

RESPONDING TO WIDESPREAD CONCERN

Relevant for: Government Policies & Welfare Schemes | Topic: Welfare of SCs - Schemes & their performance; Mechanisms, Laws, Institutions & Bodies

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018 overrides a March 20 judgment of the Supreme Court, which restricted the powers of the police under the Code of Criminal Procedure to arrest a suspect. The verdict also read down a specific bar in the Atrocities Act of 1989 against anticipatory bail. Accused persons were not allowed to seek anticipatory bail to thwart arrest.

The judgment reasoned that many false cases are foisted on innocent persons under the 1989 Act and that the fundamental right of an innocent person to be protected from arbitrary arrest should be protected. For this, the court ordered that a Deputy Superintendent of Police should conduct a “preliminary inquiry” into every complaint of atrocity committed against an SC/ST member. Subsequently, the arrest of the accused persons should be approved by the Senior Superintendent of Police concerned. The judgment had led to widespread violence and loss of lives across the country, following which the government moved the Supreme Court for a review.

The 2018 Bill, passed by the Lok Sabha even as the government’s review petition is pending in the Supreme Court, overcomes the March 20 judgment by amending the 1989 Act to introduce Section 18A. This provision does away with the need for a preliminary inquiry or requirement for an investigating officer to take prior approval from his superior before registering an FIR on a complaint under the Act.

The statement of objects and reasons of the Bill highlights that the provisions of the Code of Criminal Procedure provide that information relating to commission of an offence should be recorded if the probe officer has “reason to suspect the commission of an offence”. The investigating officer can arrest a person and there is no requirement of conducting a preliminary inquiry before recording information.

The principles of criminal jurisprudence and Section 41 of the Code of Criminal Procedure imply that once the investigating officer has reasons to suspect that an offence has been committed, he can arrest an accused. This decision to arrest or not to arrest cannot be taken away from the investigating officer.

The Bill brings back the bar on accused seeking anticipatory bail. It says the provision of Section 438 (anticipatory bail) of the Code shall not apply to a case under this Act, notwithstanding any judgment/order of any court.

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