not be directly accepted without the previous permission of the Court which in turn before granting the same shall have to record satisfaction on the basis of directions given in the case of the State of Gujarat Vs. Rajput Bhikaji Kaluji & Ors. that the same was voluntary, true and genuine and not sham one. In fact a similar question also did arise before the Madras High Court in case of Dhanraj Vs. The State.

In the said case, the question was whether the offences under Sections 6 and 7 of the Civil Rights Act were compoundable or not, wherein in para-4 it has been observed as under:

“4. A doubt was raised that the offence under the Protection of Civil Rights Act is not strictly a compoundable one. I have carefully considered this contention and heard the learned counsel for the appellant as well as the learned Public Prosecutor. It is clear that the Protection of Civil Rights Act, 1955 is a special Act and S. 16 of the same lays down that it overrides other laws. Now, the question is whether the conviction could be compounded in law. Having regard to the peculiar facts of this case and the circumstances set out supra. I am of the opinion that this is a fit case of this Court to interfere and record the settlement arrived at between the parties. My reasons are as follows – The permeable to the protection of Civil Rights Act reads that the Act was intended to punish the breaching of and practices of Untouchability and for the enhancement of any disability arising therefrom. When the parties themselves have voluntarily and willingly come forward to settle their differences, I do not think there can be any legal impediment in permitting the same, since it is not contrary to the spirit of the act. When the affected parties under the protection of Civil Rights Act themselves have come before this Court and are prepared to compound the offence, there is no reason why this Court should not accept the same, since, in my opinion, the Act itself will be better implemented if compounding of such offences is permitted. I have also taken into consideration the further fact that both the parties involved, namely, Krishnavani and Indirani are Staff Nurses employed in the Government Hospital, holding responsible post, and both of them agree that further proceedings, against each other may be dropped. The

103. Cr. L.J. 284 (Mad.).
alleged acts constituting the offence took place in August, 1980 and it would appear that both parties have forgotten the incident totally as is clear from the endorsement made by the parties in person before this Court. In these circumstances it will be but-just and expedient to up-hold the compromise and record the same."

The aforesaid observations of Madras High Court are required to be whole-heartedly endorsed and in that view of the matter, though there is no express provision is either of the aforesaid two act, viz., the Civil Rights Act and the Atrocities Act, regarding composition of the offences, still however, invoking inherent powers under section 482 of the Code, this Court declares that the Court is definitely empowered to compound the offence under the Civil Rights Act and the Atrocities Act; depending upon the facts and circumstances of that particular case. Not only that but merely because the minimum sentence is prescribed, that by itself cannot be permitted to come in the way to settle the matter, where the aggrieved party himself is ready and willing to settle the same. The apprehension of Mr. Shah that such a compromise would be against the public policy and it will perpetrate crimes one after another has no basis. In fact, the public policy warrants that such a compromise, if it is voluntary, true and genuine, it would accordingly be encouraged. Further, if such a compromise is accepted then it would subserve the very object of the Act Viz., “the rehabilitation.” Thus, once the cordial relations are resorted between the parties and they have already started living peacefully together, no better justice could ever be done then by seeing that compromise is accepted and things are rehabilitated in the said manner.

XI. BRIEF SUMMARY OF THE CHAPTER

In this chapter a detailed study has been made to explain about the ‘Act’ in toto and some of the judicial interpretations given by judiciary on the provision of the ‘Act’.
Chapter 5

Investigation and Trial of Atrocity cases and powers of Special Courts under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
The researcher has in this chapter made an attempt to explain about investigation of Atrocities under the ‘Act’, Governments power to setting up of Special Courts for the trail of atrocities cases, appointment of Special Public Prosecutors, meaning and procedure of ‘Externment’ under the Act, State Governments power to impose collective fine, preventive action to be taken by the Law and Order machinery to prevent the Commission of Atrocities, whether Section 360 of Criminal Procedure Code and the provisions of the Probation of Offenders Act applies to persons guilty of an offence under the ‘Act’ were discussed.

I. INVESTIGATION OF ATROCITIES UNDER THE ‘ACT’

Investigating Officer: According to Rule-7 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995, an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government in consultation with D.G.P., Superintendent of Police, after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

1.1. Scheduled Castes and Scheduled Tribes (PoA) Act, 1989, Section 3(1)(x) r/w Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995, and under Rule-7, Investigation into an offence shall be done by Deputy Superintendent of Police. But, if investigation report referring case as mistake of fact submitted by Inspector of Police is valid or not? ‘NO’. It is not valid.

