



Legal provisions regarding the scheduled castes and scheduled tribes and administration of justice

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Abstract

India is a diverse country, and is devoted to the development and welfare of its citizens since the independence of India in the year 1947 and later followed by the commencement of the constitution in the year 1950. The constitution of India provides for equality of status and opportunity to all the citizens of this country, as well as it also provides that no citizen shall be discriminated on the grounds of religion, caste or sex, etc. The directive principles of the state policy, stands as testimony to the commitment of the state towards its people as stated under articles 38, 39, 39A and 46. The goal is to provide education, justice and security to the weaker sections of the society involving the scheduled castes and scheduled tribes.

The untouchability act was passed in the year 1955 which was later refurbished in the year 1976 and the act came to be known as the Protection of Civil Rights Act. Despite these provisions being enacted there was lack of administration due to the lacunae and loopholes. Later in the year 1989 the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, was enacted it proved to be a great success in comparison with its predecessors as the Indian Penal Code and the Protection of Civil Rights act had failed to put a control in the atrocities caused against the Scheduled castes and Scheduled Tribe people.

Keywords: atrocities, the scheduled caste/scheduled tribe (Prevention of Atrocities) act, investigation, rehabilitation, reliefs

Introduction

India is such a country which is rich in diversification and yet the country was devoted to the welfare of the citizens since the commencement of the constitution in the year 1950. The constitution of India provides for equality of status and opportunity to all the citizens of this country, as well as it also provides that no citizen shall be discriminated on the grounds based on religion, sex or caste. The directive principles of the state policy, stands as testimony to the commitment of the state towards its people as stated under articles 38, 39, 39A and 46. The goal is to provide education, justice and security to the weaker sections of the society involving the scheduled castes and scheduled tribes.

The Untouchability Act was passed in the year 1955 which was later refurbished in the year 1976 and the act came to be known as the Protection of Civil Rights Act. Despite these provisions being enacted there was lack of administration because of the loopholes that were present. Later in the year 1989 the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, was enacted it proved to be a great success in comparison with its predecessors as the Indian Penal Code and the Protection of Civil Rights act had failed to put a control in the atrocities caused against the Scheduled castes and scheduled tribes' people.

Constitutional provisions

The Indian constitution under article 15, specifically states that no citizen shall be subjected to any disability or restriction on the grounds of religion, caste, sex or place of birth.

Article 16 provides for equality of opportunities in matters of public employment, and no citizen shall, be discriminated against on grounds like sex, religion, place of birth or descent etc.

Article 29 of the constitution provides for the protection of minorities which include the scheduled tribes. Article 371 even provides for special provisions in respect to Arunachal Pradesh, Assam, Manipur, Mizoram, Nagaland and Sikkim.

Article 338 guarantees the formulation of National Commission for Scheduled Castes which monitors all the matters that are related to the constitutional and other legal safeguards and to inquire into those specific complaints which are registered with regards to the deprivation of rights.

India is a vast country with a lot of diversification and the problems of social inequality is greatly prevalent. The country is distributed into various heterogeneous groups and various other hierarchical and social divisions, the two of them being the scheduled tribes and scheduled castes.

Article 46 of the constitution provides for the state to promote educational and economic opportunities for the upliftment of the people, especially in particular of SCs and STs by providing them with some special provisions and by providing them protection from all and any kind of injustice that might occur to them.

Legal Provisions

The parliament has enacted some special statutes in order to uphold the constitutional mandate and for the protection of the interests of these sections of the society. These statutes has proved to be very useful for the welfare of the people belonging to the scheduled castes and scheduled tribes.

The major enactments that have been made are as follows:

1. The Protection of Civil Rights Act which was enacted in the year 1955.
2. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) act which was passed in the year 1989,
3. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) rules which was passed in the year 1995;

The Protection of Civil Rights Act, 1955 is an extension of the abolition of untouchability and its practice in any form provided under article 17 of the constitution. This act provides for the punishments for the discriminatory practices of untouchability in order to remove the disabilities of the social system of India.

