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INTERPRETATION OF THE LEGAL STATUTES RELATED TO SC/ST (PREVENTION OF ATROCITIES) ACT AMENDMENT

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Abstract: *The paper besets with the background of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and its subsequent amendment in 2018. The real purpose of the act was to act as shield to the vulnerable section of the society against the high and mighty. However, in 2018, the Supreme Court diluted the provision making it almost toothless and frustrating the entire objective of the Act. The judgment unilaterally decided all Dailts to be "liars" and all cases lodged are "false" and hence directed to add anticipatory bail to the ones against whom cases are being lodged giving them an almost blanket immunity. This was immediately addressed by the Legislature through an amendment in 2018 which aimed to restore the real purpose of the Act. The author here enumerates on the interpretation aspect of the Act which the judiciary miserably failed to ponder upon.*

Introduction

TheSC/ST (Prevention of Atrocities) Act Amendment in 2018 was a result of an erred Supreme Court judgment which diluted the entire Act and its purpose behind it. The act came in for a purpose and that was to protect the vulnerable backward class society from the oppression by the mighty. But the judiciary failed to grasp the real objective and went behind mere numbers showing high acquittal rates in the cases registered under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The author here takes the aid of purposive interpretation to grasp the real objective of the act and how the judiciary miserably failed to take the liberal approach which the Act envisage. The failure of the judiciary compelled the

legislature to come up with an amendment in 2018 which nullified the narrow approach and restored the original purpose of the Act for which it was enacted.

The Context

The SC/ST (Prevention of Atrocities) Act Amendment in 2018 (Hereinafter "2018 Amendment") saw the light of the day because of a controversial decision of the two-judge bench of the Supreme Court in *SK Mahajan vs State of Maharashtra (criminal appeal no.416 of 2018)* delivered on March 20. While the author moves to the integrities of the 2018 Amendment, the author will firstly set out the context and the background of the act with its inception and disputes.

In 1955, the SC/ST Act was originally passed by the Parliament as the Untouchability (Offences) Act. In 1976, it was renamed as the Protection of Civil Rights (PCR) Act. However, that was proven to be non-effective later on and hence it got replaced with the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act in 1989 (Hereinafter "the Act"). As time passed by, in 2015, the Act encompassed more offences like like tonsuring of the head, the moustache of backward caste people by upper-castes which were categorised as criminal activities.

Now, in 2018, in *SK Mahajan vs State of Maharashtra (criminal appeal no.416 of 2018)* delivered on March 20, the Supreme Court delivered a judgment which forces a counter-constitutional judicial amnesia with respect to atrocities suffered by scheduled castes and tribes. This case was dramatic travesty from the main purpose and objective of the Act.

The brief facts of the case is concerned with a 2007 dispute when one Bhaskar Gaikwad (from SC community) filed a complaint against the college principal Satish Bhise (from non-SC community). It was alleged that Mr. Bhise made some malafidecasteist comments against Mr. Gaikwad in the annual confidential report (ACR).

Mr. Gaikwad came to know about these remarks in his ACR and he filed a FIR against Mr Bhise under the sections of the SC/ST Act that penalise a non-SC person for giving a public servant false information that could harm a SC person. Subsequently, the police went to prosecute them.

In 2016, Mr. Bhise approached the Bombay High Court which dismissed his plea of setting aside the FIR against him. Following the High Court setback, the principal appealed this in the

Supreme Court. The apex court, instead of concerning itself solely with the merits of Mr. Mahajan's appeal, dramatically expanded the ambit of the case, noting,

> *"The question which has arisen in the course of consideration of this matter is whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse."*

Now this judgment diluted the entire Act under the garb of protecting innocent people from being victimised by fake and malafide complaints under the SC/ST Act. It allowed anticipatory bail to be granted to those alleged to be booked under the Act and laid down precisely four important guidelines for arrests under the Act "to avoid false implications".

Those three guidelines are summarised below:

1. A preliminary enquiry is to be initiated and conducted by the concerned DSP to check that the allegations are not "frivolous or motivated" before registering a case against a person.
2. There is a requirement of permission of the Appointing authority before arresting a public servant under this Act.
3. Not only public servants, but also others can only be arrested after Senior Superintendent of Police (SSP) of the concerned district permits to do so.
4. The reasons for granting permission should be recorded by SSP and hand it to the accused and the Court.