This point of law was discussed by Madras High Court in A. Sasi Kumar Vs The Superintendent of Police, Villupuram and three others held that “Investigation into offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has to be carried by Deputy Superintendent of Police. The Court further held that it is evident from Rule 7 of the said Rules that the Inspector of Police has no powers and has no jurisdiction to investigate the matter like this, which is one arising under the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), and as such any investigation done by the Inspector of Police is immaterial, and so a direction has to be issued to the Superintendent of Police Cuddalore to depute a Deputy Superintendent of Police as required under Rule 7 of the said Rules, to make further investigation into the matter under Section 173 (8) of Cr. P.C. and to file a final report before the Special Court viz, the Principal District and Sessions Court at Cuddalore. Hence I hold that a direction has to be issued to the Superintendent of Police, Cuddalore to depute a Deputy Superintendent of Police to make further investigation into the case in Crime No.768 of 1997 on the file of the Inspector of Police, Virudhachalam Police Station and to file a final report before the Principal District and Sessions Court at Cuddalore, which is a special court to try the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), and the Deputy Superintendent of Police so deputed by the Superintendent of Police, Cuddalore will send a copy of the F.I.R. to the Special Court viz., the Principal District and Sessions Court at Cuddalore and thereafter proceed with the further investigation and make a final report before the Principal District and Sessions Court at Cuddalore which is the special court to try the offence under the said Act, and the petition has to be allowed accordingly.

On the same point the Andhra Pradesh High Court in *D. Ramalinga Reddy @ D. Babu Vs State of Andhra Pradesh* hold that under section 3 (1)(xi) of the Scheduled castes and Scheduled Tribes (PoA) Act, 1989: “The learned Senior Counsel appearing for the appellant submits that, since the prosecution was initiated under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the investigation should have been conducted by an officer not below the rank of Deputy Superintendent of Police. He submits that any investigation which has to be conducted into the allegations made under the said Act has to be made in accordance with the Rules known as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. These rules have been framed by the Central Government in exercise of rule making power conferred under section 23 of the Act. The Central Government has been

2. 1999 (2) Crimes 343.
authorized under Section 23(1) of the Act to make rules for carrying out the purpose of the Act. Since the purpose and objective sought to be attained by the Act is to minimize the offences against Scheduled Castes and Scheduled Tribes therefore it prescribes stringent sentences also. Therefore, in order to ensure any misuse of the Act, Rule 7 of the Rules lays down not only that the investigation should be done by an officer not below the rank of Deputy Superintendent of Police but also lays down that such officer should be specifically appointed by the State Government for investigating the offences under the Act. It further lays down that while, appointing such officers the Government should take into consideration his past experience, sense of ability and justice to perceive the implications of the case. On bare perusal of Rule 7 of the Rules it becomes abundantly clear that even all Deputy Superintendents of Police cannot investigate Offences under S.Cs and S.Ts (Prevention of Atrocities) Act. Only those officers who are not below the rank of Deputy Superintendent of Police and are specifically appointed by the State Government, or the Director General of Police or Superintendent of Police are competent for the purpose of investigating the cases under the Act. This order of appointment can either be specific or general.

There is no dispute that the present case was investigated by a Sub-Inspector of Police and not by an Officer envisaged under Rule 7. Since the investigation itself has been conducted by an officer who was not authorized in law to conduct the investigation the whole trail is vitiated. The same view has been expressed in a judgment of Madras High Court reported in Ramu V. Supdt. of Police, Villupuram.\(^3\) Therefore, conviction of the appellant for the offence under section 3(1)(xi) of S.Cs & S.Ts (Prevention of Atrocities) Act has to be set aside and is accordingly set aside and the accused-appellant is acquitted of the charges under the Act”.

On the same issue the Orissa High Court in Pradeep Pradhan and another, petitioners Vs State of Orissa, opposite Party\(^4\) held that investigation made in contravention of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule, 1995 is illegal.

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3. 1998 M.I.J. Reports (Crl. 132).
The Court further held that "Learned counsel for the petitioners submits that the petitioners had initially filed Crl. Misc. Case No.805/2002 with a prayer to quash the order of cognizance on various grounds one of such being that the case has not been investigated by the designated police officer but by a Sub-Inspector of Police, which is not provided in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as 'the Rules') but the said Crl. Misc. Case was disposed of with the observation as indicated in the foregoing paragraph. According to the learned counsel for the petitioners, after the Cr., Misc. case filed by the petitioners was disposed of, this Court in the judgment dated 20-3-2003 rendered in Ranjit alias Rajat Kumar Das V State of Orissa,5 decided a similar question which squarely covers the case of the petitioners. In the case of Ranjit, the investigation was taken up by a Sub-Inspector of Police and subsequently a Deputy Superintendent of Police ('D.S.P.' in short) was appointed as Investigating Officer. The Deputy Superintendent of Police after perusing the case diary of the previous Investigation Officer and testing some witnesses already examined filed the charge-sheet. This Court held that submission of such charge-sheet could not be said to be on the basis of the investigation taken up by the D.S.P. and ultimately quashed the proceeding for non-compliance of R. 7 of the Rules. This Court also in a batch of cases in Chandra Sekhar Pani V State of Orissa 6 Orissa, held that violation/contravention of R. 7 of the Rules would entail an investigation illegal and would vitiate the trial.

