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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION [C] NO. 1015 OF 2018

PRATHVI RAJ CHAUHAN ....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ....RESPONDENTS

WITH

WRIT PETITION [C] NO. 1016 OF 2018

J U D G M E N T

ARUN MISHRA, J.

1. The petitioners have questioned the provisions inserted by way of carving out section 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act of 1989). Section 18 as well as section 18A, are reproduced hereunder:

> "18. Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."
> "Section 18A. (1) For the purposes of this Act,-
>
> (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
>
> (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made, and no procedure other than that provided under this Act or the Code shall apply.

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

2. It is submitted that section 18A has been enacted to nullify the judgment of this Court in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra & Anr.*, (2018) 6 SCC 454, in which following directions were issued:

> "83. 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 scrutinised 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 directions (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.
> The above directions are prospective."

3. It has been submitted that this Court has noted in *Dr. Subhash Kashinath* (supra) that the provisions of the Act of 1989 are being misused as such the amendment is arbitrary, unjust, irrational and violative of Article 21 of the Constitution of India. There could not have been any curtailment of the right to obtain anticipatory bail under

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section 438 Cr.PC. Prior scrutiny and proper investigation are necessary. Most of the safeguards have been provided under the Act of 1989 to prevent undue harassment. This Court has struck down the provision of section 66A of the Information Technology Act on the ground of violation of fundamental rights; on the same anvil, the provisions of section 18A of the Act of 1989 deserve to be struck down.

4. It is not disputed at the Bar that the provisions in section 18A in the Act of 1989 had been enacted because of the judgment passed by this Court in *Dr. Subhash Kashinath*'s case (supra), mainly because of direction Nos (iii) to (v) contained in para 83. The Union of India had filed review petitions, and the same have been allowed, and direction Nos (iii) to (v) have been recalled. Thus, in view of the judgment passed in the review petitions, the matter is rendered of academic importance as we had restored the position as prevailed by various judgments that were in vogue before the matter of *Dr. Subhash Kashinath* (supra) was decided. We are not burdening the decision as facts and reasons have been assigned in detail while deciding review petitions on 1.10.2019 and only certain clarifications are required in view of the provisions carved out in section 18A. There can be protective discrimination, not reverse one. We have dealt with various questions in the review petitions while deciding the same as under:

> "36. In the light of the discussion mentioned above of legal principles, we advert to directions issued in paragraph 83. Direction Nos. (iii) and

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(iv) and consequential direction No. (v) are sought to be reviewed/recalled. Directions contain the following aspects: -

1. That arrest of a public servant can only be after approval of the appointing authority.
2. The arrest of a non-public servant after approval by the Senior Superintendent of Police (SSP).
3. The arrest may be in an appropriate case if considered necessary for reasons to be recorded;
4. Reasons for arrest must be scrutinised by the Magistrate for permitting further detention;
5. Preliminary enquiry to be conducted by the Dy. S.P. level officers to find out whether the allegations make out a case and that the allegations are not frivolous or motivated.
6. Any violation of the directions mentioned above will be actionable by way of disciplinary action as well as contempt.

37. Before we dilate upon the aforesaid directions, it is necessary to take note of certain aspects. It cannot be disputed that as the members of the Scheduled Castes and Scheduled Tribes have suffered for long; the protective discrimination has been envisaged under Article 15 of the Constitution of India and the provisions of the Act of 1989 to make them equals.

38. All the offences under the Atrocities Act are cognizable. The impugned directions put the riders on the right to arrest. An accused cannot be arrested in atrocities cases without the concurrence of the higher Authorities or appointing authority as the case may be. As per the existing provisions, the appointing authority has no power to grant or withhold sanction to arrest concerning a public servant.

39. The National Commission for Scheduled Castes Annual Report 2015-16, has recommended for prompt registration of FIRs thus:
"The Commission has noted with concern that instances of procedural lapses are frequent while dealing atrocity cases by both police and civil administration. There are delays in the judicial process of the cases. The Commission, therefore, identified lacunae commonly noticed during police investigation, as also preventive/curable actions the civil administration can take. NCSC recommends the correct and timely application of SC/ST (PoA) Amendment Act, 2015 and Amendment Rules of 2016 as well as the following for improvement:

> “8.6.1 Registration of FIRs - The Commission has observed that the police often resort to preliminary investigation upon receiving a complaint in writing before lodging the actual FIRs. As a result, the SC victims have to resort to seeking directions from courts for registration of FIRs u/s 156(3) of Cr.P.C. Hon’ble Supreme Court has also on more than one occasion emphasized about registration of FIR first. This Commission again reemphasizes that the State / UT Governments should enforce prompt registration of FIRs.”
>
> (emphasis supplied)

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40. The learned Attorney General pointed out that the statistics considered by the Court in the judgment under review indicate that 9 to 10 percent cases under the Act were found to be false. The percentage of false cases concerning other general crimes such as forgery is comparable, namely 11.51 percent and for kidnapping and abduction, it is 8.85 percent as per NCRB data for the year 2016. The same can be taken care of by the Courts under Section 482, and in case no *prima facie* case is made out, the Court can always consider grant of anticipatory bail and power of quashing in appropriate cases. For the low conviction rate, he submitted that same is the reflection of the failure of the criminal justice system and not an abuse of law. The witnesses seldom come to support down-trodden class, biased mindset continues, and they are pressurised in several manners, and the complainant also hardly muster the courage.

