Law on

SC/ST (Prevention of Atrocities) Act, 1989

[The SC/ST (Prevention of Atrocities) Rules, 1995 as amended in 2016]

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1. **Laws Governing the offences against members of SC/ST Community:** Following are the various laws governing the offences committed against the members of the Scheduled Castes and Scheduled Tribes :
   (i) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
   (ii) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2016.
   (iii) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018.
   (iv) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.
   (v) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (Amendment) Rules, 2016 w.e.f. 14.4.2016

2. **SC/ST (Prevention of Atrocities) Act, 1989 last amended by central Act No. 1 of 2016 w.e.f. 26.01.2016 :** SC/ST (Prevention of Atrocities) Act, 1989 has been last amended by the central Act No. 1 of 2016 w.e.f. 26.01.2016 and drastic amendments have been made in the 1989 Act particularly in Section 14 which provides for taking of cognizance of offences under this Act by the 'Exclusive Special Court' or 'Special Court' notified under sub-section (1) of Section 14 of the 1989 Act.

3. **Object behind enactment of the SC/ST (Prevention of Atrocities) Act, 1989:** This is the age of democracy and equality. No people or community should be today insulted or looked down upon and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community as is evident from the Statement of Objects and Reasons of the Act. See : Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435

4. **How to interpret the provisions of the SC/ST (Prevention of Atrocities) Act, 1989 ? :** The thrust of Article 17 of the Constitution and the SC/ST (Prevention of Atrocities) Act, 1989 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society—equality to the Dalits, at par with general public absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light to annihilate untouchability; to accord to the Dalits and Tribes right to equality, social integration a fruition and fraternity a reality. See : State of Karnataka Vs. Appa Balu Ingale, AIR 1993 SC 1126.

5. **Effect of change of religion by the member of SC/ST :** It cannot be said that merely by change of religion person ceases to be a member of Scheduled Tribe but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate Court as such a question would depend upon the fact of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and traditions of the community which he earlier belonged to. See : State of Kerala Vs. Chandramohanan, AIR 2004 SC 1672

6. **Jurisdiction for trial of offences under the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 & the SC/ST Act, 1989 :** A Division Bench of the Allahabad High Court, in the matter of Ajai Rai Vs. State of UP, 1995(32) ACC 477 (Allahabad)(DB**),** has ruled that when an accused has been charge-sheeted for offences under the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 & also under the SC/ST (Prevention of Atrocities) Act, 1989, then only the special court constituted u/s 8 of the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 would be competent to try the offences under both the special Acts. For trial of the substantive offence under IPC, the ordinary courts may take cognizance while for an offence under the 1986 Act only special Courts can hold the trial. Even if there be a trial of the accused for substantive offences under the Indian Penal Code in an ordinary Criminal Court, he could be tried for a distinct offence under this Act by the Special Court as provided for u/s 300 (4) CrPC. The legislature had in mind that an accused may not be harassed twice over and, accordingly, the provisions of Section 8 of the Act have been made. While taking up the trial for an offence under the Act, it would be competent for the Special Judge to take up the charges of offences under other Acts also in the same trial. Section 8 of the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 reads as under : "**Section 8 : Power of Special Court with respect to other offences :**

(1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial.

(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorized by

this Act or such rule or, as the case may be, such other law, for the punishment thereof."

7. **Offences under UP Dacoity Affected Areas Act, 1983 & the SC/ST Act, 1989 :** As regards the trial of offences under the provisions of the UP Dacoity Affected Areas Act, 1983 and the SC/ST (Prevention of Atrocities) Act, 1989, Section 6(2) of the UP Dacoity Affected Areas Act, 1983 is relevant which reads as under :

"Section 6(2) : In trying any scheduled offences, a Special Court may also try any offence other than such offence with which a scheduled offender may be charged at the same trial under any law for the time being in force."

8. **Court cannot award less than minimum sentence provided by statute:** Offence of atrocity was committed by the accused u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. The trial court had convicted and sentenced the accused with imprisonment for six months and Rs. 500/- as fine. On appeal, the High Court reduced the minimum sentence of six months to the period already undergone by the accused in jail and enhanced the fine from Rs. 500/- to Rs. 3000/-. The Supreme Court set aside the said penalty awarded by the High Court and restored the penalty awarded by the trial court. The Supreme Court further held that court cannot impose less than minimum sentence contemplated by the statute. Even the provisions of Article 142 of the Constitution of India cannot be resorted to impose sentence less than the minimum sentence provided by law. **See: State of Madhya Pradesh Vs. Vikram Das, AIR 2019 SC 835.**

9. **Constitutional validity of the SC/ST (Prevention of Atrocities) Act, 1989 :** The thrust of Article 17 of the Constitution and the SC/ST (Prevention of Atrocities) Act, 1989 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society—equality to the Dalits at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light to annihilate untouchability; to accord to the Dalits and Tribes right to equality, social integration, a fruition and fraternity a reality. This is the age of democracy and equality. No people or community should be today insulted or looked down upon and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. See :

(i) Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435
(ii) State of Karnataka Vs. Appa Balu Ingale, AIR 1993 SC 1126
(iii) Mata Sewak Vs. State of UP, 1995 AWC 2031 (Allahabad) (Full Bench)

10. **Offences under the SC/ST (Prevention of Atrocities) Act, 1989 are a distinct class of offences :** The offences under the SC/ST (Prevention of Atrocities) Act, 1989 form a distinct class of offences by themselves and cannot be compared with other offences. See: State of MP Vs. Ram Kishna Balothia, AIR 1995 SC 1198.

11. **Eminent senior advocates with not less than seven years practice to be appointed to conduct the cases before the special courts and exclusive special courts (**Rule 4 (1) as amended w.e.f. 14.4.2016): The State Government, on the recommendation of the District Magistrate , shall prepare for each district a panel of such number of eminent senior advocates who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts.

