Law on SC/ST (Prevention of Atrocities) Act, 1989

[The SC/ST (Prevention of Atrocities) Rules, 1995]

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1(A). SC/ST (Prevention of Atrocities) Act, 1989 last amended by central Act No. 1 of 2016 w.e.f. 26.01.2016 : SC/ST (Prevention of Atrocities) Act, 1989 has been last amended by the central Act No. 1 of 2016 w.e.f. 26.01.2016 and drastic amendments have been made in the 1989 Act particularly in Section 14 which provides for taking of cognizance of offences under this Act by the 'Exclusive Special Court' or 'Special Court' notified under sub-section (1) of Section 14 of the 1989 Act.

1(B). Object behind enactment of the SC/ST (Prevention of Atrocities) Act, 1989 : This is the age of democracy and equality. No people or community should be today insulted or looked down upon and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community as is evident from the Statement of Objects and Reasons of the Act. See : Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435

1(C). <u>How to interpret the provisions of the SC/ST (Prevention of Atrocities) Act, 1989 ?</u> : The thrust of Article 17 of the Constitution and the SC/ST (Prevention of Atrocities) Act, 1989 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society—equality to the Dalits, at par with general public absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light to annihilate untouchability; to accord to the Dalits and Tribes right to equality, social integration a fruition and fraternity a reality. See : State of Karnataka Vs. Appa Balu Ingale, AIR 1993 SC 1126.

2. <u>Constitutional validity of the SC/ST (Prevention of Atrocities) Act, 1989</u> : The thrust of Article 17 of the Constitution and the SC/ST (Prevention of Atrocities) Act, 1989 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society—equality to the Dalits at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light to annihilate untouchability; to accord to the Dalits and Tribes right to equality, social integration, a fruition and fraternity a reality. This is the age of democracy and equality. No people or community should be today insulted or looked down upon and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for

equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. See :

(i) Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435
(ii) State of Karnataka Vs. Appa Balu Ingale, AIR 1993 SC 1126
(iii) Mata Sewak Vs. State of UP, 1995 AWC 2031 (Allahabad) (Full Bench)

3. **Offences under the SC/ST (Prevention of Atrocities) Act, 1989 are a distinct class of offences :** The offences under the SC/ST (Prevention of Atrocities) Act, 1989 form a distinct class of offences by themselves and cannot be compared with other offences. See : State of MP Vs. Ram Kishna Balothia, AIR 1995 SC 1198.

4(A). **Offences under the SC/ST (Prevention of Atrocities) Act, 1989 when not constituted ? :** If there is no evidence to the effect that the accused committed the alleged offence that the victim or injured or the deceased was a member of Scheduled Caste or a Scheduled Tribe, the provisions u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 would not attract. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act is constituted. See : Masumsha Hasanasha Musalman Vs. State of Maharashtra, AIR 2000 SC 1876

4(B). **Conviction u/s 3(2)(v) also not to be recorded on conviction u/s 376 when there is no evidence to support charge u/s 3(2)(v) :** In a criminal trial for the offences u/s 376(2) IPC and u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989, the Supreme Court has held that if there is no evidence showing that the rape was committed by the accused

on the victim since she was a member of SC/ST, the provisions of Section 3(2)(v) of the 1989 Act would not attract and the accused cannot be convicted u/s 3(2)(v) of the 1989 Act. See :

(i) Ramdas Vs. State of Maharashtra, AIR 2007 SC 155
(ii) Dinesh Vs. State of Rajasthan, AIR 2006 SC 1267
(iii) 2011 CrLJ 204 (All)

4(C). **<u>Knowledge and not mens rea is an essential ingredient of the offences under the SC/ST (Prevention of Atrocities) Act, 1989</u>** : Knowledge and not mens rea is an essential ingredient of the offences of Section 3(1) and 3(2) of the SC/ST (Prevention of Atrocities) Act, 1989. See : Mata Sewak Vs. State of UP, 1995 AWC 2031 (Allahabad) (Full Bench)

4(D-1). **<u>Offence u/s 3(1)(x) constituted only when the public views the person belonging to SC/ST being insulted</u> :** The expression "in any place within public view" occurring in Section 3(1)(x) of the SC/ST Act means that the public must view the person being insulted for which he must be present and no offence on the allegations u/s 3(1)(x) gets attracted in the person is not present. See :

(i) Asmathunnisa Vs. State of AP, AIR 2011 SC 1905 (para 10)
(ii) Gorige Pentaiah Vs. State of AP, (2008) 12 SCC 531
(iii) Sudama Giri Vs. State of Jharkhand, 2009 CrLJ (NOC) 1250 (Jharkhand)

4(D-2). **<u>SC/ST (Prevention of Atrocities) Act, 1989 to attract only when the offence is committed in public view and not in room</u> :** Where the cognizance of offence u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 was taken on the basis of allegations by the informant, a member of SC community, that he was accosted in way and was brought to a room where he was abused, assaulted and intimidated by number of accused persons, it has been held that since the informant was intimidated and abused etc. in a room and not within public view, therefore Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 was not attracted. See : 2010 CRLJ 4006 (Jharkhand)

