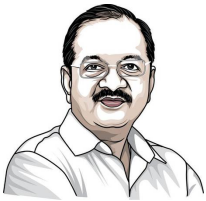


Was the SC right on the anti-atrocities law?

A view of the Supreme Court in New Delhi. | Photo Credit: [Shiv Kumar Pushpakar](#)

YES | Gopal Shetty



There was a need for the court to step in so that innocent people are not implicated

The recent Supreme Court ruling on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, is clear in intent and is nothing new. So, I am baffled by the reactions to the judgment. What it does is to direct the police to verify all the facts of a case before registering a complaint under the Act so as to ensure that justice is done to both the complainant and the accused.

The Constitution, drafted by B.R. Ambedkar, premises equality before law, which means that all citizens of the country are equal, including Dalits and Adivasis. Ambedkar gave us the mantra of Bandhutva (brotherhood) and we all should follow it and protect all the citizens of this country.

Misuse of law

But let us not be oblivious to the fact that there are a few people today who misuse the very law that was enacted to protect them. And if someone is misusing the law to level a false charge, what can possibly be wrong in saying that the complaint has to be verified at the preliminary stage by a preliminary committee before a formal charge can be made? And this is exactly what the Supreme Court has said. If a complaint is registered under the said Act, without verifying the facts of a case, isn't one going against the very principles of natural justice? Shouldn't every citizen get a fair opportunity to defend herself?

But having said that, it is also a fact that investigating officers do not take cognisance of complaints filed by Dalits and Adivasis. Therefore, let me add that cases must be registered against erring police officers who have either delayed or avoided filing a complaint.

The apex court has given a direction to thoroughly verify the facts of the complaint before registering the FIR of the complainant. The government has also informed the court that it does not intend to make any amendments to the Atrocities Act. Despite the submission, we witnessed a nationwide protest. Properties worth crores of rupees were damaged and people lost their lives. The question is, who is responsible for this?

As for figures, chargesheets are filed in 77% of the cases filed. To my knowledge and following our discussions in Parliament, in 2014, about 40,000 cases were registered under the Act; in 2015, there was a slight drop; and in 2016, the figures were similar to the 2014 figures. There was a need for the court to step in so that unwarranted cases are not registered and innocent people are not implicated.

Rural and urban areas

The reasons behind the low conviction, which is 15%, is because cases are registered without proper investigation and a simple accusation leads to an FIR which does not stand scrutiny in a court of law. This exercise is a way to harass people and is a complete waste of time — of both the police and the court.

Also, one will find that in the figures provided by the government, more cases under the Act are filed in rural areas as opposed to urban areas where caste identities are blurred. It is easier to falsely implicate people in rural areas. Every time there is a fight or a dispute in rural pockets, it is given a caste angle and someone or the other gets implicated under the Atrocities Act. Just as a few false rape cases are registered to harass or settle scores under Section 376 of the IPC, it is not uncommon to find the Atrocities Act being similarly misused.

Gopal Shetty is a BJP MP from Maharashtra

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NO |Anand Teltumbde

The judgment neutralises an Act which provided some sense of protection to hapless people

I denounce this judgment not merely because it is anti-Dalit but because it suffers from several infirmities.

Neutralising an Act

The case in question was in response to an appeal from the Director of Technical Education against whom a Dalit employee had filed a case under the SCs and the STs (Prevention of Atrocities) Act for denying him permission to prosecute the officer who was primarily charged for committing an atrocity. The court could have accepted his appeal and quashed the case. Instead, it went beyond that and added conditions for admissibility of atrocity cases which amounted to rewriting the Act, thus defying all canons of objectivity and judicial propriety. The judgment effectively neutralises the Act which provided some sense of protection to hapless people against oppressive societal prejudices. The reluctance of the ruling establishment in implementing the “Act with teeth” is evident from the fact that its implementation came in 1995, after a delay of six years.

The bogey of its misuse, however, was raised even before it became operative. The misuse of any law (including this one) can be attempted only by resourceful people. What are the chances of a poor Dalit landless labourer taking recourse to this law? About 75% of the population, especially women and the marginalised, avoid reporting a crime as they feel frustrated and unhappy with the way cops behave with complainants. It is only following pressure from activists that complaints of atrocities get into the police register. Even after the registration of a complaint, it has to pass through prejudicial barriers — police investigation, the indulgence of the prosecution, and the judicial verdict. The acquittal of culprits has become the norm. There are studies, such as one by the Centre for Social Justice, Ahmedabad, which have exposed how cases of atrocities result in acquittal due to the anti-Dalit attitude of the law enforcement.

