



The Centre for Law & Policy Research is a not-for-profit organisation that is dedicated to making the Constitution work for everyone, through law and policy research, social and governance interventions and strategic impact litigation.

CENTRE FOR LAW & POLICY RESEARCH
D6, Dona Cynthia Apartments, 35
Primrose Road, Bangalore 560025
www.clpr.org.in

ACKNOWLEDGEMENTS

PUBLISHED BY

Centre For Law & Policy Research (CLPR)

LEAD EDITORS & AUTHORS

Jayna Kothari, Executive Director, CLPR

Disha Chaudhari, Senior Researcher at CLPR

CO-AUTHORS

Payal Gaikwad, Project Coordinator at CLPR

Anjana Rajsri Anand, Naibedya Dash & Priya Chaudhary

All Research Associates at CLPR.

RESOURCE PARTNER

Manupatra

FUNDED BY

The Federal Republic Of Germany,

Through the Embassy in New Delhi, India.

This Resource Book has benefitted immensely from the inputs and feedback provided by community activists, lawyers, and academics through a one-day consultation held on November 18th at the India International Centre, New Delhi. We are grateful for the contributions made by:

Abirami Jyotheesaran, Aishwarya Karan, Aman Prem Prakash Anjani, Bhanwar Meghwanshi, Daniel Edwin, Dr. K.B Obalesh, G. Prabhu, Henri Tiphagne, Jadumani Mahanand, Kavita Srivastava, Kuldeep Kumar Baudh, Manisha Mashal, Manoranjini, Mayura Priyan, R. Karunanidhi, Rajni, Shivaraj Huchannavar, Shrey, Siddharth KJ, Smitha G.S, Swapnil, Tara Chand, Ujjaini Chatterjee and Vijaylakshmi.

COVER & LAYOUT DESIGN

www.crackerandrush.com

INDEX

INTRODUCTION

- What are the Aims of this Resource Book?
- Who is this Resource Book for?
- How is this Resource Book structured?
- Legal Framework on Caste Discrimination in India

JUDGMENT SUMMARIES

ARTICLES 15 & 16 | NON-DISCRIMINATION & RESERVATIONS PAGE 18–39

A. Reservations in Education & Employment

1. State of Madras v. Champakam Dorairajan & Others
2. M. R. Balaji & Others v. State of Mysore
3. Mrs. Valsamma Paul v. Cochin University & Others
4. E. V. Chinnaiah v. State of Andhra Pradesh & Others
5. Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Others
6. State of Punjab & Others v. Davinder Singh & Others

B. Reservations in Promotions

7. State of Kerala & Another v. N. M. Thomas & Others
8. R. K. Sabharwal & Others v. State of Punjab & Others
9. Indira Sawhney & Others v. Union of India & Others
10. Ashok Kumar Thakur v. State of Bihar & Others
11. M. Nagaraj & Others v. Union of India & Others
12. Jarnail Singh & Others v. Lachhmi Narain Gupta & Others
13. B. K. Pavitra & Others v. Union of India (B. K. Pavitra II)

14. Janhit Abhiyan v. Union of India

ARTICLE 17 & PREVENTION OF UNTOUCHABILITY PAGE 40–51

15. Ramachandran Pillai v. State of Kerala
16. Pavadai Gounder & Others v. State of Madras & Another
17. Surya Narayan Choudhary and Others v. State of Rajasthan
18. State of Karnataka v. Appa Balu Ingale & Others
19. N. Adithayan v. The Travancore Devaswom Board & Others
20. P. Rathinam v. State of Tamil Nadu & Others
21. Sukanya Shantha v. Union of India & Others

THE SC/ST (PREVENTION OF ATROCITIES) ACT, 1989 PAGE 52-81

A. Coverage & Implementation of the SC/ST (PoA) Act

22. Daya Bhatnagar & Others v. State
23. Swaran Singh & Others v. State through its Standing Counsel & Another
24. Rajendra Shrivastava v. The State of Maharashtra
25. Kailas and Others v. State of Maharashtra T. R. Taluka P. S.
26. National Campaign on Dalit Human Rights & Others v. Union of India & Others
27. State of Bihar & Others v. Anil Kumar & Others
28. Ms. Gayatri @ Apurna Singh v. State & Another
29. Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari & Others
30. Hariram Bhambhi v. Satyanarayan & Others

B. Anticipatory Bail under the SC/ST (PoA) Act, 1989

31. State of M. P. & Another v. Ram Krishna Balothia & Another
32. Vilas Pandurang Pawar & Another v. State of Maharashtra & Others

33. Shakuntla Devi v. Baljinder Singh
34. Dr. Subhash Kashinath Mahajan v. The State of Maharashtra & Another
35. Union of India v. State of Maharashtra & Others
36. Naresh Tyagi v. State of NCT of Delhi
37. Prathvi Raj Chauhan v. Union of India & Others
38. Shajan Skaria v. The State of Kerala & Another

PROHIBITION OF MANUAL SCAVENGING PAGE 82-97

39. Safai Karamchari Andolan & Others v. Union of India & Others
40. Smt. Ramadevi v. The State of Karnataka
41. Smt. Chinnamma & Others v. State of Karnataka & Others
42. The Secretary to the Government of Tamil Nadu, Municipal Administration & Water Supply Department & Others v. Valaiyakka & Others
43. National Institute for Rock Mechanics v. Assistant Commissioner & Executive Magistrate, Kolar Sub-Division & Others
44. Change India v. Government of Tamil Nadu & Others
45. B. Elumalai v. The State
46. Shri Sumanth v. The State of Karnataka
47. A. Nagarajan v. Union of India
48. Balram Singh v. Union of India & Others
49. Safai Karamchari Andolan v. Union of India & Others

THE INTERSECTION OF CASTE & GENDER PAGE 98-113

50. Lata Singh v. State of U.P. & Others
51. Mayakaur Baldevsingh Sardar & Another v. State of Maharashtra
52. Bhagwan Dass v. State (NCT) of Delhi
53. B. Dilipkumar v. The Secretary to Government

54. Vikas Yadav v. State of Uttar Pradesh & Others
55. Shakti Vahini v. Union of India & Others
56. Gaurav Jain v. Union of India & Others
57. In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014
58. Patan Jamal Vali v. State of Andhra Pradesh
59. Mani Ram Chaudhary v. State of Uttar Pradesh

LAND RIGHTS & WELFARE MEASURES PAGE 114-127

60. Kasireddy Papaiah & Others v. The Government of Andhra Pradesh
61. Soosai & Others v. Union of India & Others
62. R. Chandevaramappa & Others v. State of Karnataka & Others
63. Chameli Singh & Others v. State of Uttar Pradesh & Others
64. Dharma Naika v. Rama Naika & Another
65. Sudha v. State of Tamil Nadu
66. P. Sathish Kumar v. State of Tamil Nadu
67. T. Muruges v. Director Dr. Ambedkar Foundation & Another
68. M. Gowri v. The District Collector & Others
69. K. Shanthi v. District Collector, Dindigul & Others



INTRODUCTION

Caste-based inequality and discrimination is a serious issue which persists even today after 75 years of our independence. At the time of the drafting of the Constitution, there was a conscious effort to ensure that the deeply embedded caste hierarchies that systematically discriminated against persons on the basis of their caste and the dehumanising practices of untouchability and segregation are removed. In addition, the measures for reservations within the Constitution for Scheduled Castes and Scheduled Tribes in public employment and in educational institutions was included to ensure the guarantee of substantive equality.

Thereafter protective legislations like the PCRA and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 (“PoA Act”) have taken further the responsibility of the State in working towards eliminating caste-based discrimination in India and securing the right to equality, life, liberty and dignity for people from Scheduled Caste and Scheduled Tribe communities.

Despite these legal protections, caste-based violence and discrimination remain widespread in India. The implementation of the PoA Act has been inconsistent, and social stigma associated with caste continues to be pervasive.

The Supreme Court and various High Courts have been pivotal in shaping the trajectory of anti-caste jurisprudence. Key judgments have interpreted the constitutional provisions, shaping the legal contours of reservation, affirmative action, and anti-discrimination laws.

The cases in the resource book are reflective of the possibilities of imagining law as an instrument of social transformation. They stand as a testament to the sustained efforts of the social movement that brought these issues to the attention of the judiciary to enforce the basic guarantees of equality, dignity and non-discrimination within the Constitution for marginalised communities.

The cases in this resource book have been curated to ensure there is a comprehensive resource that covers all the significant court decisions that can help advance the rights of Dalit, Bahujan and Adivasi persons while also raising awareness about the negative rulings by courts so that steps can be taken to overcome the barriers resulting from those decisions, where required. The resource book primarily contains case summaries of the final decisions of the courts along with the link to the judgments.

WHAT ARE THE AIMS OF THIS RESOURCE BOOK?

This Resource Book aims to facilitate access to significant court decisions on caste discrimination in India. It provides summaries of the important judgments in a simple and easy to understand manner. This Resource Book aims to serve a wide range of stakeholders working with anti-caste movements for protecting and promoting the rights of Dalit, Bahujan and Adivasi persons in India. This includes persons belonging to Scheduled Castes, Scheduled Tribes, grassroots activists and organisations, as well as community-based organisations, NGOs, lawyers, students, researchers, public officials including legislators, policy makers and judges.



WHO IS THIS BOOK FOR?

- 1 **Community Members**
Members of Dalit, Bahujan and Adivasi communities to better understand their legal rights and entitlements;
- 2 **SC and ST Rights Groups and NGOs**
Activists, civil society groups and organisations working on the rights of Dalit, Bahujan and Adivasi persons;
- 3 **Students**
Students, researchers and groups seeking to address the challenges faced by Dalit, Bahujan and Adivasi persons in accessing justice and the gaps in implementation of the laws;
- 4 **Government Functionaries**
Public officials and government functionaries who are responsible for ensuring that the rights of Dalit, Bahujan and Adivasi persons are protected;
- 5 **Academics and Lawyers**
Lawyers, judges and researchers who can use the Resource Book as a ready-reckoner on important judgments in their work on the rights of Dalit, Bahujan and Adivasi persons.

HOW IS THIS BOOK STRUCTURED?

This Resource Book is structured thematically to enable readers to easily identify the themes and topics they wish to find information on and engage with.

1

INTRODUCTION TO THE LEGAL FRAMEWORK

The Resource Book begins by providing an overview of the current legal framework addressing caste-based discrimination and the protective measures introduced for securing the rights of members of Scheduled Castes and Scheduled Tribes.

2

CASE BRIEFS ON CASTE DISCRIMINATION IN INDIA

This section covers the judgments on the substantive rights and entitlements guaranteed under the Constitution of India and the protective legislation specifically addressing violence and discrimination faced by members of Scheduled Castes and Scheduled Tribes.

Case details – Title, Court, Judges and Citations. The Resource Book has Manupatra citations for all cases and neutral citations including INSC citations from the official Supreme Court Reports where available.

Case summary – Including the applicable right, facts, court's decision and the significance of the case in the panoply of caste discrimination judgments.

QR codes – Each case summary contains a QR code which gives the link to the entire judgment for those who wish to read them.

INTRODUCTION

LEGAL FRAMEWORK ON CASTE DISCRIMINATION IN INDIA

Caste discrimination has been addressed by the law under the Constitution of India and special anti-caste laws that seek to address the myriad ways in which caste-based violence and hierarchies continue to be perpetuated. In addition to the anti-discrimination framework of the Constitution, which under Article 15, explicitly prohibits discrimination on the basis of caste identities, there are several other constitutional and statutory provisions that deal with caste-based violence and practices. These include provisions outlawing the practice of untouchability, those dealing with affirmative action measures in the form of reservations for Scheduled Castes and Scheduled Tribes, and special laws on caste atrocities and manual scavenging. The constitutional provisions and laws covered in this section shed light on some of the most significant anti-caste legislative developments in India that have been pivotal in addressing the historic and systemic practices rooted in caste discrimination and inequality.

01

CONSTITUTION OF INDIA, 1950

The foundation of the Indian constitution was based on equality, with its main architect Dr. B.R. Ambedkar seeking to eradicate discrimination based on caste. Part III of the Constitution covers the Fundamental Rights. Within the Fundamental Rights, Article 14 guarantees every person equality before the law and equal protection of the law. Beyond this, the Constitution accords proper recognition to the history and pervasiveness of caste discrimination in India.

Special focus is also paid to caste as a ground of discrimination in the constitutional scheme. Article 15(1) of Constitution provides that the State shall not discriminate based on caste along with grounds of religion, race, sex or place of birth. Article 15(2) states that no citizen shall be discriminated against on the same grounds with regard to their access to shops, places of public entertainment such as hotels and public restaurants as well as other places of public resort such as wells, tanks, roads, etc., maintained out of State funds for the use of the general public. Articles 15(4) and Article 15(5) provide for special provisions for the advancement of the socially and educationally backward classes or the Scheduled Castes and Scheduled Tribes.

Article 16 addresses equality of opportunity in public employment in Article 16(1). Article 16(2) states that no one shall be ineligible for or discriminated against for the purposes of public employment on the grounds of religion, race, caste, sex or place of birth. Article 16(4) allows the State to make special provisions for the benefit of the socially and educationally backward classes or Scheduled Castes and Scheduled Tribes, including reservations in appointment. Article 16(4A) similarly allows the State to make special provisions for reservations in promotions and Article 16(4B) states that any unfilled reserved posts would be carried over to the next year without affecting the determination of the fifty per cent ceiling for reservations. Article 17 issues an express prohibition against the practice of untouchability in all forms and applies not just to the State but also to private individuals.

In addition to the Fundamental Rights, Part IV of the constitution covers the Directive Principles of State Policy. Article 46 obligates the State to promote the educational and economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and exploitation.

Finally, Articles 243D reserves seats for persons belonging to the Scheduled Castes and Scheduled Tribes in the Panchayats, and Article 243T does the same for Municipalities. Article 330 reserves seats for persons belonging to the Scheduled Castes and Scheduled Tribes in the Lok Sabha.

02

THE PROTECTION OF CIVIL RIGHTS ACT, 1955 (“PCRA”)

The PCRA was enacted in 1955 and was named as The Untouchability Offences Act. Following a report of the Elayaperumal Committee in 1972 on the status of its implementation, the statute was later amended to increase the number and nature of offences, enhance penalties, and was renamed as the ‘Protection of Civil Rights Act’. In many ways, the PCRA is perhaps India’s first equality law although it is a criminal statute and not a civil law. The primary objective of the PCRA is to prohibit the ‘enforcement of any disability on the ground of untouchability’ and defines ‘civil rights’ as rights accruing to a person because of the abolition of untouchability. The term ‘untouchability’ however has not been defined anywhere in the statute. ‘Untouchability’ has thus been understood as a social practice which looks down on certain depressed classes, solely on account of their birth and disables them from having any interaction with people from the so-called higher castes or classes. Some of the main provisions are as follows:

Religious Untouchability

Section 3 of the PCRA punishes the enforcement of religious untouchability such as preventing a person from entering a place of worship or performing a religious service, offering prayers, or bathing or using the waters of any sacred tank, well or any water source

Enforcing Social Disabilities

Section 4 imposes punishments when any person, on the ground of untouchability, prevents the entry of another to a shop, restaurant, public place, public water body or prevents the practice of a profession, occupation or trade, or the use of or access to any place of public resort, including any place which is maintained wholly or partly by State funds, or a charitable place, occupation of residential premises, use of jewellery or the use of any social or religious custom.

Admitting Persons To Public Facilities

Section 5 punishes refusal of entry into hospitals, dispensaries, educational institutions instituted for the public

Non-Discrimination In Commercial Transactions

Section 6 imposes punishments for the refusal to sell goods or provide services to a person on the ground of untouchability.

Other Offences Arising Out Of Untouchability

Section 7 prohibits and punishes other offences including molesting, injuring or obstructing a person from exercising their right or boycotting a person for exercising their right, or encouraging another to practice untouchability.

Section 7A punishes anyone who compels any person on the ground of untouchability to do any scavenging or sweeping or to remove any carcass or to flay an animal, remove the umbilical cord or do any other job of a similar nature. Section 7 also makes the act of insulting or attempting to insult a member of a Scheduled Caste on the ground of untouchability an offence.

Duties Of The State

The PCRA also imposes positive obligations on the State to tackle untouchability. Section 8 provides that if anyone is convicted of an offence under Section 6, the license of their profession or trade or permit shall be cancelled or suspended. Collective fines can be imposed against all the inhabitants of an area who are abetting an offence, for example of boycott. Section 15A(2)(i) of the PCRA imposes positive obligations on the State to provide adequate facilities, including legal aid, to persons subjected to any disability arising out of ‘untouchability’, and to set up Special Courts.

03

THE SCHEDULED CASTES & SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“SC/ST (PoA) Act”) was enacted in response to the continued rise in the incidence of violence against SC and ST persons and as it was felt that the PCRA did not curb the evil practice of atrocities against Dalits. Its main provisions are as follows:

Atrocities

The SC/ST (PoA) Act is a criminal law that provides a whole list of discriminatory acts against Dalits that are termed as ‘atrocities’ which are recognised as criminal offences. These atrocities are outlined in Section 3 of the PoA and are offences that may be committed against SC/ST persons by a person not from an SC/ST community and includes (a) putting inedible or obnoxious substances into the mouth or forcing consumption, (b) dumping excreta, sewage, carcass etc. at the entrance of occupied premises, (c) garlanding with footwear or parading naked a person, (d) wrongfully dispossessing of land, wrongfully occupying, cultivating, interfering with the enjoyment of any premises owned or occupied, (e) making a person perform manual scavenging, (f) initiating false, malicious or vexatious litigation, (g) intimidating with an intention to humiliate, and (h) imposing or threatening social or economic boycott of an individual, family or group etc. In 2015, the PoA was extensively amended by The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and the list of atrocities under Section 3 was increased from 15 offences to 37 offences. The amendment also added under Section 3(k) and 3(w) specific atrocities against SC/ST women – (a) performing or promoting the dedication of an SC/ST woman to a deity, idol or temple as a devadasi and (b) intentionally touching (of a sexual nature) a woman belonging to an SC/ST community, without the consent of the woman or using acts, words, gestures of a sexual nature towards an SC/ST woman knowing that she belongs to such community.

Special Courts

Section 14 makes it mandatory for State Governments to establish Exclusive Special Courts for one or more districts to exclusively adjudicate on offences under the PoA Act and appoint Special Public Prosecutors to try offences under the Act.

Victim/Witness Protection

Section 15(A)(1) requires that arrangements be made for the protection of victims, dependents and witnesses against any kind of intimidation, coercion, inducement, violence or threat of violence. Section 15A (11) imposes a duty on the State to frame an appropriate scheme to ensure the implementation of various rights and entitlements of victims and witnesses in accessing justice. The State is also mandated to provide travel and maintenance expenses during investigation, inquiry and trial, and undertake socio-economic rehabilitation including relocation during investigation, inquiry and trial.

Bar On Anticipatory Bail

Anticipatory bail is prohibited under section 18 of the PoA Act and investigations should be completed within 60 days from the date of the atrocity.

Oversight Committee

Under Rule 16 of the PoA Rules, the State Government is mandated to constitute a Vigilance and Monitoring Committee. The State level Committee shall be the Chief Minister, and as per Rule 16(2), the Committee shall meet at least twice a year to review the implementation of the Act.

04

THE SCHEDULED CASTES & SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACTS, 2015 AND 2018

Comprehensive amendments were introduced to the provisions of the Scheduled Castes & Scheduled Tribes Prevention of Atrocities Act in 2015 and 2018. The amending Act of 2015 brought some significant changes to the law.

Offences Not Previously Covered

First among these, was the introduction of new offences including social boycott and forms of harassment, humiliation and social exclusion which have been categorised as atrocities for the purpose the of the Act. Section 2(bc) introduced the definition of economic boycott and Section 2(eb) was added to define social boycott.

Inclusion Of Manual Scavengers

Further the 2015 Amendment Act also includes the definition of manual scavengers under Section 2(bf) to mean the same as Section 2 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

Fast Track Courts

Second, the 2015 Amendment has also set up special Courts and Special Public Prosecutors to try offences committed under the Act for ensuring speedy disposal of cases.

Overruling Subhash Kashinath Mahajan

The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 further introduced Section 18A as a measure to undo the ruling in the Subhash Kashinath Mahajan case and state that there would be no requirement for preliminary enquiry or approval from the investigation officer for making an arrest of any person accused of committing an offence under the Act.

05

THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('PEMSRA') was enacted to eradicate the practice of unsafe cleaning of insanitary latrines. The practice of manual scavenging in India is largely hereditary, inextricably linked to the caste system, and is performed almost exclusively by members of the Dalit community in India, a majority of them being women. Prior to the PEMSRA, the previous legislation in force was the Employment of Manual Scavengers and Construction of Dry Latrines, 1993, whose scope was limited to dry latrines. The PEMSRA is the most recent and by far the most detailed legislation on the prohibition of manual scavenging and rehabilitation of persons involved in manual scavenging. Its main provisions are as follows:

Manual Scavenger

Under the PEMSRA, a manual scavenger is a person who has been employed to manually clean, dispose of and handle human excreta in insanitary latrines, open pits, railway tracks and other premises. It includes persons engaged on a regular or a contract basis.

Insanitary Latrines

An "insanitary latrine" is defined as any latrine that requires human excreta that is discharged or flushed into an open drain or pit into which excreta is discharged or flushed to be manually cleaned before the excreta fully decomposes. Under Section 4(1)(s) of the Act, every local authority is mandated to carry out a survey of existing insanitary latrines. Every insanitary latrine is required to be demolished and converted into a sanitary latrine whether with assistance from the State government or by the local authority and at the cost of the occupier if occupiers fail to do so by themselves.

Construction Of Insanitary Latrine

Section 5 states that no person shall construct an insanitary latrine or engage or employ a person either directly or indirectly as a manual scavenger.

Contract/ Agreement To Perform Manual Scavenging Void

Every person engaged as a manual scavenger shall be discharged immediately from any work of manual scavenging. Under Section 6, a person engaged as a manual scavenger is no longer required to perform those tasks and a contract or agreement engaging a person as a manual scavenger will be void and inoperative. Crucially, the statute also provides that a person employed as a manual scavenger on a full-time basis must be assigned other work for at least the same compensation by the employer and cannot be retrenched.

Hazardous Cleaning

Under Section 7, no person can be engaged for the hazardous cleaning of a sewer or a septic tank. Sections 8, 9 and 10 lay down the punishments and penalties for the violation of Sections 5, 6 and 7. Engaging a person as a manual scavenger is punishable with imprisonment of up to two years with fine. Other offences are punishable with imprisonment of up to one year with fine, and up to two years with fine for subsequent convictions. All offences under the Act are cognizable and non-bailable.

Survey

Section 11 mandates that there should be a survey and identification of persons engaged as manual scavengers.

Rehabilitation
Of Manual
Scavengers

Section 13 provides for rehabilitation of persons identified as manual scavengers which would include cash assistance, livelihood and skill training, provision of subsidies and concessional loans for taking up alternative occupation, scholarships for children of manual scavengers, allotment of residential plots and financial assistance for construction of house.

State
Responsibilities

The Act further lists out local authorities’ responsibilities, establishes vigilance committees and provides for the appointment of inspectors.

National & State
Commission For
Safai Karamcharis

The National Commission for Safai Karamcharis Act, 1993 provides for the establishment of a National Commission for Safai Karamcharis (NCSK) and State Commissions for Safai Karamcharis to monitor the implementation of the statute and to perform other functions.