12. **Exclusive Special Pubic Prosecutors (Rule 4 (1A) as amended w.e.f. 14.4.2016):** The State Government in consultation with the Director Prosecution or In-Charge of the Prosecution shall also specify a panel of such number of Public Prosecutors and Exclusive Special Pubic Prosecutors as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts, as the case may be.

13. **Rule 4 (1B) w.e.f. 14.4.2016:** Both the panels referred to in sub-rule (1) and sub-rule (1A) shall be notified in the Official Gazette of the State and shall remain in force for a period of **three years**.
Rule 4 (2) w.e.f. 14.4.2016: Provides for Special Public Prosecutors and Exclusive Special Public Prosecutors
Rule 4 (3) w.e.f. 14.4.2016: Provides for Special Public Prosecutor or Exclusive Special Public Prosecutor

14. **Victim of offence under SC/ST Act not entitled to seek appointment of advocate of his choice to conduct prosecution:** In the case noted below, the Delhi High Court has held that a victim under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not entitled to seek appointment of an advocate of his/her choice as the Public Prosecutor or Special Prosecutor for conducting the prosecution under the said Act. **See: Sunil Grover Vs. Government of NCT of Delhi, AIR Online 2019 Delhi 210.**

15. **Offences under the SC/ST (Prevention of Atrocities) Act, 1989 when not constituted ? :** If there is no evidence to the effect that the accused committed the alleged offence that the victim or injured or the deceased was a member of Scheduled Caste or a Scheduled Tribe, the provisions u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 would not attract. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act is constituted. See : Masumsha Hasanasha Musalman Vs. State of Maharashtra, AIR 2000 SC 1876

16. **Conviction u/s 3(2)(v) also not to be recorded on conviction u/s 376 when there is no evidence to support charge u/s 3(2)(v) :** In a criminal trial for the offences u/s 376(2) IPC and u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989, the Supreme Court has held that if there is no evidence showing that the rape was committed by the accused on the victim since she was a member of SC/ST, the provisions of Section 3(2)(v) of the 1989 Act would not attract and the accused cannot be convicted u/s 3(2)(v) of the 1989 Act. See :

(i) Ramdas Vs. State of Maharashtra, AIR 2007 SC 155
(ii) Dinesh Vs. State of Rajasthan, AIR 2006 SC 1267
(iii) 2011 CrLJ 204 (All)

17. **Knowledge and not mens rea is an essential ingredient of the offences under the SC/ST (Prevention of Atrocities) Act, 1989** : Knowledge and not mens rea is an essential ingredient of the offences of Section 3(1) and 3(2) of the SC/ST (Prevention of Atrocities) Act, 1989. See : Mata Sewak Vs. State of UP, 1995 AWC 2031 (Allahabad) (Full Bench)

18. **Offence u/s 3(1)(x) of SC/ST Act is constituted only when the victim is insulted in public views:** The expression "in any place within public view" occurring in Section 3(1)(x) of the SC/ST Act means that the public must view the person being insulted for which he must be present and no offence on the allegations u/s 3(1)(x) gets attracted if the person is not present. See:

(i) Asmathunnisa Vs. State of AP, AIR 2011 SC 1905 (para 10)
(ii) Gorige Pentaiah Vs. State of AP, (2008) 12 SCC 531
(iii) Sudama Giri Vs. State of Jharkhand, 2009 CrLJ (NOC) 1250 (Jharkhand)

19. **'Public View' may be inferred even from a private place if independent persons from public are present there:** To attract the offence under Section 3(1)(x) of the SC/ST Act, the place where the offending action takes place should be within public view, that does not mean that the place should be a public place. It could well be a private place provided the utterance was made within the public view. "Public view" is understood to mean a place where public persons are present howsoever small in number they may be. Public persons are independent and impartial persons who are not interested in any of the parties. The same has been explained to mean persons not having any kind of close relationship or association with the complainant. Such persons are as good as strangers who do not have any liking for the complainant through any close relationship or any business commercial or other vested interest and who are not participating members with him in any way. See:

(i) Daya Bhatnagar Vs. State, 2004 (109) DLT 915
(ii) Smt.Usha Chopra Vs. State & Another, 115 (2004) DLT 91
(iii) Kanhaiya Paswan Vs. State, 2012 (4) ILR (Delhi) 509
(iv) Kusum Lata Vs. State & Others, 2016 (4) AD (Delhi) 362.

20. **Insulting a member of SC/ST community behind closed doors does not constitute an offence under the said Act:** In the case noted below, the Allahabad High Court has held that to constitute an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the alleged offence should have been committed in "public view". where a person is allegedly insulted for being a member of the SC/ST community behind closed doors, the SC/ST Act cannot be applied. See:

(i). **Hitesh Verma Vs State of Uttarakhand, AIR 2020 SC 5584 (Three-Judge Bench)**

(ii). **Order dated 28.03.2018 of the Allahabad High Court passed on Application No. 40418 of 2012 moved u/s 482 CrPC, K.P. Thakur Vs. State of UP.**

21. **SC/ST (Prevention of Atrocities) Act, 1989 to attract only when the offence is committed in public view and not in room :** Where the cognizance of offence u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 was taken on the basis of allegations by the informant, a member of SC community, that he was accosted in way and was brought to a room where he was abused, assaulted and intimidated by number of accused persons, it has been held that since the informant was intimidated and abused etc. in a room and not within public view, therefore Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 was not attracted. **See :Hitesh Verma Vs State of Uttarakhand, AIR 2020 SC 5584 (Three-Judge Bench)**

22. **Door of accused not being in public view, no offence found to have been committed under SC/ST Act:** In the case noted below, the allegations were levelled by the complainant belonging to the Scheduled Caste that the accused had abused the victim by the name of his caste in public. The occurrence had taken place at the door of house of the accused. There was nothing on record to show that the said door of the accused was within the public view. The Allahabad High Court held that since the offence had not been committed in public view, no offence under the SC / ST Act was made out against the accused person and his conviction was set aside. **See: Raj Kumar Agarwal Vs. State of UP, AIR Online 2018 All 4975.**

