

## **Dilution of the SC/ST Act: The need for an urgent review**



*Source:* <http://www.catchnews.com/india-news/r-day-takeaway-why-the-amended-sc-st-act-matters-1453895123.html>

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### **Dilution of SC/ST Act: The need for an urgent review**

*On March 20th 2018 the Supreme Court led by Justices Adarsh Goel and U.U. Lalit passed a judgement would be in essence go against the Scheduled Castes (SC) and the Scheduled Tribes (ST) community. This judgment states that the SC/ST (Prevention of Atrocities) Act, 1989 a legislation meant to protect the marginalized communities from abuse and discrimination is been used as an instrument of “blackmail” and is used by some to exact “vengeance” and satisfy vested interests. While data suggests just the opposite- rise in number of crimes with low conviction and high pending trials which may have as much to do with the implementation of the provisions, the judgment not only reflects the court’s ignorance towards these crimes, it poses a large threat to the value of justice, at both the individual and social level.*

#### **Introduction**

The **Scheduled Castes (SCs)** and **Scheduled Tribes (STs)** are various officially designated groups of historically disadvantaged people in India as per the Hindu caste system. They have been victims of discrimination and exclusion. Despite various measures and legislations adopted to improve the socio economic conditions of the SCs and STs, all proved to be inadequate to check such atrocities. Later in 1989, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted by the Congress Government led by Rajiv Gandhi government (recently amended in 2015) with an aim to eliminate the atrocities occurring against members of the SCs and STs and at the same time providing protection, compensation and rehabilitation to victims. The provisions of SC/ST PoA Act & Rules can be divided into three different categories. The first category establishes criminal liability for a number of specifically defined atrocities, and extends the scope of certain categories of penalizations given in the Indian Penal Code (IPC). The second category contains provisions for relief and compensation for victims of atrocities. The third category contains provisions that establish special authorities for the implementation and monitoring of the Act.

However despite the comprehensive provisions in the legislation, the implementation of the Act remains weak and inadequate that has also been highlighted in some of the past judgements. For instance when in 2016, the National Campaign on Dalit Human Rights’, a voluntary organisation approached the Apex Court complaining that the implementation of the Act has been totally ineffective and that Dalits are still suffering from atrocities in view of the non-compliance of various provisions of the Act, the Supreme Court observed that the provisions in regard to improving the Scheduled Castes and Scheduled Tribes conditions, all were found to be inadequate to check these atrocities, enforced due to ‘the indifferent attitude of the authorities’. Similar organisations such as the National Human Rights Commission and the SC/ST Commission had also expressed their concern over the implementation of Act, in their Report on Prevention of Atrocities against Scheduled Castes authored by Shri K B Saxena which to the Prime Minister and State Chief Ministers in 2004. Later a report by the Human Rights Watch titled [“Hidden Apartheid: Caste Discrimination against](#)

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India's 'Untouchables' 2007 pointed out that Dalits were often the victims of discriminatory treatment in the administration of justice where prosecutors and judges have failed to vigorously and faithfully pursue complaints brought by Dalits (for evidence the data on the rate of acquittals in such cases” and the failure to register such cases by the police has been used). Another study conducted by the *Economic & Political Weekly* noted that nearly 50% of cases filed under the Act did not go through the trail in court and was closed by the police. More recently, the Ministry of Home Affairs annual report of 2017 highlighted that despite the deterrent provisions made in the PoA Act, increasing atrocities against the members of SCs and STs had been a cause of concern to the Government”. The MHA in fact, had stated that “it was, therefore, considered appropriate to strengthen the Act and make the relevant provisions of the Act more effective”. In fact, former Prime Minister Manmohan Singh in a speech delivered on 7 September 2009 said, “it is shocking that the conviction rate for cases of atrocities against SC/STs is less than 30% against the average of 42% for all cognizable offences under the IPC”. Subsequently, an amendment to the existing Act came into force in 2016 with provisions to strengthen and expand the scope of the Act (expand the scope of presumptions pertaining to institutional strengthening, appeals (a new section), establishing rights of victims and witness (a new chapter) and strengthening preventive measure). Twenty-three years after the law came into force, the Supreme Court has now triggered a controversy by diluting it to prevent its misuse.