On the same point the Bombay High Court (Nagpur Bench) in Uttam D. Yernev Vs State of Maharashtra7 held that under section 23 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Rule 07 of 'Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 'investigation shall be done by Deputy Superintendent of Police and this rule is a mandatory one. Investigation done

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5 2003 (2) Orissa LR 65,
by Head Constable of Police in contravention of this rule leads to vitiate entire trail procedure.

But, the Andhra Pradesh High Court (Full Bench) in *Yannam Satyanarayana Vs State of Andhra Pradesh* held that the rule 7 of SCs & STs (PoA) Rules i.e., *investigation to be conducted by an officer not below the rank of Deputy Superintendent of Police is not mandatory but only a directory one.*

Mere investigation conducted by an officer other than the one who is contemplated under said Rule, cannot be said to be totally vitiated. The Court further held that having regard to the aforesaid principles as enunciated by the Apex Court, more so, with the statutory background in the present case in the absence of any specific provision to that effect and the competency to conduct the investigation sought to be conferred only through the subordinate legislation where there is no challenge to the validity of the said Rule 7 of the Rules, it has to be necessarily seen that the investigation is a process which will have no bearing as such on the case unless and until the accused or the party aggrieved comes out with any serious prejudice to him or any rights conferred under the law, the trial would not go derailed in any manner. Further, though there is no explanation forthcoming on behalf of the State as to why and how the investigation as contemplated by an Officer as per the said Rule has not been taken recourse to, yet it cannot be a sole ground as such to give any advantage to the accused or aggrieved party to take any shelter thereunder and go scot free. Therefore, it necessarily follows that it is open to the accused or the party aggrieved to show substantial prejudice which has an indelible mark on the very case or the merits itself as sought to be made against him. The mere investigation conducted by an Officer other than the one who is contemplated under the said Rule, cannot be said to be totally vitiated. Even on a reading of the decision of the Division bench of this Court in *Viswanadhula Chittibabu V. State of A.P.*, the Division Bench of this Court has no opportunity of referring to the decisions which have been referred to above in *State of West Bengal V. Narayan* and *State of* **8. 2006 CRI. L.J. 2320.**

9. *(2000 Cri LJ 1811) (supra).*
Madhya Pradesh V. Ram Singh \(^{10}\) and consequent effect of such departure in the investigation process on the rights of the accused or the party aggrieved. The prejudicial aspect has not come up for consideration. It is now well settled that even in regard to a procedure preceding the Court trial would not have any effect on the case unless and until the prejudice is shown by the accused or the party aggrieved. In view of the above, we are not in entire agreement with the principles laid down by the aforesaid Division Bench to hold that Rule 7 of the Rules is a mandatory and the same is not a procedural defect but it is only inherent defect in making the investigation vitiating the entire trial. Though, we share the view of the Division Bench only to the extent that the investigation procedure has to be necessarily followed up in the manner as prescribed under the Statute or the Rules made thereunder, an defect therein would not in any way made any inroads into the trial in its entirety. However, it is open to the accused or the party aggrieved at the initial stages to raise such objection on the investigation conducted by any Officer other than the one contemplated under Rule 7 of the Rules and invite a decision before the commencement of the trial itself. However, the same cannot be taken advantage after competition of the entire trial, more so, in the absence of showing any substantial prejudice. It is only where the Court on either stage comes to conclusion that the right and interests of the accused or the party aggrieved have been substantially affected or prejudiced, necessary benefit has to be extended. We accordingly hold that the said Rule is not mandatory but only a directory one. Consequently we overrule the decision in Viswanadhula Chittibabu V. State of A.P.

On the same point the Kerala High Court in Rajesh Vs State of Kerala\(^{11}\) held that under section 3(i) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Rule 07 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule 1995, Circle Inspector of Police who conducted investigation of case was not authorized under R.7 of 1995 Rules to conduct investigation for offence under Act.

The Madhya Pradesh High Court (Indore Bench) in Bharat Singh & another Vs.

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10. 2000 Cri LJ 1401  
State of Madhya Pradesh further held that Rule 7 of the SCs & STs (PoA) Rules ‘is not pari materia to Section 05 of prevention of corruption Act. The Court further held that “The provisions of Rule 07 of the SCs and STs (Prevention of Atrocities) Rules 1995, is not pari material to S. 5 of the Prevention of Corruption Act, therefore, the investigation done by Inferior Officer of the Police, than the Superintendent of Police duly appointed as per the provision under R. 7 has caused prejudice to the appellants because the Investigating Officer even did not obtain the certificate from the competent authority to establish that the complainant belongs to the Scheduled Caste or Scheduled Tribe Community. This show that the Investigating Officer (Sub Inspector of Police) was not aware of the provisions of the Act and Rules and investigated the matter in a routine manner. If investigation would have been done by designated Police Officer, he would have probably first ascertained whether complainant was falling within the category of Scheduled Caste or Scheduled Tribes. Under circumstances conviction and sentence of the appellants passed by the Court below, set aside.

