

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.1015 OF 2018

IN THE MATTER OF:

Prathvi Raj Chauhan & Anr. ...Petitioners
Versus
Union of India & Ors. ...Respondents

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FILED BY:

(ANIL KATIYAR)

Advocate for the Sole Respondent

FILED ON: .10.2018

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 1015 OF 2018

IN THE MATTER OF:

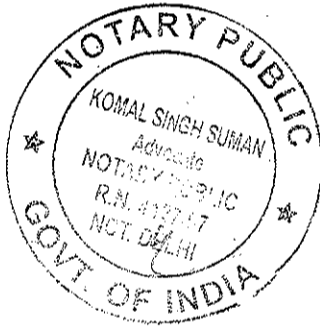
Prathvi Raj Chauhan & Anr ... Petitioners

Versus

Union of India & Ors. ... Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE

SOLE RESPONDENT



I, Ms. Rashmi Chowdhary, working as Joint Secretary to the Government of India, Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, New Delhi, do hereby solemnly affirm and state as under:-



That I am at present serving as the Joint Secretary in the Department of Social Justice and Empowerment, and in my official capacity, I am acquainted with the facts and circumstances of

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the case. I am competent to swear and affirm the present affidavit on behalf of the Respondent.

II. That at the outset it is submitted that the Writ Petitioner(s) has wrongly impleaded the Union of India through the Principal Secretary, Prime Minister's Office, whereas the petitioner ought to have impleaded the Department of Social Justice and Empowerment, which is the concerned Ministry regarding the issue raised in the writ petition. The present reply, therefore, is submitted on behalf of the Ministry of Social Justice and Empowerment and the office of Principal Secretary, Prime Minister's Office deserves to be deleted from array of parties. I respectfully pray that the cause title may kindly be amended suitably.

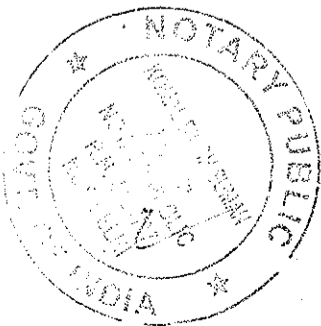
III. That I have gone through the contents of the Writ Petition filed by the Petitioner in this Hon'ble Court under Article 32 of the Constitution of India and have understood the contents thereof.



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IV. I say that, save and except those, which are matter of record, all the averments, statements and submissions made by Petitioner in the abovementioned Synopsis & List of Dates and Writ Petition are, until and unless specifically admitted, are denied by the answering Respondent. At the outset, it is respectfully submitted that the UOI is committed to discharge its constitutional and statutory obligation of protecting the interest of the Scheduled Castes and Scheduled Tribes population which has, since generations suffered the disadvantage resulting from various social and economic factors. It is the most humble submission of the Central Government that the statutory provisions under the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989 and its impugned amendment is the least which the country owes to this section of the society who have been denied several civil rights since generations and have been subjected to indignities, humiliations and harassments. The



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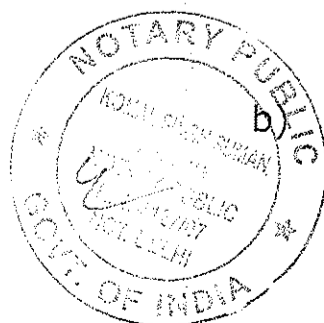
statutory provisions impugned is in discharge of the duty of welfare state and deserves to be protected and defended in the larger interest of the Scheduled Castes and Scheduled Tribes.

The Act and the amendment provisions are in the fulfilment of the commitment of the Government of India to secure and protect the persons belonging to Scheduled Castes and Scheduled Tribes from such indignities, humiliations and harassments.

V. I say that the present Writ Petition has been filed by the petitioner under Article 32 of the Constitution of India with the following prayers:-

"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 Articles 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



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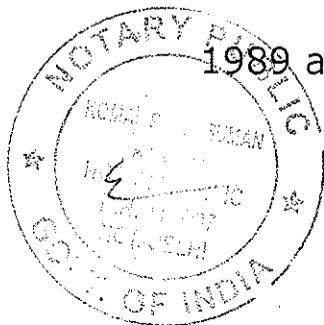
amendment in Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 during the pendency of this writ and /or

c. Pass such other order(s)/direction(s) as this Hon'ble court may deem fit and proper in the interest of justice."

VI. That before submitting parawise reply to the writ petition, the answering respondent would like to place before this Hon'ble Court brief facts and objections to the maintainability of the writ petition in the form of preliminary submissions.

BREIF FACTS

VII. I say that before submitting the preliminary submissions, the answering respondent submits the following perspective that led to the enactment of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the subsequent amendments thereto.



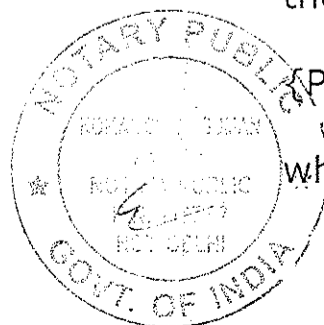
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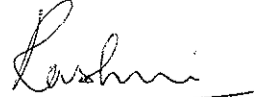
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The Scheduled Castes and the Scheduled Tribes
(Prevention of Atrocities) Act, 1989

VIII. That despite the right to non-discrimination on the basis of race or caste enshrined in Article 15 of the Indian Constitution, discrimination against members of the SCs and the STs is pervasive.

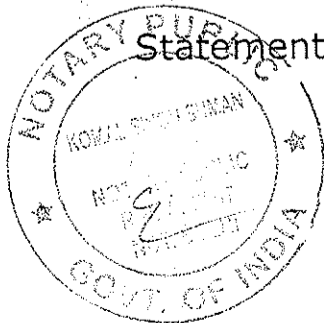
IX. That Article 17 of the Constitution of India abolished 'untouchability', forbade its practice in any form, and made enforcement of any disability arising out of 'Untouchability' an offence punishable in accordance with law. In pursuance of the aforesaid Constitutional provision, an Act of Parliament namely, the Untouchability (Offences) Act, 1955 (22 of 1955) was enacted and notified on 08.05.1955. Subsequently, it was amended and renamed in the year 1976 as the Protection of Civil Rights (PCR) Act, 1955. The PCR Act extends to the whole of India and prescribes punishment for




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the offences of practice of untouchability. It is implemented by the respective State Governments and Union Territory Administrations.

X. That as the PCR Act covered offences of untouchability, but not of atrocities against members of the Scheduled Castes (SCs) and the Scheduled Tribes (STs), therefore, another Act of Parliament which also falls within the provisions of Article 17 of the Constitution was enacted and brought into force on 31.01.1990, for preventing atrocities against members of SCs and STs, to provide for Special Courts for the trial of such offences as well as relief and rehabilitation of the victims of atrocities. The Statement of Objects and Reasons which accompanied the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, introduced in Parliament, had set out the circumstances surrounding the enactment of the PoA Act and pointed to the evil which the statute had sought to remedy. In the Statement of Objects and Reasons it was stated:-

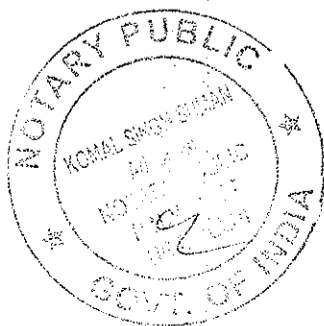



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"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

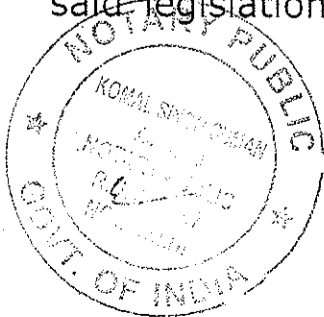
2. ... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the




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Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

The above statement had graphically described the social conditions which motivated the said legislation.



