IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 949 OF 2022

Sanjay Krushna Katkar .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

WITH

CRIMINAL APPEAL NO.603 OF 2022

Mukul Goyal s/o Arvind Goyal .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

WITH

CRIMINAL APPEAL NO.740 OF 2022

Naina Surat Rawat w/o Mukul Goyal d/o Surat Singh Rawat .. Appellant

Versus

Arvind Goyal s/o Ishwar Prasad Goyal & Anr. .. Respondents

WITH

CRIMINAL APPEAL NO.741 OF 2022

Naina Surat Rawat w/o Mukul Goyal .. Appellant

Versus

Meena Arvind Goyal & Anr. .. Respondents

Esha/M.M.Salgaonkar

WITH

CRI-INTERIM APPLICATION NO.3315 OF 2022

IN

CRIMINAL APPEAL NO.603 OF 2022

Mukul Goyal s/o Arvind Goyal .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

...

Dr. Abhinav Chandrachud with Ms. Swati Bhushan Sharma, Mr. Pranit Kulkarni, Mr. S.K. Sharma, Ms. Sonali Kulkarni, i/b Mr. Nilesh S. Patil, Advocates for the Appellant in Appeal No. 603/2022.

Mr. Prakash Ambedkar with Mr. Kishore Walanju, Mr. Ashish Deep Verma i/b Mr. Advait V. Shukla, Mr. Hemant Ghadigaonkar, Mr. Sandesh More, Mr. Satish Aher, Mr. Nikhil Kamble, Mr. Siddharth Herode and Mr. Rahul Londhe, Advocates for the Appellant in Appeal Nos. 740/2022 & 741/2022.

Mr.Sanjeev Kadam with Mr.P.P.Raul, Mr.Mayur G.Sanap and Mr.Siddharth Karpe for the Appellant in Appeal No.949 of 2022.

Dr. Birendra Saraf, Advocate General with Mrs. A.S. Pai, Public Prosecutor and Mr. J.P. Yagnik, Additional Public Prosecutor for the State/Respondent.

Mr. Anil V. Singh, Additonal Solicitor General of India with Mr. Aditya Thakkar, Mr. Ashish Chavan, Ms. Savita Ganoo, Mr.Rohit Lalwani, Mr. D.P. Singh, Mr. Abhishek Bhadang, Mr.Pranav Thakur and Ms. Ismita Thakur, Advocates for the Respondent-UOI.

Ms. Swati Bhushan Sharma with Mr. Naveen Sharma, Mr. S.K. Sharma and Mr. Nilesh S. Patil, Advocates for Respondent No. 2 in Appeal Nos. 740/2022 & 741/2022.

Mr. Yash Naik with Mr. Vaibhav Gaikwad and Mr. Atharva R.B., Advocates for Respondent No. 2 in Appeal No. 949/2022.

CORAM	:	**REVATI MOHITE DERE,J. BHARATI DANGRE, J. & N.J.JAMADAR, J.**
RESERVED ON	:	**21st MARCH, 2023**
PRONOUNCED ON	:	**01st SEPTEMBER, 2023**

JUDGMENT

(PER BHARATI DANGRE, J.)

1. By order dated 28.11.2022, the learned Single Judge of this Court (Sarang V. Kotwal, J.) formulated two issues arising before him, to be placed before the Hon'ble the Chief Justice in terms of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 and requested for constitution of a Bench of two or more Judges to decide the same.

2. The issues are eloquently set out in the order dated 28.11.2022, as under:

> "**A.** If a person belongs to a caste or a tribe which is declared by notification as a Scheduled Caste or Scheduled Tribe in a particular State or Union Territory, but not in other parts of the country, then whether any act defined under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; can be an offence outside that State or Union Territory.
>
> **B.** The Appeals under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 can be decided by a Single Judge Bench or by a Division Bench and whether such Appeals would fall within any of the clauses (a) to (i) of Rule 2(II) (Criminal) of Chapter I of the Bombay High Court Appellate Side Rules, 1960."

3. We would proffer to pronounce on the Issue No.(B) ahead of issue formulated as Issue No.(A), as the said issue is more facile and not much debated.

ISSUE NO.B

"WHETHER AN APPEAL UNDER SECTION 14-A OF THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 CAN BE DECIDED BY SINGLE JUDGE OR WHETHER IT REQUIRES HEARING BY THE DIVISION BENCH"

4. The second issue, as regards whether the Appeals under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as **"The Atrocities Act"**), should be decided by the Single Bench or a Division Bench, was also referred to a larger Bench by the Division Bench of this Court (A.S. Gadkari and Milind N. Jadhav, JJ.) on 10.11.2022 while hearing ***Cri. Appeal No. 949 of 2022*** in case of ***Sanjay Krushna Katkar Vs. State of Maharashtra and Anr.***.

5. The Division Bench was unable to agree with the view expressed by another Division Bench/Co-ordinate Bench at Nagpur in ***Cri. Appeal No. 193 of 2018*** in case of ***Gulabrao Marotrao Ulhe Vs. State of Maharashtra***, which, after referring

to Rules 1 and 2 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 had recorded its findings as under:

> "The conduct of business rule in respect of criminal matters clearly makes out two categories of matters to be dealt with by the Single Judge and by the Division Bench. In terms of clause (a) above, all the appeals against - (1) convictions, except in which the sentence of death or imprisonment for life has been passed and (2) acquittals in respect of the offences which are punishable for imprisonment of not exceeding ten years and fine are triable by the Single Judge. Rest all the appeals are required to be decided by the Division Bench."

6. Since the Division Bench in ***Sanjay Katkar*** (supra) was not agreeable to the said proposition and for the following reasons recorded in the order dated 10.11.2022, it followed the course of making over the issue to a Larger Bench, as it was of the opinion that all Appeals pertaining to bail at pre-trial stage, involving offences under the Atrocities Act, including charges punishable with life imprisonment or death, should be heard by the learned Single Judge. The relevant part of the elaborate order reads thus:

> "7) It is pertinent to note that the provisions in all the Acts referred herein above are the special statutes dealing with specific offences not covered by the Penal Code. However the Division Bench at Nagpur has not decided the issue on that basis. The Court has considered the provisions of Appellate Side Rules qua 'conviction and sentence' while passing the said Judgment and Order. The Division Bench has decided that all Applications in connection with bail involving provisions of SC & SC Act should be placed before the Division Bench in accordance with Rule 1 and 2 (supra).
>
> (8) A minute perusal of paragraphs 8 to 11 of Gulabrao Ulhe's case (supra) clearly indicates that, it proceeds on the footing that the sentence prescribed under the provisions of the SC and ST Act and as if this Court is dealing with an

appeal against conviction. It clearly appears that, the criteria of appeals against conviction as stated in Chapter I Rule 2 (II) (Criminal) has been adopted by the Co-ordinate Bench of this Court in the case of Gulabrao Ulhe (supra) while considering the issue of jurisdiction for deciding or dealing with an appeal under Section 14-A of the SC and ST Act. It is to be noted here that, we are at a stage of anticipatory bail/regular bail as contemplated under Section 438/439 of the Criminal Procedure Code (Cr.P.C.) and not an appeal against conviction and sentence under the SC and ST Act.

(9) As noted earlier, paragraph 11 of the said judgment in the case of Gulabrao Ulhe (supra) proceeds on the footing of sentence/punishment prescribed under Section 3(1)(w)(i),(r) and (s) of the SC and ST Act."

7. In order to deal with the legal quandary, posed by the Division Bench and also the learned Single Judge, it is most apposite to consider the scheme of enactment, in which, the provision for "Appeals" has been inserted by way of amendment.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is enacted by the Parliament to prevent the act of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, by providing for Special Courts for trial of such offences and for providing them the relief of rehabilitation.

The special statute was enacted, on cogitating the prevailing scenario, that despite various measures being taken to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they still remain vulnerable and are constantly deprived of the civil rights available to them and are subjected to various offences, indignities, humiliations and harassment. It was also noted

that serious crimes were committed against them for various historical, social and economic reasons and to minimise the atrocities being committed and to deal with such calamitous situation, dire need was expressed for a special legislation.

8. The Atrocities Act enlisted various acts which would amount to "Atrocity" and made such acts committed by a person, not being a member of Scheduled Castes or Scheduled Tribes punishable under Section 3.

The said Section enlisted various such acts, which would amount to causing injury, insult or annoyance to any member of a Scheduled Caste or Scheduled Tribe and it also covered distinct instances, which would intentionally insult a member of a Scheduled Caste or Scheduled Tribe and it even extended to interference in enjoyment of his/her rights as an individual and also cover abusive acts or the acts which would result in imposition of social or economic boycott upon the members of the said community.

The Special enactment contained special provisions, which are given an overriding effect over any other law for the time being in force or any custom or any instrument having effect by virtue of any such law. Duty is cast on the Central Government to ensure effective implementation of the enactment and pursuant to it, even the State Government is duty bound to take measures for its implementation.

The enactment contemplate the constitution of Special Courts and Exclusive Special Courts for providing speedy trial for the victims of the offences under the said Act and it also provide for appointment of Special Public Prosecutors and

exclusive Public Prosecutors for conducting cases in the Special Court.

9. It is in this special statute, Amending Act 1 of 2016 introduced Section 14-A, a provision in form of "Appeals", which prescribed as under :-

> "(2) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail."

The above provision, did not however, specify whether the Appeal would lie before the Single Bench or the Division Bench of the High Court and for ascertaining whether it should lie before the Single Judge or otherwise, one has to necessarily turn to the Bombay High Court Appellate Side Rules, 1960 framed in exercise of the power conferred under Section 122 of the Code of Civil Procedure alongwith Article 225 of the Constitution of India.

10. Chapter I of the Bombay High Court Appellate Side Rules, 1960 prescribe the jurisdiction of Single Judges and Benches of the High Court and Rule 1 in Chapter I specifically provides that the criminal and civil jurisdiction of the Court shall, except in cases where it is otherwise provided, shall be exercised by Division Bench consisting of two or more Judges.

The conduct of business is further bifurcated into two categories; Civil and Criminal.

Rule 2 sets out the jurisdiction of the Single Judge i.e. the matters which the Single Judge may dispose off.

Part I has set out the jurisdiction of the Single Judge in civil cases and part II enlists the arena, wherein the Single Judge may exercise its powers to the exclusion of the Division Bench.

11. Clause (a) of Part II dealing with criminal business has carved out jurisdiction of the Single Judge of the High Court to the following effect:-

> "(a) Appeals against convictions, except in which the sentence of death or imprisonment for life has been passed, appeals against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding ten years or with such imprisonment and fine, and appeals under Section 377 of the Code of Criminal Procedure, revision applications and Court notices for enhancement of sentence for offences punishable on conviction with a sentence of fine only or with sentence of imprisonment not exceeding ten years or with such imprisonment and fine."

Clause (e) of Part II, reads thus:

> "(e) Application for bail or stay, not arising in or out of or relating to any appeal or application already pending in the High Court."

12. On reading the aforesaid provisions, the jurisdiction of the Single Judge in the High Court is clearly carved out and by virtue of clause (e), a specific category is entrusted to the assignment of the Single Judge i.e. Applications for bail or stay except the one, arising in or out of or relating to any Appeal or Application already pending in the High Court.

Apart from this, Miscellaneous Applications filed under Section 482 of Cr.P.C. etc. would also fall in the domain of jurisdiction to be exercised by the Single Judge.

