The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Objective of:

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Act”)

It is stated that it is:

“An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for 1[Special Courts and the Exclusive Special Courts] for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.”

- Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.
- This Act was enacted when the provisions of the existing laws (such as the Protection of Civil Rights Act, 1955 and Indian Penal Code) were found to be inadequate to check these crimes (defined as 'atrocities' in the Act). The object of the Act is to prevent commission of atrocities against members of the Scheduled Castes and Scheduled Tribes.2
- The objectives of the Act clearly emphasise the intention of the government to deliver justice to these communities through proactive efforts to enable them to live in society with dignity and self-esteem and without fear or violence or suppression from the dominant castes.

Constitutional Provisions

- The builders of Indian Republic and founding fathers of our Constitution had considered it necessary to provide specific safeguards in the constitution for the upliftment of Scheduled Castes (SC) and Scheduled Tribes (ST) communities in India.
- The Preamble to the Constitution of India provides for:
  “JUSTICE, social, economic and political;
  LIBERTY of thought, expression, belief, faith and worship;
  EQUALITY of status and of opportunity; and to promote among them all
  FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;”
- The provision and safeguards for Backward Classes and especially for SCs & STs have been incorporated in the Constitution of India. The safeguards are in the field of social, economic, political, educational, cultural and services under the State for the people belonging to these communities for their development. The definition of Scheduled Castes and Scheduled Tribes and how are the Castes/Tribes scheduled are contained under Articles 366(24) and (25) and 341 and 342 of the Constitution.
- Article 341.
  Scheduled Castes – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

1 Subs. For “Special Courts” by Act 1 of 2016 (w.e.f. 26-01-2016)
• Article 342 - similar provision as above, for Schedules Tribes.

• Article 366

Definitions – In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say – * * *

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution;

• The safeguards provided to Scheduled Castes and Scheduled Tribes are grouped in the following broad heads:
  1. Social Safeguards
  2. Economic Safeguards
  3. Educational & Cultural Safeguards
  4. Political Safeguards
  5. Service Safeguards

SOCIAL SAFEGUARDS

• Articles 17, 23, 24 and 25(2) (b) of the Constitution enjoins the State to provide social safeguards to Scheduled Castes.

  “Article 17. Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law”

• Article 17 relates to abolition of untouchability being practiced in society. The Parliament enacted the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to tackle the problem of untouchability, which is being practiced against Scheduled Castes.

  “Article 23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them”

• Article 23 prohibits traffic in human beings and ‘begar’ and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. Even in this Article, there is no specific mention about the SCs but substantial portion of child labour engaged in hazardous employment belong to SCs.

  “Article 24. Prohibition of employment of children in factories, etc

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”

• Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Even in this Article, there is no specific mention about the SCs but substantial portion of child labour engaged in hazardous employment belong to SCs.

  “Article 25(2) (b). Freedom of conscience and free profession, practice and propagation of religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus”

- **Article 25(2)** (b) provides that Hindu religious institutions of a public character shall be opened to all classes and sections of Hindus.

**ECONOMIC SAFEGUARDS**

- Article 23, 24 and 46 form part of the economic safeguards for members of the Scheduled Castes and Scheduled Tribes. Articles 23 and 24 have already been discussed above.
- **Article 46** - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

**EDUCATIONAL AND CULTURAL SAFEGUARDS**

“**Article 15(4)** – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

**POLITICAL SAFEGUARDS**

- **Article 243D** – This article assures the reservation of seats in Panchayats, both for men and women of Scheduled castes and scheduled tribes and also assures the seats of chairpersons in the Panchayats, according to their population in the constituencies. The actual number of seats is to be provided by the state govt by a law, but the percentage should approximate the population of these caste groups in the respective constituencies.

- **Article 243D. Reservation of seats**

  1. Seats shall be reserved for
     (a) the Scheduled Castes; and
     (b) the Scheduled Tribes,
     in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat
  2. Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes
  3. Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat
  4. The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:
     Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:
     Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:
Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens

- **Article 243T** - This article makes the similar provision of seats for SC/ST men and women, in the Municipalities.

