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THE SCHEDULED CASTES AND TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 WITH REFERENCE TO DISCRIMINATION FACED BY RESIDENTS OF NORTH-EASTERN STATES IN INDIA

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ABSTRACT

Discrimination against various different ethnic groups is a deep-rooted age-old plague in the Indian society. The society has been divided into various fragments. What emerged from the very fragmentation was discrimination and torture to the downtrodden sections of the society which continues till date. In order to ensure equality in the society, the framers of the Constitution of India have incorporated certain provisions which help the uplifting of these discriminated groups. Discrimination also takes place based on the location one lives in or the structure of one's body. The residents of North-eastern states face the mentioned kinds of discrimination. The paper will particularly focus on the discrimination faced by the residents of north-eastern states who belong to the Scheduled Castes and Scheduled Tribes. In order to deal with the increased number of cases of violence and discrimination against the SC's and the ST's hailing from north-eastern part of the country, the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was roped in. The sole aim of the paper is to analyse the mentioned statute in detail, including the rationale behind enactment of the same, loopholes within the act, various amendments made in the statute till date and understanding the terminology 'Protective Discrimination'.

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INTRODUCTION

North-east India includes Darjeeling district of West Bengal, Assam, Meghalaya, Nagaland, Manipur, Tripura and Arunachal Pradesh. Glancing at its geographical location, it is barriered by natural boundaries on three of its sides. A number of Scheduled Tribes reside in these very states of north-east India. It was in 1971, that the Reorganization of North-east India Bill was framed and passed in law in the year 1972². This converted Meghalaya into a full-fledged state from its pre-existing autonomous existence. Manipur and Tripura which were the Union Territories, were also given the status of states. The Mizo Hills and the NEFA were turned into Union Territories, Mizoram and Arunachal Pradesh. A number of different tribes reside in these very states of north-eastern India. These tribes have their own means of employment in order to support their lives. This area of the country has various groups which are minorities and have diverse origins and differ from each other in many forms. The politics of the 'protective discrimination' for these Scheduled Tribes present and living in this region poses some severe questions on the very face of justice, fairness and costs on the system legitimacy. ³In the previous years, the Adivasi tribe of the 'Santhals' residing in the Kokrajhar district of Assam faced severe violence which ultimately led to their eviction from the very state. These tribals fell prey to the Bodo extremists who inflicted violence with their dispute regarding their '*Bodo homeland*'. *This is a perfect example of the escalating tension, not only between the Santhals and the Bodos, but between all the different communities residing in the north-east region.* Among these various issues of inconsistencies between the various tribes of north-east India, the problems of employment and hardships in earning a livelihood, press harder on their problems. The main source of livelihood in the north-eastern states is agriculture. The economy of these ST households lies near the 'subsistence agricultural economy'⁴. Due to all the employment issues, these north-eastern people migrate to the metropolitan cities like Delhi, Bangalore, Mumbai, Chennai and many others. These migrants face a lot of racial discrimination based on their looks and language.⁵ In order to deal with such instances of racial discrimination and the offences committed against these minorities, the government promulgated the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act),

² V. Venkata Rao, Reorganization of North-east India, 3 Indian Journal of Pol. Sci. 2, 1972.

³ Sanjib Baruah, Protective Discrimination and Crisis of Citizenship in North-East India, 38 Economic and Political Weekly 1624, 2003.

⁴ Reimeingam Marchang, Land, Agriculture and Livelihood of Scheduled Tribes in North-East India, J. of Land and Rural Studies, 2017.

⁵ Jyoti Guntakka, Prevention of Atrocities Act- Boon or a Bane, SSRN L.J. 1, 2014.