13. The question that falls for consideration by the referral order of the Division Bench headed by Justice Ajay Gadkari and the learned Single Judge, Justice Kotwal, is whether such an appeal preferred under Section 14-A of the Atrocities Act should be disposed off by a Single Judge or it deserves a hearing by a Division Bench.

While deciding the said issue, the clear demarcation of the jurisdiction of the Single Judge of the High Court and that of a Division Bench must be kept in mind.

Every Appeal against conviction, except where the sentence imposed is of death or imprisonment for life, may be disposed of by a Single Judge. When we look at another category of case, which the learned Single Judge is competent to decide, is the appeal against acquittal where the offence is punishable with fine only or sentence of imprisonment not exceeding 10 years. For enhancement of sentence, it is the Single Judge, who is competent to exercise the jurisdiction, where the offence is punishable with a sentence of fine or sentence of imprisonment not exceeding ten years. Further, an application for bail or stay, which do not arise in or out of, or related to any Appeal or Application pending before the High Court, also fall within the jurisdiction of Single Judge.

14. With this schematic formation of the jurisdiction of the Single Judge of the High Court in the Appellate Side Rules, what is relevant to note is the maximum punishment which can be imposed, upon commission of an offence under the Atrocities Act. As per Section 3 of the Act, upon commission of any of the acts covered by clause (a) to clause (zc) of sub-section (1), the act is made punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years with fine.

On being convicted for committing an act falling in sub-clauses (i), (iv), (v), the punishment prescribed is imprisonment for life and fine, whereas on being convicted for committing an offence under other clauses being clauses (ii), (iii), the punishment prescribed shall be imprisonment for a term not less than six months, but which may extend to seven years.

15. In such emerging scenario, when clause (a) of Chapter I of Rule 2(II) is perused, though, it includes Appeals against conviction, going by its logical derivation , an Appeal filed for committing an offence under Section 3(1) (a) to (zc), being not punishable with death or imprisonment for life, would lie before the learned Single Judge of the Court. However, an Appeal on being convicted under Section 3(2) (i), (iv) and (v) would lie outside the jurisdiction of the Single Judge, thus creating two classes of Appeals.

16. It would be ironic to assume that though an Appeal against conviction under sub-section (1) of Section 3 would lie before the Single Judge, there is no reason why an Appeal challenging grant or refusal of bail, would be preferred before the Division Bench.

Clause (e) of part II of criminal business clearly stipulate that an Application for bail or stay, unless and until it arises out of or relating to any Appeal or Application pending in High Court, would fall within the business of a Single Judge.

This analogous distinction has been rightly recorded by the Division Bench in its order dated 10/11/2022 in case of ***Sanjay Katkar*** (supra), when it drew a comparison with serious offences under IPC, and in particular, punishable under Sections 302, 376, 409, 467, which prescribe penalty of death, but the Bail Application, whether under Section 438 or 439, would lie before the Single Judge. Apart from this, a comparison is also drawn in the Bail Application for the offence committed under the Maharashtra Control of Organised Crime Act (MCOCA), where the punishment prescribed is death or life imprisonment, yet the Bail Applications are heard by a Single Judge of the High Court. The Division Bench also noted that Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, **"MPID Act"**), which provides for Appeal against the orders of the designated Special Courts and even such Appeals are also placed before the Single Judge.

The Division Bench headed by Justice Gadkari has rightly recorded as under:-

> "By the amendment introduced under Section 14-A of the SC and ST Act, the regular procedure under Section 438 or 439 of Cr.P.C. has been substituted by providing to file an appeal against any judgment, sentence or order not being an interlocutory order of a Special Court to the High Court both on facts and law. Though the provision of appeal has been made for seeking bail or a challenge to grant bail by an order of the Special Court, it is not an appeal against conviction. Therefore, provision of Rule 2(II)(a) may not apply as it pertains to the appeals filed challenging grant or refusal of bail by the learned Special Court."

The Division Bench categorically referred that a special category carved out in the form of Rule 2 (II)(e) dealing with Application for Bail or stay and Bail Application in an Appeal filed by parties under Section 374 of the Cr.P.C. is excluded from the category.

17. We are in complete agreement with the reasoning adopted by the Division Bench in its order dated 10/11/2022, which is clearly missed out by the Division Bench in it's order dated 24/04/2018 in case of ***Gulabrao Ulhe*** (supra).

A perusal of the order in case of ***Gulabrao Ulhe*** (supra) would reveal that the Co-ordinate Bench, by referring to the heading "Criminal" construed clause (a) of Rule 2(II) and concluded that the appeal is required to be disposed of by a Single Judge, if the punishment does not exceed ten years of imprisonment and fine, but, since Section 14-A captioned as "Appeals", being preferred against refusal or grant of Bail, it will have to be placed before Division Bench and it directed that all the Bail Applications should be placed before the Division Bench.

The reasoning adopted in case of ***Gulabrao Ulhe*** (supra) apparently does not have our approval and we would confirm

the view propounded by the Division Bench in case of ***Sanjay Katkar*** (supra) and answer the question accordingly.

Merely because the nomenclature used under Section 14-A of the Atrocities Act is "Appeals", one should not lose sight of the fact that what is assailed in the Appeal, is an order of refusal or grant of bail under Section 438 or 439 of the Cr.P.C.

In any case, it is ultimately for the High Court, which has framed the Bombay High Court Appellate Rules, to decide which matters are to be disposed off by Single Judge and barring these matters, all other matters would fall for consideration before the Division Bench. The power of the Hon'ble The Chief Justice to assign any matter or categories of matters, which can be disposed off by Single Judge to a Division Bench also make it amply clear that it is the decision of the High Court, which would finally prevail, since ultimately the High Court has power to make rules to regulate it's own procedure in relation to the administration of justice. It is ultimately left to the decision of the High Court to regulate it's business by framing appropriate rules on procedural aspect. In any case, when the clause (a) of Rule II read alongwith clause (e), the 'Appeals' under Section 14-A of the Act would definitely fall within its embrace.

A dichotomous situation would emerge in case the Appeals under Section 14-A(2) are left to be decided by the Division Bench, though the Appeals filed against conviction and sentence or against acquittal under Section 14-A(1), where the punishment prescribed is less than sentence for death or imprisonment for life shall lie before the Single Judge of the High Court, as it would be covered by clause (a), but

against an order refusing or granting Bail, it would lie before the Single Judge.

Hence we answer the issue, by holding that Appeals under Section 14-A(2) would lie before the Single Judge of the High Court.

ISSUE -A

"WHETHER THE OFFENCE UNDER THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 GETS ATTRACTED WHEN A PERSON BELONGING TO A CASTE OR TRIBE DECLARED BY A NOTIFICATION IN A PARTICULAR STATE OR UNION TERRITORY MOVES OUT OF IT'S TERRITORIAL JURISDICTION,WHERE HE IS NOT RECOGNISED SO."

18. The second question that has been made over for consideration on a reference, require us to examine, whether a person, who belong to a Scheduled Caste or Scheduled Tribe, and is so declared by Presidential Notification, in a particular State or Union Territory, but not in other parts of the Country, and when any act defined as an offence under the Atrocities Act, is committed against him, can it amount to an offence, even though it is committed outside the State or Union Territory, where he has received the recognition.

Confuting the said proposition, we have heard Dr. Abhinav Chandrachud, who is opposed by the learned Additional Solicitor General of India, Mr. Anil Singh as well as the learned Advocate General Dr. Birendra Saraf. We have also heard Dr. Prakash Ambedkar and Mr. Sanjeev Kadam, who have advanced their arguments for due deliberation on the issue referred for consideration to this Full Bench.

COUNTER ARGUMENTS ADVANCED

19. Dr. Chandrachud extensively took us through the scheme engrafted in the Constitution of India, identifying the Scheduled Castes and Scheduled Tribes and also the Constitution (Scheduled Caste) and (Scheduled Tribe) Orders promulgated in the year 1950, to understand the purport of these terms, for the purpose of the Constitution.

After taking us through the framework of the Constitution, identifying the castes and tribes, in the historical background of an enactment in form of the Protection of Civil Rights Act, 1955 (for short, **"The Act of 1955"**), the learned Counsel would submit that the Constitution makers have assigned specific meaning to the said terms, "Scheduled Caste" and "Scheduled Tribe" and have deemed it appropriate to specify the procedure of identifying the castes, classes, races, tribes or part of groups within them which, shall be deemed to be Scheduled Castes or Scheduled Tribes for the purposes of the Constitution, but have also clarified that, they shall be so recognized as Scheduled Castes/ Scheduled Tribes in relation to that State or Union Territory, as the case may be.

By inviting our attention to Articles 366 (24) and (25) of the Constitution, he would submit that the Scheduled Castes or Scheduled Tribes are deemed to be the one, described in Articles 341 and 342 of the Constitution of India.

20. In utter contrast, Dr. Chandrachud would submit that when one has to look at the provisions of the Atrocities Act, which is a special enactment, intended to prevent the

commission of the act of atrocities against a particular class, by providing a special mechanism for trial of offences and also to provide relief of rehabilitation to the victims of such offences, the enactment has consciously applied the term "Scheduled Caste" and "Scheduled Tribe", for whose benefit, the statute is enacted. While drawing a distinction with the Protection of Civil Rights Act of 1955, which had used the word "Person", the submission advanced is, that the Parliament was conscious that it intended to protect only a particular class, of "Scheduled Castes" and "Scheduled Tribes", already identified under the Constitution and therefore, while the Protection of Civil Rights Act, 1955 punished the acts prohibited against any "Person", the Atrocities Act specifically targeted the Scheduled Castes and Scheduled Tribes, by stipulating that the terms shall have the same meaning assigned to them respectively under clauses (24) and (25) of Article 366 of the Constitution and thus, the Parliament has narrowed the scope of the Act, by restricting it to the two clusters, that are already identified. Ultimately, both the enactment, according to Dr. Chandrachud, are in *pari materia,* in a sense that they are caste based statutes and therefore, the intention of the legislature must be gathered from the choice of the words used by it, rather than the Court assigning a meaning to the term, which would be determinative, of the applicability of the Atrocities Act.

In order to buttress his submissions, he would rely upon the judgment of the Apex Court in case of ***Lalu Prasad Yadav & Anr. Vs. State of Bihar***[1], where it is categorically held that if the later statute does not use the same language as the one in

1 (2010) 5 SCC 1

the earlier statute, the alternation must be taken to have been made deliberately. He would specifically rely on paragraph 39 of the judgment which has reproduced the interpretation of the statute by G.P. Singh (12th Edn., 2010 at page 310) where the following statement of law has been made:

> "Just as use of same language in a later statute as was used in an earlier one in pari materia is suggestive of the intention of the Legislature that the language so used in the later statute is used in the same sense as in the earlier one, change of language in a later statute in pari materia is suggestive that change of interpretation is intended."

Another decision in case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation***[2], has also been relied upon, which reiterate the principles of *pari materia* statutes.

21. Another, but, very significant submission advanced by Dr. Chandrachud is about the interpretation of a penal statute and it is asserted by him that it is a well-settled principle of statutory interpretation, that penal statutes must be construed narrowly and if two possible constructions can be placed upon a penal provision, the Court must lean in favour of that construction which exempts the subject from penalty. By relying upon the principle of law enunciated by the Constitution Bench in case of ***Tolaram Relumal & Anr. Vs. State of Bombay***[3], he takes his argument ahead, to submit that it is not competent to the Court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature and as pointed out by Lord

2 (2014) 9 SCC 657
3 AIR 1954 SC 496

Macmillan in ***London and North Eastern Railway Co. Vs. Berriman***[4], where it was held as under :-

> "Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language."