The same Madhya Pradesh High Court, (Gwalior Bench) in Keshav Singh Vs. State of Madhya Pradesh held that “According to Rule 7 of SC & ST (POA) Rules, 1995, the investigation shall be conducted by Deputy Superintendent of Police. But, however, investigation conducted by a police officer who is not competent to do it, would not vitiate trail because a defect or illegality in an investigation has no direct bearing on competence or procedure relating to cognizance of trail, plea that trail vitiated due to non-compliance of Rule 7, hence, not tenable.

Further the Court observed that “in the case of Dhanraj Singh the learned single Judge of this Court held that due to non-compliance of Rule 7 of Rules 1995 which is a mandatory provision, the conviction and sentence under the Act 1989 which is a mandatory provision, the conviction and sentence under the Act 1989 cannot be sustained. In this case, the scope of Section 465 of Cr. P.C. and proposition laid down by

13. 2007 CRI. LJ. 721.
the Apex Court in State of M.P. Vs. Bhooraji\textsuperscript{14} were not taken up for consideration. Dhanraj Singh case is distinguishable.

Therefore, in view of the judgment in the case of State of M.P. Vs. Bhooraji, the position is now very clear on the point that an investigation conducted by a police officer who is not competent to do it would not vitiate the trial because a defect or illegality in an investigation, however serious, has no direct bearing on the competence or procedure relating to cognizance or trial.

Therefore, the objection that due to non-compliance of Rule 7 of the Rules 1995, trial Court would vitiate is not correct and the submission as advanced by the counsel for the appellant is not acceptable.

Now the rule position is that an investigation under SC & ST (PoA) Act shall be done by Deputy Superintendent of Police.

II. GOVERNMENTS POWER TO SETTING UP OF SPECIAL COURTS FOR THE TRAIL OF ATROCITY CASES

Under Section 14 of SC & ST (PoA) Act 1989, the State Government is, for the purpose of providing for speedy trial, empowered to constitute a court of session to be a special court for each district to try the offense under this Act. However, such notification shall be

(a) with the concurrence of the Chief Justice of the High Court, and
(b) notified in the Official Gazette.

The Court of Sessions (designated Court) is specified to conduct a trial and no other Court can conduct trial of the offence under the Act. However, the trial is valid only when it is on the committal of the case by the Court of Magistrate having jurisdiction.

II. 1. Whether Special Court has jurisdiction to entertain a complaint without committal by Magistrate Court? The answer is ‘NO’.

On this point of law the Punjab and Haryana High Court in Raj Mal, Petitioner Vs 

\textsuperscript{14} (2001 Cri LJ 4228)
Rathan Singh and another held that under section 14 of SC & ST (PoA) Act, 1989 the special Court has power to take cognizance of the case and the case need not be preceded by committal of case by Magistrate. The court further observed that the learned counsel for the respondent accused of course, contends that the Special Judge had no jurisdiction to take cognizance of the complaint directly. According to him, though he has been constituted as a Special Judge to punish offences punishable under the Act, he could take cognizance of only such offences as are committed by the Magistrate in accordance with the provisions of the Code of Criminal Procedure. In this connection, he relied upon a decision of Single Judge of Allahabad High Court in Mangli Prasad Vs. Additional Sessions Judge Ilndts which supports this contention of the learned counsel for the petitioner. But a single Judge of this Court in Davinder Singh Sarpanch Vs. State of Punjab, has taken the view that the Judicial Magistrate has no jurisdiction to entertain the complaint under this Act whereas the Special Court constituted under section 14 of the Act can entertain the complaint and take cognizance and that it is not necessary that the case must be committed to the Special Court by Magistrate as in other Sessions cases. This Court has held accordingly after taking into consideration various provisions of the Act, with which I respectfully agree. There is also the Full Bench decision of the Kerala High Court in Hareendran V. Sarada wherein also, the same view as has been taken by this Court, has been taken. Agreeing with the view of this Court and the Kerala High Court, with respect, I disagree with the view taken by the learned single Judge of the Allahabad High Court in Mangli Prasad V. Additional Sessions Judge Ilnd and I hold that it is not necessary that the case should be committed to the Special Court by a Magistrate to entitle the Special Court to take cognizance of the offences under the Act. II. 3. But on the same point of law the Andhra Pradesh High Court in Ammula Raji Reddy, Vs State of A.P., held that under section 14 of SC & ST (PoA) Act, 1989, the

16. (1997) 3 Rec Cri R 575
17. (1995) 2 Rec Cri R 19
19. 2005 CRI. LJ. 220

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Special Judge cannot take cognizance of offence by way of taking charge sheet straightaway without committal of case from concerned Magistrate.

The Court further observed that “In Moly V. State of Kerala\textsuperscript{20}, the Supreme Court, while considering the scope of S.14 of the SC/ST Act and following Vidydharan and Gangula Ashok V. State of A.P.\textsuperscript{21} held “The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. ‘Special Court’ is defined in the Act as ‘a Court of Session specified as a Special Court in S.14.’ Thus the Court of Session is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. In view of S.193 of the Code of Criminal Procedure, unless it is positively and specifically provided differently, no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, nor given by implication, that the Special Court of Session (Special Court) can take cognizance of the offence under the Act as Court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is not reason to think that the charge sheet or a complaint can straightway be filed before such Special Court for offences under the Act.”