1989. This very act, regulates a procedure in order to deal with the offences committed against these scheduled tribes. The act mandates the appointment of the District Superintendent of Police to carry out the investigation of the very offences committed against these minorities. In the case of Sasi Kumar v. The Superintendent of Police, Villupuram and Others⁶, the Madras High Court held that it is mandatory for the DSP to investigate the cases including offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 and that no other police officer under the rank of the DSP is eligible to carry out the investigation. A similar judgement was passed in the case of Uttamlal d. Yerner v. State of Maharashtra ⁷by the Bombay High Court that investigation of an offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 conducted by a Head Constable of Police would vitiate the entire procedure. This act also calls for establishment of SC and ST Protection Cell⁸. This cell would be coordinated by the Director General of the Police. Under this act, Special Courts must be set up in order to carry out speedy trials for the cases of atrocities against the SC's and the ST's. This act looks tough and tight and seems to promote the idea of providing justice to these downtrodden sections of society. But this is not the case when it comes to the practicality. There emerge a plethora of difficulties which make it difficult for the SC's and the ST's belonging to the north-eastern side of the country to be provided justice and equality. There are several loopholes in the system which need proper attention in order to overcome them.

This paper would shed light on the difficulties faced by the SC and the ST people despite of the presence of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 and would suggest some remedies in order to make it more effective.

1. The dilemma of Racial Discrimination pertaining to the North-Eastern masses

The social abuse of the north-eastern masses due to their language and looks is not new. In the trying times of the corona outbreak in the country, many instances of hate crimes against the north-eastern people living in the metropolitan cities have spiraled. Several disturbing incidents have been recorded where these people were spat on and had been

⁶ Sasi Sasi Kumar v. The Superintendent of Police, Villupuram and Others, 1998 (1) CTC 276.

⁷ Uttamlal D. Yerner v. State of Maharashtra, AIR 1974 SC 517.

⁸Rao, S. Someswara, Prevention of atrocities against scheduled castes and scheduled tribes' implementation of the scheduled castes and scheduled tribes' prevention of atrocities act 1989: a comprehensive study, <https://shodhganga.inflibnet.ac.in/handle/10603/39069#>.

called as coronaviruses. In these sorry states of affairs where these people have been discriminated and tortured time and again, the government is still not on its toes. It is a very disturbing fact that if any violence or abuse is reported to the police which involves the north-eastern natives, an FIR is registered under Sec 509 of the Indian Penal Code. In addition to this, the police officers remain clueless as to what provisions have been provided in such matter of circumstances where a person belonging to the north-east has been abused on racial lines. It is a shame to know the provision provided for the protection of the north-eastern people against any sort of racial discrimination i.e., the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 remains unnoticed⁹ and meager cases are filed under the same. The sad reality is that all the laws and regulations are properly placed but there is a severe lack of implementation.

In 2014, the apex court led out measures to address the violence and racial discrimination against the north-eastern people. The Hon'ble court directed the setting up of a committee in order to review the measures and regulations issued by the government for the welfare of the suffered class, to guide and point out the loopholes in the framed legislations and ensure the effective implementation of the same and to direct the reported complaints of discrimination or abuse to the National Human Rights Commission (NHRC) straight away¹⁰. In *Court on its own Motion v. Union of India*, the court developed a perspective of zero tolerance towards discriminatory practices and violence against the north-eastern masses and held that these very acts violated Article 19(1)(d) and (e) of the Indian Constitution as these acts obstruct the rights of the north-eastern people to traverse throughout the country and profess any business or trade¹¹. The Hon'ble judges pointed out the significance of drafting a separate legislation which exclusively looked after the welfare and protection of the natives of north-eastern states and deterred any person from any state to resort to any sort of hate crime against any migrant from any state.

⁹ Sukanya Singha, Governments have failed to address racial abuse of people from North east, *The Wire*, May 14, 2020.

¹⁰ Ritika Goel, *Racial Discrimination: An Undiagnosed Science in India*, L.S.P. Review and K.S., 26 May, 2020.

¹¹ *Court on its own Motion v. Union of India*, MANU/DE/0410/2014.

The Nino Tania murder case was one of the greatest examples of the brazen act of violence against north-east people¹². Nido was a young boy from a north-east state who countered the verbal abuse by a group of people who were calling him names based on his looks and his accent of speaking. Upon retaliation, he was brutally killed using iron rods and sticks. The murder raised chills in the spines of the public at large and also exposed the impotency as well as incompetency of the authorities to address the brazen hate crime.