JUDGMENT SUMMARIES



01

ARTICLES 15 & 16: NON-DISCRIMINATION & RESERVATIONS

ABOUT

ARTICLES 15 & 16: NON-DISCRIMINATION & RESERVATIONS

In its commitment to equality, the Indian Constitution recognises the need for affirmative action to address historical injustice against and socio-economic inequalities of marginalised caste communities. Reservation or affirmative action has been one of the main measures by which discrimination faced by SC / ST and OBCs has been addressed in public education and public employment in India. It has been used as a measure to guarantee equality. The bulk of cases around Article 15 and caste as a ground for discrimination have been mainly relating to reservations in admissions to educational institutions, which fall under Article 15 (4) and 15 (5). Under Article 16, the cases deal with reservations, a whole range of cases around public employment, including reservations in promotions, implementation of rosters and consequential seniority.

Almost all of the cases on reservation and discrimination on the basis of caste under Article 15 were cases filed by petitioners who were members of dominant castes, challenging affirmative action measures brought about by the State for Scheduled Castes and Scheduled Tribes. This can be seen from the early cases of *State of Madras v. Champakam Dorairajan* to the later *M. Nagaraj v. Union of India* cases. *Champakam Dorairajan* in fact led to the introduction of reservations in education as seen by the subsequent first amendment to the Constitution which invalidated this judgment.

The issue of reservations is deeply contested and the case that marks the beginning of the judicial discourse on the same was *M.R. Balaji v. State of Mysore* which ruled that reservations in public employment ought not to exceed 50%, thereby establishing a ceiling limit. This was reaffirmed in *Indra Sawhney v. Union of India*, one of the most significant rulings on the question of reservations wherein the Court not only upheld this 50% ceiling but also introduced the concept of ‘creamy lawyer’ which excludes affluent members of marginalised castes communities from the benefits of reservation. This undermines the purpose of addressing caste-based discrimination and the reparative role of affirmative action, which is unrelated to one’s class identity.

The issue of determination of backwardness then took centre-stage in landmark rulings of *State of M. Nagaraj*, which asserted the role of reservations as beyond equal representation to address inequalities. *M. Nagaraj* furthered this requirement of demonstration of backwardness in awarding reservations to caste communities in promotion. More recently in *BK Pavithra v. Union of India*, consequential seniority along with reservation in promotion as rendered unconstitutional owing to lack of quantifiable data mandated by *M. Nagaraj*. The latest judgment on *State of Punjab v. Davinder Singh* recognises State power of sub-classification.

A. RESERVATIONS IN EDUCATION & EMPLOYMENT

01

RIGHT IN QUESTION

Right to affirmative action benefits for backward castes.

CASE NUMBER

Case No. 270 and 271 of 1951, decided on April 9, 1951.

COURT

Supreme Court of India

JUDGES

H.J Kania C.J.I. & S. F. Ali, M. Patanjali Sastri, M. C. Mahajan, B. K. Mukherjea, S. R. Das and Vivian Bose JJ.

CITATION

1951 AIR SC 226;
MANU/SC/0007/1951



State of Madras v. Champakam Dorairajan & Others

FACTS

The State of Madras implemented a reservation policy for admission to engineering and medical colleges of the State which directed that the seats be filled in the following manner: For every 14 seats - 6 were to be allotted to non-Brahmin students, 2 to backward Hindus, 2 to Brahmins, 2 to 'Harijans', 1 to Anglo-Indians and Indian Christians and 1 to Muslims. Champakam Dorairajan, a Brahmin woman who was unable to secure a seat approached the Madras High Court challenging her non-admission on the ground that it was based on caste and in violation of her fundamental rights under Article 15(1) and Article 29(2) of Constitution.

COURT DECISION AND REASONING

It was argued by the State of Madras that it was the responsibility of the state to enact measures for the welfare of marginalised sections of society. Article 46 of the Constitution mandates that the State must promote the educational and economic interests of weaker sections of the society, particularly, SCs, STs and socially and educationally backward classes (SEBCs), and therefore the Communal G.O was valid in law. The Court noted that while Clause (1) of Article 29 protects the language, script, or culture of a section of citizens, Clause (2) guarantees the fundamental right of an individual citizen and mandates that there shall be no discrimination in educational institutions. The right to secure admission to any educational institution in Clause (2) is a right which an individual citizen has as a citizen, and not as a member of any community or class of citizens. This right is not to be denied to citizens on grounds of religion, race, caste, language, or any of them. The Court held that the Communal G.O, which classified students based on religion, race, and caste, violated the fundamental rights guaranteed under Article 29(2) of the Constitution of India.

SIGNIFICANCE

This was a negative decision, and it prompted the first amendment to the Constitution in 1951 after which Article 15(4) was introduced which authorises the State to make special provisions for SEBCs.

02

M. R. Balaji & Others v. State of Mysore

RIGHT IN QUESTION

Right to reservation in educational institutions.

CASE NUMBER

Writ Petition Nos. 90-112 of 1962, decided on September 28, 1962.

COURT

Supreme Court of India

JUDGES

B. P. Sinha, C.J.I & P.B Gajendragadkar, K. N Wanchoo, K. C. Das Gupta, and J. C. Shah, JJ.

CITATION

AIR 1963 SC 649; MANU/SC/0080/1962



FACTS

In 1962, the State of Mysore (presently Karnataka) issued an order effectively reserving 68% of the seats in public universities (engineering and medical colleges) from SC, ST and OBC communities. The order categorised backward classes into two groups: Backward Classes and More Backward Classes (MBCs). 50% seats for admission were reserved for all backward classes, of which 28% were for BCs and 22% for MBCs. There was a provision of 15% reservation for SCs and 3% for STs. The order was challenged before the Supreme Court by a batch of 23 petitioners.

COURT DECISION AND REASONING

There were two key issues before the Court in this case – (1) Whether the State of Mysore can categorise backward classes into “backward classes” and “more backward classes”? (2) Keeping in mind the constitutional provisions under Articles 14, 15 and 29(2), was the State authorised to reserve such a large proportion of seats in educational institutions? The Petitioners argued that it was first necessary for the State to appoint a Commission, as contemplated by the Constitution, which would make its report recommending steps to be undertaken to improve the condition of Backward classes. The Court observed that while that was true, it would be wrong to assume that the appointment of the Commission was a condition precedent to any action under Article 15(4). Article 15(4) empowers the State to enact special provisions in the form of reservation orders, and such provisions can be made by an executive order as well. On the issue of sub-categorisation of backward classes, the Court noted that Article 15(4) applies to ‘classes of citizens’ and not castes of citizens, and class shows division of society according to status, rank, or caste. The Government Order clearly stated that the only practicable method of classifying Backward Classes was based on castes, which the Court relied on to state that the classification of “backward” and “more backward” classes could not be permissible under Article 15(4). While there is no hard and fast rule, and it is for the State to consider and decide the test applied in determining backwardness consistent with the requirements of Article 15(4), introducing two categories was not within the scope of the provision.

The last issue that was dealt with by the Court was whether a significant proportion of 68% of the seats could be reserved in educational institutions. The Court was reluctant to provide a rigid or definite cap but observed that generally, a special provision should be less than 50% and how much less would be dependent on prevailing circumstances. The reservation of 68% was held to be inconsistent with Article 15(4).

SIGNIFICANCE

The decision in M.R Balaji is significant as this was the first instance where the Court proposed a limit on the quantum of reservations, and this served as a legal precedent in many other subsequent cases. While the Court upheld the authority of the State to implement reservation policies, it also placed a limit of 50% setting the stage for the contested issues of balancing affirmative action measures with the constitutional principle of equality.

03

Valsamma Paul v. Cochin University & Others

RIGHT IN QUESTION

Right to reservation for SC/ST and OBC persons based on marriage.

CASE NUMBER

C.A No. 3163-64 of 1995, decided on January 4, 1996.

COURT

Supreme Court of India

JUDGES

K. Ramaswamy & B. L. Hansaria, JJ.

CITATION

AIR 1996 SC 1011; 1996(3) SCC 545; MANU/SC/0275/1996



FACTS

The Appellant, a woman from a dominant class of Syrian Catholics had married a person belonging to the backward class of Latin Catholics. The Appellant's appointment to the Respondent University to a reserved post was challenged on the ground that she did not belong to a backward class.

COURT DECISION AND REASONING

The question before the Court was whether someone, by virtue of marriage, would be entitled to be identified as a member of their spouse's class or caste for the purposes of reservation under Article 16(4) of for admission to an educational institution under Article 15(4). The Court recognised that its task lies in balancing the conflict between personal law and the constitutional framework underlying Articles 15(4) and 16(4) of the Constitution. It held that that the objective of reservations was to remove the disadvantages and historical suffering of Dalits, Adivasis and Other Backward Classes and noted that when a person leading a privileged life is transplanted into a marginalised community by virtue of marriage, adoption, or conversion, they will not become eligible to benefit from reservation. It held that acquisition of such status in voluntary mobility across caste positions would undermine the ethic of the Constitution and frustrate the scheme of reservation under Articles 15(4) and 16(4) of the Constitution. In light of this, the Court noted that the Appellant, having led a privileged life till her marriage, will not be entitled to the benefit of reservation allocated for Latin Catholics.

SIGNIFICANCE

Dismissing mere association by marriage and acceptance of a person into a community as ground for benefiting from reservation, the Court held that caste, unlike class, is not a mobile social category and requires specific and purposeful provision to address the social and economic inequalities faced by marginalized communities.

04

E. V. Chinnaiah v. State of Andhra Pradesh & Others

RIGHT IN QUESTION

Validity of sub-classification of Scheduled Castes for the purpose of reservation.

CASE NUMBER

Civil Appeal No. 6758 of 2000, Civil Appeal No. 6934 of 2000, Civil Appeal No. 7344 of 2000, Civil Appeal No. 3442 of 2001, decided on November 05, 2004.

COURT

Supreme Court of India

JUDGES

N. S. Hegde, S. N. Variava, B. P. Singh, H. K. Sema, and S. B. Sinha, JJ.

CITATION

2004 INSC 644; AIR 2005 SC 162; MANU/SC/0960/2004



FACTS

The Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 was challenged before the High Court of Andhra Pradesh at Hyderabad on the ground that it subdivided the castes mentioned in the Presidential List into different groups for the purpose of reservation. The State had appointed a Commission to identify the groups amongst the Scheduled Castes who had failed to secure the benefit of reservations in the State. The High Court dismissed the case by a majority of 4:1, however on appeal before the Supreme Court, the matter was referred to a Constitution Bench.

COURT DECISION AND REASONING

The Court had to decide whether the State had the power to subdivide the castes mentioned in the Presidential List for the purpose of reservation. The Appellants argued that the impugned Act is not an enactment providing for reservation for the Scheduled Castes, but only divides the Scheduled Castes into different groups. The State submitted that it had the necessary legislative competence to enact the legislation, as it provides reservation for the most backward of the backward classes. The Supreme Court held that the State does not have the power to subdivide the castes mentioned in the Presidential List for the purpose of reservation. The Court emphasised the dangers of classification, stating that it may produce artificial inequalities which undermine the guarantee of equality. The Supreme Court declared the impugned Act as ultra vires the Constitution and sets aside the judgment of the High Court.

SIGNIFICANCE

This judgment expressed the view that if States were allowed to tinker with a list for the purpose of political gains, then the very essence of the Constitution would be compromised. The decision in E.V Chinnaiah has been recently overturned in *State of Punjab and Ors. v. Davinder Singh and Ors.* (2024 INSC 562), the dissenting opinion of which however continues to uphold the ruling in E. V. Chinnaiah.

05

Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Others

RIGHT IN QUESTION

Reservation for Marathas and assessment of backwardness.

CASE NUMBER

C.A. No. 3123 of 2020, decided on May 5, 2021.

COURT

Supreme Court of India

JUDGES

A. Bhushan, L. N. Rao, S. A. Nazeer, H. Gupta & S. R. Bhat, JJ.

CITATION

2021 INSC 284; MANU/SC/0340/2021



FACTS

In 2017, the Maharashtra State Backward Class Commission recommended 12% and 13% reservation for Marathas in educational institutions and appointments in public services, respectively. Based on this, the State enacted the Socially and Educationally Backward Classes Act 2018 (SEBC Act, 2018) which granted 16% reservation for Marathas in Maharashtra's state educational institutions and appointments to public service, which effectively led to exceeding the 50% limit on reservations. The Act was challenged before the Bombay High Court, which read down the prescribed 16% reservation in education and public employment. The High Court held that the Act should not prescribe reservations exceeding the Commission's recommended 12% and 13% quotas. On appeal, the case was ultimately referred to a Constitution bench of the Supreme Court.

COURT DECISION AND REASONING

The Court had to decide whether the SEBC Act, 2018 granting reservation for Maratha community, which exceeded the 50% reservation limit was valid. It noted that the Supreme Court in *Indra Sawhney v. Union of India & Ors.*, [1992] Supp. (2) S.C.R. 454 provided that in 'exceptional circumstances' the 50% limit could be breached. The Court considered whether the Maharashtra State Backward Commission Report successfully made out a case of existence of extraordinary situation and exceptional circumstances in the State justifying the reservations for Marathas to fall within the exception carved out in the *Indra Sawhney* decision. It concluded that the Commission, the Bombay High Court's judgment and the SEBC Act all failed to lay out an 'extraordinary situation' to fall within the exception to this limit and hence, the SEBC Act, insofar as it identified and grants reservations to Marathas, was struck down. It held that the 50% limit on reservations should not be reconsidered. The Court also held that the 102nd Constitutional Amendment did take away the States' powers to identify backward classes. Only the President can notify a list that identifies them which Parliament can amend thereafter.

SIGNIFICANCE

The Court treated the 50% ceiling limit as sacrosanct and importantly it took away the power of the States to identify Backward Classes, and held that States can only make recommendations. Further, the 102nd Amendment did not violate the basic structure of the Constitution.

06

State of Punjab & Others v. Davinder Singh & Others

RIGHT IN QUESTION

Whether sub-classification of the Scheduled Castes is permissible.

CASE NUMBER

Civil Appeal No. 2317 of 2011, decided on August 1, 2024.

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud, C.J.I. & M. Misra, B. R. Gavai, Vikram Nath, B. M. Trivedi, P. Mithal & S. C. Sharma, JJ.

CITATION

2024 SCC OnLine SC 1860, 2024 INSC 562, MANU/SC/0816/2024



FACTS

In 2006, the State of Punjab enacted the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006, giving the first preference in reservation of Scheduled Caste seats to Balmikis and Mazhabi Sikhs. The Punjab & Haryana High Court struck down the preferential reservation provisions as unconstitutional, in line with the decision in *E. V. Chinnaiah v. State of Andhra Pradesh*. Thereafter, the matter came to the Supreme Court and was referred to a 7-judge Constitution bench.

COURT DECISION AND REASONING

The questions before the Court were whether sub-classification can be permitted for SC & ST groups as was done in the case of socially and educationally backward classes (SEBC); and whether legislatures are competent to introduce sub-classification within SC and ST categories. In a 6:1 majority opinion, the Court upheld the validity of sub-classification within SC categories and overturned the decision in *E.V Chinnaiah*. The majority held that Article 14 endorses parity of treatment under parity of conditions and sub-classification is upheld as a facet of equality. Scheduled Castes are not a homogenous group with varying degrees of backwardness and sub-classification of these groups does not amount to an interference with the Presidential List as it does not introduce or exclude any castes from the list. The majority also held that states have the power to create subcategories within the SC and ST lists and Articles 14, 15 and 16 provide for substantive equality. In order ensure that substantive equality is not compromised, sub-classification must be based on empirical data of social backwardness. Justice Gavai also observed that the principle of creamy layer exclusion must also apply to SC and ST groups for the purpose of reservation. Justice Bela Trivedi gave a dissenting opinion, upholding the rationale of *E. V. Chinnaiah*.

SIGNIFICANCE

This is an important ruling emerging from the Supreme Court on the question of substantive equality. Sub-classification remains a highly contested question within the SC and ST community.

B. RESERVATIONS IN PROMOTIONS

07

RIGHT IN QUESTION

Reservations in promotions.

CASE NUMBER

Civil Appeal No. 1160 of 1974, decided on September 19, 1975.

COURT

Supreme Court of India

JUDGES

A. N. Ray, C.J.I. & H. R. Khanna, K. K. Mathew, M. Hameedullah Beg, V. R. Krishna Iyer, A. C. Gupta and S. M. Fazal Ali, JJ.

CITATION

AIR 1976 SC 490;
MANU/SC/0479/1975



State of Kerala & Another v. N. M. Thomas & Others

FACTS

Rule 13AA of the Kerala State Subordinate Services granted provisional promotions to members of Scheduled Castes and Scheduled Tribes who did not have the requisite qualifications to be eligible for such promotion, along with a two-year grace period for them to gain such qualifications. The Rule was challenged by the Petitioner who was a teacher belonging to a dominant caste. It was argued that the preferential treatment was clearly void under Articles 16(1) and (2) and not covered by Article 16(4).

COURT DECISION AND REASONING

The primary issue before the Court was whether the government order violated the right to equality by granting concessions to members of Scheduled Castes and Scheduled Tribes. The majority opinion of the Court upheld the validity of the law, stating that affirmative action or positive discrimination was not a violation of the right to equality. These include actions taken to bring about substantive equality, which may involve differential treatment to rectify past social inequalities. Article 16 allows the State to make special provisions and reservations in matters of employment to provide equal opportunities to historically marginalised groups. Equality of opportunity guaranteed under Article 16(1) is the right to equal opportunity between members of the same class and the rule of equality under Articles 14(1) and 16(1) will not be violated by any measures implemented to ensure equal representation of underrepresented classes where the basic needs for efficiency of administration were met. The majority thus held that that Article 16(4) is an exception to Article 16(1) and reservations can be made in promotions to ensure adequate representation of SC and ST communities in public employment. It held that for employees belonging to Scheduled Castes and Scheduled Tribes, allowing them an extended period of two years for passing the special tests for promotions was a reasonable classification which has a rational nexus to the objective of providing equality of opportunity for all citizens in public employment and Article 16(4) is an extension of Article 16(1).

SIGNIFICANCE

The decision in N M Thomas is important as the Court took a more expansive approach to substantive equality under the Constitution.

08

R. K. Sabharwal & Others v. State of Punjab & Others

RIGHT IN QUESTION

Reservations in promotions and the roster method of implementation.

CASE NUMBER

Writ Petition (Civil) No. 79 of 1979, decided on February 10, 1995.

COURT

Supreme Court of India

JUDGES

Kuldip Singh, S. Mohan, M. K. Mukherjee, B. L. Hansaria & S. B. Majmudar, JJ.

CITATION

1995 INSC 108;
MANU/SC/0259/1995



FACTS

The Punjab Government provided reservations for the Scheduled Castes and Backward Classes in promotions for members of the Scheduled Castes and Backward Classes. This reservation policy was challenged by the Petitioners who were general category employees.

COURT DECISION AND REASONING

The issue in this case was the operation of the roster system. The Court stated that the entire cadre strength should be considered for reservation of posts. When a percentage of reservation is fixed in a particular cadre and the roster indicates the reserve points, the posts at those roster points are to be filled from amongst the reserve categories. Candidates of the general category are not entitled to be considered for the reserved posts, but the reserve candidates can compete for the non-reserved posts. Article 16(4) of the Constitution permits the State Government to make provisions for the reservation of posts in favour of any backward class of citizen which, in the opinion of the State, is not adequately represented. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. These reservations are to be operated as per the roster which would be implemented as a running account from year to year. The purpose of "running account" is to make sure that the SC/ST and Backward Classes get their percentage of reserved posts and must be so interpreted that it does not result in excessive reservation. Thus, in a cadre of 100 posts, when the posts earmarked for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved and thereafter the roster does not survive. In the event of non-availability of a reserve candidate at the roster-point it would be open to the State Government to carry forward the point in a just and fair manner.

SIGNIFICANCE

This was one of the early judgments on reservations in promotions and formed the basis of the constitutional amendment to insert Article 16 (4A).

09

Indra Sawhney & Others v. Union of India & Others

RIGHT IN QUESTION

Right of marginalised castes to reservation in promotion.

CASE NUMBER

WP (C) 930 of 1990, decided on November 16, 1992.

COURT

Supreme Court of India

JUDGES

M.H. Kania, C.J.I. & M.N. Venkatachaliah, S. R. Pandian, T. K. Thommen, A. M. Ahmadi, Kuldip Singh, P. B. Sawant, R. M. Sahai and B. P. Jeevan Reddy, JJ.

CITATION

AIR 1993 SC 477;
1992 Supp 2 SCR 454;
MANU/SC/0104/1993



FACTS

The case originated from the proposals of the Mandal Commission, which suggested a 27% quota for Other Backward Classes (OBCs) and an additional 10% for socially and economically backward classes (SEBCs) in public sector employment and educational institutions. The case analysed the constitutional validity of these reservations and the scope of the application of affirmative action. The issues before the Court were - Constitutionality of the 27% reservation for OBCs in central government jobs and educational institutions; Validity of concept of "creamy layer" within the OBCs be excluded from the reservation benefits; and permissible limit of reservations in government jobs as per Articles 15(4) and 16(4) of the Indian Constitution.

COURT DECISION AND REASONING

The Supreme Court affirmed the idea of providing reservations for socially and economically backward classes, emphasising their significance in attaining social justice and advancement. The Court confirmed that caste is a valid indicator of backwardness and can be considered the basis for providing reservations. It also upheld the constitutionality of the 27% reservation for OBCs in central government positions and educational institutions, on the condition that the total quantum of reservations does not exceed 50% of the available seats. Additionally, the concept of the "creamy layer" within the OBCs was introduced to exclude economically advanced individuals from reservation benefits, ensuring that affirmative action reaches the genuinely disadvantaged sections. Lastly, the Court held that reservations in promotions are not allowed under Article 16(4) of the Constitution.

SIGNIFICANCE

This ruling established that the total reservation for public sector jobs and education cannot be more than 50%, ensuring a balance between affirmative actions and merit-based selection. It confirmed the constitutional validity of reservations for OBCs, strengthening the government's ability to implement affirmative action policies for social equality. It also introduced the concept of the "Creamy Layer", aimed at ensuring that reservations benefit the most disadvantaged within the OBCs and preventing misuse by economically privileged individuals.

10

Ashok Kumar Thakur v.
State of Bihar & Others

RIGHT IN QUESTION

Criteria for determining the “creamy layer” and exclusion from reservation benefits.

CASE NUMBER

Writ Petitions (C) No. 631 of 1994 with other petitions decided on September 4, 1995.

COURT

Supreme Court of India

JUDGES

Kuldip Singh & S. Saghir Ahmad, JJ.

CITATION

AIR 1996 SC 75;
MANU/SC/0011/1996



FACTS

The states of Bihar and Uttar Pradesh laid down criteria for determining the “creamy layer” of backward classes, for the purpose of exclusion from reservation. In addition to the rule of exclusion laid down by the Government of India, the States added further conditions for identifying the ‘creamy layer’ such a salary of Rupees 10,000 or more per month, the wife or the husband to be a graduate, and one of them owning a house in an urban area, or the family owning immovable property of the value of at least Rupees 20 lakhs. The constitutional validity of the criteria laid down by the States was challenged before the Supreme Court.

