

**Some of the important points that need to be covered in the Government's petition/appeal to a larger Bench of the Supreme Court**

- Through the centuries of our history, the SCs have been denied the right to own agricultural land of their own, and this has been enforced through formal law in some Provinces, Princely States and everywhere through rigid caste-based custom, which is even more effectively lethal than formal law.
- Post-Independent land-reforms have not made significant change in their state of landlessness and they continue to be largely agricultural wage-labourers in rural areas, and in urban areas casual labourers in the unorganized sector, including scavenging labourers.
- STs have also been steadily deprived of their lands all through history, and in greater rapidity after Independence.
- As a result, the SCs and STs have become the two most vulnerable classes of people in the country.
- Any effort on their part to secure their Constitutional rights is visited with severe reprisals, including massacres, mass-arsons, social boycott and economic boycott, and humiliations of various types.
- Plenty of evidence is available of the above. A sample of this evidence need to be placed before the Supreme Court. These facts are so well-known and notorious that the Supreme Court will be required to take judicial notice of it.
- In view of the rampant perpetration of atrocities on them, the Government had no alternative but to enact the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (POA) Act 1989. At that time the Government was headed by Shri Rajiv Gandhi ji.
- The next Government headed by Shri V.P.Singh ji operationalised this Act.
- The present Government of the NDA headed by Shri Narendra Modi ji further strengthened the Act through the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (POA) Amendment Act 2015.
- Thus, there is an all-Party consensus on the Act and its strengthening.
- This is natural because it is founded on social realities and Constitutional mandates, for e.g., vide Article 46.

- Typically in every village, at one end are the powerful land-owning individuals who belong to the dominant land-owning community of the village(though all members of the community may not be large land-owners) and, at the other end, are the SCs who are largely landless agricultural labourers and other labourers.
- This juxtaposition is the basic contradiction in our society.
- This is strengthened by “Untouchability” which continues to be rampant, despite the Constitutional bar in Article 17 and the PCR Act.
- Because of the juxtaposition of the powerful and the powerless, it is very difficult to secure proper investigation and quick and successful trial.
- It is for this reason that a number of clear-cut cases like massacres and mass-arsons have ended in acquittals. In cases of convictions by trial courts, acquittals by High Courts have followed. There are cases where the Supreme Court set aside the High Court’s acquittals, showing that acquittal does not mean that the case is false.
- The following cases should be presented to illustrate the above:

**Kizhavenmani atrocity**, Tamil Nadu, in 1958, where 44 SCs were burned to death in a confined building. No doubt about the factum of massacre. The reason was SC Agricultural labourers seeking a little rise in their very low wages. What was sought was much lower than the existing statutory minimum wages. The High Court acquitted all the accused.

Karamchedu, Andhra Pradesh, 1984 – 5 SCs massacred. Trial court convicted many of the accused. The High Court acquitted all. The Supreme Court upheld the trial court judgment – a clear example that acquittals do not mean false cases.

Tsundur, Andhra Pradesh 1991 – 8 SCs massacred. Trial court convicted (2007). High Court acquitted (2014). The Supreme Court admitted SLP of surviving victims and survivors of victims. Government’s petition in the Supreme Court pending – the Supreme Court directed serving of notice to other parties and because the report of serving of notice is not received, the case is not yet posted for consideration of admission of the SLP. This is an example of how delay is a basic feature of our system and every additional layer of procedure, as directed in the Supreme Court’s judgment of 20.3.2018, will add to this delay. There is no mechanism anywhere in our system to ensure prompt service and report so that the case can move forward.

**6 cases of Bihar including Bathani Tola (1996) and Laxmanpur Bathe (1997)** . In most of these, the trial court convicted the accused. In all of them, the High Court acquitted the accused. Appeals are pending in the Supreme Court.

- The Government should also place the case of Kambalapalli, Karnataka as an example of the prime witness, who is the sole survivor and the head of a family whose other members were massacred, turned “hostile” resulting in the acquittal of all the accused – when asked, being the

head of the family, why he turned hostile, he said 'let me be given full protection, then I shall speak the truth'. This is an example of how factually indisputable cases of crime fail in courts showing that acquittal does not mean the case is false.

