

**IN THE SUPREME COURT OF INDIA**

CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO. OF 2018

**IN THE MATTER OF:-**

PRATHVI RAJ CHAUHAN &

PRIYA SHARMA

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT(S)

WITH

**PAPER BOOK**

(FOR INDEX KINDLY SEE INSIDE)

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## **SYNOPSIS & LIST OF DATES AND EVENTS**

That the Petitioners are invoking the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India against the constitutional amendment in arbitrary manner made by the Respondents to alter the directions, those were promulgated by this Hon'ble court in the matter of Dr. Subhash kashinath mahajan vs. The state of Maharashtra and Anr; wherein this Hon'ble court issued directions after examining all the relevant facts and data pertains to The scheduled castes and Tribes (Prevention of Atrocities) Act; In this regard, This Hon'ble Court has made following observations

*Our conclusions are as follows:*

- i) Proceedings in the present case are clear abuse of process of court and are quashed.*
- ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);*
- iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.*

*iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated. v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.*

*The above directions are prospective.*

At the very outset, it is submitted that a well descriptive order was passed by this Hon'ble court for the safe guard of the innocent people of this country, this judgment also protects the interest of whole nation, in this Judgment Hon'ble court observed that there were instances of abuse of the Act by vested interest for political or personal reasons, hence in course to protect the fundamental rights of innocent, preliminary enquiry is needed to ensure allegations is not "frivolous or motivated".

However this judgment faced a nationwide protest of political groups just to take advantage in upcoming election, in the face of protests government filed review petition which is still pending; thereafter a rare moved was adopted by the central government, to get the political millage and under pressure from alliance partner and also worried over the prospects of antagonizing huge vote bank ahead of next year Loksabha elections, The Government decided to amend this act and restored the previous

provisions in such a manner, so that an innocent can't access to avail the right of Anticipatory bail.

It is pertinent to mention here that, in both the Houses of Parliament this amendment was passed by the voice vote, without any discussion or debate. The relevant abstract of the constitutional amendment is produced herein under-

*After section 18 of the scheduled castes and the scheduled tribes (Prevention of Atrocities) Act 1989, the following shall be inserted , namely:-*

*“18 A. i) For the purpose of this Act, -*

*a) Preliminary enquiry shall be required for registration of a First Information Report against any person; or*

*b) The investigating officer shall not required approval for the arrest, if necessary, of any person, Against whom an accusation of having committed an offence under this act has made and no procedure other than that provided under this Act or the code shall apply.*

*ii) 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.”*

It is submitted that in context of this scheduled castes and Tribes (Prevention of Atrocities) Act, Section 18 A of the Atrocities Act, which excludes Section 438 of Criminal Procedure Code, violates constitutional mandate under Articles 14 and 21 and is violates the doctrine of basic

structure of the Constitution can't be amended; after amendment the structure of the act turned to violative with basic principles of liberty and accountability. Which means those who are so inclined could accuse anyone of certain crimes and be able to extract ransom, as a condition of withdrawing the accusation, this court can't remain a mute spectator to the abuse of Law, we are living in a civilized society and there were many growing instances of misuse of this act, there is an apprehension that the amended law also fast becoming a new tool of harassment, arrest on the basis of mere allegation without preliminary enquiry is violation of fundamental rights. The number of complaints under this said act had increased alarmingly and under the context of the report filed by the commission, 85% of complaints under the Impugned act end in acquittal. This Hon'ble Court has interpreted Article 21 as, this right to include the right to be free from degrading and inhuman treatment, the right to integrity and dignity of the person, and the right to speedy justice.

The Preamble of the Constitution of India itself talks about the equal status of the citizens of India. The constitution speaks about sovereign, socialist, secular, democratic republic, it also grants equality, but the tyranny of this society even now there is no equality. Dr. Ambedkar dreamt of a social and economic equality. The

Constitution of India was made keeping all these consequences in mind. The part III of the Constitution which talks about the fundamental rights tried to abolish this caste system but failed because of political system of our country and our law makers only emphasizing to strengthen the vote bank not inclined to eradicate the caste system or to fill the gap between the lower and upper caste. Article 14 which talks about right to equality before law, according to this article every person is equal in the eyes of law, it emphasized on prohibition of discrimination on grounds of color, race, religion, caste, gender, place of birth, etc.

That, the Parliament placed this constitutional amendment in the atrocity act with a sole intention to appease a particular section of society before elections. The great German novelist Johann Wolfgang von Goethe had said, "A clever man commits no minor blunder." With the amendment bill to reinstate the original provisions of SC/ST Act, this government too has done a major blunder of the tenure. What is surprising about this is, the entire situation is eerily similar to that of former Prime Minister Rajiv Gandhi. He committed the biggest blunder of his tenure in the Shah Bano case. With a brute majority that he had in both the houses of parliament, he overturned the 1985 Supreme Court judgment, of Shah Bano Case

and banned the maintenance, terming it unconstitutional, that opened the door for dangerous precedents.

That, as we know India is diversified country both in social as well in economic terms. In some part one community is at the helm in social structure while in another part another community enjoys the higher status, The general community of this country is living in this country as second grade citizen which don't have any rights for last 800 years, when Muslim rule came in power for over almost 600 years, all Hindu's were treated like second grade citizen. it doesn't matter whether they are of high caste or low caste, in the same manner as the Britishers did with us over 200 years. so on an average general community have also faced the same problem as the other's faced, after the independence of country it was in mind that those are having progressive mindset would be allowed to live in batter environment but the government has failed to secure equality before law instead to take onus of failure the government stated appeasing some sects of the communities which resulted in cast, religion or region based politics. The impact of this politics is the innocents are suffering. Not a single policy exists in this country for the betterment or rehabilitation of the weak sections of general community, however many laws are here those already presumed the guilt of general

category person. Although we general caste people are now habitual of all these discriminatory acts made by the Legislature, moreover after amendment in Sc/ST act, this government also tried to snatch the fundamental rights provided by the constitution of India.