- **Article 243T. Reservation of seats**
  
  (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality

  (2) Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes

  (3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality

  (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide

  (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334

  (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens

- **Article 330** – It makes provision for Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people, i.e. Loksabha. The seats are reserved as per the percentage of their population in the states and Union territories.

- **“330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People**
  
  (1) Seats shall be reserved in the House of the People for
  
  (a) the Scheduled Castes;

  (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and

  (c) the Scheduled Tribes in the autonomous districts of Assam

  (2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory ………………………..”

- **Article 332** – It makes similar provision for SC and ST people, in the Legislative Assemblies of the States.

“Article 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States
(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in Nagaland and in Meghalaya, in the Legislative Assembly of every State

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State……………………………….‖

SERVICE SAFEGUARDS

• “Article 16(4) - Equality of opportunity in matters of public employment

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

• Article 16(4A) - Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion (with consequential seniority) to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

• Article 335- Claims of Scheduled Castes and Scheduled Tribes to services and posts

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State

OTHER CONSTITUTIONAL PROVISIONS

Article 338 provides for National Commission for Scheduled Castes:

The primary functions of the commission pertain-

• to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes
• to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
• (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
• to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the rule specify.

Similar kind of National Commission is provided for members of Scheduled Tribes under Article 338A of the Constitution.
Index of Cases related to The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

I. Jurisdiction
1. Achla D. Sare v. Asha Mahilkar 2016 SCC OnLine Chh 294
3. Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. AIR 1994 SC 2623

II. Public View - Under Section 3(1) (x) (prior to amendment of 2016); Now under 3 (1) (r) and (s)
2. State of Rajasthan v. Shivdan, son of Danudan (2016) 4 CrLR 2082
7. Pardeep Kumar v. State of Haryana and Ors. 2020 SCCOnline P&H 671
8. Salim Abdul Shaikh v. State of Maharashtra Criminal Appeal No. 1030 of 2018

III. Presumption as to offences - Section 8
12. Rajulapati Ankababu v. State of A.P. 2018 (1) ALT (Crl.) 247 (A.P.)
13. Kulwinder and Ors. v. State (NCT of Delhi) and Ors. 252 (2018) DLT 1
14. Prathvi Raj Chauhan v. Union of India & Ors. AIR 2020 SC 1036

IV. Eyewitness

V. Conviction under IPC and SC/ST Act

VI. Probation - Section 19

VII. Anticipatory Bail - Section 18 and 18A
23. Prathvi Raj Chauhan v. Union of India and Others 2020 SCC OnLine SC 159

VIII. Victim Compensation- under SC/ST Act and Rules
30. Union of India v. State Of Maharashtra and Ors. AIR 2019 SC 4917
List of Judgments on:

JURISDICTION

Section 14 of the Act provides that:

S.14 : Special Court and Exclusive Special Court

(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.

Further, Section 20 of the Act provides that:

S.20 : Act to override other laws

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

• In Achla D. Sapre v. Asha Mahilkar 2016 SCC OnLine Chh 294, decided on February 25, 2016; the Hon’ble Chattisgarh High Court held that,

“The Special Courts constituted under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 alone have the jurisdiction to directly take cognizance of an offence under the provisions of Section 3(1)(x) and not the Judicial/trial Magistrate. The Court of Judicial Magistrate is not a Special Court as notified by the State Government within the meaning of Section 14 of the 1989 Act read with Section 193 of the Criminal Procedure Code, 1973.”

• Further, Dhiraj Kumar v. State of Jharkhand 2017 SCC OnLine Jhar 2266, order dated 23.11.2017, the Hon’ble Jharkhand High Court has held that Cognizance of offences committed under SC & ST (Prevention of Atrocities) Act can only be taken by a Special Court.

The bench of Hon’ble Mr. Justice B.B Mangalmurti J., held that "the Court of the Chief Judicial Magistrate cannot take cognizance of offences under the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 since there stood no ambiguity in the decision of the
Supreme Court wherein it necessitated the constitution of a Special Court for trial of offences committed under the Act. Hence, the Court set aside the impugned order.”

