CHAPTER - I

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I INTRODUCTION:

The present chapter deals with legal dimensions of atrocities on SCs and STs. It has been noted that “social stability, cultural harmony and economic parity are the basic prerequisites for the establishment of peace, order and progress in a society.” It is unfortunate that even after 50 years of Independence the Scheduled Castes and Scheduled Tribes are becoming victims of different type of atrocities. They are forced to eat obnoxious substances, dumping waste matter on land, denudation, wrongful occupation of land, dispossession, bonded labour, intimidation during the voting, public humiliation, outrage of modesty, sexual exploitation, fouling of water sources, obstruction of entry to a place of public resort, eviction form habitation, mischief with explosives, destruction of building and suppression of evidence by dominant castes.

Atrocities are to be viewed as social and physical violence committed collectively or individually by the members of groups, castes and try to communities who have more access to the existing resources and monopolise superiority of their status over others.

Atrocities are not products of intervention of external forces but of an interplay of both the social structure which is anomalous with presence of both the caste system and class structure.
A considerable amount of change had occurred among Scheduled Castes and Scheduled Tribes in India since our political independence. During all these years, the people of Scheduled Castes and Tribes in villages have definitely been influenced by changes occurred in their surroundings and have derived inspiration from them. However, they have not yet overcome the atrocities on them.  

As these factors are directly reflects on the movements on the society certain sections from the society possess superfluous resources and dominate critical positions and privileges, others suffer deprivation and subjugation. Naturally the society gets divided into weak and strong sections. In our society the classification of these groups is often based on irrational and unscientific grounds like birth, sex, education, marital status, material possessions, social stratification and individual placement in the power hierarchy. India is the country where we can see such a cleavage demarking various social segments into real and identified ones.

Atrocities against these socially weaker sections like Scheduled Castes and Scheduled Tribes is as old as the history of mankind. The gravity and nature of crime is generally related to the value system of social systems and its sub-systems. The nature and extent of these atrocities is primarily dependent on the quality of life and basic cultural values. The people of Scheduled Caste and Scheduled Tribes have been socially, morally, economically, physically and sexually exploited in India since long. The social status of these people has been fixed in a box type structure of society by the upper castes of Hindu society, sometimes in the name of tradition and sometimes on the strength of social sanctions. They have given utmost a lower status in society. The image of Scheduled Caste and Scheduled Tribe people in Indian society has been considered always as slave (servant or das). Being
handicapped socially, psychologically and culturally, they need protection at all stages of life. Theoretically, in legal sense they have given equal status, however, in reality the subordination of Scheduled Caste and Scheduled Tribe people is seen in every walk of social life. Today, we are on the verge of entering into twenty first century, but still the atrocities on Scheduled Caste and Scheduled Tribe people are not continuing, but are also increasing with faster rate.

1.1 DEFINITIONS OF ATROCITY:

"The term atrocity with relation to weaker sections has not been clearly defined to date. An attempt has been made to define it in the Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act 1989. In order to prevent and combat the menace of atrocity, particularly born of untouchability, various attempts have been made at enactments of laws since Independence. The first of such efforts was articulated with the enactment of Untouchability Offence Act – 1955. The provisions were recast and made more stringent with a new act in 1976. There were too many loopholes and loose ends in the provisions of two acts, and because of the ineffective prevention and overall police role in mitigating atrocity on the weaker sections, the desired results could not be achieved. Consequently a more effective legislation was brought in as Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989, Section 3 of this act provides punishment of the offences of atrocity."³

"In common parlance, the term atrocity denotes an act which is extremely heinous. The meaning of the term has undergone a sea change because of the explanation provided by the Ministry of Home Affairs in 1980-81. According to this explanation, any offence, cognizable or non-cognizable under the Indian Penal Code in which the victim is a member of the SCs or
STs and the offender is a non SC or non ST is an act of atrocity irrespective of motive. The term underwent yet another change in 1983, after the report of the National Police Commission. The National Police Commission had pointed out that there was not uniformity in treating offences as act of atrocity. Consequently certain Penal Sections of the Indian Penal Code, were identified as atrocity. With this change the basic caste orientation attached to the concept of atrocity underwent a tremendous change.