41. As to prevailing conditions in various areas of the country, we are compelled to observe that SCs/STs are still making the struggle for equality and for exercising civil rights in various areas of the country. The members of the Scheduled Castes and Scheduled Tribes are still discriminated against in various parts of the country. In spite of reservation, the fruits of development have not reached to them, by and large, they remain unequal and vulnerable section of the society. The classes of Scheduled Castes and Scheduled Tribes have been suffering ignominy and abuse, and they have been outcast socially for the centuries. The efforts for their upliftment should have been percolated down to eradicate their sufferings.

42. Though, Article 17 of the Constitution prohibits untouchability, whether untouchability has vanished? We have to find the answer to all these pertinent questions in the present prevailing social scenario in different parts of the country. The clear answer is that untouchability though intended to be abolished, has not vanished in the last 70 years. We are still experimenting with 'tryst with destiny.' The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. They cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods of scavenging to *Harijans* due to lack of resources and proper planning and apathy. Whether he can shake hand with a person of higher class on equal footing? Whether we have been able to reach that level of psyche and human dignity and able to remove discrimination based upon caste? Whether false guise of cleanliness can rescue the situation, how such condition prevails and have not vanished, are we not responsible? The answer can only be found by soul searching. However, one thing is sure that we have not been able to eradicate untouchability in a real sense as envisaged and we have not been able to provide down-trodden class the fundamental civil rights and amenities, frugal comforts of life which make life worth living. More so, for Tribals who are at some places still kept in isolation as we have not been able to provide them even basic amenities, education and frugal comforts of life in spite of spending a considerable amount for the protection, how long this would continue. Whether they have to remain in the status quo and to entertain civilized

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society? Whether under the guise of protection of the culture, they are deprived of fruits of development, and they face a violation of traditional rights?

43. In *Khadak Singh vs. State of Himachal Pradesh,* AIR 1963 SC 1295, this Court has observed that the right to life is not merely an animal's existence. Under Article 21, the right to life includes the right to live with dignity. Basic human dignity implies that all the persons are treated as equal human in all respects and not treated as an untouchable, downtrodden, and object for exploitation. It also implies that they are not meant to be born for serving the elite class based upon the caste. The caste discrimination had been deep-rooted, so the consistent effort is on to remove it, but still, we have to achieve the real goal. No doubt we have succeeded partially due to individual and collective efforts.

44. The enjoyment of quality life by the people is the essence of guaranteed right under Article 21 of the Constitution, as observed in *Hinch Lal Tiwari v. Kamla Devi*, (2001) 6 SCC 496. Right to live with human dignity is included in the right to life as observed in *Francis Coralie Mullin v. Union Territory Delhi, Administrator*, AIR 1981 SC 746, *Olga Tellis v. Bombay Corporation*, AIR 1986 SC 180. Gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits are instances of human rights violations as observed by this Court in *People's Union for Civil Liberties v. Union of India*, (2005) 2 SCC 436:

> "34. The question can also be examined from another angle. The knowledge or experience of a police officer of human rights violation represents only one facet of human rights violation and its protection, namely, arising out of crime. Human rights violations are of various forms which besides police brutality are — gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits, etc. A police officer can claim to have experience of only one facet. That is not the requirement of the section." (emphasis supplied)

45. There is right to live with dignity and also right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the Act of 1989. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of a citizen under Article 21 as observed by this Court in *Umesh Kumar v. State of Andhra Pradesh*, (2013) 10 SCC 591, *Kishore Samrite v. State of Uttar Pradesh*, (2013) 2 SCC 398 and *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221. The provisions of the Act of 1989 are, in essence, concomitants covering various facets of Article 21 of the Constitution of India.

46. They do labour, bonded or forced, in agricultural fields, which is not abrogated in spite of efforts. In certain areas, women are not treated

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with dignity and honour and are sexually abused in various forms. We see sewer workers dying in due to poisonous gases in chambers. They are like death traps. We have not been able to provide the masks and oxygen cylinders for entering in sewer chambers, we cannot leave them to die like this and avoid tortious liability concerned with officials/machinery, and they are still discriminated within the society in the matter of enjoying their civil rights and cannot live with human dignity.