- It has been held in Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors., AIR 1994 SC 2623 decided by Supreme Court in paragraph 26 as under:-

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases, the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

i. A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

ii. Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.

iii. Every litigant has a vested right in substantive law, but no such right exists in procedural law.

iv. A procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.

v. A statute which not only changes the procedure but also creates new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

- Relying on the above judgment of the Hon’ble Supreme Court, the Hon’ble Chattisgarh High Court in Khursid Khan v. State of Chattisgarh Criminal Revision No. 903 of 2019 decided on 10-12-2019 has held that,

“On perusal of the Section 14 of the Act, 1989, it can be presumed that this provision has a retrospective effect. Hence, at this stage, when the provision under Section 14 of the Act, 1989 is in force and it relates to procedure for entertaining a complaint and taking cognizance with respect to offence under the Act, 1989, therefore, there shall not be any need for committal on the case in this particular matter.”

PUBLIC VIEW

After the amendment of 2016, the term public view finds mention in Section 3 (1) (r) and 3 (1) (s):

(Note: Earlier it was provided under Section 3 (1) (x) of the Act prior to the amendment of 2016)

S.3 : Punishments for offences atrocities

1[(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;]

- In Swaran Singh and Others v. State through Standing Counsel and Another (2008) 8 SCC 435; discussing the applicability of Section 3(1) (x) of the 1989 Act, the Hon’ble Supreme Court held that the condition that the act in question must have been committed in any place within public view- Expression “place within public view”- Meaning and scope of,
explained- Said expression distinguished from the expression “public place”. It was observed that the provision does not use the expression “public place” but instead the expression used is “in any place within public view”. A place can be a private place but yet within public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.

- **In Gorgie Pentaiah v. State of A.P. & Others (2008) 12 SCC 531;** the Hon’ble Supreme Court held that “according to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

- **In State of Rajasthan v. Shivdan, son of Danudan (2016) 4 CrLR 2082;** the Hon’ble Rajasthan High Court while dealing with Indian Penal Code, 1860 Section 504 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(1)(x) - There was an alleged incited of caste based discrimination. FIR did not contain any instance of any kind of abuse on basis of Caste. All witnesses including some of the Eye witnesses did not say anything that might be helpful in the Prosecutions’s case to prove their side of the story. It was also noted that there as a delay of about 7 Days in filing of the FIR which also had no sign of acceptable resins for it being in delay. Held, in absence of any evidence that might show that the accused intentionally wanted to discriminate with the Complainant on the basis of his caste, the Court ordered the release of the accused.

- **In Gautam v. State 1999 0 CrLR 500;** the Hon’ble Rajasthan High Court held that “It is not the requirement of Section 3 of the Act of 1989 that the offence should be committed at a public place. What is required is that the offence should be committed in the public view.”

- **In Trilochan Singh S/o Sajjan Singh v. State of Rajasthan (2002) 1 CrLR 556;** the Hon'ble Rajasthan High Court held that;

> “14. The word 'intentional' appearing in Section 3(1)(x) of the SC/ST Act is contrary to what is unintended or done inadvertently.

> 15. The word "insult" has not been defined either under the Indian Penal Code or under the SC/ST Act. .

> 16. The word "intimidate" must be understood to overawe, to put in fear, by show of force, threat or violence, and it may also include the use of actual force unaccompanied by threat.

> 17. The word "humiliate" has been ascribed to mean inter alia; "to reduce to lower position in one's own eyes or eyes of others: injure the self respect of'. It is also essential that such a humiliation should have been caused in the public view. Public view does not essentially refer to a public place.

> 18. In order to attract the provisions of Section 3(1)(x) of the SC/ST Act, the public must view the person being insulted.”

- **In Balu s/o Bajirao Galande v. State of Maharashtra & anr. (2006) 6 AIR(Bom)(R) 251;** the Hon’ble Bombay High Court held that “The expression "public view" in Section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, should be independent and impartial and not interested in any of parties.”

- **In Pradnya Pradeep Kenkare v. State of Maharashtra (2005) 3 MhLJ 368;** the Hon’ble Bombay High Court held that “The provisions of Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would be attracted only in case of insulting or intimidating a member of the Scheduled Caste in any place within a public view. The
expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both on even any one of these ingredients would not be sufficient to all use the person of having committed an offence under Section 3(1)(x) of the said Act.

