

# RGICS



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## RGICS BRIEF

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### **Implications of Supreme Court Order on Atrocities Act**

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## Implications of Supreme Court Order on Atrocities Act

### PART: I Introduction and Background

A double bench of Supreme Court comprising of Justice A.K. Goel and Justice U.U. Lalit on 20<sup>th</sup> March 2018 under one of its order has issued guidelines for arresting accused of crime under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (PoA). The new guidelines issued by the court substantially amends section 18 of the PoA Act, 1989 which provides for immediate arrest of the accused and exclusion of the provision of anticipatory bail. The Act passed by the Parliament came into force from January 1990 and amended in 2015 provides for protection of victims of caste based atrocities by various means. Protection to victim under the Act includes immediate arrest of accused, financial assistance for victim, time bound police enquires, exclusive courts to hear cases in fast track mode at district levels, and provision for appointment of special public prosecutors. The recent order of the Supreme Court bench in the case of Dr. Subhash Kashinath Mahajan Versus the State of Maharashtra (Criminal Appeal No. 416 of 2018) observed that the Act has been misused by filing of several false and malicious cases by people from ST and SC communities. To arrive at the decision of issuing guidelines mentioned in the table below the court observed three major issues in implementation of the law. These observations are (1) the immediate arrest of accused jeopardized liberty of person; (2) The law has been misused and (3) the law is a tool to perpetuate casteism. This paper attempts to scrutinize these observations of the court viz a viz social realities of caste based atrocities.

In its order, the court attempted to change the PoA Act, 1989 as follows:

<b>Provisions</b>	<b>The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989</b>	<b>Supreme Court Order, 2018 (Criminal Appeal No. 416 of 2018)</b>
Arrest of Accused	The Section 18 of the PoA Act 1989 provides for immediate arrest of accused after registration of FIR	The arrest of accused must go through following procedures: 1- After receiving complaint, concerned Deputy Superintendent of Police (DSP) will conduct preliminary enquiry to find out whether the allegation make a case under the Atrocities act and that the allegation are not frivolous or motivated. 2- After preliminary enquiry by DSP, for effecting arrest of the accused requires approval of the appointing authority of accused (if the accused is public servant) and approval of Senior Superintendent of Police (SSP) for non-public servant accused.

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Anticipatory Bail	The Section 18 of the PoA Act, 1989 does not allow anticipatory bail to accused. It excludes provisions of the section 438 of IPC related to anticipatory bail to prevent accused from arrest.	The court can grant anticipatory bail to accused if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
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The above mentioned guidelines related to arrest of the accused under the Act actually created three levels of protection for accused under the Act. While casteism and caste based atrocities are realities of India that cannot be wished away, the suggested measures to protect the accused would adversely affect people from Scheduled Castes and Scheduled Tribes who are socially disadvantaged and economically impoverished. The three protections provided for the accused will substantially increase vulnerability of the very communities for whom the law was made. Various activists, academicians and peoples from SC and ST communities have opposed and criticized this order of the Supreme Court.

The court's order has not only faced sharp criticism but on 2<sup>nd</sup> April, 2018, a nationwide shutdown (*Bharat Bandh*) was organized by people from SC and ST communities. Many people have scrutinized new guidelines in detail and found it in contrast to the objectives of the law and its constitutionality.

### PART: II Major Observations of the Court

To justify the order, the SC bench in its decision observed that a number of false cases have been filed under the PoA Act and in this it has been grossly misused in last the three decades. It also observed that the rampant misuse of the Act has been perpetuating casteism and leading to caste hatred. These observations of the Court are based on NCRB data, various case laws and observations provided by Shri Maninder Singh (Additional Solicitor General, appearing for Union of India), Shri Amrendra Sharan (counsel, appearing as amicus) and other counsels appearing in the case.

#### **I- Making a Case for the Liberty of the Accused**

The court in its order observed that several offences under the PoA Act, 1989 might solely depend upon the version of the complainant, which may not be found to be true. Therefore, the immediate arrest of accused under the law ignores the presumption of innocence until proven guilty. To support this argument the court cited third report of the National Police Commission. According to the report, the power of arrest was one of the chief sources of corruption of police. 60% of arrests were unnecessary or unjustified. In its report, the commission recommended that the police officer making the arrest should record the reasons. These arguments

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and observations led the court to issue guidelines for arresting the accused under the Act. However, some of the counsels appearing in the cases opposed it and requested the court to not issue directions which are legislative in nature.

