Draft Observations

National Coalition for Strengthening SCs & STs (PoA) Act (NCSPA)

&

National Dalit Movement for Justice (NDMJ)

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in

CRIMINAL APPEAL NO.416 OF 2018

(Arising out of Special Leave Petition (Crl.) No.5661 of 2017)

DR. SUBHASH KASHINATH MAHAJAN …Appellant

VERSUS

THE STATE OF MAHARASHTRA AND ANR. …Respondents

1. What the Judgment says (Final Conclusion of the Court)?

The Supreme Court of India on 20.03.2018 comprising a bench of Justices Hon'ble Justice A.K Goel and Hon'ble Justice U.U Lalit laid down stringent ruling under the SCs and STs (Prevention of Atrocities) Act 1989, a legislation meant to protect the marginalized communities from caste based atrocities and discrimination.

A bench of Justices AK Goel and UU Lalit made the following observations with regard to SCs and STs (PoA) Act 1989:

a) There is **no absolute bar against grant of anticipatory bail** in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
b) **Arrest of a public servant can only be after approval** of the appointing authority and of a non-public servant after approval by the S.S.P which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.
c) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

2. General Observations in relation to the Judgment:

2.1 The ruling dilutes the very purpose of the progressive legislation, a legislation meant to protect the marginalized communities from caste based atrocities and discrimination.

2.2 A cursory look at the judgment reveals the **failure of the Additional Solicitor General (ASG), representing the Centre, to place on record the overall social background of the Act, importance of the provisions of the Act and the relevant data** pertaining to the implementation of the Act. The observations in the judgment are **unjustified and several misinterpretations** of the Act were found.

2.3 It seems that the arguments /opinions presented by the Additional Solicitor General (ASG), representing the Centre, on the Act, **were one sided, and while placing on record his arguments he failed to recognize "The Statement of Objects and Reasons appended to the Bill** of the aforesaid Act and that the Bill before the Act was passed had been prepared in pursuance of Article 17 of the Constitution, by which untouchability was abolished and its practice in any form was forbidden". **Thus the judicial review on any of the averments of any special legislation has to be seen at the backdrop of its statement of objects and reasons.** In the present case the judiciary failed to recognize so.

2.4 The Statement of Objects and Reasons appended to the SCs and STs (PoA) Bill while moving the same in the Parliament, read as under:--

> ***"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and 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....."

Thus the preamble of a statute is a part of I the Act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied or the doubts, which may be intended to be settled.

2.5 A cursory look at the Judgment also reveals that **most of the arguments were based on the previous judgments of Cr.P.C and SCs and STs (PoA) Act 1989 and interpreted in such a way thereby projecting a negative image or use of the SCs and STs (PoA) Act 1989.**

2.6 In Para 76 of the judgment the court observed the issue of **false complaint** as under

" We are satisfied, in the light of statistics already referred as well as cited decisions and observations of the Standing Committee of Parliament that there is need to safeguard innocent citizens against false implication and unnecessary arrest for which there is no sanction under the law which is against the constitutional guarantee and law of arrest laid down by this Court.

2.7 The court failed to observe that the ***issue of making provision for punishment for false complaints was examined by the Parliament but the Government took a stand that awarding punishment to members of SCs and STs for false implication would be against the spirit of the Act.*** The Additional Solicitor General ***failed to explain that the Government did not accept the recommendation of the*** **Standing Committee on Social Justice**

and Empowerment (2014 -15) (Sixteenth Lok Sabha) Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) on The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014, in this regard because the **acquittals of the accused do not mean that the cases were false.** The acquittals usually mean a factually true atrocity could not be provide in the court, because of poor investigation or because of witnesses turning hostile on account of absence of adequate protection for them, as happened in the Kambalapalli case of Karnataka.