- Further, held that to constitute an offence two ingredients; i.e. (i) the insulting words used; (ii) must have been said in public, are essential.”

- In Pardeep Kumar v. State of Haryana and Ors. 2020 SCCOnline P&H 671 /CRR No. 1354 of 2019 (O&M) date of decision: 14/05/2020; The Punjab and Haryana High Court has held that to constitute the offence under the Act, it must be alleged that the accused intentionally insulted or intimidated with intention to humiliate a member of Scheduled Caste or Schedule Tribe in any public place within public view.

- In Court’s opinion with regard to the present matter, once it’s admitted that the alleged conversation over the mobile phone was not in a public gaze nor witnessed by any third party, the alleged use of caste words cannot be said to have been committed within the public view.

- Court added to its observation that, “Merely uttering such wrong words in the absence of any public view does not show any intention or mens rea to humiliate the complainant who besides being Sarpanch, belongs to Scheduled Caste community.”

- Basic ingredients of the offence in the FIR are that there must be intentional insult, secondly the insult must be done in a public place within public view, which is not in the present case.

- In Salim Abdul Shaikh v. State of Maharashtra Criminal Appeal No. 1030 of 2018 decided on 25.09.2019, The Bombay High Court held that insult or humiliation must take place in the presence of or in the proximity of at least one independent public witness in order for the offence to qualify as atrocity under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

- As far as the offence punishable under Section 3(1)(s) is concerned, offence of atrocity is made out only when the same takes place "in any place within public view." Referring to the law laid down in Pradnya Pradeep Kenkare and Ors. vs. State of Maharashtra and Balu s/o. Bajirao Galande vs. State of Maharashtra and Another, Court observed- "It is, thus, clear that the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled castes or scheduled tribe. Presence of both ingredients is absolutely necessary for making out the offence of atrocity.

Abuses, insult or humiliation must take place in presence of or in the proximity of atleast one independent public witness."

- In KP Thakur & Anr. v. State of UP & Anr. Application U/S 482 No. - 40418 of 2012, order dated: 18.02.2020; Allahabad High Court has held that for constituting an offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the alleged offence should have been committed in "public view".

- The single-Judge bench comprising Justice Ram Krishna Gautam clarified that where a person is allegedly insulted for being a member of the SC/ST community behind closed doors, the SC/ST Act cannot be applied.

- The high court noted that the offence alleged to be committed by Thakur was short of one essential ingredient, 'public view'.
“It was a Chamber of the Enquiry Officer, where Presenting Officer and Enquiry Officer were present and it can never be said to be a public view. Even if, any occurrence took place at that place, it may never be said to be a public view and it has been verified by apex court, mentioned as above. Hence, the very ingredient of offence punishable under Section 3(1)(X) of the Act was missing,” the court observed.

- The Hon’ble Rajasthan High Court in Pappu Kanwar v. State of Rajasthan and Ors. S.B. Criminal Appeal No. 174 of 2018 with regards to satisfying the ingredients necessary for conviction under the Act has held that;

“There is no independent or reliable material whatsoever on the record of the case which can be considered sufficient to draw even a remote inference that the accused insulted the deceased or her family members on the ground of their caste or that the deceased was instigated by the appellant to commit suicide. As a matter of fact, none of the witnesses examined during investigation, claims to have personally witnessed the conversation which took place between the accused and the deceased.

The conclusions drawn by the I.O. in the charge-sheet, which have been referred to supra, are totally conjectural and not based on any substantive evidence whatsoever. In addition thereto, even if it is assumed for a moment that these conclusions are correct, then also, they do not constitute material sufficient to satisfy the Court that the appellant herein is prima facie responsible for the offences attributed to her.”

**PRESUMPTION AS TO OFFENCES**

Section 8 of the Act provides that:

**S.8 : Presumption as to offences**

In a prosecution for an offence under this Chapter, if it is proved that-

(a) the accused rendered 3[any financial assistance in relation to the offences committed by a person accused of], or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object;

4[(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.]