The PoA Act, 1989 is a special legislation that ensures protection of socially and economically weaker sections of the society namely Scheduled Caste and Scheduled Tribes. The misuse of any law can jeopardize the liberty of an innocent person. The PoA Act, 1989 is not different from other laws in this regard. Now the question is whether the special character of this legislation is leading to an increase in misuse of the law. Following are two major facts, which help to understand this.

- **Institutional Caste Discrimination against SCs and STs:** The current Supreme Court order strengthens its argument by citing a report of National Police Commission. Taking note of the third report of the commission the court observed that the arrest is “one the chief source of corruption of police<sup>1</sup>”. The report goes in details and explains the misuse of power of arrest. The report further reads, “*several persons who ought to be arrested are let free on account of political influence or other considerations, while harmless persons who need not be arrested at all are often arrested and even remanded to police custody on inadequate grounds<sup>2</sup>*”. The report through this observation indicated towards institutional prejudice against weaker communities. The report further observed that caste prejudice of people in power leads to harassment of people from weaker sections of the society. The report reads, “*police sometimes do not take cognizance of their complaints of ill treatment at the hands of upper castes on the ground that complaints are non cognizable and therefore cannot be investigated by them without orders from a magistrate<sup>3</sup>*.” The observation of the Supreme Court that the power of arrest is leading to corrupt practices is right but the special status of the PoA Act actually minimizes this corruption for SCs and STs. The special character of the law protects victims of caste atrocities from caste prejudice of institutions such as police.
- **Issue of False Cases:** The Final Report (FR) submitted by the police after investigation of case is the first point of justice/injustice delivery. Police files a Final Report in court if it thinks that the case does not deserve judicial trial. A FR is submitted for four major reasons one, if the case is true but evidences are insufficient; two, if mistake in recording of facts were observed; three if the case is non-cognizable and four if the case is false.

In the case of PoA Act, 1989, on an average, the police file a FR for about 15-16% cases investigated in a year. The rate of filing FR under the PoA Act is relatively high compared to other offences. Of the total cases investigated under the Act, the police in 2016 submitted a final report for 9.6% cases, declaring them false. A study of Final Report of the PoA Act and Section 498A of the IPC by Khora (2014) observed that the FR submitted by police for false cases invites Section 182 and 211 of the IPC against complainant. However, the study found that these

<sup>1</sup> [http://www.supremecourtindia.nic.in/supremecourt/2017/22086/22086\\_2017\\_Judgement\\_20-Mar-2018.pdf](http://www.supremecourtindia.nic.in/supremecourt/2017/22086/22086_2017_Judgement_20-Mar-2018.pdf)

<sup>2</sup> CHRI, Recommendations of National Police Commission: [http://humanrightsinitiative.org/old/publications/police/npc\\_recommendations.pdf](http://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf)

<sup>3</sup> CHRI, Recommendations of National Police Commission: [http://humanrightsinitiative.org/old/publications/police/npc\\_recommendations.pdf](http://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf)

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sections are recommended in very few RFs. The invoking of Section 182 and 211 of the IPC requires proving falsity of the case beyond reasonable doubt, which means re-examining facts related to the original case. Nevertheless, using the label of 'false' and still not invoking relevant sections of IPC reflect the hostile attitude of the police towards the victims under the PoA Act.

While it is true that the constitution of India guarantees protection of individual's liberty. It also provides for special care and support for protection of liberty of people belonging to weaker sections such as SCs and STs. The Article 46 of the constitution enables the state to promote with special care, educational and economic interests of weaker section of the society to protect them from social injustice and all forms of exploitation<sup>4</sup>. The prevalence of caste system in India is one of major factors behind oppression of exploitation of SCs and STs. Therefore, the PoA Act, 1989 attempts to protect these communities from oppressive caste system. The Act draws its constitutionality from the Article 46 of the constitution and attempts to protect liberty of people belonging to the weaker sections of the society.

### II- The Misuse of Law

The Supreme Court order highlights five cases in which accused were acquitted by different High Courts of India to prove the instances of false cases. The court also took note of the high acquittal rate under the law to prove misuse of the law. The ASG Mr. Maninder Singh appearing for Government of India submitted that out of total cases disposed by courts in 2016, nearly 75% resulted in acquittal/withdrawal or compounding of the cases. The conviction rate under the Act is as low as 25%.