In other words, it is the submission of Dr. Chandrachud that if two possible interpretations are available, the Court shall choose the one, which saves the person/accused under an enactment, regardless of the supposed intention of the legislature. Hence, according to him, the Atrocities Act shall be reasonably construed, as applicable only to the "Scheduled Castes" and "Scheduled Tribes", within the State, in which they are considered to be so and not in any other State to which they migrate, and, therefore, the Court must adopt a purposive interpretation with reference to the intention of the legislature.

22. While referring to the decision in case of ***Vaghela Dilipbhai Gulabsang Vs. State of Gujarat*** [5] delivered by Gujarat High Court and another decision by Jharkhand High Court in case of ***Ashuthosh Kumar Vs. State of Jharkhand & Anr.***[6], the submission of the learned Counsel is, that both the decisions have failed to considered the Constitution Bench judgments of the Supreme Court in case of ***Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College & Ors.***[7] and in case of ***Action Committee On Issue of Caste Certificate to Scheduled Castes***

4 (1946) A.C.278
5 2019 SCC OnLine Guj 6995
6 2019 SCC OnLine Jhar 321
7 (1990) 3 SCC 130

and Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.[8] and, hence, they are not capable of being construed as binding precedents, on the question of extension of benefit of the Atrocities Act to the migrants.

23. Dr. Chandrachud has placed on record the extracts of the Constituent Assembly debate and in particular, the speech delivered by Dr. Babasaheb Ambedkar as well as the parliamentary debate, when the amendments to Articles 13 and 14 were introduced. He has also placed reliance on following judgments in support of his submissions:

(i) *Bir Singh Vs. Delhi Jal Board (2018) 10 SCC 312;*

(ii) *Subhash Chandra & Anr. Vs. Delhi Subordinate Services Selection Board & Ors. (2009) 15 SCC 458;*

(iii) *Bhadar Ram (Dead) through LRs Vs. Jassa Ram & Ors. (2022) 4 SCC 259;*

(iv) *Shweta Santalal Lal Vs. State of Maharashtra & Ors. (2010) SCC OnLine Bom 309; and*

(v) *The report of the Backward Classes Commission (Kaka Kalelkar) as well as the extracts of J.H.Hutton, Census of India, 1931 Vol. 1*

24. In a nutshell, Dr. Chandrachud wants us to restrict the meaning of the words “Scheduled Castes” and “Scheduled Tribes” under the Atrocities Act to the one in clauses (24) and

8 (1994) 5 SCC 244

(25) of Article 366 and further to Articles 341 and 342, which has defined “Scheduled Castes” and “Scheduled Tribes” for the purposes of the Constitution and according to him, this definition in no manner is limited only to the privileges or benefits conferred upon people belonging to this class, but the provision schematically identify the “Scheduled Castes” and “Scheduled Tribes” for the purposes of the Constitution, and must restrict the benefits to the State to which he/she belongs and have been declared to be so and, therefore, when a member of this class migrates to another State, he/she cannot continue to reap the benefit of the caste and shall not be entitled to carry the caste status as a baggage, so much so, for the purpose of attracting any offence alleged to have been committed against him in the State of migration.

This according to Dr. Chandrachud is the purport of the Constitution Bench judgments which have interpreted the term “for the purposes of the Constitution” and “in relation to that State” as applied in Articles 341 and 342 of the Constitution.

It is the submission of Dr. Chandrachud that in the two Constitution Bench judgments in ***Marri Chandra*** (supra) and ***Action Committee*** (supra), the Supreme Court has carried out a delicate balancing exercise of protecting the rights of Scheduled Caste/Scheduled Tribe persons who have migrated to another State against the Scheduled Caste/Scheduled Tribe persons who are waiting in the State, for conferment of benefits, in which the migration has occurred. His submission is, that the Constitution Bench has declared that a migrant

from State 'A' shall not be entitled to derive the benefits/privileges which were conferred upon him in his original State, and Scheduled Caste/Scheduled Tribe person who migrates from another State to the State of Maharashtra, may not continue to enjoy similar privileges. Apart from this, through an illustration he would submit that the Scheduled Caste/Scheduled Tribe persons who migrate from one State to another State of Maharashtra may commit a crime against a Scheduled Caste/Scheduled Tribe person who is resident/native of Maharashtra and if the migrant Scheduled Caste/Scheduled Tribe person, in such a case, is considered to be so, even in the State of Maharashtra, then, he/she would have complete immunity from the applicability to the provisions of the Atrocities Act. This analogy, according to him, is liable to be inferred from the bare reading of Section 3 of the Atrocities Act, which makes it clear that only a person who is not “a member of the Scheduled Caste/Scheduled Tribe” can be considered as having committed the offence under the said Act.

25. Responding to the aforesaid submissions coming from Dr. Chandrachud, the learned Advocate General for the State Dr. Birendra Saraf wants us to approach the question B placed before us by touching on three aspects of the matter; Firstly, the history and the object in enacting the Atrocities Act and the mischief which the Parliament sought to remedy by it’s enactment; secondly, upon the touchstone of principles of statutory interpretation for special enactment intended to combat a special class of crimes committed against a special

class of people and thirdly, by addressing the understanding of the terms “Scheduled Caste” and “Scheduled Tribe” under the Atrocities Act.

As per the learned Advocate General, the definition under the Atrocities Act, which is linked to the identity of the class of people cannot be read down on the basis of the judgments dealing with claims to the privileges, rights and benefits conferred upon the said class under the Constitution.

Dr. Saraf has taken us through the broad framework of the Constitution of India and he would submit that the framers of the holy document were fully conscious of the unfortunate position of the members of the Scheduled Castes and Scheduled Tribes and centuries of their suffering, ignominy and abuse for the posterior period in the history and therefore, the special provisions were introduced in the Constitution in form of Part XVI by providing the beneficial protective discrimination which at a subsequent point of time has been recognized as a facet of the right to equality.

He would submit that the Atrocities Act was enacted by the Parliament in terms of the constitutional mandate enshrined under Article 17 of the Constitution which prohibits untouchability and makes it an offence punishable under law, so that the commission of “Atrocities” against the members of the Scheduled Castes and Scheduled Tribes can be prevented.

Dr. Saraf has invited our attention to the history of the special enactment, which has surfaced through the judgment of the Apex Court in case of ***Prathvi Raj Chauhan Vs. Union of India & Ors.***[9], as well as in the decision of the Apex Court in case of ***National Campaign on Dalit Human Rights & Ors. Vs.***

9 (2020) 4 SCC 727

Union of India & Ors.[10]. We were also taken through the object and purpose of the Atrocities Act, which could be gleaned from its statements, objects and reasons, **(SOR)** which would make it apparent that the Atrocities Act was intended to be a special enactment, to check and deter the crimes committed against members of Scheduled Castes and Scheduled Tribes by the members of Non-Scheduled Caste and Non-Scheduled Tribe.

It is the submission of the learned Advocate General that the Atrocities Act is not legislation which intends to confer any benefits or privileges upon the said class, but it intended protection to the members of the oppressed classes, from being subjected to "Atrocities" on account of the historical, social and economic inequalities, that they have suffered in the past and which continue to exist even in the present social scenario.

Concentrating on the need for a special statute, in the form of Atrocities Act, he would urge that due to the increase in the commission of atrocities against the members of the Scheduled Caste/Scheduled Tribe throughout the Country and the inadequacy of law in form of the Act of 1955 and some scanty provisions in the IPC, which failed to effectively check and deter such crimes, this mischief was sought to be redressed by the special Act, which have a pan India operation and is aimed at preventing the commission of atrocities against the members of the Scheduled Caste/Scheduled Tribe throughout the territory of India, on being identified as belonging to the said class. According to Dr. Saraf, there is no territorial or geographical limit to the applicability of the provisions of the Atrocities Act and act of "Atrocities" defined

10 (2017) 2 SCC 432

and covered under Section 3 of the enactment could take place anywhere, across the territory of India, including but not limited, over the virtual medium. According to him, if the restrictive interpretation as sought to be projected by Dr. Chandrachud is given to the provisions of the Atrocities Act, by restricting the geographical and territorial limits, the purpose of the enactment itself would be defeated.

The learned Advocate General would, therefore, draw a line of distinction in the sphere/arena where the judgments of the Constitution Bench in ***Marri Chandra*** (supra) and ***Action Committee*** (supra) would operate.

26. Dealing with the argument on the purposive interpretation of a penal statute, the learned Advocate General would submit that the Atrocities Act ought to be interpreted in the context of its background and the interpretation according to the provision in the said statute must be achieved by serving the object of the law and bearing in mind the mischief that it sought to prevent. He would rely upon the decision of the Apex Court in case of ***State of Karnataka Vs. Appa Balu Ingale & Ors.***[11]**,** by referring to paragraphs 33 to 35 of the law laid down therein.

The learned Advocate General would submit that even in the context of penal statutes, the Supreme Court has reiterated that the statute ought to be interpreted having regard to the object of the law and a strict, literal and lexical construction may not be given effect to, especially when it reduces the provision to futility or defeats the obvious or tolerably plain intention of the legislature to combat special

11 1995 Supp (4 SCC) 469

crimes. In this context, he would submit that the Atrocities Act ought to be interpreted in a manner, which is consistent with its legislative history and object and any interpretation that defeats or frustrates it, is to be avoided.

27. Dealing with the facet of the definition of "Scheduled Castes" and "Scheduled Tribes" in the Act, which in turn make a reference to Articles 341 and 342 of the Constitution, the learned Advocate General would submit that the expression "Scheduled Castes" and "Scheduled Tribes" in the Constitution is with reference to castes/tribes that are deemed to be so under Articles 341 and 342 of the Constitution. By reading the two provisions of the Constitution, he would submit that it is the prerogative of the President, who may with respect to the State or Union Territory, by a public notification, specify castes, races or tribes or parts of groups within castes, races or tribes, that shall be for the purpose of Constitution be deemed to be Scheduled Caste or Scheduled Tribe in relation to that State or Union Territory.

He would strenuously urge that by assigning a meaning to the term, "Scheduled Castes" and "Scheduled Tribes" in the Constitution itself, and by formulating the same in Articles 341 and 342, the constitution makers have eliminated the necessity of having a long list of the Scheduled Castes and Scheduled Tribes in the Constitution. Secondly, it has ensured that due regard would be had to the "social and educational background" of Scheduled Castes and Scheduled Tribes in a particular State or a Union Territory or part thereof and it ensured that the members so identified in a particular State or

Union Territory, are entitled for the privileges under the Constitution, in that State/Union Territory.

He has placed reliance upon the following extract of the speech of Dr.Babasaheb Ambedkar in the Constituent Assembly, when a draft provision was introduced on 17/09/1949, and the quote read as under :-

> "The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes.... Once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President."

28. Dr. Saraf would submit that in the exercise of powers under Articles 341 and 342 of the Constitution of India, the President has issued the Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order 1950 and which was amended from time to time and, as a result, a particular caste/tribe is recognized as, Scheduled Caste or Scheduled Tribe, only if it is included in the said order issued by the President. However, he would submit that only because the Scheduled Caste or Scheduled Tribe is notified by the President for a particular State or Union Territory it does not mean that members of such caste or tribe lose their identity, upon leaving the State or the Union Territory of that origin. While no longer they can be entitled to the privileges conferred by the Constitution, but, according to Dr.Saraf they

continue to retain their identity as members of Scheduled Caste or Scheduled Tribe, as definitely they may be exposed and susceptible to the atrocities, on account of this identity, which only because they have migrated, they are unable to shed off.