The relevant para no 2.14 of the Standing Committee on Social Justice and Empowerment (2014 -15) (Sixteenth Lok Sabha) Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 reads as under

> ***"Since the punishments proposed in section 4 of the Bill are quite stringent, what are the safeguards available for the „accused" who might be implicated knowingly in false, malicious or vexatious suit and which comes to light during the trial or at appeal stage and what would be the penalty for such litigants and under which law and which sections, the Ministry in the written reply furnished that :***
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> ***"… relevant sections of the IPC can be invoked for dealing with specific false cases. The object of the PoA Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes (SCs) and the Scheduled Tribes (STs), to provide for 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. It would, thus, not be in consonance with the intent of the PoA Act to provide for punishment for members of SCs and STs for falsely implicating the accused"

As regards penalties for such litigants and under which law and which sections, the Ministry stated that, "IPC sections like 191 (related to false evidence), 192 (fabricating false evidence), 198 (using as true a certificate know to be false), 211 (false charge of offence made with intent to injure), 420 (cheating) 499 (defamation), 503 (criminal intimidation) may be some of the relevant sections of the IPC. The punishment have been prescribed in the IPC"

2.8 Para 66 of the judgment made following observation with regard to the abuse of the Act-

"We have already noted the working of the Act in the last three decades. It has been judicially acknowledged that there are instances of abuse of the Act.."

It is to be noted that the observation of the Bench that it has noted "abuse" of law in the nearly 3 decades of its operation, is a very drastic, prejudiced observation not backed with any material evidence and facts on record.

2.9 Para 66 of the Judgment further goes on to say -

"It may be noticed that by way of rampant misuse complaints are 'largely being filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests'.

2.10 Again the observation and phrases like “abuse”, “rampant misuse” etc are drastic, not backed by any evidence and facts on record. The court failed to recognize that largest number of atrocities and cases of atrocities pertain to the SCs trying to get possession of lands, legally allotted to them; when others try to capture SC and ST lands; honour of SC and ST women; and resistance to various types of inhuman humiliations and discriminations a number of which have been listed in the Act as offences; and so on.

2.11 In this regard the apex court on the other hand failed to notice and recognize the increase in atrocities against Scheduled Castes by 5.5% in 2016 (40,801) over 2015 (38,670) and increase atrocities against Scheduled Tribes by 4.7% in 2016 (6,568) over 2015 (6,276).

2.12 The **Hon’ble apex court further failed to recognize the low disposal rate by courts in the recent years.** A total of 144979 cases of atrocities against SCs and 23408 cases of atrocities against STs came for **trial in the court** and out of these in only 14615 cases, **trials were completed** for the cases against SCs and 2895 cases for STs. At the end of the year 89.6 % of cases for SCs and 87.1% for STs remained **pending trial.**

2.13 In Para 26 of the Judgment the court observed the following in relation to the false cases, acquittal and discharge:

> ***“...it is mentioned that in the year 2016, 5347 cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases. It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. (Reference: Annual Report 2016-2017***

published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India)".

2.14 Again the apex court failed to observe that the **data presented before the court talks about the minimal number of cases found to be false in comparison** to the high number of cases of atrocities registered against SCs and STs as evident in the recent NCRB, 2016, Crime in India Report.

2.15 The **apex court instead of recognizing the low conviction percentage,** which remained at 25.7% for SCs and 20.8% for STs for the year 2016 and the **high acquittal percentage** which ended with 74.2% for SCs and 79.2% for STs, **made its observation on the basis of a small number of cases which found to be false under the Act.**

2.16 The judgment has not looked at the reasons for high number of increase in atrocities, low conviction rate and high acquittal rate and analyzed its reasons. Some of the well known hurdles and are **shoddy investigation, incorrect and biased recording of victims and witnesses statements during investigation, filing of improper charge sheet and undue delay in filing charge sheets, in appropriate support mechanisms to the victims and witnesses by the investigating officers and public prosecutors and, as a whole, by the trial court.** On the other hand there are hardly cases where the **public servants have been convicted under Section 4 of the SCs and STs (PoA) Act 1989** for the above-mentioned willful neglect of their duties to be performed under the PoA Act.

