

## **Schedule caste and Schedule tribe (Prevention of Atrocities) Act, 1989**

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This article does not try to state as to the offences punishable under this act. It tries to cover the amendment and the legal interpretations regarding the act, so as to enable the functionaries of Criminal Justice Administration for proper implementation of the act. The amendment to the act has come into force on 26/01/2016, with prospective effect. The amended act has covered various offences committed against the dalits, which are not covered earlier by any act or IPC like allegations of witchcraft etc.

In a judgment between Gunda Sampath Vs State of Andhra Pradesh <sup>(1)</sup>, the Hon'ble High Court, expressed concern over the misuse of the act, which imposes heavy responsibility on the investigation and prosecution of the case, so that no case is foisted with an agenda of personal vendetta or at the behest of vested interests. To ease the said responsibility, the Apex courts and High court have delivered some precedents, let us see, some of them.

### **FIR:**

The first stage of any case is the registration of case. The famous Lalita Kumari Judgment<sup>(2)</sup> which envisaged the compulsory registration of FIR in respect of a cognizable offence and also provided for two weeks preliminary enquiry in respect of reports not revealing a cognizable offence, is also applicable to the cases under this act. The case between Dr.Subhash Kashinath Mahajan Vs State of Maharashtra and another <sup>(3)</sup>, wherein it was held that, the permission from SSP to arrest the accused and if the accused is a public servant, then permission from the head of the concerned department was necessary to arrest the said public servant, has been set at naught by the Amendment act, 2018.

### **SEC 41 A CRPC NOTICE**

Sec 18 of the act prohibits for grant of an Anticipatory bail for the accused under this act. The bail also cannot be granted to the accused unless an opportunity is granted to the prosecution to oppose the said bail petition. Hence, everybody is under the impression that Sec 41 A CrPC notice is not applicable to the cases under this act. It is relevant here to mention that Sec 41 A is notice, which is prior to arrest, whereas the above provisions of the act are dealing with bail, which is after arrest.

In Konidhana Anand Sharma Vs State of A.P.<sup>(4)</sup>, the Hon'ble High Court has supported the issuance of Sec 41 A CrPC notice, in the offences under this act, to the extent of calling it as Station Bail.

## **REMAND TO SPECIAL COURT OR JURISDICTIONAL COURT.**

As per the new amended act, Section 193 of the Code has no application to trial of offences under the SC/ST Act by the Special Court and the Special Court under SC/ST Act has jurisdiction to deal with the cases involving offences under SC/ST Act right from the initial stages in the same manner as a Magistrate can deal with them under the code.

However, the Magistrates having jurisdiction over the area in which offences under SC/ST are alleged to be committed, empowered to deal with the cases under Section 190 of the Code will also have the jurisdiction to deal with cases during the “inquiry” i.e. pre-trial stages including exercise of power under Section 156 (3) of the code and thereafter he shall transmit all such cases to the Special Court situated within that jurisdiction, as held in the judgment between Boda Rakesh Naik Vs The State of Telangana<sup>(5)</sup>.

Hence remand can be either made to the Jurisdictional court or the special court.

## **KNOWLEDGE AND INTENTION**

As per the pre amended act, unless the offence is committed with a culpable mental state, i.e., Mensrea, there was no offence. That is to say Intention to commit the offence on a person as he belongs to certain caste was important for charging the case. This also found credence in case between S.Venkata Lakshamma Vs State of A.P<sup>(6)</sup>. But now, after the amendment, the mere knowledge that the victim belongs to Schedule caste or Schedule tribe is sufficient, in Ashrafi Vs State of U.P.<sup>(7)</sup>, this aspect has been interpreted. Hence, the intention plays a back seat now after the amendment.

## **CASTE**

A person can change his religion and faith but not the caste, to which he belongs, as caste has linkage to birth, was the point held in Mohammad Sadique Vs. Darbara Singh Guru<sup>(8)</sup>, while dealing with the election petition. The Apex court did not elaborate about the caste and confirmed that the parents of the petitioner belonged to the Schedule caste and that the petitioner obtained the caste certificate after conversion and the caste certificate showed that the petitioner belonged to Schedule caste.

But in Chinni Appa Rao vs State of A.P<sup>(9)</sup>, the Hon’ble High Court held that on conversion to Christianity, the person loses the caste certificate and he/she cannot claim to be belonging to Schedule caste or Schedule Tribe. In yet another case between Sunitha Singh Vs State of U.P.<sup>(10)</sup>, the Apex Court held that marriage cannot change the caste. A spouse cannot claim to be belonging to the Schedule Caste/ tribe of the other spouse, basing alone on marriage.

Hence, the caste certificate issued by the competent authority should be considered as the criterion for deciding the issue of the victim as well as the accused.

## **NON –OBSTINATE CLAUSE**

Many a times, it has challenged the thought process of the Criminal Justice Administration functionaries, as to where the case has to be tried, when the offence forms part of this act and also that of other acts like Juvenile Justice (Care and Protection) Act, 2015 and Protection of Children From Sexual Offences act, 2012, which acts are also equipped with non-obstinate clauses of predominance over the other acts.

In State of A.P. Vs Mangali Yadagiri<sup>(11)</sup>, it has been settled that Victim belongs to Schedule caste/tribe and an offence under the provisions of POCSO are committed on the child, then the special court of POCSO shall have jurisdiction to try the case.