29. The learned Advocate General has also relied upon the decision of the Gujarat High Court in case of ***Vaghela Dilipbhai Gulabsang*** (supra) and according to him, the Gujarat High Court had considered the very same argument advanced by Dr. Chandrachud and after consideration of the historical background preceding the enactment of the Atrocities Act, has rejected the same.

He has also placed reliance upon observations of the learned Senior Judge of this Court in case of ***Minaxi A. Pednekar Vs. State of Goa (Cri.Bail Application No.245 of 2009 decided on 14/08/2009)***, while considering a bail Application. Our attention was also invited to another decision of another Single Judge of this very Court in case of ***R. Charles Raj Vs. The State of Maharashtra (Cri.W.P.No.252 of 2004 decided on 22/11/2004)***, which has taken a divergent view.

In conclusion, it is the submission advanced on behalf of the State, that on examination of the scheme, object and history of the Atrocities Act, it is manifestly a social reformatory statute, aimed at preventing humiliation of the members of a particular class on the basis of their identity and since the Act has been framed for combating a special category of crime, the interpretation that advances the object which the enactment intended to achieve must be adopted, as it shall

take the statute further rather than restricting its scope by limiting its geographical limitations.

Apart from this, according to the learned Advocate General, reliance placed upon the provisions of the Act of 1955, is misconceived and he would contrast the submission of Dr. Chandrachud that the two statues are *pari materia,* merely because they deal with caste.

30. The learned Additional Solicitor General of India Mr.Anil Singh, would join the learned Advocate General in opposing the arguments advanced by Dr. Chandrachud, by submitting that the special enactment in form of the Atrocities Act, when carefully read do not contain any reference to territorial limitations on its applicability. By taking us through the scheme of enactment, Mr. Singh would submit that the operation of the statue is not restricted only in the State, as the Act has recognized the 'person' for whom it is enacted and this person is a member of Scheduled Caste or Scheduled Tribe and the benefits conferred by the enactment, to prevent him from atrocities must be availed by him regardless of the situs of the atrocities. According to him, Section 2(c) and Section 3 of the Atrocities Act must be read in consonance with the statement of the object and reasons, which clearly highlight that the enactment is intended to protect all the members of the Scheduled Castes and Scheduled Tribes throughout the Country. According to him, it is not the intention of the legislature that the protection conferred, on being a member of Scheduled Caste or Scheduled Tribe is lost, merely because at the time of the commission of the offence he/she is not present

in the State of his origin and giving such an interpretation, would be violative of provisions of Articles 14 and 21 of the Constitution, according to Mr. Singh. He would further submit that migration of a member of a Scheduled Caste/ Scheduled Tribe to another State is of no consequence under the Atrocities Act, as the Act intend to protect the atrocities being committed upon the particular class by a member of a community who does not belong to that class. The status of being a member of a caste/ tribe being conferred on him recognized as Scheduled Caste/Scheduled Tribe, cannot be denuded unless and until the caste/tribe is removed from, the order which has recognized it to be so.

Mr. Singh has also relied upon the decision of the Apex Court in ***S. Pushpa & Ors. Vs. Sivachanmugavelu & Ors.***[12].

31. We have also heard Dr. Prakash Ambedkar, who has reiterated the scope of special enactment intended to protect atrocities being committed upon the members of Scheduled Castes and Scheduled Tribes and he would submit that while enacting the said legislation, the intention of the Parliament was not merely to introduce, but also to achieve larger goals of preventing atrocities on the members of a particular class. According to him, it is a welfare legislation and any interpretation which would narrow down its scope should be avoided and he pressed into service the rule of construction as laid down in ***Heydon's*** **case**[13] i.e. the Mischief Rule or Rule of Purposive Interpretation. He would also place reliance on the

12 (2005) 3 SCC 1
13 3 Co.Rep 7a : 76 ER 637

decision in case of ***Bengal Immunity Company Limited Vs. State of Bihar & Ors.***[14].

In the backdrop of the well-acclaimed rule of statutory interpretation, Mr. Ambedkar would urge that the Atrocities Act intended to suppress the mischief of untouchability which was practised in Indian society based on *varna* system and the earlier legislation were incapable of dealing with such menace and this necessitated the passing of the Protection of Civil Rights Act, 1955 for removal of untouchability and for punishing those who were practising untouchability.

According to Mr. Ambedkar the Atrocities Act has its roots embedded in Article 17 of the Constitution and it is based on the golden thread of equality which runs throughout the Constitution. He has taken us through the scheme of the fundamental rights enshrined in the Constitution and in particular, from Articles 14 to 17. He would stressfully rely upon the decision of the Apex Court in case of ***Prathvi Raj Chauhan*** (supra) and would extensively rely upon the pertinent observations. He would also make reference to the observations made by Hon'ble Justice Dr. Chandrachud, in case of ***Indian Young Lawyers Association & Ors. Vs. State of Kerala & Ors.***[15], where His Lordship had commented upon Article 17 and has clearly pronounced as under :-

> "A reflection of the transformative ideal of the Constitution, which gives expression to the aspirations of socially disempowered individuals and communities and provides a moral framework for radical social transformation."

14 AIR 1955 SCC 661
15 (2019) 11 SCC 1

According to Dr. Ambedkar, the legislation or provisions which deal with the conferment of certain rights and privileges upon the members of Scheduled Caste and Scheduled Tribe community cannot be equated with the legislation which proscribe the illegal practices which the members of the community are subjected to. He would submit that the laws relating to reservations or employment or educational benefit or election, conferring certain rights upon the members of Scheduled Caste/Scheduled Tribe community cannot be compared with the law that penalizes the act committed against them, as the first set of those benefits flow from the scheme provided under Articles 15 and 16 of the Constitution whereas the later flows from Article 17. That is how he drew a distinction in the interpretation put forth by the Constitution Bench in case of ***Action Committee*** (supra) and ***Marri Chandra*** (supra).

Mr. Ambedkar would, therefore, request this Court to answer the second issue placed for consideration before us, in the affirmative, to mean that even if the other parts of the Country, where the particular caste/tribe is not notified as Scheduled Caste/ Scheduled Tribe, the acts which amount to the atrocities under the Act, shall still be attracted.

ANALYSIS OF THE ARGUMENTS ADVANCED IN FAVOUR OF AND AGAINST THE PROPOSITION FORMULATED AT ISSUE B:-

32. The substratum of the submissions of Dr. Chandrachud is, the offence contemplated under the Atrocities Act is not attracted against a migrant, who has migrated from the State of origin to another State and per contra, the learned Advocate

General and the learned Additional Solicitor General of India have argued that the baggage of caste continues to be retained by a person, though he migrates to another State from the State of his origin, and since the enactment in the form of special statute intend to offer protection from atrocities committed against a member of Scheduled Caste or Scheduled Tribe, irrespective of his migration, the offence would still be attracted.

33. As we embark to consider the rival contentions, we find it congruous to outline relevant elements of the caste system prevailing in the country.

The division of the society into various castes is the most significant system of social stratification in Hindu society, with the general feeling about it having a divine ordinance, atleast with divine approval. The caste system is such a peculiar and complex thing that no satisfactory definition of 'caste' is possible.

As per Emile Senart, the author of "Caste in India, the facts and the system", "A caste is a close corporation, excluding and in theory at any rate, rigorously hereditary. Often united in celebration of certain festivals, it is further bound together by common occupation and by the practice of common customs, which relate more particularly marriage, food and questions of ceremonial pollution. Finally it rules its members by exercise of a jurisdiction, the extent of which is fairly wide and which by the sanction of certain penalties, especially a exclusion, either absolute or revocable, from the group succeeds in enforcing any authority of the community."

The concept of caste is characterized by two essential concomitants; (a) its membership being confined to those who are born of members and include all persons so born; and (b) members are forbidden by an inexorable social norms to marry outside the group.

34. Four fold division is found in the Rugveda, the magnacarta of the caste system and one can get an insight into the Varn system, adopted since centuries, which separated the 'Shudra' from the three Varnas; Brahmins, Kshatriyas and Vaishyas, being recognised as "Savarnas" and the Shudras as "Avarnas". The salient feature of this inferior class, being their segregation as "Untouchables" or "Atishudras".

The tradition bound caste system intricately had within its embryo the institution of untouchability, which divided the Hindus, influenced their thought process and deeply imprinted in their mind, the suppression and enslavement of humanity by strongly harbouring a traditional belief of defiling by contacting the person, having food or drinking water with him by a member of higher caste and, hence, degrading the class of untouchables, undertaking menial work. The history reflect that by practicing untouchability, the upper caste kept this lower strata of the society at a distance and looked down upon them in the social structure. Another reason why the people of this class were considered to be low in the social hierarchy, is their engagement in the occupation like treatment of hides and skin of animals, or in scavenging, shifting of night soil etc.

35. No matter, whatever form, the practice of untouchability assume, it amounted to a degrading appellation for the people concerned. B.S.Murthy, an Indian Novelist, while recording his opinion on merits of various expressions used for describing this class, used the following expression :-

> "Perhaps the best of this is, untouchable, as it will remind him of his fallen state by a constant stinks."

Necessarily untouchability is a corollary of the Varn and caste institution, a spirit of social aggression, underlying the attitude towards those considered to be belonging to this class.

36. As social institutions, Varn and Jati have undergone changes, but have shown the rarest of resilience to survive. It survived the onslaught of anti-caste religion like Buddhism, Jainism, Christianity, Islam and Sikhism. The emerging philosophy in form of "Advait Bhakti" preached by the saints all over India was not successful in halting the juggernaut, nor did the reformist moment of 19th century like Brahmo Samaj, Arya Samaj, Prarthana Samaj stopped it's adherence, though it's severity scaled down to some extent.

The idea of liberal democracy or the principles of equality and social justice, could not renege it's application nor did the strong message from the father of the nation, Mahatma Gandhi towards love and tolerance or Ahimsa was able to entirely rescind it. Justice S.B.Wad in his book, "Caste and the Law in India" aptly noted as under :-

> "Except for family (which is a natural institution), no other institution known as human civilization has shown such a strong instinct to survive and dominate. The caste system in true sense of the term is suigeneris."

37. The pre-British era was a period when the caste dominated the law and administration of justice, as the caste system had not only the sanction of law, but also of the religion. A gradual change, but qualitative in nature, however, started being seen with the advent of British administration.

The Caste Disabilities Removal Act (Act No.21 of 1850) was enacted with the specific preface, "so much of any law or usage now in force within India, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in any Court." The establishment of new system of administration of justice, though did not abolish the caste system, but attempted to demarcate the areas between the administration of justice and control of personal behaviour of the members of the society, which apparently was caste based. The British Government did not recognize caste as a unit empowered to administer justice and it received the position of a closet restricting it to community behaviour, though it retained it's cultural integrity. The caste association continued it's existence irrespective of the enactments and the provisions intended for it's abolition.

38. While addressing the Constituent Assembly, while Article 11 (corresponding to Article 17) was introduced in Constituent Assembly, Shri V.I. Muniswamy Pillai argued,

> ".....the very clause about untouchability and and its abolition goes a long way to show to the world that the unfortunate communities that are called 'untouchables' will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so-called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being. The sting of untouchability went deep into the hearts of certain sections of the people and many of them had to leave their own faiths and seek protection under religions which were tolerant."