The incidence of atrocities has persistently risen over the last two decades and hovers at an annual 50,000 cases today, implying that every hour six atrocities are being committed on Dalits in India. The conviction rate, however, was in single digits until recently. It is only after 2012, when this dismal reality was publicly decried that the government claimed the conviction rate was a little over 20%.

Several infirmities

It is a fact that in most cases the courts do not apply the Act saying that the crime was not committed because of the caste of the victim. In Khairlanji, among the most infamous caste crimes in history, the court declined to see a caste angle to the massacre. In 2002, in Jhajjar where five Dalits were lynched by a mob, the Act was not applied on the ground that the accused did not know the caste of the victims.

The judgment suffers from several infirmities. One, it violates the Constitution insofar as it rewrites the Act which is the preserve of Parliament. Two, the appellant could have been granted bail in the case and hence invoking Article 14 or 21 was uncalled for.

Three, the prayer of the appellant was to quash the case against him and not the Act. The judges in generalising this particular case erred in their judgment. Four, to decide whether the case is true or false is for the judges to examine. How can the police or some official perform this judicial function? It is unfortunate that such an unjust judgment has come from the Supreme Court, the last hope of the people to get justice.

Anand Teltumbde is a senior professor at the Goa Institute of Management and a civil rights activist

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IT'S COMPLICATED | D. Shyam Babu

The accused has a right to due process, but no one can assume that the Act is not being misused

The Supreme Court judgment, delivered on March 20, in the *Subhash K. Mahajan v. State of Maharashtra* stretches both law and logic to unbelievable levels. The court has held that the SCs and the STs (Prevention of Atrocities) Act, 1989, is being abused to falsely implicate innocent non-SCs/STs in criminal litigation and such abuse is "rampant". The conclusion prompted the court to issue guidelines to defend the victims of misuse of the Act. The rationale is obvious: discrimination suffered by the SCs/STs is an exception while the abuse of the Act enacted to protect them is the rule. The court also found it "necessary to express concern that working of the Atrocities Act should not result in perpetuating casteism" and cited B.R. Ambedkar to fortify its logic.

Reverse discrimination

This is similar to the argument of reverse discrimination or racism which is put forth against affirmative action. However, the court has taken its cue from a December 2014 report of the Parliamentary Standing Committee on Social Justice and Empowerment, which opined that the Act should have "an inbuilt provision" to protect those falsely implicated under the Act. But why should an Act which is meant to protect the human rights of SC/STs contain provisions that would deter them from invoking it? Shouldn't it be enough that any mala fide use of the Act could be dealt with under the IPC? In fact, the Parliamentary Standing Committee rejected this argument of the Ministry of Social Justice and Empowerment. The apex court too rejected it when the Additional Solicitor General made the submission in the present case.

Nobody can dispute that the accused has a right to due process of law, nor can one assume that the Act is not being misused. However, the court has ignored the extraordinary nature of infirmities suffered by the SCs/STs, which require exemplary legislation such as the Atrocities Act. When crimes of untouchability are treated as commonplace incidents, due process rights of individuals are given precedence over the need to safeguard the human rights of SCs/STs. If a case under the Atrocities Act is a mere dispute between two parties, as the court seems to have assumed, the justification for special constitutional provisions and laws disappears.

The court didn't even consider the Atrocities Act within the framework of fundamental rights. It cited a plethora of case laws on due process but didn't mention Article 17, a fundamental right, which not only abolished untouchability but remains the fount of all special laws (including the Atrocities Act) for the welfare of SCs/STs. The omission is glaring. The court has invoked the fundamental rights of an accused under Articles 14 and 21, and overlooked the fact that Article 17 is meant to help SCs/STs enjoy basic citizenship.

Wrong ministry approached

The legislature and the executive too are deeply implicated in their lackadaisical approach, further compounding the plight of these communities. The Standing Committee's demand for "an inbuilt provision" in defence of the accused deserved serious consideration though it is contrary to the stand of most political parties. But the committee asked the wrong ministry. The Ministry of Social Justice and Empowerment has no jurisdiction over the administration of criminal justice under the Act, which is the domain of the Home Ministry. The Home Ministry could have thrown light on the pertinent question of whether the extent of misuse of the Act is sufficient to warrant special measures to protect the accused, and why IPC provisions against false cases have been found to be inadequate.

Views expressed are personal

D. Shyam Babu is senior fellow at the Centre for Policy Research, New Delhi

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The India-Japan economic relationship remains underwhelming in relation to strategic ties

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