47. The Constitution of India provides equality before the law under the provisions contained in Article 14. Article 15(4) of the Constitution carves out an exception for making any special provision for the advancement of any socially and educationally backward classes of citizens or SCs. and STs. Further protection is conferred under Article 15(5) concerning their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. Historically disadvantageous groups must be given special protection and help so that they can be uplifted from their poverty and low social status as observed in *Kailas & Ors. v. State of Maharashtra*, 2011 (1) SCC 793. The legislature has to attempt such incumbents be protected under Article 15(4), to deal with them with more rigorous provisions as compared to provisions of general law available to the others would create inequality which is not permissible/envisaged constitutionally. It would be an action to negate mandatory constitutional provisions not supported by the constitutional scheme; rather, it would be against the mandated constitutional protection. It is not open to the legislature to put members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position *vis-à-vis* others and in particular to so-called upper castes/general category. Thus, they cannot be discriminated against more so when we have a peep into the background perspective. What legislature cannot do legitimately, cannot be done by the interpretative process by the courts.

48. The particular law, i.e., Act of 1989, has been enacted and has also been amended in 2016 to make its provisions more effective. Special prosecutors are to be provided for speedy trial of cases. The incentives are also provided for rehabilitation of victims, protection of witnesses and matters connected therewith.

49. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste

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factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the Cr.PC.

50. The data of National Crime Records Bureau, Ministry of Home Affairs, has been pointed out on behalf of Union of India which indicates that more than 47,000 cases were registered in the year 2016 under the Act of 1989. The number is alarming, and it cannot be said that it is due to the outcome of the misuse of the provisions of the Act.

51. As a matter of fact, members of the Scheduled Castes and Scheduled Tribes have suffered for long, hence, if we cannot provide them protective discrimination beneficial to them, we cannot place them at all at a disadvantageous position that may be causing injury to them by widening inequality and against the very spirit of our Constitution. It would be against the basic human dignity to treat all of them as a liar or as a crook person and cannot look at every complaint by such complainant with a doubt. Eyewitnesses do not come up to speak in their favour. They hardly muster the courage to speak against upper caste, that is why provisions have been made by way of amendment for the protection of witnesses and rehabilitation of victims. All humans are equal including in their frailings**.** To treat SCs. and STs. as persons who are prone to lodge false reports under the provisions of the Scheduled Castes and Scheduled Tribes Act for taking revenge or otherwise as monetary benefits made available to them in the case of their being subjected to such offence, would be against fundamental human equality. It cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc. In such cases, FIR is required to be registered promptly.

52. It is an unfortunate state of affairs that the caste system still prevails in the country and people remain in slums, more particularly, under skyscrapers, and they serve the inhabitants of such buildings.

53. To treat such incumbents with a rider that a report lodged by an SCs/STs category, would be registered only after a preliminary investigation by Dy. S.P., whereas under Cr.PC a complaint lodged relating to cognizable offence has to be registered forthwith. It would mean a report by upper-caste has to be registered immediately and arrest can be made forthwith, whereas, in case of an offence under the Act of 1989, it would be conditioned one. It would be opposed to the protective discrimination meted out to the members of the Scheduled Castes and Scheduled Tribes as envisaged under the Constitution in Articles 15, 17 and 21 and would tantamount to treating them as unequal, somewhat

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supportive action as per the mandate of Constitution is required to make them equals. It does not *prima facie* appear permissible to look them down in any manner. It would also be contrary to the procedure prescribed under the Cr.PC and contrary to the law laid down by this Court in *Lalita Kumari* (supra).

54. The guidelines in (iii) and (iv) appear to have been issued in view of the provisions contained in Section 18 of the Act of 1989; whereas adequate safeguards have been provided by a purposive interpretation by this Court in the case of *State of M.P. v. R.K. Balothia*, (1995) 3 SCC 221. The consistent view of this Court that if *prima facie* case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh* (supra), a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, *prima facie* it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

55. That apart directions (iii) and (iv) issued may delay the investigation of cases. As per the amendment made in the Rules in the year 2016, a charge sheet has to be filed to enable timely commencement of the prosecution. The directions issued are likely to delay the timely scheme framed under the Act/Rules.

In re: sanction of the appointing authority :

56. Concerning public servants, the provisions contained in Section 197, Cr.PC provide protection by prohibiting cognizance of the offence without the sanction of the appointing authority and the provision cannot be applied at the stage of the arrest. That would run against the spirit of Section 197, Cr.PC. Section 41, Cr.PC authorises every police officer to carry out an arrest in case of a cognizable offence and the very definition of a cognizable offence in terms of Section 2(c) of Cr.PC is one for which police officer may arrest without warrant.