R.K. Kshirsagar in his book entitled Untouchability in India Implementation of Law and Abolition, notes in addition to the offences of untouchability which were generally registered under the Protection of Civil Rights Act, several other crimes against ex-untouchables are being committed by the Caste Hindus. Such crimes are called as atrocities. The criterion on which the crimes can be categorized as atrocities are stated as under. The first criterion of the atrocities is the malign attitude of the criminals. Those crimes which are committed against ex-untouchables with the intention to lower down the morale of the victims and damage their self-pride can be called atrocities. Thinking this criteria pivotal Nandu Ram defines atrocities as meticulous treatment injected upon the victims which besides doing physical harm, hurts their personal ego and damages their image in society. The second criterion of atrocities is the caste-crime link. Those offences which are committed against the members of the ex-untouchables community by so called high caste persons can be called atrocities. Thinking this criteria important, atrocities can be identified as all crimes against person or properly of the ex-untouchables as a reprisal or revenge for their having exercised any right accruing to them by reason of the abolition of untouchability. The third criterion of identifying atrocities is, such crimes fulfil the ingredients of the offences defined under a) sections 143, 144, 145, 147, 148, 149, 302, 304, 307, 323, 324, 325, 326, 342, 343, 346, 347, 354, 363, 364, 365, 366, 366-A,
The instances of atrocities are numerically so enormous and horrible that one cannot imagine."4

"The term atrocity has not gained much popularity in the academic language and so also in the sociological analysis unlike tension, conflict, antagonism, violence, etc., which are used with specific connotations. The term atrocity had not been defined till 1989 in the law and, therefore, the Government have been using the expression crimes against the Scheduled Castes and Scheduled Tribes. However, since 1974 the Ministry of Home Affairs (Govt. of India) started collection statistics of such crimes and indicated that atrocities on SCs and STs might be classified of four categories, viz. murder, grievous hurt, arson and rape. Later, the collection of these statistics encompassed all IPC (Indian Penal Code) offenses in which SC/ST persons were victims. This means only those crimes against the SCs/STs have been treated atrocities which are cognizable offenses and are physical in nature.

A large number of crimes against these people, which have social-psychological dimensions, were not considered atrocities till recently. Only in 1989 the Government adopted an Act known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act which widely covers the social psychological dimensions, besides the physical or physiological one, of crimes against the SCs/STs. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the first time defined atrocity as an offence punishable under Section 3 of the Act."5
1.2 DEFINITION OF SCHEDULED CASTES:

Section 341 of The Constitution of India defines Scheduled Castes as the President [may with respect to any State [or Union Territory], and where it is a State], after consultation with the Governor [thereof] by public notification, specify the castes, races or tribes or parts of groups within castes, races or tribes which shall for the purposes of this constitution be deemed to be Scheduled Caste in relation to that State [or Union Territory], as the case may be. Secondly Parliament may by law include in or exclude from the list of Scheduled Caste specified in a notification issued under Cl. (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.  

S.C. Malik in his book "Commentaries on The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act," expresses his views regarding definition of Scheduled Castes as Scheduled Castes means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this constitution.

1.3 DEFINITION OF SCHEDULED TRIBES:

Section 342 of the Constitution of India defines Scheduled Tribes as "the President [may with respect to any State [or Union territory], and where it is a State], after consultation with the Governor [thereof] by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory], as the case may be, secondly Parliament may by law include
in or exclude from the list of Scheduled Tribes specified in a notification issued under Cl.(1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

"Scheduled Tribe is not born but is only constituted by the Presidential notification made relation to a particular state. There is no All India Scheduled Tribe."^{8}

According to Hon'ble Justice S. Malik, Judge, High Court, Allahabad (Retd.), Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Art.342 to be Scheduled Tribes for the purposes of this Constitution."^{9}

In another definition of Scheduled Tribe S. Malik pointed out with a cast law in sect.2 (C) that "the Scheduled Tribes are inhabitants or intractable terrain regions of the country, kept away from the main stream of national life and with their traditional mooring and customary beliefs and practices, they are largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage and ethos. These are a nomadic class of citizens whose habitats are generally hilly regions or forests, and this results in their staying away from the national life. The Constitution, therefore, enjoins to provide facilities and opportunities for development of their economic and educational standards."^{10}

The present study covers different types of atrocities against SCs and STs, some of these are Murder, Hurt, Rape, Kidnapping and abduction, Dacoity, Robbery, Arson, other classified IPC crimes and under special laws like Protection of Civil Rights Act 1955, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
As the study of atrocities on Scheduled Caste and Scheduled Tribe is being conducted, it is very important to see the provision from The Protection of Civil Rights Act – 1955, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act –1989).