COURT DECISION AND REASONING

The Supreme Court, in the “Mandal case” (*Indra Sawhney v. Union of India*), held that socially advanced members of a backward class or the ‘creamy layer’ have to be excluded so that the benefit of reservation reaches the poorest and the weakest sections of the backward class. However, in this case the additional conditions for identifying the “creamy layer” laid down by the States of Bihar and Uttar Pradesh was arbitrary and violative of Article 14 and Article 16(4) of the Constitution of India. The Court held that the multiple conditions added by the States, such as the spouse being a graduate or a landowner in an urban area have no nexus with the object sought to be achieved. The Court noted that it is difficult to draw a line where a person, belonging to the backward class, ceases to be so and becomes part of the “creamy layer”. However, the Court has laid down clear and easy to follow guidelines for the identification of “creamy layer” in the Mandal case. The Court also noted that the income limit must be such as to mean and signify social advancement. It however noted that it will be open to the two States to lay down fresh criteria for the subsequent years in accordance with law.

SIGNIFICANCE

This case is significant as it clarifies the law laid down by the Court in the Mandal case and emphasised the importance of the income limit for the purpose of determining the “Creamy Layer”.

11

M. Nagaraj & Others v.
Union of India & Others

RIGHT IN QUESTION

Validity of reservations in promotions with consequential seniority.

CASE NUMBER

WP (C) No. 61 of 2002, decided on October 19, 2006.

COURT

Supreme Court of India

JUDGES

Y. K. Sabharwal, C.J.I. & K. G. Balakrishnan, S. H. Kapadia, C. K. Thakker and P. K. Balasubramanyan, JJ.

CITATION

(2006) 8 SCC 212;
MANU/SC/4560/2006



FACTS

The main challenge in this petition was to the Constitution (Eighty-fifth Amendment) Act, 2001 which inserted Article 16(4-A) of the Constitution retrospectively from 17.6.1995, providing reservations in promotion with consequential seniority. The Petitioners claimed that the consequences of the impugned Amendment Act would result in reverse discrimination in the percentage of representation of the reserved category officers in the higher cadre.

COURT DECISION AND REASONING

The Supreme Court affirmed the constitutionality of the Amendment Act and held that they did not infringe upon the fundamental structure of equality as outlined in Articles 14, 15, and 16 of the Constitution. It asserted that the amendments serve as enabling provisions, permitting states to implement reservation in promotions if they determine backwardness, insufficient representation, and uphold overall efficiency, rather than mandating it. The Court held that Clauses (1) and (4) of Article 16 are restatements of the principle of equality under Article 14. Article 16(4) is enacted as a remedy for the past historical discriminations against a social class and the object in enacting the enabling provisions like Articles 16(4), 16(4A) and 16(4B) is that the State is empowered to identify and recognise compelling interests for remedying backwardness. If the State has quantifiable data to show backwardness and inadequacy, then the State can make reservations in promotions keeping in mind maintenance of efficiency in Article 335. The Court held that Article 335 is to be read with Article 46 which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes. Thus, where the State finds compelling interests of backwardness and inadequacy, it may relax the qualifying marks for SCs and STs. It thus held that Constitutional amendments conferring discretion on the State to make reservations in promotions for SCs and STs were valid.

SIGNIFICANCE

This was a significant decision which upheld the constitutional validity of Article 16(4A) and more importantly settled the issue of reservations in promotions with consequential seniority for SCs and STs.

“ ‘Formal equality’ means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of “proportional equality” expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy.”

JUSTICE S.H. KAPADIA

M. Nagaraj & Others v. Union of India & Others

12

RIGHT IN QUESTION

Right to reservations
in promotions.

CASE NUMBER

SLP (C) No. 30621, 31735,
35000 of 2011, decided on
September 26, 2018.

COURT

Supreme Court of India

JUDGES

Dipak Misra, C.J.I. & Kurian
Joseph, R. F. Nariman, S. K.
Kaul and Indu Malhotra, JJ.

CITATION

(2018) 10 SCC 396;
MANU/SC/1053/2018



Jarnail Singh & Others v. Lachhmi Narain Gupta & Others

FACTS

The case before the Court stemmed from an appeal against a judgment of the Tripura High Court which invalidated Section 4(2) of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1991, deeming it contrary to the standards set in *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 on reservation in promotions. The matter was referred to a Constitutional Bench with the purpose of reviewing the judgment in *M. Nagaraj*, as it had failed to mention *E.V. Chinnaiah v. State of A.P. & Ors*, 2004 INSC 644 . The Bench was also tasked with examining whether *M. Nagaraj* violates the principles of *Indra Sawhney v. Union of India*, AIR 1993 SC 477 by not adequately acknowledging the backwardness of Scheduled Castes and Tribes. This involves mandating the State to re-evaluate the backwardness of these social groups using quantifiable data as proof.

COURT DECISION AND REASONING

The Court opined that there was no reason to review *M. Nagaraj* which was a unanimous five-judge bench judgment repeatedly followed by several decisions and was approved by larger bench judgments as well. Further, it was not necessary to refer to *E. V. Chinnaiah*, since it did not deal in any manner with any of these aspects on which constitutional amendments in *Nagaraj* were upheld. The Court invalidated the requirement for demonstrating backwardness, deeming it inconsistent with the *Indra Sawhney* case and explained that the test for social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes. It compared Article 46 with Article 16(4) and Article 16(4A), concluding that "backward classes" in the latter is equivalent to "weaker sections of the people" in the former, and that Scheduled Castes and Scheduled Tribes are the most backward sections of the society. It also noted that the State does not extend reservations in promotion to Scheduled Castes and Tribes from the "creamy layer" i.e., who are not economically disadvantaged, observing that the creamy layer test did not interfere with the Parliament's power under Article 341 or Article 342. Applying Articles 14 and 16 to exclude the creamy layer cannot be said to be thwarted simply because persons within a particular group in the Presidential List may be kept out by Parliament on the application of the creamy layer principle. Only through the exclusion of the creamy layer would the truly backward realise the benefits of reservation.

SIGNIFICANCE

The decision in *M. Nagaraj* made it very challenging for state governments to satisfy the requirements set forth, leading several high courts to invalidate affirmative action policies that included promotion-based reservations, citing *M. Nagaraj*. Although *Indra Sawhney* held that the discussion of the creamy layer was not pertinent to caste-based reservations, this ruling affirmed its relevance to promotions for Scheduled Castes and Tribes, as established in *M. Nagaraj*.

B. K. Pavitra & Others v. Union of India & Others (B. K. Pavitra II)

RIGHT IN QUESTION

Reservations in promotions and consequential seniority for SC/ST persons.

CASE NUMBER

M.A. No. 1151 of 2018 in Civil Appeal No. 2368 of 2011, decided on May 10, 2019.

COURT

Supreme Court of India

JUDGES

U. U. Lalit & D. Y. Chandrachud, JJ.

CITATION

2019 INSC 671; AIR 2019 SC 2723; MANU/SC/0738/2019



FACTS

The State of Karnataka instituted the Ratna Prabha Committee to submit a quantitative report demonstrating (i) current backwardness of SC/STs, (ii) cadre-wise representation of SC/STs in Government Departments, (iii) effect on administrative efficiency due to reservation in promotion in the state. Based on the Committee report, Karnataka passed the 2018 Karnataka Reservation Act providing for reservation in promotion and consequential seniority, back dated to 24th April 1978. This Act was challenged by the Petitioner.

COURT DECISION AND REASONING

The Court looked at whether this legislation was in conformity with the Constitution Bench judgments in *M. Nagaraj* and *Jarnail Singh*. It analysed the data provided by the State demonstrating backwardness, inadequate representation and administrative efficiency and found the data submitted acceptable and hence upheld the Reservation Act 2018. The Court held that the judgment in *Jarnail Singh* introduced the creamy layer principle for reservation in promotion and not for consequential seniority. Specifically, it held that consequential seniority is a consequence of reservation in promotion and not an additional benefit. Hence, the creamy layer test could only be applied at the stage of reservation in promotion and not subsequently for consequential seniority. The Court also accepted the claim of inadequate representation as the Committee found that SC/ST employees constitute 10.65% and 2.92% respectively across 31 State Government departments. The Court clarified that reservation in promotion via the Reservation Act 2018 will be allowed until SC/ST representation reaches 15% and 3% respectively. It was observed that inference can be drawn that reservation in favour of SC/ST has negatively impacted efficiency. Justice Chandrachud criticised the predominant merit-based approach to maintaining administrative efficiency. He observed that the seemingly neutral system of standardised tests mask existing inequalities in society, which appear to favour already privileged candidates. He introduced a representative definition of efficiency, citing Amartya Sen, and held that merit should be measured as an action that leads to societal good. Hence, a meritorious candidate is not just one who is more talented, but on whose appointment fulfils the constitutional goal of uplifting SC/STs. This representative notion of efficiency is congruent with the policy of consequential seniority.

SIGNIFICANCE

The ruling reinforces the state's authority to implement affirmative action but also mandates that any reservation policy must be grounded in thorough analysis of social backwardness and representation, thereby promoting a more equitable public service. Additionally, the judgment redefines the concept of merit by asserting that it should encompass broader societal goals, including diversity and inclusivity, rather than being limited to traditional metrics of performance.

Janhit Abhiyan v. Union of India

RIGHT IN QUESTION

Right to reservation for Economically Weaker Sections.

CASE NUMBER

Writ Petition (Civil) 55 of 2019, decided on November 7, 2022.

COURT

Supreme Court of India

JUDGES

U. U. Lalit, C.J.I. & Ravindra Bhat, Dinesh Maheshwari, B. M. Trivedi & J. B. Pardiwala, JJ.

CITATION

[2022] 14 SCR 1; 2022 INSC 1175; MANU/SC/1449/2022



FACTS

By the 103rd Constitutional Amendment, Articles 15(6) and 16(6) were inserted to the Constitution permitting 10% reservation in educational institutions and public employment for persons from economically weaker sections (EWS). This reservation explicitly excludes persons from SC, ST and OBC categories. This was challenged in these petitions.

COURT DECISION AND REASONING

The majority judgment of Justices Dinesh Maheshwari, Bela M. Trivedi and J.B. Pardiwala upheld the constitutionality of the amendment and held that such exclusion was justified because persons from SC, ST and OBC categories already had the benefit of reservations under Article 15(4), 15(5) and 16(4). The dissenting judgment of Justice U.U. Lalit and Justice Bhat held that by excluding SC and ST communities, the amendment actively discriminates against them. Reservations based on caste in Articles 15(4) and 16(4) are not privileges or benefits, but reparative measures and to use this as a ground to deny EWS reservation to the poorest, based on their SC/ST status would amount to discrimination which is prohibited under the Constitution. The dissenting opinion reiterated the importance of Article 17 on the abolition of untouchability in any form, noting that it imposes an obligation on the State to prohibit caste discrimination in any manner. The obligation not to exclude or discriminate against SC/ST communities by reason of the express provisions in Articles 17 and 15(1) constitutes the essence of equality and this can be said to be part of the basic structure of our Constitution.

SIGNIFICANCE

The dissenting judgment is important as it recognises that caste status cannot be excluded from EWS status.

02

ARTICLE 17 & PREVENTION OF UNTOUCHABILITY

ARTICLE 17 & PREVENTION OF UNTOUCHABILITY

Practices of untouchability to persons based on their caste, are deeply tied to notions of purity, pollution and defilement. The practice of untouchability was used to not only physically keep distance, to exclude from certain premises but also to forms of discrimination such as economic and social boycott. Boycotts would include the withdrawal of economic relations such as opportunities for earning, buying food, borrowing money and would also extend to areas where ‘untouchables’ possessed enforceable public legal rights such as the use of footpaths, roads, wells, tanks, their remuneration as village workers etc.

Social reform to remove discrimination against people due to their caste status and the practice of ‘untouchability’ began much before the Constitution was framed. Dr. Ambedkar proposed several fundamental rights for the protection of Scheduled Castes and Scheduled Tribes and one of them was for abolition of untouchability which was seen as creating equality of citizenship. Along with the abolition of untouchability, the right to equality and removal of discrimination on account of untouchability was also urged. Finally, these provisions for abolition of untouchability were introduced into the Constitution under Article 17 which states: “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.”

There was a great deal of debate in the Constituent Assembly as to what would constitute ‘untouchability’ and questions were raised as to whether practices of untouchability against women during menstruation, against people with leprosy and against people placed under quarantine would be brought under the ambit of ‘untouchability’. Article 17 was finally agreed to be drafted in an open-ended manner, with ‘Untouchability’ not being defined and included in inverted commas with a capital U.

Many of these discriminatory practices of untouchability raised in the Constituent Assembly debates are still prevalent today in India. Not only is caste-based untouchability still practiced, but so are other forms of untouchability. Practices of segregation are still practiced against women based on menstruation, which has been brought under the ambit of Article 17. Courts have played a critical role in shaping the understanding and enforcement of the abolition of untouchability.

15

RIGHT IN QUESTION

Whether creating a separate class for Harijan students amounts to discrimination and untouchability.

CASE NUMBER

Crl. R.P. No. 461 of 1963, decided on November 24, 1964.

COURT

High Court of Kerala

JUDGE

P. Govinda Menon, J.

CITATION

1964 KLT 1015; MANU/KE/0403/1964



Ramachandran Pillai v. State of Kerala

FACTS

The Petitioner, who was the headmaster of Venganoor English Girls High School was accused of committing an offence under Section 5(b) of the Untouchability (Offences) Act, 1955 (“Act”) for establishing a separate division called ‘Standard IX-F’ exclusively for ‘Harijan’ girl students. Following his conviction by the Sessions Judge, he approached the High Court.

COURT DECISION AND REASONING

The Court upheld the headmaster’s conviction and sentence, agreeing that forming a separate class for ‘Harijan’ students was discriminatory. The headmaster argued that the separate class was intended to provide better educational support to students he thought were struggling academically. The Court did not agree with this claim as the evidence demonstrated that some of the students in this segregated class had outperformed their ‘non-Harijan’ classmates. The Court found that the headmaster could not justify the separation and concluded that it was based on untouchability rather than educational needs. Discrimination means treating someone unfavourably compared to others. According to Section 5(b) of the Act, any act that discriminates against individuals based on untouchability is prohibited, regardless of other reasons. The Court referred to Art. 17 of the Constitution and held that if one of the reasons for the segregation of the 33 students was on the ground of untouchability, the offence is made out, the S. 12 of the Act deals with presumption and the court shall presume, that such act was committed on the ground of untouchability. The Court importantly held that ‘separate but equal treatment’ which had come up for consideration before the American Courts in connection with segregation of African American learners was held to be unconstitutional in the *Brown v. Board of Education* case. The Court therefore held that by segregating the Harijan students into a separate division the petitioner has clearly committed the offence charged against him.

SIGNIFICANCE

This is an important case as it was one of the first judgments which held that segregation of students by caste was unequal. It was perhaps the pre-cursor to the Right to Free and Compulsory Education of Children Act 2009.

16

Pavadai Gounder & Others
v. State of Madras & Another

RIGHT IN QUESTION

Right to protection
from the practice of
untouchability.

CASE NUMBER

Writ Appeal No. 219 of 1972,
decided on September 18,
1972.

COURT

Madras High Court

JUDGES

A. Rama Murthi & B. S.
Somasundaram, JJ.

CITATION

AIR 1973 Mad 458;
MANU/TN/0202/1973



FACTS

The land of the Appellants was acquired under the Land Acquisition Act 1894 for the formation of a “Harijan colony”. The acquisition was challenged by the Appellants as violative of Article 17 as it amounts to segregating marginalised castes into a specific locality, which would further perpetuate the practice of untouchability.

COURT DECISION AND REASONING

The Court held that after the addition of Article 15(4) by the 1st Amendment to the Constitution, measures taken for the advancement of the marginalised sections of society are constitutionally valid. The Court also held that ‘public purpose’ under the Land Acquisition Act is a wide term and includes any scheme with the object of public prosperity and welfare. Therefore, a scheme for setting up a “Harijan colony” cannot be challenged on the ground that it does not serve the ‘public purpose’ requirement. Under their current living conditions, rainwater stagnated in the surrounding fields had rendered the colony damp and unhygienic. The Court rejected the Article 17 contention on the grounds that prohibited ‘practices’ under the Article are those that cause any disability to a particular community, such as with regards to access to public shops, restaurants etc. Article 17 cannot be held to prohibit the State from introducing a scheme which improves the conditions of the marginalised castes.

SIGNIFICANCE

This was the one of the first few cases heard after the introduction of Article 15(4), and the Madras High Court expressed disagreement with an earlier decision of the Bombay High Court in *Jagwant Kaur v. State of Bombay*, which had given the opposite decision under similar facts. It opined that the precedent set by the Bombay High Court would now stand overruled by Article 15(4).

17

Surya Narayan Choudhary &
Others v. State of Rajasthan

RIGHT IN QUESTION

Right of “Harijans” to
enter temple premises.

CASE NUMBER

W. P. Nos. 1925 of 1987 &
127 of 1988, decided on
September 29, 1988.

COURT

High Court of Rajasthan
(Jaipur Bench)

JUDGE

J. S. Verma, C.J. & Farooq
Hasan, J.

CITATION

AIR 1989 RAJ 99;
MANU/RH/0011/1989



FACTS

The Petitioners filed these petitions in public interest to address the unlawful and inhuman practice of untouchability that subjected “Harijans” to be “purified” before entering the Nathwara temple. These practices violated the constitutional right under Article 17 that provides for abolition of untouchability, and in light of this, the Petitioners sought judicial intervention to ensure entry of “Harijans” into temples without restrictions imposed on them based on their caste position.

COURT DECISION AND REASONING

The Court emphasised that Articles 14 and 15 of the Constitution mandate that all individuals irrespective of their caste must be treated equally and cannot be discriminated against based on their social identity. Article 17 further provides for the abolition of untouchability. Reliance was also placed on Directive Principles of State Policy, specifically Article 46 that requires the State to protect marginalised caste communities from social injustice and all forms of exploitation. The Court noted that the State has a duty to ensure that discrimination based on purity such as untouchability is not practiced by authorities carrying on the administration of the temple. The Court held that every “harijan” who wishes to enter the Nathwara temple shall be permitted by the concerned authorities in accordance with general practice and regulations of entry that is applicable to everyone else. It affirmed that no person from marginalised community will be discriminated against in any manner in permissions regarding temple entry, and that “Harijans” exercising their right will not be compromising public order in any manner.

SIGNIFICANCE

Persons from Scheduled Castes have been subjected to untouchable practices of discrimination based on caste purity from time immemorial, and this judgment recognises such violent practices regarding entry to places of worship as unlawful and unconstitutional.

“ It is indeed a pity that forty years after the Father of the Nation laid down his life preaching abolition of untouchability and practising it, we should still be debating such matters and directions of the Court should be necessary to enforce compliance of the salutary provisions made for eradication of untouchability. This shows that mere enactment of such a law or guaranteeing a right in the Constitution of India is not enough and the change needed is really in our hearts and not elsewhere, It is the willing acceptance of the society which alone is the sure guarantee of eradication of any social evil. The acceptance must be without any reservation and it must be real and not a mere camouflage. The problem facing us is not the result of legal non-acceptance of equality of Harijans but of hesitation and refusal to accept honestly even that which we cannot openly deny or defy. It is, therefore, necessary that the maxim that all men are born free and equal must be accepted by the society from within and not merely by the State agency. The State agency works only through human agency.”

CHIEF JUSTICE J.S. VERMA

Surya Narayan Choudhary & Others v. State of Rajasthan

18

State of Karnataka v. Appa Balu Ingale & Others

RIGHT IN QUESTION

Offences of untouchability under the Protection of Civil Rights Act 1955.

CASE NUMBER

Criminal Appeal No. 164 of 1983, decided on December 1, 1992.

COURT

Supreme Court of India

JUDGES

Kuldip Singh & K. Ramaswamy, JJ.

CITATION

AIR 1993 SC 1126;
MANU/SC/0151/1993



FACTS

The Respondents were accused of stopping Dalits from retrieving water from a bore well and threatening them with dire consequences if they did not obey, on the ground that they were “untouchable”. The Respondents were charged with offences under Sections 4 and 7 of the Protection of Civil Rights Act, 1955 and of the five Accused, three including Appa Balu Ingale were convicted. On appeal, the Karnataka High Court acquitted the remaining Accused and an appeal was subsequently filed by the State of Karnataka against the judgment of the High Court.

COURT DECISION AND REASONING

The Court stated that the High Court erred in rejecting the prosecution's evidence and found that the case against the Accused was proven beyond reasonable doubt. The Court set aside the High Court decision and restored the judgment of the Additional Sessions Judge. In his separate but concurring opinion, Ramaswamy J. noted that untouchability is an extension of the caste system that engages in indirect slavery. The Court held that all customs and practices that recognise or encourage untouchability are void for being opposed to public policy. The thrust of Article 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lack any legal or moral base.

SIGNIFICANCE

The Court undertook a sociological review of the institution of untouchability and recognised its foundation in prejudice and hatred. The Court noted that an offence of untouchability does not require a ‘mens rea’ or criminal intention.

19

N. Adithayan v. The Travancore Devaswom Board & Others

RIGHT IN QUESTION

Right to management of religious affairs.

CASE NUMBER

Appeal (Civil) 6965 of 1996, decided on October 3, 2002.

COURT

Supreme Court of India

JUDGES

S. Rajendra Babu & Doraiswamy Raju, JJ.

CITATION

AIR 2002 SC 3538; MANU/SC/0862/2002



FACTS

A writ petition was filed in the Kerala High Court challenging the appointment of a non-Brahmin as an Archaka for performing pujas in the temple, on the grounds that it violates the long-standing custom of only having Malayala Brahmins in the temples. The Board had started a Thanthra Vedantha School and started appointing non-Brahmins as Santhikarans from 1969 onwards. It was claimed that this violates the right of the worshippers to practice and profess their religion and manage their religious affairs under Articles 25 and 26 of the Constitution.

COURT DECISION AND REASONING

The Petitioners argued that the Agamas, i.e. treatises on construction of temples, installation of idols and the rituals to be performed, are judicially recognised and when a temple has been consecrated as per Agamas, the maintenance of the sanctity of the idol can be sought to be enforced. However, the Court held that the conducting of the rituals, recitations and poojas in an appropriate manner is the material consideration for maintaining the sanctity of the idol. As this does not constitute an essential religious practice under Article 25 of the Constitution, if a qualified person is appointed as Santhikaran, no legal remedy can disqualify them based on their caste. The appointment of the third Respondent was upheld as he was properly trained in the Vedic texts and modes of worship in the Thanthra School set up by the Board.

SIGNIFICANCE

The Court interpreted the qualifications to be an Archaka as the composite of the person's training, expertise and knowledge instead of being determined solely by their caste identity.

20

P. Rathinam v. State of Tamil Nadu & Others

RIGHT IN QUESTION

Right of Scheduled Caste persons to public cremation grounds and not to be segregated.

CASE NUMBER

W.P. (MD) No. 1322 of 2009, decided on March 6, 2009.

COURT

Madras High Court

JUDGES

P. K. Misra & M. Jaichandren, JJ.

CITATION

2022 (2) MWN (Criminal) 321; MANU/TN/4054/2009



FACTS

This was a petition filed in public interest to enforce the provisions of the SC/ST (PoA) Act and provisions of police protection to Scheduled Caste persons to allow them to use the cremation-cum-graveyard constructed under the welfare scheme of the Government of Tamil Nadu. The petition concerned an incident where the family of a person belonging to a Scheduled Caste was prevented from using the government cremation-cum-graveyard. Further, the police, when notified, turned a blind eye, and the deceased had to be cremated in another place. It was argued that this was a violation of Article 17 of the Constitution and Section 3(1) (xiv) of the SC/ST (PoA) Act.