57. In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High Court for quashing the FIR under Section 482 as observed in *State of Orissa v. Debendra Nath Padhi,* (2005) 1 SCC 568.

58. While issuing guidelines mentioned above approval of appointing authority has been made imperative for the arrest of a public servant under the provisions of the Act in case, he is an accused of having committed an offence under the Act of 1989. Permission of the appointing authority to arrest a public servant is not at all statutorily envisaged; it is encroaching on a field which is reserved for the legislature. The direction amounts to a mandate having legislative colour which is a field not earmarked for the Courts.

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59. The direction is discriminatory and would cause several legal complications. On what basis the appointing authority would grant permission to arrest a public servant? When the investigation is not complete, how it can determine whether public servant is to be arrested or not? Whether it would be appropriate for appointing authority to look into case diary in a case where its sanction for prosecution may not be required in an offence which has not happened in the discharge of official duty. Approaching appointing authority for approval of arrest of a public servant in every case under the Act of 1989 is likely to consume sufficient time. The appointing authority is not supposed to know the ground realities of the offence that has been committed, and arrest sometimes becomes necessary forthwith to ensure further progress of the investigation itself. Often the investigation cannot be completed without the arrest. There may not be any material before the appointing authority for deciding the question of approval. To decide whether a public servant should be arrested or not is not a function of appointing authority, it is wholly extra-statutory. In case appointing authority holds that a public servant is not to be arrested and declines approval, what would happen, as there is no provision for grant of anticipatory bail. It would tantamount to take away functions of Court. To decide whether an accused is entitled to bail under Section 438 in case no *prima facie* case is made out or under Section 439 is the function of the Court. The direction of appointing authority not to arrest may create conflict with the provisions of Act of 1989 and is without statutory basis.

60. By the guidelines issued, the anomalous situation may crop up in several cases. In case the appointing authority forms a view that as there is no *prima facie* case the incumbent is not to be arrested, several complications may arise. For the arrest of an offender, maybe a public servant, it is not the provision of the general law of Cr.PC that permission of the appointing authority is necessary. No such statutory protection provided to a public servant in the matter of arrest under the IPC and the Cr.PC as such it would be discriminatory to impose such rider in the cases under the Act of 1989. Only in the case of discharge of official duties, some offence appears to have been committed, in that case, sanction to prosecute may be required and not otherwise. In case the act is outside the purview of the official discharge of duty, no such sanction is required.

61. The appointing authority cannot sit over an FIR in case of cognizable, non-bailable offense and investigation made by the Police Officer; this function cannot be conferred upon the appointing authority as it is not envisaged either in the Cr.P.C. or the Act of 1989. Thus, this rider cannot be imposed in respect of the cases under the Act of 1989, may be that provisions of the Act are sometimes misused, exercise of power of approval of arrest by appointing authority is wholly impermissible, impractical besides it encroaches upon the field reserved for the legislature and is repugnant to the provisions of general law as no such rider is envisaged under the general law.

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62. Assuming it is permissible to obtain the permission of appointing authority to arrest accused, would be further worsening the position of the members of the Scheduled Castes and Scheduled Tribes. If they are not to be given special protection, they are not to be further put in a disadvantageous position. The implementation of the condition may discourage and desist them even to approach the Police and would cast a shadow of doubt on all members of the Scheduled Castes and Scheduled Tribes which cannot be said to be constitutionally envisaged. Other castes can misuse the provisions of law; also, it cannot be said that misuse of law takes place by the provisions of Act of 1989. In case the direction is permitted to prevail, days are not far away when writ petition may have to be filed to direct the appointing authority to consider whether accused can be arrested or not and as to the reasons recorded by the appointing authority to permit or deny the arrest. It is not the function of the appointing authority to intermeddle with a criminal investigation. If at the threshold, approval of appointing authority is made necessary for arrest, the very purpose of the Act is likely to be frustrated. Various complications may arise. Investigation cannot be completed within the specified time, nor trial can be completed as envisaged. Act of 1989 delay would be adding to the further plight of the downtrodden class.

In ref: approval of arrest by the SSP in the case of a non-public servant:

63. *Inter alia* for the reasons as mentioned earlier, we are of the considered opinion that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the Act of 1989.

Requiring the Magistrate to scrutinise the reasons for permitting further detention:

64. As per guidelines issued by this Court, the public servant can be arrested after approval by appointing authority and that of a non-public servant after the approval of SSP. The reasons so recorded have to be considered by the Magistrate for permitting further detention. In case of approval has not been granted, this exercise has not been undertaken. When the offence is registered under the Act of 1989, the law should take its course no additional fetter sare called for on arrest whether in case of a public servant or non-public servant. Even otherwise, as we have not approved the approval of arrest by appointing authority/S.S.P., the

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direction to record reasons and scrutiny by Magistrate consequently stands nullified.