The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 which provided the provisions in order to prevent the atrocities that occurred against the SCs and STs was enacted by the government of India on 30th January 1990. This act was enacted in order to check and control the crimes and atrocities that occur against the persons belonging to the communities of the scheduled tribes and scheduled castes.

In the case of *Dr. Ram Krishna Balothia v. Union of India* (AIR 1994 MP 143), the Madhya Pradesh High Court observed that, the entire scheme of the SC/ST (PoA) act was to provide protection to the members of the scheduled castes and scheduled tribes and further to provide for special courts to provide speedy trial of the offences that were committed. The act has been definitely a success with regards to weeding out the prime reasons of the atrocities that has been occurring with the Scheduled Castes and the Scheduled Tribes.

The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995, came into force under the effect of section 23(1) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989. This statute gives detailed guidelines in order to prevent the atrocities that occur against the scheduled castes and the scheduled tribes.

These enacted statutes, acts as a source of positive discrimination in favor of the scheduled castes and scheduled tribes, providing for more stringent punishments under these statutes than the punishments and penalties that are provided by IPC or any other statute.

Crimes against the SCs and STs

According to the data provided by NCRB, (national crime records bureau) in the year 2020, the crimes against the scheduled castes and scheduled tribes has greatly risen with maximum cases being registered in the states of Uttar Pradesh and Madhya Pradesh.

Crime against SCs

The incidence of crime against the scheduled castes, in 2011 the number of cases that were registered was about thirty seven thousand cases. In the year 2015, the number of cases of atrocities against the SCs, were 45,003.

In the year 2019, a total of almost fifty thousand cases of crimes against the SCs were registered, and within a year the number has greatly risen to vast amount of almost fifty five thousand cases in the year 2020 showing an increase of almost ten percent. The crime rate had increased from almost twenty three per lakh population to twenty five per lakh population.

The NCRB data also specifically mentioned that the cases of “simple hurt” were the most number of registered cases of atrocities amounting to almost seventeen thousand cases, which amounted to almost forty percent in the year 2020. It was followed by cases under the SC/ST prevention of atrocities act which amounted to almost five thousand cases or almost about nine percent and cases that were registered under criminal intimidation amounted to almost four thousand cases which was about the eight percent of the total number. The data also stated that another three thousand cases were registered for rape, three thousand cases for assault on women with intent to outrage modesty, almost a thousand cases for murder and almost two thousand cases for attempted murders.

Crime against STs

The incidence of crime that occurred against the scheduled tribes, in the year 2011 were registered to a number of almost six thousand cases. In the year 2015, the number of cases that were registered for atrocities against the STs, were recorded to a number of almost eleven thousand cases.

In the year 2019, a total of eight thousand cases were registered as cases of crime against the STs, and in if we look at the year 2020, with just a difference of one year the cases had increased to almost an amount of about nine thousand and five hundred cases with an increase of about ten percent as compared to the crimes that were committed in the year 2019. The crime rate had increased from seven per lakh population in 2019 to almost eight per lakh population the year 2020.

The cases involving simple hurt included of the largest chunk, with a number of 2247 cases which amounted to about twenty seven percent of the total number of cases, almost a thousand cases of rape forming about fifteen

percent, and about nine hundred cases of assault on women with intent to outrage her modesty accounting to about eleven percent.

Atrocities and Legal precedents

The easiest way of committing a crime against the scheduled castes or scheduled tribes is by humiliating them by teasing them with their caste or tribal nature with the intention of hurting their sentiments.

In *Kaliya Peru Mal V. State of Tamil Nadu* (AIR 2003 SC 3828), the Hon'ble court has observed that, the accused abused the complainant by her caste name, in filthy language, thereby causing insult and intimidation to her. The Hon'ble Court held that, this amounted to an offence under section 3 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989.