2. Detailed study about the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989.

According to the Hindu Civilization, it is segregated into numerous distinct castes, out of which over 400 have been given the status of Scheduled Tribes and Scheduled Castes. These are the fractions of the society who were also termed as 'untouchables.'¹³The very heart of the Constitution i.e., the Preamble guarantees equality despite of any caste, creed or religion. But these rights and equality have been only drafted on paper and not so practically. The very act of terming the lower castes as untouchables, discloses the miserable and awful scenario of the country with respect to equality among masses. The constitution did not succeed in providing equal rights and opportunities to these lower fractions of the society. Due to the inability of the Constitution to serve these downtrodden masses, the Untouchability (Offences) Act, 1955 was drafted. But the mentioned act projected some major deficiencies which severely affected the validity of the act. In 1976, the same act was remodeled in the form of the Protection of Civil Rights Act. But, in spite of the changes made, the act did not prove to be effective to address the atrocities against these very people. It was after the failure of numerous laws and regulations, that the Parliament finally passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

2.1 Objectives of the Act

The objectives of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act). 1989, which was penitentiary in nature were precisely identified:

¹²Titikya Bartakki, *Discrimination and the Rising of North-east: A Long way to go*, Research Gate Pub., April, 2017.

¹³ Anubhav Pandey, All you need to know about the SC and ST prevention of atrocities act, 1989, April 27, 2015, iPleaders Solution, <https://blog.ipleaders.in/prevention-atrocities/>.

“Despite various measures to improve the social and economic conditions of the SC’s and the ST’s, they remain vulnerable.... They have, in severe 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 resist the practice of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labor, the vested interests try to cow them down and terrorize them. When the SC’s and ST’s try to preserve self-respect or honor of their women, they become 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-SC’s and non-ST’s. It is considered necessary that not only the term ‘atrocities’ should be defined, but also stringent measures should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and other Union Territories to take specific preventive measures to protect SC’s and ST’s from being victimized and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.”¹⁴

2.2 Salient Features of the Act

a. Facing Humiliation in Public

The act establishes checks and balances to prevent the harassment of the members of the Scheduled Caste and Scheduled Tribe in public. If any person hurls abuse by calling out the victim by his caste, will be liable rigorous imprisonment of six years along with a fine. It was in the case of *Peru Mal v. State of Madras*¹⁵ that the Hon’ble court observed that the affirmations pointed out by the complainant provided that she was humiliated by the accused by calling her caste name, that too in a very inappropriate manner which humiliated her. The court booked the accused under Sec 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

In *State of Kerala v. U.P. Hasan*, the complainant was called as ‘Pulaya Nadi’ by the accused which literally meant ‘son of a prostitute’ in Malayalam. The court did not register an offence under the Atrocities Act as there was no mention of the victim’s

¹⁴ National Commission for SC’s First Report 2004-05, New Delhi, 2006, pp. 222-3.

¹⁵ *Peru Mal v. State of Madras*, AIR 1998 CriLJ 1467.

caste. ¹⁶This case specifies the fact that it is necessary that a person must be abused because of his caste in order to register an offence under the Atrocities Act.

b. Outraging the Modesty of a Woman through Assault

It was in the case of *Karan Singh v. State of Haryana*¹⁷, the complainants were sexually assaulted merely due to the fact that they were women and not due the reason that they belonged to the Scheduled Caste. Hence, the court did not convict the accused under the Atrocities Act. In order to charge an offence under Sec 3(1)(xi) of the Atrocities Act, it is necessary that the use of force or any corporeal attack on any woman belonging to the SC or the ST, should be committed, taking into consideration her caste i.e., SC or ST.

In *Ashok Bapurao Thorat v. State of Maharashtra and Anr.*, the matter before the Hon'ble Court concerned with a sexual intercourse between the complainant and the accused. The affirmation levelled against the accused was that of sexual intercourse with the complainant who belonged to Scheduled Caste¹⁸. Later on, it was gathered that the sexual intercourse was actually a consensual one and they had a love affair. The court discarded the matter and stated that it was no offence under the Atrocities Act and the accused was not liable.

c. Forced to vote

If a member of the Scheduled Tribe or Scheduled Caste faces any kind of resistance from a non-SC or non-ST and is forced to vote a particular candidate against his/her choice, shall be liable for imprisonment for a term of five years.

d. Wrongful Possession

In the matter of *Kashiben Chhaganbai Koli v. State of Gujarat*,¹⁹ the accused had a deal with the complainant where he agreed to sell his land to the latter. Thereafter, the possession of the land was transferred to the complainant. Meanwhile, due to some personal reasons, there was a feud amongst them. following which the accused entered the land and damaged the crops. The court convicted the accused under Section 3(1)(v) of the Atrocities Act as well as for cheating and damaging the property of the

¹⁶ *State of Kerala v. U.P. Hasan*, AIR 1968 SC 1201.