1.4 THE PROTECTION OF CIVIL RIGHTS ACT, 1955 WITH THE PROTECTION OF CIVIL RIGHTS RULES, 1977:

The provisions of Constitution of India and certain sections from Indian Penal Code which help these lower caste people from protecting their rights. Although these are implementing properly, the mind set of common Maratha caste or Hindu caste people has not changed so far and the atrocities are committed on these weaker sections continuously.

To uphold the Constitutional mandate and to safeguard the interests of this section of the society, Special social enactments have come into force time to time including privileges by way of reservations for them.

The major legal enactment sponsored by Centre are:

i) Protection of Civil Rights Act, 1955; and

ii) SC/ST (Prevention of Atrocities) Act, 1989

The Protection of Civil Rights Act, 1955 was enacted in furtherance of Article 17 of the Constitution by which untouchability was abolished and its practice in any form is forbidden. Further, in order to check and deter crimes against SCs/STs by persons belonging to other Communities, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought into force from 30th January, 1990. These enactments have extended the positive discrimination in favour of SCs and STs to the field of criminal law in as much as they prescribe penalties that are more stringent than for corresponding offences under Indian Penal Code (IPC) and other laws. For
speedy trial of cases registered exclusively under these Acts, special centers
have been established in the major States.

Following are the sections under P.C.R. Act – 1955:

Section - 3  Punishment for enforcing religious disabilities.
Section - 4  Punishment for enforcing social disabilities.
Section - 5  Punishment for refusing to admit persons to hospitals, etc.
Section - 6  Punishment for refusing to sell goods or render services.
Section - 7  Punishment for other offences arising out of untouchability.
Section- 7(1)(d) Insults or attempts to insult on the ground of untouchability
on member of S.C.
Section – 7A  Unlawful compulsory labour when to be deemed to be a
practice of "untouchability".
Section – 8  Cancellation or suspension of licences in certain cases.
Section – 9  Resumption or suspension of grants made by Government.
Section – 10  Abetment of offence.
Section – 10-A  Power of State Government to impose collective fine.
Section – 11  Enhanced penalty on subsequent conviction.
Section – 12  Presumption by courts in certain cases.
Section – 13  Limitation of jurisdiction of civil courts.
Section – 14  Offences by companies.
Section – 14-A  Protection of action taken in good faith.
Section – 15  Offences to be cognizable and triable summarily.
Section – 15-A  Duty of State Government to ensure that the rights accruing
from the abolition of "untouchability" may be availed of by
the concerned persons.
Section – 16  Act to override other laws.
Section – 16-A  Probation of offenders Act – 1958, not to apply to persons
above the age of fourteen years.
Section – 16-B  Power to make rules.
Section – 17  Re-appeal.

The Protection of Civil Rights Rules – 1977

Section – 3  Manner of inquiry under sub-section(1) of Section-10-A.
Section – 4  Period of filling a petition under sub-section (3) of Section –
10-A.
Section – 5  Reports by the State Government.
1.5 THE SCHEDULED CASTE AND THE SCHEDULED TRIBE
(PREVENTION OF ATROCITIES) ACT, 1989 WITH RULES, 1995

Despite various measures to improve the socio-economic conditions of
the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are
denied number of civil rights. They are subjected to various offences,
indignities, humiliations and harassment. They have, in several brutal
incidents, been deprived of their life, and property. Serious crimes are
committed against them for various historical, social and economic reasons.

Because of the awareness created amongst the Scheduled Castes and
Scheduled Tribes through spread of education, etc., they are trying to assert
their rights and resist practices of untouchability against them or demand
statutory minimum wages or refuse to any bonded 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 become irritants for the dominant and the mighty. Occupation
and cultivation of even the Government allotted land by the Scheduled Castes
and Scheduled Tribes is resented and more often these people become victims
of attacks by the vested interests. Of late, there has been an increase in the
disturbing trend of commission of certain atrocities like making the Scheduled
Caste persons eat inedible substances like human excreta and attacks on and
mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of
women belonging to the Scheduled Castes or a Scheduled Tribes.