The rationale of this judgment was majorly based on the National Crime Records Bureau (NCRB) data for 2015 which stated that for almost 15-16% complaints closure reports were filed. And for the rest 75% of cases, the courts had granted acquittals'/withdrawals or compounding of the cases.

This instigated a nationwide outrage of the SC/ST community because the judgment carefully countermanded the original mandate of the Act. Amid the anger and outrage o the public, the

Government decided to amend and reinstate the original flavour of the act by amending the Act in 2018 which will eventually nullify the Supreme Court judgment of March 20.[1]

So, after the menace created by the Supreme Court, the Government came with an amendment in 2018 to control the dilution of the Act by the March 20 Judgment. So the amendment inserts three new clauses to the section 18 of the 1989 Act. The first states that, a "preliminary enquiry shall not be required for registration of a First Information Report (FIR) against any person". Corresponding to it, the next clause mentions that "the arrest of a person accused of having committed an offence under the Act would not require any approval". Thirdly, the provisions of anticipatory bail enshrined in section 438 of CrPC shall not apply to a case under this Act, "notwithstanding any judgment or order of any Court".

Also, a review petition was filed by the Government to review the judgment of March 20. On the review petition filed by the Government on October 1, 2019, the Supreme Court recalled its earlier March 20 judgment and said that it was unfair to all SC/ST community members as "a liar or crook". Subsequently, in another petition, the Supreme Court upheld the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act of 2018.

Interpreting the Amendment

While the author talked about the inception of the act and the concerning controversies, the author will now delve into the essence of interpreting this Act and its 2018 Amendment. The stringent provisions of this Act has been always under controversy and there have been split views on the applicability and implementation of the provisions. However, the laws of interpretation of statutes gives the Act a beneficial interpretation and that the author will discuss in depth below.

Beneficial legislations are those which aims to confer some kind of benefit to individuals or classes of people. The nature of these benefits is to protect vulnerable classes of society from oppressions targeted on them.[2] So, a beneficial legislations are given liberal interpretation to give

[1]KrishnadasRajagopal, 'Supreme Court upholds amendments made to nullify own judgment diluting provisions of SC/ST Act, *The Hindu* (10 February 2020).
[2] M.N Rao, N S Bindra's Interpretation of Statutes, pg. 341(10th ed, 2007), Lexis NexisButterworths, New Delhi.

them the widest possible meaning which the language permits. When a statute is meant for the benefit of a particular class and if a word in the statute is capable of two meanings i.e. one which would preserve the benefits and one which would not, then the meaning that preserves the benefit must be adopted.[3]

Beneficial construction is an interpretation to secure remedy to the victim who is unjustly denied of relief. The interpretation of a statue should be done in such a way that mischief is suppressed and remedy is advanced.[4]

Beneficial interpretation is considered to be the touchstone of interpretation. The law comes for a cause and it cannot exist in vacuum and so cannot the interpretation. If the entire essence of the cause is lost in the dark then the law can be deemed to be futile. Similarly while diluting the SC/ST Act, the Supreme Court chose the path of vacuum. It ignored the basic principle of beneficial interpretation and why the law was ever drafted. If the object of safeguarding the vulnerable minority community is lost in the dark, then the real objective behind the law fails. The visions of the makers of the law is ignored.

Here in the 1989 Act, to understand the mischief it wanted to remedy, we need to date back to the object and purpose of the Act. The Statement of Objects and Reasons of the 1989 act states:

> *"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied a number of civil rights. They are subjected to various offences, indignities, humiliations and harassment… A special legislation to check and deter crimes against them committed by the non-scheduled Castes and non-Scheduled tribes has, therefore, become necessary".*

So here the intention of the beneficial legislation is clear that they want to protect the vulnerable class of SCs and STS against the oppression of upper castes and according to Justice G.P Singh these legislations need to interpret keeping the following rules in mind.[5]

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[3]Hanumant, On Beneficial Construction available at http://hanumant.com/IOS-Unit7-BeneficialAndStrictConstruction.html last visited on August 18, 2012.

[4] G. Granville Sharp, *Maxwell on interpretation of statutes*, pg 68 (10th ed. 1953),Sweet & Maxwell Limited, London.

a. The words in the statute should be given the widest possible meaning till the language of the statute permits.
b. liberal approach should be adopted to confer benefits on particular class or category for which the beneficial legislation is intended.
c. The words used in the statute should be given a purposive interpretation for effectuating the object of the welfare legislation.