COURT DECISION AND REASONING

The Court relied on Article 17 of the Constitution, the Protection of Civil Rights Act, 1955 and SC/ST (PoA), 1989 Act and observed that the Civil Rights Act had been enacted with the specific purpose of giving effect to Article 17 of the Constitution and public officials are entrusted to ensure strict compliance with the provisions of the Constitution and these statutes. The Court was very critical of the practice of caste-based segregation even after one's death and noted that it is the duty of public officials to ensure that no member of any community is denied permission to cremate their deceased on grounds constructed as graveyard and officials in this case should have been more proactive in preventing the forbidden practice of untouchability. The Court also noted that it was the need of the hour to educate people so that the 'pernicious' practice of untouchability can be eradicated. Any such instance, where untouchability is practiced directly or indirectly, would stand contrary to Article 17 of the Constitution.

SIGNIFICANCE

In strictly holding segregation after death as violative of Article 17, the Court recognised the fundamental right to dignity of marginalised communities even in death and reiterated the duty of public officials to protect such right.

Sukanya Shantha v. Union of India & Others

RIGHT IN QUESTION

Right against direct
and indirect practice of
untouchability in prisons.

CASE NUMBER

Writ Petition (C) No. 1404 of
2023, decided on October 3,
2024.

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud, C.J.I. & J.
B. Pardiwala & Manoj Misra,
JJ.

CITATION

2024 INSC 753;
MANU/SC/1084/2024



FACTS

This petition was filed in public interest challenging the prison rules in several states such as Uttar Pradesh, West Bengal, Madhya Pradesh, etc. which propagated caste-based discriminatory practices. The rules used caste identity to allocate work, with marginalised castes being assigned cleaning and sweeping work while cooking duties were reserved for high castes. Similarly, men of de-notified tribes were not appointed as guards due to a ‘strong natural tendency to escape’ and were treated as ‘habitual criminals’ even if they had no previous convictions. The Petitioner challenged the prison rules and manuals for violation of Articles 14, 15 and 17 for discriminating on the basis of caste.

COURT DECISION AND REASONING

The Court held that the impugned rules did not satisfy the test of ‘reasonable classification’ and was therefore violative of Article 14 of the Constitution. It held that caste can only be used for classification when it is used to create protective policies for the marginalised castes. It cannot be the basis of a classification that perpetuates discrimination. The objective sought for the provision of labour in prisons is reform and rehabilitation of the prisoners and the Court held that this was in no way achieved by classifications based on caste identity. The rules discriminated against prisoners directly in terms of allocation of work, and indirectly through the usage of proxies of caste identity such as ‘habitual offender’ and ‘natural tendency to escape’ and are thus violative of Article 15. The impugned rules and manuals reinforce negative stereotypes and engage in practicing untouchability by segregating ‘degrading or menial’ tasks only to certain castes. The Court held the provisions to be in violation of untouchability in Article 17 and Article 23 as it permitted involuntary or forced labour based on caste identity.

SIGNIFICANCE

The Court took *suo moto* cognisance of discriminatory practices inside prisons on any ground and listed the same as In Re: Discrimination Inside Prisons in India. It reiterated that there is no place for the ‘separate but equal’ doctrine under the Indian Constitution.

03

**THE SC/ST
(PREVENTION OF
ATROCITIES) ACT,
1989**

ABOUT

THE SC/ST (PREVENTION OF ATROCITIES) ACT, 1989

“Custom is no small thing as compared to law. It is true that law is enforced by the state through its political power and custom is not. Custom is enforced by people far more effectively than law is by the state. This is because the compelling force of an organised people is far greater than the force of the state.”

Dr. B.R Ambedkar

This articulation of caste as law by Dr. Babasaheb Ambedkar is critical for understanding the limitations of the law in addressing caste discrimination. The enactment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (SC/ST (PoA) Act) was the aftermath of a long history of legislative and constitutional measures aimed at addressing caste-based discrimination and violence. The Constitution of India, under Article 17, abolished untouchability and made its practice in any form a punishable offense, seeking to dismantle the social stratification perpetuated by caste hierarchies. Further, Articles 38, 39, and 46 directed the State to promote social justice, economic welfare, and educational advancement for Scheduled Castes (SCs) and Scheduled Tribes (STs).

The need for a special legislation addressing caste discrimination arose owing to the failure of the law in curbing instances of caste-based violence and atrocities. The existing criminal law provisions and prior legislations like the Protection of Civil Rights Act (PCRA) of 1955 and the Bonded Labour System (Abolition) Act, 1976, aimed to prohibit discrimination based on untouchability or the outlawing of bonded labour, but had significant limitations, especially the lack of specific provisions to address violent crimes or systemic exploitation.

Reports by the National Commission for Scheduled Castes and Scheduled Tribes (NCSCST), established under Article 338 of the Constitution, highlighted escalating atrocities and called for more stringent laws to address the socio-economic and political marginalisation of persons from marginalised and oppressed caste groups.

The objective of the SC/ST (PoA) Act was to create a protective legislative framework that imposed a duty on the State to adopt a preventive and proactive approach towards addressing caste-based violence and discrimination. However the judicial discourse on the Act showcases apathy and ignorance on part of judges in taking this objective forward. The legal and justice system continues to fail members of Scheduled Castes with systemic failures like delayed registration of FIRs, lapses in police investigations, long-drawn trials undermining the purpose of the SC/ST (PoA) Act. One of the many ways victims of caste discrimination have been denied recourse to the protection of anti-caste laws like the SC/ST (PoA) Act is by excluding them from the scope and purview of the law. The developments in the case of Rohit Vemula reveal how the question who is a Scheduled Caste is often raised to exclude the application of protective anti-caste legislation.

Despite legislative developments like the enactment of the SC/ST (PoA) Act, and the amendments to the law in 2015 and 2018, the rampant abuse and violence against persons belonging to Scheduled Castes continues. This is owing to the fact that the anti-caste legislations in India are inextricable linked to a legal system that is controlled by dominant caste persons and the caste-blindness and bias showcases a lack of political will and commitment on part of the State machinery to implement the law.

Barring few instances of individual instances where courts have used the provisions of the SC/ST (PoA) Act to penalise perpetrators of caste atrocities, the systemic issue of caste discrimination remains unaddressed. Although the calls for a preventive approach, the cases in this section reveal the State's endemic failure to take proactive measures to prevent caste-based violence and the continued culture of impunity resulting in persecution of persons from marginalised caste identities.

A. COVERAGE & IMPLEMENTATION OF THE SC/ST (POA) ACT

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, serves as a crucial legislative tool in India designed to protect the rights of Scheduled Castes and Scheduled Tribes from various forms of abuse, discrimination, and violence

This transformative legislation offers a strong framework to provide justice for these marginalized communities, thereby confronting historical grievances and systemic discrimination they encounter. Instituted to avert atrocities against Scheduled Castes (SCs) and Scheduled Tribes (STs), the Act outlines extensive provisions to safeguard their rights and dignity. It enforces strict penalties for crimes directed at individuals based on their caste or tribal identity, ensuring that offenders face suitable legal repercussions.

Acknowledging the historical inequality, violence, abuse, and atrocities experienced by Scheduled Castes (SCs) and Scheduled Tribes (STs), it became evident after the adoption of the Indian Constitution that specific legislation was required to abolish the practice of untouchability. After the SC/ST (PoA) Act was enacted, there have been several instances where Courts have had an opportunity to interpret the provisions of the law on atrocities.

One notable case is *Daya Bhatnagar and Others v. State of Delhi*, which established that the accused must possess knowledge or awareness that

the victim belongs to a Scheduled Caste or Scheduled Tribe. If the accused is unaware that the individual they are insulting, intimidating, or humiliating is a member of these communities, no offense under the Section can be established. Furthermore, it was determined that the term 'public view' in section 3(1)(x) of the Act refers to the visibility of events to a group of individuals within a locality or village, rather than just a few individuals who are private and unrelated to the complainant in any personal, business, or vested interests and who do not share any participatory relationship with him. Consequently, Courts have in subsequent cases enlarged or restricted the scope protection offered by the law, often owing to a narrow reading of the provisions. In *Swaran Singh v. State* (2008), the Supreme Court gave a broad reading to the term "public view" to hold that the usage of the word 'chamar' with the intent to humiliate was offensive and against the law. In *Gayatri v. State* (2017), on the other hand, the Delhi High Court ruled that using casteist slurs on digital platforms would not amount to a violation of the SC/ST (PoA) unless the remarks were against a particular person and there was prior knowledge of their caste identity.

The cases in this section illustrate the scope of the provisions of the SC/ST (PoA) Act and the manner in which the protective framework of the law has been interpreted by the Courts, often to the detriment of the rights of persons belonging to Scheduled Castes.

22

Daya Bhatnagar & Others
v. State

RIGHT IN QUESTION

The meaning of ‘public view’ under Section 3(1)(x) of the SC/ST (PoA) Act.

CASE NUMBER

Crl. W. No. 402 of 2001,
decided on January 17, 2004.

COURT

Delhi High Court

JUDGE

S. K. Aggarwal, J.

CITATION

109 (2004) DLT 915, MANU/
DE/0085/2004



FACTS

The Petitioners were accused of using casteist slurs against two persons from a Scheduled Caste. The first had been in front of five others, while the second report stated that 25-30 ladies had come banging on their door, shouting the same offensive words while ordering them to get out. Petition had been filed in front of the High Court to quash the FIR. A reference was made to the Court consequent to a difference of opinion on the interpretation of “public view” within Section 3(1)(x) of the SC/ST (PoA) Act, 1989 [presently Section 3(1)(r)]. A complaint against the complainant and witnesses was filed under Section 354 of the IPC, and it was claimed that they were no longer neutral witnesses.

COURT DECISION AND REASONING

The Court held that the ‘public view’ requirement can be met even in a private place where the public is present. ‘Public view’ would be satisfied whenever the persons present are independent and impartial towards any of the parties. This would exclude any persons having close relationships with the complainant. It would also exclude any persons having previous enmity with the accused or those who have motive to falsely implicate them. In the present case, the witnesses had no link with the complainant, business, commercial or otherwise. Their mere presence at the complainant’s house would not rob them of their independent nature. Moreover, the lodging of the counter FIR did not deprive the persons of their neutral witness status by itself, unless the prevailing circumstances suggest otherwise, like in the simultaneous lodging of cross FIRs.

SIGNIFICANCE

Though the Court recognised the wide nature of ‘public view’ under the SC/ST (PoA) Act, it excluded those with close relationships from being included within public view. This exempts situations where for example someone has been insulted in front of their family or spouse.

23

Swaran Singh & Others v.
State through its Standing
Counsel & Another

RIGHT IN QUESTION

Whether calling a person “chamar” would amount to offence under Section 3(1)(x) of the SC/ST (PoA) Act, 1989.

CASE NUMBER

Criminal Appeal No. 1287 of
2008, decided on August 18,
2008.

COURT

Supreme Court of India

JUDGES

Markandey Katju &
Altamas Kabir, JJ

CITATION

2008 INSC 941;
MANU/SC/7954/2008;
2008 (8) SCC 435



FACTS

The Appellants in this case were accused of insulting a member of the Scheduled Caste with the intention to humiliate them under Section 3(1)(x) of the SC/ST (PoA) Act, 1989. The Complainant stated that the Appellants insulted him by calling him by his caste name (calling him “chamar”) as he was standing near the car parked at the gate of the premises. The issues for consideration before the Court were whether a prima facie offence was made out under Section 3(1)(x) of the Act (presently Section 3(1)(r)), and whether calling a person “chamar” amount to insulting a member of the Scheduled Caste with the intention to humiliate them.

COURT DECISION AND REASONING

Section 3(1)(x) punishes the intentional insult or intimidation, with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe in any place within public view. The Supreme Court held that the use of the term “chamar” to insult, abuse and deride persons from marginalised castes is highly offensive and is only used to humiliate and insult someone. The Court clarified that Section 3(1)(x) does not use the expression “public place” but instead “in any place within public view” and the place near the car parked at the gate of the premises was certainly within public view. The site of the offence could therefore be a private place and yet be considered within the public view. It held that an offence is made out against the Appellants 2 and 3 because the intent of the appellants was to insult or humiliate the complainant, and this was done within the public view. The First Appellant, Swaran Singh however is not shown to have used the offensive words within public view since per the F.I.R. There was nothing to show that any member of the public was present when he uttered these words.

SIGNIFICANCE

The Court observed the caste-ist intent underlying slurs of this nature and rejected submissions on the origins of the term used to wrongfully dismiss such allegations, thus strengthening the legal safeguards against caste-based discrimination.

“ Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically down trodden. The SC/ST communities in our opinion 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 this Court. In the age of democracy no people and no community should be treated as being inferior.

.....

The caste system is a curse on our nation and the sooner it is destroyed the better. In fact it is dividing our country at a time when we must all be united as Indians if we wish to face the gigantic problems confronting us e.g. poverty, unemployment, price rise, corruption, etc. The Scheduled Castes and The Schedules Tribes (Prevention of Atrocities) Act, 1989 is a salutary legislative measure in that direction.”

JUSTICE MARKANDEY KATJU

Swaran Singh & Others v. State through its Standing Council & Another

24

Rajendra Shrivastava v. The State of Maharashtra

THE POA ACT, 1989

RIGHT IN QUESTION

Right of a Scheduled Caste woman to protection under the SC/ST (PoA) Act after marrying a dominant caste man.

CASE NUMBER

Criminal Application No. 2347 of 2009, decided on January 22, 2010.

COURT

Bombay High Court

JUDGES

B. H. Marlapalle, A. S. Oka & R. Y. Ganoo, JJ.

CITATION

MANU/MH/0036/2010



FACTS

The Complainant, a woman born into a Schedule Caste married a dominant caste man. She filed a complaint against her husband and his relatives under various provisions of the Indian Penal Code (IPC) for cruelty, criminal breach of trust and bigamy and under Section 3(1) (ii) and 3(1)(x) of SC/ST (PoA) Act for intentional insult or intimidation on the basis of her caste. The Accused contended that the Complainant's caste status merged with that of her husband's after marriage, and therefore the provisions of the SC/ST (PoA) Act would not apply.

COURT DECISION AND REASONING

The Court held that a woman born into a Scheduled Caste or Scheduled Tribe retains her caste identity even after marrying into a dominant caste family, and remains entitled to protection under SC/ST(PoA) Act. The Court emphasised that caste is acquired at birth and does not change through marriage, adoption, or any other voluntary act. The systematic discrimination and disadvantages faced by an SC/ST individual do not disappear after marriage to someone from a dominant caste. Such individuals remain vulnerable to caste-based abuses and atrocities. The Court emphasised that allowing caste identity to change post-marriage would undermine the intent of the SC/ST (PoA) Act which seeks to protect marginalised communities from systematic abuse.

SIGNIFICANCE

This is a landmark judgment as it reinforces the protective framework of SC/ST (PoA) Act for a woman even against abuse by her husband and his relatives on the basis of caste.

25

Kailas & Others v. State of Maharashtra T. R. Taluka P. S.

RIGHT IN QUESTION

Convictions should not be set aside on hyper-technical grounds.

CASE NUMBER

Criminal Appeal No. 11 of 2011, decided on January 5, 2011.

COURT

Supreme Court of India

JUDGES

Markandey Katju & G. S. Misra, JJ.

CITATION

2011 INSC 15;
MANU/SC/0011/2011



FACTS

The Complainant was assaulted and paraded naked on the road of a village for having illicit relations with a man from a dominant caste. The Accused were convicted by the Additional Sessions Judge, Ahmednagar under Sections 452, 354, 323, 506(2) read with Section 34 of the Indian Penal Code (IPC), along with Section 3 of the SC/ST (PoA) Act, 1989. The Bombay High Court upheld the convictions under the IPC but acquitted the Accused of the offence under the SC/ST (PoA) Act.

COURT DECISION AND REASONING

The Court held that the conviction under the SC/ST (PoA) Act had been set aside on the hyper-technical grounds that no caste certificate had been produced in favour of the Complainant and that an investigation was not carried out by a police officer of the rank of Deputy Superintendent of Police. There was no reason to disbelieve the evidence of the Complainant, and one of the prosecution witnesses had confirmed the basis on which she was attacked. The torn clothes were seized by the police and produced in court, and pieces of broken bangles were lying in front of her house. Therefore, the Court overruled the High Court and upheld the conviction of the perpetrators under the SC/ST (PoA) Act.

SIGNIFICANCE

The Court laid down the precedent that convictions under the SC/ST (PoA) Act cannot be overturned on hyper-technical grounds when the evidence of the complainant is bona fide and inspires confidence.

26

National Campaign on Dalit Human Rights & Others v. Union of India & Others

RIGHT IN QUESTION

Implementation of the provisions of the SC/ST (PoA) Act.

CASE NUMBER

W.P. (C) No. 140 of 2006, decided on December 15, 2016.

COURT

Supreme Court of India

JUDGES

L. Nageswara Rao, D. Y. Chandrachud & T. S. Thakur, JJ.

CITATION

AIR 2017 SC 132;
2017(2) SCC 432;
MANU/SC/1615/2016



FACTS

The Petitioners filed the petition seeking effective implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and rules made thereunder. This Act was enacted to prevent atrocities against marginalised caste persons and in ensuring justice, rehabilitation and establishment of special courts for prompt action against crimes of atrocity. The Petitioners have drawn attention to continued atrocities, non-registration of cases, delays and improper procedure in investigation and lack of compensation paid to victims of caste atrocities.

COURT DECISION AND REASONING

The Court cited Articles 15, 17 and 46 of the Constitution, along with international instruments such as the ICERD and examined the provisions of the SC/ST (PoA) Act 1989. It stated that the object of the Act had been defeated by the indifference demonstrated by the authorities. In holding the State Governments accountable for carrying out the provisions of the Act, the Court also recognised that the Central Government has an equally important role in ensuring compliance, under Section 21(4) of Act. The role of the National Commission was emphasised in monitoring implementation of protections of marginalised communities. In noting that the authorities are guilty of not enforcing the provision of the Act, the Court ordered that both Central and State Governments must strictly enforce the provisions of the Act and that the National Commissions are also directed to discharge their duties. NALSA was requested to formulate schemes to spread awareness and provide free legal aid to marginalised castes and tribes.

SIGNIFICANCE

It is an important decision as it highlights the failure to implement the provisions of the SC/ST (PoA) Act. However, no concrete directions were issued by the Court in this case.

27

State of Bihar & Others
v. Anil Kumar & Others

RIGHT IN QUESTION

Whether the provisions related to investigative process under the SC/ST (PoA) Act must be interpreted strictly or liberally?

CASE NUMBER

Civil Appeal Nos. 4397-4400 of 2017, decided on March 23, 2017.

COURT

Supreme Court of India

JUDGES

J. S. Khehar, C.J.I. & D. Y. Chandrachud and S. K. Kaul, JJ.

CITATION

(2017) 14 SCC 304;
AIR 2017 SC 2716;
MANU/SC/0440/2017



FACTS

Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995 framed by the Central Government required the investigation for cases of alleged atrocities to be placed in the hands of an officer not below the rank of Deputy Superintendent of Police. However, the government of the State of Bihar delegated the process to officers lower than the rank of Deputy Superintendent of Police through a notification via its powers under Section 9 of the SC/ST (PoA) Act. A petition challenging the state's notification was dismissed by the Patna High Court, following which the matter came before the Supreme Court.

COURT DECISION AND REASONING

The Court held the Central Government was fully competent and justified in requiring that the investigative process under the SC/ST (PoA) Act be conducted by an officer not below the rank of a Deputy Superintendent of Police. Keeping in mind the harsh effect of any violation of the provisions of the Act, the Central Government thought it appropriate to have investigations be carried out by an officer not below the rank of Deputy Superintendent of Police. The Court therefore affirmed the validity of Rule 7 of the SC/ST (PoA) Rules. In considering the notification issued by the State of Bihar, the Court referred to the power conferred by Section 9 of the SC/ST (PoA) Act which authorised the State Government to extend the power of arrest, investigation and prosecution to all officers as would be entitled to carry out such procedures under the Code of Criminal Procedure. It was observed that the power conferred by Section 9 was expansive and the legislative intent behind the provision was to grant the State Government discretionary authority. The State Government was therefore competent to relax Rule 7 and to extend the power of investigation to officers below the rank of Deputy Superintendent of Police, irrespective of the provisions of the Code of Criminal Procedure and the SC/ST (PoA) Act. This power vested with the State Government, through a non obstante clause, cannot be neutralised by any Rule framed Under Section 23 of the SC/ST (PoA) Act.

SIGNIFICANCE

This judgment upheld the power of state governments to authorise officers lower than the Deputy Superintendent of Police to arrest and investigate cases of atrocities, thereby allowing expansion of law enforcement authorities' powers to prosecute atrocities under the SC/ST (PoA) Act.

28

Gayatri @ Apurna Singh v.
State & Another

RIGHT IN QUESTION

Whether the use of casteist slurs on Facebook constitutes an offence.

CASE NUMBER

W.P. (CrI) 3083 of 2016,
decided on July 3, 2017.

COURT

Delhi High Court

JUDGE

Vipin Sanghi, J.

CITATION

2017 SCC OnLine Del 8942;
MANU/DE/1823/2017



FACTS

The case arose out of a complaint against the Petitioner under Section 3(1)(x) of the SC/ST (PoA) Act alleging that she had harassed and abused the Complainant based on comments made by the Accused on their social media. The Petitioner-accused sought to quash the FIR registered against her before the Delhi High Court on the ground that the alleged statements were not directed against a specific person.

COURT DECISION AND REASONING

The Court quashed the FIR based on its reasoning that allegations under Section 3(1)(x) were not made out. The Court held that for an offence to be made out under this provision, the person insulting a Scheduled Caste person must know that the said person belonged to Scheduled Caste community and issue the insult to humiliate them on the ground that they belong to that community. Generalised statements will not attract the provision of this Act, and that the statement must be directed against a particular member to whom the utterance can be associated with. Any comment against the community as a whole would not attract penalisation under Section 3(1)(x) of the 1989 Act. The question of whether a Facebook wall may constitute as a place within public view, the Court held that it is irrelevant whether the privacy settings are set by the author of the post and that as long as independent impartial persons who are not interested in either parties can view the post, it would qualify as a place within public view.

SIGNIFICANCE

This is a negative judgment as it holds that the act of humiliation using caste names online would only include allegations made against specific persons.

29

Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari & Others

RIGHT IN QUESTION

Whether a court other than a Special Court can take cognizance of an offence under the SC/ST (PoA) Act.

CASE NUMBER

Crl. Appeal No. 967 of 2021, decided on October 26, 2021.

COURT

Supreme Court of India

JUDGE

M. R. Shah and Aniruddha Bose, JJ.

CITATION

2021 INSC 674;
MANU/SC/0983/2021



FACTS

A person belonging to a Scheduled Caste alleged being abused and physically assaulted based on her caste identity by the Accused and lodged a complaint before the Judicial Magistrate under Sections 452, 323, 325, 504, 506(2) and 114 of IPC and under Section 3(1)(x) of the SC/ST (PoA) Act. The Respondent-Accused filed an petition before the High Court of Gujarat under Section 482 of the Code of Criminal Procedure (CrPC) to quash the criminal proceedings, on the grounds that only a Special Court can take cognizance of an offence under Section 14 of the SC/ST (PoA) Act. The High Court allowed the petition and set aside the FIR, against which the Complainant approached the Supreme Court.