### About the judgment

The Supreme Court on March 20th 2018 banned automatic arrests and registration of criminal cases under the Scheduled Castes (SC) and the Scheduled Tribes (ST) Prevention of Atrocities Act, 1989<sup>1</sup>, and made it mandatory for the police to conduct preliminary inquiries within seven days of a complaint before filing a first information report. The judgment also stated that public servants can be arrested under this law only with the written permission of their public authority. A bench comprising of Justice UU Lalit and AK Goel in the *Subhash Kashinath Mahajan vs The State of Maharashtra* while quoting the NCRB data 2016 regarding cases registered against SC/STs (stated that the Atrocities Act was being used to blackmail innocent citizens and public servants, and that it should not be used to “perpetuate casteism” (Section 18 of the PoA Act specifically bars the application of Section 438 of the CrPC which provides for anticipatory bail) in respect of offences under the Act.). The court had also emphasized that it felt that the Act may even “perpetuate casteism” and how there was a need to curb “false implication of innocent citizens on caste lines”. In doing so, the judges completely ignored the issue of weak and inadequate implementation of the PoA Act and the fact that while the NCRB data indicates a rise in the number of crime against the community members, the conviction rates has been abysmally low. In fact, even after the amendment was to the existing Act, provisions such as setting up of special police stations, special courts for dealing with atrocities on Scheduled Castes and Scheduled Tribes has still not be implemented by many States. For instance Uttar Pradesh, one of the top states with highest number of cases has neither set up special police stations nor identified areas prone

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<sup>1</sup> Scheduled Castes (SC) and the Scheduled Tribes (ST) Prevention of Atrocities Act, 1989 is a legislation meant to protect the marginalised communities from abuse and discrimination

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to such transgressions despite 10,430 cases in 2016. This dismal situation is a nationwide reality today despite amendments implemented in the SC/ST (Prevention of Atrocities) Act in 2016 to infuse urgency in dispensation of justice. In addition, only four states—Bihar, Chhattisgarh, Jharkhand and Madhya Pradesh have special police stations. Exclusive special courts, which are to be set up mandatorily in all states to try cases of discrimination, are present in 14 states only.

The decision by the court has drawn criticism from a Dalit organisation which claims said it would lead to "great miscarriage of justice". Expressing its concern over the top court's March 20 verdict, the National Executive Committee of the Dalit Shoshan Mukti Manch(DSMM) has urged the Centre to file a review petition so that the Act remained effective which thankfully has been accepted the Centre. "The truth is that in cases of atrocities against SCs and STs; Not only is the conviction rate very low, but there is delay at every stage from filing charge sheets to proceeding with the matters in court," the organisation says.

### Is the dilution then, justified?

India has over 180 million Dalits. A crime is committed against a Dalit every 15 minutes. Six Dalit women are raped every day. Over the last 10 years (2007-2017), there has been a 66% growth in crime against Dalits. Under this light data from different NCRB reports are compiled below:

1. Annual statistics from the National Crime Records Bureau suggest that from 2009 to 2014, crimes against Scheduled castes increased by 40% while those against Scheduled tribes went up 118%.As compared to 2009, the rising numbers of crimes against SCs and STs, from 33,412 (SCs) and 5,250 (STs) in 2009, the number of crimes recorded as 47,064 (SCs) and 11,451 (STs) in 2014.
2. In 2014, most crimes against SCs were registered in Uttar Pradesh (8,075), followed by Rajasthan (8,028) and Bihar (7,893), and most crimes against STs were registered in Rajasthan (3,952), Madhya Pradesh (2,279) and Odisha (1,259).
3. The Bureau's data for the 10-year period from 2007 to 2016 showed an average conviction rate of 28.8 in crimes against Scheduled castes and 25.2 in crimes against Scheduled tribes. The average conviction rate for all crimes under the Indian Penal Code is much higher at 42.5.
4. In 2016, the National Crime Records Bureau recorded 40,801 registered cases of atrocities against Scheduled castes and 6,568 cases of atrocities against Scheduled tribes. In addition, the police investigated cases pending from previous years and filed chargesheets in 78% of cases of atrocities against Scheduled castes and 81% of cases relating to Scheduled tribes.
5. However the court conducted trials in 1,44,979 cases of atrocities against Scheduled castes, the majority of them pending from previous years but completed trials in only 14,615 cases. Of these, the courts convicted the accused in 3,753 cases, resulting in a conviction rate of 25.7 in 2016.

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6. Similarly, of the 23,408 cases of atrocities against Scheduled tribes heard in courtrooms that year, 2,895 trials were completed with a conviction rate of 20.8 while in comparison, the conviction rate for all crimes under the Indian Penal Code in 2016 was 46.8.
7. A report published in [The Times of India](#), claimed that at least 1,027 atrocity cases were registered across the state in 2016 in Maharashtra till July, Home ministry suggested, only 14 convictions were made in such cases under the act, raising questions on whether reviewing the said act is a good idea after all. Maharashtra in fact, has been seeing a steady rise in crimes against SC and STs.
8. The 2016 crime data released in December 2017 revealed the top 5 states with highest number of SC/ST crime cases-
  - Madhya Pradesh occupies the top position in crime against scheduled castes in terms of crime rate, (which is defined by the incidence of crime recorded per one lakh population). It registered 3,294 incidents of crime against scheduled castes in 2014 followed by 3,546 in 2015 and 4,922 last year.
  - Second was Rajasthan that recorded 6,735 incidents of crime against scheduled castes in 2014, which declined to 5,911 in 2015 and 5,136 in 2016.
  - Goa holds third position in terms of crime rate against scheduled castes. However, in terms of numbers, Goa recorded only 13 such cases each in 2014 and 2015 while the number of crime against scheduled castes declined to 11 last year.
  - With 5,701 incidents of crime reported against scheduled castes last year, Bihar stood fourth.
  - Gujarat registered 1,094 incidents of crime against scheduled castes which increased to 1,322 in 2016. In 2015, Gujarat recorded a minor dip in the number when 1,010 incidents of crime against scheduled castes were registered in the state.
9. The disposal of cases by police and courts revealed that under the Act, 1989, 11,060 cases were taken up for investigation in 2016 and the charge-sheeting rate was 77%.
10. There were also 45,233 cases pending trial from the previous year under the SC/ST (Prevention of Atrocities) Act, 1989 whereas 5,124 were sent for trial during the year resulting in a total of 50,357 cases during the year. While no cases were withdrawn by the government and there were no cases disposed by plea bargaining, 49 cases were compounded.
11. During the year in 45,466 cases, the trial was completed. While there were convictions in 7,011 cases, in 38,455 the accused were acquitted or discharged. So the conviction rate was 15.4% while the pendency percentage took at 90.5%.

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12. In cases related to crime against women, assaults on women with the intent to outrage modesty, at 7.7% (3172 cases), reported the highest number of cases of crimes/atrocities against Scheduled Castes (SCs), followed by rape with 6.2% (2541 cases) during 2016. Rape cases were the highest in Uttar Pradesh, Bihar, Rajasthan followed by Madhya Pradesh, Andhra Pradesh, Jaipur.

These figures do not include the actual number of incidents since most Dalits generally do not muster enough courage to register cases for fear of retaliation by the higher castes. Even if some cases which goes to the court, the most likely outcome is acquittal due to caste biases at every stage of investigation and trial.