Enforcement of fundamental rights is a basic feature of the Constitution. This Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 represent the foundational values which form the basis of the rule of law. Contents of the said act have to be struck down in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty has to be protected against any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of Legislation has also to be consistent with the fundamental rights.

**THE ATROCITIES ACT HAS NOW BECOME AN INSTRUMENT TO “BLACKMAIL IS ALSO PRONE TO MISUSE ON ACCOUNT OF MONETARY INCENTIVE AND**



**TO EXACT “VENGEANCE” AND SATISFY VESTED INTERESTS**

While the intention of the act was good, however after new amendment, its structure is inconsistent with basic principles of liberty and accountability.

The anti-atrocities law, which protects Scheduled Castes and Scheduled Tribes from casteist slurs and discrimination, has become an instrument to “blackmail” innocent citizens and public servants. The past three decades have seen complainants — who belong to the marginalized sections of society — use the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 to exact “vengeance” and satisfy vested interests

The Atrocities Act is also prone to misuse on account of monetary incentive being available merely for lodging a case under Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Such incentive may encourage not only genuine victims but, there being no safeguard even against a false case being registered only to get the monetary incentive, such false cases may be filed without any remedy to the affected person

The Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by the

police for extraneous reasons against other citizens. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution

Public servants find it difficult to give adverse remarks against employees for fear that they may be charged under the Act. It may unfairly damage the personal and professional reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other.

In support of the above said submissions, there are several judgments wherein the courts also have acknowledged the misuse of law;

THE MADRAS HIGH COURT IN JONES VERSUS STATE  
OBSERVED, THE RELEVANT PORTION IS EXTRACTED  
AND REPRODUCED HEREUNDER:-

*“This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for*

*extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.*

JUDGMENT OF BOMBAY HIGH COURT IN SHARAD  
VERSUS STATE OF MAHARASHTRA OBSERVED, THE  
RELEVANT PORTION IS EXTRACTED AND REPRODUCED  
HEREUNDER:-

*“ 12. We hasten to add that such type of complaints for rampant misuse of the provisions of Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are largely being filed particularly against Public servants, judicial/judicial officers with oblique motive for satisfaction of vested interests. We think the learned Members of the Bar have enormous social responsibility and obligation to ensure that the social fabric of the society is not damaged or ruined. They must ensure that exaggerated versions should not be reflected in the criminal complaints having the outrageous effect of independence of judicial and quasi judicial authorities so also the public servants.*

*We cannot tolerate putting them in a spooked, chagrined and fearful state while performing their public duties and functions. We also think that a serious re-look at the provisions of the Act of 1989 which are being now largely misused is warranted by the Legislature, of course, on the basis of pragmatic realities and public opinion. A copy of this Judgment is directed to be sent to the Law Commission for information.”*

It was, thus, submitted that above judgments are merely illustrations to show that the abuse of law was rampant.

**AMENDMENT IN ACT IS ARBITRARY, UNJUST AND IRRATIONAL AND VIOLATE THE FUNDAMENTAL RIGHTS BY RESTRICTING ANTICIPATORY BAIL, WHICH IS AGAINST THE ARTICLE 21**

The object of Article 21 is to prevent encroachment upon personal liberty in any manner. Article 21 is repository of all human rights essential for a person or a citizen. A fruitful and meaningful life presupposes life full of dignity, honour, health and welfare. In the modern “Welfare Philosophy”, it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens; while invoking the provisions of Article 21.

It is one more discriminatory amendment (in that it only applies to some groups of people – indeed, it perpetuates the caste system); it violates the fundamental rights of the accused. (Section 438 (of the Criminal Procedure Code) does 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). Where “verbal abuse” is reported, which may prove false, hence it should clearly be bailable offence.

In Rini Johar (supra) this Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates Article 21 of the

Constitution and thus the victim of arrest was entitled to compensation. This Court noted the observations and guidelines laid down against wrongful arrests in Joginder Kumar (supra), D.K. Basu (supra), Arnesh Kumar (supra) and other cases and held that since the arrest is in violation of guidelines laid down by this Court and is violative of Article 21, the person arrested was entitled to compensation; liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty

The Gujarat High Court in Pankaj D Suthar (supra) considered the question whether Section 18 of the Atrocities Act excludes grant of anticipatory bail when on prima facie judicial scrutiny, allegations are found to be not free from doubt, the relevant abstract of judgment is reproduce here for mere perusal;

*Section 18 of the Atrocities Act gives a vision, direction and mandate to the Court as to the cases where the anticipatory bail must be refused, but it does not and it certainly cannot whisk away the right of any Court to have a prima facie judicial scrutiny of the allegations made in the complaint. Nor can it under its hunch permit provisions of law being abused to suit the mala fide motivated ends of some unscrupulous complainant. In this case also if indeed this Court been satisfied with the story revealed by the complainant as truthful and genuine, then anticipatory bail would have been surely rejected right forth as a matter of course, but since the submissions of Mr. Pardiwala have considerable force, this Court has no*

*alternative but to accept the same in the larger interests of justice to see that merely on the count of the firsthand prejudice attempted to be caused by allegations in the complaint, the petitioner-accused is not denied his precious right of the anticipatory bail.*

*6. In view of the aforesaid discussion, though in a way the learned A.P.P. is absolutely right when he submitted that no anticipatory bail can be granted to the petitioner-accused because of Section 18 of the Atrocities Act, in the opinion of this Court, his submission fails because at this stage it is too difficult to rule out the probability of the accusations levelled by the complainant against the petitioner - accused having committed an offence under the Atrocities Act being false, vexatious and by way of counterblast as stemming from the ulterior motive to humiliate, disgrace and demoralise the petitioner-accused who is a public servant. When that is the result and position, there is no question of bypassing of Section 18 of the Atrocities Act arises as apprehended by the learned A.P.P. Taking in to consideration the facts and circumstances of this particular case, and in view of the aforesaid discussion , this Misc . Criminal Application for anticipatory bail deserves to be allowed and is allowed accordingly”*

In the light of the above, we first consider the question whether there could be an absolute bar to the grant of anticipatory bail. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. it may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered under the Atrocities Act, without any protection of law.