COURT DECISION AND REASONING

The issue before the Court was whether the entire criminal proceedings can be said to have been vitiated in view of the second proviso to Section 14 of the SC/ST (PoA) Act inserted with effect from January 26, 2016. The second proviso noted that Special Courts constituted under the Act shall have power to directly take cognizance of the offences under the SC/ST (PoA) Act. The Court held that the second proviso to Section 14 does not confer exclusive jurisdiction to the Special Court, as the proviso lacks the word “only”. The proviso was added for the purpose of ensuring a speedy trial and does not vitiate the trial for a case the cognizance of which is taken by the Magistrate. The Court also held that the High Court erred in quashing the charges under the IPC while dealing with the issue of S.14 of the SC/ST (PoA) Act.

SIGNIFICANCE

Alongside its observations on which courts can take cognizance of offences under the SC/ST (PoA) Act, the Court also held that delay in filing cannot be used as a ground to quash a complaint under Section 482 CrPC, as it is an issue to be considered at the trial stage. Further, where sanction is not taken under Section 197 CrPC for the prosecution of a police officer, the High Court should direct the authority to take sanction and institute proceedings in cases of serious offences alleged, instead of quashing the criminal proceedings.

30

Hariram Bhambhi v. Satyanarayan & Others

RIGHT IN QUESTION

Right of victim to be heard at every stage of the proceedings under the SC/ST PoA Act.

CASE NUMBER

Crl. Appeal No. 1278 of 2021, decided on October 29, 2021.

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud & B. V. Nagarathna, JJ.

CITATION

AIR 2021 SC 5610;
MANU/SC/1008/2021



FACTS

The Respondent had been accused of killing one Ram Niwas who was a member of a Scheduled Caste and was charged with offences under Section 302 of IPC along with Sections of the SC/ST (PoA) Act. The Accused was granted bail by the High Court. The Appellant filed an application for the cancellation of bail on the ground that no notice was issued to them at the stage of granting of bail, as required by Section 15A(3) of the SC/ST (PoA) Act, and thus no opportunity to be heard had been given, as required by Section 15A(5). The High Court rejected the application, stating that it had granted the appellant an opportunity to be heard, against which the Appellant approached the Supreme Court.

COURT DECISION AND REASONING

The Court observed that Section 15A of the SC/ST Act contains important provisions that safeguard the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings. These provisions enable a member of the marginalised caste to effectively pursue a case and counteract the effects of defective investigations. The Court also reiterated the decisions of various High Courts which had noted that the purpose of Section 15A was to protect the rights of victims and witnesses and held that sub-sections (3) and (5) of Section 15A of the SC/ST (PoA) Act are mandatory and not directory in nature. The Court held that there must be compliance with the principles of natural justice at every stage under the SC/ST (PoA) Act. It disagreed with the High Court's view that non-observance of S.15A (3) at the stage of granting of bail could be cured by providing the appellant a hearing at the subsequent proceeding for the cancellation of bail. Furthermore, the Court observed that there was no application of mind in the High Court order, which only mentioned the submission of the Respondent and contained no reasoning. The Court held that bail orders that do not record reasons and only record submissions cannot pass muster, and that brief reasons indicating the basis for granting bail are essential. Moreover, the Court held that notice under S.15A(3) should be served expeditiously to avoid undue delay. The order granting bail to the Respondent was set aside directing him to surrender into custody on or before November 7, 2021.

SIGNIFICANCE

This is an important case where the Court has paid attention to the provisions of the SC/ST (PoA) Act and the procedural safeguards introduced in the law to protect the rights of victims and witnesses keeping in mind their vulnerable status in cases of caste-based crimes.

B. ANTICIPATORY BAIL UNDER THE SC/ST (POA) ACT, 1989

Section 18 of the SC/ST (PoA) Act, 1989 states that anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 shall not apply to any offence under the Act.

The exclusion of anticipatory bail becomes necessary for offences under the Act due to the systemic biases and deep-rooted structural violence resulting from caste-based discrimination. The Statement of Objects and Reasons of the SC/ST (PoA) Act acknowledges how vested interests often try to coerce victims into withdrawing their complaints and adverse consequences such as mass killings and sexual assault faced by them based solely on their caste identity.

The issue of anticipatory bail has been a contested one and Courts have interpreted the bar under Section 18 to not be absolute in nature. In *Vilas Pandurang Pawar v. State of Maharashtra*, the Supreme Court held that the bar for grant of anticipatory bail under Section 18 shall apply only in situations where the complaint or FIR prima facie discloses a specific offence under the Act, such as insult or intimidation with the intent to humiliate. The need for prima facie case of an offence for the bar on anticipatory bail to be invoked was reiterated in the case *Subhash Kashinath Mahajan v. State of Maharashtra* where the Court restricted the power of the police to register complaints and make arrests under the SC/ST (PoA). This led Parliament to enact Section 18A through the Scheduled Castes and Scheduled Tribes (Amendment) Act, 2018 which removed the pre-condition of approval for arrest and reiterated the bar against Section 438, CrPC for cases under the Act.

The order in *Subhash Kashinath Mahajan v. State of Maharashtra* was subsequently recalled and in *Prathvi Raj Chauhan v. Union of India* the legality of Section 18A was upheld. This was further solidified by *Shajan Skaria v. State of Kerala* in 2024, where it was held that the bar under Section 18 would apply when there is reason to believe that an offence under the Act has been committed and therefore a valid arrest can take place.

The cases in this section trace the way the statutory bar to grant of anticipatory bail in cases of atrocities committed under Section 3(1) of the SC/ST (PoA) Act has been interpreted by courts and how the issue of whether there is a violation of the 'right to bail' has been adjudicated.

31

State of M.P. & Another v. Ram Kishna Balothia & Another

RIGHT IN QUESTION

Challenge to the constitutional validity of Section 18 of the (PoA) Act.

CASE NUMBER

CA No. 1343 & 1344-1400 of 1995, decided on February 6, 1995.

COURT

Supreme Court of India

JUDGES

B. P. Jeevan Reddy & Sujata Manohar JJ.

CITATION

AIR 1995 SC 1198;
MANU/SC/0239/1995



FACTS

This case was a challenge to the constitutionality of Section 18 of the SC/ST (PoA) Act which prohibited the filing of anticipatory bail applications in cases of offences under the SC/ST (PoA) Act. The High Court of Madhya Pradesh held that Section 18 of the SC/ST (PoA) Act was unconstitutional and violates the right to equality and the right to life under Articles 14 and 21 of the Constitution. The State appealed this decision in the Supreme Court of India.

COURT DECISION AND REASONING

The Court observed that the law was enacted to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes, which were a separate class of acts. These were offences arising from untouchability which was a constitutionally prohibited form of discrimination under Article 17. Hence the exclusion of anticipatory bail must be viewed within this larger context. The Court also took note of the Statement of Objects and Reasons of the SC/ST (PoA) Act which stated that there was historic evidence of the fact that when members of Scheduled Castes and Scheduled Tribes assert their rights under the law, they are subjected to threats and intimidation by the perpetrators. The denial of anticipatory bail was not a violation of Article 14 as the offences concerned were of a distinct category.

SIGNIFICANCE

This is a significant ruling of the Supreme Court as it upheld the constitutionality of section 18 of the SC/ST (PoA) Act and made a distinction between crimes under penal laws and atrocities committed against Dalit and Adivasi persons.

32

Vilas Pandurang Pawar & Another v. State of Maharashtra & Others

RIGHT IN QUESTION

Whether Section 18 of the SC/ST (PoA) Act, 1989 in denying the provision of anticipatory bail violates Articles 14 and 21 of the Constitution?

CASE NUMBER

SLP (Crl.) 6432 of 2012, decided on September 10, 2012.

COURT

Supreme Court of India

JUDGES

P. Sathasivam & Ranjan Gogoi, JJ.

CITATION

(2012) 8 SCC 795;
MANU/SC/0732/2012



FACTS

This Special Leave Petition before the Supreme Court was the result of a complaint filed by Savita Madhav Akhade, one of the Respondents before the Supreme Court against the Appellant Vilas Pandurang and 14 others, alleging that they had abused, beaten, and harassed her and her family on account of their caste. Savita had registered an FIR for offences under the SC/ST (PoA) Act, and despite the bar under Section 18 of the SC/ST (PoA) Act, 13 out of the 15 accused had been granted anticipatory bail. The remaining accused approached the Supreme Court for anticipatory bail.

COURT DECISION AND REASONING

The issue before the Court in this case was whether a person charged with offences under the IPC along with the provisions of the SC/ST (PoA) Act, is entitled to anticipatory bail as per Section 438 of the CrPC. The Court observed that the complaint had specifically averred that the Petitioners had mentioned her caste and abused her. As per Section 18 of the SC/ST (PoA) Act, anticipatory bail is not applicable in cases where a person has been accused of committing an offence under the SC/ST (PoA) Act, 1989. The bar against anticipatory bail under Section 18 imposes a duty on the court to verify whether the averments in the complaint make out an offence under Section 3(1) of the SC/ST (PoA) Act, 1989. If there is a specific allegation of insult using the caste name, the accused persons are not entitled to anticipatory bail. The Court thus dismissed the Special Leave Petition and held that Section 18 of the SC/ST (PoA) Act, 1989 was applicable in the given case and the Petitioners were not entitled to anticipatory bail.

SIGNIFICANCE

The Court emphasised the importance of a special law like the SC/ST (PoA) Act and upheld that no anticipatory bail can be granted under it.

“ 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 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. 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.”

JUSTICE P. SATHASIVAM

Vilas Pandurang Pawar & Another v. State of Maharashtra & Others

33

Shakuntla Devi v. Baljinder Singh

RIGHT IN QUESTION

Power of Courts to grant anticipatory bail under the SC/ST (PoA) Act.

CASE NUMBER

Criminal Appeal No. 595 of 2013, decided on April 15, 2013.

COURT

Supreme Court of India

JUDGES

A. K. Patnaik & S. J. Mukhopadhyay, JJ.

CITATION

(2014) 15 SCC 521; MANU/SC/0407/2013



FACTS

In this case, the Petitioner, Shakuntala Devi lodged a complaint against the Accused, Baljinder Singh, alleging that he had committed serious offences which included threats and assault. The Petitioner and her husband both belonged to a Scheduled Caste and the Petitioner had lodged a complaint against the accused, a member of a dominant caste for using physical force and coercion and intimidation to compel her to go along with him to the Panipat Court and write down a compromise on stamp paper. The complaint also noted that the accused was aware of the petitioner's caste identity and had also threatened her on the basis of the same. The accused-Appellant Baljinder Singh had been granted anticipatory bail by the High Court and Punjab and Haryana, and this decision was challenged by the petitioner before the Supreme Court.

COURT DECISION AND REASONING

The Court relied on the decision in Vilas Pandurang Pawar where it was held that there is a specific bar against grant of anticipatory bail under Section 18 of the SC/ST (PoA) Act and a court should only entertain an application for anticipatory bail where based on the facts alone, it is prima facie clear that that there was no commission of an offence under Section 3(1) of the Act. In this case, the High Court had granted anticipatory bail to Baljinder Singh without recording any finding as to how it had reached the conclusion that there was no substantial evidence to show that there was a caste-motivated offence committed in the case. This was found to be contrary to the provisions under Section 18 of the SC/ST (PoA) Act and the Supreme Court accordingly set aside the order of the High Court of Punjab & Haryana which had granted anticipatory bail to the accused.

SIGNIFICANCE

This case is important as the Court categorically noted that an order of a High Court granting anticipatory bail must record reasons for reaching the conclusion that there was no prima facie case made out for the commission of an offence under Section 3(1) of the SC/ST (PoA) Act.

34

Dr. Subhash Kashinath Mahajan v. The State of Maharashtra & Another

RIGHT IN QUESTION

Whether the provisions of the SC/ST (PoA) Act in denying anticipatory bail and granting arrest powers are an abuse of the process of law?

CASE NUMBER

CA No. 416 of 2018, decided on March 20, 2018

COURT

Supreme Court of India

JUDGES

U. U. Lalit & A. K. Goyal, JJ.

CITATION

AIR 2018 SC 1498;
MANU/SC/0275/2018



FACTS

The Petitioner, a government employee, had been accused of offences under Section 3(1)(ix), 3(2)(iv) and 3(2)(vii) of the SC/ST (PoA) Act after it was alleged that he had refused sanction against two individuals who had been accused of an offence under the SC/ST (PoA) Act for making comments against an employee belonging to a Scheduled Caste. He approached the High Court for quashing the complaint and challenged the provisions of Section 18 of the SC/ST (PoA) Act.

COURT DECISION AND REASONING

The Court went into whether there was a need for procedural safeguards to ensure there was no abuse of the arrest powers under the provisions of the SC/ST (PoA) Act. The right to equality and liberty must be protected against any unreasonable procedure. The Court further observed that given the secular fabric of the Constitution, the interpretation of the SC/ST (PoA) Act must promote constitutional values of fraternity and integration of society to ensure there are no false implications for innocent citizens. The Court held that the bar on grant of anticipatory bail under Section 18 of the SC/ST (PoA) Act is for the protection of victims of caste-motivated crimes and cannot be applicable where an individual is falsely implicated, and the law must not be interpreted literally to uphold an absolute exclusion of anticipatory bail. It was held that there is no absolute bar against the grant of anticipatory bail in cases under the SC/ST (PoA) Act if no prima facie case is made out or where the complaint is found to be malafide. The Court held that no automatic arrest should take place under the Act and to avoid any false implication under the law, a preliminary enquiry may be conducted by the DSP to find out if the allegations made present a case of an offence under the SC/ST (PoA) Act.

SIGNIFICANCE

This was a negative judgment which in-effect diluted the protective discrimination framework of the SC/ST (PoA) Act. The directions were subsequently recalled by a three Judge Bench in Union of India v. State of Maharashtra.

35

Union of India v. State of Maharashtra & Others

RIGHT IN QUESTION

Validity of the directions issued by the Court in Subhash Kashinath Mahajan.

CASE NUMBER

Review Petition (Crl.) No. 228 of 2018, decided on October 1, 2019.

COURT

Supreme Court of India

JUDGES

Arun Mishra, M. R. Shah & B. R. Gavai, JJ.

CITATION

AIR 2019 SC 4917;
MANU/SC/1351/2019



FACTS

This petition was filed for review of the direction issued by the Supreme Court in Subhash Kashinath Mahajan for attempting to amend legislative provisions. It was submitted that the statutory provisions of the SC/ST (PoA) Act could not be nullified. It was submitted that the rate of false cases (9-10%) in SC/ST (PoA) Act cases is consistent with the rate of false cases for other crimes, and that the low rate of conviction was not because of an abuse of law but a reflection of our failing criminal justice system.

COURT DECISION AND REASONING

The Court acknowledged the right to live with dignity entails grant of compensation for its violation, and the provisions of the SC/ST (PoA) Act form the concomitants of these rights under Article 21. The Court revised its stance, stating that the law cannot be changed due to its misuse. The Court further held that the caste identity of a person is a not factor in them registering false cases. The large number of cases is a representation of the continued discrimination faced by members of the SC and ST communities in India. It would violate the fundamental right to equality to treat SC and ST persons as prone to lodge false reports as compared to the rest of the population, as merely the fact that one person may misuse the provisions cannot be the reason to disentitle the class as a whole. The Court held that the direction mandating prior approval for arrest was discriminatory and was not provided for by the statute. They perpetuated the inequality against persons belonging to SC and ST communities. It thus constituted an encroachment on the legislature's domain as it would frustrate the very purpose of the Act, which is to ensure speedy and complete justice to the SC and ST communities. The Court thereby recalled the directions on prior approval of arrest and preliminary inquiry issued in *Subash Kashinath Mahajan v. State of Maharashtra*.

SIGNIFICANCE

The Court exercised its review jurisdiction to recall discriminatory directions that had been issued by a previous bench and rightfully acknowledged the prejudiced basis on which the previous bench had operated.

36

Naresh Tyagi v. State of NCT of Delhi

RIGHT IN QUESTION

Grant of Anticipatory Bail where prima facie case of offence is made out.

CASE NUMBER

Crl. M.C. 1476 of 2020, decided on May 30, 2020.

COURT

Delhi High Court

JUDGE

Asha Menon J.

CITATION

MANU/DE/1129/2020



FACTS

The Complainant, Ajay, who was working at a distribution centre for providing food to the poor was accused by the Petitioner, Naresh Tyagi, of diverting the food meant for consumption by animals and consequently, the distribution centre was shut down. This led to a verbal altercation between the two, following which an FIR that was lodged by the Complainant for offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST (PoA) Act. The Petitioner filed a petition under Section 482 of Code of Criminal Procedure to quash the FIR against him, stating that it was a false complaint against him and no offence was made out and filed an application for anticipatory bail.

COURT DECISION AND REASONING

To exercise its powers under S.482, the Court must take a prima facie view of the matter to confirm whether a case is made out. The Court noted that if the FIR makes out a cognizable offence, then it would not be appropriate for S.482 to be applied. In the present case, the Court held that the evidence needed to be analysed further to determine whether an offence under the SC/ST (PoA) Act was committed, and thus denied exercising its powers under S.482. Nonetheless, considering the context in which the quarrel took place, the Court said there was a possibility of embellishment in the FIR to enhance the seriousness of the allegations. Therefore, to serve the interests of justice, anticipatory bail was granted to the Petitioner.

SIGNIFICANCE

The Court refused to quash the FIR under S.482 as it could not be said that a prima facie case had not been made out in the FIR. However, the Court was comfortable with granting anticipatory bail in the same matter, despite long-standing Supreme Court precedent which states that when an accused is charged with an offence under the SC/ST (PoA) Act, there operates a bar against anticipatory bail, which can only be surpassed when no prima facie offence has been made out in the complaint.

37

Prathvi Raj Chauhan v. Union of India & Others

RIGHT IN QUESTION

Validity of the directions issued by the Court in Subhash Kashinath Mahajan.

CASE NUMBER

W.P. (C) No. 1015-16 of 2018, decided on February 10, 2020.

COURT

Supreme Court of India

JUDGES

Arun Mishra, Vineet Saran & S. R. Bhat JJ.

CITATION

AIR 2020 SC 1036; MANU/SC/0157/2020



FACTS

Following the decision of the Supreme Court in *Subhash Kashinath Mahajan v. State of Maharashtra* (2018) the Government of India introduced an amendment to the SC/ST (PoA) Act 1989. The amendment introduced Section 18-A of the Act which stated that there would be no requirement for a preliminary enquiry or approval for the arrest of a person who had been accused of committing an offence under the Act. The Section also noted that the provisions of Section 438 of the erstwhile Code of Criminal Procedure, 1908 (CrPC) dealing with anticipatory bail would not apply in such cases, despite any judgment, order, or direction of any Court. The Petitioners had approached the Court questioning the validity of Section 18-A, arguing that the amendment had been enacted to nullify the decision of the Supreme Court in *Subhash Kashinath Mahajan* and were therefore invalid. The Petitioner's main contention was that the decision in *Subhash Kashinath Mahajan* was in response to the misuse of the provisions of the SC/ST (PoA) Act, 1989 and to ensure that there is no curtailment of the right of an individual to obtain anticipatory bail under Section 438 of the CrPC. Section 18-A, in taking away this liberty was violating fundamental rights and must be struck down.

COURT DECISION AND REASONING

At the time that the petitions were being heard, review petitions challenging the decision in *Subhash Kashinath Mahajan* had already been filed before the Supreme Court and the directions issued in the case, as noted above, had already been recalled. The Court upheld the validity of the 2018 Amendment to the SC/ST (PoA) Act by virtue of which Section 18-A was inserted. In the majority opinion authored by Justice Arun Mishra, it was held that the directions issued in the case of *Subhash Kashinath Mahajan* placed an undue burden on SC/ST persons who had suffered caste-based atrocities. The directions amounted to judicial law-making and were in excess of the powers conferred by the judiciary. With regard to preliminary inquiries, it was observed that the same will only be permissible under the narrow circumstances as noted by the Court in *Lalita Kumari v. Government of Uttar Pradesh* (2013). The bar on anticipatory bail, it was reiterated, would apply unless there was a prima facie case for non-applicability of the SC/ST (PoA) Act.

In a separate and concurring opinion, Justice Ravindra Bhat added a caveat noting that anticipatory bail must only be granted in exceptional cases and the exception must be sparingly applied. Justice Bhat also pointed to the lack of proper implementation and usage of the SC/ST (PoA) Act and how further diluting the provisions would be even more detrimental to those approaching the police in case of violence and atrocities.

In upholding the provisions of the Act, Justice Bhat also placed emphasis on the ideal of fraternity in the Constitution to hold that Articles 15 and 17 of the Constitution aim to achieve the ideal of fraternity which promises to address problems resulting from a highly fragmented society.

SIGNIFICANCE

The Court used this opportunity to elaborate on the need for a scheme of protective discrimination under the SC/ST (PoA) Act as a means of addressing the historical violence and discrimination faced by Dalit and Adivasi persons. The Court reiterated that victims of atrocities should not be denied justice.

“ 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 Code of Criminal Procedure, 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."

JUSTICE RAVINDRA BHAT
Prathvi Raj Chauhan v. Union of India & Others

Shajan Skaria v. The State of Kerala & Another

RIGHT IN QUESTION

Whether the bar against anticipatory bail under Section 18 of the SC/ST (PoA) Act, 1989 is absolute in nature?

CASE NUMBER

Criminal Appeal No. 2622 of 2024, decided on August 23, 2024.

COURT

Supreme Court of India

JUDGES

J. B. Pardiwala & Manoj Misra, JJ.

CITATION

2024 INSC 625;
2024(4) ACR 252;
MANU/SC/0936/2024



FACTS

The Appellant published a video levelling certain allegations against the Complainant. The Complainant alleged that the video was published to abuse and insult him and filed an FIR under Sections 3(1)(r) and 3(1)(u) of SC/ST (PoA) Act, 1989. The Appellant applied for anticipatory bail under S.438 of the Code of Criminal Procedure, 1973 (CrPC) to the Court of Special Judge for Scheduled Castes and Scheduled Tribes. The Special Judge held that the allegations in the FIR were prima facie sufficient to attract the offence under the SC/ST (PoA) Act and thus refused to grant anticipatory bail as per S.18 of the Act. The High Court of Kerala affirmed the order passed by the Special Judge and refused to grant anticipatory bail to the Appellant.

COURT DECISION AND REASONING

The Court paid special attention to the expression “arrest of any person” within the text of S.18 and held that there would be a bar against the remedy of anticipatory bail only where there can be a valid arrest as per S.41 read with S.60A of the CrPC. While S.60A provides that no arrest can be made except in accordance with the provisions of the CrPC, S.41 allows the police to arrest without a warrant where there is a reasonable complaint or credible information, or a reasonable suspicion exists that a person has committed a cognizable offence. The Court held that a preliminary enquiry be conducted by courts to see if the plaint meets these requirements before applying the bar under S.18. The Court found nothing in the video to suggest such an offence under the Act and granted anticipatory bail to the appellant.

SIGNIFICANCE

By comparing humiliation under the SC/ST (PoA) Act to similar offences under the Protection of Women from Domestic Violence Act, 2005 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Court held that humiliation under the SC/ST (PoA) Act must be intricately associated with the caste identity of the insulted person to emphasise the nature of the intent required for an offence under the SC/ST (PoA) Act.