¹⁷ *Karan Singh v. State of Haryana*, (2014) 5 SCC 738.

¹⁸ *Ashok Bapurao Thorat v. State of Maharashtra and Anr*, MANU/MH/1606/2007.

¹⁹ *Kashiben Chhaganbai Koli v. State of Gujarat*, AIR 2009 CriLJ 1156.

complainant. According to Section 3(1)(v) of the Atrocities Act, if any non-SC or non-ST wrongfully dispossess, enters or damages the property of a member of a Scheduled Caste or Scheduled Tribe who has been legally allotted the land or has been transferred possession of the same shall be liable for imprisonment up to a term of six years along with fine.

3. Effectiveness of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989.

There are serious plausible question marks on the effectiveness of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The law seems perfect on paper, but in practice it is not the same. It is recorded that less than half of the filed cases in the court which seek for the invocation of the mentioned act are disposed due to lack of evidence.²⁰ Some of the registered cases are not even investigated by the police. Other cases are tried in the court but are filed under different provisions of law. S.P. Anand, District Convenor of the Karnataka Dalit Sangraha Samiti confessed about the ‘pressure’ on law enforcement agencies when it comes to the investigation of the atrocity cases involving ‘prime businessmen and rich-landlords.’ But, the Superintendent of Police, Abhishek Goyal stated that the Atrocity Act was being misused by the people in the same manner as the provisions against dowry. Manish Karbikar, Mangalore City Police Commissioner admitted that most of the matters which are registered under the mentioned act “turn out to be false.” He stated that the witnesses do not comply with their recorded statement and completely contradict themselves in the court. Or sometimes the charges against the suspect are repealed due to the fact that he did not know the caste of the victim.

4. Discrepancies in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989.

It was in March 20, 2018, that Justices Adarsh Goel and U.U. Lalit promulgated direction that if there is any matter registered pertaining to the Scheduled Caste or Scheduled Tribe (Prevention of Atrocities Act), 1989, which involves a public servant as a perpetrator, it would be a mandate to carry out an inquiry by a senior officer after which the perpetrator i.e., the involved public servant would be liable for an arrest. This

²⁰ How effective is the Atrocities Act, Mohit M. Rao, The Hindu, June 28, 2016.

particular order issued by the apex court diluted the very effect of the Atrocities Act. This act was supposed to be an effective remedy which would cut short all the judicial and other legal formalities and was supposed to speed up the process of investigation of the matter. But after this amendment it did lend a credence to the majority groups who have always been vocal against the mentioned act. They have a chance to justify themselves in the apex court and also dispose off the matter through unconventional means. The accusation by these masses who belong to the majority class of upper castes in the country, that the Atrocities Act was being misused by the minorities to file bogus and false cases against their people only to satisfy their personal vendetta is not new. The upper caste members of the Vanniyars in Pattali Makkal Kathahi of Tamil Nadu have always been vocal against the Atrocities Act and have protested for its abrogation²¹. After the order issued by the Supreme Court, this act has surely been compromised.

Secondly, the very formation of the Atrocities Act for the Scheduled Castes and Scheduled Tribes has surely legged up to provide justice as well as equality for the minority and the discriminated sections of the society. But, in practice things may seem a different. It is quite arduous to file a suit under this provision. There is a lack of uniformity as well as a sense of responsibility in the system. When such matters are tried to bring under the notice of the Police, it is unperceived and disrespected due to which an FIR about the matter fails to be recorded. Even if somehow the FIR is filed, the Police nab suspects who are not actually involved in the crime. It is a point to be noted that even if the implementation of the Atrocity Act seems to be pulverized on the face of it, but there are problems at the grassroot level. It takes significant amount of pressure from NGO's, civil societies and other trusted welfare organizations in order to actually implement the basic procedure of filing an FIR. ²²It is a misery that the judges of the apex court presume the fact that it is trouble-free for the Scheduled Castes and the Scheduled Tribes to file an FIR and expecting ready compliance from the law enforcement agencies such as the Police.

