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Important provisions relating to the Anticipatory bail under the SC/ST Act, 1989

1Shilpa Tank

1Advocate

1Law College Mohanlal sukhardia university, Udaipur

1. Introduction

The concept of equality entails that all human beings are entitled to equal rights and opportunities to develop their potential and talent and to fulfill their goals and aspirations. This means that people in society can be different in terms of their preferences. Their talent and abilities may differ and due to this reason some people have become more successful than others in their chosen places. In other words, lack of equality in social status, property or privilege is not important, but equality in the availability of basic things like education, health and safety housing makes society unequal and unjust.

Our constitution is the fundamental law of the land and applicable to every person who is in the territory of India. Indian constitution gives a huge list of fundamental rights which is very useful for the protection of our citizen and it is enjoyed by everyone without any discrimination according to Article 15 (No discrimination on the grounds of Religion, Race, Caste, etc) of the constitution. Our Constitution gave various rights in the favour of backward classes to stop the social evil of untouchability and caste discrimination. But the behavior of untouchability and caste discrimination was still applied in the society and it was realised that we need another strong act for schedule caste and schedule tribes to improve their conditions and with this thinking the schedule caste and schedule tribe act, 1989 came into existence.

2. What was the Aim of SC/ST Act

The major aim of this act is to prevent the commission of offences of atrocities against the members of the SC and ST caste, and to provide for (special court and the exclusive special court) for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected with it. The aim behind the act is to protect the rights of the SC and ST community and to give them equal status in the society.

Over the longest period of time SC, ST, Dalits and Adivasis have faced discrimination that the founding fathers of constitution ensure that they will not be a victim of any kind of untouchability and that's why Article 17 placed into the constitution as a part of fundamental right and this article was very clear that there was abolition of untouchability in all the forms neither in words nor in actions nor in gestures nor in support, you cannot practice untouchability in any form. The constitution does not define the word untouchability but it makes the practice of untouchability as an offence which is punishable. But it was realised that the law is not functioning to stop the evil, it is not strong as per the requirement. So to make a stringent law and strict law we made The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

This is the law of Extraordinary Powers, it will create special courts and exclusive courts that will not merge with other judicial delays.

There is no provision of Anticipatory Bail (direction for grant of bail to a person apprehending arrest). That is why this is a very powerful law. But in 2018 this ground was challenged. It was argued that the concept of Not Anticipatory Bail under this act is against the provisions of fundamental rights and considered unconstitutional. It was also realized that there are number of false cases registered under the SC/ST Act, referring to the data of national crime records bureau in this regard, that Andhra Pradesh has reported second highest number, 1,009 cases were found to be "false or mistake of fact or law" under the Scheduled Caste and Schedule Tribes Act in 2015.

In the case of **Union of India VS State of Maharashtra & others AIR 2020**, the court held that if there is false and unsubstantiated FIR, the proceedings under section 482 of the code can be invoked. There is no presumption that the members of the SC & ST may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the

members of the elite class. For lodging a false report, it cannot be said that the caste of a person is a cause. It is due to human failing and not due to the caste factor.

In another judgment of **Khuman Singh VS State of Madhya Pradesh, AIR**

2019, the court held that in a case for applicability of Section 3(2) (5) of the act, the fact that the deceased belonged to schedule caste would not be enough to inflict enhanced punishment. The Supreme Court said that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to schedule caste.

CASE LAW: Dr. Subhash Kashinath Maharaj VS The State of Maharashtra 20th March, 2018

● Facts of the case -

The petitioner issued one application that there is no provision of granting Anticipatory Bail in the act, the SC ST act prohibited the provision of Anticipatory Bail and it takes away the guarantee of personal liberty which is mentioned in Article 22 (Protection against arrest and detention in certain cases). In other words, the personal liberty is to retain that is required as a constitutional guarantee, this was challenged that it is acceptable and is it allowed and if is not allowed then you should strike it down so.

● Court's Decision -

The court held that we do not allow this is slightly arbitrary and this is unconstitutional, so we are giving some directions and making amendments under the laws of the acts and this is considered as a Schedule Caste and Schedule Tribe Amendment Act, 2018. In this amendment the court gives certain directions and those are:-

- a.) Arrest of a public servant can only be effected after acquiring the approval of the appointing authority.
- b.) Arrest of a Non-public servant can only be carried out after acquiring the approval of the superintendent of police.

- c.) In giving such approval, The approval authority has to record reasons for the same , such recorded reasons must be scrutinized by the magistrate for permitting further detention.
- d.) A preliminary enquiry must be carried out before the registration of FIR under the act by DY.S.P level officer of police to ascertain whether the allegations are frivolous or motivated.

● Bases of the Court's Decision-

15-16% of the total number of complaints filed in 2015 under the act were false and many cases were filed to settle personal scores and harass adversaries.

Any harassment of an innocent citizen irrespective of caste or religion is against the guarantee of the constitution. The supreme court has sought to strike a balance between protecting individual liberty and preserving the spirit of law. At the moment this judgment can cause quite a bit of demonstrations and quite a bit of protest especially from the SC/ST community. The government issued the review petition under Article 137 against the act but before the decision of this review petition. The parliament amended it and by amending they inserted Section 18A under the SC/ ST Act.

According to Section 18A of this act-

- (a) Preliminary enquiry shall not be required for registration of an first information report against any person,
- (b) The investigating officer shall not require approval of a arrest of any person and if the offences is committed then no procedure other than provided this act shall look like,
- (c) The provisions of section 438 of CRPC shall not apply to the case under this act, notwithstanding any judgment or order or direction of any court.

● Review petition and Writ -

In the case of **Prithvi raj chauhan VS Union of India, October, 2018** , This writ was issued with the question, How the parliament can make the provision of Section 18A under the act, because it is violating the provisions of constitution.

● Issues arising in this Writ -

1. Is the absolute bar on grant of Anticipatory Bail for the accused is arbitrary and unjust, violating Article 14 of the constitution?
2. Does the bar on Anticipatory Bail infringe the personal liberty of an individual who has been booked under the act without any ground?
3. Does the power of automatic arrest violate the safeguard as provided under Section 41 and 41A of CRPC? Does it violate the protection of reasonable procedure under Article 21 of the constitution?

The bench of 3 Judges upheld the Section 18A and issued STATUS QUO ANTE (the previously existing state of affairs). They overruled the previous rule which the supreme court had done by diluting it. The supreme court held that “ I don’t think as a three bench of judge were dilution is allowed, it should have been allowed it is wrong , it is impractical, it should not be done, it takes away the spirit of the act, but in Extraordinary circumstances in very rare cases, the High Court only can grant Anticipatory Bail. it makes a complete bar on anticipatory bail.

Conclusion-

After the great controversies , finally the act was amended in their true nature. On February 2020, the final judgment in the prithvi raj chauhan’s case was came and Justice Arun Mishra and Justice Vineet Saran uphold the Section 18A, However the Judges of High courts will have an inherent power to grant Anticipatory bail in cases of Prime Facie , an offence under the act of 1989 law is not made out. This is how the Supreme Court maintains a balance between the general laws and special laws.