4(E). <u>Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 in respect of offence of rape not to attract merely because the victim belongs to SC or ST community</u> : Where a woman belonging to ST was allegedly raped but there were no allegations much less proof to show that the accused committed rape on her on the ground that she belonged to ST, it has been held that mere fact that victim woman belonged to ST *ipso facto* cannot attract Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989. See : 2010 CRLJ 3812 (AP)

4(F). <u>SC/ST (Prevention of Atrocities) Act, 1989 when to attract ?</u> : Where accused was convicted for offences u/s 506, 354 of the IPC and also u/s 3(1)(x) of the SC/ST (Prevention of atrocities) Act, 1989, it has been held that since there was no evidence that the alleged act was committed by the accused knowing fully well that the prosecutrix belonged to SC community and there was also no cogent legally admissible evidence in respect of Section 506 IPC, only offence u/s 354 IPC was made out and not u/s 506 & 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. See : Sanjay Das Vs. State of M.P, 2011 CrLJ 2095 (Chhattisgarh High Court)

4(G). <u>Offence u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 not substantive offence & no penalty can be awarded thereunder</u> : Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of Scheduled Caste or a Scheduled Tribe or such property belongs to such member, then with the aid of Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 enhanced punishment of life imprisonment would be awarded in such case but conviction and sentence u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 simpliciter is

not permissible under law and in such cases the accused will be convicted for the offence under IPC read with section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 and sentence of imprisonment for life and fine will be awarded. Therefore, the appellants could not be convicted and sentenced u/s 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 simpliciter. Section 3(2)(v) of the SC/ST Act does not constitute any substantive offence. The accused has to be convicted under the IPC with the aid of Section 3(2)(v) of the SC/ST Act, 1989. See :

(i) Mijaji Lal Vs. State of UP, 2009 (65) ACC 446 (All) (DB)

(ii) Ramesh Chhakki Lal Vs. State of UP, 2009 CrLJ (NOC) 683 (Allahabad)

5(A). **<u>Cognizance of offences w.e.f. 26.01.2016 (as amended by central Act No. 1 of 2016) under the SC/ST (Prevention of Atrocities) Act, 1989 to be taken by the 'Exclusive Special Court' or 'Special Court' notified u/s 14(1) of the Act</u>** : As per the second Proviso to sub-section (1) of Section 14 of the SC/ST (Prevention of Atrocities) Act, 1989, as amended by Central Act No. 1 of 2016 w.e.f. 26.01.2016, Cognizance of offences w.e.f. 26.01.2016 (as amended by Central Act No. 1 of 2016) under the SC/ST (Prevention of Atrocities) Act, 1989 is to be taken by the 'Exclusive Special Court' or 'Special Court' notified u/s 14(1) of the Act. The said second Proviso to Section 14(1) reads thus : "*Provided further that the courts so established or specified shall have power to directly take cognizance of offences under this Act.*"

5(B). **<u>Sessions Judge to take cognizance of the offences under the SC/ST (Prevention of Atrocities) Act, 1989 only on committal of case by Magistrate</u>** : Special Court of Sessions constituted u/s 14 of the SC/ST (Prevention of Atrocities) Act, 1989 cannot take cognizance of any offences under the Act without case being committed by Magistrate to it. Conviction by the special court under the 1989 Act is not sustainable if it has *suo motu* entertained and taken cognizance of the complaint directly without the case

being committed to it and, therefore, there should be re-trial or total setting aside of the conviction, as the case may be. See :

(i) Vidyadharan Vs. State of Kerala, (2004) 1 SCC 215
(ii) Moly & another Vs. State of Kerala, AIR 2004 SC 1890
(iii) Gangula Ashok Vs. State of AP, AIR 2000 SC 740
(iv) Mata Sewak Vs. State of UP, 1995 AWC 2031 (All)(Full Bench)

5(C). <u>Cognizance and trial of case by Special Court valid even in the absence of commitment of the case by Magistrate</u> : Giving approval to an earlier Two-Judge Bench decision of the Supreme Court reported in State of M.P. Vs. Bhooraji & Others, AIR 2001 SC 3372 and disapproving the law declared by other Two-Judge Benches in the cases of Moly & Another Vs. State of Kerala, AIR 2004 SC 1890 & Vidyadharan Vs. State of Kerala, (2004) 1 SCC 215, a **Three-Judge Bench** of the Hon'ble Supreme Court (on reference being made to resolve the conflicting views in the above cases) has held that if the cognizance of an offence under the 1989 Act is taken by the Special Judge directly without cognizance by Magistrate under Section 193 of the CrPC and without the case being committed to sessions under Section 209 CrPC, conviction by special judge cannot be set aside or there cannot be a direction of re-trial. The decisions rendered in the cases of Moly & Vidyadharan without noticing the decision in Bhooraji, a binding precedent, were *per incurium.* Law laid down in the cases of Moly & Vidyadharan does not expound the correct position of law and they stand overruled. The law laid down in Bhooraji's case is the correct law. See : **Rattiram & Others Vs. State of UP, 2012 (76) ACC 885 (SC) (Three-Judge Bench).**