- In Vaghela Dilipbhai Gulabsang v. State of Gujarat Criminal Appeal No. 1355 of 2019 decided on 31.07.2019, the Hon’ble High Court of Gujarat held that,

“The Act provides for statutory presumptions as to offences. If the Legislature intended its applicability in a particular State for a person of scheduled caste or tribe declared in relation to that State only it would have provided very clearly in the provisions itself. Section 3(2) (v) of the Act prescribes knowledge of the caste of a person against whom an offence is committed as necessary ingredient of it where knowledge can be presumed under Section 8(c) of the Act. Section 8(c) of the Act provides that if the accused is having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim unless contrary is proved. Thus, if the offender

3 Subs. by Act 1 of 2016, s. 6, for “any financial assistance to a person accused of” (w.e.f. 26-1-2016).

4 Ins. by s. 6, ibid. (w.e.f. 26-1-2016).
is having personal knowledge of the victim, may be a person against whom an offence is committed or who has suffered or experienced physical, mental, physiological, emotional or monetary harm or harm to his property as a result of commission of any offence under the Act, which also includes his relatives, legal guardian and legal heirs, and therefore, in the present case, the first informant is falling within the definition of victim, that knowledge can be presumed. The very fact that accused No. 1 is alleged to have visited the house of first informant frequently for the purpose of recovery of money alongwith the fact that the deceased i.e. her husband was a friend of accused No. 1, coupled with the fact that for lending money he had procured document of title to the property in which the victim resides and the said document came to be seized from the brother of accused No. 1 and not only that, accused No. 1, who is already arrested, in his statement, confirms these things, is more than enough to presume knowledge of caste of the victim. If the statement of the accused cannot be utilized for any purpose other than investigation then also to lend assurance to the facts, which would establish personal knowledge of the victim, it can certainly be considered while deciding the bail application.

- **In Rajulapati Ankababu v. State of A.P. 2018 (1) ALT (Crl.) 247 (A.P.),** the Hon’ble High Court of Andhra Pradesh held that;

  “A perusal of Section 8(c) of the SC/ST Act in juxtaposition with Section 3(2)(va) of the SC/ST Act makes it clear that the Court can draw a presumption that the accused has knowledge that the victim belongs to SC/ST community unless the contrary is proved. Whether the petitioner committed the alleged offence knowing fully well that the de facto complainant belongs to Scheduled Tribe or not would become a relevant issue after full-fledged trial only. It is needless to say that while deciding the interlocutory applications more particularly the bail petitions, the Court has to restrain itself to express any opinion more particularly on factual aspects which ultimately affects the merits of the main case. At this stage, the Court has to consider whether the allegations made in the complaint prima facie constitute the offences alleged to have been committed by the petitioner, for a limited purpose of granting or rejecting the bail.”

- **In Kulwinder and Ors. v. State (NCT of Delhi) and Ors. 252 (2018) DLT 1;** the Hon’ble Delhi High Court held that,

  “Section 8(b) is of particular relevance in the present case since it makes specific reference to a group of persons committing an offence as a sequel to an existing dispute regarding land “or any other matter”. In such a scenario, it is stipulated that the presumption is drawn as regards the common intention and prosecution of the common object.”

- **In Prathvi Raj Chauhan v. Union of India & Ors. AIR 2020 SC 1036;** the Hon’ble Supreme Court held that there is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper Castes or the members of the elite class.

- Further, for lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one.

- In case it is found to be false/unsustantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the Cr.PC.
**EYEWITNESS**

- In Ashoksinh Jayendrasinh v. State of Gujarat (2019) 6 SCC 535; the Hon’ble Supreme Court held that on Eye witnesses giving contradictory evidence, Held, guilt of the accused has not been proved beyond reasonable doubt.

- Proof of motive was taken as one of the important aspects by the trial court as well as by the High Court. Though motive is a relevant aspect, it is to be kept in view that motive is a double edged weapon. Proof of motive merely adds to the value of evidence of the eye-witnesses.

- There was darkness at the time and the place of occurrence making it difficult for the witnesses to identify the assailants. The evidence of eye-witnesses are contradictory to each other as to the firing of the fatal blow. The guilt of the accused has not been proved beyond reasonable doubt and the benefit has to be given to the accused.