This cannot be the scenario in a civilized society. Similarly, even a non public servant can be black mailed to surrender his civil rights.

**LEGITIMATE EXPECTATIONS OF FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA HAVE BEEN FRUSTRATED TOTALLY, AS TO BE BORN IN A UPPER CASTE CAN'T BE A GROUND TO FACE ABUSE OF LAW OR PRESUMPTION OF GUILT**

There cannot be any mandate under the law for arrest of an innocent; Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court. In Noor Aga versus State of Punjab, it was observed:

*“33. Presumption of innocence is a human right as envisaged under Article 14 (2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof, would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).*

*35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on*

*an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld*

According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.

A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.



**PRIOR SCRUTINY, PROPER INVESTIGATION,**  
**CREDIBLE INFORMATION AND REASONABLE**  
**PROCEDURE IS REQUIRED BEFORE ARREST**

There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny; referring to Section 41(1)(b) Cr.P.C. it was submitted that arrest could be effected only if there was 'credible' information and only if the police officer had 'reason to believe' that the offence had been committed and that such arrest was necessary. Thus, the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41A Cr.P.C.

It was submitted that the expression 'reason to believe' in Section 41 Cr.P.C. had to be read in the light of Section 26 IPC and judgments interpreting the said expression. The said expression was not at par with suspicion. Reference has been made in this regard to Joti Prasad versus State of Haryana, Badan Singh @ Baddo versus State of U.P. & Ors., Adri Dharan Das versus State of West Bengal, Tata Chemicals Ltd. versus Commissioner of Customs and Ganga Saran & Sons Pvt. Ltd. versus Income Tax Officer & Ors.

In the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.

**DATA AND STATISTICS DEPICTS LOW PERCENTAGE OF CONVICTION UNDER SCHEDULED CASTES AND TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

The number of complaints under this said act had increases drastically, alarmingly and under the context of the report filed by the commission, 85% of complaints under the Impugned act ends in acquittal.

As per data (Crime in India 2016 – Statistics) compiled by the National Crime Records Bureau, Ministry of Home Affairs, it depicts that in the year 2016, 5347 cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases.

It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. (Reference: Annual Report 2016-2017 published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India).

The NCRB data revealed that in 2016, there were 45233 cases pending trial from the previous year under the SC/ST (Prevention of Atrocities) Act, 1989 whereas 5124 were sent for trial during the year resulting in a total of 50,357 cases during the year. While no cases were withdrawn by the government and there were no cases disposed by plea bargaining, 49 cases were compounded.

During the year in 4546 cases, the trial was completed. While there were convictions in 701 cases, in 3845 the accused were acquitted or discharged. So the conviction rate was 15.4 % while the pendency percentage took at 90.5%.

The NCRB data also revealed that Final reports submitted by the police during the year, the police had found 2150 cases to be “true but (with) insufficient evidence”, 5,347 cases to be “false”, and 869 cases to be “mistake of fact”.

The Law Commission in July 2002 has severely criticized the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this article to the 41st Report of the Law Commission wherein the Commission saw “no justification” to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind

**NO SAFEGUARD TO PROVE INNOCENCE, IS PROVIDED AGAINST FALSE IMPLICATION, UNDUE HARASSMENT UNDER THIS ACT, ALSO NO PENAL PROVISIONS AGAINST THE ABUSE OF LAW**

The Act should amend in such a manner which promote fraternity and integration of society as the Constitution

envisages “a cohesive, unified and casteless society.” the object of the Act shall to prevent commission of offences of atrocities against members of SCs and STs and it must be in consonance with the intent of the Act to provide for punishment for members of SCs and STs for falsely implicating a person. If punishment would not be provided, it means someone from the SC/ST community can get away with a false complaint against a person even if a court of law finds the complaint to be frivolous

It was submitted that there is no safeguard against false implication, undue harassment and uncalled for arrest thus, for the innocent citizen of country there shall be amendment in such manner which incorporate safeguards against unreasonable and arbitrary power of arrest in such cases.

**MISUSE OF SCHEDULED CASTES AND TRIBES  
(PREVENTION OF ATROCITIES) ACT, 1989 HAS  
RUINED THE CAREERS AND LIVES OF MANY  
INNOCENTS**

Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society; By

referring to the statement of Joseph Addison, “Better to die ten thousand deaths than wound my honour”

The Apex Court in *Khedat Mazdoor Chetna Sangath v. State of M.P.* (1994) 6 SCC 260 posed to itself a question “If dignity or honour vanishes what remains of life?” This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India.

The Act has many benefits but it has some limitations too. Some of the non-societal member tries to make the most use of the legal opportunism and tries to get some one innocent involved In these cases. These fraud cases causes huge defamation of wrongfully accused person and The consequences of such scenarios are long-lasting.

**IN SHAH BANO CASE, ORDER OF THIS HO’BLE COURT WAS OVERTURNED IN THE SAME MANNER BY THE PARLIAMENT JUST TO GARNER THE VOTES OF MINORITY COMMUNITY WHICH ADVERSELY AFFECTED THE WHOLE SOCIETY**

There are several instances recorded in history when government took wrong steps to culminate the political agenda. The first case where this conflict of opinion first came to light was the historic judgment of *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*, In this judgment, a sixty-two-year-old Muslim woman was divorced by her husband by exercising his right to incontestable ‘talaq’. A

constitutional bench of the Supreme Court held that a divorced Muslim woman is entitled to maintenance under Section 125 of the Code.

The orthodox Muslim community launched protests and agitations against this judgment as they saw it as interference in their personal law. Caved in under pressure Prime Minister Rajiv Gandhi committed the biggest blunder of his tenure in the Shah Bano case. With a brute majority that he had in both the houses of parliament, he overturned the 1985 Supreme Court judgment, of Shsh Bano Case and unanimously passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act banned the maintenance, terming it unconstitutional, that opened the door for dangerous precedents. Thus, the right to appeal under Section 125 was largely restricted to Muslim women and the law, which should have championed for women's rights, became anti- secular and anti- feminist due to the influence of politics and orthodoxy.