Though the Full Benches of Kerala and Rajasthan High Court held that the committal proceedings are not warranted in a case coming under the SCs and STs (Prevention of Atrocities) Act, the subsequent judgments of the Supreme Court, as mentioned above, reiterated that a complaint or a charge sheet cannot be straightaway laid before the Special Court under the Act. In the case on hand, the charge-sheet was admittedly filed before the Special Court and the said Court took cognizance of the offence and after framing of the charges proceeded with the trial. In the light of the above legal position, I have no hesitation to hold that the Special Judge cannot take cognizance of the offence by way of taking the charge sheet straightaway without committal of the case from the concerned Magistrate.

\textsuperscript{20} 2004 Cri L.J. 1812 SC (Ker): AIR 2004 SC 1890
But again the Karnataka High Court in *M.B.Ramachandran & another Vs State*\textsuperscript{22}, SC & ST (PoA) Act 1989, the Special Court is empowered to take cognizance and try offences u/s 3 as a court of original jurisdiction and need for committal by Magistrate of Karnataka held that under Sec.14 (Karnataka Amendment by Act 35 of 2003) of SCs & STs (PoA) Act 1989, the Special Court is empowered to take cognizance and try offences u/s 3 as a court of original jurisdiction and need for committal by Magistrate has been done away with by amendment. The court further observed that the judgment of the Apex Court rendered in *Gangula Ashok and another V. State of Andhra Pradesh*,\textsuperscript{23} is based on the original Act as it stood before amendment. The provision having been amended subsequently, wherein the need for committal by the Magistrate has been done away with. By the said Amendment the Special Court was empowered to take the cognizance and try such offences as a Court of original jurisdiction.

II. 4. On the same point the Madhya Pradesh High Court in *Bhagwan Singh and others Vs State of Madhya Pradesh*\textsuperscript{24} held that Section 3(1)(xv) of SCs & STs (PoA) Act, 1989 and sections 426, 451, 323, 34 of IPC and u/Rule 07 of SCs & STs (PoA) Rules, committal proceedings are mandatory in nature, but, non-compliance will not vitiate entire trail but vitiate trail relating to offences under Atrocities Act.

The Calcutta High Court in *S.K. Devanath alias Sampangi and others Vs State of West Bengal and another*\textsuperscript{25} held that ‘A Special Court constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 essentially being a Sessions Court not an original Court is not empowered under section 190 of the code of Criminal Procedure to take cognizance of any offence punishable under the said Act without the case being committed to it. The Court further held that “thus a special court constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 essentially being a Sessions Court and not an original Court is not empowered

\textsuperscript{22.} 2007 CRI. L.J. 489.
\textsuperscript{23.} AIR 2000 SC 740
\textsuperscript{24.} 2008 (2) Crimes 636 M.P.
\textsuperscript{25.} 2009 (1) Crimes 733 (Cal.).
Under Section 190 of the Code of Criminal Procedure to take cognizance of any offence punishable under the said Act without the case being committed to it. Consequently as the Special Court has no jurisdiction to take cognizance under Section 190 of the Code of Criminal Procedure in respect of any offences punishable under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 under section 3(1)(xi), conviction for offence by Special Court. Whether trial could be said to be vitiated because Special Judge directly took cognizance without there being committal proceeding – The answer is ‘NO.’

The Chhattisgarh High Court in *Mahendra Kumar Vs. State of Chhattisgarh*\(^\text{26}\) held that “In view of the law laid down by the Supreme Court in Bhooraji’s case, I am of the considered view that the first submission, though on the face of it looks very attractive, but upon close scrutiny I found it to be without substance or merit. In the present case, the appellant had failed to point out any prejudice or disadvantage when the Special Judge (Specified Judge) took the cognizance of the case without any committal order on the basis of legal position adopted by the Full Bench of the M.P. High Court. The procedural lapse would not render the Specified Judge incompetent to take cognizance.

II. 5. Now the rule position is that a Special Court is not empowered to take cognizance of a complaint without the case being committed to it.

III. APPOINTMENT OF SPECIAL PUBLIC PROSECUTORS UNDER THE ACT:

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in the Court.

\(^{26}\) 2010 (1) Crimes 947 (Chhattisgarh).
The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995, R.4(5) provides for appointment of advocate of choice of victim of atrocity who is also in opinion of District Magistrate an eminent senior advocate. Appointment of senior advocate as Special Public Prosecutor for conducting trial at instance of victim. Whether is there any conflict between R. 4(5) of Rules and S. 15 of the Act - 'NO'.