The laws of interpretation was given a deaf ear while the Supreme Court gave the March 20 judgment diluting the 1989 Act. It indirectly frustrated the entire objective of the Act by dilution of the Act. It failed to give beneficial interpretation by giving a narrow ambit instead of a wider interpretation. This was immediately felt by the Legislature, hence the amendment was indispensable.

In Halsbury's Laws of England, Volume 44(1), fourth reissue, para 1474, pp 906-07, it is stated:

> *"Parliament intends that an 'enactment shall remedy a particular mischief and it is therefore presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, should find a construction which applies the remedy provided by it in such a way as to suppress that mischief."*

The doctrine originates in Heydon's case where the Barons of the Exchequer resolved that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

1. what was the common law before the making of the Act;

2. what was the mischief and defect for which the common law did not provide;

3. what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and

The purposive interpretation was totally ignored by the Supreme Court in the March 20 judgment which defeated the entire purpose of the 1989 Act. The predominant nature of the purposive

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[5] *Id.*

interpretation was recognized in **ShaileshDhairyawan v. Mohan BalkrishnaLulla** (2016) 3 SCC 619 which is as follows:

> "*33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced.Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by* ***ParayankandiyalEravathKanapravanKallianiAmma v. K. Devi*** *(1996) 4 SCC 76, para 68* ***Revanasiddappa v. Mallikarjun****, (2011) 11 SCC 1, para 40 11 (2016) 3 SCC 619 the courts not only in this country but in many other legal systems as well.*"

In **Salomon v. Salomon & Co Ltd** [1897] AC 22, Lord Watson observed that:

> "*In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.*"

In **Black-Clawson International Ltd. v. PapierwerkeWaldhof-Aschaffenburg AG** [1975] AC 591, p. 613, Lord Reid held that:

> "*We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said.*"

Not only the Act of 1989 was misinterpreted, the Court also ignored the basic guiding principles of interpreting the Constitution. The base of the 1989 Act lies in the in the intersection of Article 14 and 21along with Article 15 and Article 17 (which prohibit vertical and horizontal discrimination and untouchability). A Constitution is the grun-norm of the law of the land and it is a settled law that if two meanings are derived from reading a law then a beneficial approach is to be taken to give it a wider ambit instead of a narrow one.[6] A bare reading of the Articles might give rise to two construction i.e. one liberal and one narrow but by the rules of purposive interpretation, the beneficial approach should be taken.

However, the Amendment in 2018 took the wider view. The amendment now seeks to run parallel to the real objective of the 1989 Act. It nullifies the restrictive approach of the Supreme Court and takes the liberal road ahead.

Recently Punjab & Haryana Court held that "a casteist slur made over a mobile phone, will not be categorised as an offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989"

The reasoning of the Court is based on a well-established principle of criminal law that a penal statue should be strictly interpreted. However, the case lost a golden opportunity to expand the scope of the 1989 Act to ensure the real purpose behind it. The Court failed to strike a balance between the purposive interpretation of a welfare legislation and the strict interpretation of a penal statute. It was argued that the act of abusing the Sarpanch (SC community) over a phone call was not within the ambit of public view and would not be an offence. The Court was of the view that the phone call cannot be considered as a public view.

Here again the Court failed to understand that the Act in question is not only a penal statute but a social welfare one as well It was especially brought into picture protect the constitutional rights of members of the Schedule Caste and Schedule Tribe communities as guaranteed under Article 15 and Article 17 of the Constitution. So the objective of the Act is different from a penal statute. Understanding the context properly, we find that the act is also a remedial statute and it is the duty upon the court is to balance the interpretation of the Act in a way that it meets the intended

[6]Bindra, N.S., " Interpretation of Statute", (2017).

outcome but at the same time does not expand the Act in such a way, that it becomes a monster of its own.

Conclusion

The SC/ST Act and the SC/ST Amendment Act is of enormous significance for Dalits and other backward communities. It cannot diluted based on just their poor conviction rates and shoddy implementation. The real problem with the law is not the misuse but the abysmal condition of the Indian criminal justice system. The criminal justice system is flawed that it fails to differentiate between the real problem faced by the Dalits and the misuse of it. The jurisprudence of the 1989 Act is so noble that it takes into account the entire social matrix of the Indian society. However, Courts with their narrow interpretation have made matters worse. The woeful narrow interpretation and confusing attitude of considering the Act to be of only penal nature are the real concerns which needs to be addressed. Sadly, the judiciary has been reluctant to acknowledge the social matrix of jurisprudence in India, which is caste.