Thereafter the said act was challenged in the matter of *Danial Latifi and Anr. v. Union of India*, where Shah Bano's lawyer herself challenged the constitutional validity of the Act. In this judgment, the Supreme Court attempted to dispel the confusion of conflicting judgments that had arisen in the aftermath of *Shah Bano*. The Bench liberally

interpreted Sections 3 and 4 of the Act and stated that a divorced Muslim woman is entitled to reasonable and sufficient provision for livelihood along with maintenance, and thus, the husband is duty bound to provide this within the Iddat period (as stated by the Act). However, one shortcoming in *Daniel Latif* was that the court failed to realize the inaccessibility of Section 125 for Muslim women. While Section 125 proclaims to be uniformly applicable, the consent of both the wife as well as the husband is required to invoke it. Pragmatically speaking, the husband would not consent to be subjected to Section 125 of the Code when he can enjoy lesser liability under the Act.

However, now the judicial position has been cleared by the case of *Shamim Bano v Ashraf Khan*. The case is one such milestone as it interprets Section 125 of the Code of Criminal Procedure to be universally applicable to women regardless of personal laws' dicta on the matter.

It is submitted here that, undoubtedly India is the largest democracy of the world however, such type of instances usually stepped down the vision of progressive country, in this unfortunate country ours democracy has reduced to "Appeasement Politics". There are several instances where our leaders committed blunders, the above mentioned matter is mere an example which could not be allowed in



civilize society, a wrong step could be detrimental for a long span and affect the lives of many.

**THIS HON'BLE COURT IS GUARDIAN OF INDIAN CONSTITUTION AND HAS POWER TO PROTECT THE FUNDAMENTAL RIGHTS OF CITIZEN ALSO THIS HON'BLE COURT CAN REVIEW THE AMENDMENT**

In a landmark ruling on dated 11 January 2007, this Hon'ble Court India ruled that all laws (including those in the Ninth Schedule) would be open to Judicial Review if they violated the basic structure of the constitution."

The nine judges bench examined the validity of inclusion of several Central and State laws, including the Tamil Nadu Reservation Act providing for 69 per cent quota in jobs and in educational institutions.

*"The power to grant absolute immunity at will is not compatible with the basic structure doctrine and, therefore, after April 24, 1973 the laws included in the Ninth Schedule would not have absolute immunity. The validity of such laws can be challenged on the touchstone of basic structure such as reflected in Article 21 read with Article 14 and Article 19, Article 15 and the principles underlying these Articles."*

*"Insertion in the Ninth Schedule is not controlled by any defined criteria or standards by which the exercise of power may be evaluated. The consequence of the insertion is that it nullifies entire Part III (relating to fundamental rights) of the Constitution. There is no constitutional control on such nullification. It means unlimited power to totally nullify Part III insofar as*

*Ninth Schedule legislation are concerned. The supremacy of the Constitution mandates all constitutional bodies to comply with the provisions of the Constitution. It also mandates a mechanism for testing the validity of legislative acts through an independent organ, viz. the judiciary."*

In this matter the court held that all such laws included in the Ninth Schedule after April 24, 1973 would be tested individually on the touchstone of violation of fundamental rights or the basic structure doctrine. The laws would be examined separately by a three-judge Bench and if these were found to violate the fundamental rights, abridge or abrogate any of the rights or protection granted to the people would be set aside.

**SECTION 66A OF THE INFORMATION TECHNOLOGY ACT WAS STRUCK DOWN BY THIS HON'BLE COURT, ON THE GROUND THAT IT VIOLATES THE FUNDAMENTAL RIGHTS**

In the matter of Shreya Singhal v. Union of India this Hon'ble Court struck down Section 66A of the Information Technology Act, 2000, relating to restrictions on online speech, unconstitutional on grounds of violating the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India. The Court further held that the Section was not saved by virtue of being 'reasonable restrictions' on the freedom of speech under Article 19(2); Section 66A of the Information Technology Act was arbitrary and unreasonable, gave wide undefined powers to the executive leading to its misuse and therefore was in

direct conflict with the basic structure of the constitution. It was violative of our fundamental rights. Its implementation led to violation of free exercise of fundamental right.

This Hon'ble court held that, Section 66A actually had no proximate connection with public order or with incitement to commit an offence.

*“The information disseminated over the Internet need not be information which ‘incites’ anybody at all. Written words may be sent that may be purely in the realm of ‘discussion’ or ‘advocacy’ of a ‘particular point of view’. Further, the mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences under the [Indian] Penal Code at all,”*

Holding several terms used in the law to define the contours of offences as “open-ended, undefined and vague”, the court observed: “Every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another. What may cause annoyance or inconvenience to one may not cause annoyance or inconvenience to another.”

The Hon'ble court pointed out that a penal law would be void on the grounds of vagueness if it failed to define the criminal offence with sufficient definiteness. “Ordinary people should be able to understand what conduct is prohibited and what is permitted. Also, those who administer the law must know what offence has been committed so that arbitrary and

discriminatory enforcement of the law does not take place,”

**IN THIS CASE COURT CAN'T BE REMAIN AS MERE SPECTATOR AFTER THIS UNCONSTITUTIONAL AMENDMENT, THIS COURT IS NOT EXPECTED TO ADOPT A PASSIVE OR NEGATIVE ROLE AND REMAIN BYSTANDER OR A SPECTATOR IF VIOLATION OF FUNDAMENTAL RIGHTS IS OBSERVED.**

while Parliament and the State Legislature in India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights; for now it has been repeatedly held that no constitutional amendment can be sustained which [violates the basic structure of the Constitution. See Kesavananda Bharati Sripadagalayaru Vs. State of Kerala AIR1973SC1461), Smt. Indira Nehru. Gandhi v. Raj Narain [1976]2SCR347], Minerva Mills Ltd. v. Union of India [1981]1SCR206] and recently in S. P. Sampath Kumar v. Union of India (1987). With this impressive expanse of judicial power, it is only right that the superior

Courts in India should be conscious of the enormous responsibility which rests on them.