In Satki Devi V. Tikam Singh on this point the Court held that the State no doubt, is the prosecutor and the prosecution in all cases and trial in all cases is to be conducted in the Court of Session by Public Prosecutor or Special Public Prosecutor, as the case may be appointed by the Government but the SCs & STs (Prevention of Atrocities) Act is a special statute which overrides any other law for the time being in force, Plea was raised that, the District Magistrate is empowered to appoint an advocate to plead the case of complainant but he has no power to appoint Special Public Prosecutor, and that the power to appoint Special Public Prosecutor under S. 15 of the Act vests in the State Government which cannot be delegated. The Special Public Prosecutor appointed under Section 15 of the Act vests in the State Government which cannot be delegated. The Special Public Prosecutor appointed under Section 15 of the Act alone can conduct the case. It is true that sub-rule (5) does not lay down any qualification as to the minimum length of practice unlike S. 15 or sub-rule (1) of Rule 4 but, apparently, framers of the rule did not want to put any restriction on the choice of the victims of atrocity subject to the embargo that the person should be an ‘eminent senior advocate’ – a term used in sub-rule (1) of rule 4 as well. Thus, the advocate should be of the choice of victim of atrocity and also in the opinion of the District Magistrate/Sub-Divisional Magistrate, an eminent senior advocate. There is no conflict between sub-rule (5) of Rule 4 and section 15 of the Act.

IV. MEANING AND PROCEDURE OF ‘EXTERNMENT’ UNDER THE ACT

(1) The Special Court may by an order in writing, direct such person (i) to remove himself beyond the limits of such area, by such route and within such time as may be
specified in the order, and (ii) not to return to that area from which he was directed to remove himself for such period. (Sec.10).

(2) The period of extermination shall not exceed two years. The order by special court may either upon a complaint or a police report that a person is likely to commit an offence under Chapter II of the Act (Sec.10).

(3) The court shall specify the grounds for such an order u/s 10(1) [Sec.10(2)].

(4) The Special Court may revoke or modify the order made u/s 10(1), for the reasons recorded in writing or representation by such person against whom the order has been made or by any person on his behalf within thirty days from the date of the order. Sec 10(3).

(5) The Special Court may cause a person, against whom an order u/s 10(1) has been made, to be arrested and removed in police custody to such place outside such areas as the court may specify, if such person fails to remove himself as directed, or re-entered such area within the period specified in the order. [Sec.11(1)].

(6) The Special Court may permit person, referred above, to return to the area from which he was directed to remove himself for a temporary period and it may further require him to execute a bond with or without surety for the due observations of the conditions imposed. [Sec.11 (2)].

(7) The Special Court may, at any time, revoke any such permission [Sec. 11(3)].

(8) The person, who was permitted to the area as under Sec. 11 (2), shall remove himself outside such area and shall not return thereto within the unexpired period, without a fresh permission [Sec.11(4)].

(9) A person, who fails to observe any of the conditions imposed or to remove himself accordingly or returns to such area without permission, may be ordered by the Special Court for the arrest and removal by the police from the area [Sec. 11(5)].

(10) (i) If special court requires, the person, against whom an order u/s 10 made, shall allow his measurements and photographs to be taken by a police officer [Sec.12(1)].

(ii) If he resists or refuses to allow his taking of measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof [Sec.12(2)].
(iii) The resistance or refusal mentioned above shall be deemed to be an offence u/s 186 of Indian Peal Code (45 of 1860) [Sec.12(3)].

(iv) On revocation of the order made u/s 10, all measurements and photographs (including negatives) taken under Sec. 12(2) shall be destroyed or made over to the person against whom such order is made [Sec. 12(4)].

(1) Any person, who contravenes an order of the Special Court made u/s 10, shall be punishable.

V. STATE GOVERNMENT POWER TO IMPOSE COLLECTIVE FINE

The provision of Section 10-A of the Protection of Civil Rights Act 1955 (22 of 1955) shall so far as may be, apply for the purposes of imposition and realization of collective fine and for all other matters connected therewith under this Act.

"Whether the Court is empowered to permit composition of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Civil Rights Act, 1955 by invoking the inherent powers under Section 482 of the Criminal Procedure code, 1973 — The answer is ‘Yes.’

In Parambir Singh Gill Vs. Malkiat Kaur,27 the Punjab and Haryana High Court accepted the compromise deal between the parties and the Court further held that the object of the Act is to provide for prevention and punitive measures to protect the members of Scheduled Castes and Scheduled Tribes from being victimized and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them. Besides, it is a measure to preserve their self respect and honour. The fact that the matter has been compromised does assuage the feelings of the members of the Scheduled Castes and provides for protection of their self respect and honour. The compromise indeed is a measure to provide adequate relief and assistance to members of the Scheduled Castes for their rehabilitation and to live with dignity.

VI. PREVENTIVE ACTION TO BE TAKEN BY THE LAW AND ORDER MACHINERY TO PREVENT THE COMMISSION OF ‘ATROCITIES’

(1) A District Magistrate or a Sub-Divisional Magistrate or any order Executive Magistrate or any Police Officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary has reason to believe that a person or a group of persons no belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behavior and maintenance of public order and tranquility and may take preventive action.

