

SC/ST (POA) Act 1989

An Administrator's Perspective.

Prefatory Remarks

- A sensitive and humane subject
- With combustible political fallout

What is a crime

Mere ACTUS REUS is not a crime.

To be a crime, it should be backed by MENS REA

Precursors to SC/ST Act

Article 17 of the Constitution abolished
untouchability.

Untouchability Act 1955

By an amendment in 1972

Renamed as Protection of Civil Rights Act 1955.

Atrocious incidents leading to this Act

- Ramanathapuram Riots
- Kilvenmani massacre of 42 Dalits in 1968 in TN
- Killing of Dalit Kotesu in Kanchikacherla in 69
- Indravelli Firing in AP on Adhivasis

SC/ST Act 1989

Announcement by Sri Rajiv Gandhi, PM on 15 Aug 1987, as PCR Act was found inadequate.

Enacted on 30th Jan 1990

Antecedents leading to SC/ST(POA) Act

- Massacres at Belchi in 1979, Pipra in 1980 of Bihar
- Burning of Dalit bridegroom on horseback at Kafatla in UP in 1980
- Police Firing- killing 15 tribals at Banjhi in Sahebganj in Bihar

**Crux of the problem is its misuse
both by the members of the
Community & upper castes, for
settlement of personal scores.**

Law Commission findings.

- In MP 75% false
- 81% cases in UP were false and 5% were against minorities

Misuse or abuse by the Judiciary

Justice Karnan, used this Act to give a questionable judgement against the then CJI J.S. Khehar awarding 5 years of RI

A private place of worship

Places of worship alongwith lands and apartments owned by private persons.

- Can they prevent others and SC/ST from worshipping there?
- No. PCR Act permits.

Disconnection of Electricity

At Harijanwada in Vinukonda, AP due to non payment of charges. MLA threatened and lodged a complaint under this Act with Police.

Legality of his move?

Case of Cine Artiste Rajani @ Mrs Malhotra

Her mother in law lodged the case under POA Act

- AP High Court quashed.

Mere belonging to SC/ST does not entitle invocation of SC/ST Act

- ★ SC stayed arrest of Shajan Skaria, a digital media journalist of Kerala for his reporting corruption against Mr PV Sreenijin, MLA of Ruling Party and son in law of Justice KG Balakrishnan, Ex-CJI
- ★ “Supposes A is a member of SC, takes 25 lacs from B and does not return the money to B. B calls him Cheat. Does this involve SC/ST Act..”
CJI Chandrachud. Shajan Scaria V Kerala & Anr

Case of Dalit Christian

Dalit christian gave the complaint. Revenue Officer gave certificate as BC-D.

Can he be the complainant?

➤ YES

➤ Kerala High Court - conversion from one religion does not change the caste of a person

Dalit Christian

Files nomination for a reserved A/C.

Is it valid?

- No. Union Law Minister clarifies that it is covered by RP Act.

Christian Tribal. Can he file a case under POA Act?

Yes. Remoteness of the residence is the criterion
and not the Caste.

Dalits as conduits. False case by Upper Caste

How to go about?

Case of Anglo

Indians

NCSC is mandated to take care of Anglo Indians also. Can an Anglo Indian be the complainant under this Act.

Denial of Posting or promotion

Case against Sri K Aravind Rao IPS, DGP

Case of Vice Chancellor of JNTU, Prof Rajagopal

Cow Vigilantism

No

Conflict between POCSO Act & SC/ST(POA) Act

Kerala High Court ruled that POCSO Act Prevails and Sec 31 of POCSO Act provides for the application of CrPC, anticipatory bail can be granted.

Renoj R.S.Vs State of Kerala and Anr.

But if POCSO Act is for rape, anticipatory bail and bail is denied vide CrI Law Amendment 2018

Honour Killings

Yes

Suicide in Universities

Case of Rohit Vemula in UOH in 2016

- Media presented it a case of State sponsored caste discrimination?
- Funeral Prayer for Yakub Menon, death punishment for Bombay bombings.
- Lack of clarity about his caste?

MRPS agitation

Rival Sect.

Ding-dong between the Parliament and the Supreme Court.

Subash Kasinath Mahajan case.
Its background

Safeguards against misuse by SC in Subash Kasinath Mahajan case

- Prelim Enquiry before FIR by DySP
- Anticipatory bail be given-barred by 1989 Act
- Arrest of govt servants - permission of appointing authority
 - Arrest of Public, SP's approval

Nullification of SC judgment in Subash Kasinath Mahajan case

Govt brought in Amendment in 2018

LATEST POSITION

What is the wayout?

In a latest judgment, the SC had categorically ruled that “humiliation on caste grounds alone decides

Meaning of PUBLIC VIEW.

Kerala HC Judgment – Digital Presence through internet has changed the meaning of Public View – Victim need not be physically present.

It's a hybrid Act

Punitive, preventive & ameliorative.

Salient features

- 1) Detailed elaboration of offences. More sociological in nature - not legalese like IPC
- 2) Enhanced punishment for public servants
- 3) Neglect of duties by Public servants
- 4) Cancellation of Arms licences in atrocity prone areas.

Abuse in the name of caste on
phone.



Continued.

5. Provision of arms to the victims
6. No anticipatory bail (Sec 18)
7. No probation of convicts (sec 19)
8. Relief and compensation to victims
9. Spl Courts & Prosecutors

Continued

10. Spl Authorities for monitoring ameliorative measures

11. Periodic review by DVMC, SVMC

12. Identification of atrocity prone areas.

Thank you