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XI. That the PoA Act extends to the whole of India except the State of Jammu & Kashmir. The provisions of the PCR Act and the PoA Act are implemented by the concerned State Governments/Union Territory Administrations and towards effective implementation of the two Acts, the Central Government under a Centrally Sponsored Scheme provides Central assistance to them, mainly for strengthening of the enforcement and judicial machinery, relief and rehabilitation of the affected persons, incentive for inter-caste marriages where one of the spouses is a member of a Scheduled Caste and awareness generation.

XII. That in this context it is further submitted that according to the National Commission for Scheduled Caste First Report 2004-2005, New Delhi 2006 pp 222-223, it was observed:

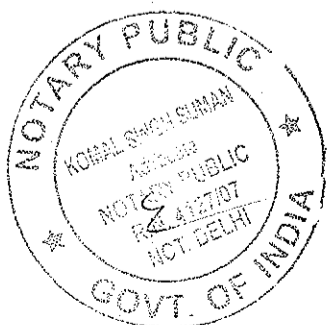
"Despite various measures to improve the socio-economic conditions of the SCs and STs, they remain vulnerable... They have in several brutal incidents, been deprived



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of their life and property... Because of the awareness created... through spread of education, etc., when they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the SCs and STs try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty...

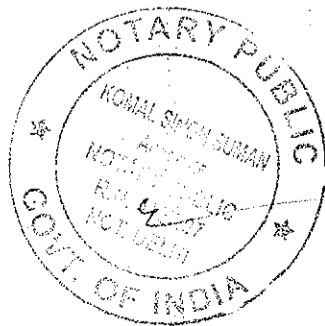
Under the circumstances, the existing laws like the Protection of Civil Rights Act 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check and deter crimes against them committed by non-SCs and non-STs... It is considered necessary that not only the term 'atrocities' should be defined, but also stringent measures should be introduced to provide for higher



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punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect SCs and STs from being victimized and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them."

XIII. In Para 1.2 of the 4th Report 2004-05 of the Parliamentary Committee on the Welfare of Scheduled Caste and Scheduled Tribe states *"The roots of atrocity can be found in the caste system. India's caste system is perhaps the world's longest surviving social hierarchy. A defining feature of Hinduism, caste encompasses a complete ordering of social groups on the basis of the so-called ritual purity. A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that*

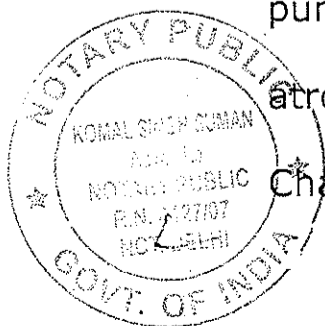


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caste may vary among regions and over time. Differences in status are traditionally sought to be justified by the religious doctrine of karma, a belief that one's place in life is determined by one's deeds in previous lifetimes."

SCHEME OF THE PoA ACT

XIV. That in so far as the Scheme and Provisions of the Act is concerned, the term 'atrocities' has been defined as an offence punishable under section 3 of the Act. In Para 1.1 of the 4th Report 2004-05 of the Parliamentary Committee on the welfare of SCs and STs, it has been stated, "Atrocities is an expression commonly used for referring to crimes against the Scheduled Castes and Scheduled Tribes in India. Atrocities denotes the quality of being shockingly cruel and inhumane whereas crime relates to an act punishable by law. Until the year 1989 the term atrocities was not defined. Crimes coming under Chapter VIII, XVI, XVII, XXI and XXII of the

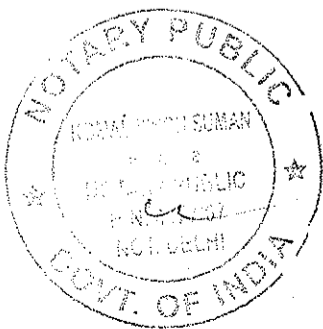


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Indian Penal Code constituted atrocities and were meant for reporting to the Central Government."

XV. That the word 'atrocities' also implies "any offence under the Indian Penal Code (IPC) committed against SCs by non-SC persons, or against STs by non-ST persons as observed by the NHRC, in its Report on Prevention of Atrocities against SCs, New Delhi, 2002, p.28.

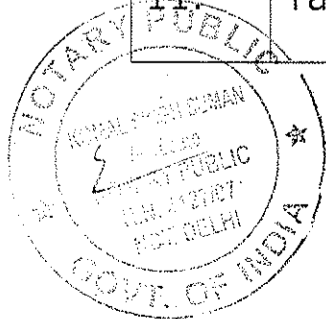
XVI. That in so far as establishment of the Special Courts is concerned, Section 14 of the PoA Act provides for establishing exclusive special courts Court for one or more Districts and specification of District Session Court as a Special Court by the State Government with concurrence of the Chief Justice of the High Court. Accordingly as per the available information, State Governments and Union Territory Administrations of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Odisha,



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Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttarakhand, Uttar Pradesh, West Bengal, Andaman & Nicobar Islands, Chandigarh, Daman & Diu, NCT of Delhi and Puducherry have designated District Session Courts as Special Courts. For speedy trial of cases under the PoA Act, 195 Exclusive Special Courts have also been set up by fourteen States. The details are as under:-

Sl. No.	State	Number of Exclusive Courts
1.	Andhra Pradesh	14
2.	Bihar	05
3.	Chhattisgarh	17
4.	Gujarat	16
5.	Karnataka	08
6.	Kerala	03
7.	Madhya Pradesh	43
8.	Maharashtra	03
9.	Odisha	03
10.	Rajasthan	25
11.	Tamil Nadu	06

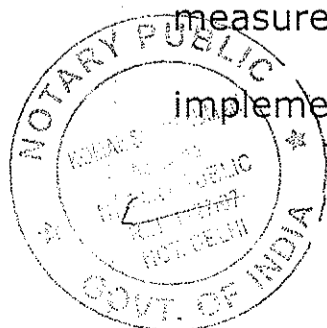


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12.	Telangana	10
13.	Uttar Pradesh	40
14.	Uttarakhand	02
	Total	195

Despite this set up, as per the data of the National Crime Records Bureau, Ministry of Home Affairs, over 89% of the PoA Act related cases in courts were pending at the end of the year 2016.

XVII. It is further submitted that since 'police' and 'public order' are state subjects, primary responsibility for prevention of atrocities and maintenance of law and order rests with the State Governments. Therefore, a responsive administration is essential for prevention of atrocities likely to be inflicted upon SCs and STs by unscrupulous non-SC/ST elements. Section 21(1) and (2) of SC/ST (POA) Act, 1989 stipulate that the State Government shall take all such measures as may be necessary for its effective implementation. However, despite the Act and



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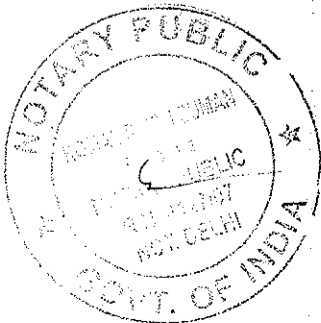
Rules, offences of atrocities against members of SCs and STs have continued.

XVIII. As per the data of National Crime Records Bureau, Ministry of Home Affairs, for the years 2014, 2015, and 2016, the position in regard to (a) number of cases registered under the PoA Act in conjunction with the IPC offences; (b) disposal of cases by courts; (c) Percentage of conviction, acquittal and pendency of such cases is tabulated herein below:-

(a) Number of cases registered under the Act in conjunction with the IPC

Year	Number of cases registered under the Act in conjunction with the IPC Offences
2014	47,124
2015	44,839
2016	47,338

The data for years 2014 to 2016, in the table above does not reflect a drastic increase in cases, as observed by the petitioner.