For addressing the discriminatory treatment of people differently based on their caste and kind of work undertaken, with untouchability ingrained in the Indian caste structure for centuries, the Constitution makers deemed it appropriate to deal with this sensitive issue by inserting Article 17, abolishing untouchability in Part III of the Indian Constitution, and recognizing it as a "fundamental right". Article 17 outstripped the practice of untouchability, guaranteeing it's elimination in all forms, by showing complete intolerance towards it and punishing the same.

Introduction of Article 17 was aimed at abolishing the caste system and discrimination based on it, ultimately taking the form of "untouchability", a worst type of injustice persisting in the society for decades. The said provision read with Article 14 of the Constitution was intended to guarantee social justice and human dignity, the two being, eluding a class of society for generation. Article 17, thus, intended to

save 1/6th of the population of this country from perpetual subjugation and despair, humiliation and disgrace.

39. As a step towards translating Article 17 into practical reality, The Protection of Civil Rights Act, 1955, was enacted to deal with the concerns of caste based discrimination and intended to provide legal solution to the issues, which formed the core of the anti-caste discourse. To strengthen the provision in the Constitution, which abolished untouchability and intended to enforce dignity and security from operation, the Protection of Civil Rights Act, 1955 was brought on the statute book by prescribing punishment for preaching the practice of 'Untouchability' and for the enforcement of any disability arising therefrom. It intended to abolish social inequality, stigma and disabilities in the society.

The Act of 1955, which extended to the whole of India, defined the term 'civil rights' in Section 2(a) to mean any right accruing to a 'person' by reason of the abolition of 'untouchability' by Article 17 of the Constitution.

Distinct provisions in the statute prescribed punishment for acts, being committed, with 'untouchability' at it's core and, for enforcing religious and social disabilities, with diverse situations and Section 7 of the Act prescribed punishment for offences, arising out of 'untouchability'.

The term "Scheduled Caste" was assigned the same meaning as in Clause (24) of Article 366 of the Constitution. The beneficiary under the Act was 'any person', who was subjected to the impropitious acts, on exercise of his civil right.

The Act of 1955 repealed several enactments to the extent to which they or any of the provisions contained therein corresponded or were repugnant in the Act or any of the provision contained therein and this included the Removal of Civil Disabilities Act, 1943 as well as the Bombay Harijan (Removal of Social Disabilities) Act, 1946.

40. Despite the Act of 1955 being brought in force with an avowed purpose to eradicate the pre-discriminatory violence against a particular class, which had it's roots in the existing social hierarchy, it could not comprehensively define the economic, social, physical, verbal relations and other structural violence against the scheduled caste and scheduled tribe population of the country.

In this background, the Parliament deemed it appropriate to introduce the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, with preamble capturing it's foreground:-

> "An Act to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

The statute was enacted with an intent to deal with different acts of atrocities foisted upon the members of Scheduled Castes or Scheduled Tribes, on different platforms and covered act like contaminating water, violence, hurling casteist abuses, causing any injury, insult or annoyance.

Section 3 of the Act, punished act of atrocities, enlisted therein and each of such act, being committed or attempted, criminalized it's commission, by a person not belonging to a Scheduled Caste and/or Scheduled Tribe.

Needless to state that the object of the Act of 1955 as well as the Atrocities Act was to prevent atrocities against the Scheduled Castes and Scheduled Tribes and was intended to remove humiliation and harassment meted out to members of a class and to ensure them fundamental, socio-economic and political rights.

41. The statement of objects and reasons **(SOR)** of the Atrocities Act provide the sagacity of it's intent and purpose and the mischief which it seek to remedy, in the backdrop that inspite of various measures adopted to improve the socio-economic condition of the Scheduled Castes and the Scheduled Tribes, they continued to remain vulnerable and subjected to various offences, indignities, humiliations and harassment.

We deem it apposite to take note of the same and deem it apt to reproduce the same :-

> "1. Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.
>
> 2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights

and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act,1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

3. The term 'atrocity' has not been defined so far. It is considered necessary that not only the term 'atrocity' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoining on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them."

42. The Atrocities Act has defined the term "Scheduled Castes and Scheduled Tribes", by assigning the meaning, respectively under Clauses (24) and (25) of Article 366 of the Constitution of India.

The "victim" is defined in Section 2(ec) to the following effect :-

"victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause

(c) of sub-section(1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs."

43. Chapter II of the Act enlists the offences of atrocities and prescribes the punishment therefor.

Though the term "atrocity", which is understood in normal parlance as an extremely cruel, violent and shocking act is to be read, as committed against the members of the Scheduled Castes and the Scheduled Tribes and it amount to an offence punishable under Section 3. Sub-section (1) of Section 3 enlists distinct acts in clause (a) to clause (zc), committed by a person, not being a member of Scheduled Caste or Scheduled Tribe, which are liable for punishment. The canvass of the different acts vary from the one committed in public view upto an act committed in the neighbourhood with an intent to cause injury, insult or annoyance to any member of Scheduled Caste or Scheduled Tribe. It also extend to wrongful occupation or cultivation of any land owned by or in the possession of a member of Scheduled Caste or Scheduled Tribe or wrongfully dispossessing him from his land or premises or interfering with the enjoyment of his rights, including forest rights. It also brings within its sweep an act of forced or bonded labour or indulging in manual scavenging or performing or promoting dedicating a Scheduled Caste or a Scheduled Tribe woman to deity, idol, object of worship or any similar practice.

Section 3 also cover the acts, which would restrict the Scheduled Caste or Scheduled Tribe member from exercising his political right, where he is a member or a Chairperson or a holder of office of Panchayat, Municipality and restraining him from performing normal duties and functions. An intentional insult or intimidation with an intent to humiliate member of the scheduled caste or scheduled tribe in any place within public view or abusing him in the name of caste is also covered within the sweep of "atrocities", which attract a penalty under Section 3.

The conspectus of Section 3 is widened by sub-section (2) to cover act of giving or fabricating false evidence, with an intent to cause any conviction of any member of the Scheduled Caste or Scheduled Tribe, which is punishable with imprisonment for life and with fine. An act of committing mischief by fire or any explosive substance intending to cause or knowing it to be likely that it will cause damage to the property belonging to the Scheduled Caste or Scheduled Tribe, committing an offence under the IPC, is punishable with imprisonment for ten years etc.

44. In order to give more muscle to Section 3 of the Act, Section 4 also prescribes punishment for neglect of duties by a public servant, who is not a member of Scheduled Caste or Scheduled Tribe and who has willfully neglected his duties under the Act and the Rules made thereunder. The duties of the public servant for effective implementation of the Act are also set out by the legislation.

For the purpose of providing speedy trial, Chapter IV made it imperative for the State Government, with the concurrence of the Chief Justice of the High Court, to establish an Exclusive Special Court for dealing with the offences under the Atrocities Act and a special procedure was carved out for tying the cases under the Atrocities Act by the Exclusive Special Court from continuing the proceedings on day-to-day basis, unless it found the adjournment to be necessary.

Another important provision in the statute existed in form of Section 18, which excluded the applicability of Section 438 of the Criminal Procedure Code in relation to any case involving the arrest of any person, on an accusation of having committed an offence under the Act.

While deciding the constitutionality of Section 18 on the anvil of Articles 14 and 21 of the Constitution of India, the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh & Anr. Vs. Ram Krishna Balothia & Anr.***[16], referred to the statement of objects and reasons accompanying the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Bill, 1989, while it was introduced in the Parliament. By referring to the same, the Hon'ble Supreme Court noted that the said statement graphically described the social conditions, which motivated the legislation and as it indicated, when the members of the Scheduled Caste and/or the Scheduled Tribe assert their rights and demand statutory protection, vested interest try to cow them down and terrorise them and in such circumstances, if anticipatory bail is not made available to the persons, who commit such offences, such denial cannot be considered as unreasonable or violative of Article 14 of the

16 (1995) 3 SCC 221

Constitution of India, as these offences form a distinct class by themselves and cannot be compared with other offences.

In the recent decision of the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan*** (supra), the majority view tracked the plight of those who suffered from the pangs of 'untouchability' and referred to the observations of the Court in ***Subhash Kashinath Mahajan Vs. State of Maharashtra***[17], with the following pertinent observations :-

> "44. As to prevailing conditions in various areas of the country, we are compelled to observe that SCs/STs are still making the struggle for equality and for exercising civil rights in various areas of the country. The members of the Scheduled Castes and Scheduled Tribes are still discriminated against in various parts of the country. In spite of reservation, the fruits of development have not reached to them, by and large, they remain unequal and vulnerable section of the society. The classes of Scheduled Castes and Scheduled Tribes have been suffering ignominy and abuse, and they have been outcast socially for the centuries. The efforts for their upliftment should have been percolated down to eradicate their sufferings.
>
> 45. Though, Article 17 of the Constitution prohibits untouchability, whether untouchability has vanished? We have to find the answer to all these pertinent questions in the present prevailing social scenario in different parts of the country. The clear answer is that untouchability though intended to be abolished, has not vanished in the last 70 years. We are still experimenting with "tryst with destiny". The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. They cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods of scavenging to Harijans due to lack of resources and proper planning and apathy. Whether he can shake hand with a person of higher class on equal footing? Whether we have been able to reach that level of psyche and human dignity and able to remove discrimination based upon caste? Whether false guise of cleanliness can rescue the situation, how such condition

17 (2018) 6 SCC 454

> prevails and have not vanished, are we not responsible? The answer can only be found by soul searching. However, one thing is sure that we have not been able to eradicate untouchability in a real sense as envisaged and we have not been able to provide downtrodden class the fundamental civil rights and amenities, frugal comforts of life which make life worth living...."

45. In the above background, we shall now deal with the submission of Dr.Chandrachud, who want us to restrict the benefits of the special statute only to a person, who is recognized in one State or Union Territory of the country, as a Scheduled Caste or Scheduled Tribe to that State or Union Territory, by denying him the protection under the statute, when he travels to another State, as he/she cannot be considered as Scheduled Caste or Scheduled Tribe there.

The provenance of his submission, are the two Constitution Bench decisions of the Apex Court, the first being in the case of ***Marri Chandra*** (supra) and the other one in the case of ***Action Committee*** (supra)

By drawing strength from the binding decisions, Dr.Chandrachud has argued before us that the law now stands authoritatively settled to the effect that, a person who is recognised as a member of Scheduled Caste/Scheduled Tribe in his original State, will be entitled to the benefits under the Constitution, in that State alone and not in other parts of the country, or other State wherever he migrates. Reliance is placed upon the following observations in ***Marri Chandra*** (supra) :-

> "20. Having regard, however, to the purpose and the scheme of the Constitution which would be just and fair to the

> Scheduled Castes and Scheduled Tribes, not only of one State of origin but other states also where the Scheduled Castes or Tribes migrate in consonance with the rights of other castes or community, rights should be harmoniously balanced. Reservations should and must be adopted to advance the prospects of weaker sections of society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the community.

The principle of law laid down has been further followed by another Constitution Bench in the case of ***Action Committee*** (supra) and the following observations are invoked by Dr.Chandrachud to strengthen his arguments :-

> "16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

46. The observations reproduced above, from the two Constitution Benches, in relation to the benefits availed by a member of a particular Scheduled Tribe or Scheduled Caste in

a State, are required to be appreciated in the light of the expressions, being defined under Article 366 of the Constitution and being cognizant of the framework of Constitution.