2.17 It is important to mention relevant Para 1.1 of the **Standing Committee on Social Justice and Empowerment (2014 -15) (Sixteenth Lok Sabha) Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 in this regard**

which talks about the non implementation of the SCs and STs (PoA) Act 1989 and Rules 1995.

> **"The implementation of PoA Act, 1989 mainly suffers due to (i) procedural hurdles such as non-registration of cases; (ii) procedural delays in investigation, arrests and filing of charge-sheets; and (iii) delays in trial and low conviction rate" .**

2.18 In Para 22 again the apex court **wrongly presumed with the data presented before it on the number of acquittals that majority of the cases are false as acquitted or discharged.** The apex court failed to observe that the acquittals of the accused do not mean that the cases were false. **The acquittals usually mean a factually true atrocity could not be provide in the court, because of poor investigation or because of witnesses turning hostile on account of absence of adequate protection for them**, as happened in the Kambalapalli case of Karnataka. The biases and prejudices become more evident when we see acquittals in major massacres of Dalit men, women and children occurred in India. In all these cases the accused, who were convicted by the trial court, were mostly let off by the High Courts for ***'lack of evidence'*. This has happened in many of the massacre cases where in the accused persons were let off by the higher courts for lack of evidence. Few of the massacre cases are mentioned below.**

> "In 2012, the high court acquitted 23 accused of **Bathani Tola** massacre of 1996 in which 21 Dalits were killed".

> "On October 9, 2013, the Patna High Court acquitted 26 accused of the **Lakshmanpur-Bathe** massacre of 1997".

"On July 3, 2013, the high court acquitted nine of the 10 accused in the **Miyanpur massacre** case of 2000 in which the Ranvir Sena men allegedly killed 32 people in Aurangabad".

"On March 1, 2013, the high court acquitted 11 convicted accused in the **Nagari Bazaar massacre** case in which 10 CPI-ML supporters, mostly Dalits, were killed in Bhojpur district in 1998".

"Tsunduru, Andhra Pradesh 1991 – 8 SCs massacred. Trial court convicted (2007). The country's first-ever special court set up for trying a case under the PoA Act the judge acquitted 123 out of the 179 accused. In the case of 41 accused, the court did not find any evidence, while 62 of them were released on benefit of doubt. The other 20 were let off due to omission of evidence or having only single witnesses. High Court acquitted (2014). The Supreme Court admitted SLP of surviving victims and survivors of victims. Government's petition in the Supreme Court pending – the Supreme Court directed serving of notice to other parties and because the report of serving of notice is not received, the case is not yet posted for consideration of admission of the SLP. This is an example of how delay is a basic feature of our system and every additional layer of procedure, as directed in the Supreme Court's judgment of 20.3.2018, will add to this delay. There is no mechanism anywhere in our system to ensure prompt service and report so that the case can move forward".

"Kizhavenmani atrocity, Tamil Nadu, in 1958, where 44 SCs were burned to death in a confined building. No doubt about the factum of massacre. The reason was SC Agricultural labourers seeking a little rise in their very low wages. What was sought was much lower than the existing statutory minimum wages. The High Court acquitted all the accused".

"Karamchedu, Andhra Pradesh, 1984 – 5 SCs massacred. Trial court convicted many of the accused. The High Court acquitted all. The Supreme Court upheld the trial court judgment – a clear example that acquittals do not mean false cases".

2.19 These are some examples to show that **acquittals do not mean that the cases of are false.** There are many other **technical and procedural hurdles such as delay in investigation and trial result in intimidation** of victims, survivors of victims and witnesses by various means including social boycott and economic boycott, which are crippling.