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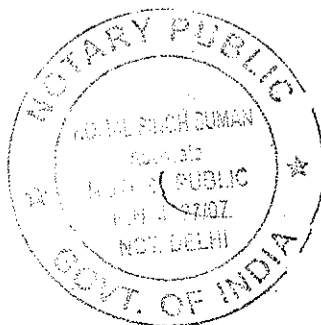
(b) Disposal of cases by the Courts

Year	No of cases in courts including cases brought forward	No of cases compounded or withdrawn during trial	No of cases Ended in conviction	No of cases ended in acquittal	No of cases disposed by courts	No of cases pending at the end of year
2014	1,40,068	752	5,710	14,137	19,847	1,19,469
2015	1,50,687	584	4,802	13,784	18,586	1,31,517
2016	1,67,660	550	4,354	13,095	17,449	1,49,661

(c) Percentage of Conviction, Acquittal and Pendency

Year	Conviction	Acquittal	Pendency
2014	28.8%	71.2%	85.3%
2015	25.8%	74.2%	87.3%
2016	24.9	75.1%	89.3%

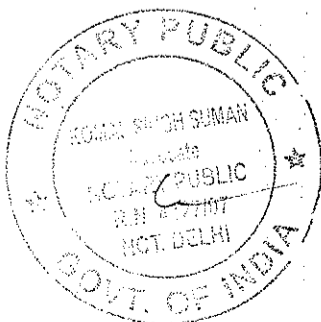
XIX. From the data in above tables, it can be deducted that firstly, that there has been no decrease in the atrocities committed on members of SCs and STs. It is also incorrect to assume that high rate of acquittal of the PoA



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Act related cases is largely on account of false cases and misuse of provisions of the Act. It is rather attributed to several factors like delay in lodging the FIR, witnesses and complainants becoming hostile, absence of proper scrutiny of the cases by the prosecution before filling the charge sheet in the court, lack of proper presentation of the case by the prosecution, prosecution unable to prove the charges, long pendency of the trial makes the witness to lose their interest and lack of corroborative evidence etc. etc. Therefore, it is misconceived and misleading to suggest that the acquittals singularly take place owing to either false cases or that the provisions of the PoA Act are being misused.

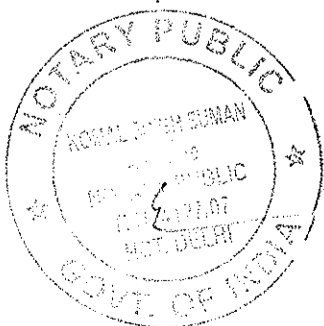
XX. That the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its fourteenth report (Year 2006-2007) had, inter-alia, recommended, "The Committee further advise the two Ministries to



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rise above the excuses of division of responsibility and evolve smooth coordination between themselves. The National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes should also be helped and supported in carrying out their duty. The Committee recommend that representatives from all the four institutions should meet regularly to devise ways and means to curb atrocities and ensure effective administration of the Prevention of Atrocities Act."

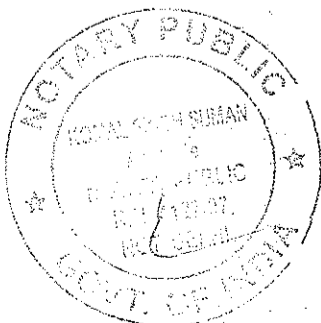
In pursuance of this recommendation, a Committee for effective coordination to devise ways and means to curb offences of untouchability and atrocities against members of Scheduled Castes and Scheduled Tribes and effective implementation of the Protection of Civil rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set up in the year 2006, under the Chairpersonship of Union



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Minister for Social Justice and Empowerment, with members drawn the Ministries of Home Affairs, Social Justice and Empowerment, Tribal Affairs, Law and Justice, National Commission for Scheduled Castes, National Commission for Scheduled Tribes and three non-official members(two amongst SCs, one amongst ST). The Committee has so far held twenty four meetings wherein implementation of the two Acts in 24 States and 4 Union Territories has been reviewed. Important points which emerged from these meetings relate to:-

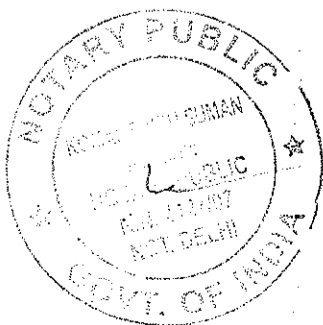
- (i) Setting up of exclusive special courts for speedy trial of the offences under the PoA Act,
- (ii) Regular conduct of meetings of the State and District level Vigilance & Monitoring Committees, as per Rules 16 and 17 of the PoA Rules,
- (vi) Review of cases having ended in acquittal, for appropriate remedial action.



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The Scheduled Castes and the Scheduled Tribes
(Prevention of Atrocities) Amendment Act, 2015

XXI. That despite the deterrent provisions made in the PoA Act, continuing atrocities against the members of SCs and STs had been a cause of concern. High incidence of occurrences of offences against the members of the SCs and the STs also indicated that the deterrent effect of the PoA Act was not adequately felt by the accused persons. It was, therefore, considered appropriate to strengthen the Act and make the relevant provisions of the Act more effective to achieve the object of the Act. Based on the consultation process with stakeholders, and having followed all procedural processes, with an objective to deliver a greater justice to members of SCs and STs, the Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Amendment Bill, 2014, was introduced in the Lok Sabha on 16.07.2014, with the Statement of Object of Reasons that was

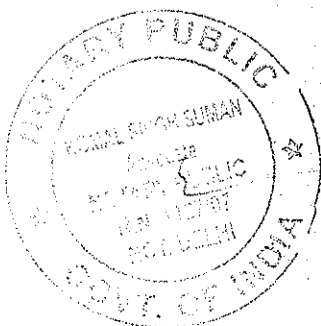


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appended, which reads as under:-

"The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of such offences and for providing relief and rehabilitation of the victims of such offences.

2. *Despite the deterrent provisions made in the Act, atrocities against the members of the Scheduled Castes and Scheduled Tribes continue at a disturbing level. Adequate justice also remains difficult for a majority of the victims and the witnesses, as they face hurdles virtually at every stage of the legal process. The implementation of the Act suffers due to (a) procedural hurdles such as non-registration of cases; (b)*

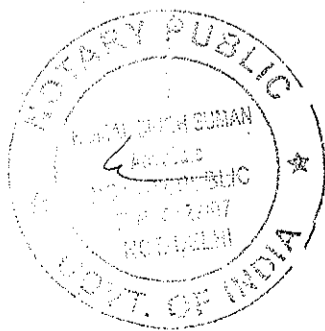


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procedural delays in investigation, arrests and filing of charge-sheets; and (c) delays in trial and low conviction rate.

3. *It is also observed that certain forms of atrocities, known to be occurring in recent years, are not covered by the Act. Several offences under the Indian Penal Code, other than those already covered under section 3(2) (v) of the Act, are also committed frequently against the members of the Scheduled Castes and the Scheduled Tribes on the ground that the victim was a member of a Scheduled Caste and Scheduled Tribe. It is also felt that the public accountability provisions under the Act need to be outlined in greater detail and strengthened.*

4. *In view of the above, it became necessary to make a comprehensive review of the relevant provisions of the Act after due*

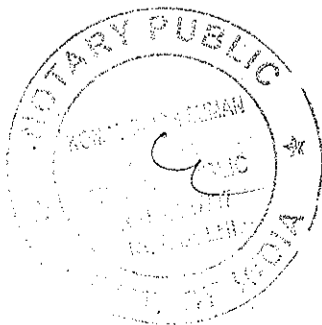


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consultation with the State Governments, Union territory Administrations, concerned Central Ministries, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes, certain Non-Governmental Organisations and Activists.