Former civil servant and expert on the subject Shri P.S. Krishnan strongly opposed the decision of the Supreme Court and urged the central government to file review the petition and explain objectives of the law to the court. He argues that high rate of acquittal does not mean that the accused is innocent and the case was false. He presented several cases where accused were convicted in one court and acquitted in another court. The acquittal by the court depends on several factors such as lack of evidence, poor investigation, intimidation of witness and many more. He further argues that the delay in investigation and trial results in intimidation of victim, their survivors and witnesses by various means including social and economic boycott (The Wire, 2018).

Issues related to false cases under PoA Act were also discussed in the Parliament. The Standing Committee on Social Justice and Empowerment in its sixth report (2014-15) discussed the issue of false and malicious complaint under the law. The committee recommended for an inbuilt provision to handle false complaint. However, the Union government took the stand that such a provision is against the objectives of the law. The government submitted: *"The object of the PoA Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes (SCs) and the Scheduled Tribes(STs), 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. It would, thus, not be in consonance with the intent of the PoA Act to provide for punishment for members of SCs and STs for registering cases falsely. Relevant sections of the IPC can, however, be invoked for dealing with specific false cases (Lok Sabha, 2014)."* An evaluation of PoA Act,

<sup>4</sup> The Wire: <https://thewire.in/law/dilution-of-sc-st-atrocities-act-will-have-a-crippling-effect-on-social-justice>

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1989 sponsored by Planning Commission in 2012 examined the reasons behind the high acquittal rate under the law. The study found following major reasons behind it<sup>5</sup>.

1. **Hostile witnesses:** The study found that witnesses turning hostile are one of the major reasons for high rate of acquittals in the atrocity cases. Economic dependency on the upper and dominant castes, and the state of insecurity, has forced prosecution witnesses in many a case to turn hostile.
2. **Preconception of misuse of the Act:** Most of the administrative machinery officials, court officers and police officers interviewed, are of the opinion that the SCs and STs are misusing the special law against their rivals and adversaries. As a result of this impression most of the Judges are skeptical and wary of awarding convictions.
3. **Police inaction:** There is huge gap between actual incidents of crime and reported crime. When the complainant reaches the police station, police officers try to compromise the case. Police officials do not want to redress the issue, visit the scene of crime, register immediately and empower the weaker sections.
4. **Lack of designated Courts:** As per the PoA Act, 1989 there shall be an exclusively special designated court in every district to look after cases related to caste atrocities. However, in most places, Session Courts have been given additional responsibility of special designated court under the law. Therefore, practically there are no designated courts for caste based atrocities.

Caste and gender discrimination is deeply rooted in all machineries of the state and its institutions. The Constitution of India acknowledges that the prevalence of these discriminations which add to the existing prejudice against SCs, STs and women. Therefore, it provides for special care and protection of these vulnerable communities to fight against injustice. The PoA Act, 1989 provides special protection to these vulnerable groups against injustice based on caste. The court order ignores these social realities. Doing away special provisions of the Act will make people more vulnerable.

### III- Perpetuating Casteism

The court order reads, *“In the light of submissions made, it is necessary to express concern that working of the Atrocities Act should not result in perpetuating casteism which can have an adverse impact on integration of the society and the constitutional values .....This may require check on false implications of innocent citizens on caste lines.”* This observation of the court ignores the casteism that is prevalent in Indian society. It does not take into account the oppressive caste system, which has been disempowering members of SC and ST communities. Caste atrocities addressed by the PoA Act emanates from this oppressive casteism and the law seeks to correct it. The recent interpretation of the legislation by the court is moves away from the purpose of the Act.

