

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO.

OF 2018

IN THE MATTER OF:-

1. INDIA FOR RULE OF LAW FOUNDATION,
Through its Chairperson
Ms. Deesha Bihari Gorasia, Advocate,

PETITIONER No.

1

2. VIKAS PARASHAR, ADVOCATE
S/o Raman Lal Parashar,
R/o 397 Narayan Puri, Dhoulipyaou,
Mathura, Uttar Pradesh – 281001

VERSUS

1. Union of India,
Through Secretary,
Ministry of Law & Justice,
Legislative Department,
New Delhi

WITH

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

CONTACT NO.: 9582462424, 9820632424

SYNOPSIS & LIST OF DATES AND EVENTS

That the Petitioners are invoking the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India against the Respondents for having passed the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, by the Lok Sabha on August 6, 2018, rendering the judgment of Supreme Court in Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra redundant, nugatory and otiose.

That being aggrieved by the directions of this Hon'ble Court, the Respondent has filed a Crl. Review Petition No. 228 of 2018 in Criminal Appeal No. 416 of 2018 on one hand, which is pending before this Hon'ble Court. On the other hand, in willful defiance of the directions of this Hon'ble Court in Criminal Appeal No. 416 of 2018 (Dr. Subhash Kashinath Mahajan supra), have gone ahead and published in the official gazette No. 27 of 2018 on August 17th 2018 the SC-ST Amendment Act, 2018, which in effect tantamount's to be a legislative overruling, invalidating and dismissing the directions of this Hon'ble Court.

The Parliament can also amend an Act to cure a defect highlighted by a Judgment, however it cannot make a law to circumvent, overrule and bypass a judicial pronouncement

indicting a social evil, which goes to the root of violation of natural justice and principles of equality. The Parliament also has the power and jurisdiction to enact or amend or repeal a law, either prospective or retrospective, only to cure an evil in the society, commensurate to the fundamental rights and the legislative competence of the Parliament and not otherwise. The Parliament by way of The SC-ST Amendment Act, 2018 avowedly seeks to bring back the unfair, arbitrary and illogical law, which was directly set at naught by this Hon'ble Court in Dr. Subhash Kashinath Mahajan supra, wherein this Hon'ble court issued the following directions:

“Our conclusions are as follows:

- i) Proceedings in the present case are clear abuse of process of court and are quashed.*
- 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. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);*

iii) 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.

iv) 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. v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

The very the purpose behind legislating The SC-ST Amendment Act, 2018 is against the well-being of the non-SC/ST people in the society and therefore premised on arbitrary, unlawful and illogical principles of law, and the same is therefore devoid of any

scientific logic or reasoning. The said publication by the Respondents of The SC-ST Amendment Act, 2018 is not only in the teeth of Article 14, 19 and 21 of the Petitioners but also in gross violation and contravention of Article 129 and 141 the India Constitution rendering the directions passed by this Hon'ble Court meaningless redundant and otiose.

The Parliament cannot overrule the Judgment passed by this Hon'ble Court, in the guise of legislative competence - it can only pass validating act in order to remove the defects highlighted by the Court.

The final judgment, once rendered by this Hon'ble Court, operates and remains in force until altered by this court it self in appropriate proceedings. The Parliament and State Assemblies have no power to enact laws to nullify the judicial verdicts based on facts and findings. Under the guise of legislative powers inter-alia under Article 246 read with the Seventh Schedule of the Constitution, the legislature cannot neutralise the effect of the judgment delivered by this Hon'ble Court, after ascertainment of fact by means of evidence/materials placed by the parties to the dispute. A plain and simple judicial decision on fact cannot be altered by a legislative decision. That under the Constitutional principle, the legislature had the power to render judicial

decisions “ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively.” But this power “has no application where a judicial decision has been rendered by recording a finding of fact.

The Parliament can make/amend/repeal an Act to cure the/a defect highlighted by a Judgment. However it doesn't have the competence to render the judgment meaningless by making/amending/repealing a law in-order to circumvent, overrule and bypass a judicial pronouncement. The legislative over-reach, in the garb of legislative competence under Article 246 read with Seventh Schedule is in total violation of the principles of separation of power between Judiciary and legislature. And therefore goes to the root of independence of judiciary and is a violation of natural justice and principles of equality among the people of the country across class's and mass's.