After this unconstitutional amendment, this Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights. There are enumerable decisions of this Court where this approach has been adopted and decision should be taken with a view to enforce fundamental rights which may sometimes be perceived as legislative in nature.

The supreme court of India is the guardian of Indian Constitution and the most important functions of the superior judiciary in India is to examine the competence and validity of legislation, thus with a hope the Petitioner has approached this Glorious Institution, which has always safeguarded the very tenets of Indian Constitution, and has always provide Right to life in wider context to the masses of the Nation.

## LIST OF DATES

1989 In 1989, The Scheduled Castes and Tribes (Prevention of Atrocities) Act was enacted to prevent atrocities against the Scheduled castes and Scheduled Tribes

20.03.2018 In the matter of Dr. Subhash kashinath mahajan vs. The state of Maharashtra and Anr; wherein this Hon'ble court issued directions after examining all the relevant facts pertains to The scheduled castes and Tribes (Prevention of Atrocities) Act; In this regard, This Hon'ble Court has made following observations

*Our conclusions are as follows:*

*i) Proceedings in the present case are clear abuse of process of court and are quashed.*

*ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);*

*iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.*

*iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous*

*or motivated. v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.*

*The above directions are prospective.*

20.08.2018

The Scheduled Castes and Tribes (Prevention of Atrocities) Act was amended and restored the previous provisions in such a manner, so that an innocent can't access to avail the right of Anticipatory bail.

Hence this Writ Petition.



**IN THE SUPREME COURT OF INDIA**

[CIVIL ORIGINAL JURISDICTION]

WRIT PETITION (C) NO. OF 2018

(UNDER ART. 32 OF THE CONSTITUTION)

**IN THE MATTER OF:-**

1. PRATHVI RAJ CHAUHAN  
& PRIYA SHARMA .....PETITIONER  
VERSUS

1. UNION OF INDIA  
THROUGH ITS PRINCIPAL SECRETARY  
PRIME MINISTER OFFICE  
YOJANA BHAWAN,  
SANSAD MARG,  
NEW DELHI 110 001

...RESPONDENT

**PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF  
INDIA BEFORE THIS HON'BLE COURT FOR VIOLATION  
OF ARTICLE 14, 19 AND 21 AND OTHER ARTICLES OF  
THE CONSTITUTION OF INDIA, AS CONSTITUTIONAL  
AMENDMENT MADE BY THE RESPONDENT TO ALTER  
THE DIRECTIONS PROMULGATED BY THIS HON'BLE  
COURT IN THE MATTER OF DR. SUBHASH  
KASHINATH MAHAJAN VS. THE STATE OF  
MAHARASHTRA AND ANOTHER.**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS  
COMPANION JUDGES OF THIS HON'BLE COURT

THE HUMBLE WRIT PETITION  
OF THE PETITIONERS ABOVE  
NAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the petitioner is filing the present Public Interest Litigation before this Hon'ble Court under Article 32 of the Constitution of India to ultra vires the Amendment made by the respondent in the SC/ST Prevention of Atrocities Act, 1989.

**2. BRIEF FACTS OF THE CASE:**

That the brief factual matrix culminating into the present writ petition is as follows:-

- a) In 1989, The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent atrocities against the Scheduled castes and Scheduled Tribes.
- b) That, the act was conceived as a strong safeguard against scheduled castes and tribes however soon after it become an instrument to blackmail innocent citizen.
- c) That, the past three decades have seen complaints – who belongs to the marginalized sections of society, used The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 to exact vengeance and satisfy vested interests.

d) That, after many instance and reports of abuse of said act and many judgments of various courts, wherein courts considered this act now became a tool to harass the innocents, This Hon'ble court in the matter of Dr. Subhash kashinath mahajan vs. The state of Maharashtra and Anr; wherein for the safeguard of innocents, this Hon'ble court issued directions after examining all the relevant facts pertains to The scheduled castes and Tribes (Prevention of Atrocities) Act; In this regard, This Hon'ble Court has made following observations

*Our conclusions are as follows:*

*i) Proceedings in the present case are clear abuse of*

*process of court and are quashed.*

*ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);*

*iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.*

*iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated. v) Any*

*violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.*

*The above directions are prospective*

It is pertinent to mention here that a well descriptive order was passed by this Hon'ble court for the safe guard of the innocent people of this country, A true copy of the judgment Dr. Subhash kashinath mahajan vs. The state of Maharashtra and Anr; in Criminal Appeal No. 416 of 2018(Arising out of Special Leave Petition (crl). No. 5661 of 2017), on dated 20.03.2018 is annexed as **ANNEXURE P-1(Pg.....)**.

- e) That, on the basis of false complaint, a special court of Jodhpur has directed the police to register a FIR against cricketer Hardik Pandya for his alleged remark on Dr. Ambedkar on Twitter. It was stated in the complaint that Mr. Pandya made remark about reservation policy, which is "derogatory", However after investigation, things clear which depicts the alleged Twitter handle was not belong to Hardik Pandya and the tweet that was in question posted by a fake account using his name.

It is pertinent to mention here that the said investigation was started because of above judgment of this Hon'ble court otherwise cricketer Hardik Pandya could be the victims of this arbitrary act. This incident is merely an example to show that the abuse of law was rampant.

A true typed copy of The Hindu newspaper, dated 22.03.2018 is annexed as **ANNEXURE P-2 (Pg.....)**.

