

National Dalit Movement for Justice -NDMJ (NCDHR)

And

National Coalition for Strengthening SCs & STs (PoA) Act

No.7/58, 1st Floor, South Patel Nagar, New Delhi-110008, Tel: +91 11
25843569, Email: rameshnathan@ncdhr.org.in

General Secretary – Dr .V.A. Ramesh Nathan, Mob: +91 95600 28068



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Press Release: For Immediate Consideration

National Dalit Movement for Justice- NCDHR strongly condemns the Judgment delivered by the Hon'ble Supreme Court of India in the Criminal Appeal no. 707 of 2020

The Hon'ble Supreme Court, in the matter of Hitesh Verma vs State of Uttarakhand (**criminal Appeal no. 707 of 2020**), passed its judgment stating that "Insulting or intimidating a person belonging to Scheduled Caste or Scheduled Tribe (SC/ST) community will not be counted as offence under the SC/ST PoA Act unless such insult or intimidation is on account of victim belonging to SC/ST community".

National Coalition for Strengthening SCs & STs PoA Act and National Dalit Movement for Justice- NCDHR strongly condemns the judgement delivered by the Hon'ble Supreme Court in the above mentioned case as it weakens the roots of fight against untouchability. We would like to further reiterate that the Scheduled Castes (SCs) and the Scheduled Tribes (STs) (Prevention of Atrocities) Act, 1989 was framed to prevent atrocities committed against the Dalit and Adivasi communities.

The research data from various source reveals that the "Act" has not been properly implemented. Still there is a large fragment of people belonging to the marginalised community for whom ensuring access to justice is still remains a dream. In most of the cases, people belonging to Dalit or Adivasi community do not even report the due to fear of social boycott or other form of atrocity by the dominant castes.

The PoA Act is intended to serve and protect the rights of Dalit and Adivasi's. However it has been observed that a number of attempts have been made to dilute its provisions. The judgment delivered in the above mentioned criminal appeal is one such attempt. The judgment will form the base of gross social injustice to the marginalised and vulnerable communities. It is only due to the constant struggle of few civil society organisation and Dalit and Adivasi leaders, the act is still into existence.

As per the facts of the case, A Dalit man raised his voice against forceful and illegal land possession by the dominant caste members. The Dalit man and his family members were constantly being threatened and subjected to atrocity.

The FIR was lodged for the offences under Sections 452, 504, 506 of Indian Penal Code and Section 3(1)(r) and 3(1)(e) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The police filed its report of investigation and removed Section 3(1)(e) from the charge sheet. The accused later filed an application under Section 482 of Criminal Procedure Code for quashing of FIR. The appeal made by the accused came before the apex court and the Hon'ble court, while quashing the FIR, reiterated that "This act intended to punish the acts of the upper caste" and this case had no connection with the caste (Scheduled Caste) of the complainant. Both the complainant and the accused person have the right to own the land and get justice. Since the incident occurred within four walls in the absence of members of the public, the allegation under the act do not stand and hence the section 3 (1) (r) cannot be applicable to this case as highlighted in his judgment.

The Hon'ble Court has ignored few of the most important legal aspects while delivering the judgment. The same are as follows:

1. The police authorities, at the initial phase of the investigation, had failed to invoke sections 3 (1) (u) and 3 (2) (va) of SC/ST Act 1989 in the said FIR. The facts of the case clearly attract these provisions. In particular, when the FIR is registered under IPC sections, the police authorities are also bound to include section 3 (2) (va) of SC/ST PoA Act. Moreover since the FIR is registered under 506 of IPC, so it is obvious that section 3 (2) (va) of SC/ST PoA Act is applicable. But the Hon'ble Court did not consider these legalities of the case and rendered a judgment which is against the principle of Social Justice.
2. Moreover section 8 of the SC/ST PoA Act, 1989 talks about *presumption as to offence*. Sub Clause (c) of Section 8 further says that "the accused having personal knowledge of

the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved". The apex court has failed to look into this significant feature of the act.

3. Finally the Hon'ble court has ignored the basic principle set up under the Object and Reason clause of the act, i.e., the Act was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. Even if a member of Schedule caste or Schedule Tribe is being verbally caste abused by the member of Dominant Caste, under the pretext of his caste identity, the act amounts to humiliation, harassment and violation of Article 21, i.e., Right to Life and Personal Dignity.

Since, the Hon'ble court has failed to consider the above mentioned aspect and has grossly erred in rendering the said impugned judgment, National Dalit Movement for Justice would like to put forth following demands in order to prevent miscarriage of justice:

1. The Hon'ble apex Court shall reconsider the appeal by taking suo-moto cognizance and transfer the same to a constitutional bench for consideration
2. The State shall file a review petition in order to ensure that the victims have access to justice;
3. Action shall be taken against the concerned police authorities under the section 4 (wilful negligence) of the SC/ST PoA Act for including inappropriate sections and diluting the gravity of the incident and for favouring the accused person.

We, on behalf of the National Coalition for Strengthening SCs & STs PoA Act (NCSPOA) will take every possible step to emphasizing upon our demands and to take action on reinstating the SC/ST PoA Act.

With Warm Regards,



Dr. V. A. Ramesh Nathan
General Secretary,
National Dalit Movement for Justice (NDMJ-NCDHR)
National Convener,
National Coalition for Strengthening SCs & STs PoA Act, New Delhi
+91 9560028068