23. **Conviction for insulting and assaulting members of SC/ST in public view held proper:** In the case noted below, there was evidence to prove that the accused persons had abused the complainant and his wife by calling them "chamarwala" and "chamarwali" with an intention to insult them by their caste in public place within public view. The accused persons had assaulted the complainant and his wife and inflicted serious and other injuries on them and the same was proved by medical evidence. The Supreme Court held that the guilt of accused persons was established and their conviction by the trial court and the High Court for the offences under the SC/ST Act was held proper. See: **Ram Prakash v. State of MP, AIR Online 2019 SC 1593.**

24. **Conviction of the accused for offence under SC/ST Act upheld despite the independent witnesses having turned hostile:** In the present case, the informant had alleged that the accused had abused by addressing him with castiest remarks and also threatened him to murder him. Version of the informant was that the accused had racially abused him and given him life threat in presence of the two independent witnesses. The two independent witnesses denied the said allegations and did not support the prosecution story and categorically denied the occurrence of the incident. There were glaring contradictions in the testimonies of the hostile witnesses as regards the manner and nature of the actual incident. The Allahabad High Court held that the testimony of the hostile witnesses was not reliable and the conviction of the appellant was upheld. **See: Ramzan Vs. State of UP, AIR Online 2019 All 2100.**

25. **Whatsapp message not being in public view held not to constitute offence under the SC/ST Act:** In the present case, the convict / appellant had sent certain offending messages to the complainant of the SC community through the Whatsapp but the contents of the messages were not in public view, no assault had occurred nor was the appellant in such a position so as to dominate the will of the complainant. The Supreme Court held that even if the allegations set out by the complainant with respect to the Whatsapp messages and words uttered were accepted on their face, no offence was made out under the SC/ST Act (as it then stood). The allegations on the face of the FIR did not establish the commission of the alleged offences. See: **Pramod Suryabhan Pawar Vs. State of Maharashtra, AIR 2019 SC (Criminal) 1489.**

26. **Changing chat on facebook from private to public would amount to chat in public view and would attract SC/ST Act:** In the case noted below, the informant stated that her husband/accused harassed and abused her caste on social network site, the facebook. Defence of the accused/husband was that the facebook wall of a member cannot be described as place within 'public view'. Change of privacy settings from public to private makes person's post not accessible to the members other than those befriended with the author. In the present case, the offending post fell foul of Section 3(1)(x) of the SC/ST Act even when the settings were private and punishable. If the befriended member was independent, impartial and not interested in any of the parties, privacy settings on facebook as private or public would make no difference for attracting the SC/ST Act. See: **Gayatri alias Apurna Singh Vs. State and Another, 2018 ADR 384.**

27. **Knowledge of the caste of the victim being SC/ST mandatory to constitute offence under SC/ST Act:** If the accused did not know the caste of the complainant, then he could not have been held liable to be penalized under the provisions of the SC/ST Act. In the circumstances, while affirming the conviction and sentence of the appellant under Section 294 IPC, the Supreme Court granted benefit of doubt to the accused and acquitted him of the charge under Section 3(1)(x) of the SC/ST Act. **See:**
    - **(i) Supreme Court judgment dated 10.05.2019 delivered in Criminal Appeal No. 883 of 2019, Narad Patel Vs. State of Chhattisgarh.**
    - **(ii) Supreme Court judgment in Criminal Appeal No. 1283 of 2019, Khuman Singh Vs. State of MP.**

28. **Knowledge of the caste of the victim being SC/ST mandatory to constitute offence under SC/ST Act:** In the present case, the occurrence had taken place in the spur of moment and in heat of passion. There was nothing on record which could prove that the appellants had committed the offence due to the reason that the victims / injured persons belonged to the Scheduled Caste. A Division Bench of the Allahabad High Court held that the provisions of Section 3(1)(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were not attracted and no offence was constituted under the said Act. See: **Ram Prakash Yadav Vs. State of UP, AIR Online 2019 All 975 (DB) (Lucknow Bench).**

29. **Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 in respect of offence of rape not to attract merely because the victim belongs to SC or ST community** : Where a woman belonging to ST was allegedly raped but there were no allegations much less proof to show that the accused committed rape on her on the ground that she belonged to ST, it has been held that mere fact that victim woman belonged to ST *ipso facto* cannot attract Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989. See : 2010 CRLJ 3812 (AP).

30. **SC/ST (Prevention of Atrocities) Act, 1989 when to attract ?** : Where accused was convicted for offences u/s 506, 354 of the IPC and also u/s 3(1)(x) of the SC/ST (Prevention of atrocities) Act, 1989, it has been held that since there was no evidence that the alleged act was committed by the accused knowing fully well that the prosecutrix belonged to the SC community and there was also no cogent legally admissible evidence in respect of Section 506 IPC, only offence u/s 354 IPC was made out and not u/s 506 & 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. **See: Sanjay Das Vs. State of M.P, 2011 CrLJ 2095 (Chhattisgarh High Court)**

31. **Offence u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 not substantive offence & no penalty can be awarded thereunder :** Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code 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 Scheduled Caste or a Scheduled Tribe or such property belongs to such member, then with the aid of Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 enhanced punishment of life imprisonment would be awarded in such case but conviction and sentence u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 simpliciter is not permissible under law and in such cases the accused will be convicted for the offence under IPC read with section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 and sentence of imprisonment for life and fine will be awarded. Therefore, the appellants could not be convicted and sentenced u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 simpliciter. Section 3(2)(v) of the SC/ST Act does not constitute any substantive offence. The accused has to be convicted under the IPC with the aid of Section 3(2)(v) of the SC/ST Act, 1989. See :
(i) Mijaji Lal Vs. State of UP, 2009 (65) ACC 446 (All) (DB)
(ii) Ramesh Chhakki Lal Vs. State of UP, 2009 CrLJ (NOC) 683 (Allahabad)