65. The direction has also been issued that the Dy. S.P. should conduct a preliminary inquiry to find out whether allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognisable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in *Lalita Kumari* (supra) by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of Dy. S.P. The number of Dy. S.P. as per stand of Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered in such a case how a final report has to be filed in the Court. The direction (iv) cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-a-vis to the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act of 1989.

66. The creation of a casteless society is the ultimate aim. We conclude with a pious hope that a day would come, as expected by the framers of the Constitution, when we do not require any such legislation like Act of 1989, and there is no need to provide for any reservation to SCs/STs/OBCs, and only one class of human exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per Constitutional goal.

67. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of down-trodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. Resultantly, we are of the considered opinion that direction Nos.(iii) and (iv) issued by this Court deserve to be and are hereby recalled and consequently we hold that direction No. (v), also vanishes. The review petition is allowed to the extent mentioned above."

5. In *State of M.P. & Anr. v. Ram Kishna Balothia & Anr.*, (1995) 3 SCC 221, this Court has upheld the validity of section 18 of the Act of 1989. This Court has observed:

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“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 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 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 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 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

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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 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 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 themselves and cannot be compared with other offences.

7. We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution, which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

> “We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.” In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

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 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 India, AIR 1993 Raj 177, and we respectfully agree with its findings."

6. This Court in *Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors.*, (2012) 8 SCC 795, has observed thus:

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

7. This Court in *Shakuntla Devi v. Baljinder Singh*, (2014) 15 SCC 521, has observed thus:

> "**4.** The High Court has not given any finding in the impugned order that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in *Vilas Pandurang Pawar case*, (2012) 8 SCC 795. Hence, without going into the merits of the allegations made

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> against the respondent, we set aside the impugned order of the High Court granting bail to the respondent."

8. Concerning the provisions contained in section 18A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general directions (iii) and (iv) issued in *Dr. Subhash Kashinath*'s case (supra). A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1, shall hold good as explained in the order passed by this Court in the review petitions on 1.10.2019 and the amended provisions of section 18A have to be interpreted accordingly.

9. The section 18A(i) was inserted owing to the decision of this Court in *Dr. Subhash Kashinath* (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No.228 of 2018 decided on 1.10.2019. Thus, the provisions which have been made in section 18A are rendered of academic use as they were enacted to take care of mandate issued in *Dr. Subhash Kashinath* (supra) which no more prevails. The provisions were already in section 18 of the Act with respect to anticipatory bail.

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10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(2) shall not apply. We have clarified this aspect while deciding the review petitions.

11. The court can, in exceptional cases, exercise power under section 482 Cr.PC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

12. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions.

.....J.
(Arun Mishra)

.....J.
(Vineet Saran)

New Delhi;
February 10, 2020.

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. 1015 OF 2018

PRATHVI RAJ CHAUHAN ...PETITIONER(S)

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENT(S)

WITH

WRIT PETITION (C) No. 1016 OF 2018

J U D G M E N T

S. RAVINDRA BHAT, J.

1. I am in agreement with the judgment proposed by Justice Arun Mishra as well as its conclusions that the challenge to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018 must fail, with the qualifications proposed in the judgment with respect to the inherent power of the court in granting anticipatory bail in cases where *prima facie* an offence is not made out. I would however, supplement the judgment with my opinion.

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2. The Constitution of India is described variously as a charter of governance of the republic, as a delineation of the powers of the state in its various manifestations *vis-à-vis* inalienable liberties and a document delimiting the rights and responsibilities of the Union and its constituent states. It is more: it is also a pact between people, about the relationships that they guarantee to each other (apart from the guarantee of liberties *vis-à-vis* the state) in what was a society riven1 along caste and sectarian divisions. That is why the preambular assurance that the republic would be one which guarantees to its people liberties, dignity, equality of status and opportunity and *fraternity.*

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3. It is this idea of India, - a promise of oneness of and for, all people, regardless of caste, gender, place of birth, religion and other divisions that Part III articulates in four salient provisions: Article 15, Article 17, Article 23 and Article 24. The idea of fraternity occupying as crucial a place in the scheme of our nation's consciousness and polity, is one of the lesser explored areas in the constitutional discourse of this court. The fraternity assured by the Preamble is not merely a declaration of a ritual handshake or cordiality between communities that are diverse and have occupied different spaces: it is far more. This idea finds articulation in Article 15.[1] That provision, perhaps even more than Article 14, fleshes out the concept of equality by prohibiting discrimination and discriminatory practices peculiar to Indian society. At the center of this idea, is that all people, regardless of caste backgrounds, should have access to certain amenities, services and goods so necessary for every individual. Article 15 is an important guarantee against discrimination. What is immediately noticeable is that whereas Article 15 (1) enjoins the *State* (with all its various manifestations, *per* Article 12) not to discriminate on the proscribed grounds (religion, race, caste, sex (i.e. gender), place of birth or any of them), Article 15 (2) is a wider injunction: it prohibits discrimination or subjection to any disability of anyone on the grounds of