6(A). <u>Special Court constituted under the SC/ST (Prevention of Atrocities) Act, 1989 continues to be Court of Sessions</u> : The Supreme Court, in the cases noted below, has held that a Special Court of Sessions constituted u/s 14 of the SC/ST (Prevention of Atrocities) Act, 1989 continues to be Sessions Court even after specification as Special Court under the 1989 Act

and trial of an accused for the offences under IPC only by such special court would not be without jurisdiction. See :

(i) State of H.P. Vs. Gita Ram, AIR 2000 SC 2940
(ii) Gangula Ashok Vs. State of A.P., AIR 2000 SC 740

6(B). **Charge-sheet/FR/complaint in respect of Gazetted Officers to be filed in the court of CJM :** Cases against Gazetted Officers are to be filed and instituted in the court of Chief Judicial Magistrate. See : Rajan Shukla Vs. State, 2006 CrLJ (NOC) 83 (Uttarakhand).

7. **Bail by Magistrate under the SC/ST (Prevention of Atrocities) Act, 1989 :** Where the accused had allegedly committed offences u/s 323, 504, 506 IPC and 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989, the Allahabad High Court has ruled that since the offence u/s 3(1)(x) of the 1989 Act is punishable with sentence upto five years and fine only, Magistrate has got jurisdiction to grant bail for the offence u/s 3(1)(x) of the aforesaid Act irrespective of the fact that the offence is triable by the Court of Sessions. See : Munna Pandey Vs. State of UP, 2008 (62) ACC 637 (All)

8(A). **Effect of investigation by a police officer below the rank of Deputy SP(Rule 7 of the 1995 SC/ST Rules)** : By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the 1995 Rules provide rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the CrPC when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offences complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the

investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence u/s 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence u/s 3 of the Act for taking cognizance of that offence. See : State of MP Vs. Chunnilal, 2009 (4) Supreme 418.

8(B). **A police officer below the rank of Deputy SP not competent to investigate offences under the 1989 Act :** According to Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995, investigation of an offence committed under the SC/ST (Prevention of Atrocities) Act, 1989 cannot be conducted by a police officer below the rank of Deputy Superintendent of Police (DSP). Provisions of Rule 7 are mandatory and the charge-sheet or other proceedings initiated on the basis of an investigation conducted by a police officer below the rank of DSP being improper and bad in law deserve to be quashed. See :

(i) 2010 CrLJ 1528 (All)
(ii) M. Kathiresan Vs. State of Tamil Nadu, 1999 CrLJ 3938 (Madras)
(iii) A Sasikumar Vs. The Superintendent of Police, 1998 (1) CTC 276 (Madras)

8(C). **A police officer below the rank of Deputy SP not competent to investigate offences under the 1989 Act :** Where an accused was convicted for the offences u/s 3(1)(xi) of the SC & ST (Prevention of Atrocities) Act, 1989 and u/s 341 IPC on the basis of an investigation and charge-sheet thereafter by a Sub-Inspector of Police, the Andhra Pradesh High Court, in appeal, set aside the conviction of the accused u/s 3(1)(xi) of the 1989 Act on the ground that the Sub-Inspector of Police was not authorized for investigation under Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995 but the conviction u/s 341 IPC was found proper as

the Sub-Inspector of Police was competent in law to investigate the offence u/s 341 IPC. See : D. Ramalinga Reddy Vs. State of A.P., 1999 CrLJ 2918 (AP)

8(D). <u>A police officer below the rank of Deputy SP whether competent to investigate offences under the 1989 Act ? :</u> Where the investigation of offense u/s 302 IPC & u/s 3 of the SC/ST Act, 1989 was conducted by officer below the rank of Deputy SP but charge sheet was submitted in court by officer of the rank of DSP, the investigation was held to be proper as per rule 7 of the 1995 Rules. See **:** Purushottam Vs. State of UP, 2010 (4) ALJ(NOC) 531(Allahabad).

8(E). <u>A police officer below the rank of Deputy SP not competent to investigate offences under the 1989 Act :</u> Where FIR involving offences u/s 364, 324 , 323, 149, 148 IPC & u/s 3(2) of SC / ST Act was investigated by the police officer below the rank of Deputy SP, interpreting rule 7 of 1995 Rules, it has been held by the Supreme Court that only investigation qua offence under the SC/ST Act is vulnerable & not those relatable to the IPC. See :

(i) State of Punjab Vs. Hardial Singh, 2010 (70) ACC 848 (SC)
(ii) Jawahir Sharma Vs. State of UP, 2010 CRLJ 1528(Allahabad).