- In Kanku vs. State of Rajasthan (16.07.2019 - RAJHC) : MANU/RH/0615/2019; the Hon’ble Rajasthan High Court stressing upon the corroboration of statement of the eyewitness has held that;

  - “The evidence of the so-called eye-witness Ladu is far from convincing and the same does not get corroborated from any other reliable piece of evidence.”

- The Hon’ble Rajasthan High Court placed reliance upon the judgment of the Hon’ble Supreme Court in the case of Digamber Vaishnav & Ors. Vs. State of Chhattisgarh (2019) 4 SCC 522; the Supreme Court dealt with in detail, the issue regarding reliability of testimony of a child witness and held as below:

  - "21. The case of the prosecution is mainly dependent on the testimony of Chandni, the child witness, who was examined as PW-8. Section 118 of the Evidence Act governs competence of the persons to testify which also includes a child witness. Evidence of the child witness and its credibility could depend upon the facts and circumstances of each case. There is no Rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one.

  - 22. This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a Rule of practical wisdom than law.”

- In State of Rajasthan v. Sumersingh (2015) 4 CrLR 1946; the Hon’ble Rajasthan High Court held that the trial court has acquitted the accused-respondent from the offence punishable under:
  - Section 302 IPC; and
  - Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

- Accused had been acquitted by the trial court on the grounds that Witness no 1 and 2 were not the eye witnesses hence there statements can’t be relied upon and also witnesses 3,4 and 5 stated that there was argument between the accused and deceased – Appeal by state - Injury cannot be proved to be given by the accused.

- The prosecution has failed to produce any witness to prove the allegations that the respondent had inflicted injury to the deceased on his head.

- Decision of the trial court upheld.

- In Prakash v. State of Rajasthan (2008) 1 RLW(Raj) 918; the Hon’ble Rajasthan High Court held that;

  “While appreciating evidence of witness, the approach must be whether it read as a whole appears to have a ring of truth – Once that impression is found the Court is required to scrutinize the evidence more particularly keeping in view the deficiencies, draw backs and infirmities
pointed out in evidence as a whole and evaluate them to find out whether it is against the general tenor of evidence and whether the earlier evaluation of evidence is shaken as to render it unworthy of belief.”

- **In Anil Kumar v. State of Rajasthan (2015) 3 RLW(Raj) 2492;** the Hon’ble Rajasthan High Court held that;

Reliance has been placed on the judgment of Hon’ble Supreme Court in *State of Goa vs. Sanjay Thakran and Anr. (2007) 3 SCC 755*, wherein their Lordships in paras 31, 32, 33 & 34 of the said judgment held, as under:-

“31. . . . . It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the above-mentioned general principle with reference to the principle of last seen together in Bodhraj vs. State of J & as under : (SCC p.63, para 31)

“31. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. . .”

To justify voluntary character of disclosure statements, it ought to be recorded in the presence of an independent-witness. It is to be noted that Section 27 of Indian Evidence Act is an exception to Section 25 of the Indian Evidence Act, which says that nothing stated to the police is admissible in evidence. Since Section 27 carves out an exception, it is necessary that prosecution must show some material to the Court to be satisfied that the same was not fabricated; therefore, it is necessary that it should have been made in the presence of an independent-witness.

- **In Dahyabhai Revabhai Chamar & Others v. State of Gujarat (2009) 1 GLH 245;** the Hon’ble High Court of Gujarat has held that;

“25. The mere fact that the witnesses are consistent in what they say is not a sure guarantee that they are truthful and credible. A judge, of fact, will have to take into consideration, the totality of the circumstances and come to the conclusion that a witness posing himself as an eye witness really strikes to judicial mind to be an eye witness though he or she may be consistent in his/her evidence. Such witness may not be acceptable for the given reasons. On scrutiny, if it is found that the conduct of the witnesses is such that it makes the case of the prosecution doubtful and his/her presence at the place of occurrence as an eye witness is suspected, then his/her evidence must be rejected.

26. Further, in order to adjudge the credibility of the witness, the Court must not be confined only to the way in which the witness might have deposed or to the demeanour of the witness. The judicial scrutiny includes consideration of the Court of the surrounding and attending circumstances as well including reasonable probabilities, so that a correct conclusion can be reached about the trustworthiness of a given witness.