5. *It is, therefore, proposed to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 which, inter alia, provides the following, namely:-*

(a) to amend the long title of the Act so as to provide for the establishment of the "Exclusive Special Courts" in addition to the Special Courts for the trial of the offences of atrocities against the

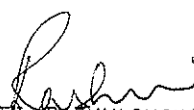


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members of the Scheduled Castes and the Scheduled Tribes;

- (b) to amend section 2 of the Act and insert certain new definitions like "economic boycott", "Exclusive Special Court", "forest rights", "manual scavenger", "public servant", "social boycott", "victim and witness";*
- (c) to amend section 3 of the Act relating to "Punishments for Offences of Atrocities" so as to provide some more categories of atrocities in the said section for which the same punishment as provided in the said section may be imposed;*
- (d) to substitute section 4 of the Act relating to "Punishment for neglect of duties" so as to impose certain duties upon the public servant and to provide punishment for neglect of the duties*



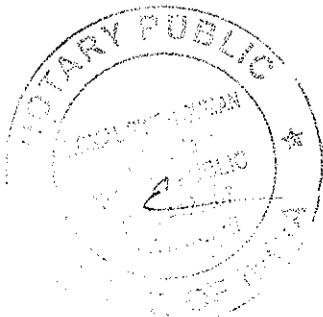

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specified in the said section;

(e) to amend section 8 of the Act relating to "Presumption as to offences" and to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise;

(f) to substitute section 14 of the Act relating to "Special Court" so as to provide that the State Government shall, with the concurrence of the Chief Justice of the High Court, establish an Exclusive Special Court for one or more districts to try the offences under the Act;

(g) to amend section 15 of the Act relating to "Special Public Prosecutor" so as to insert a new sub-section requiring the State Government to specify an Exclusive Public Prosecutor or appoint an

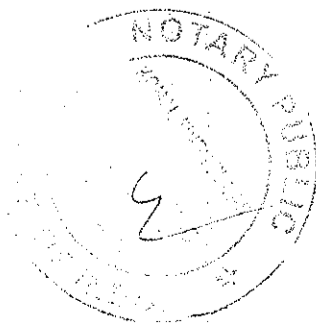


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advocate as an Exclusive Special Public Prosecutor for the purpose of conducting cases in Exclusive Special Court; and

(h) to insert a new Chapter IVA relating to "Rights of Victims and Witnesses" to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence.

6. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2013, containing the aforesaid amendments to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, was introduced in the Lok Sabha during the winter session of Parliament on the 12th December, 2013. However, the said Bill was not taken up for consideration

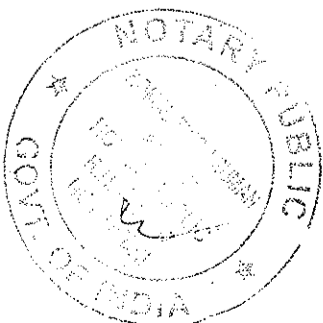


and passing.

7. *Keeping in view the urgency in the matter, the President on the recommendations of the Central Government and in exercise of the powers conferred by clause (1) of article 123 of the Constitution promulgated the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 on the 4th March, 2014. It is proposed to replace the aforesaid Ordinance with the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2014.*

8. *The Bills seeks to achieve the above objects."*

XXII. That after the aforesaid Bill was passed by both the Houses of Parliament and assented by the President of India, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (No.1 of 2016), was

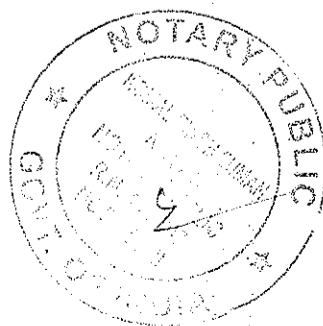


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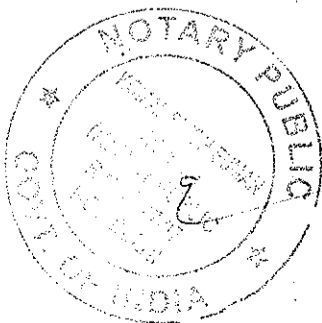
notified in the Gazette of India Extraordinary on 01.01.2016 and enforced with effect from 26.01.2016.

XXIII. That the amendments done in the Principal Act viz the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (No.1 of 2016), broadly relate to addition of several new offences of atrocities against members of the SCs and the STs like tonsuring of head, moustache, or similar acts which are derogatory to the dignity of members of the SCs and the STs, garlanding with footwear, denying access to irrigation facilities or forest rights, dispose or carry human or animal carcasses, or to dig graves, using or permitting manual scavenging, dedicating a SC or a ST women as devadasi, abusing in caste name, perpetrating witchcraft atrocities, imposing social or



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economic boycott, preventing SC and ST candidates from filing of nomination to contest elections, hurting a SC/ST woman by removing her garments, forcing a member of a SC or a ST to leave house, village or residence, defiling objects sacred to members of a SC and a ST, touching or using words, acts or gestures of a sexual nature against members of a SC and a ST and addition of certain IPC offences like hurt, grievous hurt, intimidation, kidnapping etc., attracting less than ten years of imprisonment, committed against members of a SC and a ST, as offences punishable under the PoA Act, besides rephrasing and expansion of some of earlier offences, establishment of Exclusive Special Courts and specification of Exclusive Special Public Prosecutors to exclusively try the offences under the PoA Act to enable expeditious disposal of cases, power of Special Courts and Exclusive



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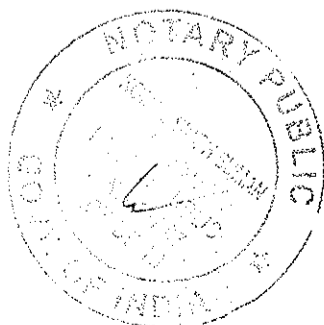
Special Courts to take direct cognizance of offence and as far as possible, completion of trial of the case , as far as possible within two months from the date of filing of the charge sheet and addition of chapter on the 'Rights of Victims and Witnesses'.

XXIV That Section 3(1) of the PoA Act as amended specifies as under:-

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

(a) *puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;*

(b) *dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the*



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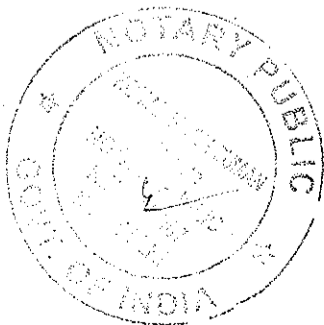
premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;

(c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;

(d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;

(e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;

(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any

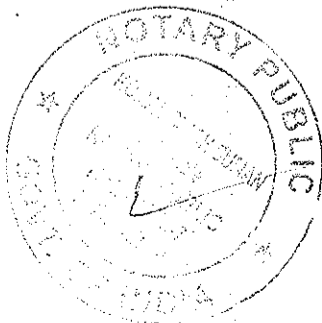


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competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

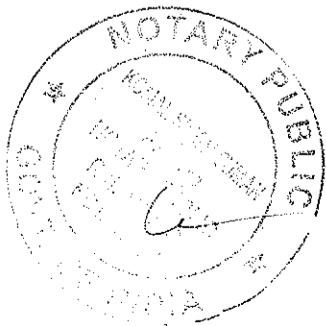
(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;



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- (i) *compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;*
- (k) *makes a member of Scheduled Caste or a Scheduled Tribes to do manual scavenging or employs or permits the employment of such member for such purpose;*
- (k) *performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;*
- (l) *forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe—*