32. **Cognizance of offences w.e.f. 26.01.2016 (as amended by central Act No. 1 of 2016) under the SC/ST (Prevention of Atrocities) Act, 1989 to be taken by the 'Exclusive Special Court' or 'Special Court' notified u/s 14(1) of the Act** : As per the second Proviso to sub-section (1) of Section 14 of the SC/ST (Prevention of Atrocities) Act, 1989, as amended by Central Act No. 1 of 2016 w.e.f. 26.01.2016, Cognizance of offences w.e.f. 26.01.2016 (as amended by Central Act No. 1 of 2016) under the SC/ST (Prevention of Atrocities) Act, 1989 is to be taken by the 'Exclusive Special Court' or 'Special Court' notified u/s 14(1) of the Act. The said second Proviso to Section 14(1) reads thus : "*Provided further that the courts so established or specified shall have power to directly take cognizance of offences under this Act.*"

Note: *Vide Circular Letter of the Allahabad High Court, the Court of the Second Senior Most Additional Sessions Judge of every Sessions Division in Uttar Pradesh has been notified to be the '**Exclusive Special Court**'.*

33. **Sessions Judge to take cognizance of the offences under the SC/ST (Prevention of Atrocities) Act, 1989 only on committal of case by Magistrate** : Special Court of Sessions constituted u/s 14 of the SC/ST (Prevention of Atrocities) Act, 1989 cannot take cognizance of any offences under the Act without case being committed by Magistrate to it. Conviction by the special court under the 1989 Act is not sustainable if it has *suo motu* entertained and taken cognizance of the complaint directly without the case being committed to it and, therefore, there should be re-trial or total setting aside of the conviction, as the case may be. See :

(i) Vidyadharan Vs. State of Kerala, (2004) 1 SCC 215
(ii) Moly & another Vs. State of Kerala, AIR 2004 SC 1890
(iii) Gangula Ashok Vs. State of AP, AIR 2000 SC 740
(iv) Mata Sewak Vs. State of UP, 1995 AWC 2031 (All)(Full Bench)

34. **Cognizance and trial of case by Special Court valid even in the absence of commitment of the case by Magistrate :** Giving approval to an earlier Two-Judge Bench decision of the Supreme Court reported in State of M.P. Vs. Bhooraji & Others, AIR 2001 SC 3372 and disapproving the law declared by other Two-Judge Benches in the cases of Moly & Another Vs. State of Kerala, AIR 2004 SC 1890 & Vidyadharan Vs. State of Kerala, (2004) 1 SCC 215, a **Three-Judge Bench** of the Hon'ble Supreme Court (on reference being made to resolve the conflicting views in the above cases) has held that if the cognizance of an offence under the 1989 Act is taken by the Special Judge directly without cognizance by Magistrate under Section 193 of the CrPC and without the case being committed to sessions under Section 209 CrPC, conviction by special judge cannot be set aside or there cannot be a direction of re-trial. The decisions rendered in the cases of Moly & Vidyadharan without noticing the decision in Bhooraji, a binding precedent, were *per incurium.* Law laid down in the cases of Moly & Vidyadharan does not expound the correct position of law and they stand overruled. The law laid down in Bhooraji's case is the correct law. See : **Rattiram & Others Vs. State of UP, 2012 (76) ACC 885 (SC) (Three-Judge Bench).**

35. **Special Court constituted under the SC/ST (Prevention of Atrocities) Act, 1989 continues to be Court of Sessions :** The Supreme Court, in the cases noted below, has held that a Special Court of Sessions constituted u/s 14 of the SC/ST (Prevention of Atrocities) Act, 1989 continues to be Sessions Court even after specification as Special Court under the 1989 Act and trial of an accused for the offences under IPC only by such special court would not be without jurisdiction. See :

(i) State of H.P. Vs. Gita Ram, AIR 2000 SC 2940
(ii) Gangula Ashok Vs. State of A.P., AIR 2000 SC 740

36. **Charge-sheet/FR/complaint in respect of Gazetted Officers to be filed in the court of CJM :** Cases against Gazetted Officers are to be filed and instituted in the court of Chief Judicial Magistrate. See : Rajan Shukla Vs. State, 2006 CrLJ (NOC) 83 (Uttarakhand).

37. **Court having jurisdiction to take cognizance of offences on receipt of police report u/s 173 (2) CrPC has power to order registration of FIR u/s 156 (3) CrPC**: Court having jurisdiction u/s 190 CrPC to take cognizable of the offences is competent to pass order upon an application moved u/s 156(3) CrPC. See:

(i) Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705 *(para 16).*

(ii) Lokesh Kumar Dwivedi Vs. State of UP, 2016 (93) ACC 818 (All)

(iii) Mahendra Pal Jha vs. Ram Autar Sharma, 2001 (42) ACC 125 (All)

38. **Interim bail by Sessions Judge/Addl. Sessions Judge:** In the cases noted below, it has been laid down that Sessions Judges and Addl. Sessions Judges are empowered u/s 439 CrPC to grant interim bail to an accused of non-bailable offence keeping the bail application pending for disposal on merits:

a. **Lal Kamlendra Pratap Singh Vs. State of UP, 2009(2) Crime 4 (SC)**

b. **Smt. Amrawati & Others Vs. State of U.P., 2005 (1) Crimes 44 (All—Seven Judge Bench.....***which received approval by Supreme Court vide its order dated 23-03-2009 passed in criminal appeal no. 538/2009 Lal Kamlendra Pratap Singh Vs. State of U.P.) and circulated by the High Court amongst the Judicial Officers of the State of U.P. vide C.L. No.:44/2004, dated 16.10.2004*

c. **Sheo Raj Singh @ Chhuttan Vs. State of UP, 2009(65) ACC 781(All-DB)**

d. **Tahseen Khan Vs. State of UP,** *decision dated 19.11.2010 rendered in Criminal Misc. Writ Petition No. 21083/2010 by a Division Bench of the Hon'ble Allahabad High Court & circulated amongst the Judicial Officers of the State of UP.*

e. **Sukhwant Singh Vs. State of Pujab, 2010 CRLJ 1435(SC)**

39. **Interim bail by Magistrate or Sessions Judge when not to be granted:** Interim bail pending hearing of a regular bail application ought not to be passed where **:**

(i) *The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims and society at large and for protecting witnesses.*

(ii) *The case involves an offence under the U.P. Gangsters Act and in similar statutory provisions.*

(iii) *The accused is likely to abscond and evade the processes of law.*

(iv) *The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.*

(v) *The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.*

(vi) *The offence is in the nature of a scam, or there is an apprehension that there may be interference with the investigation or for any other reason the Magistrate/Competent Court feels that it is not a fit case for releasing the appellant on interim bail pending the hearing of the regular bail.*

(vii) *An order of interim bail can also not be passed by a Magistrate who is not empowered to grant regular bail in offences punishable with death*

or imprisonment for life or under the other circumstances enumerated in Section 437 CrPC.

