

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
OF 2018
WRIT PETITION NO.

IN THE MATTER OF:-

SANDEEP LAMBA

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT(S)

WITH

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

PARTY IN PERSON - SANDEEP LAMBA

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SYNOPSIS & LIST OF DATES AND EVENTS

That the Petitioner is 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.*

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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 move was adopted by the central government, to get the political mileage and under pressure from alliance partner and also worried over the prospects of antagonizing huge vote bank ahead of next year Lok Sabha 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

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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.

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.

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That, the Parliament placed this constitutional amendment in the atrocity act with a sole intention to appease a particular section of society before elections. 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 Shsh Bano Case and banned the maintenance, terming it unconstitutional, that opened the door for dangerous precedents.

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

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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"

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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

In support of the above said submissions, there are several judgments wherein the courts also have acknowledged the misuse of law which are stated in the ground of this Writ Petition;

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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 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.

**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

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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.

**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*

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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 Latifi* 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.

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

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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.

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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

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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

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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.

24.8.2018

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. SANDEEP LAMBA ,
PLOT NO.91, BLOCK- A
BABA HARIDAS ENCLAVE,
JHARODA KALAN;
NAJAFGARH,
NEW DELHI - 110072PETITIONER
VERSUS

1. UNION OF INDIA
THROUGH ITS PRINCIPAL SECRETARY
PRIME MINISTER OFFICE
YOGJANA 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,

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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. That the Petitioner is Advocate by profession and he is practising in many courts of Delhi, including supreme court of India.
- 1A. That in this writ petition there is violation of article 14,19,21 of constitution of India.

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. 28-117.....).

- e) 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.
- f) 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."

g) 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

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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.

h) 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-2 (Page No. 118-119)**

i) 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 20th day of August 2018, as

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the date on which the provisions of the said act shall come into force.

- j) 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
- k) 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.
- l) 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.

m) 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).

n) 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.

o) 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%.

p) 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".

q) 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

- r) 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"
- s) 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.
- t) 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

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and The consequences of such scenarios are long-lasting.

3. GROUNDS OF WRIT PETITION:

- 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 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.
- c) 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.
- d) 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*

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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.

e) Because, review petition that was filed by the government is still pending before this Hon'ble Court.

f) 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.

g) 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.

h) 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 better 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.

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

- 1) 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

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.

m) 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.

- n) 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
- o) 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.
- p) 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

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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.

q) 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

- r) 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."
- s) 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
- t) 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

u) 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.

v) 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.

w) 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

x) 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

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- 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: 23/08/2018

FILED ON: 24/08/2018

PLACE: NEW DELHI

FILED BY
SANDEEP LAMBA
(PARTY IN PERSON)