2.20 The amendments to the Act came in force in year 2016 and but the concern remains the implementation of the amended Act, as the experience says that even after the passage of more than one year the new provisions of **SCs and STs (PoA) Amendment Act 2015 are not being enforced in a proper manner**. The trends of gruesome atrocities against Dalit and Adivasis shows the same picture. It is pain to note that the court did not recognise the procedural hurdles and apathy of the State in implementing the provisions. Dalits and Adivasis communities suffering from inhuman atrocities like **murders and mass-murders, social boycott and economic boycott, mass arsons, rapes, gangrapes** etc on a daily basis all over India. These are few examples and many of the cases go **unreported and are compromised**. **It is to be noted that Section 15 A of the newly amended Act, under victims and witnesses rights provided that a victim shall have the right to be heard in respect of bail, discharge, release, parole, conviction and sentence and similarly many other provisions.** The question remains the same if the progressive provisions under the Act have actually been implemented by the authorities in its true sense and weather the apex court have kept in mind these reasons behind before making a observation on the number of false cases, acquittal and discharge etc.

2.21 In Para 66 of the judgment the Hon'ble bench along with the Gujarat High Court Judgement in Pankaj D Suthar versus State of Gujarat, 17 (1992)1 GLR 405 also observed that

> ***"..the legislature never intended to use the Act "as an instrument to blackmail or to wreak personal vengeance" or "to deter public servants from performing their bona fide duties".***

These are also drastic observations, not backed by evidence and facts. The use of the work "blackmail" for personal vengeance and deterring public servant from performing their bonafide duties, etc. in connection with this Act, are neither correct nor fair. The problems faced by the SCs and STs vis-à-vis many public servants is that they fail to perform their bonafide duties, particularly in relation to SCs and STs.

2.22 The **highest body of judiciary in total failed to recognize the overall non implementation of SCs and STs (PoA) Act 1989 and Rules 1995 and various reasons for low conviction rate and high acquittal** rate which has been reiterated by this court in many of its own judgments, including in **Writ Petition (Civil) No. 140 Of 2006 - National Campaign On Dalit Human Rights & Ors. vs Union Of India & Ors,** wherein the apex court in para 12 specifically says-

> ***"..We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the concerned authorities in complying with the provisions of the Act and Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities…"***

"We are satisfied that the Central Government and State Governments should be directed to strictly enforce the provisions of the Act and we do so".

3. Specific observations on the issue of Anticipatory Bail

3.1 What the judgment Says? [Relevant paras 48 to 74 & 83 (ii)]

"There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide".

3.2 Our Response:

3.2.1 Presently, the **SCs and STs (PoA) Act 1989 bars a court from granting anticipatory bail to a person accused of the offence as per Section 18**. On receiving a complaint, the police are bound to immediately register a First Information Report (FIR) and arrest the accused.

3.2.2 The scope of Section 18 of the SCs and STs (PoA) Act 1989 read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SCs and STs (PoA) Act 1989, **no court shall entertain an application for anticipatory bail**.

3.2.3 Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

3.2.4 The provisions of the Cr.P.C., which is the parent statute, provides the procedure to be followed by the Investigating Agency and the Courts, during the course of investigation, inquiry and trial, as the case may be. The crucial question that falls is whether the provisions of Cr.P.C., applicable to the cases registered under the provisions of the SCs and STs (PoA) Act 1989 , for the purposes of investigation, inquiry and trial. The SCs and STs (PoA) Act 1989 is a special enactment. It is not much in dispute with regard to the proposition of law that when there is a conflict between the provisions of the Cr.P.C., and the special Act, the provisions enumerated under the special Act will prevail over the Cr.P.C.

3.2.5 A conjoint reading of the above two provisions clearly demonstrates that the words and expressions as used in Cr.P.C. are applicable, to the SCs and STs (PoA) Act 1989 unless a contrary meaning is assigned to the same word or expression under the SCs and STs (PoA) Act 1989. In the present case thus a specific bar and a specific averment has been provided in relation to the section 18 of the SCs and STs (PoA) Act 1989.

3.2.6 As per the principle enunciated in many of the judgments namely - ***Gangula Ashok v State of A.P, Moly v. State of Kerala , Directorate of Enforcement v. Deepak Mahajan, Mirza Iqbal Hussain v. State of U.P, A.R.Antulay v Ramdas Sriniwas Nayan*** the provisions of Cr.P.C., are applicable for investigation, inquiry and trial of the offences under any other special or local Act, unless such special or local Act provides a specific provision for that purpose.