- These are some examples to show that acquittals do not mean that the cases are false.
- Delay in investigation and trial result in intimidation of victims, survivors of victims and witnesses by various means including social boycott and economic boycott, which are crippling. The crippling effect of boycott was placed before the Simon Commission by DrBabasahebAmbedkar in 1929.
- It is for this reason that the Act was tightened by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (POA) Amendment Act 2015.
- It requires further strengthening, as seen from the continuing trend of atrocities.
- Because the caste system is rampant and is inherited over the centuries, caste based mindset, caste-based biases are widely prevalent among all sections, in all the limbs of the State and institutions, the Act has been strengthened keeping this in view, but that is not enough.
- Among the important amendments in the Act is a new Chapter of the rights of the victims and witnesses.
- The condition of prior sanctions, laid down in the Supreme Court's judgment of 20.3.2018, will worsen the already existing long delays in the prosecution of atrocity cases.

The Kamballapalli case shows how witnesses are vulnerable to intimidation and threats, which include social and economic boycott. This was noticed by a Committee which toured British India in the 1920s and this situation continues even today.

### **The Observations of the Supreme Court**

- There cannot be any difference about the observation of the Supreme Court that a caste-less society must be created. But to give the impression that the Act is perpetuating casteism is not correct and needs expunging. Casteism can be abolished only if its underpinnings are eliminated, such as the landlessness of SCs, the misappropriation of the lands of STs, lack of irrigation for SC and ST lands, unavailability of quality education from the pre-school to the highest level for SCs and STs, their high neo-natal, infant, under-five and child mortality rates, stunting, anaemia etc. in all of which they fare the worst among all social groups, and so on. These have to be tackled. Mere slogans and verbal attacks on the caste system will not eliminate it.

The destruction of this pernicious system will require the elimination of the wide gaps between the SCs and STs, at the bottom end, and the Socially Advanced Classes (SACs), i.e., the non-SC, non-ST, non-SEdBC castes (NSCTBCs) at the other end, in every parameter of development,

welfare and life – economic, occupational, education at all levels, health-and-nutrition-related, housing-and-residential facilities related, and this will require comprehensive measures of Social Justice and their sustained, uninterrupted and undiluted implementation, till the inequality is eliminated and the objective of the destruction of caste system and casteism is laid. The POA Act 1989 and the POA Amendment Act 2015 are part of this package of comprehensive measures.

- The Government’s case will be strengthened if it is able to show that it is undertaking such comprehensive action for SCs and STs through measures like
  - legislation for Special Component Plan for Scheduled Castes (SCs) and Tribal sub-Plan (TsP) and SC and ST Development authorities
  - national campaign in all States for grant of lands to all rural SC families and landless ST families with pattas/ownership documents and peaceful possession, and
  - other measures, which I have mentioned in my e-letter to Minister for Social Justice & Empowerment dated 20.3.2018 (which I have furnished earlier also)

and take steps to see that the State Chief Ministers do what is prescribed by the POA Amendment Act 2015, and if on this basis it is able to tell the Supreme Court that it has taken measures with regard to these fundamentals.

- The Government also must dissociate itself from the ASG Shri Maninder Singh’s statements before the Court as reported in Times of India dated 21.3.2018. According to him, the issue of making provision for punishment for false complaints was examined by the Parliament but the Government took a stand that awarding punishment to members of SCs and STs for false implication would be against the spirit of the Act. He failed to explain that the Government did not accept the recommendation of the Standing Committee in this regard because the acquittals of the accused do not mean that the cases were false. The acquittals usually mean a factually true atrocity could not be provide in the court, because of poor investigation or because of witnesses turning hostile on account of absence of adequate protection for them, as happened in the Kambalapalli case of Karnataka.
- The observation of the Bench that it has noted “abuse” of law in the nearly 3 decades of its operation, is a very drastic observation not backed with evidence and facts.
- The Bench also observed that it has been judicially acknowledged that there are instances of abuse of the Act by vested interests against political opponents in panchayat, municipal or other elections, to settle private civil disputes arising out of property, monetary disputes, employment disputes, and seniority disputes”.