- f) That, on dated 12 April, 2018 an article published in The Navbharat Times daily regarding the misused The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 in order to make money, 10 false cases under the SC/ST act were lodged against the victim. A true type copy of the news article published by Navbharat Times on dated 12.04.2018 has been annexed hereto and marked as **ANNEXURE P-3 (PAGE NO.....)**.
- g) That, under pressure from the opposition parties and particular sections of the society, the government decided to file a review petition against the judgment of this Hon'ble court; the review petition is still pending before this Hon'ble court.
- h) That, in order to appease the SC/ST community of this country with the sole intention to strengthen the vote bank before Loksabha election the government adopted an extraordinary step of constitutional amendment to restore the previous provisions of the The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 in such a manner, so that an innocent can't access to avail the right of Anticipatory bail.

*After section 18 of the scheduled castes and the scheduled tribes (Prevention of Atrocities) Act 1989, the following shall be inserted , namely:-*

*“18 A. i) For the purpose of this Act, -*

*a) Preliminary enquiry shall be required for registration of a First Information Report against any person; or*

*b) The investigating officer shall not required approval for the arrest, if necessary, of any person,*

*Against whom an accusation of having committed an offence under this act has made and no procedure other than that provided under this Act or the code shall apply.*

*ii) 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.”*

i) That, while the intention of the act was good, however after new amendment, its structure is inconsistent with basic principles of liberty and accountability. It is one more discriminatory amendment (in that it only applies to some groups of people – indeed, it perpetuates the caste system); it violates the fundamental rights of the accused. (Section 438 (of the Criminal Procedure Code) does 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). Where “verbal abuse” is reported, which

may prove false, hence it should clearly be bailable offence.

j) That, on dated 17.08.2018 a notification in The Gazette of India published by the ministry of Law and Justice that The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018 no. 27 of 2018 received the assent of the President and is hereby published for general information. A True copy of the notification published in Gazette of India is annexed and marked as **ANNEXURE P-4 (Page No. )**.

k) That, on dated 20.08.2018 a notification in The Gazette of India published by the ministry of Social Justice and Empowerment that in exercise of the power conferred by sub section (2) section 1 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018 no. 27 of 2018, the central government hereby appoint the 20<sup>th</sup> day of August 2018, as the date on which the provisions of the said act shall come into force.. A True copy of the notification published in Gazette of India is annexed and marked as **ANNEXURE P-5 (Page No. )**.

l) That, in Rini Johar (supra) this Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates Article 21 of the Constitution and thus the victim of arrest was entitled to compensation. This Court noted the observations and guidelines laid down against wrongful arrests in Joginder Kumar (supra), D.K. Basu (supra), Arnesh Kumar (supra) and other cases and held that since the arrest is in violation of guidelines laid down by this Court and is violative of Article 21, the person arrested was entitled to compensation; liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty

m) That, the number of complaints under this said act had increases drastically, alarmingly and under the context of the report filed by the commission, 85% of complaints under the Impugned act ends in acquittal.

n) That, As per data (Crime in India 2016 – Statistics) compiled by the National Crime Records Bureau, Ministry of Home Affairs, it depicts that in the year 2016, 5347 cases were found to be false cases out of the investigated out



of SC cases and 912 were found to be false cases out of ST cases.

- o) That, It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. (Reference: Annual Report 2016-2017 published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India).
- p) That, The NCRB data revealed that in 2016, there were 45233 cases pending trial from the previous year under the SC/ST (Prevention of Atrocities) Act, 1989 whereas 5124 were sent for trial during the year resulting in a total of 50,357 cases during the year. While no cases were withdrawn by the government and there were no cases disposed by plea bargaining, 49 cases were compounded.
- q) That, during the year in 4546 cases, the trial was completed. While there were convictions in 701 cases, in 3845 the accused were acquitted or discharged. So the conviction rate was 15.4 % while the pendency percentage took at 90.5%.

- r) That, the NCRB data also revealed that Final reports submitted by the police during the year, the police had found 2150 cases to be “true but (with) insufficient evidence”, 5,347 cases to be “false”, and 869 cases to be “mistake of fact”. The True copy of the photo compilation, which depicts the data pertain to the Sc/ST atrocity act annexed and marked as **ANNEXURE P-6 (Page No. )**.
- s) The Law Commission in July 2002 has severely criticized the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this article to the 41st Report of the Law Commission wherein the Commission saw “no justification” to require a person to submit to

custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind

- t) That, life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society; By referring to the statement of Joseph Addison, “Better to die ten thousand deaths than wound my honour”
- u) That, the Apex Court in *Khedat Mazdoor Chetna Sangath v. State of M.P.* (1994) 6 SCC 260 posed to itself a question “If dignity or honour vanishes what remains of life?” This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India.
- v) That, the Act has many benefits but it has some limitations too. Some of the non-societal member tries to make the most use of the legal opportunism and tries to get some one innocent

involved In these cases. These fraud cases causes huge defamation of wrongfully accused person and The consequences of such scenarios are long-lasting. The True copies of the News compilation, which depicts the misuse of Atrocity Act are annexed and marked as **ANNEXURE P-7 (Page No. )**.

### **3. GROUNDS:**

- a) Because, the constitution of India has delegated power to the parliament to enact and amend the constitution, However no constitutional amendment can be sustained which violates the basic structure of the Constitution (as stated in Kesavananda Bharati Sripadagalayaru Vs. State of Kerala).
- b) Because, the Atrocity Act came in the force in the year 1989, the main object of the said act was to curtail and restrict the atrocities against the SC/ST, but despite of that the Act has been misused to file false complaints to promote caste hatred.
- c) Because, the past three decades have seen complaints – who belongs to the marginalized sections of society, used The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 to exact vengeance and satisfy vested interests.
- d) Because, The Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by the police for extraneous reasons against other citizens. Any harassment of an innocent citizen, irrespective of

caste or religion, is against the guarantee of the Constitution.

- e) Because, after amendment the 1989 Act denies anticipatory bail to the suspected offenders. The law is therefore used to rob a person of his personal liberty merely on the unilateral word of the complainant
- f) Because, as per the observations made by this Hon'ble Court in Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & Anr. *“In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.”*

These guide lines were made by the court to protect the interest of the innocent citizen of country.