3.2.7 There are many provisions under Cr.P.C which have no application under SCs and STs (PoA) Act 1989 in respect of the offences committed under this Act. Under the provisions of the Cr.P.C., the Station House Officer will conduct investigation into a cognizable offence. On the other hand Rule 7 of the SCs and STs (Rules), 1995 mandates that the Deputy Superintendent of Police alone is competent to investigate into the offences committed under the SCs and STs (PoA) Act 1989. This provision is a clear- cut departure to

the Cr.P.C., so far as the rank of the Investigating Officer in conducting investigation is concerned.

3.2.8 Similarly, Section 26(2) of Cr.P.C., enables the Courts constituted under the Cr.P.C., to conduct inquiry or trial in respect of the offences committed under a special enactment, provided if such Act is silent with regard to the forum. Reading of Section 2(bd) and Section 14 of the SCs and STs (PoA) Act 1989 clearly demonstrates that a Special Court constituted under this Act alone is empowered to conduct trial of the offences alleged to have been committed under this Act. Section 14A of the SC/ST Act provides the appellate forum to challenge an order of the Special Court and stipulates the period of limitation to prefer appeal. The second proviso to Sub- section (1) of Section 14 of the SC/ST Act reads as follows: "Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act".

3.2.9 A perusal of the above provision clearly demonstrates that Section 209 of Cr.P.C has no application to the offences committed under the SC/ST Act. In other words, the Special Court can directly take cognizance of offence.

3.2.10 It is needless to say that Section 360 of Cr.P.C., enables the Court to release the accused on probation of good conduct or after admonition. In view of Section 19 of the SCs and STs (PoA) Act 1989, Section 360 of Cr.P.C., and the provisions of Probation of Offenders Act, 1958 have no application in respect of the offences committed the SCs and STs (PoA) Act 1989.

3.2.11 To put it in a different way, certain provisions of Cr.P.C., are not applicable for the offences committed under the SCs and STs (PoA) Act 1989 so far as investigation, inquiry and trial are concerned, in view specific machinery provided under the SCs and STs (PoA) Act 1989 and thus the Section 18 of the SCs and STs (PoA) Act 1989 excludes the application of Section 438 of Cr.P.C., (Anticipatory Bail) for the offences committed under the SCs and STs (PoA) Act 1989.

4. On the issue of Arrest: [75 to 81 & 83 (iii)]

4.1 What the judgment Says?

"In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention".

4.2 Our response:

4.2.1 Arrest of an accused forms an integral part of investigation. Arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.

4.2.2 It is a settled law that a police officer is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence.

4.2.3 As said in the general observations of the judgment Now if their is already a settled law and the police officers after some investigation, make up his mind as to whether it is necessary to arrest the accused person their was no reason for the apex court to further review and say *arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P.* Court has not relied on any material evidence on record and assumed that the arrest under the SCs and STs (PoA) Act is widely abused.

4.2.4 The apex court has failed to recognize that on the other side the police officials are in many cases not arresting the accused persons due to influence of the dominant caste perpetrators. The provisions of Act and Rules have not been implemented is a well known fact. The Complaints of the victims are not registered under SCs and STs (PoA) Act, even if registered not registered under the correct sections of the PoA Act, investigations are not done in a proper manner by the investigating officers. Chargesheets are not filed on time as per the PoA Act by the investigating officers. Even the accused persons are not arrested and roam freely. Protective and Rehabilitative mechanisms are not reaching out to the victims and witnesses and this includes immediate arrest of the accused in order to save them from further threats from the accused persons.

4.2.5 The Judgment says that for the arrest of the public servant prior approval have to be taken from the appointing authority, which will further increase the impunity enjoyed by the pubic servants as the inquiring authority will be the people from their own department who will never recommend for the arrest of the public servant who has committed the offence under the Act. This is another loophole making a way for the public servant to escape or evade the law. The apex court failed to recognize that there are hardly any cases where in the Public Servants have actually been prosecuted under the willful negligence of their duties under the SCs and STs (PoA) Act 1989. The

learned attorney general did not produce any substantive evidence with regard to false cases and arrest of the accused persons under the SCs and STs (PoA) Act 1989 and in specific the public servants convicted under section 4 of the SCs and STs (PoA) Act 1989.