This observation and phrases like “rampant misuse” etc are drastic, not backed by evidence and facts.

The Government must explain and show that the largest number of atrocities and cases of atrocities pertain to the SCs trying to get possession of lands, legally allotted to them; when others try to capture SC and ST lands; honour of SC and ST women; and resistance to various types of inhuman humiliations and discriminations a number of which have been listed in the Act as offences; and so on. In recent times, there have also been a number of cases of killings of SC spouses in inter-caste marriages between adult SC and non-SC youth out of their free choice, seeking to destroy the stirrings in the younger generation against the caste system that the Supreme Court judgment rightly deplores.

- The Supreme Court has observed that, it may be noticed that by way of rampant misuse, complaints are largely being filed particularly against public servants/ quasi judicial/ judicial officers with oblique motive for satisfaction of vested interests.

The complaints against judicial officers, as observed in the judgment, has not been heard of.

- The Bench also observed that, the legislature never intended to use the Act “as an instrument to blackmail or to wreak personal vengeance” or “to deter public servants from performing their bona fide duties”.

These are also drastic observations, not backed by evidence and facts. The use of the word “blackmail” for personal vengeance and deterring public servant from performing their bonafide duties, etc. in connectin with this Act, are neither correct nor fair.

The problems faced by the SCs and STs vis-à-vis many public servants is that they fail to perform their bonafide duties, particularly in relation to SCs and STs.

An example of the impression conveyed by this observation regarding “blackmail” is the blaring heading “No More Blackmail under SC/ST Act” in the Pioneer dated 21.3.2018

- The Government’s petition must urge that the Bench’s observation about the “right to life and liberty” of the accused has to be balanced with the fundamental right to life and liberty of the SCs and STs.

Large numbers of SCs and STs do not have the fundamental right to life in the literal sense. Right to Life included Right to Life with Dignity. There is a rampant denial of dignity to SCs and STs throughout the country. This is the continuance of centuries of history including decades of Independence.

The larger Bench of the Court may be requested to take a balanced view in this regard, instead of a one-sided view.

14. Regarding the observation that the working of the Act should not result in perpetuating casteism which can have an adverse impact on integration of the society and the constitutional values, it needs to be pointed out by the Government to the larger Bench that it is not the Act and

its working that perpetuate the caste system, but the centuries-old social system which has inter alia

- denied due place for the SCs and STs in all fields, relegated them to the level of slaves, serfs, agricultural labourers, bonded labour, manual scavenging and other labour (which largely continues even today), and
- secured a monopoly for members of a few upper castes in positions of importance, high status and power in every field without exception.

As an example, it may be pointed out that there is not a single judge of the SCs and STs in the Supreme Court, nor a single Chief Justice belonging to the SCs and STs in any of the High Courts.

The Act is one of the package of comprehensive measures required to eliminate the casteism, the caste system and the imbalances in society produced by it and continuing till today.

- The Bench also expressed the view that the interpretation of the Atrocities Act should promote constitutional values of fraternity and integration of the society, and that this may require a check on false implication of innocent citizens on caste lines.

The SCs and STs thirst for fraternity and integration more than any other class. It is the upper classes who are trying to keep them away by denying them the freedom to take water from common sources, denying freedom for their children to sit equally in the class-rooms and for mid-day meals, denying them the right to use common cremation/burial grounds and denying them equal and dignified access to various places of public resort, apart from imposing on them labourbood, unequal education, social and economic boycott and massacres, mass-arson etc.

To imply that check on the POA Act is a way to promote fraternity is a very limited view of the historical and present role of the caste system and casteism.

- The Government may request the Supreme Court to take a holistic view on the basis of these facts pertaining to society, traditional economic and caste system and its continuing prevalence and effect, and over-rule the present judgment of the Supreme Court and expunge the above and similar unwarranted and unfair observations made in the judgment.