9(A). <u>Using word "*Chamar*" whether offence u/s 3(1)(x) of the 1989 Act ?</u> : Calling a member of the Scheduled Caste **"***chamar***"** with intent to insult or humiliate him in a place within public view is certainly an offence u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. Whether there was intention on the part of the accused to insult or humiliate by using the word "chamar" will depend on the context in which it was used. It is thus the intention in which the word "chamar" was used. It is true that chamar is the name of a caste among Hindus who were traditionally persons who made leather goods by handicraft. But today the word "chamar" is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person "chamar" today is nowadays an abusive language and is highly offensive. In fact, the word

"chamar" when used today is not normally used to denote a caste but to intentionally insult and humiliate someone. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. Hence, the so-called upper castes and OBCs should not use word "chamar" when addressing a member of the Scheduled Caste, even if that person in fact belongs to the "chamar" caste, because use of such a word will hurt his feelings. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Object and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the said Act, what has to be taken into account is the popular meaning of the word "chamar" which it has acquired by usage, and not the etymological meaning. If the etymological meaning is taken into account, it may frustrate the very object of the Act and hence that would not be a correct manner of interpretation. Before the coming of the British into India, the chamars were a stable socio-economic group who were engaged in manufacturing of leather goods by handicraft. As is well known, feudal society was characterized by the feudal occupational division of labour in society. In other words, every vocation or occupation in India became a caste e.g. *dhobi* (washerman), *badhai* (carpenter), *lohar* (blacksmith), *Kumbhar* (potter), etc. The same was the position in other countries also during feudal times. Thus, even now many Britishers have the surnames like Baker, Butcher, Taylor, Smith, Carpenter, Gardener, Mason, Turner etc. which shows that their ancestors

belonged to these professions. See : Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435.

9(B). **Words "*sali dhobin*" when not to amount to an offence under the SC/ST (Prevention of Atrocities) Act, 1989** : Where utterance of words "Sali Dhobin" was made by the accused on the first floor of the house, it has been held that Section 3(i)(X) of the SC/ST (Prevention of Atrocities) Act, 1989 was not attracted as the floor of the house was not a public place. See : Suhail Fasih Vs. State of UP, 2012 (76) ACC 10(All)

9(C). **Non-mentioning of caste of SC/ST in FIR not fatal :** After ascertaining the facts during the course of investigation it is always open to the Investigating Officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court to either accept the same or take the cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed, at the time of trial, materials can be placed to show that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. See : Mrs. Pushpa Vijay Vonde Vs. State of Maharashtra, 2009 CrLJ 3204 (Bombay)

9(D). **Disclosure of caste of both sides i.e. the accused and the complainant necessary for taking of cognizance of offences under the SC/ST Act :** Where FIR does not disclose caste of the accused as well as of the complainant, cognizance of the offence under the SC/ST Act could not be taken on the basis of such FIR. See : State of Maharashtra Vs. Vijay Chandradhan, 2010 CrLJ (NOC) 104 (Bombay)

10. **Effect of change of religion by the member of SC/ST :** It cannot be said that merely by change of religion person ceases to be a member of Scheduled Tribe but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate Court as such a

question would depend upon the fact of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and traditions of the community which he earlier belonged to. See : State of Kerala Vs. Chandramohanan, AIR 2004 SC 1672

11(A). <u>Jurisdiction for trial of offences under the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 & the SC/ST Act, 1989</u> : A Division Bench of the Allahabad High Court, in the matter of Ajai Rai Vs. State of UP, 1995(32) ACC 477 (Allahabad)(DB**),** has ruled that when an accused has been charge-sheeted for offences under the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 & also under the SC/ST (Prevention of Atrocities) Act, 1989, then only the special court constituted u/s 8 of the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 would be competent to try the offences under both the special Acts. For trial of the substantive offence under IPC, the ordinary courts may take cognizance while for an offence under the 1986 Act only special Courts can hold the trial. Even if there be a trial of the accused for substantive offences under the Indian Penal Code in an ordinary Criminal Court, he could be tried for a distinct offence under this Act by the Special Court as provided for u/s 300 (4) CrPC. The legislature had in mind that an accused may not be harassed twice over and, accordingly, the provisions of Section 8 of the Act have been made. While taking up the trial for an offence under the Act, it would be competent for the Special Judge to take up the charges of offences under other Acts also in the same trial. Section 8 of the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 reads as under :

"**Section 8 : Power of Special Court with respect to other offences :**

(1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may, under

any other law for the time being in force, be charged at the same trial.

(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorized by this Act or such rule or, as the case may be, such other law, for the punishment thereof."

11(B). <u>Offences under UP Dacoity Affected Areas Act, 1983 & the SC/ST Act, 1989</u> : As regards the trial of offences under the provisions of the UP Dacoity Affected Areas Act, 1983 and the SC/ST (Prevention of Atrocities) Act, 1989, Section 6(2) of the UP Dacoity Affected Areas Act, 1983 is relevant which reads as under :

"Section 6(2) : In trying any scheduled offences, a Special Court may also try any offence other than such offence with which a scheduled offender may be charged at the same trial under any law for the time being in force."

12. **<u>Probation not to be granted to an offender above the age of 18 years for the offences under the 1989 Act</u> :** Section 19 of the SC/ST (Prevention of Atrocities) Act, 1989 provides that Section 360 CrPC or the provisions of the Probation of Offenders Act, 1958 shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under the 1989 Act."