(viii) If the Public Prosecutor/Investigating Officer can satisfy the Magistrate/Court concerned that there is a bona fide *need for custodial interrogation of the accused regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime, or for obtaining information leading to discovery of material facts, it may constitute a valid ground for not granting interim bail, and the Court in such circumstances may pass orders for custodial interrogation, or any other appropriate order.* See : **Pradeep Tyagi Vs. State of UP & Others, 2009 (65) ACC 443 (All…DB)**(*Para 12*)**.**

40. Reasons must be recorded by court when adjourning the hearing of bail application and not granting interim bail : Relying on the Seven-Judge Bench decision of the Hon'ble Allahabad High Court in Amrawati Vs. State of UP, 2004 (57) ALR 290 and the Apex Court decision in Lal Kamlend Pratap Singh Vs. State of UP, 2009 (67) ACC 966 (SC) and avoiding to record strictures on the conduct of the concerned Magistrate, in the case noted below, the Hon'ble Allahabad High Court (Hon'ble Karuna Nand Bajpayee, J.) has observed thus : *"the need and desirability of hearing the bail applications on the same day is not difficult to gauge from the observations made by the Full Bench in Amrawati's case when it held that if on the application made u/s 437 CrPC, the Magistrate feels constrained to postpone the hearing of the bail application, he should release the accused on interim bail and if there are circumstances which impell the court not to adopt such a course, the court shall record its reasons for its refusal to release the applicant on interim bail.*" See : **Naval Saini Vs. State of UP, 2014 (84) ACC 73 (All)(para 7) .**

41.1. Anticipatory Bail u/s 438 CrPC: A Two - Judge Bench comprising Justice Adarsh Kumar Goel and Justice Uday Umesh Lalit in their judgement dated 20.03.2018 had observed that the provisions of the SC/ST (Prevention of Atrocities) Act, 1989 are being misused and as such was arbitrary, unjust, irrational and violative of Article 21 of the Constitution of India. There could not have been any curtailment of the right to obtain anticipatory bail under Section 438 CrPC. Prior scrutiny and proper investigation was held necessary before effecting arrest of the accused named in the FIR. The Supreme Court had issued following directions in the case:

(i) There is no absolute bar against grant of anticipatory bail in cases under the SC/ST (Prevention of Atrocities) Act, 1989 **if no prima facie case** is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D. Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);

(ii) In view of the acknowledged abuse of law of arrest in cases under the SC/ST (Prevention of Atrocities) Act, 1989 **arrest of a public servant** can only be **after approval of the appointing authority** and of a non-public servant **after approval by the S.S.P.** which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

(iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the SC/ST (Prevention of Atrocities) Act, 1989 and that the allegations are not frivolous or motivated.

(iv) Any violation of directions under (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

(v) The above directions are prospective. See: **Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra, (2018) 6 SCC 454.**

Note1: *Parliament by an amendment of 2018 added a new Section 18A in the SC/ST (Prevention of Atrocities) Act, 1989 and legislatively overruled the said Two-Judge Bench Judgement in Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra, (2018) 6 SCC 454 and took away the power of the courts to grant anticipatory bail u/s 438 CrPC to the accused persons for the offences under the said Act.*

Note2: *Now over ruled by a Three -- Judge Bench of the Supreme Court comprising Justices Arun Mishra, Vineet Saran, S. Ravindra Bhat vide their judgement dated 01.10.2019 delivered in Union of India Vs. State of Maharashtra, See: AIR2019 SC 4917.(Three -- Judge Bench)*

41.2. Permission of appointing authority before arrest of public servant not necessary: Overruling the directions issued by a Two-Judge Bench of the Supreme Court in the case of Subhash Kashinath Mahajan Vs. State of Maharastra, AIR 2018 SC 1498, a Three-Judge Bench of the Supreme Court has ruled that prior approval of the appointing authority before arrest of a public servant is not required as there is no such prohibition either in IPC or in CrPC and the same is also contrary to the provisions of Article 15(4) and also impermissible under Article 142 of the Constitution. See:Union of India Vs.State of Maharastra, AIR 2019 SC 4917 (Three-Judge Bench).

42. No anticipatory bail for offences under SC/ST Act (Section 18 of SC/ST Act): Section 438 of the Code of Criminal Procedure shall not apply to persons committing an offence under the Act. Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.See: Union of India Vs. State of Maharashtra, (2020) 4SCC 761 (Three-Judge Bench)

43. Prohibition of anticipatory bail: Section 18A w.e.f 17.08.2018 of the SC/ST Act: By inserting a new Section 18A in the said Act, the Parliament overruled legislatively the directions of the Supreme Court on arrest, enquiry and anticipatory bail as issued in the case of Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra, (2018) 6 SCC 454. New Section 18-A is reproduced below:

"**(1)** For the purposes of this Act,

(a) Preliminary enquiry shall not be required for registration of a First Information Report against any person;

(b) The investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

44A. Anticipatory bail u/s 438 CrPC for offences under SC/ST Act when to be granted?: It is important to keep oneself reminded that while sometimes, perhaps mostly in urban areas, false accusations are made, those are not necessarily reflective of the prevailing and wide spread social prejudices against the members of the oppressed classes. While considering any application seeking pre-arrest bail, the High Court has to balance the two interests:

(i) that the power under Section 438 CrPC is used sparingly and such orders are made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and

(ii) that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. See: **Supreme Court judgement dated 10.02.2020 in Writ Petition (C) No. 1016 of 2018, Prathvi Raj Chauhan Vs. Unioin of India.**

44B. Anticipatory bail can be granted if no prima facie case is made out: Despite bar of Sections 18 and 18-A of the Act, anticipatory bail can be granted under the SC/ ST Act if no prima facie case is made out. See: **Rahna Jalal Vs State of Kerala, (2021) 1 SCC 733(Three-Judge Bench)**

45. Bail by Magistrate under the SC/ST (Prevention of Atrocities) Act, 1989 : Where the accused had allegedly committed offences u/s 323, 504, 506 IPC and 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989, the Allahabad High Court has ruled that since the offence u/s 3(1)(x) of the 1989 Act is punishable with sentence upto five years and fine only, Magistrate has got jurisdiction to grant bail for the offence u/s 3(1)(x) of the aforesaid Act irrespective of the fact that the offence is triable by the Court of Sessions. See: Munna Pandey Vs. State of UP, 2008 (62) ACC 637 (All)

46. Rights of victims and witnesses for hearing and protection: **Section 15A w.e.f. 26.01.2016:** Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 added w.e.f. 26.01.2016 is reproduced below:

(1) It shall be the duty and responsibility of the **State to make arrangements for the protection of victims, their dependents, and witnesses** against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim‘s age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release,

parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses:
(a) the complete protection to secure the ends of justice;
(b) the travelling and maintenance expenses during investigation, inquiry and trial;
(c) the social-economic rehabilitation during investigation, inquiry and trial; and
(d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (*6*), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including—
(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;
(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;
(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (*c*) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (*c*) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as—

(a) to provide a copy of the recorded First Information Report at free of cost;

(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;

(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;

(d) to provide relief in respect of death or injury or damage to property;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;

(f) to provide the maintenance expenses to the atrocity victims and their dependents;

(g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;

(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;

(i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;

(j) to take necessary precautions at the time of medical examination;

(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.

47. "Hearing": What is?: Oral hearing not required once show cause notice or opportunity to reply is afforded: Once the show cause notice is given and opportunity to reply to the show cause notice is afforded, it is not necessary to give an oral hearing. See: Gorkha Security Services Vs. Government (NCT of Delhi), (2014) 9 SCC 105.

48. Personal hearing when not required?: Relying upon the Supreme Court decision in A.R. Antulay Vs. R.S. Naik, AIR 1988 SC 1531, a Division Bench of the Allahabad High Court has held that the principles of natural justice cannot be stretched too far. It depends upon the facts and circumstances of the case as to whether the personal hearing was a must. This need not be permitted

to be exploited as a purely technical weapon. The legislature appears to be conscious in not making provision for personal hearing under Section 20 of the Urban Land (Ceiling & Regulations) Act, 1976. Opportunity of personal hearing is not necessary when opportunity of making comments or sending some more details have been afforded. That itself is sufficient for compliance of the principles of natural Justice. See: (i) Pyare Lal Tandon Vs. State of UP, AIR 1993 Allahabad 118 (DB) and (ii) Shesh Mani Nath Tripathi Vs. Dy. Inspector General of Police, AIR 1964 Allahabad 540 (Full Bench).

49. Personal hearing not necessary when the party was provided opportunity to submit its detailed explanation: Where the party had not sought opportunity of personal hearing and was asked to submit its explanation which it had submitted in detail by including therein each and every relevant circumstance, it has been ruled by the Supreme Court that the party was not prejudiced by non-grant of opportunity of personal hearing. See: Nirma Industries Limited Vs. SEBI, (2013) 8 SCC 20.

50. Oral hearing when not required?: In the case noted below, a Constitution Bench of the Supreme Court has ruled that it has never been held either in this country or elsewhere that the rule of *audi alteram partem* (hear the other side also) takes within its sweep the right to make oral submissions in every case. It all depends upon the demand of justice in a given case. See: Mohd. Arif Vs. Registrar, Supreme Court of India, (2014) 9 SCC 737 (Five-Judge Bench).

51. Investigation by a police officer of below rank than prescribed not to vitiate trial or conviction: Where an FIR under the Prevention of Corruption Act, 1988 was investigated not by the officer of the rank and status of Deputy SP or equal but the police officer of the rank of Inspector, it has been held by the Supreme Court that such lapse would be an irregularity and unless it resulted in causing prejudice to the accused, trial and conviction would not be vitiated.See:

(i). **Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88**

(ii). Ashok Tshersing Bhutia Vs. State of Sikkim, (2011) 4 SCC 402

51.1. Effect of investigation by a police officer below the rank of Deputy SP(Rule 7 of the 1995 SC/ST Rules) : By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the 1995 Rules provide rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the CrPC when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offences complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence u/s 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence u/s 3 of the Act for taking cognizance of that offence. See :

(i).State of MP Vs. Babu Rathore, (2020) 2 SCC 577
(ii)State of MP Vs. Chunnilal, 2009 (4) Supreme 418.