04

PROHIBITION OF MANUAL SCAVENGING

PROHIBITION OF MANUAL SCAVENGING

Manual scavenging is a practice that is deeply linked to caste-based discrimination and dehumanization. The battle against manual scavenging as being against dignity was first sought to be regulated through the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Manual Scavengers Prohibition Act). Thereafter this law was repealed and a new law being The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (“PEMSRA”) was passed. The PEMSRA expressly prohibited the construction of insanitary latrines while also imposing stricter penalties for violations. Most significantly, the new law introduced comprehensive rehabilitation measures, such as alternative employment, skill development, and compensation for families affected by the deaths of those engaged in manual scavenging. The 2015 amendment of the SC/ST (PoA) Act further expanded the legislative framework by formally defining manual scavenging and emphasising the caste-based discrimination entrenched in the practice.

Despite these legislations and numerous judgments aimed to eradicate manual scavenging, the ground reality remains different. Implementation and enforcement of these laws are grossly inadequate with continued reports on manual scavenging practices.

The issue of manual scavenging has been addressed by Courts while highlighting the caste-based discrimination and the violations of fundamental rights. For instance, in *Bandhua Mukti Morcha v. Union of India*, manual scavenging recognized as a form of debt bondage and forced labour that violated the right to dignity. In *Safai Karamchari Andolan & Ors. v. Union of India* and *Ors* the Supreme Court condemned the practice as abhorrent act, noting that it violated the fundamental rights to dignity and equality, as well as the prohibition against untouchability under Article 17 of the Constitution. Similarly, in *Balram Singh v. Union of India* and *Ors* the Supreme Court directed the phased elimination of manual scavenging, replacing it with mechanised cleaning methods and increasing the quantum of compensation under the law.

Courts have also faced challenges in enforcing accountability, including balancing individual rights with the urgent need for justice through rulings in anticipatory bail for those accused of violating manual scavenging laws. Importantly, these judgments have emphasised the right to dignity and safe working conditions while highlighting the duty of the State to uphold these rights of those marginalised on account of their caste identities.

39

RIGHT IN QUESTION

The right of sewage workers to live a life with equality, dignity, and life free from untouchability and forced labour.

CASE NUMBER

Writ Petition (Civil) No. 583 of 2003, decided on March 27, 2014.

COURT

Supreme Court of India

JUDGES

P. Sathasivam, Ranjan Gogoi & N. V. Ramana, JJ.

CITATION

2014 INSC 212; 2014(4) SCALE165; [2014] 4 SCR 197; MANU/SC/0233/2014



Safai Karamchari Andolan & Others v. Union of India & Others

FACTS

This was a public interest litigation filed before the Supreme Court by the Safai Karamchari Andolan and others, asking for the complete eradication of the inhumane practice of manual scavenging and the dry latrines, enforcement of the 1993 Act, and the protection of the rights under Articles 14, 17, 21, and 23 of the Constitution.

COURT DECISION AND REASONING

The Supreme Court addressed whether the practice of manual scavenging is unconstitutional and violates the fundamental rights of persons engaged in manual scavenging and whether the government has failed to implement the 1993 Act to abolish untouchability mandated by the Constitution. By the time this petition was heard, the new 2013 PEMSRA was passed, and the Supreme Court directed all state governments and Union Territories to fully implement the new 2013 Act. The Court emphasised that manual scavenging is a form of untouchability explicitly prohibited under Article 17. The Court passed the following directions:

- Persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Part IV of the 2013 Act with initial, one time, cash assistance, children shall be entitled to scholarship, they shall be allotted a residential plot and financial assistance for house construction, and at least one member of their family, shall be given, subject to eligibility and willingness, training in livelihood skill and other forms of rehabilitation;
- For all sewer deaths, compensation of Rs. 10 lakhs should be given to the family of the deceased.
- Railways should adopt a time bound strategy to end manual scavenging on the tracks.
- Provision of support for dignified livelihood to safai karamchari women.
- Identification the families of all persons who have died since 1993 and award compensation.

SIGNIFICANCE

This case is a landmark decision as it laid down the provision of compensation of Rs. 10 Lakhs for manual scavenging and reinforced the state’s responsibility to eradicate this practice.

40

Smt. Ramadevi v. The State of Karnataka

RIGHT IN QUESTION

The right to compensation and compassionate appointment for the family of deceased manual scavengers under the 2013 Act.

CASE NUMBER

W.P. Nos. 201021-022 of 2015, decided on June 05, 2015.

COURT

High Court of Karnataka

JUDGE

L. Narayana Swamy, J.

CITATION

2015 SCC OnLine Kar 6007



FACTS

Ramadevi, the Petitioner, was the widow of M. Venkatesha, a daily wage manual scavenger who drowned while cleaning an underground drain. Despite several representations to the municipal authorities, she received no compensation or compassionate appointment, and therefore approached the High Court of Karnataka.

COURT DECISION AND REASONING

The Karnataka High Court allowed the petition, directing the Respondents to pay Rupees 10 lakhs as compensation to the Petitioner and provide her with a Group-D government job on compassionate grounds. Additionally, the Court ordered the regularisation of all daily wage manual scavengers and pourakarmikas across Karnataka to prevent exploitative practices. The Court emphasised that scavengers constitute a distinct class, given their unique work, occupation, and social background, which differ significantly from other professions. The Court noted that while the State Government and other authorities had consistently regularised services in other disciplines, the same was not done for scavengers, despite their persistent exploitation and the capitalisation of their illiteracy and ignorance. The Court underscored that substantive justice is essential to achieve the constitutional goals of social, economic, and political equality, dignity, and fraternity. It held that denying regularisation and subjecting scavengers to exploitative temporary employment practices amounted to arbitrary action, racial discrimination, and a violation of constitutional rights. The Court concluded that justice for manual scavengers requires not just monetary compensation but substantive efforts to address systemic exploitation, ensure rehabilitation, and uphold dignity. It called for immediate reforms to replace temporary and contractual arrangements with secure, regularised employment for all manual scavengers.

SIGNIFICANCE

This ruling is significant for applying the reasonable classification test under Article 14 of the Constitution to recognise manual scavengers as a distinct class. The Court justified this classification based on their unique work, social background, and systemic exploitation and thus satisfies the requirements for treating them as a distinct class of persons for the purpose of Article 14.

41

Chinnamma & Others v. State of Karnataka & Others

RIGHT IN QUESTION

The right to compensation, rehabilitation, and constitutional protections for families of manual scavengers under the 2013 PEMSRA.

CASE NUMBER

W.P. No. 16365 of 2014, decided on January 11, 2016.

COURT

High Court of Karnataka

JUDGE

Ashok B. Hinchigeri, J.

CITATION

MANU/KA/0118/2016



FACTS

The Petitioners, the wife, and children of Chenchaiiah, a manual scavenger, sought Rupees 10 lakhs compensation and rehabilitation benefits after his death due to asphyxiation while cleaning a drain. The Bruhat Bengaluru Mahanagara Palike (BBMP) paid Rupees 2 lakhs towards compensation from the mayor's fund but failed to provide the judicially mandated amount of Rupees 10 lakhs compensation or other rehabilitation measures mandated under the 2013 Act. The BBMP argued that the deceased was not directly employed by them but engaged through a contractor and therefore was not entitled to pay any more compensation. The Petitioner approached the Karnataka High Court seeking relief.

COURT DECISION AND REASONING

The Karnataka High Court allowed the petition and directed BBMP to pay the remaining Rupees 8 lakh compensation to fulfil the statutory mandate and provide all benefits guaranteed under Section 13 of the 2013 Act, such as allotment of residential plot, cash assistance, etc. The Court rejected BBMP's arguments that the deceased was not directly employed by them and that they are not liable due to the contractor's involvement. This Court held BBMP directly accountable for ensuring worker safety and compliance with the statutory obligations under the PEMSRA. The Court emphasised that manual scavengers are entitled to dignity and protection under the Constitution and criticised the systemic failures of municipal authorities. The Court reinforced that municipalities bear the ultimate responsibility for safeguarding the rights of vulnerable workers and their families.

SIGNIFICANCE

This case is significant as it holds municipal authorities directly accountable for the safety, dignity, and protecting the rights of manual scavengers even when contractors are involved. The Court took a strong stance on direct accountability rejecting attempts to evade responsibility and shifting blame to contractors.

42

The Secretary to the Government of Tamil Nadu, Municipal Administration & Water Supply Department & Others v. Valaiyakka & Others

RIGHT IN QUESTION

The right to dignity of manual scavengers and the duty of the State to pay compensation irrespective of the place of death.

CASE NUMBER

Writ Appeal (MD) No.550 of 2016, decided on April 07, 2016.

COURT

The Madras High Court

JUDGES

S. Manikumar & C. T. Selvam, JJ.

CITATION

MANU/TN/0667/2016



FACTS

The Respondent, Valaiyakka, filed a writ petition seeking compensation after her son, Arumugam, died of asphyxia while cleaning a septic tank in a private residence. The Respondent made representations to the State authorities to grant compensation of Rupees 10 lakhs for deaths resulting from manual scavenging as decided by the Supreme Court in *Safai Karamchari Andolan v. Union of India (2014)*. Despite these representations, no compensation was granted, leading to the writ petition.

COURT DECISION AND REASONING

The Madras High Court affirmed the Writ Court's earlier directive for the government to process Respondent's representations within six weeks. The Court rejected the argument that deaths on private premises were exempt from State liability. The Court cited the decision *Safai Karamchari Andolan (2014)* where it was held that the State was responsible for providing compensation in cases of deaths resulting from manual scavenging, even on private premises, and could recover the amount from private parties later. It also emphasised that the 2013 Act enshrines the right to dignity and mandates immediate compensation and rehabilitation. The High Court reiterated the binding nature of the Supreme Court's directions, affirming that the State is duty-bound to provide compensation irrespective of the workplace's nature.

SIGNIFICANCE

The decision in this case reinforced that the government cannot evade its obligations under the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, even if the death occurs in private premises. It upholds the principle that the State is primarily responsible for compensating victims and can recover the amount from liable private parties.

43

National Institute of Rock Mechanics v. Assistant Commissioner & Executive Magistrate, Kolar Sub-Division & Others

RIGHT IN QUESTION

The right to file complaints and FIRs against manual scavenging.

CASE NUMBER

W.P. No. 25568 of 2017, decided on July 17, 2017.

COURT

High Court of Karnataka

JUDGE

Ashok B. Hinchigeri J.

CITATION

2017 (4) AKR 757; MANU/KA/1843/2017



FACTS

The Petitioner challenged an order passed by the Karnataka State Commission for Safai Karmacharis, alleging that manual scavengers were employed to clean toilets and soak pits (kakkas gundis) at the Petitioner's establishment. The Petitioner contended that they had no manual scavengers on their payroll and that the cleaning work was outsourced to a contractor. The Petitioner also argued that the Karnataka State Commission for Safai Karmacharis did not have the authority to entertain complaints regarding manual scavenging. The Petitioner further claimed that the complaint lacked material particulars, including the date of the alleged manual scavenging and questioned the jurisdiction of the Commission.

COURT DECISION AND REASONING

The Karnataka High Court dismissed the petition and held that the State Commission for Safai Karmacharis has the authority to direct the registration of an FIR regarding manual scavenging, as provided under Sections 31 and 32 of the 2013 Act and that there is no statutory requirement for complaints only to be filed before the Executive Magistrate. Failure to apply for identification as a manual scavenger does not prevent a complaint from being filed, as the objective of the 2013 Act is to prevent manual scavenging and rehabilitate those affected. The Court held that manual scavenging is a violation of human dignity and that the State Commission for Safai Karmacharis has the power to register and address complaints.

SIGNIFICANCE

This case underscores the responsibility of employers to prevent manual scavenging even when the work is outsourced to contractors. It also reaffirms the State authority to take proactive measures to eliminate manual scavenging and ensure compliance with the provisions of the 2013 Act.

44

Change India v. Government of Tamil Nadu & Others

RIGHT IN QUESTION

Right to receive timely compensation for the loss of life during hazardous sewerage work.

CASE NUMBER

W.P. No. 25726 of 2017, decided on June 4, 2018.

COURT

Madras High Court

JUDGES

Indira Banerjee, C.J. & Abdul Quddhose, J.

CITATION

MANU/TN/2579/2018



FACTS

A Public Interest Litigation (PIL) was filed by the organisation Change India seeking compensation for the families of manual scavengers who lost their lives while performing hazardous work. The petition specifically sought enhanced compensation with interest accounting for the delay in releasing compensation to the heirs of manual scavengers who had died during sewerage work, such as cleaning manholes and septic tanks, since 1993. The Petitioner relied on the Supreme Court’s decision in Safai Karamchari Andolan vs. Union of India (2014), which mandated compensation of Rupees 10 lakhs to be paid to the families of manual scavengers who died in the course of such work.

COURT DECISION AND REASONING

The Madras High Court recognised that compensation of Rupees 10 lakhs was due to the families of manual scavengers who died during sewerage work. The Court acknowledged that while compensation was paid, it was done in tranches, leading to delays. However, the Supreme Court judgment did not provide for interest on delayed payments. The High Court directed the State of Tamil Nadu to pay interest at the rate of 8% per annum, from October 1, 2014, until the full payment of Rupees 10 lakhs to the heirs of the deceased manual scavengers. The Court emphasised that the State had a duty to prohibit manual scavenging and ensure the timely payment of compensation.

SIGNIFICANCE

This case highlights the ongoing challenges related to manual scavenging and the delayed compensation to affected families. The Court emphasised the State’s responsibility to prevent manual scavenging and ensure prompt compensation for deaths resulting from such hazardous work. It reinforced the principle that even though the Supreme Court’s decision did not mandate interest, the State must compensate for the delays in fulfilling its obligation.

45

B. Elumalai v. The State

RIGHT IN QUESTION

Right to work with safety and dignity.

CASE NUMBER

C.R.L. O.P. 15777 of 2018, decided on February 21, 2022.

COURT

Madras High Court

JUDGE

M Nirmal Kumar, J.

CITATION

MANU/TN/4188/2022



FACTS

A petition was filed to quash criminal proceedings arising from the death of Babu, who died while cleaning a septic tank. The Petitioner denied employing the deceased for manual scavenging, arguing that the incident was caused by municipal authorities’ failure to clean the tank.

COURT DECISION AND REASONING

The Court dismissed the petition, ruling that there was sufficient prima facie evidence to proceed with the trial. Testimonies from the deceased’s wife, witnesses, and co-workers, along with the forensic and investigative reports, indicated that the Petitioner had directly engaged Babu in hazardous cleaning, violating Section 7 of the 2013 Act. The Petitioner’s contention that the deceased acted voluntarily was not maintainable owing to the statutory prohibition on employing individuals for such tasks and the explicit evidence linking the Petitioner to the incident. The Tamil Nadu government had already paid Rupees 10 Lakhs in compensation to the deceased’s family following the Supreme Court’s decision in Safai Karamchari Andolan v. Union of India (2014). The Court held that the Petitioner’s arguments could only be tested during the trial, not at the stage of quashing proceedings and refused to quash the FIR. The trial court was directed to expedite proceedings and conclude the case within four months to avoid undue delays.

SIGNIFICANCE

Through its decision, the Court upheld the legal prohibition on hazardous manual scavenging and reinforced the accountability of individuals who violate the law. It emphasised the persistent need to strictly enforce the PEMSRA, 2013, to protect vulnerable workers. The case reaffirmed the judicial commitment to uphold human dignity and ensure prompt justice for historically marginalised groups like persons engaged in manual scavenging.

46

Shri Sumanth v. The State of Karnataka

RIGHT IN QUESTION

The right to due process under the 2013 Act specifically concerning the proper procedure for initiating legal action.

CASE NUMBER

Writ Petition No. 49799 of 2019, decided on May 26, 2022.

COURT

High Court of Karnataka

JUDGE

M. Nagaprasanna, J.

CITATION

Not available



FACTS

Sumanth, an engineer employed by the Bangalore Water Supply and Sewerage Board (BWSSB) was accused of violating Sections 5, 7, 8, 9 and 10 of the 2013 Act, as he was seen directing an individual to enter a manhole for maintenance work. A complaint was lodged, leading to an FIR and chargesheet was subsequently filed. Sumanth challenged the proceedings, arguing that the 2013 Act mandates initiation of prosecution only through a formal complaint to the Magistrate as per Section 10 and not through a police report.

COURT DECISION AND REASONING

The High Court quashed the proceedings against the Sumanth. The Court emphasised that Section 10 of the 2013 Act explicitly requires the prosecution to commence only upon a private complaint filed directly with the Magistrate. A complaint made to the police does not fulfil this requirement, rendering the FIR and subsequent legal actions invalid. The Court declined to address whether Sumanth's actions constituted a violation of the Act, as the procedural lapse itself was sufficient to nullify the proceedings.

SIGNIFICANCE

This was a negative judgment as it held that complaints under the PEMSRA can only be filed directly with the Magistrate. It failed to account for challenges in registering complaints because in most cases, the complaints are registered by the police themselves or filed by others with the police. This judgment has been followed by the Karnataka High Court in other cases as well, which has led to quashing of complaints in several instances of manual scavenging.

47

A. Nagarajan v. Union of India

RIGHT IN QUESTION

Right to human dignity and life, specifically regarding the continued practice of manual scavenging despite the 2013 Act.

CASE NUMBER

W.P. (MD) No. 24289 of 2016, decided on December 19, 2022.

COURT

Madras High Court

JUDGES

R. Mahadevan & J. Sathya Narayana Prasad, JJ.

CITATION

Not available



FACTS

Multiple Writ Petitions were filed regarding the continued practice of manual scavenging in Tamil Nadu. The key issue was the implementation and enforcement of the 2013 Act. It was argued that there is a lack of proper implementation and rehabilitation schemes for manual scavengers and a need for proper identification and support. The Government's response showed that while some mechanisation had been done, manual scavenging continues with 48687 manual scavengers identified across 18 states as of March 31, 2020.

COURT DECISION AND REASONING

The Madras High Court issued comprehensive directions to authorities to take stringent action against those engaging persons for manual scavenging including to provide protective and safety equipment for sanitary workers and to ensure the complete mechanisation of sewer and septic tank cleaning, and to strictly implement the 2013 Act and ensure the rehabilitation of manual scavengers and their family. It also directed the State to create awareness about the perils of manual scavenging and provide compensation to victims' families. The Court emphasised that manual scavenging violated human dignity and the right to life. It noted that despite multiple laws and court decisions to prohibit the practice, it continues due to inadequate implementation and socio-economic factors. The Court recognised that while some progress has been made in mechanisation and rehabilitation, more comprehensive action is still needed to completely eradicate this practice.

SIGNIFICANCE

This judgment reinforced the constitutional prohibition of manual scavenging as a violation of human dignity while recognising the intersection of caste discrimination and manual scavenging. It provided a comprehensive framework for the implementation of existing laws and highlighted the continued prevalence of manual scavenging despite a protective legal framework. Further, it stressed the need for mechanisation and modernisation of sanitation work.

Balram Singh v. Union of India & Others

RIGHT IN QUESTION

The implementation of the PEMSRA.

CASE NUMBER

W.P. (C) No. 324 of 2020, decided on October 20, 2023.

COURT

Supreme Court of India

JUDGES

S. Ravindra Bhat & Aravind Kumar, JJ.

CITATION

2023 INSC 950; 2023(14) SCALE803; MANU/SC/1183/2023



FACTS

The Petitioner filed a Writ Petition under Article 32 to eradicate manual scavenging. He argued that despite the 1993 Act and 2013 Act, manual scavenging practices persist. The Supreme Court expanded the scope to review the working of the PEMSRA.

COURT DECISION AND REASONING

The Supreme Court examined the implementation of the 2013 Act and the effectiveness of the measures taken by the government. It directed the Union and States to ensure that manual sewer cleaning is phased out and replaced with mechanised cleaning methods. Further, compensation for sewer deaths was increased from Rupees 10 lakhs to Rupees 30 lakh and in cases of permanent disability due to hazardous cleaning, the minimum compensation was set at Rupees 20 lakhs. The Court also ordered a national survey of manual scavengers to be conducted within one year by the National Commission for Safai Karamcharis in collaboration with other state authorities. The government was directed to create a model contract for agencies engaged in sewer cleaning, ensuring strict compliance with safety standards and providing for the cancellation of contracts and blacklisting of violators. Additionally, rehabilitation programs for manual scavengers, including scholarships for children and training for alternative employment need to be strictly implemented.

The Court emphasised that despite legislative measures, manual scavenging and sewer cleaning without safety equipment persisted due to weak enforcement and monitoring. It stated that manual scavenging is a form of forced labour and untouchability and that its eradication was essential for upholding the dignity of individuals, as guaranteed under Articles 21 and 23.

SIGNIFICANCE

This judgment reinforced the constitutional commitment to eradicate manual scavenging and ensure dignity and safety for all workers involved in hazardous cleaning tasks.

“ If we are to be truly equal, in all respects the commitment that the constitution makers gave to all Sections of the society, by entrenching emancipatory provisions, such as Articles 15(2), 17, 23 and 24, each of us must live up to its promise. The Union and the States are duty bound to ensure that the practice of manual scavenging is completely eradicated. Each of us owe it to this large segment of our population, who have remained unseen, unheard and muted, in bondage, systematically trapped in inhumane conditions. The conferment of entitlements and placement of obligations upon the Union and the States, through express prohibitions in the constitution, and provisions of the 2013 Act, mean that they are obliged to give real meaning to them, and implement the provisions in the letter and spirit. Upon all of us citizens lie, the duty of realizing true fraternity, which is at the root of these injunctions. Not without reason does our Constitution place great emphasis on the value of dignity and fraternity, for without these two all other liberties are chimera, a promise of unreality. It is all of us who today proudly bask in the achievements of our republic, who have to awake and arise, so that the darkness which has been the fate of generations of our people is dispelled, and they enjoy all those freedoms, and justice (social, economic and political) that we take for granted.”

JUSTICE RAVINDRA BHAT
Balram Singh v. Union of India & Others

Safai Karamchari Andolan v. Union of India & Others

RIGHT IN QUESTION

Rights of manual scavengers to be free from hazardous work.

CASE NUMBER

W.P. Nos. 17380 of 2017, 31345 of 2014, and W.P. (MD) No. 24243 of 2017, decided on April 29, 2024.

COURT

Madras High Court

JUDGES

S.V. Gangapurwala, C.J.I. & S. N. Prasad, J.

CITATION

MANU/TN/2299/2024



FACTS

PIL filed seeking an end to the practice of manual scavenging. Additionally, regulating section 2(q) (sewer) of the 2013 Act. Further seeking directions to stop manual scavenging and enforcing criminal action for violation and to provide compensation for deaths, promote the use of machines for clearing septic tanks, and strict enforcement of the 2013 Act.

COURT DECISION AND REASONING

The Court addressed the ongoing exploitation of marginalised communities through manual scavenging, the immediate need for intervention to prohibit these practices and the failure of Respondents to ensure timely compensation to the heirs of deceased manual scavengers. It issued guidelines to fully eradicate manual scavenging by 2026 including strict criminal action against those employing manual scavenging; filing FIRs against responsible officials; mechanisation of septic tank, sewer, and stormwater drain cleaning; enhanced compensation for deaths (Rupees 30 lakhs); rehabilitation and alternative employment opportunities for manual scavengers, provisions of health check-ups and educational facilities for the families; and identification and issuing of ID cards, etc. The Court ordered a phased eradication by 2026 Manual scavenging is a violation of human dignity and perpetuated by deep-rooted caste discrimination and is not only illegal but also a form of state-sanctioned casteism. The court noted that the definition of 'sewer' under the 2013 Act should be interpreted broadly to include storm water drains and should include persons who entered the pipes for clearing waste.