Another common way in which the SCs and STs are being harmed is by wrongful possession. Under section 3 (1) (f) the Scheduled Caste/Scheduled Tribe (PoA) act, 1989, provides that a person being a non-SC or non-ST wrongfully occupies or cultivates any land, which is owned by, or is in the possession of or has been allotted to, or has been notified by any competent authority to be allotted to a member of a Scheduled Caste or scheduled Tribe or gets such land transferred those persons shall be punishable with imprisonment for a term which shall not be lower than six months but which may increase up to 5 years with fine.

In the case of *Kashiben Chhaganbhai Koliv. State of Gujarat* (CriLJ1156 : 2008), a member belonging to the Scheduled Caste was dispossessed from his land by an upperclassman. The accused agreed to sell his land to the petitioner and handed over possession to him. The accused entered the land forcefully and damaged the crops of the petitioner. The claim was supported by the eyewitness present and the accused was convicted under section 3(1) (v) as well as for damaging the crops.

Bonded labour cannot be seen in this current age and time, but there was a era when bonded labour was greatly prevalent. But, in the present situation under The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989, if a person belonging to scheduled caste or scheduled tribe is compelled by someone not belonging to Scheduled Castes or Scheduled Tribes, to do "beggar" is liable for punishment of a minimum of six months and a maximum of 5 years, accompanied by fine.

The list of atrocities that are committed against the Scheduled Castes and Scheduled Tribes are given in section 3 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989, which include:

1. Dumping of sewage in an area occupied by a person of Scheduled Tribe or Scheduled Caste.
2. Garlands with footwear.
3. Making a person forcibly tonsure their head or moustache or painting face or any other act which is derogatory to the human dignity.
4. Wrongful occupation or cultivation of a land owned by a person of Scheduled Caste or Scheduled tribe.
5. Destroys or defiles objects that are sacred or in high esteem for the members of the Scheduled Castes or Scheduled Tribes.
6. Any act of sexual nature against the members of the Scheduled Castes or Scheduled Tribes.
7. Forceful removal of garments of a person belonging to the Scheduled Castes or Scheduled Tribes.
8. Imposing any kind of boycott which is social or economical in nature against the persons belonging to Scheduled Castes or Scheduled Tribes.
9. Denial of accession in the irrigation facilities or forests.
10. Forceful removal of a person from his residence, on the ground that he belongs to Scheduled Castes or Scheduled Tribes.

Nature and punishments under The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989:

The offences that has been listed in the act are cognizable in nature and hence the police can arrest the offenders without a warrant and can also proceed with the investigation without taking any orders from the court.

The punishments under this act extend from a minimum of six months imprisonment to a maximum of 5 years accompanied by a fine. Still in some cases the punishments can also be increased to life imprisonment or even death sentence.

Section 4 of this act specifically provides for the punishment for the neglect of duties by a public servant. The section mentions, that any person occupying the office of a public servant but is not a member of a scheduled caste or scheduled tribe consciously neglects the duties that are required to be performed by him is punishable for imprisonment for a term of which shall not be less than six months but which may extend to one year as provided under this act or as provided by the rules provided in any other enactment.

Section 5 of the act provides for increased punishments for the crimes so committed. The section states that, a person who has been already convicted for an offence under this chapter has been convicted for the second offence, subsequent to the second offence, is punishable with imprisonment for a term which is not less than one year but which may extend to the punishment provided for that particular offence.

Special Courts for SCs/STs

The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989 clearly provides for the establishment of special courts given in chapter 4 of the act. Section 14 (1) of the act states that, for the purpose of providing for speedy trial the state government shall, with the concurrence of the Chief Justice of the High Court, by

providing a notification in the Official Gazette, for establishing Exclusive Special Courts for one or more districts.

These special courts are not similar to that of a normal court. These special courts shall only try for offences committed under this act on a day to day basis.

Prof. Jaffet of the department of sociology in National Law School has given his opinion regarding this and has said that these special courts were performing better than the normal court sessions.

P.S Krishnan, who was the Former member secretary of the National commission of backward classes has said that for each and every special courts that were established, the government shall by giving notification on the Official Gazette appoint a police officer as investigating officer for the purpose of investigation with respect to cases that are offences under this act.