<sup>5</sup> Planning Commission Evaluation of PoA Act, 1989: [http://planningcommission.gov.in/reports/sereport/ser/ser\\_atro2410.pdf](http://planningcommission.gov.in/reports/sereport/ser/ser_atro2410.pdf)

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Scheduled Caste and Scheduled Tribe together constitute nearly one fourth of India's populations. These communities which constitute the nearly one fourth of the Indian population have been victimized by the caste system that provides social privileges to only certain select caste groups. It further allows people from privileged caste communities to oppress and suppress SCs and STs for various purposes. According to the National Campaign on Dalit Human Rights (NCDHR), every 18 minutes a crime is committed against SCs in India. Every week, six kidnappings and abductions of SCs are reported, three SC women are raped every day and 13 SCs are murdered in a week. These figures are based on reporting of crime to National Crime Record Bureau (NCRB). Various estimates have recorded that a large number of crime goes un-reported in India due to various reason. Despite this gap in reporting of crime, the atrocities against SCs and STs reported by police and investigating agencies in India is alarmingly high. Successive NCRB data shows that in last one decade there is substantial increase in reporting of atrocities against these communities. These reports also suggest that the pendency rate in court has also increased in last few years. An evaluation of the PoA Act, 1989 sponsored by the Planning Commission in 2012 examined instigating factors behind caste-based atrocities in some States. The report observed following major instigating factors<sup>6</sup>.

- Marriage processions on roads by Dalits,
- Indecent behavior by SCs and STs in front of Upper Caste men,
- Festival Processions by SCs,
- Wearing bright/new clothes,
- Using umbrellas in public place,
- Wearing dark glasses, chappals, smoking in public place,
- Using bicycles in public place,
- Denying to work as agricultural labour,
- Protesting against payment of lower wages in comparison to upper castes co workers,
- Denying to provide services such- Barber, Washer man, restaurant/hotel, carpenter, tailor, potter
- Selling milk to cooperatives,
- Selling their produce/products in local markets.

The above list of caste-based atrocities is indicative, there are several other ways by which SCs and STs are exploited and abused. After Independence, the government of India introduced several policies to abolish caste discrimination and protect vulnerable groups from social injustice. Despite several policy measures after independence, the caste practices remain very integral to common life. Halfhearted implementation of special policies such as reservation, education and criminalization of caste hatred through legislations such as PoA Act, 1989 is also responsible along with other factors for persisting casteist nature of society. However, these policies have also improved conditions of SCs and STs in many ways. The enactment of the PoA Act, 1989 is one important policy to discourage the casteist mindset and prejudice. It attempts to provide level playing field for member of SC and ST communities, who are oppressed by other caste communities

<sup>6</sup> Planning Commission Evaluation of PoA Act, 1989: [http://planningcommission.gov.in/reports/sereport/ser/ser\\_atro2410.pdf](http://planningcommission.gov.in/reports/sereport/ser/ser_atro2410.pdf)

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### Conclusion:

The decision of the Supreme Court to impose sanction on arrest of accused under the PoA Act, 1989 emanates from its observations related to implementation of the Act. In its observations, the court has flagged issues related to misuse of the law to perpetuate casteism and harass member of non-SC/ST communities. Issues raised by the court in its observations are not new. These issues have been part of common discussions criticizing the PoA Act. However, these issues are completely ignorant of the brutality of oppressive caste system, institutional caste discrimination and the purpose of the PoA Act, 1989. Now, the order of the Supreme Court legitimizes the criticism of the PoA Act based on these issues. Same issues were raised in 2015 while amending the PoA Act to make it more stringent and effective. Many members of the Parliament raised the issue of false cases reported under the laws. They wanted an inbuilt system to deter filing of false cases under the law. However, the parliament took a strong stand that such a system would dilute the purpose of the Act. The parliament suggested that the issue of false and malicious cases could be dealt through appropriate sections of Indian Penal Code.

The atrocities against SCs and STs based on caste discrimination are often socially justified by the perpetrators. To combat this, the PoA Act, 1989 has been challenging such social and discriminatory practices by criminalizing caste based atrocities. It is no surprise that the dominant castes engaging in discriminatory and derogatory practices are against the law which punishes such behavior. The current order of the Supreme Court meets some demands of those social elites. However, it has serious implication on SCs and STs who wish to seek justice against prevalent caste atrocities. Given the social and economic vulnerability of members of SCs and STs these new sanctions on arrest of accused would further delay registration of cases, investigation and filing of charge sheets. The Act acknowledged that the public institutions is reflective of the society we live in; It is no surprise to sees the same system of oppression of those from weaker communities. In order to protect vulnerable victims from further caste based harassment by public institutions the Act provides for immediate arrest of accused. However, new sanctions directed by the court ignore these sensitivities. Moreover, it exposes victim to three layers of such institutions without any protection.

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