

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

India has over 180 million Dalits. A crime is committed against a Dalit every 15 minutes. Six Dalit women are raped every day. Over the last 10 years (2007-2017), there has been a 66% growth in crime against Dalits. Further, data from the National Crime Records Bureau on which the [Supreme Court based its recent judgment](#) that sought to protect public servants and private citizens from arbitrary arrests under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, show that the rape of Dalit women has doubled in the last 10 years. The figures represent only a tip of the iceberg since most Dalits do not register cases for fear of retaliation by higher castes. Even if a case reaches court, the most likely outcome is acquittal due to caste biases at every stage.

Strangely, Justices A.K. Goel and U.U. Lalit in *Kashinath Mahajan*, adopting 'purposive interpretation' and invoking Ambedkar on societal fraternity, have diluted the stringent provision of denial of anticipatory bail in the SC/ST Act. The judgment gives no prominence to caste atrocities and ignores untouchability, which is still prevalent. The mischief that Parliament wanted to address too was ignored by the court. In the Statement of Objects and Reasons of the Prevention of Atrocities Act, Parliament had clearly noted that when Dalits assert their rights, vested interests try to terrorise them. Accordingly, keeping in view the special nature of crimes against Dalits, anticipatory bail had been excluded. A cursory glance of crimes made punishable under the SC/ST Act would explain why. Moreover, constitutionality of this exclusion had been upheld by a five-judge bench of the apex court in *Kartar Singh*, which Justice Goel noted in passing.

The decline in the conviction rate for crimes against Dalits has created an impression that this may be driven by false filing of cases. But data from NCRB do not seem to support this contention. In fact, the share of false cases under the SC/ST Act has declined over time (2009-2015). The conviction rate too has in fact improved — from 23.8% in 2013 to 28.8% in 2014. Why it dropped in 2015 after the Bharatiya Janata Party came to power has to be probed. But comparing conviction rates of hate crimes with that of ordinary crimes is neither rational nor reasonable.

Moreover, low conviction rates show poor investigation and incompetence of prosecution. Witnesses routinely turn hostile in such cases. We have low conviction rates in terror crimes as well, but will the court similarly dilute stringent provisions of terror laws? If there is concern about the 'presumption of innocence' of the accused, the protection of anticipatory bail should be extended to the accused in all cases and under all statutes.

As far as facts of the case in hand are concerned, the court is absolutely right that an adverse entry by non-SC officers in itself as to the character or integrity of the Dalit employee or routine denial of sanction of prosecution in good faith may not amount to a crime under the SC/ST Act. But then in this case the accused was indeed granted anticipatory bail. He had come to the apex court after the high court had refused to quash criminal proceedings against him. The high court rightly noted that in spite of possibility of misuse of the SC/ST Act, its penal provisions cannot be faulted as it would send the wrong signals to the downtrodden. The apex court has indeed sent wrong signals.

The court has deviated from the established judicial opinion on the subject. The Supreme Court had clearly said that anticipatory bail provision for the first time was introduced in 1973 and it is merely a limited statutory right and not part of right to life and personal liberty under Article 21.

Justice Goel's judgment has given too much space to the arguments in favour of those accused of offences against Dalits. He has quoted judgments from the Gujarat High Court at length. Gujarat, incidentally, has a low conviction rate under the SC/ST Act.

Only three small paragraphs (27, 28, 29) have been devoted to arguments in favour of the provision. Even the government arguments were not considered worthy of more than one paragraph. The government did not put its best foot forward. But why should we be surprised?

In any case, as for the case in hand, Section 22 of the SC/ST Act already protects public servants from prosecution if they acted in 'good faith'. But now even a First Information Report is not to be registered without preliminary inquiry. Moreover, even after the registration of FIR, the accused cannot be arrested without written approval of the appointing authority. No FIR can be registered against anybody without permission of the senior superintendent of police.

The judgment will have a chilling effect on the already underreported crimes against Dalits. The government must go for a review.

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