13(A). **<u>FIR when not containing the caste of accused?</u> :** FIR is not expected to be an encyclopedia. It is open to the investigating officer to record that the accused either belongs to or does not belong to SC/ST. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to SC/ST. Even

if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to SC/ST. Thus the accused can, during investigation or at the time of framing of charge or at the time of trial, can show that he either belongs to SC/ST or not so that applicability of section 3(1)(xi) of the Act is ruled out. See : Ashabai Machindra Adhagale Vs. State of Maharashtra, AIR 2009 SC 1973 (Three-Judge Bench)

13(B). **Disclosure of caste in complaint not necessary** : It is not a requirement u/s 3 of the SC/ST Act, 1989 that the complainant should disclose the caste of the accused in the complaint. See : Mr. Pushpa Vijay Bonde Vs. State of Maharashtra, 2010 (70) ACC 413(Bombay High Court)(Full Bench)**.**

14. **Penalty u/s 3(2)(5) of the 1989 Act :** If an accused commits any offence under IPC with imprisonment for a term less than ten years, then Section 3(2)(5) of the SC/ST Act , 1989 can not be attracted in such case. Where a Fast Track Judge of Aligarh judgeship had convicted four accused persons u/s 363 IPC r/w Section 3(2)(5) of the SC/ST Act (though Section 363 IPC is not punishable with imprisonment for a term of ten years or more but it is punishable with imprisonment for a term which may extend to seven years) and sentenced them with the imprisonment of five years each, the conviction and sentence was set aside by the Allahabad High Court as Section 3(2)(5) was not attracted at all. The same Fast Track Judge had also convicted the accused persons for offence u/s 366 IPC r/w Section 3(2)(5) of the SC/ST Act but had awarded the sentence of imprisonment of five years only u/s 366 IPC (although an offense u/s 366 IPC is punishable with imprisonment for a term which may extend to ten years) , passing severe strictures against the aforesaid trial Judge, the Division Bench observed thus "In such situation, the accused persons, who do not belong to SC or ST , ought to have been convicted u/s 366 IPC read with section 3 (2)(5) of the SC/ST Act because Section 366 IPC is punishable with imprisonment for life and fine ought to have been awarded u/s 366 IPC read with section 3(2)((5) SC/ST Act whereas sentence of five years

imprisonment with fine has only been awarded u/s 366 IPC. The impugned judgment shows that the learned Trial Judge is not well equipped with criminal law which is really very unfortunate. Registrar General is directed to send a copy of this order through the District Judge concerned within a week to the said Trial Judge who is advised to improve his legal knowledge by perusing law books." See : Munni Devi Vs. State of UP, 2009 (65) ACC 522 (All)(DB).

15. **POCSO Court to try both the cases where accused charged under SC/ST Act also :** A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-

obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See : **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP)** *(paras 14, 15, 16, 17, 19 & 20)*

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Offences Against

OBCs & Minorities

1. **"Offence": Definition of ? :** Section 2(n) of the Code of Criminal Procedure, 1973 defines the word 'offence'. According to Section 2(n) of the CrPC, 'offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871.

2. **"Offence" as defined in IPC :** Section 40 of the Indian Penal Code, 1860 also defines the word 'offence'. According to Section 40, except in the Chapters and Sections mentioned in clauses 2 and 3 of this Section, the word "offence" denotes a thing made punishable by this Code. In Chapter IV, Chapter VA and in the following Sections, namely, Sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 118, 119, 120, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined. And in Section 141, 176, 177, 201, 2002, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

3. **Protection to SC/ST under the Constitution of India :** Article 338 and 341 of the Constitution of India provide for special protection to the members belonging to the Scheduled Castes and Scheduled Tribes.

4. **Articles 15 & 16 of the Constitution** : Regarding reservation in public employment to the members of SC/ST.

5. **Article 17 of the Constitution :** Abolition of untouchablity.

6. **U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994**

7. **Indra Sawhney Vs. Union of India, AIR 1993 SC 477 (Nine-Judge Bench).** See: State of Uttar Pradesh Vs. Bharat Singh & Others, (2011) 4 SCC 120 (para 80).

REPORTS OF SC/ST COMMISSIONS TO GOVERNOR

8. **Article 338(7): National Commission for Scheduled Castes:** Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such reports shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of

the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

9. **Article 338A(7): National Commission for Scheduled Tribes:** Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

10. **Article 341: Scheduled Castes:** (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

11. **Article 342: Scheduled Tribes:** (1) The President 3[may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

12. **Expression 'Scheduled Castes' or 'Scheduled Tribes' have not been used in the Constitution in ordinary sense but in the sense as defined in Articles 366(24) & 366(25) :** By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is

said in relation to Article 341 *mutatis mutandis* applies to Article 342. The laudable object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words 'castes' or 'tribes' in the expression 'Scheduled Castes' and 'Scheduled Tribes' are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366 (24) and 366 (25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some Orders were issued under the said Articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued by Amendment Acts passed by the Parliament.Plain language and clear terms of these Articles show (1) the President under Clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) Under Clause (2) of the said Articles, a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by Parliament. In other words, Parliament alone is competent by law to include in or exclude a caste or tribe from the list of the Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles. In including castes and tribes in Presidential Orders, the President is authorized to limit the notification to parts or groups within the caste or tribe depending on the educational and