While assessing and evaluating the evidence of eye witness, the Court must adhered to, two principles namely (1) whether in the circumstances of the case was it possible for the eye witness to present at the scene of offence and (2) whether there is anything inherently improper or unreliable or improbable of the evidence of a witness.

In addition to this, as an attending circumstance, it must be explored that whether the witness had opportunity to witness the crime, what was the ordinary conduct of the witness, what was the
nearness of the crime and pre-disposition towards the accused. It is neither a rule of law nor prudent that if the evidence of the eye-witnesses is consistent with the story narrated in the FIR or corroborates each other then the evidence of such witness has to be accepted on its face value without assessing the probabilities of their evidence or without considering the other factors and features of the case as would be an evidence on the material on the record.

Phipson on evidence 14th edition writes “the credibility of a witness depends upon his knowledge of the facts, his intelligence, his disinterestness, his integrity, his veracity. Proportion to these is the degree of credit his testimony deserves from the Court of jury.”

**CONVICTION**

**Section 3 of the Act provides that:**

**S.3 : Punishments for offences atrocities**
(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine; [(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;]

**Section 5 of the Act provides that:**

**S.5 : Enhanced punishment subsequent conviction**

Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

**Section 6 of the Act provides that:**

**S.6 : Application of certain provisions of the Indian Penal Code**

Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

- Therefore, it is safe to conclude by stating that a person on satisfying the necessary ingredients as provided for in the above sections shall be convicted under both the IPC and the Act.
- The same is illustrated by many judgments of the Supreme Court and various High Courts, one example being:

In, Asharfi v. State of Uttar Pradesh 2018 1 SCC 742 decided by the Hon’ble Supreme Court:

- The trial court vide its judgment dated 30.11.2007 convicted the appellant for the offences under Sections 450, 376(2)(g), 323 IPC and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- For conviction under Section 376(2)(g) IPC, the appellant was sentenced to undergo rigorous imprisonment for ten years with fine of Rs. 8,000/- with default clause and for conviction under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, the appellant was sentenced to undergo life imprisonment with fine of Rs. 10,000/- with default clause. The appellant was also imposed sentence of imprisonment for other offences under Indian Penal Code.
- However in this case, The evidence and materials on record did not show that the appellant had committed the offence on the victim on the ground that (s)he belonged to Scheduled Caste.
- Thus, conviction under the Act was overruled however the conviction under IPC was upheld.
- Therefore, ingredients of the special law need to be satisfied in order to attract conviction under the same.

**PROBATION**

**Section 19 of the Act provides that:**

*S.19 : Section 360 of the Code or the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act*

The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

- In Abaji s/o. Shripatrao Tekale & Anr. v. State of Maharashtra (2011) 2 MhLJ(Cri) 594; the Hon’ble High Court of Bombay held that In view of Section 19 of Act, benefit of Section 360 of Cr PC cannot be granted to accused.

It further held that the Hon’ble Supreme Court in case of State of M.P. v. Kashiram reported in 2009 (3) Mh LJ 107 : 2009 All MR (Cri) 925 (SC) has observed that, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is therefore the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

Also, The counsel for the appellants also submitted that, the appellants/accused are not involved in any other offence except this alleged offence and therefore this Court may consider to grant them benefit of Probation of Offenders Act or Section 360 of the Criminal Procedure Code. The Court held that the said prayer of the appellants cannot be entertained in view of Section 19 of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act, 1989, Section 19 of the Act.

**ANTICIPATORY BAIL**

**Section 18 and 18A of the Act provide that:**

*S.18 : Section 438 of the Code not to apply to persons committing an offence under the Act.*

Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

*S.18A.*

(1) *For the purposes of this Act,—*

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.".
In Prathvi Raj Chauhan v. Union of India and Others 2020 SCC OnLine SC 159, the Hon’ble Supreme Court held that;

“10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.”

Further observed by Justice Bhat that;

As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.

Supreme Court in Vilas Pandurang Pawar v. State of Maharashtra, (2012) 8 SCC 795, has observed thus:

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

Supreme Court in Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Anr (2018) 6 SCC 454; the Hon’ble Supreme Court held that no absolute bar against grant of anticipatory bail in cases under Atrocities Act if no prima facie case is made out or where on judicial scrutiny complaint is found to be prima facie malafide.

