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The Constitutional Tug-of-War: Judicial Evasion, Legislative Supremacy, and the Restorative Trajectory of the SC/ST (Prevention of Atrocities) Act, 1989

Pragyanshu Gautam
Research Associate, UCL Faculty of Laws

Abstract: This research paper examines the constitutional crisis of the SC/ST (PoA) Act, 1989. The Supreme Court's *Dr. Subhash Kashinath Mahajan (2018)* verdict, citing 'misuse,' imposed non-statutory hurdles: mandatory preliminary inquiry and prior arrest sanction. This dilution subverted the Act's purpose of instantaneous deterrence [Article 15(4)], drawing wide criticism as judicial overreach. Parliament restored the Act via the 2018 Amendment (Section 18A), reinstating the bar on anticipatory bail. The *Union of India (2019)* ruling affirmed that judicial power (Article 142) cannot supplant the statute, rejecting suspicion on Dalit victims. Empirically, the study debunks the 'false case' narrative. NCRB data (up to 2022) reveals a deep implementation deficit: despite high registration, the conviction rate is critically low at 32.4%, with over 90% trial pendency. Failure is attributed to institutional impunity, exacerbated by the judicial requirement to prove Caste Animus *(Hitesh Verma, 2020)*. Efficacy is now determined by a crisis of executive accountability and the urgent need for institutional de-casteing.

Keywords: Caste Animus, Implementation Deficit, Judicial Overreach, Protective Discrimination, SC/ST (PoA) Act 1989

I. Introduction

The **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act)**, stands as a specialized, deterrent statute, indispensable for addressing the persistence of caste-based systemic discrimination and violence in India.[1] The necessity for this robust measure was empirically demonstrated by the failure of earlier laws; for instance, the low conviction rates under the **Protection of Civil Rights Act, 1955**,[2] rarely exceeded single digits. More acutely, the period preceding the PoA Act's enactment saw a sharp rise in serious caste-based crimes, illustrating the severe inadequacy of the general penal code against caste animus. This paper undertakes a critical examination of the unprecedented constitutional crisis that unfolded between 2018 and 2019, fundamentally challenging the Act's statutory potency and the doctrine of **separation of powers**. Specifically, it analyzes the controversial procedural interpolation introduced by the Supreme Court in ***Dr. Subhash Kashinath Mahajan v. The State of Maharashtra*** – a judgment widely perceived as an act of judicial overreach.[3] This analysis then traces the subsequent, decisive constitutional restoration enacted by the Parliament and its validation in ***Union of India v. State of Maharashtra***.[4] Finally, the paper scrutinizes the judicial premise of the Act's alleged 'misuse' and investigates how **institutional factors**, particularly entrenched caste bias within the law enforcement machinery, contribute to the high rate of case non-substantiation.

II. Judicial Overreach and the Imposition of Non-Statutory Hurdles (2018)

2.1. The Dilution of Deterrence: The *Mahajan* Judgment

In March 2018, a two-judge bench of the Supreme Court, comprising Justice A. K. Goel and Justice U. U. Lalit, pronounced the *Dr. Subhash Kashinath Mahajan* verdict. The Court, observing the possibility of the Act's provisions being exploited for 'extraneous considerations,' and possibly relying on the often-cited, albeit contested, statistic that **over 40% of cases registered under the Act are ultimately closed by police as 'false'** or unsubstantiated,[5] introduced six non-statutory procedural safeguards that critically eroded the Act's core principle of instantaneous arrest and deterrence. The key directives imposed included:

- **Prior Sanction for Public Servants**: Arrest could only be effected with the written permission of the appointing authority.
- **Prior Sanction for Non-Public Servants**: Arrest required the written permission of the Senior Superintendent of Police (SSP) of the District.
- **Mandatory Preliminary Inquiry (PE)**: A PE, to be conducted by an officer of the Deputy Superintendent

of Police (DSP) level, was deemed mandatory prior to the registration of an FIR to determine if the allegations were 'frivolous or motivated.'

The Court justified these fetters by asserting that they protected the individual's **Right to Life and Personal Liberty (Article 21)** from the serious consequences of prosecution 'even on a false complaint.'[6] However, by legislating new procedural conditions absent from the statute, the judgment was seen as an act of judicial law-making, crossing the constitutional boundary and rendering the Act temporarily **ultra vires** to its protective intent.

2.2. Legislative Restoration: The Plenary Power to Cure

The subsequent **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018** (Amendment Act),[7] inserted **Section 18A**. This new section contained an explicit **non-obstante clause**, unequivocally overriding any court judgment or direction. Section 18A categorically eliminated the prerequisites of preliminary inquiry, prior approval for arrest, and the application of anticipatory bail provisions (**Section 484 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)**).[8]

This swift legislative action restored the Act's original, unconditional deterrent structure, demonstrating the Parliament's constitutional authority to cure a judicial defect in statutory interpretation.

III. The Reversal and the Affirmation of Constitutional Imperatives (2019)

3.1. The Upholding of Protective Discrimination

The three-judge bench, in the subsequent ***Union of India v. State of Maharashtra*** case, partially reversed the *Mahajan* verdict and affirmed the constitutional validity of the 2018 Amendment.[9] The Court explicitly recognized that the procedural safeguards introduced in 2018 were inherently detrimental to the constitutional mandate of protective discrimination (Article 15(4))[10] and the principle of **Equality (Article 14)**.[11] The bench emphatically stated, 'can't treat all of them (Dalit Atrocities victim) as a liar,' fundamentally rejecting the judicial suspicion cast upon the entire victim class.