### So what does NCRB data indicate?

It is quite evident from established data that for an effective law that protects a certain section of the society, it is essential that it is properly implemented. In this case too, the implementation of the Act has been the problem and not its misuse. The above data further implies that acquittal does not necessarily prove innocence, it may also point to inadequate investigation and evidence on record, or procedural infirmities. By providing only the figure for false cases, without placing it within the larger context of cases coming up before courts and being decided, the court presents a counter-factual account of cases pertaining to the commission of atrocities against Scheduled castes and Scheduled tribes that is anecdotal and totally unsupported by evidence and data and does not reflect the social realities these cases rest on.

So, despite this evidence, why did the judges rule as they did? The main reason, as explained by Smriti Sharma of the Delhi School of Economics in her 2014 research paper is because the Judiciary is steeped in caste-based prejudice, and condones atrocities. This time around, it has only fortified the impunity of marauding upper-castes. Recently the Union Social Justice Minister Thaawarchand Gehlot had requested the Law Minister Ravi Shankar Prasad favoring filing of a review plea against the Supreme Court's verdict on the SC/ST Act, while noting that there were concerns that the order will make the law "ineffective" and adversely impact the dispensation of justice to Dalits and tribals. Seeking legal opinion on the issue, Gehlot, in the note to the law minister, said, "It is felt that the Supreme Court order may make the SC/ST (Prevention of Atrocities) Act ineffective and adversely impact the dispensation of justice system. In my opinion it would be right to file a review petition against the verdict."

CRIMES AGAINST DALITS						
METROS Rank	Cities	Total Number of Crimes(%)	Murder	Crime against Women	SC/ST <sup>^</sup>	Minor IPC Crimes <sup>*</sup>
1	Lucknow	262 (16%)	8	88	23	117
2	Patna	241 (15%)	1	1	0	239
3	Jaipur	219 (14%)	1	43	3	174
4	Bengaluru	207 (13%)	5	7	190	4
5	Hyderabad	139 (9%)	1	12	92	34
* (Prevention of Atrocities) Act only (without IPC)						
*May Include cases under Simple hurt, Trespass, Mischief, Use of Abuse Language/Act and Criminal Intimidation, etc.						
STATES Rank	States	Total Number of Crimes(%)	Murder	Crime against Women	SC/ST <sup>^</sup>	Minor IPC Crimes <sup>*</sup>
1	Uttar Pradesh	10426 (26%)	271	3117	1065	5401
2	Bihar	5701 (14%)	54	45	253	5080
3	Rajasthan	5134 (13%)	66	641	106	4353
4	MP	4922 (12%)	81	1833	4	3369
5	Andhra Pradesh	2331 (6%)	23	748	446	1320
* (Prevention of Atrocities) Act only (without IPC)						
*May Include cases under Simple hurt, Trespass, Mischief, Use of Abuse Language/Act and Criminal Intimidation etc.						

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Source: <http://indianexpress.com/article/explained/ncrb-data-2016-most-atrocities-against-dalits-involve-crimes-against-women-most-cases-in-bengaluru-4962457/>

### Conclusion

***“The taste of anything can be changed. But poison cannot be changed into nectar.” – BR Ambedkar***

Crimes against SCs and STs demonstrate an extreme form of discrimination and prejudice. Previous incidents such as the withdrawal of criminal cases in the Muzaffarnagar riots and the University Grants Commission directive to implement reservation taking the department/centre as unit and delay in payment of SC/ST scholarships-all of them end up depriving the SC/STs of their rights. Moreover in a country where a crime is committed against a Dalit every 15 minutes and apparently six Dalit women are raped every day; safeguarding their rights should be the priority of the court, the government and the citizens. Unfortunately an obvious implication of this judgment would be that more cases of under reported crimes will continue to take place without the fear of punishment as the victims of atrocity crimes will now think twice before filing cases because neither will an FIR be filed immediately nor will the perpetrator be arrested. This on the other hand, serves more power to the perpetrator who shall now feel less guilty-this eventually means rise in the incidents of crime with lesser chance for it to be reported and dealt it. Under such circumstances, the court has not only surely let down SC/ST community, but the entire nation. Renowned social activists such as Dilip C Mandal and Kancha Illaiah both claim that what the court failed to address is the weak implementation of the Act, instead what is presented is a short-term view that blocks the progress of collective moral consciousness that is essential for any law to become an expression of the social community.