social backwardness. It is permissible that only parts or groups within them could be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to entire State or parts of State. It appears that the object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste or tribe is a Scheduled Caste or Scheduled Tribe or not for the purpose of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be within the meaning of the entries contained in the Presidential Orders issued under Clause (1) of Articles 341 and 342 is to be determined looking to them as they are. Clause (2) of the said Articles does not permit any one to seek modification of the said orders by leading evidence that the caste or tribe (A) alone is mentioned in the Order but caste or tribe (B) is also a part of caste or tribe (A) and as such caste or tribe (B) should be deemed to be a scheduled Caste or Scheduled Tribe as the case may be. It is only the Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the Entries in the Schedules pertaining to each State whenever one caste or tribe has another name it is so mentioned in the brackets after it in the Schedules. In this view, it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste or tribe is a Scheduled Caste or Scheduled Tribe for the purpose of Constitution even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under Clause (1) of the said Articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or Courts or tribunals are vested with any power to modify or vary said Orders. If that be so, no

enquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in Clause (2) of Articles 341 and 342 would be futile holding any enquiry or letting in any evidence in that regard is neither permissible nor useful. See : State of Maharashtra Vs. Milind & Others, AIR 2001 SC 393 (Five-Judge Bench)(paras 10 & 11)

13. **Son of a tribal woman married to a husband of forward class (Kayasth) not entitled to the benefits of tribal status :** The condition precedent for granting tribe certificate is that one must suffer disabilities wherefrom one belongs. The offshoots of the wedlock of a tribal woman married to a non-tribal husband, forward class, cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. The marriage of the appellant's mother, a tribal woman, to a Forward Class (kayastha) husband, was a Court marriage performed outside the village. Ordinarily, the Court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or ex-communicated from the village community. The couple performed Court marriage outside the village; settled down in a city and their son, the appellant, was also born and brought up in the environment of forward community. He as such did not suffer any disability from the society to which he belonged. Fact that the appellant used to visit the village during recess or holidays and there was cordial relationship between the appellant and the village community would not amount to acceptance of the appellant by the village community. By no stretch of imagination, a casual visit to the relative in other village would provide the status of permanent resident of the village or acceptance

by the village community as a member of the tribal community. The appellant-son was, therefore, not entitled to get the tribal certificate. See : Anjan Kumar Vs. Union of India & Others, AIR 2006 SC 1177(Paras 6, 7 & 16)

14. **National Commission for Scheduled Castes has power to investigate into complaint but has no power to grant injunction like Civil Court :** Under clauses (a) and (b) to sub-Article (5) of Article 338 of the Constitution, the National Commission for Scheduled Castes has power to investigate into the matters and enquiry into the complaints but it has no power to grant injunction like Civil Courts. See : All India Indian Overseas Bank SC & ST Employees' Welfare Association Vs. Union of India, (1996) 6 SCC 606 (para 10).

15. **Offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 form distinct class by themselves and cannot be compared with other offences:** When members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interets 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. 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 alledged 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 context that Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,has been incorporated in the said Act.

It cannot be considered as in any manner violative of Article 21. 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 Indian Penal Code. Therefore Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution. See : State of M.P. & Another Vs. Ram Kishna Balothia & Another,AIR 1995 SC 1198 (Paras 6, 9, 10 & 12) .

16. **Parliamentary legislation for protection of members of SC/ST against attrocities** : Besides the constitutional provisions contained in Articles 338 to 342 of the Constitution, the Parliament has enacted the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended on 21.12.2015, for the protection of the members of the Scheduled Castes and Schedulted Tribes against attrocities.

17. **Object behind enactment of the SC/ST (Prevention of Atrocities) Act, 1989 :** This is the age of democracy and equality. No people or community should be today insulted or looked down upon and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community as is evident from the Statement of Objects and

Reasons of the Act. See : Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435.

18. **Constitutional validity of the SC/ST (Prevention of Atrocities) Act, 1989 :** The thrust of Article 17 of the Constitution and the SC/ST (Prevention of Atrocities) Act, 1989 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society—equality to the Dalits at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light to annihilate untouchability; to accord to the Dalits and Tribes right to equality, social integration, a fruition and fraternity a reality. This is the age of democracy and equality. No people or community should be today insulted or looked down upon and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. See : (i) Swaran Singh Vs. State Through Standing Counsel, (2008) 8 SCC 435, (ii) State of Karnataka Vs. Appa Balu Ingale, AIR 1993 SC 1126 and (iii) Mata Sewak Vs. State of UP, 1995 AWC 2031 (Allahabad) (Full Bench).

19. **How to interpret the provisions of the SC/ST (Prevention of Atrocities) Act, 1989 ? :** The thrust of Article 17 of the Constitution and the SC/ST (Prevention of Atrocities) Act, 1989 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral

base. It seeks to establish new ideal for society, equality to the Dalits, at par with general public absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light to annihilate untouchability; to accord to the Dalits and Tribes right to equality, social integration a fruition and fraternity a reality. See : State of Karnataka Vs. Appa Balu Ingale, AIR 1993 SC 1126.

20. **Protection to minorities under the Constitution of India :** Articles 29 & 30 of the Constitution of India provide for special protection to the minorities in India.