In Raj Sundara Babu Vs. Government of A.P. where writ petition praying for issuance of notification under Section 17 (1) and (3) of the Act to declare Ambedkar I.D.W.A. Mahanagar Colony as “Area prone to Atrocities” was filed it was held that policy of Government being to ensure people of Scheduled Castes and Scheduled Tribes to mingle with other Sections of society, writ petition is liable to be dismissed.

VII. SECTION 438 OF THE CODE NOT TO APPLY TO PERSONS COMMITTING AN OFFENCE UNDER THE ‘ACT’

Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

Whether Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, unexceptionally bars grant of anticipatory bail when the offence punishable under said Act is alleged in the Complaint? – The answer is ‘NO’

The Gujarat High Court in Pankaj D. Suthar Vs. State of Gujarath held that Section 18 of Scheduled Castes (Prevention of Atrocities) Act, 1989 does not absolutely bar grant of anticipatory bail when the offence punishable under said Act is alleged in the complaint.

28. 2005 (1) ALD (Cri.) 258.
On the same point the Madhya Pradesh High Court in *Ramdayal and others Vs. State of Madhya Pradesh*\(^{30}\) held that "when there is no material to reasonably raise a suspicion of the commission of offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, an application under Section 438, Cr. P.C. cannot be said to have been barred".

On the same question of law i.e., "whether anticipatory bail can be granted to the accused under SCs & STs Act? The answer is 'NO'.

The Karnataka High Court in *Bapu Gouda and another Vs. State of Karnataka*\(^ {31}\) held that persons committing offences under section 3 of SCs and STs (PoA) Act 1989 cannot be granted anticipatory bail.

The court further observed that the Supreme Court in the case of *State of Madhya Pradesh V. Ram Krisha Balothia*,\(^ {32}\) has held that the offences which are enumerated under Section 3(1) of the Act arise out of the practice of "Untouchability". It is in this context that certain special provisions have been made in the Act, including Section 18. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offence, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.

Referring to the statement of objects and reasons the Court held that the above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these

\(30\). 1991 (3) Crimes.
\(31\). 1996 CRI. L.J. 1117
circumstances, if anticipatory bail is not made available to persons who commit such
offences, such a denial cannot be considered as unreasonable or violative of Article 14, as
these offences form a distinct class by themselves and cannot be compared with other
offences.

The Court further held that looking to the cautious recommendation of the Law
Commission, the power to grant anticipatory bail is conferred only on a Court of Session
or the High Court. Also anticipatory bail cannot be granted as a matter of right. It is
essentially a statutory right conferred long after the coming into force of the Constitution.

It cannot be considered as an essential ingredient of Article 21 of the Constitution.
And its non-application to a certain special category of offences cannot be considered as
violative of Article 21 of the Constitution. The offences enumerated under the present
case are very different from those under the Terrorists and Disruptive Activities
(Prevention) Act, 1987. However, looking to the historical background relating to the
practice of “Untouchability” and the social attitudes which lead to the commission of
such offences against Scheduled Castes and Scheduled Tribes, there is justification for an
apprehension that if the benefit of anticipatory bail is made available to the persons who
are alleged to have committed such offences, there is every likelihood of their misusing
their liberty while on anticipatory bail to terrorise their victims and to prevent a proper
investigation. It is in this context that Section 18 has been incorporated in the Act.

The Court further held that the offences which are enumerated under Section 3 are
offences which, to say the least, denigrate members of Scheduled Castes and Scheduled
Tribes in the eyes of society, and prevent them from leading a life of dignity and self-
respect. Such offences are committed to humiliate and subjugate members of Scheduled
Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These
offense constitute a separate class and cannot be compared with offences under the Penal
Code.

On the same question of law the Orissa High Court in Ramesh Prasad Bhanja
and others Vs. State of Orissa held that “Mere registration of case under section 3(1) of

33. 1996 CRI. LJ. 2743.
Act would not ipso facto attract prohibition contained under sec. 18. Applicability of Section 438 of Criminal Procedure Code not excluded.

The Court further observed that “Section 18 of the Act lays down as follows: Section 438 of the code is not to apply to persons committing an offence under the Act.

Nothing in Sec. 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

The expression an “accusation of having committed an offence under this Act” does not mean that mere registration of the case under the Act would ipso facto attract the prohibition contained in Section 18. The opinion of the police regarding the nature of alleged offence is neither final nor conclusive.

Merely because a case is mechanically registered under the Act, the provision of section 438 of the Code cannot be said to be inapplicable in each and every case. If the allegations make out a prima facie case under section 3 or for that matter Sections 4 and 5 of the Act, the jurisdiction to entertain an application under section 438 is definitely ousted. Where however, the allegations do not make out any prima facie case punishable under any of the provisions of the Act, the bar under section 18 is inapplicable and the provision of section 438 of the Code can be availed of.