The act also provides that for every special court that has been established, a public prosecutor or an advocate who has been in practice as an advocate for atleast seven years shall be appointed by the state government by giving a notification in the Official Gazette as a special public prosecutor for conducting the cases that get registered in those special courts.

Reliefs provided

The relief amount to be provided to the aggrieved parties has also been justified under Annexure I of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995. Some of the reliefs that are provided are as follows:

- Rs. 1,00,000/- for offences related to wrongful occupation of cultivation of land.
- UptoRs. 1,00,000/- for offences related to wrongful dispossession of land.
- Rs. 1,00,000/- for offences related to beggar or any form of bonded labour.
- Rs.85,000/- for offences related to prevention of voting filing nomination.
- Rs. 85,000/- for offences related to institution of malicious proceedings.
- Rs. 1,00,000/- for offences related to public humiliation.
- Rs. 2,00,000/- for victims of offences related to intentional touching of a scheduled caste or scheduled tribe woman without consent using acts or gestures sexual in nature.

These are some of the reliefs that are guaranteed to the victims under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989.

Provisions with regards to investigation

Under section 23 of The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989, the central government is authorized to frame rules for carrying out the purpose of this act. It is under this section that the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995 was framed. Under this statute, according to Rule 7(1), investigation of offence committed under the SC/ST act cannot be investigated by an officer not below the rank of Deputy Superintendent Police (DSP).

In *D. Ramlinga Reddy v. State of AP (Cr.L.J. (1999) 2918)*, the A.P High Court, has stated that, provisions of Rule & are mandatory and held that investigation under the SC/ST act has to be carried out by only an officer who is not below the rank of DSP. An investigation is to be carried out. The charge sheet that has been filed by an incompetent officer is liable to be quashed.

Thus, the investigation that has to be done is to be of utmost importance and no negligence will be tolerated, and if there is any negligence the performing officer will be punished under section 4 of the The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989.

Similarly, in the case of *M. Kathiresam V. State of Tamil Nadu (1999 CriLJ 3938)*, the Madras High Court held that, the investigation that have been conducted by an officer who is not a DSP is improper.

Provisions with regards to rehabilitation

Under the Section 21 (2) mentioned under The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989, seeks for assuring social and economic rehabilitation of the victims. This helps in securing legal aid to the victims along with all kinds of travel and maintenance expenses, during the investigation and trial.

Rule 11 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995, states that every victim their dependents and witnesses shall be paid rail fares by second class in express/mail passenger train or actual bus or train fare from his/her place of residence to the place of investigation.

Under Rule 12 mentioned under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995, directs the District Magistrate for making arrangements for providing immediate relief which can be either in cash or in kind or both to the victims who has been harmed by the atrocities, their family members & dependents, including food, water, clothing, shelter, medical and transport facilities and the important items required for maintaining proper human dignity. However the rules to determine the level of relief has been provided in the schedule of the act.

Rule 13 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995, states that the state government to take care in appointing persons with proper inclination and understanding of the problems that the SCs and STs come across and to ensure that SCs and STs are given adequate representation in the police force and administration system.

Rule 14 provides guidelines for the state to make necessary provision in the annual budget for providing relief to the SCs and the STs and for the rehabilitation purposes.

These are the provisions that are laid under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) rules, 1995, which has been commenced under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) act, 1989.

Conclusion

From the beginning of the era of written history, the backward communities and classes have suffered because of the hierarchical differences in society. The upperclassmen has always taken advantage of the lower castes and tribes and exploited them to the fullest. Even in the British era the situation was same and these people faced those atrocities and were exploited. After the independence of India, our constitutional framers made the constitution with the goal of providing social and economic justice to its people, and to provide equality among all without making any discrimination on the basis of caste, colour, creed, sex or religion.

After the enactments of several statutes following the constitutional provisions, the atrocities committed against the SCs and STs has seen a huge drop as compared to the situation before. Right now the main cause of atrocities is due to the lack of education and development in the rural areas of the country. However with the passage of time, India will definitely come out of these shackles and the country will be truly free from the evils of castes and tribal discrimination.

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