Whereas in case of the offence being committed by a Child in conflict with law, then the case has to be referred to Juvenile Justice Board.

## **The ACT for lay man**

- Exclusive Special Courts can take cognizance of the case directly.
- Cases to be tried to be disposed within 2 months.
- an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, or an order of the Special Court or the Exclusive Special Court granting or refusing bail of a Special Court or an Exclusive Special Court, to the High Court, within a period of ninety days from the date of the judgment, sentence or order appealed from: Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days. Every appeal preferred shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal
- A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.
- A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.
- A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.
- the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including— (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public; (b) issuing directions for non-disclosure of the identity and addresses of the witnesses; (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if

necessary, pass appropriate orders for protection: Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint: Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

- All proceedings relating to offences under this Act shall be video recorded.

<p>Sec 3 Punishments for offences of atrocities.  (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—  (a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;  (b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;  (c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;  (d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;  (e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;  (f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;  (g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.  Explanation.—For the purposes of clause ( f ) and this</p>	<p>shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.</p>
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clause, the expression “wrongfully” includes—

(A) against the person’s will;

(B) without the person’s consent;

(C) with the person’s consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt;

or

(D) fabricating records of such land;

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

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;

(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe—

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

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

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

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

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing

benefits of any public service which is due to him;  
(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;  
(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;  
(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;  
(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;  
(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;  
(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

Explanation.—For the purposes of this clause, the expression “object” means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

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

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

Explanation.—For the purposes of sub-clause (i), the

expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

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

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence:

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

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

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

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

<p>(C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;</p> <p>(D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or</p> <p>(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;</p> <p>(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or</p> <p>(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe,</p>	
<p>(3) (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—</p> <p>(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence,</p>	<p>the person who gives or fabricates such false evidence, shall be punished with death;</p>
<p>(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards,</p>	<p>shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;</p>
<p>(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any</p>	<p>shall be punishable with imprisonment for a term which shall not be less</p>

property belonging to a member of a Scheduled Caste or a Scheduled Tribe,	than six months but which may extend to seven years and with fine;
(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe,	shall be punishable with imprisonment for life and with fine;
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member	shall be punishable with imprisonment for life and with fine;
(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member,	shall be punishable with such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine.
(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,	shall be punishable with the punishment provided for that offence; or
(vii) being a public servant, commits any offence under this section,	shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.
4. (1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, (2) The duties of public servant referred to in sub-section (1) shall include— (a) to read out to an informant the information given	shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the informant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.”

## THE SCHEDULE

[See section 3(2) (va)]

Section under	the Name of offence and punishment Indian Penal Code
120A	Definition of criminal conspiracy.
120B	Punishment of criminal conspiracy.
141	Unlawful assembly.
142	Being member of unlawful assembly.
143	Punishment for unlawful assembly.
144	Joining unlawful assembly armed with deadly weapon.
145	Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.
146	Rioting.
147	Punishment for rioting.
148	Rioting, armed with deadly weapon.

217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
319	Hurt.
320	Grievous hurt.
323	Punishment for voluntarily causing hurt.
324	Voluntarily causing hurt by dangerous weapons or means.
325	Punishment for voluntarily causing grievous hurt.
326B	Voluntarily throwing or attempting to throw acid.
332	Voluntarily causing hurt to deter public servant from his duty.
341	Punishment for wrongful restraint.
354	Assault or criminal force to woman with intent to outrage her modesty.
354A	Sexual harassment and punishment for sexual harassment.
354B	Assault or use of criminal force to woman with intent to disrobe.
354C	Voyeurism.
354D	Stalking.
359	Kidnapping.
363	Punishment for kidnapping.
365	Kidnapping or abducting with intent secretly and wrongfully to confine person.
376B	Sexual intercourse by husband upon his wife during separation.
376C	Sexual intercourse by a person in authority.
447	Punishment for criminal trespass.
506	Punishment for criminal intimidation.
509	Word, gesture or act intended to insult the modesty of a woman.

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1. Gunda Sampath Vs State of Andhra Pradesh; 2017(2) ALD (Cri) 271(AP).
  2. Lalita Kumari Vs State of U.P.
  3. Dr.Subhash Kashinath Mahajan Vs State of Maharashtra and another.; 2018(1) ALD (Cri) 629(SC).
  4. Konidhana Anand Sharma Vs State of A.P. 2017(2) HLT (Cri) 167.
  5. Boda Rakesh Naik Vs The State of Telangana; 2017 1 ALD CrI 1035;
  6. S.Venkata Lakshamma Vs State of A.P.; 2014(1) ALD (Cri) 717(A.P).
  7. Ashrafi Vs State of U.P., 2018(1) ALT (Cri) 239 (SC).
  8. Mohammad Sadique Vs. Darbara Singh Guru; 2016 0 AIR(SC) 2054;
  9. Chinni Appa Rao vs State of A.P; 2016(1) ALD (Cri) 545
  10. Sunitha Singh Vs State of U.P.; 2018 0 Supreme(SC) 33
  11. State of A.P. Vs Mangali Yadagiri, 2016(1) ALD (Cri) 314(A.P)