The said publication by the Respondents of The SC-ST Amendment Act, 2018 is passed by the Lok-Sabha in utter haste, keeping in view the impending Parliamentary Elections 2019, where the people belonging to SC/ST category can be misled by the Ruling party and in the bargain a blind loyalty

and devotion can be negotiated whereby the votes can be managed by way of undue influence and manipulation.

It is submitted that the directions passed by this Hon'ble Court was for the protection against the abuse of the Police powers against the innocent people of this country, without preliminary inquiry. This Hon'ble Court has directed the State to do a through preliminary enquiry and investigation and if anything material found, the police is free to arrest the accused, as per law. However without a preliminary investigation and through enquiry the arrest shall be unfair. This judgment also protects the interest of whole nation, in this Judgment Hon'ble court observed that there were instances of abuse of the Act by vested interest for political or personal reasons, hence in course to protect the fundamental rights of innocent, preliminary enquiry is needed to ensure allegations is not "frivolous or motivated".

However this judgment faced a nationwide protest of political groups just to take advantage in upcoming election in 2019, on the face of protests and to get maximum political millage and being under pressure from alliance partner's and also worried over the prospects of antagonizing huge SC-ST vote bank ahead of 2019 Lok-Sabha Elections, the Respondents filed a Review

Petition. The Respondents despite the pendency of the Review Petition still decided to legislate The SC-ST Amendment Act, 2018 and restored the *status-quo-ante*. The SC-ST Amendment Act, 2018 revives the previous provisions in such a manner, that an accused person can't access and avail the right of Anticipatory bail.

The Parliament by passing the SC-ST Amendment Act 2018 has unconstitutionally done indirectly what it couldn't do directly. Despite the Review Petition pending with the Supreme Court, the Government of India has in-order to overrule and get-away of the directions of this Hon'ble Court, has passed the SC-ST Amendment Act 2018, which is not only illegal but also reeks of deep seethed desire to win 2019 Parliamentary Election by incorrect means.

The legislature cannot overrule a judgment but the legislature may pass a validating Act changing the law upon which that judgment had been founded. Parliament had the competence to bring in retrospective amendments to remove the basis of a judgment. However in the guise of an amendment, Parliament can't overrule a judgment or usurp judicial powers.

Any law/amendment made by the Parliament must have a public purpose and not against the public policy of India. The Parliament can make/amend/repeal an Act to cure a defect highlighted by a Judgment. However it doesn't have the power or competence to render the judgment meaningless by amending an Act in-order to circumvent, overrule and bypass a judicial pronouncement. The legislative over-reach, in the garb of legislative competence under Article 246 read with Seventh Schedule is in total violation of the principles of separation of power between Judiciary and legislature. And therefore goes to the very root of independence of judiciary and is a violation of natural justice and principles of equality among the people of the country. Parliament had the competence to bring in retrospective amendments to remove the basis of a judgment. In the guise of amendment, Parliament cannot overrule a judgment or usurp the judicial power.

The relevant abstract of the said the Amendment Act, 2018 is produced hereunder-

1. *(1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.*

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely:—*
"18A. (1) For the purposes of this Act,—

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

Effect of the Amendment Act, 2018 on Public Servants

This Amendment Act, 2018 being highly prejudicial, the Public Servants find it difficult to give adverse remarks against employees for fear that they may be charged under the Act. It may unfairly damage the personal and professional reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other.

Anticipatory Bail

It is submitted that in context of Section 18A the SC-ST Amendment Act 2018, which excludes Section 438 (Anticipatory Bail) of Criminal Procedure Code, violates the scheme of the Constitution of India and specifically runs counter to Articles 14, 19 and 21 and is violative the doctrine of basic structure of the Constitution and there must be struck-down by this Hon'ble Court.

An order of anticipatory bail constitutes, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process, which directs that if the person in whose favor it is issued is thereafter

arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest “*shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action*“. A direction under section 438 is intended to confer conditional immunity from this ‘touch’ or confinement.