52. **A police officer below the rank of Deputy SP not competent to investigate offences under the 1989 Act :** According to Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995, investigation of an offence committed under the SC/ST (Prevention of Atrocities) Act, 1989 cannot be conducted by a police officer below the rank of Deputy Superintendent of Police (DSP). Provisions of Rule 7 are mandatory and the charge-sheet or other proceedings initiated on the basis of an investigation conducted by a police officer below the rank of DSP being improper and bad in law deserve to be quashed. See :
(i) 2010 CrLJ 1528 (All)
(ii) M. Kathiresan Vs. State of Tamil Nadu, 1999 CrLJ 3938 (Madras)
(iii) A Sasikumar Vs. The Superintendent of Police, 1998 (1) CTC 276 (Madras)

53. **A police officer below the rank of Deputy SP not competent to investigate offences under the 1989 Act :** Where an accused was convicted for the offences u/s 3(1)(xi) of the SC & ST (Prevention of Atrocities) Act, 1989 and u/s 341 IPC on the basis of an investigation and charge-sheet thereafter by a Sub-Inspector of Police, the Andhra Pradesh High Court, in appeal, set aside the conviction of the accused u/s 3(1)(xi) of the 1989 Act on the ground that the Sub-Inspector of Police was not authorized for investigation under Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995 but the conviction u/s 341 IPC was found proper as the Sub-Inspector of Police was competent in law to investigate the offence u/s 341 IPC. See : D. Ramalinga Reddy Vs. State of A.P., 1999 CrLJ 2918 (AP)

54. **A police officer below the rank of Deputy SP whether competent to investigate offences under the 1989 Act ? :** Where the investigation of offense u/s 302 IPC & u/s 3 of the SC/ST Act, 1989 was conducted by officer below the rank of Deputy SP but charge sheet was submitted in court by officer of the rank of DSP, the investigation was held to be proper as per rule 7 of the 1995 Rules. See **:** Purushottam Vs. State of UP, 2010 (4) ALJ(NOC) 531(Allahabad).

55. **A police officer below the rank of Deputy SP not competent to investigate offences under the 1989 Act :** Where FIR involving offences u/s 364, 324 , 323, 149, 148 IPC & u/s 3(2) of SC / ST Act was investigated by the police officer below the rank of Deputy SP, interpreting rule 7 of 1995 Rules, it has been held by the Supreme Court that only investigation qua offence under the SC/ST Act is vulnerable & not those relatable to the IPC. See :
(i) State of Punjab Vs. Hardial Singh, 2010 (70) ACC 848 (SC)
(ii) Jawahir Sharma Vs. State of UP, 2010 CRLJ 1528(Allahabad).

56. **Investigation of offences under SC/ST Act and explanation for delay in submitting charge-sheet new Rules 7(2) and 7(2A) w.e.f. 14.04.2016:** The new Rules 7(2) and 7(2A) added in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 w.e.f. 14.04.2016 provide for prompt investigation of the offences committed under the said Act and also for explanation of the Investigating Officer for delay in completing the

investigation and submitting the charge-sheet to the Court. The said Rules 7(2) and 7(2A) are reproduced below:

"Rule 7(2): The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority, submit the report to the Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the officer in- charge of the concerned police station shall file the charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet).

Rule 7(2A): The delay, if any, in investigation or filing of charge-sheet in accordance with sub-rule (2), shall be explained in writing by the investigating officer".

57. Using word "*Chamar*" whether offence u/s 3(1)(x) of the 1989 Act ? : Calling a member of the Scheduled Caste **"***chamar***"** with intent to insult or humiliate him in a place within public view is certainly an offence u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. Whether there was intention on the part of the accused to insult or humiliate by using the word "chamar" will depend on the context in which it was used. It is thus the intention in which the word "chamar" was used. It is true that chamar is the name of a caste among Hindus who were traditionally persons who made leather goods by handicraft. But today the word "chamar" is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person "chamar" today is nowadays an abusive language and is highly offensive. In fact, the word "chamar" when used today is not normally used to denote a caste but to intentionally insult and humiliate someone. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. Hence, the so-called upper castes and OBCs should not use word "chamar" when addressing a member of the Scheduled Caste, even if that person in fact belongs to the "chamar" caste, because use of such a word will hurt his feelings. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Object and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the said Act, what has to be taken into account is the popular meaning of the word "chamar" which it has acquired by usage, and not the etymological meaning. If the etymological meaning is taken into account, it may frustrate the very object of the Act and hence that would not be a correct manner of interpretation. Before the coming of the British into India, the chamars were a stable socio-economic group who were engaged in manufacturing of leather goods by handicraft. As is well known, feudal society was characterized by the feudal occupational division of labour in society. In other words, every vocation or occupation in India became a caste e.g. *dhobi* (washerman), *badhai* (carpenter), *lohar* (blacksmith), *Kumbhar* (potter), etc. The same was the position in other

countries also during feudal times. Thus, even now many Britishers have the surnames like Baker, Butcher, Taylor, Smith, Carpenter, Gardener, Mason, Turner etc. which shows that their ancestors belonged to these professions. See : Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435.

58. **Words "*sali dhobin*" when not to amount to an offence under the SC/ST (Prevention of Atrocities) Act, 1989** : Where utterance of words "Sali Dhobin" was made by the accused on the first floor of the house, it has been held that Section 3(i)(X) of the SC/ST (Prevention of Atrocities) Act, 1989 was not attracted as the floor of the house was not a public place. See : Suhail Fasih Vs. State of UP, 2012 (76) ACC 10(All)

59. **Non-mentioning of caste of SC/ST in FIR not fatal :** After ascertaining the facts during the course of investigation it is always open to the Investigating Officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court to either accept the same or take the cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed, at the time of trial, materials can be placed to show that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. See : Mrs. Pushpa Vijay Vonde Vs. State of Maharashtra, 2009 CrLJ 3204 (Bombay)

60. **Disclosure of caste of both sides i.e. the accused and the complainant necessary for taking of cognizance of offences under the SC/ST Act :** Where FIR does not disclose caste of the accused as well as of the complainant, cognizance of the offence under the SC/ST Act could not be taken on the basis of such FIR. See : State of Maharashtra Vs. Vijay Chandradhan, 2010 CrLJ (NOC) 104 (Bombay)

61. **Disclosure of caste in complaint not necessary** : It is not a requirement u/s 3 of the SC/ST Act, 1989 that the complainant should disclose the caste of the accused in the complaint. See : Mr. Pushpa Vijay Bonde Vs. State of Maharashtra, 2010 (70) ACC 413(Bombay High Court)(Full Bench)**.**

62. **FIR when not containing the caste of accused? :** FIR is not expected to be an encyclopedia. It is open to the investigating officer to record that the accused either belongs to or does not belong to SC/ST. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to SC/ST. Even if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to SC/ST. Thus the accused can, during investigation or at the time of framing of charge or at the time of trial, can show that he either belongs to SC/ST or not so that applicability of section 3(1)(xi) of the Act is ruled out. See : Ashabai Machindra Adhagale Vs. State of Maharashtra, AIR 2009 SC 1973 (Three-Judge Bench)

63. **Probation not to be granted to an offender above the age of 18 years for the offences under the 1989 Act :** Section 19 of the SC/ST (Prevention of Atrocities) Act, 1989 provides that Section 360 CrPC or the provisions of the Probation of Offenders Act, 1958 shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under the 1989 Act."