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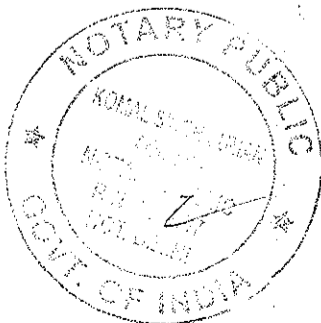
(A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;

(B) not to file a nomination as a candidate or to withdraw such nomination; or

(C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;

(m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a



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member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;

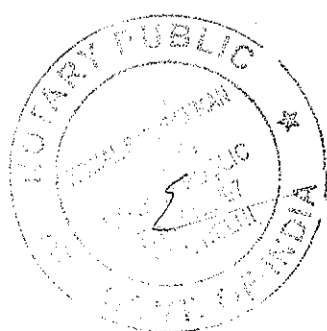
- (o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;
- (p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- (r) intentionally insults or intimidates with intent to humiliate a member of a



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Scheduled Caste or a Scheduled Tribe in any place within public view;

- (s) *abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;*
- (t) *destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.*
- (u) *by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;*
- (v) *by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;*



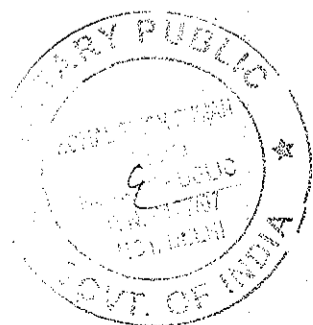
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(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of



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passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence: Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or



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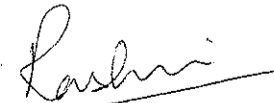
any bathing ghat, any public conveyance, any road, or passage;

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

(C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;

(D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or




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(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe.

Shall be punishable with imprisonment for a term between six months to five years with fine.

XXV. That certain specific IPC offences in the Schedule like hurt, grievous hurt, intimidation, kidnapping etc., attracting less than ten years of imprisonment, committed against members of a SC and a ST, have

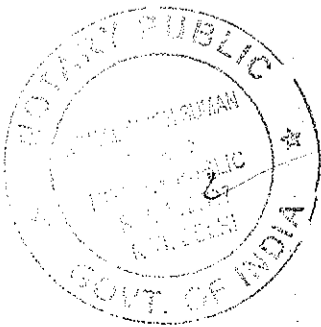


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been specified as offences punishable under the PoA Act.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018

XXV. That the Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities){PoA} Act, 1989 was further amended by the Parliament in the year 2018. The amendments done in the PoA Act were based on a well-reasoned objective of strengthening the statutory framework for giving protection to members of the SCs and the STs and thereby protect their fundamental right to dignity which is also an integral part of Articles 14 and 21 of the Constitution, brought in the 'Statement of Objects and Reasons'(SoR) appended to 'the Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities)Amendment Bill, 2018, introduced in the Lok Sabha on 03.08.2018. The SoR reads as under:-

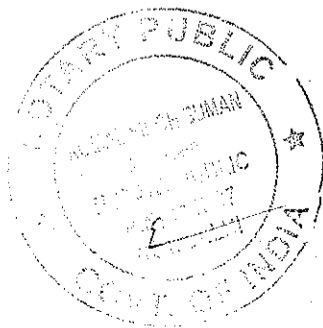


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"1. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (said Act) was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes and to provide for Special Courts and exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences. The said Act was amended in 2015 with an objective to deliver greater justice to members of the Scheduled Castes and the Scheduled Tribes.

2. In a recent judgment, the Supreme Court has held that a preliminary enquiry shall be conducted by a Deputy Superintendent of Police to find out whether allegations make out a case under the said Act before registering a First Information Report relating to commission of an offence and

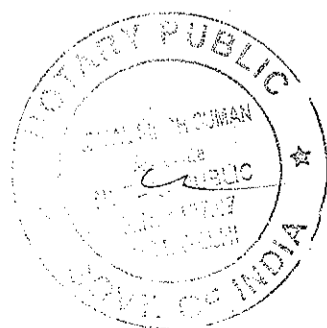


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the approval of an appropriate authority shall be obtained before arrest of any person in connection with such offence.

3. *However, the provisions of the Code of Criminal Procedure, 1973 provide that every information relating to commission of an offence, if given, shall be recorded and where the investigating officer has reason to suspect the commission of an offence, he can arrest a person and there is no requirement of conducting a preliminary enquiry before recording of any such information or obtaining of an approval from any authority before arresting any person. Moreover, such preliminary enquiry and approval would only delay the filing of a charge sheet.*

4. *The principles of criminal jurisprudence and section 41 of the Code of Criminal Procedure, 1973 as interpreted in several judgments, implies that once the*



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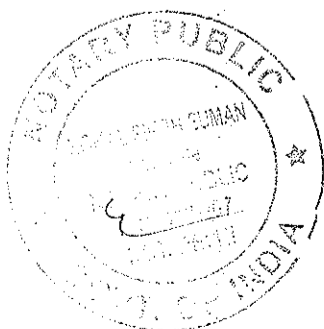
investigating officer has reasons to suspect that an offence has been committed, he can arrest an accused. This decision to arrest or not to arrest cannot be taken away from the investigating officer.

5. In view of the above, it is expedient in the public interest that the provisions of the Code of Criminal Procedure, 1973 be made applicable in respect of registration of First Information Report relating to commission of an offence or arrest of any person without any preliminary enquiry or approval of any authority, as the case may be.

6. The Bill seeks to achieve the above objects"

XXVI. That accordingly, a new Section 18-A was inserted in the Act, which reads as follows:-

" 18A. (1) For the purposes of this Act,-



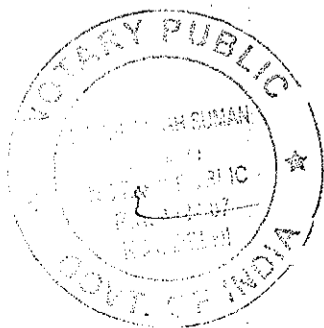
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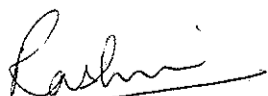
(a) Preliminary enquiry shall not be required for registration of a First Information Report against any person; or

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

(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgement or order or direction of any Court."

XXVII. That Consequent upon detailed discussion in the Lok Sabha and the Rajya Sabha on 6th August, 2018 and 9th August, 2018 respectively, on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018, the said




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Bill was passed by the both the Houses of Parliament and after having received assent of the President of India on 17.08.2018, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 to further amend the PoA Act, 1989 was notified on 17.08.2018 and enforced on 20.08.2018. However, this Amendment Act, was not enacted by amending the Constitution of India, as incorrectly observed by the petitioner.

PRELIMINARY OBJECTIONS

XXVIII. That in the premises aforesaid, the following preliminary objections are raised:-

a. That the writ petition is not maintainable under Article 32 of the Constitution of India. It is submitted that Article 32 of the Constitution which guarantees by clause (1) the right to move this Hon'ble Court by appropriate

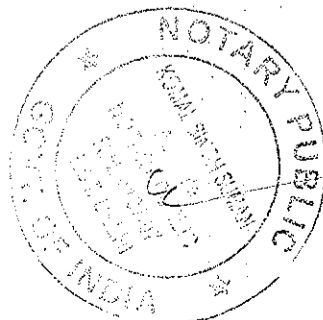


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proceedings for the enforcement of the rights conferred by Part III, provides by clause (2) that:

"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."

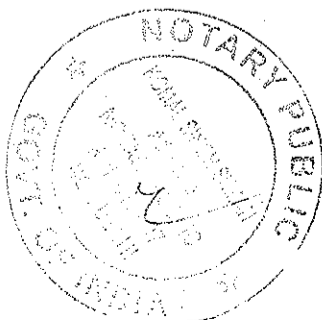
- b. It is submitted that that the jurisdiction conferred on this Hon'ble Court by Article 32 can be exercised for the enforcement of the rights conferred by Part III and for no other purpose. In other words, the purpose for which that right can be enforced is stated in the very Article which confers that right and violation of a fundamental right is the sine qua non of the exercise of the right conferred by Article 32.