SIGNIFICANCE

The case underscored the continued existence of manual scavenging despite legal prohibitions and highlighted the need for stricter enforcement, mechanisation, and rehabilitation efforts.

05

THE INTERSECTION OF CASTE & GENDER

THE INTERSECTION OF CASTE & GENDER

This resource book would be incomplete without identifying judgments that illustrate how caste and gender discrimination co-constitutively exclude, exploit, and discriminate against women from Scheduled Caste and Scheduled Tribe communities.

Women face double discrimination on account of their caste and gender and this intersection is visible in multiple sites of oppression, be it in marriage, education, and employment. Practices such as use of derogatory language, sexual assault, public humiliation, and naked parading in the streets are instances where violence is used against women as an instrument of control and coercion by dominant caste individuals to humiliate and dehumanise women from marginalised caste groups.

This is evident in the cases of sexual violence against Dalit women. In many of these cases, courts have often diluted the provisions of the SC and ST (PoA) Act and overturned charges under it, for not having evidence that sexual violence was committed because the survivor’s caste identity. This is evident in decisions in the cases of *Asharfi v. State of Uttar Pradesh* and *Patan Jamal Vali v. The State of Andhra Pradesh*. Such decisions fail to recognise caste-based sexual violence against Dalit women.

Caste-based violence also takes the form of ‘honour-crimes’, especially in cases where women chose to find their own partners outside caste hierarchies, which often leads to violence against couples in inter-faith and inter-caste marriages. The Khairlanji massacre is one instance of such barbaric violence, but the Court failed to recognise it as such, and did not apply the provisions of the SC/ST (PoA) Act. In some instances, the Court has stringently dealt with issues of caste-based sexual violence and affirmed the fundamental right to choose a partner as done in *Lata Singh v. Union of India*.

The Devadasi or Joginis system remains more pervasive than ever, despite several enactments prohibiting the practice. It continues to thrive through the sexual exploitation of women from marginalised castes. The decision in *Gaurav Jain v. Union of India* draws attention to the measures introduced by the Court to ensure rehabilitation of Devadasis and their children. The cases in this section point to the intersectional experiences of discrimination faced by women on account of their caste and gender identities.

50

RIGHT IN QUESTION

The right to marry a partner of one’s choice and freedom to enter inter-caste marriages.

CASE NUMBER
W.P. (Crl.) No. 208 of 2004, decided on July 7, 2006.
COURT
Supreme Court of India
JUDGES
Ashok Bhan & Markandey Katju, JJ.
CITATION
2006 INSC 407; MANU/SC/2960/2006



Lata Singh v. State of U.P & Others

FACTS

Lata Singh married Brahma Nand Gupta. Their marriage was an inter-caste union solemnised at the Arya Samaj Mandir in Delhi. Lata’s brothers opposed the inter-caste marriage and filed a false police report accusing Brahma of kidnapping their sister. Consequently, Brahma’s family members were wrongfully arrested and detained, and Lata’s brothers also harassed Brahma’s family members. Lata approached the Supreme Court in a writ petition under Article 32 of the Constitution seeking the quashing of the criminal proceedings initiated against her husband’s family. Lata also sought protection from harassment that she and her husband had been facing.

COURT DECISION AND REASONING

The Supreme Court quashed the criminal proceedings stating that Lata Singh was free to marry anyone of her choice as there is no law preventing an inter-caste marriage. The Court stated that the threats and harassment against individuals for marrying outside their caste were illegal and such actions by Lata’s brothers were an abuse of the legal system. It further directed law enforcement agencies to ensure the protection of couples in inter-caste or inter-religious marriages from harassment, threats, or violence. The Court noted that parents opposed to such marriages may cut ties with their children, but they cannot be permitted to resort to violence and intimidation. The Court also took this opportunity to condemn ‘honour killings’ in noting that such acts of violence were often justified in the name of family honour but were shameful and barbaric murders that deserved punishment. In a democratic country, every individual has the freedom to marry a partner of their choice without threat, coercion, or intimidation.

SIGNIFICANCE

This is a significant case as it tackled the systemic issues of caste-based violence and violence in instances of inter-faith marriages to uphold the freedom to marry a partner of one’s choice. The Court went on to condemn honour crimes and called for strict legal action against those perpetrating violence in the name of caste. It further reinforced the constitutional right to marry freely and noted that the State was obligated to take measures to protect this right.

Mayakaur Baldevsingh Sardar & Another v. The State of Maharashtra

RIGHT IN QUESTION

Whether an instance of honour killing would fall under rarest of the rare doctrine warranting imposition of death penalty?

CASE NUMBER

Crl. Appeal Nos. 1364 to 1366, 1378-1380 and 1419-1421 of 2004, decided on October 8, 2007.

COURT

Supreme Court of India

JUDGES

S. B. Sinha & H.S. Bedi, JJ.

CITATION

(2007) 12 SCC 654; MANU/SC/7994/2007



FACTS

Rajvinder Kaur, the daughter of the Appellants had secretly married one Ravinder Singh, and her family was opposed to their relationship because of Ravinder Singh being from an ‘inferior’ caste and economic background. The Appellants had been accused of killing Ravinder Singh and his family after Rajvinder Kaur filed an F.I.R as she had narrowly escaped death herself but was witness to the incident. The Trial Court convicted all accused persons of offences under Sections 302 and 307 of the IPC read with Section 120B, sentencing four of them to death and two of them to life imprisonment. The High Court initially delivered a split verdict on the justifiability of the death sentences, and on reference to a third judge, sentenced the Appellants to life imprisonment under Section. 302 read with Section 34 of the IPC. This decision was appealed before the Supreme Court.

COURT DECISION AND REASONING

The Supreme Court took note of the facts of the case which pointed to the way Rajvinder Kaur’s family had been opposed to her relationship and on informing them of her secret marriage, had invited the wrath of her family. The accused were Jat Sikhs, and the victims of the crime were Matharu Ramgariah Sikhs, and this was a case of a caste-motivated crime. It was also observed that her testimony as a sole witness was reliable and there was no reason to doubt it, despite the delay in mentioning the names of the accused as this was likely in such traumatising circumstances. The Court also dismissed the contention that there was no common intention to attack, as all the accused had arrived together, and the assailants had come into the house on the signal of Mayakaur. The High Court expressed reluctance to award the death penalty, as it believed it would not serve the society at large since the murders had been committed due to ‘social pressures and in vindication of the family honour’. The Supreme Court however noted that it cannot sit on its hands and wait for society to come to accept inter-caste relationships and had a responsibility to ‘prod’ it along through the criminal justice system. It held that the case falls under the ‘rarest of the rare’ doctrine as established in Bachan Singh v. State of Punjab but declined to reimpose the death penalty as the accused had served more than 8 years of their sentence and it had been 4 years since the decision of the High Court.

SIGNIFICANCE

The Court noted that judges appear to be more conservative and ‘almost apologetic’ in awarding the death penalty in murders on caste grounds but seemed more than willing to award it when dealing with murders on religious factors. It acknowledged that this reluctance of courts has contributed to the establishment of dangerous caste-based organisations that believe to have the license to harm others to enforce their decrees.

“ We also notice that while Judges tend to be extremely harsh in dealing with murders committed on account of religious factors they tend to become more conservative and almost apologetic in the case of murders arising out of caste on the premise (as in this very case) that society should be given time so that the necessary change comes about in the normal course. Has this hands off approach led to the creation of the casteless Utopia or even, a perceptible movement in that direction? The answer is an emphatic no as would be clear from mushrooming caste based organizations controlled and manipulated by self-appointed Commissars who have arrogated to themselves the right to be the sole arbiters and defenders of their castes with the license to kill and maim to enforce their diktats and bring in line those who dare to deviate. Resultantly the idyllic situation that we perceive is as distant as ever. In this background is it appropriate that we throw up our hands in despair waiting ad infinitum or optimistically a millennium or two for the day when good sense would prevail by a normal evolutionary process or is it our duty to help out by a push and a prod through the criminal justice system? We feel that there can be only one answer to this question.”

JUSTICE H. S. BEDI

Mayakaur Baldevsingh Sardar & Another v. State of Maharashtra

52

Bhagwan Dass v. State (NCT) of Delhi

RIGHT IN QUESTION

Honour killings fall within the rarest of rare cases warranting the imposition of the death penalty.

CASE NUMBER

Crl. Appeal No.1117 of 2011, decided on May 9, 2011.

COURT

Supreme Court of India

JUDGES

Markandey Katju & G. S. Misra, JJ.

CITATION

(2011) 6 SCC 396; MANU/SC/0568/2011



FACTS

The Appellant Bhagwan Dass was accused of murdering his daughter Seema, who had left her husband and was living in a relationship with her uncle, Srinivas. The appellant was angered by his daughter's actions, which he perceived as disrespecting the family. Seema was found strangled to death with an electric wire, and her body was discovered after the police were notified about the incident. Key evidence included statements made by Bhagwan Dass to his mother, which were considered extra-judicial confessions, and the recovery of the ligature material used in the crime.

COURT DECISION AND REASONING

The Court upheld the conviction of Bhagwan Dass for the murder of his daughter, Seema, characterising it as an honour killing. The Court found overwhelming circumstantial evidence linking Bhagwan Dass to the crime, including his motive stemming from perceived dishonour. In this case, though the killing was not a caste-motivated crime, the Court took note of how "honour killings" had become commonplace as many people felt they were dishonoured when a young man or woman related to them or belonging to their caste married against their wishes, alluding to the pervasive nature of caste-based discrimination and how it led to brutal violence and atrocities. The Court also relied on its decision in the case of Lata Singh v. State of U.P reiterating that while a person may be at the liberty to cut off social ties with their son or daughter of a member of their caste, they could not take law into their own hands and resort to violence or threats. The Court also observed that honour killings, whatever the reason for such brutal acts of violence, fall within the rarest of rare cases for which the death penalty must be imposed. The only way to eradicate such barbaric practices is to penalise those committing such acts with death as a necessary deterrent for such outrageous and uncivilised behaviour.

SIGNIFICANCE

This case is significant as it highlights the judiciary's stance against honour killings, categorising them as severe offenses warranting strictest punishment.

53

B. Dilipkumar v. The Secretary to Government

RIGHT IN QUESTION

Protection of couples in inter-caste marriages and duty of Police Officials.

CASE NUMBER

W.P. No. 26991 of 2014, decided on November 11, 2014.

COURT

Madras High Court

JUDGE

V. Ramasubramanian, J.

CITATION

MANU/TN/2353/2014



FACTS

The case arises from the inter-caste marriage between the Petitioner, a man belonging to a Scheduled Caste and a woman belonging to a Most Backward Community, as notified by the Government of Tamil Nadu. The couple were forcibly separated and the woman was eventually killed, which the Petitioner alleges was at the hands of his wife's family, their community and the police. The Petitioner sought for directions concerning transfer of the investigation of the case to the CBI, compensation of Rs. 10 lakhs for the death of his spouse by dominant caste forces and for initiation of departmental and criminal proceedings against the police officials.

COURT DECISION AND REASONING

The Court found that the initial investigation conducted by the local police was marred with inconsistencies. The police had initially dismissed any possibility of honour-killing and wrote off the case as death by suicide without sufficient investigation. The Court held that on prima facie evaluation, the death is an instance of honour killing and further arrived at the conclusion that the investigation team has manipulated the records to protect themselves. Since the investigation team does not inspire the confidence of the victims, the Court ordered that the case be transferred to CBI, that the police provide protection to the petitioner until the investigation was completed and for inquiry to be initiated against the officers for misconduct. The Court also observed that the issue of compensation be considered after the investigation by the CBI was completed.

SIGNIFICANCE

Crimes of honour-killing are often portrayed as suicides or death by accident and this case is indicative of how State instruments are also complicit in caste-atrocities. The Court recognises serious lapses in investigation which essentially aided the dominant caste forces in committing this heinous crime but does not mete out strict action against the police officials who facilitate it.

54

Vikas Yadav v. State of Uttar Pradesh & Others

RIGHT IN QUESTION

Whether the Court can impose a fixed term sentence in case of honour killings?

CASE NUMBER

Crl. Appeal Nos. 1531 to 33 and 1528 to 30 of 2015, decided on October 3, 2016.

COURT

Supreme Court of India

JUDGES

Dipak Misra & C. Nagappan, JJ.

CITATION

(2016) 9 SCC 541; MANU/SC/1167/2016



FACTS

The Appellant murdered his sister and her husband on the night of their wedding, due to family opposition to the inter-caste relationship. He was convicted for offences under Sections 302 and 201 of the Indian Penal Code and sentenced to life imprisonment. The High Court upheld the conviction and imposed a fixed sentence of 25 years of imprisonment without remission. This decision was challenged before the Supreme Court for violating the right to life of the accused by imposing a fixed term sentence not sanctioned by law.

COURT DECISION AND REASONING

The Supreme Court held that there was no fundamental right or statutory right to apply for remission and held the curtailment of powers of remission under Section 433-A of the Code of Criminal Procedure, 1973 to be valid. The Court upheld the fixed term sentence of 25 years imposed on the Appellant. The Court particularly took note of the observations made by the High Court on the issue of the nature and severity of the offence committed which had led to the enhancement of punishment. It was observed that from the evidence as well as the analysis made by the High Court, the criminal proclivity of the accused was evident as they had no respect for human life or the dignity of the dead person. The accused had brutally burned the body of the deceased, and the Court held that the dead deserve to be treated with dignity. That is the basic human right. The brutality that has been displayed by the accused persons clearly exposed their depraved state of mind. The Court noted that it was important to highlight the aspect of this being a case of honour killing as that was one of the primary reasons for the imposition of a fixed-term sentence. Referring to various judgments on honour killings, the Supreme Court reiterated that the freedom and individual choices of a woman cannot be curtailed in the name of 'self-assumed' honour, and especially not through physical force or mental cruelty. Her independence and constitutional identity stand above any condemnable and deplorable perception of 'honour'.

SIGNIFICANCE

The High Court and the Supreme Court while taking note of the depravity of the crime committed, imposed a severe punishment but refused to treat this as constituting a 'rarest of the rare' case, and did not grant the death penalty.

“ One may feel “My honour is my life” but that does not mean sustaining one’s honour at the cost of another. Freedom, independence, constitutional identity, individual choice and thought of a woman be a wife or sister or daughter or mother cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so called brotherly or fatherly honor or class honor by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of “honour”, comparable to medieval obsessive assertions.”

JUSTICE DIPAK MISRA

Vikas Yadav v. State of Uttar Pradesh & Others

55

Shakti Vahini v. Union of India & Others

RIGHT IN QUESTION

The right to marry a partner of one’s choice and freedom to enter inter-caste marriages.

CASE NUMBER

W.P (C) No. 231 of 2010, decided on March 27, 2018.

COURT

Supreme Court of India

JUDGES

Dipak Misra, C.J.I. & D. Y. Chandrachud and A. M. Khanwilkar, JJ.

CITATION

AIR 2018 SC 1601; 2018 (3) SCC (CRI) 1; MANU/SC/0291/2018



FACTS

Shakti Vahini, the Petitioner organisation, filed the present petition in public interest against honour killings and crimes in the name of honour. The Petitioner sought directions from the State and Central governments to take preventive measures against honour crimes. This includes submitting a national action plan, establishing special safety cells in each district for couples, launching prosecutions for honour killings, and addressing the societal mind-set that supports such crimes.

COURT DECISION AND REASONING

The Supreme Court emphasised the significance of liberty and personal choice in an individual's life. The Court remarked that in addressing the distressing issue of Honour Crimes, it is essential to implement preventive, remedial, and punitive actions, while also outlining the general guidelines and procedures, and granting the executive and police administration of the relevant states the authority to introduce additional measures to create a strong framework for these objectives. The Court suggested identifying districts, subdivisions, and/or villages that have experienced incidents of honour crimes in the last five years; increasing surveillance by law enforcement upon observing inter-caste or inter-religious marriages; providing details about planned gatherings of Khap Panchayats; and if such gatherings are taking place, informing Khap Panchayat members that these meetings are not allowed by law.

SIGNIFICANCE

This landmark ruling shattered the constraints imposed by a male-dominated society and created a path toward a fair and liberated society. The concept of freedom is not all-encompassing, and as such, but is not limited to physical confines. The illegitimacy of Khap Panchayats and their decrees underscored that no one is above the law.

56

Gaurav Jain v. Union of India & Others

RIGHT IN QUESTION

Rights of sex workers, Devadasis, and their children to live with dignity.

CASE NUMBER

W.P.(C) No. 824 of 1988 with W.P.(Crl.) Nos. 745 to 754 of 1990, decided on July 9, 1997.

COURT

Supreme Court of India

JUDGES

K. Ramaswamy & D. P Wadhwa, JJ.

CITATION

1997 INSC 547; MANU/SC/0789/1997



FACTS

The Petitioner filed a PIL praying for establishing separate educational institutions for the children of sex-workers and devadasis. The Petitioner had requested the establishment of separate educational institutions and accommodations in Gaurav Jain v. Union of India 1990 Sup. SCC 709 and in its 1989 order, the State observed that segregating children of sex-workers would not be in the interest of the children and the society at large.

COURT DECISION AND REASONING

The Court referred to international conventions including the Universal Declaration of Human Rights, the Conventions on the Rights of the Child and the Convention on Elimination of All Forms of Discrimination Against Women ins addressing the rights of children of sex-workers to be integrated into mainstream of national life and duty of the State to provide for measures to eradicate sex-work and to lay down rehabilitative measures. The Court also took note of the V.C. Mahajan Committee report which had stated that Dalits and Tribes constituted 36% of the women and girls in sex work and 24% of them were from the OBC category. It was observed that economic rehabilitation, education, and alternative employment were essential to prevent the practice of dedication of young women to prostitution as Devadasis, Jogins or Venkatasins. Emphasising the right of children of devadasi women, the Court held that it was necessary to enforce provisions of various statutes that aim to protect and rehabilitate devadasi women and their children. The Court referred to the provisions of the Juvenile Justice Act and how the same can be utilised to ensure rehabilitation for children of Devdasis by treating them as ‘neglected children’ as defined in the Act. It directed the State to establish and make available juvenile homes for children of devadasis. The officers in charge of juvenile homes were also directed to guarantee protection and rehabilitation of these children. The Court noted that Devadasi women and other women engaged in sex work should be rehabilitated through self-employment schemes and urged the State to eradicate the practice and rehabilitate sex-workers.

SIGNIFICANCE

The Court recognised the necessity of pro-active measures to prevent and end the practice of Devadasi system, which was predominantly leading to exploitation of women from Scheduled Castes, Scheduled Tribes, and Other Backward Classes.

57

In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News dated 23.01.2014

RIGHT IN QUESTION

Honour killing of persons in inter-caste relationships.

CASE NUMBER

Suo Moto W.P. (Crl) No. 24 of 2014, decided on March 28, 2014.

COURT

Supreme Court of India

JUDGES

P. Sathasivam, C.J.I. & S. A Bobde and N. V Ramana, JJ.

CITATION

2014 INSC 227;
AIR 2014 SC 2816;
MANU/SC/0242/2014



FACTS

The Supreme Court undertook suo-moto proceedings based on news items published about the gang rape of a woman from a Scheduled Tribe on the direction of the Village panchayat as punishment for having relationship with a man from different community.

COURT DECISION AND REASONING

The Supreme Court directed the District Judge and Chief Secretary of the State to submit a detailed report on the incident. Upon receiving the report, the Court held the State duty bound under Article 21 to protect the inherent freedom of choice in marriage. The Court also observed that such crimes are consequences of State inaction in being unable to protect fundamental rights of citizens. By virtue of interim orders, the State was also directed to provide compensation under Section 375A and rehabilitate survivors of rape, in addition to fine payable to the victim under Sections 326A and 376D of IPC. In light of this direction, the State submitted a report on the rehabilitative measures undertaken regarding issuance of government orders on compensation, legal aid, allocation of property, construction of residential house and other social welfare measures for the victim and her family. Considering this report, the Court further ordered compensation of Rs. 5,00,000 and interim compensation of Rs. 50,000 within one month from the date of the judgment. While noting that no measures were taken to ensure the safety and security of the victim and her family who were likely to be socially ostracised, the Court also ordered a circle officer to inspect the victim's place of residence on a daily basis. Lastly, it was also held by this Court that all governmental hospitals and local bodies are statutorily obligated to provide medical services free of cost for offences under Section 326A, 376, 376(A), (B), (C), (D) or (E) of IPC.

SIGNIFICANCE

In holding the State accountable to protect the fundamental rights of persons in caste-based sexual violence, the Court has taken a proactive measure in the issue of honour-killings and caste-based sexual violence.

58

Patan Jamal Vali v. State of Andhra Pradesh

RIGHT IN QUESTION

Right to protection against discrimination and violence for individuals from marginalised groups with disabilities.

CASE NUMBER

Crl. Appeal No. 452 of 2021, decided on April 27, 2021.

COURT

Supreme Court of India

JUDGES

M.R. Shah & D. Y. Chandrachud, JJ.

CITATION

(2021) 16 SCC 225;
2021:INSC:272;
MANU/SC/0323/2021



FACTS

The victim, a person with 100% visual impairment belonging to the Scheduled Caste, was raped by the Accused in broad daylight at her residence, while her mother was working nearby. The Sessions Judge tried the Accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which mandates enhanced punishment for crimes committed against SC/ST members due to their caste identity, and he was given a life sentence and fined. Despite the Accused's attempts to cast doubt on the credibility of the victim's evidence due to her disability, the conviction and sentence was upheld by the High Court. The accused challenged the conviction order on grounds that the offence was not committed because of the victim's caste identity.

COURT DECISION AND REASONING

The Supreme Court set aside the conviction of the Accused under the SC/ST Act, 1989 and upheld his conviction under Section 376 (rape) of the Indian Penal Code. However, it confirmed his punishment of life imprisonment without any reduction in sentence. It stated that in the present case, the accused took advantage of the victim's visual impairment and familiarity with the victim's family. Although the Court held that there was nothing on record to prove that the victim's caste identity was a factor in the commission of the crime, it opined on the principle of "intersectionality", according to which multiple sources of oppression operate cumulatively to produce a specific experience of subordination. Therefore, the victim in this case, who is a person with disability, and a woman, and belonging to a scheduled caste, is in a uniquely disadvantaged position. The Court highlighted the need for the judiciary to not perpetuate stereotypes and biases against persons with disabilities and held that the victim's testimony is entitled to full weight as that of a person without visual impairment.

SIGNIFICANCE

Although this case detailed the concept of intersectionality, highlighting how the challenges and vulnerabilities faced by women were amplified when combined, including their caste identity. This is a negative judgment as the Supreme Court applied a restrictive approach to interpreting the SC/ST (PoA) Act, 1989.

59

Mani Ram Chaudhary v. State of Uttar Pradesh

RIGHT IN QUESTION

Application of the provisions of the SC/ST (PoA) Act in cases of sexual assault against a girl belonging to a Scheduled Caste.

CASE NUMBER

Crl. Appeal No. 3561 of 2004, decided on September 19, 2022.