21. **Determination of "minority" only by reference to demography of a State and not on the basis of population of the country as a whole:** The term 'minority' is not defined in the Constitution. The Supreme Court in its famous Constitution Bench judgement in TMA Pai Foundation Vs. State of Karnatka, (2002) 8 SCC 481 (Eleven-Judge Bench) had taken clue from the provisions of the State Reorganisation Act and held that in view of India having been divided into different linguistic States, carved out on the basis of the language of the majority of persons of that region, it is the State, and not the whole of India, that shall have to be taken as the unit for determining linguistic minority vis-a-vis Article 30 of the Constitution. In as much as Article 30(1) of the Constitution places on par religions and languages. The minority status, whether by reference to language or by reference to religion, shall have to be determined by treating the State as unit. The principle would remain the same whether it is a Central legislation or a State legislation dealing with linguistic or religious minority. The Supreme Court further opined that to determine "minority" in a State, the population of that State should be taken into consideration by treating the

State as a unit and its demography should be found out and calculated if the persons speaking a particular language or following a particular religion are less than 50% of the population, then the status of linguistic or religious minority can be given to them. The population of the entire country is irrelevant for the purpose of determining such status. Minority, whether linguistic or religious, is thus determinable only by reference to the demography of a State and not by taking into consideration the population of the country as a whole. See: P. A. Inamdar Vs. State of Maharashtra & Others, AIR 2005 SC 3226 (Seven-Judge Bench) (para 98).

22. **Religious or linguistic minorities in a State should be determined on the basis of population of the State:** Religious or linguistic minorities under Article 30 of the Constitution of India are to be determined only in relation to the particular legislation which is sought to be impugned. Thus, if it is the State Legislature, the religious or linguistic minorities are to be determined in relation to the population of the State. See: D. A. V. College, Jullundur Vs. State of Punjab & Others, AIR 1971 SC 1737 (Five-Judge Bench).

23. **Linguistic minority: who is?:** A linguistic minority for purposes of Article 30 (1) of the Constitution of India is one which must at least have a separate spoken language. It is not necessary that the language should also have a distinct script for those who speak it. See: D. A. V. College, Jullundur Vs. The State of Punjab & Others, AIR 1971 SC 1737 (Five-Judge Bench) (para 10).

24. **Arya Samajis: whether constitute religious minority?** The 'Arya Samaj' founded by Swami Dayanand Saraswati by rejecting the manifold absurdities found in Smritis and in traditions and in seeking a basis in the early literature for a purer and more rational faith can be considered to be a religious minority, at any rate as part of the Hindu religious minority in the State of Punjab. The Arya Samajis have a distinct script of their own, namely Devnagri. They are therefore entitled to invoke the rights

guaranteed under Article 29 (1) of the Constitution of India because they are a section of citizens having a distinct script and under Article 30 (1) because of their being a religious minority. See: D. A. V. College, Jullundur Vs. The State of Punjab & Others, AIR 1971 SC 1737 (Five-Judge Bench) (para 16 & 18).

25. **Jain community is recognized as a minority in Uttar Pradesh and has right to run educational institutions of its choice:** Jain religion indisputably is not a part of Hindu religion. The question as to whether the Jains are part of the Hindu religion is open to debate. Jains have a right to establish and administer their own institutions. But only because an institution is managed by a person belonging to a particular religion, the same would not ipso facto make the institution run and administered by a minority community. A minority is determinable by reference to the demography of a State. Whether an institution is established and administered by a minority community or not may have to be determined by the appropriate authority in terms of the provisions of the statute governing the field. Furthermore, minority institutions are not immune from the operations of the measures necessary to regulate their functions. To what extent such regulations would operate, however, again is a matter which would be governed by the statute. Minority communities do not have any higher rights than the majority. They have merely been conferred additional protection. This has been laid down by an Eleven-Judge Bench of the Supreme Court in P.A. Inamdar Vs. State of Maharashtra & Others, (2005) 6 SCC 537 wherein the Constitution Bench was dealing with the object of Article 30(1) of the Constitution. In para 97 of the judgment of the Supreme Court in P.A. Inamdar case, the Constitution Bench observed thus: "The object underlying Article 30(1) of the Constitution is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher University education and go out in the world fully equipped with such intellectual

attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good, general education to children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution." It is interesting to note that the question as to whether the Jains should be treated to be a minority under Section 2 (c) of the National Commission for Minorities Act, 1992 came up for consideration before a Three-Judge Bench of the Supreme Court in Bal Patil Vs. Union of India & Others, (2005) 6 SCC 690 wherein the Supreme Court noticed that the framers of the Constitution engrafted group of Articles 25 to 30 in the Constitution of India against the background of partition of the country so as to allay the apprehensions and fears in the minds of Muslims and other religious communities by providing to them a special guarantee and protection of their religious, cultural and educational rights. In the case of Bal Patil, the Supreme Court held that the so-called minority communities like Sikhs and Jains were not treated as national minorities at the time of framing the Constitution. Sikhs and Jains, in fact, have throughout been treated as part of the wider Hindu community which has different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws like the Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act and other laws of the pre- and post-Constitution periods, definition of "Hindu" included all sects and sub-sects of Hindu religion including Sikhs and Jains. Thus, "Hinduism" can be called a general religion and common faith of India whereas "Jainism" is a special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence i.e. "Ahimsa" and compassion i.e.