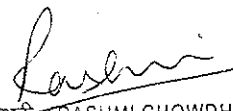


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- c. That in the matter of Amendment of an Act, by the legislature expressing the will of the people, there cannot be violation of any fundamental right under Article 14, 19 and 21 since it is well settled that no motive or malice can be attributed to the legislature. The petitioners have not demonstrated or averred in the writ petition as to how his or her fundamental right is violated by the Amendment of the Act. This position is well settled in law. Therefore, on this ground also the writ petition would not be maintainable.
- d. That the writ of mandamus seeking a direction to stay the provisions of the new amendment carried out is also not available to the petitioner. It is well settled that stay of legislative provisions is not to be granted by the constitutional courts. In any case, for issuance of a writ of mandamus the petitioner ought to establish a legal right and a corresponding duty on the part of the State, which it has failed to discharge. It is



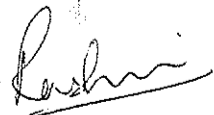

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submitted that the petitioner has no legal or fundamental right in the matter of amendment of the 1989 Act, Therefore, in the absence of a legal/fundamental right, question of issuance of a writ mandamus as prayed for does not and cannot arise. On this ground also the writ petition is liable to be dismissed in limine.

e. That it is admitted by the petitioners in sub para 2i that the intention of the answering respondent was good implying thereby that the Amendment Act of 2018 is justified according to petitioner's own admission. In view of such categorical admission the writ petition is not maintainable at all.

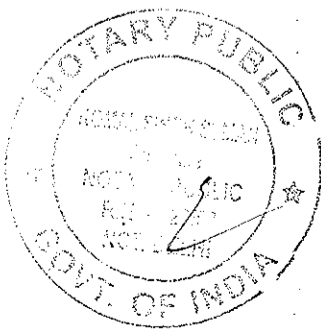
f. That the writ petition is also not maintainable as a Public Interest Litigation as the same does not meet the parameters laid down by this Hon'ble Court.





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PARAWISE REPLY TO THE WRIT PETITION

1. That the writ petition is not maintainable and the preliminary objection(s) raised herein above is reiterated. It is submitted that the amendment of the 1989 Act is not ultra vires as alleged.
- 2a. In reply it is most respectfully submitted that the submissions made in paragraphs VI to XXVIII of the preliminary submissions above are reiterated.
- 2b-c. That the contention of the petitioners that the provisions of the Act have been used to black mail innocent citizens is not only vague, bald and bereft of any particulars but it is false misleading and hence denied. It is well settled that instances of misuse or possibility of misuse cannot be a ground to declare any provision ultra vires or declare the same to be arbitrary. It is denied that the provisions of the Act are being used to exact vengeance and satisfy vested interests. On the contrary, it is submitted




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that there is no let up in the atrocities committed on the Scheduled Castes and Scheduled Tribes and secondly more and more cases are being registered.

2d. In so far as the judgement rendered by this Hon'ble Court in the case of Dr Subhash Kashinath Mahajan Vs the State of Maharashtra and Annexure P/1 are concerned, the same is matter of record. It is however, submitted that the Union of India has filed a Review Petition No 228/2018 and the same is pending adjudication.

2e-f. That the contents are based on media reports and the same are denied for want of knowledge.

2g. That the contents are petitioner's own perception and the same are therefore, denied. It is submitted that the Review Petition has been filed by the Union of India after following due procedure and it is denied that the same has been filed under

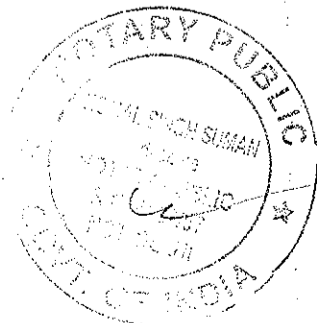



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pressure either as alleged or otherwise. The Review Petition No. 228 of 2018 was filed in the Hon'ble Supreme Court, based on a considered decision taken by the Central Government. It is submitted that not only that the Review Petition was heard on few occasions in open court and the same is pending adjudication but it also submitted that the Union of India has exercised its right in filing a Review Petition as available in law and hence no exception can be taken regarding the same.

2h.

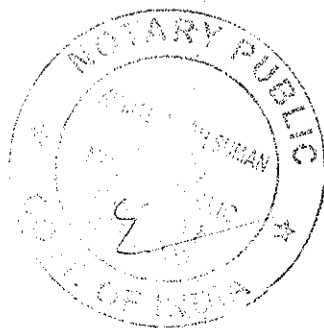
That the contents are petitioner's own perception and the same are therefore, denied. That the contention of the petitioners that the amendment of the Act has been done to appease SC/ST with view to strengthen the vote bank before the Lok Sabha elections are specifically denied. It is submitted that no statutory provision can be challenged while attributing motives to the legislature. It is submitted that the

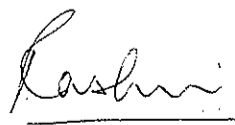


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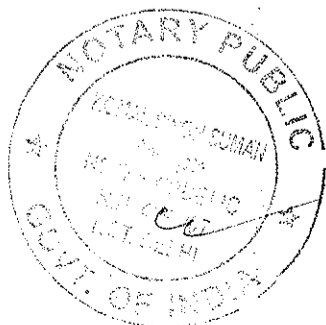
answering respondent has a continuous constitutional obligations to eradicate discrimination, inequality, untouchability etc of the Scheduled Caste and Scheduled Tribe, as they have a constitutional right to non-discrimination on the basis of Article 15 of the Indian Constitution, and a fundamental right to be protected against discrimination.

It is further submitted that though abolished and forbidden by Article 17, the practice of 'untouchability' persists due to its systemic character. Hence, the Indian Parliament enacted the Amendment Act, 2018 in order not to dilute the provisions of the Act in its application. The reply given in paragraphs XXVII-XXVIII of the preliminary submissions above are reiterated and relied upon. In so far as insertion of sec 18A by Amendment Act, 2018 is concerned, the same is matter of record.




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- 2i. That it is admitted by the petitioners in this sub para themselves that the intention of the act was good. In view of such categorical admission the writ petition is not maintainable at all. It is denied that the structure of the Act after the amendment is inconsistent with basic principles of liberty and accountability. Needless to mention that despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable and they deserve to be protected by making stringent penal provisions. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons. Therefore, it is reiterated that the answering respondent



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has a constitutional duty to eradicate discrimination, inequality, untouchability etc of the Scheduled Caste and Scheduled Tribe, as they have a constitutional right to non-discrimination on the basis of Article 15 of the Indian Constitution, and a fundamental right to be protected against discrimination. It is further submitted that though abolished and forbidden by Article 17, the practice of 'untouchability' persists due to its systemic character.