The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and thus means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences. The grant of “anticipatory bail” to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

Right to Equality

The time has come, when India must proudly walk towards growth and development like Singapore, Korea and other South-East-Asian countries and be called and known as an Equalitarian Society. We must move away from the archaic laws like reservation at the cost of equality. The reservation policy of the Government of India must be completely stopped being in total violation of the Right to Equality of the members of the non-SC-ST community. The Members of the SC-ST community have enjoyed the reservation policy for long, at the cost and peril of the members of the non-SC-ST community.

The word fraternity has no meaning if the members of SC-ST are given partial treatment under the protection of this Amendment Act 2018. In fact this Amendment Act 2018 will create a wider divide among the citizens of this country and the members of the non-SC-ST community will start avoiding the members of SC-ST community. I wonder how will this act achieve its purpose and object of protecting the members of SC-ST Community against the non-SC-ST members. If we want to abolish the sense of separation among the people of India, it is necessary that we should not encourage the sense of separation by our own act.

This Amendment Act 2018 in fact does injustice to the social, political and economic rights of the members of the SC-ST community.

The SC-ST Amendment Act 2018 is an attempt to separate the society unfairly. To provide social security to the members of the SC-ST community, unequally at the cost of non-SC-ST members, is only going to divide the country. The SC-ST Amendment Act, 2018 is bound to encourage separatism and post-pone, at least for some time, the dream of evolving a truly secular State. As long as any community demands and gets partial treatment by the Government, a truly secular State, in my opinion, shall always remain a distant dream. The SC-ST Amendment Act 2018 in a way divides the Indian community on the lines of insecurity, hatred and jealousy against the members of the majority community, which is very harmful for the entire nation. This kind of a divide will never be capable of being leveled and the level playing field and goodwill among the Indian society will be eroded permanently.

Under this act SC/ST people get an unfair advantage over rest of the population thereby violating Article 14 of the constitution. However if it may be necessary for social justice then this act

may only be used in caste wise sensitive areas for a period of not more than five years. There should be a review of a caste wise sensitive area every five years.

The SC-ST Act doesn't provides, as to what will happen if the victims of the SC-ST community, lodges a manufactured and false police complaint against the non-SC-ST community members, thereby willfully causing injury, embarrassment and humiliation to them.

LIST OF DATES

- 1989 The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes in India.
- 20.03.2018 In the matter of Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra; wherein this Hon'ble Court issued directions after examining all the relevant facts pertains to the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989;

16.05.201 8 Review Petition filed by the Respondents against the directions of this Hon'ble Court in Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra;

17.08.201 8 The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, an Act No. 27 of 2018 was notified in the Gazette of India and published by the Ministry of Law and Justice and the President of India gave his assent and the same was published for general public as Govt. information. The amendment was done in a way to overruled the directions of this Hon'ble Court in the matter of Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra.

20.08.201 8 A notification in the Gazette of India was published by the Ministry of Social Justice and Empowerment that in exercise of the power conferred by sub section (2) section 1 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018 No.

27 of 2018, the Central Government hereby appoints the 20th day of August 2018, as the date on which the provisions of the impugned Act shall come into force.

Hence this Writ Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO. OF 2018

IN THE MATTER OF:-

1. INDIA FOR RULE OF LAW FOUNDATION,
Through its Chairperson
PETITIONER No. 1
2. VIKAS PARASHAR, ADVOCATE
3. AJAY KUMAR MISHRA

VERSUS

1. Union of India,
Through Secretary,
Ministry of Law & Justice,
Legislative Department,
4th Floor, A-Wing,
Shashtri Bhawan,

New Delhi - 110001

WITH

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

CONTACT NO.: 9582462424, 9820632424

PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
BEFORE THIS HON'BLE COURT FOR VIOLATION OF
ARTICLE 14, 19 & 21 AND OTHER ARTICLES OF THE
CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THIS HON'BLE COURT

HUMBLE WRIT PETITION OF THE PETITIONERS
ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners are filing the present Writ Petition (Public Interest Litigation) before this Hon'ble Court under Article 32 of the Constitution of India in-order to assail the validity of the SC-

ST (Prevention of Atrocities) Amendment Act, 2018. As the same is in the teeth of Article 14, 19 & 21 apart from the entire scheme of the Indian Constitution.