- g) Because, review petition that was filed by the government is still pending before this Hon'ble Court.
- h) Because, The Respondent arbitrarily decided to amend this act and restored the previous provisions in such a manner, so that an innocent can't access to avail the right of Anticipatory bail.
- i) Because, this rare moved was adopted by the respondent, to get the political millage and as the respondent was under pressure from alliance partner and also worried over the prospects of

antagonizing huge vote bank of Dalit ahead of parliamentary elections.

j) Because The general community of this country is living in this country as second grade citizen which don't have any rights for last 800 years, when Muslim rule came in power for over almost 600 years, all Hindu's were treated like second grade citizen. it doesn't matter whether they are of high caste or low caste, in the same manner as the Britishers did with us over 200 years. so on an average general community have also faced the same problem as the other's faced, after the independence of country it was in mind that those are having progressive mindset would be allowed to live in batter environment but the government has failed to secure equality before law instead to take onus of failure the government stated appeasing some sects of the communities which resulted in cast, religion or region based politics. The impact of this politics is the innocents are suffering.

k) Because Public servants find it difficult to give adverse remarks against employees for fear that they may be charged under the Act. It may unfairly damage the personal and professional

reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other.

- 1) Because In support of the above said submissions, there are several judgments wherein the courts also have acknowledged the misuse of law;

THE MADRAS HIGH COURT IN JONES VERSUS STATE OBSERVED, THE RELEVANT PORTION IS EXTRACTED AND REPRODUCED HEREUNDER:-

*“This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.*

JUDGMENT OF BOMBAY HIGH COURT IN SHARAD VERSUS STATE OF MAHARASHTRA OBSERVED, THE RELEVANT PORTION IS

EXTRACTED AND REPRODUCED

HEREUNDER:-

*“ 12. We hasten to add that such type of complaints for rampant misuse of the provisions of Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are largely being filed particularly against Public servants, judicial/judicial officers with oblique motive for satisfaction of vested interests. We think the learned Members of the Bar have enormous social responsibility and obligation to ensure that the social fabric of the society is not damaged or ruined. They must ensure that exaggerated versions should not be reflected in the criminal complaints having the outrageous effect of independence of judicial and quasi judicial authorities so also the public servants.*

*We cannot tolerate putting them in a spooked, chagrined and fearful state while performing their public duties and functions. We also think that a serious re-look at the provisions of the Act of 1989 which are being now largely misused is warranted by the Legislature, of course, on the basis of pragmatic realities and public opinion. A copy of this Judgment is directed to be sent to the Law Commission for information.”*

It was, thus, submitted that above judgments are merely illustrations to show that the abuse of law was rampant.

m) Because It is one more discriminatory amendment (in that it only applies to some groups of people – indeed, it perpetuates the caste system); it violates the fundamental rights of the accused. (Section 438 (of the Criminal Procedure Code) does 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). Where “verbal abuse” is reported, which may prove false, hence it should clearly be bailable offence.

- n) Because In Rini Johar (supra) this Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates Article 21 of the Constitution and thus the victim of arrest was entitled to compensation. This Court noted the observations and guidelines laid down against wrongful arrests in Joginder Kumar (supra), D.K. Basu (supra), Arnesh Kumar (supra) and other cases and held that since the arrest is in violation of guidelines laid down by this Court and is violative of Article 21, the person arrested was entitled to compensation; liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty
- o) Because the Gujarat High Court in Pankaj D Suthar (supra) considered the question whether Section 18 of the Atrocities Act excludes grant of

anticipatory bail when on prima facie judicial scrutiny, allegations are found to be not free from doubt, the relevant abstract of judgment is reproduce here for mere perusal;

*Section 18 of the Atrocities Act gives a vision, direction and mandate to the Court as to the cases where the anticipatory bail must be refused, but it does not and it certainly cannot whisk away the right of any Court to have a prima facie judicial scrutiny of the allegations made in the complaint. Nor can it under its hunch permit provisions of law being abused to suit the mala fide motivated ends of some unscrupulous complainant. In this case also if indeed this Court been satisfied with the story revealed by the complainant as truthful and genuine, then anticipatory bail would have been surely rejected right forth as a matter of course, but since the submissions of Mr. Pardiwala have considerable force, this Court has no alternative but to accept the same in the larger interests of justice to see that merely on the count of the firsthand prejudice attempted to be caused by allegations in the complaint, the petitioner-accused is not denied his precious right of the anticipatory bail.*

*6. In view of the aforesaid discussion, though in a way the learned A.P.P. is absolutely right when he submitted that no anticipatory bail can be granted to the petitioner-accused because of Section 18 of the Atrocities Act, in the opinion of this Court, his submission fails because at this stage it is too difficult to rule out the probability of the accusations levelled by the complainant against the petitioner - accused having committed an offence under the Atrocities Act being false, vexatious and by way of counterblast as stemming from the ulterior motive to humiliate, disgrace and demoralise the petitioner-accused who is a public servant. When that is the result and position, there is no question of bypassing of Section 18 of the Atrocities Act arises as apprehended by the learned A.P.P. Taking in to consideration the facts and circumstances of this particular case, and in view of the aforesaid discussion , this*

*Misc . Criminal Application for anticipatory bail deserves to be allowed and is allowed accordingly”*

In the light of the above, we first consider the question whether there could be an absolute bar to the grant of anticipatory bail. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. It may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered under the Atrocities Act, without any protection of law. This cannot be the scenario in a civilized society. Similarly, even a non public servant can be black mailed to surrender his civil rights.

p) Because there cannot be any mandate under the law for arrest of an innocent; Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity

before an independent forum or Court. In *Noor Aga versus State of Punjab*, it was observed:

*“33. Presumption of innocence is a human right as envisaged under Article 14 (2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof, would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).*

*35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld*

- q) Because a great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage
- r) Because there can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such

allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny; referring to Section 41(1)(b) Cr.P.C. it was submitted that arrest could be effected only if there was 'credible' information and only if the police officer had 'reason to believe' that the offence had been committed and that such arrest was necessary. Thus, the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41A Cr.P.C.