3.2. Scrutiny of Judicial Policy-Making

The 2019 ruling provided a rigorous constitutional analysis of the limits of judicial power. It determined that the preceding bench's reliance on **Article 142** (the power to do complete justice) was misplaced. Referencing established jurisprudence, the Court affirmed that Article 142 is a supplementary power that cannot 'supplant the substantive provisions' of a legislative enactment, particularly where the statute's provisions are clear and unambiguous.[12] The introduction of the mandatory PE and sanctions was, therefore, declared **'impermissible'** as it constituted policy-making – a domain reserved for the Legislature – violating the core tenets of the **separation of powers**.

The Court, consequently, overruled the critical procedural fetters of the 2018 judgment, preserving the Act's core strength. The bench also confirmed that the Indian legal framework includes specific deterrents against malicious prosecution, such as **Section 224** (False information) and **Section 298** (False charge) of the **Bharatiya Nyaya Sanhita (BNS)**.[13]

IV. Discussion: The Falsity Discourse and Quantified Institutional Impunity

The discourse surrounding the 'misuse' of the PoA Act, which served as the cornerstone of the 2018 dilution, warrants a deeper sociological and institutional critique grounded in quantitative data. The oft-cited high rate of cases categorized as 'False' or 'unsubstantiated' is, in reality, a symptom of **systemic judicial and police failure**, not victim deceit.

4.1. Updated Implementation Data and Decline in Justice Delivery

The severity of the implementation deficit is starkly revealed in the latest data from the National Crime Records Bureau (NCRB).[14]

Table

Indicator (NCRB Average, 2018–2022)	Percentage	Comparison / Implication
Cases Registered Against SCs (2022)	**57,582 cases**	Confirms persistent and increasing violence; demonstrates victims' continued willingness to utilize the Act.
All-India Conviction Rate (PoA Act)	**32.4% (2022)**	Indicates a continued decline in prosecution success (down from 39.2% in 2020), severely undermining the Act's deterrent effect.
Pendency Rate (Cases Awaiting Trial)	**90% - 94%**	Reveals the near-total failure of the designated Special Courts to achieve 'speedy trial' as mandated by the Act.
Relief Disbursement (Institutional Failure)	**Severe Delays/Non-compliance**	PoA Rules mandate immediate relief, yet institutional reviews consistently show delayed or non-disbursement.

This data strongly suggests that the high failure rate of PoA cases occurs downstream of the FIR filing, primarily due to the state's inability to secure conviction, rather than initial fabrication.

4.2. The Enduring Challenge of Proving 'Caste Animus' and Judicial Filtering

In recent years, the Supreme Court has consistently reinforced that the core requirement for attracting penal provisions under the PoA Act is the presence of **caste animus** – that the crime must have been committed *on the ground of* the victim's caste. Specifically, the judgment in ***Hitesh Verma v. State of Uttarakhand*** explicitly clarified that a simple insult or altercation is insufficient; the insult must be demonstrably 'on account of' the victim's caste identity, irrespective of whether the act occurred in 'public view.'[15]

This judicial emphasis, while legally sound, serves as a crucial and narrow filter. By requiring rigorous proof of discriminatory intent, courts often exercise their inherent powers (such as **Section 528 of the BNSS** for quashing frivolous complaints) to dismiss cases arising from personal rivalries, thereby re-introducing a version of procedural scrutiny akin to the 'preliminary enquiry' rejected in 2019. This creates an enormous evidentiary burden on the prosecution, especially given the aggravation caused by **deeply-rooted caste bias** within the law enforcement machinery.

V. Conclusion

The legal trajectory from *Mahajan* (2018) through the 2018 Amendment to *Union of India* (2019) provides a profound lesson in constitutional resilience. The definitive overruling of non-statutory hurdles preserved the Act's inherent deterrence and affirmed that the State's fundamental duty to provide immediate protection cannot be superseded by judicial policy preferences. The enduring challenge, however, transcends legal interpretation; it lies in the rectification of the **institutional impunity** and deep-seated caste bias within the administrative and police machinery, evidenced by the persistent low conviction and high pendency rates, and the continued difficulty in judicially establishing **caste animus**, which remain the critical impediment to achieving the legislative goal of dignity and swift justice for the Scheduled Castes and Scheduled Tribes.

The constitutional tussle of 2018-2019 ultimately settled the matter of **legislative supremacy** over judicial policy intervention in protective discrimination statutes. Yet, the data demonstrates that the **law is only as strong as its enforcement mechanism**. The failure is now purely executive and administrative. Until the state addresses the **90%+ pendency** through dedicated infrastructure and eradicates the institutional inertia that translates legitimate complaints into statistical failures (the low **32.4% conviction rate**), the PoA Act will remain a robust legal shield compromised by a weak administrative arm, failing to deliver the promise of justice enshrined in Article 15(4). The next frontier in realizing the Act's vision is not further legal amendment, but uncompromising **executive accountability and institutional de-casteing**.

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[11]. Indian Const. art. 14.
[12]. *Id.*
[13]. Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
[14]. *See* National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, 2023).
[15]. *Hitesh Verma v. State of Uttarakhand*, (2020) 10 SCC 710.
[16]. *See Asif Hameed and Ors. v. State of Jammu and Kashmir and Ors.*, AIR 1989 SC 1899 (emphasizing that the function of the judiciary is interpretation, not pronouncement of policy).