COURT

Allahabad High Court

JUDGE

A. K. Mishra and S. S. Prasad JJ.

CITATION

ILR (2022) 9 All 1551: (2022) 121; MANU/UP/2867/2022



FACTS

Shanti Devi belonged to a Scheduled Caste and her daughter was a student of Class V in the Primary School, Bheeta. It was alleged that the accused Appellant on spotting the victim alone dragged the minor inside his house and raped her. The victim somehow reached her house and informed her mother. Based on the proof of documentary evidence and injury reports, along with the oral depositions, the Court of Sessions found the accused to be guilty and charged him with offences under Section 3(2)(v) SC/ST Act, Section 376 IPC. The accused Appellant appealed the order of conviction before the High Court.

COURT DECISION AND REASONING

One of the primary issues the Court dealt with was whether the accused Appellant was aware of the survivor's caste and as a result, could be charged with the commission of an offence under Section 3(2)(v) of the SC/ST (PoA) Act? The Court found the accused Appellant to be guilty of the offence under Section 376 IPC beyond reasonable doubt. However, the Court held that mere commission of the act is not sufficient, there must be knowledge of the survivor's caste identity. There is no evidence on record to show that the accused Appellant was aware of the victim's caste identity. Therefore, the accused Appellant cannot be convicted under Section 3(2)(v) of the SC/ST (PoA) Act. It was further observed that the accused Appellant had already undergone a sentence with remission of over 25 years (as on 12.6.2022), the punishment for life under Section 376 IPC was substituted by the sentence already undergone by the Appellant. The fine was reduced to Rs. 10,000/- and on its failure to pay, the accused Appellant was to undergo imprisonment of three months.

SIGNIFICANCE

This is a negative decision where the Court imposed an unnecessary threshold of prior knowledge of caste identity and failed to take note of the intersectional violence based on the survivor's caste and gender.

07

**ACCESS TO LAND
RIGHTS & WELFARE
MEASURES**

ACCESS TO LAND RIGHTS & WELFARE MEASURES

Section 2(g) of the SC/ST (PoA) Amendment Act of 2015 notes that anyone who wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom commits an offence under the Act. The Constitution also imposes a duty on the State to implement welfare measures that specifically address the historic discrimination on account of caste-based hierarchies that continue to be a systemic barrier to the promise of substantive equality.

Courts have played a significant role in drawing attention to the way caste-based discrimination manifests to deny members of Scheduled Castes access to rights including property rights and the benefit of welfare measures. In *R. Chandavarappa Etc. v. State of Karnataka & Ors. Etc.* (1995) the Supreme Court noted that lands assigned to individuals belonging to Scheduled Castes and Scheduled Tribes are meant to remain in their personal possession for cultivation and they cannot be alienated from the land.

In *Chameli Singh and Ors. v. State of Uttar Pradesh and Ors.* (1995), the same court held that the right to shelter was a fundamental facet of the right to life while upholding the invocation of the urgency clause for allocation of land to members of the Scheduled Castes. On the question of access to welfare schemes and benefits for members of Scheduled Castes, issues before the Court have ranged from entitlement to benefits including compensation and compassionate appointment for members of the families of victims of atrocities, to questions as to the legal entitlement to targeted measures introduced for the benefit of members of Scheduled Castes in cases of inter-caste marriages. In *Sudha v. State of Tamil Nadu* (2016), the Supreme Court held that the Petitioner in question, Sudha, who was the sister of a victim of an atrocity was entitled to relief of employment assistance. The cases dealing with access to land rights and entitlement to welfare measures under several schemes and legislations including the SC/ST (PoA) Act and Rules reveal the role played by the Courts in drawing focus to the specific issues stemming from caste-based violence and discrimination for which existing legal provisions and remedies can be better utilised to address caste discrimination at a structural level.

60

RIGHT IN QUESTION

Validity of invocation of the urgency clause under the Land Acquisition Act, 1894, for providing housing to Scheduled Castes.

CASE NUMBER

W.P. No. 3513 of 1971, decided on November 25, 1974.

COURT

High Court of Andhra Pradesh

JUDGE

O. Chinnappa Reddy, J.

CITATION

MANU/AP/0126/1975



Kasireddy Papaiah & Others v. The Government of Andhra Pradesh

FACTS

The Petitioners owned small parcels of land in Reddipalli Village, Visakhapatnam District totalling 3 acres and 17 cents. The government issued a notification under Section 4(1) of the Land Acquisition Act on May 15, 1970, proposing to acquire the land for providing house sites to “Harijans”. This notification was published on September 24, 1970. Simultaneously, the Government invoked the urgency clause under Section 17(4) of the Land Acquisition Act to dispense with the inquiry process. The Petitioners challenged the acquisition arguing that the delay in publishing the notification and subsequent steps indicated no genuine urgency and there was no public notice under Section 4(1) which makes the acquisition invalid. The Government argued that housing for “Harijans” was a pressing social necessity justifying the use of urgency provisions.

COURT DECISION AND REASONING

The Andhra Pradesh High Court invalidated the acquisition and held that the failure to comply with the mandatory public notice requirement under Section 4(1) makes the proceedings void. The Court acknowledged that housing for Harijans was a critical issue but clarified that bureaucratic delays in implementing decisions did not negate the initial urgency. The urgency must be assessed based on the circumstances at the time the notification was issued, not subsequent delays. The Court held that public notice under Section 4(1) was mandatory to ensure landowners were adequately informed. Failure to issue this notice invalidated the acquisition proceedings, even if the Petitioners were otherwise aware of the notification. It recognised the need of housing conditions of “Harijans” as a pressing historical and social problem requiring immediate attention, but emphasised that procedural compliance was necessary for lawful acquisition.

SIGNIFICANCE

This judgment highlight how procedural lapses by the government can affect the welfare measures aimed to address the urgent housing needs of marginalised communities. By invalidating the acquisition, the decision underline the systematic inefficiencies and delay that hinder critical initiatives for uplifting marginalised communities. Therefore, this judgment highlights the harmful impact of bureaucratic failures on marginalised communities that delay their access to property rights and perpetuate inequality. **This decision was subsequently overruled in *K. Yadaiah & Ors. v. Government of Andhra Pradesh* (1982).**

61

Soosai & Others v. Union of India & Others

RIGHT IN QUESTION

Right to schemes for Scheduled Castes after conversion to Christianity.

CASE NUMBER

W.P. Nos. 9596 of 1983 & 1017 of 1984, decided on September 30, 1985.

COURT

Supreme Court of India

JUDGES

P. N. Bhagwati, C.J.I. & A. N. Sen and R. S. Pathak, JJ.

CITATION

AIR 1986 SC 733; MANU/SC/0045/1985



FACTS

The Petitioner belonged to the Adi-Dravida Community and had converted to Christianity and was a cobbler by profession. He applied for allotment of bunks free of cost, under the Special Central Assistance Scheme of the Government of India for the welfare of Scheduled Castes. He was rejected on the ground that under this scheme persons belonging to the Scheduled Castes and converted to Christianity are not eligible. The Constitution (Scheduled Castes) Order, 1950 specifically declares that no person who professes a religion different from the Hindu or Sikh religion shall be a member of a Scheduled Caste, and hence the Petitioner challenged its constitutional validity.

COURT DECISION AND REASONING

The Court had to decide whether a person belonging to a Scheduled Caste retains their caste identity on conversion to Christianity. The Court held that to prove that they were being discriminated against in this case, Christian members of the concerned castes would have to prove that they suffer from stigmatisation, socio-economic disability, and cultural and educational backwardness even after conversion. The Court noted that the exemption of persons born into Scheduled Castes who have converted to Christianity was enacted via the President’s powers under Article 341(1) of the constitution, which vests the power to decide which castes, races or tribes would be ‘deemed to be Scheduled Castes in relation to a State or Union territory.’ The Court held that the material placed by the Petitioners was not sufficient to prove that discrimination was faced by them and carried over even after their conversion to the Christian community and dismissed the petition.

SIGNIFICANCE

This is a negative ruling where the Court held that a person belonging to a Scheduled Caste after converting to Christianity will not be eligible for assistance under the scheme, thus adopting a narrow understanding of caste discrimination despite the well documented material on discrimination faced by Dalit Christians or Dalit Muslims and the practices of untouchability that continue to be practised. A new set of petitions on the same question are pending before the Supreme Court.

62

R. Chandevvarappa & Others v. State of Karnataka & Others

RIGHT IN QUESTION

Right of Scheduled Caste persons to not be alienated form land allotted to them.

CASE NUMBER

C.A. No. 8507, 8505 & 8510 of 1995, decided on September 8, 1995.

COURT

Supreme Court of India

JUDGES

K. Ramaswamy, B. L. Hansaria, JJ.

CITATION

1995 SCC (6) 309; 1995 INSC 552; MANU/SC/0805/1995



FACTS

Dasana Rangiah Bin Dasaiah (“the Assignee”), a Scheduled Caste person, was allotted two acres of vacant government land in 1951. The Appellant claimed to have purchased the property from the sons and widow of the Assignee in 1968. One of the Assignee’s sons submitted a representation to the Assistant Commissioner contending that the alienation was in violation of the Revenue Code Rule 43(5). Violation of the Rule was affirmed by the first appellate authority and then subsequently in both the writ petition and the writ appeal before the High Court. The Appellant then filed an appeal challenging the order of the Division Bench before the Supreme Court.

COURT DECISION AND REASONING

The Court recognised that the first issue is to determine the nature of the right given to the Assignee Dasana. The Court noted that the lands assigned to individuals belonging to Scheduled Castes and Scheduled Tribes are meant to remain in their personal possession for cultivation and cannot be alienated. Citing Muralidhar Dayandeo Kesakar, the Supreme Court affirmed the prohibition on alienation of land assigned by government to Scheduled Caste persons to protect the economic rights of marginalised social groups. On the issue of adverse possession, the Court noted that the Appellant who has now acquired the land from the original grantee could not claim ownership to the property by virtue of adverse possession because the original grant was carried out with restrictions on alienation. The sale of the assigned land was deemed void as the Assignee’s land remained protected from alienation.

SIGNIFICANCE

The Court emphasised the constitutional aim to secure economic justice under Articles 38, 39 and 46 of the Constitution that mandate the distribution of material resources for welfare of marginalised communities, for the purpose of economic empowerment.

63

Chameli Singh & Others v. State of Uttar Pradesh & Others

RIGHT IN QUESTION

Right to shelter is a part of fundamental right to life for allotment of land to Scheduled Castes.

CASE NUMBER

C.A.Nos. 12122 of 1995, decided on December 15, 1995.

COURT

Supreme Court of India

JUDGES

K. Ramaswamy, Faizanuddin & B. N. Kirpal, JJ.

CITATION

1996 (2) SCC 549; MANU/SC/0286/1996



FACTS

The Appellants owned agricultural land in Bijnore, Uttar Pradesh which was acquired under the Land Acquisition Act, 1894 to provide housing to Dalits. The government issued notifications under Sections 4(1) and 6 of the Act and invoked the urgency clause under Section 17(4) to dispense with the mandatory inquiry under Section 5-A. The Appellants challenged the acquisition while arguing that the land was not waste or arable and rendering the use of the urgency clause is invalid. There was no genuine urgency justifying the bypassing of the inquiry under Section 5A. Additionally, acquisition violated their right to livelihood under Article 21 as the land was their sole means of livelihood.

COURT DECISION AND REASONING

The Supreme Court upheld the validity of the land acquisition and stated that the invocation of the urgency clause was justified given the public purpose of providing housing for Dalits. Therefore, dismissing the appeal. The Court recognised the right to shelter as an integral part of the right to life under Article 21. It emphasised that housing is essential for ensuring human dignity, physical and mental well-being, and equal opportunity. The Court held that the government’s decision to invoke the urgency clause under Section 17(4) was based on a constitutional obligation to address the housing needs of marginalised communities. It stated that courts should not interfere with such decisions unless mala fides are proven. The Court also emphasised that the deprivation of an individual’s property for public purpose, such as housing for Dalits, is constitutionally permissible if compensation is provided. The provision of housing was deemed a national and constitutional urgency.

SIGNIFICANCE

The judgment reinforced the inclusion of shelter within the ambit of the right to life under Article 21 of the Constitution. It highlights the State’s obligation to ensure social and economic justice for marginalised section of society through planned development initiatives.

“ Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The Preamble to the Indian Constitution assures to every citizen social and economic justice and equity of status and of opportunity and dignity of person so as to fasten fraternity among all Sections of society in an integrated Bharat. Article 39(b) enjoins the State that ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker Sections of the society to minimise inequality in income and endeavour to eliminate inequality in status. Article 46 enjoins the State to promote with special care social, economic and educational interests of the weaker Sections of the society, in particular, Schedules Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life.”

JUSTICE K. RAMASWAMY

Chameli Singh & Others v. State of Uttar Pradesh & Others

64

Dharma Naika v. Rama Naika & Another

RIGHT IN QUESTION

Validity of transfer of land granted to SCs or STs executed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.

CASE NUMBER

Civil Appeal No. 2802 of 2001, decided on February 5, 2008.

COURT

Supreme Court of India

JUDGES

Tarun Chatterjee & Dalveer Bhandari, JJ.

CITATION

(2008) 14 SCC 517; MANU/SC/7113/2008



FACTS

The government granted land to a Scheduled Caste individual named Shri Tejyanaika, restricting its sale for 15 years. After the expiration of the 15-year period, his heirs decided to sell the land to Dharma Naika, but the Karnataka SC/ST (Prohibition of Transfer of Certain Lands) Act was enacted, requiring government permission for such transfers. Despite this, the heirs executed the sale deed without permission. Authorities moved to reclaim the land, claiming the sale violated the Act. The Assistant Commissioner ruled the sale invalid, restoring the land to Tejyanaika's heirs. Dharma Naika's family challenged this ruling in the Karnataka High Court and then the Supreme Court, asserting the agreement was valid as it preceded the Act.

COURT DECISION AND REASONING

The Supreme Court dismissed the appeal, upholding the nullification of the sale. The Court stated that the law was created to protect SCs and STs, who were often coerced into transferring their granted lands to more affluent individuals for nominal or no compensation. The Court noted that the Act expanded the definition of "transfer" to include not just completed sales but also agreements to sell, even if they did not pass ownership immediately. Although the agreement for sale was made in 1976 (before the Act), the actual transfer (through the registered sale deed) occurred in 1986—after the Act's enforcement. Since no government permission was obtained, the transfer violated Section 4(2) and was declared void. The Court emphasized that the Act was designed to restore alienated land to SC/ST grantees or their heirs, even if it had been transferred under an earlier agreement.

SIGNIFICANCE

This judgment reinforces the protective measures for SCs and STs under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. It underscores that even agreements predating the Act do not validate transfers executed post-Act without governmental permission. This case highlights the judiciary's role in safeguarding the land rights of marginalized communities, emphasizing legislative intent of protecting marginalized groups from economic exploitation and preserving their land ownership.

65

Sudha v. State of Tamil Nadu

RIGHT IN QUESTION

Right of victims of caste-atrocities for relief under Rule 12 of SC/ST (PoA) Rules, 1995.

CASE NUMBER

W.P. (MD) No. 23035 of 2015, decided on January 29, 2016.

COURT

Madras High Court

JUDGE

D. Hariparanthaman, J.

CITATION

Not available



FACTS

The Petitioner is a woman belonging to Scheduled Caste, whose brother was murdered by dominant caste persons. An FIR was registered against the accused, and the investigation was underway. The Petitioner then filed a writ of mandamus seeking directions against the State to provide her an appointment on compassionate grounds in any suitable post in consideration of her educational qualification.

COURT DECISION AND REASONING

The Court noted that Rule 12 of SC/ST (PoA) Rules provides for measures to be taken by District Administration for providing relief in cash or in kind to victims of atrocity, their family members, and dependents. Such immediate relief included food, water, clothing, shelter, medical aid, transport facilities and other essentials necessary for human beings. Specifically, Clause 21 of Annexure I of the SC/ST (PoA) Rules provided that the amount of relief for victims of murder, death, massacre, rape, mass rape, gang rape, permanent incapacitation and dacoity included pension to widows and dependents of deceased, full cost of education and maintenance of children, provisions of daily essentials such as utensils, rice, wheat, etc. for a period of three months. Considering these provisions, the counter-affidavit filed by Deputy Superintendent of Police and letter of Superintendent of Police to District Collector and District Magistrate recommending appointment of Petitioner, the Court held that the petitioner was entitled to relief of employment assistance as per SC/ST (PoA) Rules. The Court further held that it was mandated in the Rules that such employment be provided within three months from the date of the murder.

SIGNIFICANCE

This decision affirmed timely and comprehensive relief to victims of atrocities underscoring the legal obligation of the State to not only protect marginalised communities from caste-based atrocities but also to provide effective support and rehabilitation to victims of violent crimes.

66

P. Sathish Kumar v. State of Tamil Nadu

RIGHT IN QUESTION

Compensation for victims of caste-based atrocities.

CASE NUMBER

W.P. No. 10602 of 2019, decided on June 7, 2019.

COURT

Madras High Court

JUDGES

S. Manikumar & Subramonium Prasad, JJ.

CITATION

AIR Online 2019 MAD 1528



FACTS

The Petitioner filed the present petition to direct District Collector and Superintendent of Police to provide all appropriate reliefs mandated under the SC/ST (PoA) Act and Rules arising out of caste atrocities committed in a violent incident in Vilipuram. The Petitioner also raised issues with regards to specifically instilling protective measures for persons in inter-caste marriages, who are at risk, owing to this incident. Lastly, the Petitioner requested directions to ensure the completion of the investigation in an appropriate and prompt manner as provided for under the 1995 Rules.

COURT DECISION AND REASONING

The Court examined the status report of District Adi Dravidar Welfare Officer of Villupuram detailing the incident and the violence and damage to property instigated by dominant caste persons on account of inter-caste marriages. The couple were threatened by a mob of over two hundred people attacking their community resulting in property damage and severe injuries. Superintendent of Police and District Collector had suggested relief funds for affected persons, however, in noting that only six of the thirty-five victims were provided compensation and the delay in investigation in violation of the Rules, the Court directed that compensation be provided to all affected persons and spot inspection be carried out immediately as mandated under Section 6 of 1995 Rules. The matter was listed for compliance.

SIGNIFICANCE

This case demonstrates the lackadaisical attitude of authorities in taking strict and prompt action in matters of caste-based atrocities. However, the Court also ensures there's no failure in compensation for victims of such violence.

67

T. Murugesh v. Director Dr. Ambedkar Foundation & Another

RIGHT IN QUESTION

Right to financial assistance for couples in inter-caste marriages.

CASE NUMBER

W.P. (MD) No. 10288 of 2020, decided on September 29, 2020.

COURT

Madras High Court

JUDGE

G.R. Swaminathan, J.

CITATION

Not Available



FACTS

The Petitioner belongs to the Hindu Arunthathiyar community, a Scheduled Caste community. He married a dominant caste person from a backward class community. This being an inter-caste marriage, the Petitioner was entitled to receive financial assistance under a scheme introduced by the Central Government. His application to this end was rejected owing to issues in documentation. A Writ Petition was therefore filed to direct the first Respondent to grant financial assistance to the sum of Rs. 2,50,000/- to the Petitioner under the "Dr. Ambedkar Scheme for Social Integration through Inter-Caste Marriages" within the time stipulated by this Court.

COURT DECISION AND REASONING

During the hearings, the second Respondent submitted that they would dispatch the community certificate and that the first Respondent will receive the same within the span of one week. Recording this in an undertaking, the writ petition was disposed of. The Court however passed a general observation that in processing applications under the "Dr. Ambedkar Scheme for Social Integration through Inter-Caste Marriages" introduced by the Union Government, the Court expects concerned authorities to treat such applications promptly. It further noted that failure in this regard would defeat the purpose of the scheme.

SIGNIFICANCE

The Court in this case emphasised the importance of making schemes and measures accessible and ensuring protective environments through financial support for couples in inter-caste marriages who face marginalisation socially and economically.

68

M. Gowri v. The District Collector & Others

RIGHT IN QUESTION

Right of victims of caste-atrocities to pension under SC/ST (PoA) Rules.

CASE NUMBER

W.P. (MD) No. 2790 of 2021, decided on April 19, 2022.

COURT

Madras High Court

JUDGE

Abdul Quddhose, J.

CITATION

2022 (2) MWN (Criminal) 321



FACTS

In the present case, a petition was filed seeking an order directing Respondents to provide the Petitioner with pension owing to the death of the Petitioner’s husband who was murdered by dominant caste persons, as per Annexure I of Rule 12(4) of SC/ST (PoA) Amendment Rules 2016.

COURT DECISION AND REASONING

The Court noted from the submissions of the Additional Government Pleader appearing for Respondents that the Petitioner has been receiving pension from the date of her husband’s death, and till date she has received Rs. 2,73,236/- and only due to her present financial position, she was not paid the pension amount. But it was also submitted that the Respondents were willing to pay arrears to the petitioner if sufficient time was granted and that they will continue to pay the pensions on a monthly basis henceforth. Recording these statements, the Court directed that arrears that were due be paid to the Petitioner within a period of four months and pension be continued in the future.

SIGNIFICANCE

The Court order enforces State obligations to provide timely financial assistance to dependents of victims of caste-based atrocities and facilitates their rehabilitation promptly. However, it is unfortunate to note that unless the Court orders, the State is not fulfilling its duties proactively and victims of caste violence have to run from pillar to post to realise entitlements provided under the SC/ST (PoA) Act.

69

K. Shanthi v. District Collector, Dindigul & Others

RIGHT IN QUESTION

Right of a Scheduled Caste person married to a person from backward class to be entitled to remedy under SC/ST (PoA) Act, 1989.

CASE NUMBER

CrI. O.P. (MD) No. 9209 of 2017, decided on September 27, 2019.

COURT

Madras High Court

JUDGE

N. Anand Venkatesh, J.

CITATION

2019 (6) CTC 139; MANU/TN/6722/2019



FACTS

The Petitioner was a victim belonging to Scheduled Caste community and her husband is the de facto Complainant belonging to backward class community. His complaint was filed under Sections 294(b), 324 and 506(ii) of IPC r/w Section 3(1)(s) of SC ST (PoA) Act, 2014. On completion of investigation, a report was filed which is still pending. The Petitioner made a representation to the District Collector for compensation for which she was entitled to under the Rules. Since the representation received no response, this petition was filed to seek direction regarding compensation as per Rule 12(4) of SC ST (PoA) Amendment Rules, 2016.

COURT DECISION AND REASONING

The report of the District Collector treated the Petitioner as part of the backward class community since her husband converted to Christianity and was part of the backward class community. The Court held that the District Collector’s view would only stand to deprive the Petitioner of the compensation that she is otherwise entitled to under the corresponding rules. It was held that caste is determined only based on birth and cannot be changed by virtue of marriage. The law was well settled that suffering disabilities socially, economically and educationally was the real test and mere marriage or conversion can never change a person’s caste identity. The Court further noted that in this case there was absolutely no material to demonstrate that the Petitioner had also converted to Christianity and if her husband had converted, such conversion had no effect on the Petitioner’s caste status as a Scheduled Caste person. The Court lastly observed that the legislature has provided for a remedy for victims of Scheduled Caste communities and this provision must be understood purposively to not deprive the Petitioner from claiming compensation.

SIGNIFICANCE

The Court’s decision strengthened the notion that marginalised caste persons are not disentitled from the protection of the State merely on account of inter-caste marriage, and that the legal identity conferred upon marginalised castes as Scheduled Castes is reflective of historical injustices suffered by them.