The Government of India Act, 1935 introduced the expression, 'Scheduled Castes' for the first time in the Indian history, as it defined 'Scheduled Castes' to mean such castes, races or tribes or parts of or groups within the castes, races or tribes, being castes, races, tribes, parts or groups, which appear to His Majesty in Council to correspond to the classes of persons formerly known as "the depressed classes". Thereafter, vide a Gazette Notification, published on 06/06/1936, the Government of India (Scheduled Castes) Order, 1936 was promulgated notifying the list of castes that are to be considered as " Scheduled Castes" across the territory of India. The Schedule was bifurcated into nine parts, indicating that the identification of the different castes for their inclusion as Scheduled Castes in the Schedule was based on an elaborate exercise conducted for each of the provinces and as a consequence, some castes were identified as Scheduled Castes throughout a province, whereas others have been so identified in limited areas, within the province.

47. The post constitution exercise, by enacting the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, as originally enacted under Articles 341 and 342 of the Constitution, was basically an exercise in re-casting the Schedule to the 1935 Act.

Clause (24) of Article 366 define “Scheduled Castes” to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution. Similarly, Clause (25) of Article 366 defines “Scheduled Tribes” to mean such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

48. One has to be also mindful of the purpose of identification of these castes/tribes. The Constitution of India, apart from Article 17, which abolished ‘untouchability’, in Part III conferred several rights upon its citizens, irrespective of the Tribe/Caste to which they belong.

Article 14 of the Constitution, through a positive concept, commanded the State to give equal treatment to similarly situated persons i.e. persons who are equal before the law. Article 15 prohibited discrimination on the grounds of religion, race, caste, sex or place of birth and clause (2) of Article 15 specifically provided for the instances.

By the Constitution (First Amendment) Act, 1951, clause (4) was introduced in Article 15, which enabled the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Clause (5) inserted w.e.f. 20/01/2006 also in form of an enabling provision, which empowered the State to make any such provision, by law, for the advancement of any socially and

educationally backwards classes of citizens or for the Scheduled Castes or the Scheduled Tribes, insofar as such special provision relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions.

Similarly, Article 16 ensures equal opportunity for all citizens in matters relating to employment or appointment to any office under the State and it prohibit discrimination in respect of employment or office under the State on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them.

The provision also empowered the Parliament to make a law in regard to a class or classes of employment or appointment to an office or to make any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Clauses (4A) and (4B) of Article 16 also enable the State for making provision for reservation in matters of promotion or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State, are not adequately represented in the services under the State.

49. In addition to the Chapter of Fundamental Rights in form of Part III of the Constitution, Part IV i.e. Directive Principles of State Policy, also make it imperative for the State to follow certain principles, described as fundamental in governance

and, in particular, Article 46, in reference to the Scheduled Castes and Scheduled Tribes, direct the State to promote the educational and economic interests of the weaker sections and to protect them from social injustice and all forms of exploitation.

50. Part XVI of the Constitution contains distinct provisions providing reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People, in the Legislative Assemblies of the States and to the services and posts.

Article 338 provides for constitution of a National Commission for Scheduled Castes alongwith Article 338A, which comprise of a provision for National Commission of Scheduled Tribes.

In addition to the aforesaid provisions, in Part IX and Part IXA of the Constitution, which pertain to the Panchayats and Municipalities, is a provision introduced for reservation of seats for the Scheduled Castes and the Scheduled Tribes.

51. In identifying, who are the Scheduled Castes and Scheduled Tribes, Articles 341(1) and 342(1), assume significance.

Article 341(1) of the Constitution empowers the President with respect to any State, after consultation with the Governer thereof, by public notification, to specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be. On similar line, is the

provision for identification of the Scheduled Tribes for the purposes of the Constitution in relation to that State or the Union Territory.

It is only the Parliament, which is empowered by law to include or exclude from the list of Scheduled Castes/Scheduled Tribes specified in the notification and except by law(s) made by the Parliament, the notification issued under Articles 341(1) and 342(1) cannot be varied by any subsequent notification.

52. From reading of Articles 341 and 342, it can be comprehended that it is only those castes, races or tribes or part of or group within any caste, race or tribe, as prescribed in the Presidential Order, shall be deemed to be Scheduled Castes/Scheduled Tribes. This prime consideration for specifying a specific caste or tribe for inclusion in the list in any given State, depends upon the nature and extent of the disadvantages and social hardships suffered by the members concerned by such class in that State. These disadvantages may be less or completely absent in another State and because of this, before issuing notifications under Articles 341 and 342, an elaborate inquiry is imperative before they are so notified.

The Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order, 1950 specifically stipulate that the castes, races or tribes or parts of, or groups within, castes or tribes, specified in the distinct parts of the Schedule to the order, shall in relation to the States to which those parts respectively relate, be deemed to be Scheduled Castes/Scheduled Tribes, so far as regards member thereof

residing in the localities specified in relation to them, in those Parts of that Schedule.

53. In ***Marri Chandra,*** this aspect of migration was examined with reference to the admission in a Medical College and we must reproduce the nub of the decision, which reads as under :-

> 21. We have reached the aforesaid conclusion on the interpretation of the relevant provisions. In this connection, it may not be inappropriate to refer to the views of Dr B.R. Ambedkar as to the prospects of the problem that might arise, who stated in the Constituent Assembly Debates in reply to the question which was raised by Mr Jai Pal Singh, which are to the following effect:
>
> > "He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in his Constitution. But, so far as the present Constitution stands, a member of a Scheduled Tribe going outside the Scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them..."

It is in the wake of the expressions, 'for the purposes of this Constitution' and 'in relation to that State', as applied in Articles 341 and 342 of the Constitution, the question which arose before the Constitution Bench, as to whether such a

candidate recognised as a member of Scheduled Caste/Scheduled Tribe in his original State, on migration to another State, is entitled to the benefit of reservation of a seat, came to be answered by Chief Justice Sabyasachi Mukharji, [As His Lordship was then], who concluded in the following words :-

> "13. .....It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g, it has been argued that right to migration or right to move from one part to another is a right given to all-to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The

> expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."

This reasoning received approval by the Constitution Bench in ***Action Committee*** (supra), when it dissuaded itself from making reference to a Larger Bench, for consideration.

54. The observations of the two Constitution Benches as above, is the fulcrum of the arguments of Dr.Chandrachud, when he submit that the benefit of being conferred with the status of a particular caste/tribe shall be restricted and have it's effect only in relation to that State, in which he is declared to be so and upon migration to another State, he shall be denuded of deriving any benefits.

We are unable to persuade ourselves by the said submission as on close reading of the Constitution Bench

decisions, it is evident that, what is involved in that is, Articles 15(4) and 16(4) of the Constitution, which is a power of State to make any provision for advancement of socially and educationally backward classes of citizens or for the Scheduled Caste and the Scheduled Tribes, whereas clause (4) of Article 16 pertains to the power of the State for making any provision for the reservation of appointments or posts in favour of any backward class of citizens, which are not adequately represented in the services under the State.

The Constitution Bench in ***Marri Chandra*** (supra) arrived at a conclusion of not conferring the benefits of reservation to a person belonging to Scheduled Caste/Scheduled Tribe on migration and specifically noted that there may be a possibility that a person having the nomenclature of the same caste in State 'A' may not suffer the same disadvantages of a person in State 'B' and the expression used in Articles 341 and 342, 'in relation to that State', is clearly indicative that he shall be entitled to the benefits under the Constitution in that State alone and not in all parts of the country, wherever he migrates. The Constitution Bench categorically held that the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others, but the crux of the conclusion of the Constitution Bench lies in the following observations :-

> "But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes

> say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem."

55. The fact that the status of the Scheduled Castes and Scheduled Tribes does not change, according to Dr. Saraf, is borne out by Dr. Ambedkar's response in the Constituent Assembly to the question posed by Mr. Jaipal Singh and Dr. Saraf has drawn our attention to the said following passage:

> "He asked me another question and it was this, Supposedly a member of the Scheduled Tribe leaving in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction may be residing, the same privileges which he would be entitled to when he is residing in the scheduled area or the tribal area?
>
> It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answers to the questions in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of the Scheduled Tribe going outside the scheduled areas or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in the scheduled area or tribal area. So far as I can see it would be practically impossible to enforce the provisions that apply to tribal areas or Scheduled areas, in areas other than those which are covered by them."

56. Necessarily the observations made by the two Constitution Benches revolve around the affirmative action in

form of reservation in an educational institution or employment. It is because of the social disadvantages suffered by the Scheduled Castes and Scheduled Tribes in the State and, since, they had no facility for development and growth, they came to be recognised as falling within the category of backward class, Scheduled Caste or Scheduled tribe and in order to make them equal, in those areas, where they have suffered a disadvantage and were in the state of underdevelopment, they were held entitled for reservation or protection in their favour, so that they can compete on equal terms with the more advantageous or developed sections of the community. Admittedly, the extreme social and educational backwardness, arising out of traditional practice of untouchability, was the predominant factor for including a community in the list of Scheduled Caste and Scheduled Tribe though the social condition of a particular class varied from State to State and the Constitution makers never intended to generalize any Caste or Tribe for the whole country. Therefore, when such a person declared as Scheduled Caste/Scheduled Tribe, migrated to another State where the person belonging to the same Caste or Tribe had not undergone the disadvantage of being discriminated or treated as an inferior class, he or she may not be entitled to avail the benefits or privileges in that State. It is also necessary that such a person, who migrated to the other State from his State of origin, by claiming the benefit conferred upon him by the Constitution in form of reservation to a seat in an educational institution or in an office of the State or in an employment in that State, may necessarily deprive one member of the

Caste/Tribe, who was in fact entitled for drawing the benefit in the affirmative action in his State.

57. The Advocate General, Dr.Birendra Saraf is justified in drawing the distinction in identifying a Scheduled Caste or Scheduled Tribe for the purposes of drawing the benefits flowing from the Constitution in form of an affirmative action and identifying him as a member of Scheduled Caste and/or Scheduled Tribe for preventing the atrocities. We find force in the submission advanced by the learned Advocate General as well as the learned Additional Solicitor General Mr.Singh and to some extent by the learned counsel Mr.Ambedkar.

The intention of Parliament in enacting the special Act in form of the Atrocities Act can be gleaned from it's statement of objects and reasons and it is evident that it is a special legislation to check and deter the crimes committed against a class, comprising of the Scheduled Caste and Scheduled Tribe by a non Scheduled Caste or non Scheduled Tribe member. It is definitely not a legislation, which confers any benefits or privileges, but it is an enactment to prevent them from being subjected to various offensive acts, indignities, humiliation and harassment, on account of various historical, social and economical reasons. One of the primary concern in enacting the special statute is, despite the steps having been taken in the past to prevent serious crimes being committed against a particular class, only on the ground that they belong to Scheduled Castes or Scheduled Tribes, and when the members of these communities asserted their rights and resisted the practices, they were terrorised and it became

difficult for them to preserve their self respect or honour as a human being. The immediate impetus for enactment of the Atrocities Act was the increase in commission of the atrocities against the members of the Scheduled Castes and Scheduled Tribes communities and inadequacy of existing laws in the Act of 1955 and the IPC, which failed to check and deter commission of such crimes.

58. The Gujarat High Court had an opportunity to deal with an argument somewhat similar to the one being advanced by Dr. Chandrachud, in the case of ***Vaghela Dilipbhai Gulabsang*** (supra).

While dealing with an Appeal filed u/s.14A of the Scheduled Caste and Scheduled Tribes Act, being preferred by an appellant facing charge u/s.302, 364 and 114 of IPC, as also under Section 3(2)(v) of the Atrocities Act, an argument was advanced that the deceased against whom it is alleged that the accused have committed the offence was of Scheduled Tribe in the State of Rajasthan and when the offence was committed, he was in the State of Gujarat and therefore, no provision of the Atrocities Act can be invoked.