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1 *The relevant parts of Article 15 are extracted below:*

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public…"

(3) Nothing in this article shall prevent the State from making any special provision for women and children"

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religion, caste, race, sex or place of birth in regard to access to shops, places of public entertainment, or public restaurants (Article 15 (2) (a)). Article 15(2)(b) proscribes the subjection of anyone to any disability on the proscribed grounds (i.e. discrimination on grounds of religion, caste, race, sex or place of birth) with regard to "*the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public..*"

4. The making of this provision- and others, in my view, is impelled by the trinity of the preambular vision that the Constitution makers gave to this country. Paeans have been sung about the importance of liberty as a constitutional value: its manifest articulation in the (original) seven "lamps" -i.e. freedoms under Article 19 of the Constitution; the other rights to religion, those of religious denominations, etc. Likewise, the centrality of equality as an important constitutional provision has been emphasized, and its many dimensions have been commented upon. However, the articulation of fraternity as a constitutional value, has lamentably been largely undeveloped. In my opinion, all the three - Liberty, Equality and Fraternity, are intimately linked. The right to equality, *sans* liberty or fraternity, would be chimerical - as the concept presently known would be reduced to equality among equals, in every manner- a mere husk of the grand vision of the Constitution. Likewise, liberty without equality or fraternity, can well result in the perpetuation of existing inequalities and worse, result in license to indulge in society's basest practices. It is fraternity, poignantly embedded through the provisions of Part III, which assures true equality, where the state treats all alike, assures the benefits of growth and prosperity to all, with equal liberties to all, and what is more, which guarantees that every citizen treats every other citizen alike.

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5. When the framers of the Constitution began their daunting task, they had before them a formidable duty and a stupendous opportunity: of forging a nation, out of several splintered sovereign states and city states, with the blueprint of an idea of India. What they envisioned was a common charter of governance and equally a charter for the people. The placement of the concept of fraternity, in this context was neither an accident, nor an idealized emulation of the western notion of fraternity, which finds vision in the French and American constitutions and charters of independence. It was a unique and poignant reminder of a society riven with acute inequalities: more specifically, the practice of caste discrimination in its virulent form, where the essential humanity of a large mass of people was denied by society- i.e. untouchability.

6. The resolve to rid society of these millennial practices, consigning a large segment of humanity to the eternal bondage of the most menial avocations creating inflexible social barriers, was criticized by many sages and saints. Kabir, the great saint poet, for instance, in his composition, remarked:

> *"If thou thinkest the maker distinguished castes:*
>
> *Birth is according to these penalties for deeds.*
>
> *Born a Sudra, you die a Sudra;*
>
> *It is only in this world of illusion that you assume the sacred thread.*
>
> *If birth from a Brahmin makes you a Brahmin,*
>
> *Why did you not come by another way?*
>
> *If birth from a Turk makes you a Turk,*
>
> *Why were you not circumcised in the womb?*
>
> …
>
> *Saith Kabir, renounce family, caste, religion, and nation,*

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And live as one."

7. There were several others who spoke, protested, or spoke against the pernicious grip of social inequity due to caste oppression of the weakest and vulnerable segments of society. Guru Nanak, for instance, stated[2]

> *"Caste and dynastic pride are condemnable notions,*
>
> *the one master shelters all existence.*
>
> *Anyone arrogating superiority to himself halt be disillusioned. Saith Nanak:*
>
> *superiority shall be determined by God"*

The Guru Granth Saheb also states that

> *"All creatures are noble, none low,*
>
> *One sole maker has all vessels fashioned;*
>
> *In all three worlds is manifest the same light…"*

2 *Guru Granth Saheb p.83*

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8. The preamble to the Constitution did not originally contain the expression "fraternity"; it was inserted later by the Drafting Committee under the chairmanship of Dr. Ambedkar. While submitting the draft Constitution, he stated, on 21 February, 1948, that the Drafting Committee had added a clause about fraternity in the Preamble even though it was not part of the Objectives Resolution because it felt that *"the need for fraternal concord and goodwill in India was never greater than now, and that this particular aim of the new Constitution should be emphasized by special mention in the Preamble"*[3]. Pandit Thakur Das Bhargava expressed a *"sense of gratitude to Dr. Ambedkar for having added the word "fraternity" to the Preamble"*. Acharya Kripalani also emphasized on this understanding, in his speech on 17 October, 1949:

> *"Again, I come to the great doctrine of fraternity, which is allied with democracy. It means that we are all sons of the same God, as the religious would say, but as the mystic would say, there is one life pulsating through all of us, or as the Bible says, "We are one of another". There can be no fraternity without this."*

9. This court too, has recognized and stressed upon the need to recognize fraternity as one of the beacons which light up the entire Constitution. Justice Thommen, in *Indira Sawhney v Union of India*[4] said this:

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3 *B. Shiva Rao: Framing of India's Constitution Vol III, page 510 (1968)*

4 *1992 Supp (3) SCR 454*

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> *"The makers of the Constitution were fully conscious of the unfortunate position of the Scheduled Castes and Scheduled Tribes. To them equality, liberty and fraternity are but a dream; an ideal guaranteed by the law, but far too distant to reach; far too illusory to touch. These backward people and others in like positions of helplessness are the favoured children of the Constitution. It is for them that ameliorative and remedial measures are adopted to achieve the end of equality. To permit those who are not intended to be so specially protected to compete for reservation is to dilute the protection and defeat the very constitutional aim."*

10. In *Raghunathrao Ganpatrao v. Union of India*[5] this court held:

> "*In our considered opinion this argument is misconceived and has no relevance to the facts of the present case. One of the objectives of the Preamble of our Constitution is 'fraternity assuring the dignity of the individual and the unity and integrity of the nation.' It will be relevant to cite the explanation given by Dr. Ambedkar for the word 'fraternity' explaining that 'fraternity means a sense of common brotherhood of all Indians.' In a country like ours with so many disruptive forces of regionalism, communalism and linguism, it is necessary to emphasise and re-emphasise that the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one common citizenship and every citizen should feel that he is Indian first irrespective of other basis. In this view, any measure at bringing about equality should be welcome."*

11. In a similar vein, the court in *Nandini Sundar v. State of Chhatisgarh*[6] again commented on this aspect and said that *"t(T)he Constitution itself, in no uncertain terms, demands that the State shall strive, incessantly and consistently, to promote fraternity amongst all citizens such that dignity of every citizen is protected, nourished and promoted.*

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5 *1993 (1) SCR 480*

6 *2011 (7) SCC 457*

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12. It was to achieve this ideal of fraternity, that the three provisions- Articles 15, 17 and 24 were engrafted. Though Article 17 proscribes the practice of untouchability and pernicious practices associated with it, the Constitution expected Parliament and the legislatures to enact effective measures to root it out, *as well as all other direct and indirect, (but virulent nevertheless) forms of caste discrimination.* Therefore, in my opinion, fraternity is as important a facet of the promise of our freedoms as personal liberty and equality is. The first attempt by Parliament to achieve that end was the enactment of the Untouchability (Offences) Act, 1955. The Act contained a significant provision that where any of the forbidden practices "is committed in relation to a member of a Scheduled Caste" the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "Untouchability". This implied that the burden of proof lies on the accused and not on the prosecution. The Protection of Civil Rights Act, 1955, followed. This too made provision for prescribing *"punishment for the preaching and practice of - "Untouchability" for the enforcement of any disability arising therefrom"*. The enforcement of social practices associated with untouchability and disabilities was outlawed and made the subject matter of penalties. After nearly 35 years' experience, it was felt that the 1955 Act (which was amended in 1976) did not provide sufficient deterrence to social practices, which continued unabated and in a widespread manner, treating members of the scheduled caste and tribe communities in the most discriminatory manner, in most instances, stigmatizing them in public places, virtually denying them the essential humanity which all members of Society are entitled to.

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13. It was to address this gulf between the rights which the Constitution guaranteed to all people, particularly those who continued to remain victims of ostracism and discrimination, that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "the Act") was enacted. Rules under the Act were framed in 1995 to prevent the commission of atrocities against members of Schedules Castes and Tribes, 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. The Statement of Objects and Reasons appended to the Bill, when moved in the Parliament, observed that despite various measures to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes, they remained vulnerable. They are denied a number of civil rights and are subjected to various offences, indignities, humiliation and harassment. They have been, in several brutal instances, deprived of their life and property. Serious atrocities were committed against them for various historical, social and economic reasons. The Act, for the first time, puts down the contours of 'atrocity' so as to cover the multiple ways through which members of scheduled castes and scheduled tribes have been for centuries humiliated, brutally oppressed, degraded, denied their economic and social rights and relegated to perform the most menial jobs.