2. That following are the brief facts culminating into the present Writ Petition -

- a. In 1989, the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent atrocities against the Scheduled Castes and Scheduled Tribes;
- b. That, the act was conceived as a strong safeguard against the members Scheduled Castes and Tribes however soon after it translated into an instrument of mass blackmail of non-SC-ST members/innocent citizen's in the hands of the members of the SC-ST community;
- c. That, the past three decades have seen a prejudicial abuse of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 by the members of the SC-ST community against the non-SC-ST members in order to set their individual scores/issues straight out of ill-will and envy;

d. That, after many instance and complaints of abuse of said SC-ST Act, 1989 and many Judgments of various Hon'ble High Courts, wherein the Courts considered this Act has now became a tool of mass harassment of the innocents members of the non-SC-ST members of the Society, this Hon'ble court in the matter of Dr. Subhash kashinath mahajan vs. The State of Maharashtra and Anr; wherein for the safeguard of innocents, this Hon'ble Court issued directions after examining all the relevant facts pertains to the Scheduled castes and Tribes (Prevention of Atrocities) Act, 1989;

It is pertinent to mention here that a well descriptive order was passed by this Hon'ble court for the safe guard of the innocent people of this country, a true copy of the Judgment of Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra and Anr; in Criminal Appeal No. 416 of 2018 (Arising out of Special Leave Petition (Crl) No. 5661 of 2017), dated 20.03.2018 is annexed as **ANNEXURE P-1 (Pg.....)**.

f. That, under pressure from the Opposition Parties and particular sections of the SC-ST society, the Government decided to file a Review Petition against the Judgment of this Hon'ble Court; the Review Petition is still pending before this Hon'ble court. A true copy of the Order passed by this Hon'ble Court dated 16/05/2018 in Review Petition CrI. No. 228 of 2018 is annexed as **ANNEXURE P-2 (Pg.....)**.

g. In order to lure the members of SC-ST community for the 2019 Parliamentary Elections, and despite having filed the Review Petition, which is pending, the Government of India without waiting for the verdict of this Hon'ble Court in the Review Petition CrI. No. 228 of 2018 and in an effort to tide-over (*legislative overruling*) the directions of this Hon'ble Court in Criminal Appeal No. 416 of 2018 (Arising out of Special Leave Petition (CrI) No. 5661 of 2017), dated 20.03.2018, impulsively adopted an extraordinary step of amending the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. The said impugned Act is called the SC-ST

Amendment Act, 2018 and is under challenge in the present Writ Petition (PIL).

h. That, save and except the directions of this Hon'ble Court w.r.t., the preliminary investigation before arresting anyone under the said Act, the intention of the act was good, however after new amendment, its structure is inconsistent with basic principles of liberty and accountability. This Act is violative of Article 14, 19 & 21 of the Indian Constitution patently and is also unfair because it doesn't allow the accused right to life and personal liberty which is guaranteed under Article 21 as Section 438 of CrPC (Anticipatory Bail) does not apply to persons committing an offence under the SC-ST Amendment Act, 2018. The arrest under the SC-ST Amendment Act must be deferred until the collection of credible evidence sufficient for filing the charge-sheet, following the proviso to Section 41(1)(b) read with Section 41A Cr.P.C. Without a preliminary investigation and credible evidence this Act is a tool of tyranny on the members of the non-SC-ST members.

i. That, on dated 17.08.2018 a Notification in the Gazette of India published by the Ministry of Law and Justice that The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018 No. 27 of 2018 received the assent of the President of India and was published for general public as Govt. information. A true copy of the said notification published in the Gazette of India is annexed and marked as **ANNEXURE P-3 (Page No.)**.

j. That, on dated 20.08.2018 a notification in the Gazette of India was published by the Ministry of Social Justice and Empowerment that in exercise of the power conferred by sub section (2) section 1 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018 No. 27 of 2018, the Central Government hereby appoints the 20th day of August 2018, as the date on which the provisions of the impugned Act shall come into force. A True copy of the notification published in Gazette of India is annexed and marked as **ANNEXURE P-4 (Page No.)**.