A similar argument was canvassed that when a person is conferred a status of Scheduled Caste or Scheduled Tribe by a presidential notification after consultation with the Governor, for the purpose of Constitution of India, he is deemed to be Scheduled Caste or Scheduled Tribe in relation to that State. While dealing with the said argument, the learned Single Judge, Justice Umesh A. Trivedi made very pertinent

observations and we deem it appropriate to reproduce and rely upon the same :-

> "When caste of a person is declared to be Scheduled Caste or Scheduled Tribe, may be for the purpose of constitution, in relation to that State, the status of caste does not get changed, on migration, within India. Though in a migrated State such person may not be entitled to reap any rights, benefits or privileges in respect of reservation in education or service under the Constitution, neither the caste nor the status attached to a person gets vanished. The person of that caste or tribe may not be entitled for the benefits under the Constitution in education or service in a migrated State but for invoking the provisions of the Act, which is conferring the dignity to the person it cannot be taken away only because he is declared deemed to be Scheduled Castes/Scheduled Tribe in his State of origin. Since such downtrodden Castes/Tribes are subjected to various offences, humiliation and harassment, to prevent that, the Act has been introduced in the year 1989. The Act is a special legislation to check the crimes committed against the Scheduled Castes and Scheduled Tribes and to achieve this objective the Act has been enacted. The legislature was conscious enough to make special central legislation like this, which is applicable throughout India except the State of Jammu & Kashmir and despite that definition, Section 2(c) is incorporated in it, as it is defined under Clause (24) and (25) of Article 366 of the Constitution of India. If the legislature wanted to restrict the applicability of the offence committed against a person in his State of origin only it would have made it very clear and loud expressly. The caste is conferred on a person by birth. It remains with him wherever he goes. The Act does not confer any right or privilege to a person either of Scheduled Caste or Scheduled Tribe but it confers respect and dignity to them. Though, on migration, person of that caste cannot claim any right or privilege under the Constitution in respect of education or employment regarding reservation to disadvantage of person of Scheduled Caste or Scheduled Tribe in that migrated State, however, they do not lose their identity as of that caste."

59. The decision of the learned Single Judge of this Court in case of ***Charles Raj*** (supra), is in a case where relief was prayed for quashing of the charges under the Atrocities Act,

1989, the observations made in paragraph 5, in our opinion, has failed to consider the purpose of the Atrocities Act and we do not agree with the view expressed therein. Another Single Judge, in case of ***Minaxi Pednekar*** *(supra)* considered the true spirit of the Atrocities of 1989 when it held that the Act is to protect the persons belonging to this class, from the Atrocities sought to be imposed on them not only in the State where they were recognised as Scheduled Caste or Scheduled Tribe, but anywhere in the country, where there was no such recognition and as far as penal provisions are concerned, they would be entitled for the benefits flowing from the enactment irrespective of their residence in a particular State.

60. The learned Advocate General has placed before us the Loksabha Debates Vol LII, when the Atrocities Bill was under discussion and while debating on the Bill, which was introduced to prevent the commission of offence of Atrocities against the members of Scheduled Caste and Scheduled Tribes and clause 3, which prescribed punishment for the offences, Dr.Rajendra Kumari Bajpai had rightly focused on its purpose and we must reproduce the same.

> "DR. RAJENDRA KUMARI BAJPAI: The whole purpose of the Bill is to focus on atrocities committed by persons other than the Scheduled Castes and Scheduled Tribes on members of Scheduled Castes and Scheduled Tribes. Such atrocities are perpetrated by a group against another. The amendment proposed would have the effect of bringing in its purview any such act committed by a member of Scheduled Caste or Scheduled Tribe upon another member of their group. Such cases can be dealt with under the ordinary law of the land and no special provision need to be made. Ordinary law operates

> where any person commits any crime or any atrocity, i.e., from man to man, the ordinary law of the land operates. But here in this Bill, we are considering one caste or perpetrating atrocity on another, i.e. the general caste on the so-called upper caste of the society. We are bringing this Act against such ideals prevailing in the society. I am not accepting this amendment."

61. We have given our thoughtful consideration to the argument of Dr. Chandrachud, that on migration from a State of origin, a member of Scheduled Caste or a Scheduled Tribe shall be denuded of his status. If this proposition sought to be propounded is accepted, it would mean that once a person belonging to this class, steps out of the boundary of his State i.e. the State of his origin, either voluntarily or involuntarily, and in case, if he is to undergo indignity, humiliation, and harassment, on the ground that he belongs to Scheduled Caste/Scheduled Tribe, he has no protection under the Act of 1989, as no offence is attracted and any brutality or caste related sufferings, will not invite any punishment, as he is not a Scheduled Caste or Scheduled Tribe in the State, where such an act is committed.

How do we appreciate this argument?

What is caste, is an enigma, but it is a well accepted fact that it is a social homogeneous class, sometimes based on occupational grouping, but the membership of such a class is involuntary. A person has no choice of his own, but since he is born out of a relationship between two persons, belonging to that group, the caste of that group automatically sticks to him, as he gained it as a hereditary trait. It is not possible for him to get rid of the baggage of his caste though he may come out of

the occupational grouping or from the social status of that particular caste and becomes socially and economically forward surpassing his peers in the caste. He may travel to different cities and undertake different occupations, at times dignified one, but would find it difficult to shed off his caste based identity, as it is nearly impossible to break the rigors of the inflexible and exclusive character of the caste system. In situations where a woman marrying a member of Scheduled Caste or Scheduled Tribe, would be considered to be a Scheduled Caste or Scheduled Tribe by herself and at times, whether she would be entitled for claiming the benefits under Article 15(4) or 16(4), the Apex Court in case of ***Valsamma Paul Vs. Cochin University & Ors.***[18], has observed as under :-

> "Acquisition of the status of the Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution and would frustrate benign the constitution policy under Article 15(4) and 16(4) of the Constitution."

Thus, neither by marriage, nor by conversion, can a person free himself of the caste barriers and his sufferings cannot be said to have been wiped out, by marrying a person from a forward caste. The label attached to a person born into a Scheduled Caste or Scheduled Tribe may continue, notwithstanding his personal upliftment, his social upliftment by his own good deeds, but he does not lose his identity and selfhood, as he has once upon a time suffered the sting and disadvantages, though he has travelled ahead in life. His economic status, his social status may undergo a change superficially, but he is unable to attain the status of higher caste, on the parameters of education, progress and his

18 (1996) 3 SCC 545

potential to overcome the distress suffered by him once upon a time. A person born as a member of Scheduled Caste or Scheduled Tribe may have to suffer the disadvantages, disabilities and indignities, only on the count of being born into a particular caste/tribe, the status, he or she acquires involuntarily on birth and sufferings of such person may not get wiped out, by marrying a person from forward caste and the label attached, continue to stick him, wherever and whenever he moves ahead in his life.

If one keeps this principle in mind, the argument that caste shall be limited to the boundaries of a State, would be a myth. The interpretation accorded to the term 'in relation to that State' used in Article 341 and 342 cannot be invoked and applied when it comes to protecting the rights of the Scheduled Caste and Scheduled Tribe and preventing the Atrocities imposed upon them and it is not a question of enjoying the rights, privileges and benefits flowing from the caste. The action under the Atrocities Act, is for preventing the member of this class being subjected to Atrocities, which is distinct from claiming a privilege which a person may not avail, when he migrates from one State to other. The Atrocities Act is entitled to protect the human dignity of the members belonging to the Scheduled Caste and Scheduled Tribe and in no case, deserves a restricted or constricted meaning, confining their status only to a particular State.

Do we say that it is his misfortune that as soon as he steps out of the State of his origin, where he enjoyed the protection conferred upon him by the Constitution, but as soon as he cross the frontiers, he ceased to be a member of that

class and, therefore, even if he is subjected to acts which amount to atrocities, he is not entitled for any protection because across the boundaries of his State, he has lost his recognition of the protective class and now he has to blame himself for the same.

62. We have specifically taken note of the decisions of the Apex Court in the case of ***Bir Singh*** (supra), which has distinguished the decision in the case of ***S.Pushpa*** (supra), which deal with All-India Services like the Indian Administrative Service **(IAS)**, Indian Forest Service **(IFoS)** and Indian Police Service **(IPS)**.

Dealing with these services, the position of law is well crystallized to the effect that members of All India Services are common to the Union and the States and they serve, by term, both the Union and the State Governments and the members of these services although recruited by the Centre,their services are placed under various State Cadres and as such, their recruitment is on pan India basis. Every citizen of this country, having the required qualification is eligible to be considered for the appointment. In ***Bir Singh***, it is noted as under :-

> "51.....It is pertinent to note that before selection in the AIS, there is no specification or indication of the cadre in Union, Union Territory or State, which they may serve. Upon selection alone, they would be allocated cadre depending upon the merit and the preferences they would have made at the time of applying. Upon selection they could be allocated to serve through any of the 25 States or 7 Union Territories of Delhi; Puducherry, Chandigarh; Daman & Diu; Dadra & Nagar Haveli; Andaman & Nicobar; Lakshadweep coupled with the States of Arunachal Pradesh, Goa and Mizoram.

... ...

> 63. The broad picture that emanates from the above discussion and narration is that insofar as the services in connection with the affairs of the Union is concerned (Central Services), wherever the establishment may be located i.e. in the National Capital Territory of Delhi or in a State or within the geographical areas of Union Territory, recruitment to all positions is on an all-India basis and reservation provided for is again a pan India reservation. This is by itself, from one perspective, may appear to be in departure from the rule set out in Part XVI of the Constitution of India (Articles 341 and 342). However, the close look undertaken hereinbefore indicates such a position is fully in accord with the constitutional structure of a federal polity."

A clear distinction is, therefore, drawn as regards the aforesaid services and the services pertaining to the Union Territory or of the Central Government. While considering the services to be placed under the control of NCT of Delhi, it is categorically held that while recruiting persons to the services under it's administration, it has necessarily to follow the policy of recruiting members from Scheduled Castes/Scheduled Tribes, as notified in the Presidential Notification.

This aspect is also taken into account by us, while making out an exception in applying the restrictive connotation of Scheduled Caste/Scheduled Tribe, by implementing it on pan India basis,when certain services are concerned.

63. Another departure is noticed by us in Section 4 of the Representation of Peoples Act, 1951, where the Parliament has consciously departed from the constitutional understanding of the term "Scheduled Caste and Scheduled Tribe" under Article 366,by providing that a person recognized so, in any State can

contest election for a reserved seat in the House of People, in any State in India. Although for elections to Legislative Assemblies, Parliament has chosen to go by the term "Scheduled Caste and Scheduled Tribe" in clause 24/25, by imposing a restriction of contesting for the Constituency only to the Scheduled Castes and Scheduled Tribes from that State, when a seat is reserved for them.

The aforesaid contingencies reveal a deviation of restricting the status conferred upon a member of Scheduled Caste and Scheduled Tribe to the State where he/she is conferred such a status and where a member of Scheduled Caste/Scheduled Tribe is not bound by the geographical boundaries of his State.

64. Dr.Chandrachud has also invoked well settled principle of statutory interpretation that the penal statute must be construed narrowly and the Court must lean in favour of that construction, which exempts the subject from penalty. He would invoke the principle laid down by the Apex Court in the case of ***Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya & Ors.***[19], where while dealing with the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987, it was noted that it is the penal statute with drastic provision and some of the provisions are introduced with a view to control the menace of terrorism. The following observations are specifically emphasized by Dr.Chandrachud.