²¹ Kalpana Kannabiran, SC/ST Act: A Hostile environment and an Atrocious Interpretation, The Wire, March 26, 2018.

²² By Diluting SC/ST Atrocities Act SC undermines Dalit And Adivasi Struggles for dignity, Suryakant Waghmare & Hugo Goringe, June 8, 2021, <https://scroll.in/article/873678/by-diluting-sc-st-atrocities-act-supreme-court-harms-dalit-and-ativasi-struggles-for-dignity>.

Thirdly, the accused in such cases under the Atrocities Act upon detainment, file counter cases on the plaintiffs just for the sake of causing inconvenience and financially draining them. Moreover, the conviction rate in the atrocity cases is detestably low. 30% of the atrocity cases are disposed under the label of “mistake of facts.”

5. Amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Minister for Social Justice and Empowerment, Mr. Thawarchand Gehlot insinuated the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment bill, 2018. The bill was introduced in the Lok Sabha and brought some major changes in the parent act. The very act ensured checks and balances against atrocities of any sort against the members of the SC and ST and also provisioned the establishment of special courts for speedy adjudgment of the matters pertaining to the offences under these sections. It was in 2018 where the apex court directed that it would be a mandate to seek a prior permission from the Senior Superintendent of Police for any arrest concerning any offence under the act. Also, in order to ensure the authenticity of the matter registered under the Atrocities Act, the Deputy Superintendent of Police was conferred powers to carry out an enquiry. This was a much-needed provision in order to terminate bogus suits registered under the act. The bill ensured that in order to carry out any arrest pertaining to the matter, no prior permission of any sort would be required by the investigating officer. Also, the provision of preliminary enquiry was abrogated. It allowed the filing of an FIR without any prior enquiry. The Act specifies that the accused cannot be subjected to any kind of anticipatory bail. The bill clarifies that the provision mentioned above, would be strictly applicable despite of any order from any competent court stating otherwise. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill was passed by the Rajya Sabha on 9th Aug, 2018.

6. Concept of Protective Discrimination

Article 15 in the Constitution of India ensures checks and balances on any sort of mishaps of discrimination against any person in the country. Clause (2) of the article deters the State as well as other individuals in the country from resorting to any kind of discrimination. Article 15 (2) was drafted with a sole intention of ruling out the extensive and blatant abuse of the Hindu social system and to harbingers a unified

republic²³. In order to rescind the judgement led out in the case of State of Madras v. Champakam Dorairajan²⁴, Article 15 (4) was drafted and implemented through an amendment (First Amendment). This amendment allowed the State to draft legislations for the upliftment of the downtrodden sections of the society i.e., Scheduled Castes and Scheduled Tribes. 'Protective Discrimination' was one of the ideologies of the State which was supposed to be an opportunity for a social Transformation in the suffered lives of the SC's and the ST's.

Article 16 (1) is meant to ensure the equality in terms of opportunity like employment education and other essential amenities in one's life. But Art 16(4) confers the state, power to reserve extra opportunities for the socially backward classes. This protective discrimination was a much-needed nuance needed to uplift these backward classes.

CONCLUSION

It can be duly admitted that it was surely an indispensable need to enact certain provisions for ensuring checks and balances on the increasing number of atrocities on the SC's and the ST's coming from the north-eastern states in order to seek employment in other parts of the country. The enactment of the Scheduled Caste or Scheduled Tribe (Prevention of Atrocities Act), 1989 was surely a bold move towards the upliftment of these downtrodden groups of the Indian society. But with the testing circumstances the act has time and again failed to fulfill its purpose. These testing times have revealed various loopholes in the mentioned statute which poses the possibilities of exploitation of the statute for one's own petty needs. Given the discussed loopholes in the paper have had been dealt with and some changes been made in the statute, the Scheduled Caste or Scheduled Tribe (Prevention of Atrocities Act) can prove to be an essential tool for ensuring equality in the present society.

²³ G.R. Jagadeesh, *Protective Discrimination: Maintaining the Balance under Constitution*, K.L.E. L.J. 13, 13-15 (2017).

²⁴ State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.