"karuna". Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human being whom they called 'Tirathankar'. Lord Mahavir was one in the generation of Thirthankars. The Tirathankars are embodiments of perfect human beings who have achieved human excellence at mental and physical levels. In a philosophical sense, Jainism is a reformist movement amongst Hindus like Brahamsamajis, Aryasamajis and Lingayats. The three main principles of Jainism are Ahimsa, Anekantvad and Aparigrah. In the instant case, the State of Uttar Pradesh at one point of time accepted the school in question as having been established and administered by the Jain community which is a minority community in the State of Uttar Pradesh. The Supreme Court held that the authorities of the State are not justified in taking steps in relation to the self same institution in a different manner. Termination of services of a teacher of such minority educational institution did not require prior approval of the District Basic Education Officer. See: Committee of Management, Kanya Junior High School Bal Vidya Mandir, Etah, Uttar Pradesh Vs. Sachiv, Uttar Pradesh Basic Shiksha Parishad, Allahabad & Others, AIR 2006 SC 2974.

26. **Principles of law enunciated by the Constitution Benches of the Supreme Court in TMA Pai Foundation and PA Inamdar case:** The Principles of law propounded by different Constitution Benches of the Supreme Court in the leading cases of (i) TMA Pai Foundation Vs. State of Karnatka, (2002) 8 SCC 481 (Eleven-Judge Bench) and (ii) P. A. Inamdar Vs. State of Maharashtra & Others, AIR 2005 SC 3226 (Seven-Judge Bench), have been analysed and enumerated by a Learned Single Judge of the Allahabad High Court in the case noted below and the same are reproduced below:

(i) Professional/technical educational institutions constitute a class by themselves as distinguished from educational institutions imparting non-professional education.

(ii) Education upto the undergraduate level on one hand and education at the graduate/post graduate levels and in professional and technical institutions on the other are to be treated on different levels inviting non indentical considerations is a proposition not open to any more debate.

(iii) Any regulation framed in national/State interest must necessarily apply to all educational institutions whether run by the majority or the minority. Article 30(1) of the Constitution of India cannot be such as to override the national interest or to prevent the Government from framing regulation in that behalf. Such a limitation must necessarily be read into Article 30.

(iv) Article 30 of the Constitution does not come in the way of the State stepping in for the purpose of securing transparency and recognition of merit in the matter of admissioin to unaided minority institutions imparting technical/professional education and that is founded on the principle that right to administer does not include a right to maladminister.

(v) The need for affiliation/recognition by the State or the University brings in the concept of regulation by way of laying down conditions consistent with the requirement for ensuring merit, excellence and preventing maladministration. Education at this level constitutes national wealth, therefore, merit cannot be compromised.

(vi) The State can as a matter of policy substitute its own procedure. It would thus be permissible for the State to regulate admissions by providing a centralised single-window procedure duly prescribed by the State or the University. The freedom of choice is available to the minority unaided institution from the list of students.

(vii) Merit based admissions to technical and professional institutions would require monitoring not only of admission procedure but also determining fee structure. Such regulations are not violative of the rights of either the minorities or non-minorities.

(viii) Admissions in the minority educational institutions, aided or unaided, shall be at State level and the agency conducting the CET must be enjoying utmost credibility and expertise in the matter.

(ix) Neither State nor the University is bound to provide approved number of students to fill up the vacant seats post CET and

centralized counselling. The minority institutions, aided or unaided or for that matter all self-financed institutions, imparting professional or technical education cannot admit students on their own but would have to depend upon the policy/mechanism of the State Government through the CET followed by centralized counselling as has been ruled by the Supreme Court in College of Professional Education Vs. State of UP & Others, (2013) 2 SCC 721. See: Sankalp Institute of Education Vs. State of UP & Others, 2017(1) ESC 262 (Allahabad) (paras 29, 44 & 45).

27. **Rights of religious or linguistic minorities to administer their institutions under Article 30(1) is not absolute but subject to regulatory powers of the State:** The right of a religious or linguistic minority to administer an institution is not absolute under Article 30(1) of the Constitution but subject to the regulatory powers of the State. Article 30(1) is not a charter of maladministration and the minority institutions are subject to the regulatory power of the State so that the right to administer may be better exercised for better administration of the institutions. The regulatory power may be exercised by statutory provisions such as the Uttar Pradesh State Universities Act, 1973 or any other enactments. See: Miss Shainda Hasan Vs. State of UP & Others, 1981 LLT (Services) 190 (Allahabad) (Lucknow Bench) (DB).

28. **Minorities have rights to establish their educational institutions to impart general secular education as well as education concerning their language, script or culture:** Article 30(1) of the Constitution covers institutions imparting general secular education. The object of Article 30 is to enable children of minorities to go out in the world fully equipped. It will be wrong to read Article 30 (1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. Article 29 and 30 of the Constitution create two separate rights though it is possible that the rights might meet in a given case. See:

Ahmedabad St. Xavier College Society Vs. State of Gujarat & Another, AIR 1974 SC 1389 (Nine-Judge Bench).

29. **Penalty for spreading religious hatred etc. (Section 295, 295A, 296 to 298 IPC)**

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