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## Headlines

### **Diesel Prices Reach All-Time High; Four-Year High for Petrol**

*(The Wire, April 1, 2018)*

Diesel and petrol prices reached a 4 year high of Rs 64.58 and Rs 73.73 respectively as global rise in prices affected domestic prices as well. The uptrend in the retail fuel market is likely to put pressure on the government to prune taxes, which account for nearly half the price of petrol and diesel. In budget 2018-19, reduction in excise duty on petrol and diesel was a major demand from the petroleum industry so as to protect the consumers from the impact of rising fuel prices in the global market but this was ignored by the Finance Minister. Between 2014-16, excise duty was raised nine times by the Finance Ministry when global oil prices crashed resulting in the government's excise doubling to Rs 242,000 crore in 2016-17 from Rs 99,000 crore in 2014-15.

Read more: <https://thewire.in/energy/fuel-prices-high-diesel-petrol-taxes>

Date Accessed: 02.04.2018

## Economy

### India Had Job Losses in 2014-15 & 2015-16—Years of High GDP Growth

(Tish Sanghera, *Indiaspend*, March 30, 2018)

According to data released by the India KLEMS database, a research project supported by the Reserve Bank of India, India's employment growth rate fell by 0.1% in 2015-16 and 0.2% in 2016-17, despite the country's real gross domestic product (GDP) growing by 7.4% and 8.2%, respectively. The data reveals that several sectors –including mining and quarrying, and textiles and manufacturing – saw falling employment growth rates between 2014-15 and 2015-16. In 2015-16, as the Skill India Mission spent Rs 1,176 crore on training people with the right skills to find alternative employment, the employment growth rate fell 0.2%, indicating a loss of jobs to the economy at a time when the government was attempting to make 400 million people employable under the scheme.

Read More: <http://www.indiaspend.com/special-reports/india-had-job-losses-in-2014-15-2015-16-years-of-high-gdp-growth-85686>

Date Accessed: 01.04.2018

## Governance and Development

### *POLITICS AND GOVERNANCE*

#### **Insolvency and Bankruptcy Code set for major overhaul**

(Gereesh Chandra Prakash, *Livemint*, April 02, 2018)

The Ministry of Corporate Affairs is in the process of finalising a series of amendments to the Insolvency and Bankruptcy Code based on a panel's recommendations to remove difficulties in turning around businesses and to strike a balance between the interests of lenders, customers of failed businesses and their promoters. The panel, led by the corporate affairs secretary argues for treating homebuyers as financial creditors, enabling them to take builders defaulting on their obligations to a bankruptcy court and decide their future along with lenders. The Bill being prepared by the ministry will also make sure that the provisions enacted in January to disqualify wilful defaulters and those 'acting jointly' with them from bidding for the bankrupt firm do not unfairly bar entities like asset reconstruction companies (ARCs), banks and alternative investment funds.

Read More: <https://www.livemint.com/Companies/yDIsM2LW9h32lbD6iK3wLP/Insolvency-and-Bankruptcy-Code-set-for-major-overhaul.html>

Date Accessed: 02.04.2018

### *DEVELOPMENT*

#### **PM Modi puts brakes on Railways' full-electrification plan**

(Ravish Tiwari, *The Indian Express*, April 2, 2018)

The Indian Railways' drive of 100% electrification has been put on hold by the Prime Minister for policy corrections during the review of the working of the Railways. This ambitious project was pursued aggressively by Railways Minister Mr Goyal but the PM questioned the feasibility and need for this project immediately since massive infrastructure was already in place for other modes of traction like diesel. The Railways had already announced plans to electrify their entire network by 2021-22 with 4000kms being commissioned for 2017-18.