In so far as the contention regarding grant of anticipatory bail under Sec 438 is concerned it is submitted that this Hon'ble Court has already considered this issue in *State of M.P. v. Ram Kishna Balothia*, (1995) 3 SCC 221, and held at page 225 :

" 6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in



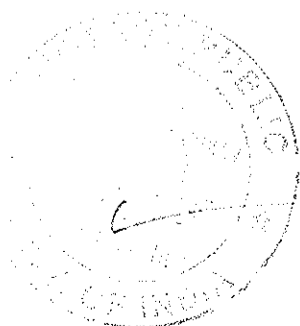
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respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'untouchability' and forbids its practice in any form. It also provides that enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of 'untouchability'. It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in

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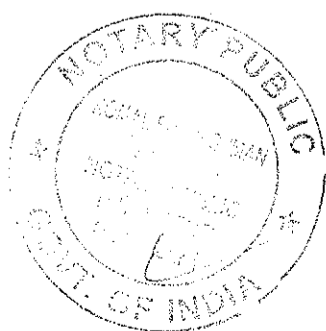


the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons it is stated:

"Despite various measures to improve the socio-economic

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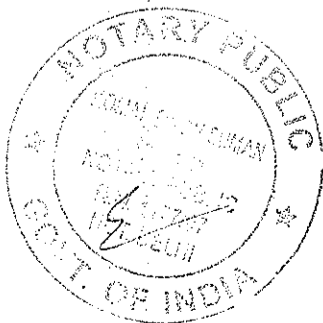


conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons

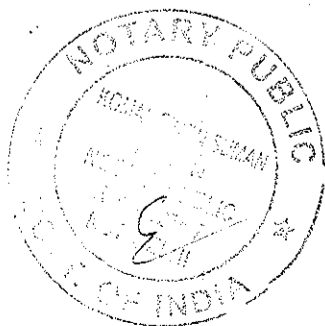
2. ... When they assert their rights and resist practices of untouch-ability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve

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their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.... A special legislation to check and



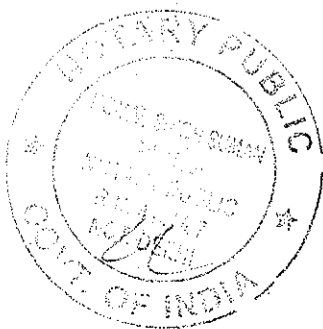
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deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if ~~§~~226 anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by

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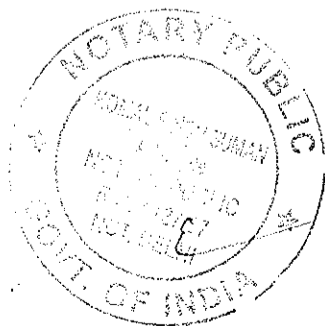


themselves and cannot be compared with other offences.

.....

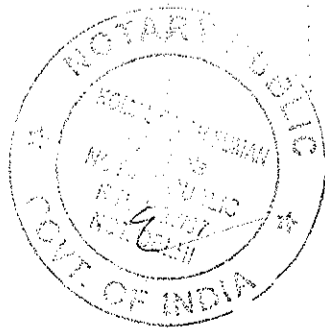
9. Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of 'untouchability' and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this

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context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot



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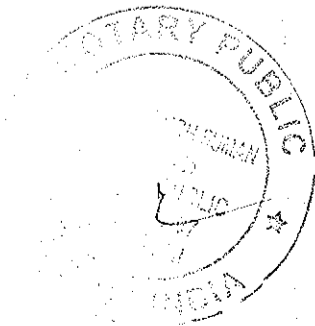
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be compared with offences under the Penal Code.

11. A similar view of Section 18 of the said Act has been taken by the Full Bench of the Rajasthan High Court in the case of Jai Singh v. Union of India² and we respectfully agree with its findings.

12 In the premises, Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution." [emphasis added]

It is submitted that the Amendment of 2018 is not only in conformity with law laid down by this Hon'ble Court [supra] but it is also submitted that in view of such clear exposition of law the writ petition is not maintainable at all. It is further submitted that it is well settled by Constitution bench of this Hon'ble Court one by a bench of 9 Hon'ble Judges in *Naresh Sridhar Mirajkar vs*



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State of Maharashtra (1966) 3 SCR 744, and the other by a Bench of 5 Hon'ble Judges in *Rupa Ashok Hurra vs Ashok Hurra* (2002) 4 SCC 388, have held that judgments of superior courts can't violate Fundamental Rights and hence cannot be made the subject matter of a Writ Petition under Article 32 of the Constitution of India. This is, *inter alia*, on the basis that judgments of superior courts cannot be said to violate fundamental rights. Therefore, in view of the ratio laid down by this Hon'ble Court in Ram Krishna Balothia's case [*supra*] the Amendment Act, 2018 cannot be said to be violative of any fundamental right of the petitioners at all.

- 2j-k. That the contents are matter of record.
- 2l. That the judgements relied upon by the petitioners are neither attracted nor applicable in the facts and circumstances of the case. The contents of reply to para 2 I above is reiterated:

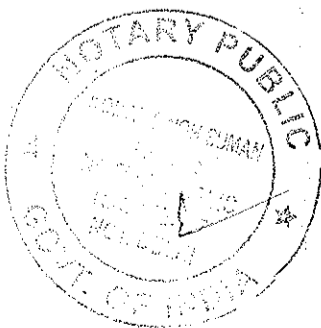


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2m-u That the contents of paras under reply are denied except those which are matter of record. The reply given in para XVIII to XX above are reiterated and relied upon in reply to paras under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same. Annexure P/7 being media reports the same are denied for want of knowledge.

2 v The object of the PoA Act is to prevent the commission of offences of atrocities against the members of the SCs and the STs, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. It would, thus, not be in consonance with the intent of the PoA Act to provide for punishment for members of SCs and STs for falsely implicating the accused. However, relevant sections of the IPC can be

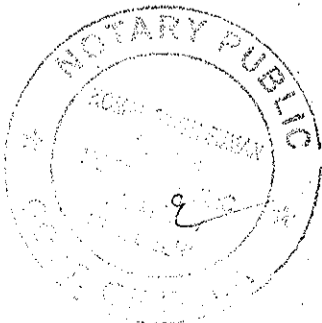


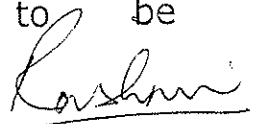
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invoked by the concerned for dealing with specific false cases. The punishments have been prescribed in the IPC.

REPLY TO GROUNDS

3 a-e. That none of the grounds under reply are available to the petitioners. The same are denied being misconceived and misleading. The reply given in preceding paras are reiterated and relied upon in reply to paras under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same in reply to Grounds as well. It is also absolute inappropriate to generalise unsupported assertions with regard to the alleged misuse of provisions of the Act. It is submitted that an alleged or penal abuse of the statutory provision can never be a ground for declaring the provision to be

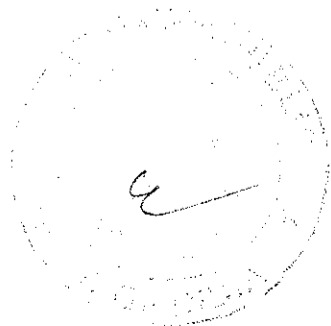


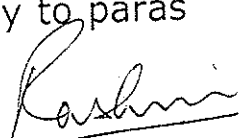

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unconstitutional. In case of any abuse of any penal provision [which include PoA Act] by any individual which ultimately tried and found to be misuse of the provision, there are sufficient statutory provisions to deal with such false implications.

It is respectfully submitted that a potential misuse of the provisions, if taken to be a ground then there are large number of penal statutes which are found to be misused by the complainant and such findings are recorded by the competent courts while acquitting the accused. In such circumstances, even such provisions would be liable to be struck down merely on the ground that there is a potential abuse.

3f-i. That none of the grounds under reply are available to the petitioners. The same are denied being misconceived and misleading. The reply given in preceding paras are reiterated and relied upon in reply to paras




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under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same in reply to Grounds as well.

It is further submitted that the judgement and order dated 20.03.2018 passed in Criminal Appeal No 416 of 2018 has led to several implications in effective implementation of the Act to include but not limited to the following:

(i) Senior Superintendents of Police(SSPs) are not available by designation or rank in several States. For example in Madhya Pradesh, except Indore and Bhopal other districts don't have the post of SSP. The SSPs generally sit in District Headquarter and are very far away from the remote location where atrocities occur.