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 inadequate to check these crimes. A special legislation to check
and deter crime against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

The term 'atrocity' has not been defined so far. It is considered necessary that not only the term atrocity should be defined but stringent measures should be introduced to provided for higher punishments for committing such atrocities. It is also proposed to enjoining on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and Scheduled Tribes from being victimized and where atrocities are committed to provide adequate relief and assistance to rehabilitate them.

This Act was passed on 11th September, 1989 and came for implementation. An act to prevent the commission of offences of atrocities against the members 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 victims of such offences and for matters connected therewith or incidental thereto.

1.6 OFFENCES OF ATROCITIES

Section 3. Punishments for offences of atrocities — (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;
(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him or makes with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use has lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
(x) intentionally insults or intimidates with intend or humiliates a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe intent to dishonour of outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or a Scheduled Tribe so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place or residence.

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.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member
of Scheduled Caste or a Scheduled Tribe to be convicted of an
offence which is capital by the law for the time being in force
shall be punished with imprisonment for life and with fine; and
if an innocent member of a Scheduled Caste or a Scheduled
Tribe be convicted or executed in consequence of such false or
fabricated evidence, the person who gives or fabricates such
false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or
knowing it to be likely that he will thereby cause, any member
of a Scheduled Caste or a Scheduled Tribe to be convicted of an
offence which is not capital but punishable with imprisonment
for a term of seven years or upwards, shall be punishable with
imprisonment for a term which shall not be less than six months
but which may extend to seven years or upwards and with fine;

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

(iv) commits mischief by fire or any explosive substance intending
to cause or knowing it to be likely that he will thereby cause
destruction of any building which is ordinarily used as a place
for worship or as a place for human dwelling or as a place for
custody of the property by a member of a Scheduled Caste or a
Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

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

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

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

Section – 4 Punishment for neglect of duties.
Section – 5 Enhanced punishment for subsequent conviction.
Section – 6 Application of certain provision of the Indian Penal Code.
Section – 7 Forfeiture of property of certain persons.
Section – 8 Presumption as to offences.
Section – 9 Conferment of power.
Section – 10 Removal of person likely to commit offence.
Section – 11 Procedure on failure of person to remove himself from area
and enter thereon after removal.

Section - 12 Taking measurements and photographs, etc. of persons against whom order under Sec.10 is made.

Section - 13 Penalty for non-compliance with order under Sec.10.

Section - 14 Special Court.

Section - 15 Special Public Prosecutor.

Section - 16 Power of State Government to impose collective fine.

Section - 17 Preventive action to be taken by the law and order machinery.

Section - 18 Section 438 of the Code not to apply to persons committing an offence under the Act.

Section - 19 Section 360 of the Code and the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act.

Section - 20 Act to override other laws.

Section - 21 Duty of Government to ensure effective implementation of the Act.

Section - 22 Protection of action taken in good faith.

Section - 23 Power to make rules.


Section - 3 Precautionary and preventive measures.

Section - 4 Supervision of prosecution and submission of report.

Section - 5 Information to Police Officer in-charge of a Police Station.

Section - 6 Spot inspection by officers.

Section - 7 Investigating Officer. (Dy.S.P.)

Section - 8 Setting up of the Scheduled Castes and the Scheduled Tribes Protection Cell.

Section - 9 Nomination of Nodal Officer.

Section - 10 Appointment of a Special Officer.

Section - 11 Travelling allowance, daily allowance, maintenance expenses and transport facilities to the victim atrocity, his or her dependent and witnesses.

Section - 12 Measures to be taken by the District Administration.

Section - 13 Selection of Officers and other State Members for completing the work relating to atrocity.
Section – 14  Specific responsibility of the State Government.
Section – 15  Contingency Plan by the State Government.
Section – 16  Constitution of State-level Vigilance and Monitoring Committee.
Section – 17  Constitution of District Level Vigilance and Monitoring Committee.
Section – 18  Material for Annual Report.
References


10. Ibid , P. XIV.