In Mithabhai Pashabhai Patel v. State of Gujarat (2009) 6 SCC 332, the Supreme Court held that by virtue of Sections 437(5) and 439(2), a direction to take a person into custody could be passed despite his being released on bail, by a previous order. The court held that under Sections 437(5) and 439(2) a person could be directed to be taken into custody without necessarily cancelling his earlier bail. The difference between cancellation of bail and a direction to take a person into custody under Section 439(2) was recognised. It was also held in this case that if a graver offence is added to the FIR or to the case after the person has been granted bail, a direction under Section 439(2) or 437(5) is required before such person can be arrested again for the new offences added to the case. Therefore, this court recognized the need for court's supervision after the bail had been granted.

The Supreme Court in Shri Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 are summarized as follows:

82. Grant of an order of unconditional anticipatory bail would be “plainly contrary to the very terms of Section 438.” Even though the terms of Section 438(1) confer discretion, Section 438(2)
“confers on the court the power to include such conditions in the direction as it may think fit in the light of the facts of the particular case, including the conditions mentioned in clauses (i) to (iv) of that sub-section.”

- In Smt. Suman Rathore v. State of Rajasthan and Another 2008(4) Crimes 729 (Raj.);

the Hon’ble Rajasthan High Court held that;

Bail granted may be cancelled, if obtained by concealing facts, but those facts should be material, relevant and of such nature that on knowing about those the Court in any event would have not granted the bail. And, Cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted.

**Victim Compensation**

Section 15A of the Act provides that;

S.15(a) : Rights of victims and witnesses

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--

(a) the complete protection to secure the ends of justice;

(b) the travelling and maintenance expenses during investigation, inquiry and trial;

(c) the social-economic rehabilitation during investigation, inquiry and trial; and

(d) relocation.

Scheduled Castes and Scheduled Tribes Prevention of Atrocities Rules, 1995

Rule 12 (4), (5) and 12 (7) provides for that;

R.12 : Measures to be taken by the District Administration.

(4) The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the Schedule annexed to these rules (Annexure I read with Annexure II). Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for human beings.

(5) The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury to, or damage to property shall be in addition to any other right to claim compensation in respect there of under any other law for the time being in force.

(7) A report of the relief and rehabilitation facilities provided to the victims shall also be forwarded to the Special Court by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate of Superintendent of Police. In case the Special Court is satisfied that the payment of relief was not made to the victim or his/her dependent in time or the amount of relief or compensation was not sufficient or only a part of payment of relief or compensation was made it may order for making in full or part the payment of relief or any other kind of assistance.

Further, Rule 15 (1) (f) provides for that;

R.15 : Contingency plan by the State Government.

1) The State Government shall prepare a model contingency plan for implementing the provisions of the Act and notify the same in the Official Gazette of the State Government. It should specify the role and responsibility of various departments and their officers at different
levels, the role and responsibility of Rural/Urban Local Bodies and Non-Government Organisations. Inter alia this plan shall contain a package of relief measures including the following:—

(f) mandatory compensation for the victims;

Also Section 357A of the Criminal Procedure Code provides that;

S.357(a) : Victim compensation scheme

1)(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry-award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit]

***The Hon‘ble Supreme Court in Union of India v. The State of Maharashtra and Ors. (2018) 6 SCC 450 held that:

“as per Rule 12(4) and (4A) read with Annexure-I of the 2016 Amendment to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, immediate compensation or other assistance has to be given to victim belonging to Scheduled Castes and Scheduled Tribes.”

Also, “there is no bar to compensation or other immediate relief being given to the victim member of the SC/ST as per the provisions noted above without any delay whatsoever. There is also no bar to registration of F.I.R. under any provision of the penal code or any other law and the offences under the SC/ST Act being added later, if necessary. Thus, there is no dilution of any provision of the SC/ST Act relating to compensation, trial, punishment or otherwise.”

***Further in Union of India v. State Of Maharashtra And Ors. AIR 2019 SC 4917; the Hon‘ble Supreme Court held that;

“There is right to live with dignity and also right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the Act of 1989. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of