

Fault lines in a 'landmark' judgment

On July 6, the day of his retirement as a judge of the Supreme Court, [Justice A.K. Goel defended the verdict](#) that he delivered on March 20, 2018 for the bench — framing guidelines on how to deal with a person accused under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

He had said, “An innocent should not be punished. There should not be terror in society... We do not want any member of the Scheduled Castes (SCs)/Scheduled Tribes (STs) to be deprived of his rights.” Leaving aside the extraordinary implication of his comments as well as the judgment that the Atrocities Act is creating “terror in society”, no sensible person can question the need to protect those who are innocent from arbitrary arrest.

Before the saga fades from public memory, we must place on record how the Goel verdict symbolises the collapse of the constitutional scheme to protect the weaker sections of society as well as a certain intolerance of persons in high places towards requirements of social justice.

Expanding the SC/ST Act

The demand for “an inbuilt provision” to protect those falsely accused under the Act was first raised by a parliamentary committee in December 2014 and the apex court did so in March 2018. And the government is rather lightfooted in seeking a recall/revision of the verdict. All the three organs of the state are united in their lack of fidelity to both the letter and spirit of the Constitution insofar as it is concerned with the rights of the weaker sections.

The judgment is concerned with a limited aspect of the Act — protecting innocent officers and employees in government and private sectors from the misuse of the Act (especially “when no prima facie case is made out or the case is patently false or mala fide”). But, sadly, the judgment has ended up conveying a false and dangerous message that the Atrocities Act is “a charter for exploitation or oppression,” and “an instrument of blackmail or to wreak personal vengeance”.

One is reminded of G.K. Chesterton’s wise counsel that one must consider why a fence was put up in the first place before pulling it down.

‘Minor’ infractions

In essence, the verdict is based on a lot we don’t know. For example, while the court appears to have mistaken a large number of acquittals in atrocities cases to be false cases, the general consensus is that police apathy, the social and the economic might of the accused and the dependence of SC/STs on those accused would have resulted in acquittals. Similarly, there is no precise data on the scale and extent to which the Act has been misused by SC/ST employees. Do these cases of misuse of the Act by SC/ST employees run into the dozens, hundreds or thousands? We don’t know.

SC/ST judgment of Supreme Court is basically wrong decision, says ex-CJI Balakrishnan

What happens when a court determines that an atrocity case is false and was filed with mala fide intent? How did the court find that the provisions in the Indian Penal Code (Sections 191 to 195), which prescribe punishment for falsifying evidence, to be inadequate in atrocities cases? We don’t know.

Did the Home Ministry (the nodal ministry for both the criminal justice aspect of the Act as well as

service rules of Central government employees) assist the Additional Solicitor General who represented the government? We don't know.

But it is unlikely that the ministry even came into the picture as the court was dealing with a criminal appeal against a Bombay High Court judgment.

Therefore, a single case transmogrified itself into a judicial exercise of policymaking. Since the bench obviously saw a broader pattern of misuse of the Act, it had all the power to initiate *suo motu* proceedings to examine the issue, or refer the matter to a larger bench. This could have enabled the court as well as the government to delve into the relevant facts and data. But why didn't the court do so? We don't know.

Procedural lapse

The court's single-minded mission to end "terror in society" rendered it oblivious to the constitutional procedure to be followed in making policies that affect the SC/STs. Article 338 clause 9 stipulates: The Union and every State Government shall consult the Commission [National Commission for Scheduled Castes] on all major policy matters affecting Scheduled Castes.

Sending the wrong signal: SC order in SC/ST Act case

Article 338A, which created the National Commission for Scheduled Tribes, provides the same procedure (as per Clause 9) in case of STs. Therefore, when the court wears the policy-making hat in matters related to SC/STs, it too is constitutionally-bound to consult these commissions.

One can advance two grounds for not following Article 338. The first is that what the court did was tweaking to issue guidelines and is not a "major" policy matter. But the spontaneous nation-wide protests against the March 20 verdict render such a defence untenable. The second and more substantive justification could be that since no government has cared to follow this procedure since 1950, why bother the top court with such an archaic provision?

It is not just Article 338 but Part XVI of the Constitution, of which the Article is a part, has long ago been reduced to a charade by successive governments. What is the use of a principle if it is not followed? One is confronted with the dilemma — whether to retain the ideal of social justice in the statute book even if it is not followed or excise it since the ideal is found to be out of tune with the new India.

The twist in the tale is the Constitution (123rd Amendment) which seeks to create the new National Commission for Backward Classes under a new Article 338B. This too has clause 9 in verbatim. At least the government must explain why it is replicating a consultative procedure for the Other Backward Classes which remains a dead letter in the case of SC/STs.

The task of balancing the rights of innocent persons facing false accusations and the need to accord legitimacy to the Atrocities Act requires compassion, equanimity, reverence for the Constitution and awareness so even impromptu comments from the top court will acquire the force of law. Unfortunately, the March 20 verdict lost that balance.

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