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14. The Report on the Prevention of Atrocities against Scheduled Castes[7] vividly described that despite enacting stringent penal measures, atrocities against scheduled caste and scheduled tribe communities continued; even law enforcement mechanisms had shown a lackadaisical approach in the investigation and prosecution of such offences. The report observed that in rural areas, various forms of discrimination and practices stigmatizing members of these communities continued. Parliament too enacted an amendment to the Act in 2015, strengthening its provisions in the light of the instances of socially reprehensive practices that members of scheduled caste and scheduled tribe communities were subjected to. In this background, this court observed in the decision in *National Campaign on Dalit Human Rights v. Union of India*[8] that:

7 *Published by the National Human Rights Commission (accessed at https://nhrc.nic.in/publications/other-publicationss on 15 December, 2019 at 08:27 hrs)*

8 *(2017) 2 SCC 432*

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"The ever-increasing number of cases is also an indication to show that there is a total failure on the part of the authorities in complying with the provisions of the Act and the Rules. Placing reliance on the NHRC Report and other reports, the Petitioners sought a mandamus from this Court for effective implementation of the Act and the Rules.

12. We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the concerned authorities in complying with the provisions of the Act and Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance of the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before the Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and State Governments should be directed to strictly enforce the provisions of the Act and we do so."

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15. In *Subhash Kashinath Mahajan v. State of Maharashtra & Ors*[9], a two judge bench of this court held that the exclusion of anticipatory bail provisions of the Code of Criminal Procedure (by Section 18 of the Act) did not constitute an absolute bar for the grant of bail, where it was discernable to the court that the allegations about atrocities or violation of the provisions of the Act were false. It was also held, more crucially, that public servants could be arrested only after approval by the appointing authority (of such public servant) and in other cases, after approval by the Senior Superintendent of Police. It was also directed that cases under the Act could be registered only after a preliminary enquiry into the complaint. These directions were seen to be contrary to the spirit of the Act and received considerable comment in the public domain; the Union of India too moved this court for their review. In the review proceedings, a three judge bench of this court, in *Union of India v. State of Maharastra*[10] recalled and overruled those directions.

9 *2018 (4) SCC 454*

10 *2019 (13) SCALE 280*

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16. In the meanwhile, Parliament enacted the amendment of 2018[11] (by Act No. 27 of 2019), which is the subject matter of challenge in these proceedings. The clear intention of Parliament was to undo the effect of this court's declaration in *Subhash Kashinath Mahajan (supra)*. The provisions of the amendment expressly override the directions in *Subhash Kashinath Mahajan*, that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The Parliamentary intent was to allay the concern that this would delay registration of First Information Report (FIR) and would impede strict enforcement of the provision of the Act.

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11 *The operative part of the amendment, a brief one, reads as follows:*
" 2. After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely:—
"18A. (1) For the purposes of this Act,— (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.
(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.".

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17. The judgment of Mishra, J has recounted much of the discussion and reiterated the reasoning which led to the recall and review of the decision in *Subhash Kashinath Mahajan* (supra); I respectfully adopt them. I would only add that any interference with the provisions of the Act, particularly with respect to the amendments precluding preliminary enquiry, or provisions which remove the bar against arrest of public servants accused of offences punishable under the Act, would not be a positive step. The various reports, recommendations and official data, including those released by the National Crime Records Bureau[12], paint a dismal picture. The figures reflected were that for 2014, instances of crimes recorded were 40401; for 2015, the crime instances recorded were 38670 and for 2016, the registered crime incidents were 40801. According to one analysis of the said 2016 report[13], 422,799 crimes against scheduled caste communities' members and 81,332 crimes against scheduled tribe communities' members were reported between 2006 and 2016.

12 *http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Table%207A.1.pdf containing statistics relating to crime against members of scheduled caste and scheduled tribe populations*

13 *Indiaspend https://www.indiaspend.com/over-a-decade-crime-rate-against-dalits-rose-by-746-746/*

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18. These facts, in my opinion ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false accusations are made, those are not necessarily reflective of the prevailing and wide spread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of 'atrocity', also lists pernicious practices (under Section 3) including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such scheduled caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards. The right to a trial with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.

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19. As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no *prima facie* materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

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

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21. It is important to reiterate and emphasize that unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalization of scheduled caste and scheduled tribe communities is an enduring exclusion and is based almost solely on caste identities. It is to address problems of a segmented society, that express provisions of the Constitution which give effect to the idea of fraternity, or *bandhutva* (बन्धुत्व) referred to in the Preamble, and statutes like the Act, have been framed. These underline the social – rather collective resolve – of ensuring that all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams. The question which each of us has to address, in everyday life, is can the prevailing situation of exclusion based on caste identity be allowed to persist in a democracy which is committed to equality and the rule of law? If so, till when? And, most importantly, what each one of us can do to foster this feeling of fraternity amongst all sections of the community without reducing the concept (of fraternity) to a ritualistic formality, a tacit acknowledgment, of the "otherness" of each one's identity.

22. I am of the opinion that in the light of and subject to the above observations, the petitions have to be and are, accordingly disposed of.

.....J.
[S. RAVINDRA BHAT]

New Delhi,
February 10, 2020.