Read more: <http://indianexpress.com/article/india/pm-narendra-modi-brake-on-railways-full-electrification-plan-5119753/>

Date Accessed: 02.04.2108

#### **India at risk of food shortage due to climate change, says study**

(*Hindustan Times*, April 2, 2018)

A recent study conducted by University of Exeter has suggested that India is among the countries at greatest risk of food shortage caused by climate change. It looked at 122 developing and least-developed countries and the impact of weather extremes on food security and predicted the vulnerability of agriculture due to frequent floods and prolonged droughts. Africa and South America were also listed high on the vulnerability index.

Read more: <https://www.hindustantimes.com/india-news/india-at-risk-of-food-shortage-due-to-climate-change-says-study/story-gLADQ5jeD4iMrpsW3rmjHM.html>

Date Accessed: 02.04.2018

### *HEALTH*

#### **People of Maharashtra exposed to sub-standard drugs: CAG report**

(DTE Staff, *Down to Earth*, March 30, 2018)

A recent CAG report on Maharashtra criticised the state's Food and Drugs Administration (FDA), the laxity of which exposed residents to inferior quality drugs between 2012 and 2017. Submitted in the state assembly on March 28, the report revealed that that delay in recalling 25 per cent of drugs marked Not of Standard Quality (NSQ) exposed the state's public to health risk. "In 95 out of 375 NSQ drugs scrutinised in audit, more than 50 per cent of the stocks had already been consumed before they were recalled. In 61 cases, the entire stock had been consumed and therefore, could not be recalled," says the report. Further, although 1,006 cases of sub-standard drugs were reported, CAG could investigate into 375 cases – implying that 63 per cent of NSQ dugs reported by drug controllers were not audited.

Read More: <http://www.downtoearth.org.in/news/people-of-maharashtra-exposed-to-sub-standard-drugs-cag-report-60067>

Date Accessed: 02.04.2018

## Society

### *CASTEISM*

#### **SC/ST Atrocities Act: Under pressure, Centre to seek review today**

**(Ananthakrishnan G, The Indian Express, April 2, 2018)**

The Centre has assured Dalit groups that it will file a review petition against the Supreme Court's order diluting the penalties under SC/ST Atrocities Act. This decision was taken in light of the protests throughout the country by various outfits as well as MPs across political parties. These groups have argued that this new order will be detrimental to the security and welfare of the SC/STs by making it difficult for them to access justice. With atrocities against the communities increasing, this new decision will result in further discrimination and abuse of the SC/STs, thus reversing the progress that the Act sought to achieve.

Read more: <http://indianexpress.com/article/india/sc-st-atrocities-act-under-pressure-centre-to-see-review-today-5119983/>

Date Accessed: 02.04.2018

## India and the World

### India increases aid to \$5 million for Palestinian refugees

(Indo Asian News Service, Hindustan Times, March 28, 2018)

According to a statement of the Ministry of External Affairs, India has increased its annual contribution to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) from \$1.5 million to \$5 million from 2018-19 for a period of three years. The statement says: "This enhancement was made in the backdrop of the unprecedented financial crisis being faced by UNRWA, which has been delivering valuable public services to Palestine refugees around the world." It also said that the four-fold increase in India's contribution is based on External Affairs Minister Sushma Swaraj's commitment to enhance support to the UNRWA at the Non-Aligned Movement (NAM) ministerial meeting on Palestine on September 19 last year.

Read More: <https://www.hindustantimes.com/india-news/india-increases-aid-to-5-million-for-palestinian-refugees/story-Z0IKsoKEFcXs6hpPUW3JM.html>

Date Accessed: 02.04.2018

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