- s) Because in the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.
- t) Because The number of complaints under this said act had increases drastically, alarmingly and under the context of the report filed by the

commission, 85% of complaints under the Impugned act ends in acquittal.

- u) Because As per data (Crime in India 2016 – Statistics) compiled by the National Crime Records Bureau, Ministry of Home Affairs, it depicts that in the year 2016, 5347 cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases.
- v) Because It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. (Reference: Annual Report 2016-2017 published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India).
- w) Because The NCRB data revealed that in 2016, there were 45233 cases pending trial from the previous year under the SC/ST (Prevention of Atrocities) Act, 1989 whereas 5124 were sent for trial during the year resulting in a total of 50,357 cases during the year. While no cases were withdrawn by the government and there

were no cases disposed by plea bargaining, 49 cases were compounded.

- x) Because during the year in 4546 cases, the trial was completed. While there were convictions in 701 cases, in 3845 the accused were acquitted or discharged. So the conviction rate was 15.4 % while the pendency percentage took at 90.5%.
- y) Because the NCRB data also revealed that Final reports submitted by the police during the year, the police had found 2150 cases to be “true but (with) insufficient evidence”, 5,347 cases to be “false”, and 869 cases to be “mistake of fact”.
- z) Because the Law Commission in July 2002 has severely criticized the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is

made in this article to the 41st Report of the Law Commission wherein the Commission saw “no justification” to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind

- aa) Because, the Act should amend in such a manner which promote fraternity and integration of society as the Constitution envisages “a cohesive, unified and casteless society.”
- bb) Because the object of the Act shall to prevent commission of offences of atrocities against members of SCs and STs and it must be in consonance with the intent of the Act to provide for punishment for members of SCs and STs for falsely implicating a person. If punishment would not be provided, it means someone from the SC/ST community can get away with a false complaint against a person even if a court of law finds the complaint to be frivolous



- cc) Because there is no safeguard against false implication, undue harassment and uncalled for arrest thus, for the innocent citizen of country there shall be amendment in such manner which incorporate safeguards against unreasonable and arbitrary power of arrest in such cases
- dd) Because, while Parliament and the State Legislature in India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights.
- ee) Because, in Shah Bano case, Parliament overturned the order of this Hon'ble court and banned the maintenance, terming it unconstitutional, which opened the door for dangerous precedents.
- ff) Because, Section 66a of the information technology act was struck down by this hon'ble

court, on the ground that it violates the fundamental rights

gg) Because, this Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights. There are enumerable decisions of this Court where this approach has been adopted and directions issued with a view to enforce fundamental rights.

4. That the petitioner has not filed any other similar petition before this Hon'ble Court or any other courts for the similar relief.

### **P R A Y E R**

In the premises of aforesaid it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Issue an appropriate order, to declare the provisions inserted in the new amendment of the Scheduled Castes and Tribes (Prevention of

Atrocities) Act, 1989 as ultra vires to the Article 14,  
19 & 21 of constitution of India; and/or

- b) Issue appropriate writ in the nature of mandamus to stay on the provision of new amendment in Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 during the pendency of this writ and/or
- c) Pass such other order (s)/ direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS  
SHALL EVER PRAY.

DRAWN ON: 21/08/2018

FILED ON: 21/08/2018

PLACE: NEW DELHI



**PROFORMA FOR FIRST LISTING**

SECTION: X

**The case pertains to** (Please tick/check the correct box):

<input type="checkbox"/>	Central Act: (Title) – Article 32 of Constitution of India	
<input type="checkbox"/>	Central Rule : (Title)	NA
<input type="checkbox"/>	Rule No(s):	NA
<input type="checkbox"/>	State Act: (Title)	NA
<input type="checkbox"/>	Section :	NA
<input type="checkbox"/>	State Rule : (Title)	NA
<input type="checkbox"/>	Rule No(s):	NA
<input type="checkbox"/>	Impugned Common order : (Date)	NA
<input type="checkbox"/>	Impugned Final Order/Decree/ <b>Notice</b> : (Date)	NA
<input type="checkbox"/>	High Court: (Name):	NA
<input type="checkbox"/>	Names of Judges:	NA
<input type="checkbox"/>	Tribunal/Authority : (Name):	
1.	<b>NATURE OF MATTER:</b> <input type="checkbox"/> Civil <input type="checkbox"/> Criminal	Civil
2.	(a) Petitioner :	PRATHVI RAJ CHAUHAN &  PRIYA SHARMA
	(b) E-mail ID: <a href="mailto:adv.prathvi@gmail.com">adv.prathvi@gmail.com</a> priyalawyer1@gmail.com	
	(c) Mobile phone number: 8010115630, 9999107578	NA
3.	(a) Respondent :	Union of India
	(b) E-mail ID:	NA
	(c) Mobile phone number:	NA
4.	(a) Main category classification:	
	(b) Sub classification:	

5.	Not to be listed before:	NA
6.	Similar/Pending matter:	NA
7.	<b>CRIMINAL MATTERS:</b>	NO
	(a) Whether accused/convict has surrendered: <input type="checkbox"/> Yes <input type="checkbox"/> No	NA
	(b) FIR No.                                  Date:	NA
	(c) Police Station:	NA
	(d) Sentence Awarded:	NA
	(e) Sentence Undergone:	NA
8.	<b>LAND ACQUISITION MATTERS:</b>	NA
	(a) Date of Section 4 notification:	NA
	(b) Date of Section 6 notification:	NA
	(c) Date of Section 17 notification:	NA
9.	<b>TAX MATTERS:</b> State the tax effect:	NA
10.	<b>Special Category</b> (first petitioner/appellant only): <input type="checkbox"/> Senior citizen > 65 years <input type="checkbox"/> SC/ST <input type="checkbox"/> Woman/child <input type="checkbox"/> Disabled <input type="checkbox"/> Legal Aid case <input type="checkbox"/> In custody	NA
11.	Vehicle Number  (in case of Motor Accident Claim matters):	NA
12.	Decided cases with citation:	NA