The Madhya Pradesh High Court in Suresh Kumar Vs. State held that “when offence registered u/s 3 of the Act and U/s 341, 294 I.P.C. bar created to grant anticipatory bail for accusation under SC and ST Act U/s 18 of the Act shall not apply when no prima facie material is available to raise suspicion of commission of any offence under the Act. When material on record prima facie did not disclose applicant having committed offence under the Act, then petitioner held entitled to anticipatory bail.

The same Madhya Pradesh High Court in Rajendra Singh and others Vs State of Madhya Pradesh held that when the accused charged for offences under section 323, 294, 506/34 of Indian Penal Code and Section 3(1) of Atrocities Act, and no ingredient found in FIR about offence under Atrocities Act and no act has been attributed to

34. 1999 (1) Crimes 636.
humiliate victim on basis of his caste. Alleged incident happened because of earlier political enmity or sudden altercation in function of marriage. Thus when there is no material to reasonably raise a suspicion of the commission of offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, an application under section 438, Cr. P.C. cannot be said to have been barred:

In *Sitaram and another vs. State of Chhattisgarh through Station House Officer* the Chhattisgarh High Court held that "provisions of section 438 of the Code is a general rule for granting anticipatory bail but bar of anticipatory bail under section 18 of the Act is an exception to the general rule. In case of any exception the prosecution is required to show facie the facts which attract the bar in the general rule.

On the same point the *Chhattisgarh High Court in Leeladhar Yadav Vs. State of Chhattisgarh* held that when offence under sections 384, 386, 294, 506(B) and 323 IPC and under section 3(1)(x) of Scheduled Castes and Scheduled Tribes Act was registered against applicant and on the face of record it raised doubt about genuineness of FIR or complaint and there was earlier dispute between parties, it could not be inferred for entertaining application under section 438 of Cr. P.C. that prosecution could not be able to collect the prima facie material against applicant it is a fit case to allow anticipatory bail in favour of applicant.

Finally in another case on the same point of law the Chhattisgarh High Court in *Sanjay Singh another Vs State of Chhattisgarh* held that before refusing to grant anticipatory bail, the court is required to examine material collected by prosecution to see if prima facie sufficient material was there for commission of offence under the Act. Prosecution found not have collected any material against applicant to prima facie show that applicants had committed offence under section 3(1)(x) of the Act. This is a fit case of grant anticipatory bail in favour of applicants.

Thus it is settled that when there is no prima facie material to establish the commission of atrocity, anticipatory bail u/s 438 of Cr. P.C. can be granted absolutely.

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37. 2009 (1) Crimes 231 (Chhatt).
38. 2009 (1) Crimes (Chhatt).
VIII. SECTION 360 OF THE CR.P.C. AND THE PROVISIONS OF THE PROBATION OF OFFENDERS ACT NOT TO APPLY TO PERSONS GUILTY OF AN OFFENCE UNDER THE ‘ACT’

The provisions of Section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

Section 12 of Juvenile Justice (Care and Protection of Children) Act which specifically provides for grant of anticipatory bail to Juvenile, Overrides Section 18 of Atrocities Act.

This view was held by Rajasthan High Court (Jaipur Bench) in Tarachand Vs. State of Rajasthan39. The Court further observed that the provisions of Sec. 12 of the Act of 2000 shall have an overriding effect over the provisions of Sec.18 of the Act of 1989 and a juvenile who is brought before the Board or appears’ even by means of an application for being granting anticipatory bail, then not withstanding the provisions of Sec18 of the Act of 1989 could be dealt with by the Board/Court (in the light of Sec. 6(2) of the Act of 2000) as Sec. 12 is a special provision meant exclusively for juveniles as such the exclusion of S. 438, Cr. P.C. under Sec 18 of the Act of 1989 shall not apply in the case of a juvenile who is to be governed by the Act of 2000 and dealt as such.

Thus, in the case of a ‘juvenile’, as defined under Sec. 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000, the exclusion of the provisions of Sec. 438, Cr. P.C. as provided under Sec. 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall not apply.


In this case Kerala High Court, by dissenting the judgment given by Orissa High Court in Antaryami Patra V. State of Orissa40 held that “The Juvenile, who has been

39. 2007 CRI. L.J. 3047.
40. 1993 CRI. L.J. 1908
charged and also under Section 3(1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is to be tried by a Juvenile Court as provided under the Juvenile Justice Act, 1986. We are also of the opinion that the provisions contained in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 will not have any over-riding effect over the provisions contained in the Juvenile Justice Act, 1986

In Chhachindra Panda Vs. State of Orissa41, the Orissa High Court held that under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 even Magistrate who was Incharge of Court of Additional Sessions Judge had also power to deal with bail application in view of Section 9 (5) of Cr.P.C., and bail can be granted.

IX. BRIEF SUMMARY OF THE CHAPTER

In this chapter the an attempt was made to explain about very important aspects of Act i.e., investigation and trial of atrocity cases, constitution of Special Courts, their powers and procedural aspects, and the judicial decisions pronounced by the judiciary on the Act at present.