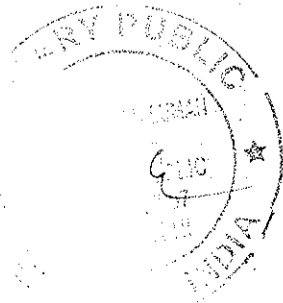


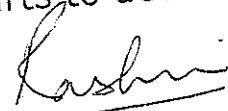
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(ii) Requirement of approval of SSP before registration of the First Information Report (FIR) will delay in registration of FIR by invoking relevant sections of the PoA Act thereby slow the process and dilute the PoA Act.

(iii) There may be a practical difficulty in conduct of preliminary enquiry by a Deputy Superintendent of Police (Dy.S.P.) within seven days, as sufficient number of Dy. S.P. level officers are usually not in place. Typically, the Dy. S.P. level officers are located at the district level and not at taluk/block level. The victims would be put to great hardship to reach the office of the Dy. S.P.

(iii) Requirement of the preliminary enquiry by the Dy.S.P. to establish whether the compliant had any malafide intent, will be usurpation of the powers of courts to decide



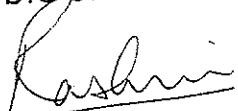

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merits of the case and, thus, against the judicial process. It should be judiciary's prerogative to decide it.

(iv) Requirement of approval of Appointing Authority (AA) before registration of the FIR in the case of public servant will delay cases as the AA in several cases may be located at the District Headquarter or capital of State/Country.

(v) Lodging of FIR after more than 24 hours of the incident will result in delays in investigation etc. and result in miscarriage of justice. The Hon'ble Supreme Court in judgment dated 12.11.2013 in Writ Petition (Criminal) No. NO. 68 OF 2008(Lalita Kumari Vs Government of Uttar Pradesh), inter-alia held that Registration of FIR is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence



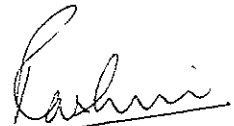

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and that no preliminary inquiry is permissible in such a situation.

(vi) Admissible relief amount in accordance with the PoA Rules, is payable to the victims of atrocities on registration of FIR, which would get delayed.

(vii) Preliminary inquiry would result in impeding strict enforcement of the provisions of the PoA Act on account of delay in registration of cases and inevitable dilution of the deterrence of the Act. This would adversely affect the very objective of the Act to prevent commission of atrocities against members of SC and ST and severely detrimental especially in heinous offences like sexual exploitation of SC/ST women including rape, gang rape, acid attacks and murder etc.




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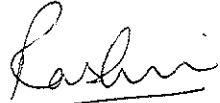
(viii) The alleged accused would escape instant arrest and this gain in the time may be used by the person in intimidating the victims and the witnesses, resulting in weakening of the case.

The above referred facts are pointed out to show the difficulties faced. The provisions which are under challenge can independently also be justified and shall be justified during the course of hearing of this petition.

It is submitted that the post judgment actions taken i.e. filing of Review Petition No. 228 of 2018 on 02.04.2018 in the Hon'ble Supreme Court and subsequent amendment done in the PoA Act to insert section 18A, were based on sound rationale and were not arbitrary.


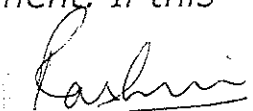
It is further submitted that the alleged ground of legislative incompetence




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raised in the writ petition, this Hon'ble Court very recently after examining various judgements rendered by this Hon'ble Court including Constitution Bench decisions, held in *State of Karnataka v. Karnataka Pawn Brokers Assn.*, (2018) 6 SCC 363, at page 376 as follows:

24. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity. When such a law is passed, the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this

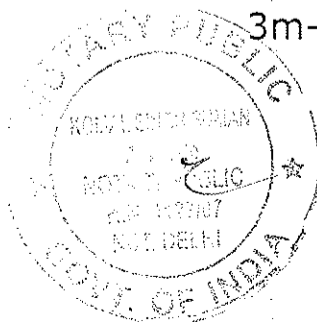


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is done, the same does not amount to statutory overruling."

The ratio of the aforesaid judgement is squarely attracted and applicable in the present case.

3j-l. That none of the grounds under reply are available to the petitioners. The same are denied being misconceived and misleading. The reply given in preceding paras are reiterated and relied upon in reply to paras under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same in reply to Grounds as well. The judgements sought to be relied upon in sub para (I) are neither attracted nor applicable in the facts and circumstances of the present case.

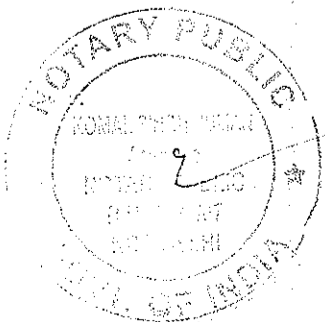
3m-s. That none of the grounds under reply are available to the petitioners. The same are



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denied being misconceived and misleading. The reply given in preceding paras are reiterated and relied upon in reply to paras under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same in reply to Grounds as well. The decision rendered in Balothia's case [supra] is squarely applicable in the facts and circumstances of the present case. Further the ratio laid down in Kartar Singh Vs State of Punjab [1994] 3 SCC 569 that denial of provisions of anticipatory bail would not be violative of Article 21 of the Constitution of India. The decisions sought to be relied upon by the petitioners are neither attracted nor applicable in the facts and circumstances of the present case.

3. t-z. That none of the grounds under reply are available to the petitioners. The same are denied being misconceived and misleading

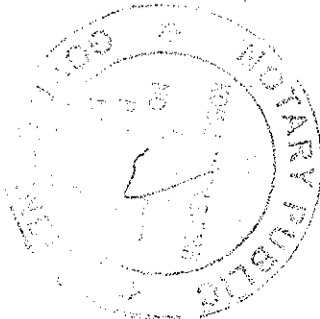


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except those which are matter of record. The reply given in preceding paras XXII to XXIV are reiterated and relied upon in reply to paras under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same in reply to Grounds as well.

3aa-gg That none of the grounds under reply are available to the petitioners. The same are denied being misconceived and misleading except those which are matter of record. The reply given in preceding paras are reiterated and relied upon in reply to paras under reply. The same are not being repeated herein for the sake of brevity but the answering respondent craves leave to refer to and rely upon the same in reply to Grounds as well.

4. That the contention made by the petitioner is matter of record.



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5. In view of the above submissions and those to be urged at the time of hearing, the writ petition is not maintainable both in law and on facts and it is liable to be dismissed. Prayed accordingly.

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सामाजिक न्याय और अधिकारिता विभाग
Department of Social Justice and Empowerment
शास्त्री भवन, नई दिल्ली-1 / Shastri Bhawan, New Delhi-1

VERIFICATION:

I, the above-named deponent, do hereby verify that the facts stated in paragraphs I to V of the Counter Affidavit are true to my personal knowledge and facts stated in paragraphs VII to XXVII, Paras 1 to 2 of parawise reply of the Counter Affidavit are true to record maintained in the office of the deponent, and the preliminary submissions made in para XXVIII and reply to Grounds 3a to 3gg are based on legal advice received and which I believe to be true, and last para 5 is prayer made to this Hon'ble Court.



M. Singh
NOTARY PUBLIC
GOVT. OFFICER
DELHI

Verified at New Delhi on this 25 day of OCT, 2018.

ATTESTED
[Signature]
NOTARY PUBLIC
DELHI (INDIA)

Rashmi
DEPONENT
रश्मि चौधरी / RASHMI CHOWDHARY
संयुक्त सचिव / Joint Secretary
भारत सरकार / Government of India
सामाजिक न्याय और अधिकारिता विभाग
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25 OCT 2018