4.2.6 The provisions of the SCs and STs (PoA) Act 1989 as a whole and in specific to the law of arrest has to be viewed in the context of prevailing social conditions and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of these offenders during the whole trial process , if they are granted anticipatory bail or are not arrested immediately. Such a provision will further bring a loophole for the perpetrators of crime to evade the law, and hamper the whole trial process.

5. On the issue of preliminary inquiry and Arrest: [Para 77, 79 and 80]

5.1 What the judgment Says?

"To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated".

5.2 Our response:

5.2.1 Para 79 of the Judgment says

"We are conscious that normal rule is to register FIR if any information discloses commission of a cognizable offence. There are however, exceptions to this rule".

5.2.2 Para 79 of the Judgment says

" ..we are of the view that cases under the Atrocities Act also fall in exceptional category where preliminary inquiry must be held.."

5.2.3 A cursory reading of the above two paras again reveals that the Hon'ble Court again used misleading interpretations such as "exceptions to this rule" and "exceptional category" and went on beyond adjudicating and reviewing its own previous judgment laid down in **Lalita Kumari vs Govt. of U.P. & Others on the arrest and preliminary inquiry.** The observation is again not backed up by any material evidence and is unjustified. This is again misuse of enunciation of law and adjudication by a Bench. The Judgment clearly says that **registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. The supreme court failed to understand the jurisprudence laid down in the above mentioned judgment.**

5.2.4 **The Hon'ble Court Constitutional Bench of Hon'ble S.C. comprising Chief Justice P. Sathasivam, Justice B.S. Chauhan, Justice Ranjana Prakash Desai, Justice Ranjan Gogoi and Justice S.A. Bobde in Lalita Kumari vs Govt. of U.P. & Others** held that Police must register FIR upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure.

5.2.5 The important issue which was considered by the Constitutional Bench in the matter was whether **"a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') or the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same?"**

5.2.6 It was contended on behalf of petitioner that upon receipt of information by a police officer in-charge of a police station disclosing a cognizable offence, it is imperative for him to register a case under Section 154 of the Code and placed reliance upon two-Judge Bench decisions of this Court in ***State of***

Haryana vs. Bhajan Lal*,*Ramesh Kumari vs. State (NCT of Delhi)* and *Parkash Singh Badal vs. State of Punjab. On the other hand it was argued on behalf of State that an officer in-charge of a police station is not obliged under law, upon receipt of information disclosing commission of a cognizable offence, to register a case rather the discretion lies with him, in appropriate cases, to hold some sort of preliminary inquiry in relation to the veracity or otherwise of the accusations made in the report. In support of his submission, he placed reliance upon two- Judge Bench decisions of this Court in ***P. Sirajuddin*** *vs.* ***State of Madras , Sevi*** *vs.* ***State of Tamil Nadu , Shashikant*** *vs.* ***Central Bureau of Investigation*** *, and* ***Rajinder Singh Katoch*** *vs.* ***Chandigarh Admn.***

5.2.7 Cognizable offences are those which attract punishment of three years or more in case of conviction and where an investigating officer can arrest an accused without warrant. **The only question before the Constitution Bench was to the interpretation of Section 154 of the Code and incidentally to consider Sections 156 and 157 also.** After hearing the contentions and arguments as well as due interpretation of statute in this regard, Hon'ble Apex Court has held regarding registration or non registration,

> **"…what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory.** However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed…". **But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith.**

5.2.8 The Hon'ble Constitutional Bench in this case titled as Lalita Kumari vs Govt. of U.P. & Others has concluded its findings in below mentioned directions. The relevant paras of the directions as follows which are clearly applicable inn the case of SCs and STs (PoA) Act 1989.

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.