64. **Penalty u/s 3(2)(5) of the 1989 Act :** If an accused commits any offence under IPC with imprisonment for a term less than ten years, then Section 3(2)(5) of the SC/ST Act , 1989 can not be attracted in such case. Where a Fast Track Judge of Aligarh judgeship had convicted four accused persons u/s 363 IPC r/w Section 3(2)(5) of the SC/ST Act (though Section 363 IPC is not punishable with imprisonment for a term of ten years or more but it is punishable with imprisonment for a term which may extend to seven years) and sentenced them with the imprisonment of five years each, the conviction and sentence was set aside by the Allahabad High Court as Section 3(2)(5) was not attracted at all. The same Fast Track Judge had also convicted the accused persons for offence u/s 366 IPC r/w Section 3(2)(5) of the SC/ST Act but had awarded the sentence of imprisonment of five years only u/s 366 IPC (although an offense u/s 366 IPC is punishable with imprisonment for a term which may extend to ten years) , passing severe strictures against the aforesaid trial Judge, the Division Bench observed thus "In such situation, the accused persons, who do not belong to SC or ST , ought to have been convicted u/s 366 IPC read with section 3 (2)(5) of the SC/ST Act because Section 366 IPC is punishable with imprisonment for life and fine ought to have been awarded u/s 366 IPC read with section 3(2)((5) SC/ST Act whereas sentence of five years imprisonment with fine has only been awarded u/s 366 IPC. The impugned judgment shows that the learned Trial Judge is not well equipped with criminal law which is really very unfortunate. Registrar General is directed to send a copy of this order through the District Judge concerned within a week to the said Trial Judge who is advised to improve his legal knowledge by perusing law books." See : Munni Devi Vs. State of UP, 2009 (65) ACC 522 (All)(DB).

65. **POCSO Court to try both the cases where accused charged under SC/ST Act also:** A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though

the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See:

(i) **KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498**

(ii) (ii) **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP)** *(paras 14, 15, 16, 17, 19 & 20)*

66. **Protection of Children from Sexual Offences Act, 2012 & Determination of Age of Victim Girl :** Where while hearing on a bail application of an accused of offences u/s 363, 366, 376, 504, 506 IPC and u/s 3/4 of the Protection of Children from Sexual Offences Act, 2012, the Hon'ble Allahabad High Court came to know that the age of the prosecutrix said to be 15 years was though determined by the Radiologist and Medical Officer but the prosecutrix was not produced before CMO for final determination of her age. Noticing the said lapse on the part of the IO, the Hon'ble Court issued warnings to the IO with the direction to the Registrar General of the Hon'ble Court to send a copy of the said judgment to the Principal Secretary (Health), Govt. of UP and also to the SSP, Allahabad and the CMO, Allahabad for suitable action against all responsible. See : **Panch Lal Adivasi Vs. State of UP, 2014 (84) ACC 22 (All).**

67. **Non-compoundable offences: Section 320(9) CrPC:** Section 320(9) CrPC imposes complete prohibition against compounding of those offences which are not compoundable under the provision of Section 320 CrPC.

68. **Distinction between power of High Court and the Sub-Ordinate Court u/s 320 & 482 CrPC for allowing compounding of offences:** Power of compounding of offences conferred on a court u/s 320 CrPC is materially different from power conferred on High Court u/s 482 CrPC. In compounding of offences, power of a criminal court is circumscribed by the provisions

contained in Section 320 CrPC. See: **State of Rajasthan Vs. Shambhu Kewat, (2014) 4 SCC 149.**

69. **Wrong compounding of offence-Revision lies:** Where the acquittal is based on the compounding of the offence which is invalid under the law, revision lies. See: **Sheetala Prasad Vs. Sri Kant, 2010 (68) ACC 271 (SC)**

70. **Relief/compensation to the victims of the offences under the SC/ST Act:** Rule 12 (4) w.e.f. 14.4.2016: The District Magistrate or the Sub- Divisional Magistrate or any other Executive Magistrate shall make necessary administrative and other arrangements and provide relief in cash or in kind or both **within seven days** to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure-I read with Annexure-II of the Schedule annexed to these rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.

71. **Immediate withdrawal of money:** Rule (4A) w.e.f. 14.4.2016**:** For immediate withdrawal of money from the treasury so as to timely provide the relief amount as specified in sub-rule (4), the concerned State Government or Union territory Administration may provide necessary authorisation and powers to the District Magistrate.

72. **Socio-Economic Rehabilitation:** Rule (4B) w.e.f. 14.4.2016**:** The Special Court or the Exclusive Special Court may also order socio-economic rehabilitation during investigation, inquiry and trial, as provided in clause (c) of sub-section 6 of section 15A of the Act.

73. **Power of Special Court or Exclusive Special Court to order for socio-economic rehabilitation of the victims:** Rule 12 (4B) w.e.f. 14.04.2016: The Special Court or the Exclusive Special Court may also order socio-economic rehabilitation during investigation, inquiry and trial, as provided in clause (c) of sub-section 6 of section 15A of the Act.

74. **Amount of relief/compensation payable to the victims of the offences under SC/ST Act:** Annexure – 1 of Rule 12(4) w.e.f 14.04.2016 provides for the amount of relief payable to the victims or their dependents for different offences/atrocities committed against them.

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