The Supreme Court's judgment of 20.3.2018 pertains to government servants, which is not typical of the bulk of the cases of atrocities and cases under the POA Act. From such an atypical case to reach a conclusion affecting the large number of victims of atrocities on issues related to land, resistance to "Untouchability", women's honour, bonded labour, etc is not in keeping with the principles of jurisprudence.

- In LalitaKumarivs Govt. of U.P. & Others case, the Supreme Court directed that prompt registration of FIR is mandatory under Section 154 of the CrPC if the information discloses commission of a cognisable offence and no preliminary enquiry is permissible in such a

situation. A quick preliminary enquiry is prescribed only where there is doubt whether the offence is cognisable or not. The present judgment of the Supreme Court seems to have not taken notice of that judgment and thus is *per incurium*.

- Government may point out that as perpetrators or promoters of atrocities are powerful individuals belonging to the dominant community of the village or area and the victims belong to the two most vulnerable classes, arrest of the accused has significant psychological value in the area. If such persons escape even arrest through anticipatory bail, it will be perceived as indication of the ability of such persons not to be even touched by the long-arm of the law. It is on account of this reality that in the original Act 1989 itself anticipatory bail has been precluded. The dilution of Section 18 of the Act by conditionalities such as those directed in the judgment of 20.3.2018 will encourage powerful perpetrators and potential perpetrators of atrocities, will encourage such police and other officers who suffer from widespread caste-bias, and demoralize and scare the already weak and vulnerable SCs and STs. In fact, in order to preclude widely prevalent practice of intimidation of surviving victims, survivors of victims and witnesses, the provisions relating to arrest and bail need tightening up through future amendments as early as possible .

- One of the basic principles of jurisprudence is *audialterempartem*, i.e. hear the other side. The other side is not only the government of Maharashtra or the Government of India, but includes the large number of SCs and STs who are victims of rampantly prevalent atrocities – the daily reports in newspapers and other sources is only the tip of the iceberg. There are far more cases where atrocities are borne silently by the victims without going to police with complaints because of their vulnerability as largely landless agricultural labourers and other labourers, who depend on their oppressors for labour and their next day's meal. There are good number of sincere persons and organizations working for the constitutional rights of these most vulnerable classes. They ought to have been invited as necessary parties so that they could have placed full facts holistically from an objective point of view.

- The Government may cite the judgment of the same Bench as in the present case regarding alleged "misuse" by women under IPC 498A in the Rajesh Sharma vs the State of UP case. The untenability of focusing disproportionately on "misuse" in cases involving vulnerable classes and categories has come out in the decision by another Bench headed by the Chief Justice recently to revisit that ruling on the ground that this Bench headed by the Chief Justice is not in agreement with the earlier judgment. The Chief Justice also observed that the Supreme Court cannot write law but can only interpret a law that is ambiguous or silent on certain aspects and not when it is crystal-clear. This is a similar case. The court may also be requested to evolve a system whereby such judgments in matters pertaining to vulnerable classes and categories do not come from any of the Bench of the Supreme Court to which people look up for supreme justice. One of the ways would be to see that a special effort is made to locate qualified individuals belonging to the SCs and STs and other disadvantaged sections and also women and other disadvantaged sections like SEBCs and bring them to the Bench of the Supreme and Benches of High Courts in reasonable proportions. A number of judges and lawyers

belonging to these classes are available in larger numbers to choose from. In this content, the recommendations of the NC on the working of the Constitution (Justice (Retd) Venkatachalaiah Commission), the observations of a Supreme Court Bench headed by Justice Pandian and recommendations of Standing Committees of the Parliament (which I have annexed to my letters to the Law Minister with copies to the Minister for SJ&E) may be cited – the present Bench has cited the recommendation of a Standing Committee. Holistically, it would be appropriate to take into account the recommendations of the Standing Committees mentioned by me also with regard to balancing of the Benches.

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