> "The legislature, therefore, made special provisions which can in certain respects be said to be harsh, created a special forum

19 (1990) 4 SCC 76

> for the speedy disposal of such cases, provided for raising a presumption of guilt, placed extra restrictions in regard to the release of the offender on bail, and made suitable changes in the procedure with a view to achieving its objects. It is well settled that statutes which impose a term of imprisonment for what is a criminal offence under the law must be strictly construed."

65. It is a primary rule of construction to discern the intent of the legislature from what is actually expressed and it must be deduced from the language used. It goes without saying that the solution of a particular problem of interpretation will often be determined by which principle or principles, the Court chooses to apply.

66. In ***Heydon's*** case, it was resolved by the Barons of the Exchequer "that for the sure and true interpretation of all statutes in general, (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered; (1) what was the common law before the making of the Act, (2) what was the mischief and defect for which the common law did not provide, (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and (4), the true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commondo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

Maxwell on Interpretation of Statutes (12th Edition) has quoted Lindly MR; "in order properly to interpret any statute,

it is as necessary now as it was, when Lord Cock reported Heydon's case to consider how the law stood, when the statute to be construed was passed, what the mischief was for the old law did not provide, and the remedy provided by statute to cure that mischief."

Although the Judges are unlikely to propound formally in their judgments the four questions in ***Heydon's*** case, consideration of the "mischief" of object of the enactment is common, and will often provide a solution to a problem of interpretation.

It is said to be the duty of the Judge to make such construction of a statute, as shall suppress the mischief and advance the remedy. Keeping this principle in mind, even in the context of a penal statute; it is imperative to interpret the provision in a statute having regard to it's object and a strict literal and lexical construction may not be given effect to, if by doing so, it reduced a provision to futility or disadvantage, if the plain intent and object of the legislation is to combat special crimes.

In ***Appa Balu Ingale & Ors.*** (supra), when challenge was raised before the Supreme Court vis-a-vis the acquittal by the High Court of a person convicted under the Act of 1955, the Hon'ble Apex Court speaking through Justice K.Ramaswamy made reference to the "socio logical and constitutional angulation" behind the Act and has pertinently observed as under :-

> "34. Judiciary acts as a bastion of the freedom and of the rights of the people. Jawaharlal Nehru, the architect of Modern India as early as in 1944 stated that the spirit of the age is in favour of equality though the practice denies it

almost everywhere, yet the spirit of the age triumphs. The judge must be atune with the spirit of his/her times. Power of judicial review, a constituent power has, therefore, been conferred upon the judiciary which constitutes one of the most important and potent weapons to protect the citizens against violation of social, legal or constitutional rights. The judges are participants in the living stream of national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other hand in the seemless web of life. The great tides and currents which engulf the rest of the men do not turn aside in their course and pass the judges idly by. Law should subserve social purpose. Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilections. Therefore, the judges should adopt purposive interpretation of the dynamic concepts of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time. The judge must also bear in mind that social legislation is not a document for fastidious dialects but a means of ordering the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable of expanding freedoms of the people and the legal order can, weighed with utmost equal care, be made to provide the underpinning of the highly inequitable social order. The power of judicial review must, therefore, be exercised with insight into social values to supplement the changing social needs. The existing social inequalities or imbalances are to be removed and social order readjusted through rule of law, lest the force of violent cult gain ugly triumph. Judges are summoned to the duty of shaping the progress of the law to consolidate society and grant access to the Dalits and Tribes to public means or places dedicated to public use or places of amenities open to public etc. The law which is the resultant product is not found but made. Public policy of law, as determined by new conditions, would enable the courts to recast the changing conceptions of social values of yesteryears yielding place to the changed conditions and environment to the common good. The courts are to search for light from among the social elements of every kind that are the living forces behind the factors they deal with. By judicial review, the glorious contents and the trite realisation in the constitutional words of width must be made vocal and audible giving them continuity of life, expression and force when they might otherwise be forgotten or ignored in the heat of the moment or under sway of passions or emotions remain

> aroused, that the rational faculties get befogged and the people are addicted to take immediate for eternal, the transitory for the permanent and the ephemeral for the timeless. It is in such surging situation the presence and consciousness and the restraining external force by judicial review ensures stability and progress of the society. Judiciary does not forsake the ideals enshrined in the Constitution, but makes them meaningful and makes the people realise and enjoy the rights."

67. Dr.Chandrachud also argued that the Atrocities Act and the Act of 1955 are in pari materia, as both deal with the same subject matter and the later Act finds mention in the statement of objects and reasons of the Atrocities Act.

In this context, the learned counsel submits that it is the conscious decision of the Parliament to use a term other than "person" in the new statute and the Court must construe the intention of the legislature accordingly. When we deal with the said submission, we find the same to be misplaced, as although several offences in relation to untouchability defined in the Civil Rights Act, 1955 are with reference to a "person", the Act has defined certain offences in relation to "Scheduled Caste" as at that time, it was not extended specifically to Scheduled Tribes. The definition of Scheduled Castes in Section 2(db) of the Civil Rights Act is identical to the definition under the Atrocities Act.

However, since the Act of 1955 did not offer adequate protection to the members of Scheduled Castes and Scheduled Tribes, the Parliament deemed it appropriate to enact the special legislation and in our view, the intention of the Parliament must be fully respected by giving effect to the same.

68. It is undisputedly the duty of the Constitutional Court to respond to the Nation's need as articulated through the legislation so enacted and interpreted the law, which would realize the constitutional goals.

We are cognizant of the background history, which prompted the Parliament to enact the special legislation four decades after the Constitution was brought into force to annihilate the atrocities continued to be committed upon the members of a particular class and to accord them right of equality and making the preamble of the Constitution a reality enforcing justice, liberty and fraternity. The Atrocities Act came to be enacted, when it was realized that whenever the members of the 'Scheduled Castes' and the 'Scheduled Tribes' assert their rights made available to them under the Constitution and demand statutory protection, they are intimidated, cowed down and disillusioned and even terrorized and made to suffer ignominy. The members of this particular class were found to be discriminated and in-spite of making provisions in the form of positive affirmation, the fruits of development still eluded them and they continued to remain vulnerable. It was, therefore, deemed necessary to punish the acts of atrocities so that the concept of 'Equality', enshrined in the Constitution coupled with the right to live with dignity is translated into reality. By the said enactment, the historically disadvantageous group was given special protection, so as to uplift them from the lower strata and those who are found guilty of suppressing them by subjecting them to the acts of humiliation and harassment, are appropriately punished. The statement of objects of the Bill preceding the Act clearly

noticed that despite various measures taken to improve their social-economic conditions, they remained vulnerable and are denied principle of social rights. They have been subjected to brutal incidents, depriving them of their right and property and they are made to undergo indignities, humiliation and harassment. The creation of caste-less society, where a person deserves equal treatment is the ultimate dream to be achieved for an independent India, so that one class of human exists and all the citizens of the country are emancipated and treated equally, as what the Constitution makers dreamt of.

This being the avowed purpose in bringing the enactment on the statute book, the founding fathers of the Constitution conceived of a Nation, where it's citizens are entitled to Equality, Liberty and Fraternity and a particular class of the society, definitely deserved protection in form of a positive affirmation, so as to ameliorate measures to achieve the goal of the constitution makers of ensuring 'Eequality and Liberty'. The social prejudices against the members of the oppressed classes necessitated enlisting of certain acts and pernicious practices, which amounted to atrocities and, therefore, it is our duty to enforce the provisions of a statute, which aimed at conferring respect and honour upon them, in it's true letter and spirit, so as to achieve identity of a caste-less society.

69. Dr.Babasaheb Ambedkar, recognized as father of the Indian Constitution and a fighter in the cause of annihilation of castes system in the country, on 25/11/1949, in his concluding remarks in the Constituent Assembly, made the following utterances which till date are significant; and are reproduced :-

> "I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation?
> The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realising the goal.
> The realization of this goal is going to be very difficult – far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes...But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint."

70. A legislation framed for combating crimes of a social nature deserve an interpretation, which is consistent with the history, object and scheme of a statute and the provisions shall be construed in a manner, which would advance the intention of the legislature and in the manner, which will suppress the mischief. We would be committing serious flaw in adopting too narrow and pedantic construction, which would stultify the intent of a special law and impede its implementation. We must be conscious of the laudable object of the Act, to attain the constitutional goal and this can only be achieved, when the rights of the 'Scheduled Castes' and 'Scheduled Tribes' are protected and not permitted to be abstruse .

The narrow interpretation of the terms 'Scheduled Castes' and 'Scheduled Tribes', which Dr.Chandrachud want us to adopt, by reading the two terms in the light of the two Constitution Bench decisions, would cause severe indentation to the class, which deserves protection from oppression. If the interpretation by Dr.Chandrachud is to be accepted, then

the person belonging to a Scheduled Castes or Scheduled Tribes, would be entitled only for protection against the dreadful acts of atrocities committed in his own State, leaving him vulnerable and without any protection, if these very acts are committed outside the geographical limits of his State.

71. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a social reformatory legislation enacted for the purpose of combating special category of crimes and, hence, it requires an interpretation, which would attain the purpose and not defeat it. The reliance placed upon the two Constitution Bench judgments, identifying the 'Scheduled Castes' and 'Scheduled Tribes' and the act of atrocities, by referring to the principle propounded in those judgments is completely misplaced as the geographical limitation under Articles 341 and 342 of the Constitution, which is conveyed by use of the words "in relation to that State" or "Union territory" are confined for conferring the benefits/privileges like reservation, employment or education and in no case, it shall be applied mutatis mutandis, when it comes to commission of atrocities upon the persons belonging to the said class for the simple reason that conferring privileges is an affirmative action intended for upliftment of these classes, but for protecting their very existence and identity, the bar of territorial arena cannot be applied.

By restricting the identity of a Scheduled Caste or Scheduled Tribe only in relation to the State of his origin, would even defeat their fundamental right under Article 19 (1)(d) and (e) of the Constitution, as it would indirectly

require them to be bound to their State of origin, with no chance of taking steps to progress themselves by stepping outside. This definitely would cause more harm to the identified class than advancing them to compete with members of the higher class and assisting them in achieving equality, as enshrined in the Constitution.

Hence, we negate the submissions advanced by Dr.Chandrachud on Issue A.

72. We would like to place on record our appreciation for the able assistance rendered by Dr.Abhinav Chandrachud, Dr.Birendra Saraf, the learned Advocate General, Mr.Anil Singh, the Additional Solicitor General of India, Dr.Prakash Ambedkar and Advocate Sanjeev Kadam.

73. In the wake of the aforesaid discussion, we answer the reference, as under :-

- : ISSUE A :-

The scope of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 cannot be restricted to a person belonging to a Scheduled Caste or Scheduled Tribe to the State or Union Territory in which he is declared as Scheduled Caste or Scheduled Tribe only, but he is also entitled to the protection under the Act, in any other part of the country, where the offence is committed, though he is not recognized as Scheduled Caste or Scheduled Tribe in that part.

- : ISSUE B :-

All Appeals under Section 14(A-2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989, irrespective of the punishment, the offence entails shall lie before the Single Judge of the High Court, as it would fall within clause (e) of Rule 2(II) of Chapter I of the Bombay High Court Appellate Side Rules, 1960.

(REVATI MOHITE DERE, J.)

(BHARATI DANGRE, J.)

(N.J.JAMADAR, J.)

Esha/M.M.Salgaonkar