3. GROUNDS:

- a. Because only the High Court in rarest of rare cases can grant pre-arrest bail while exercising powers under Article 226 of the Constitution of India and since the SC-ST Amendment Act 2018 doesn't provides for the grant of anticipatory bail under Section 438 CrPC, it would be bad in law for Hon'ble Courts to grant anticipatory bails, when the SC-ST Amendment Act 2018 itself has not provided for the same. The legislative intention is, therefore, not to seek or provide pre-arrest bail when the FIR discloses a cognizable offence. Since there is a conscious withdrawal/deletion of Section 438 CrPC by the Legislature from the SC-ST Amendment Act 2018, by Section 2(2) of the SC-ST Amendment Act 2018, the relief which otherwise the Non-SC-ST members could not have obtained under the Code, cannot be sought indirectly by invoking the Writ Jurisdiction of the Hon'ble High Court' or this Hon'ble Courts across India, which is impermissible in law.
- b. Because the SC-ST Amendment Act 2018 itself doesn't empower the Hon'ble Courts to invoke Section 438 of

CrPC, only in rare and extra-ordinary cases, can the Hon'ble High Courts and this Hon'ble Court can exercise its jurisdiction under Article 226 or Article 32 of the Constitution of India, to grant anticipatory bails. The Lower Courts will not have the jurisdiction to grant anticipatory bails, since section 438 CrPC is deleted from the scope of the SC-ST Amendment Act 2018. Not everyone will be able to approach the writ Courts to get the relief.

- c. Because provisions of Section 438 CrPC (Pre-Arrest Bail) are absent in the SC-ST Amendment Act 2018, the Writ Court's shall be burdened with large number of Writ Petitions filed under Article 226 and 32 of the Indian Constitution.
- d. Because Section 438 was added to the Code of Criminal Procedure in the year 1973, in pursuance to the recommendation made by the 41st Law Commission, but in many States including the State of Uttar Pradesh Section 438 was specifically omitted, the legality of which came up for consideration before the Constitution Bench of this Court in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569 and this Court held that the deletion of Section 438 in the State of Uttar Pradesh does not offend either Article

14, 19 or 21 of the Constitution of India and the Legislature is competent to delete that section and such a deletion is valid under Article 254(2) of the Constitution of India.

- e. Because as per Kartar Singh *supra*, a claim for pre-arrest protection is neither a statutory nor a right guaranteed under Article 14, 19 & 21 of the Constitution of India. All the same, in Karatar Singh's case (*supra*), this Court in sub-para (17) of Para 368, has also stated as follows:

“368 xxx xxx xxx (17) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters;

xxx xxx xxx”

- f. Because section 41 CrPC is not deleted by the SC-ST Amendment Act 2018, therefore the Police cannot arrest

any body with following the due procedure established by law. And Article 21 guarantees the right to life and personal liberty. Absence of a statutory power under section 438 CrPC cannot restrain or curb the freedom guaranteed by Article 21 of the Constitution of India.

- g. Because the Courts, while examining the challenge for quashing the FIR or a charge-sheet, could not grant relief against arrest till the completion of the trial.
- h. Because the Writ Petition seeking Anticipatory Bail if rejected, there exists no remedy, to protect ones life and personal liberty against a fabricated and false complaint. There is no question of seeking an interim orders for granting bail, when Writ Petition itself is dismissed.
- i. Because one of the gifts of democracy to mankind is the right to personal liberty. Life and personal freedom are the prized jewels under Art.19 conjointly assured by [Art. 20\(3\), 21](#) and 22 of the Constitution and Art.19 ensures freedom of movement. Liberty aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality. Liberty is the essential concomitant for other rights without which a man cannot be at his best. The

essence of all civil liberties is to keep alive the freedom of the individual subject to the limitations of social control envisaged in diverse articles in the chapter of Fundamental Rights Part III in harmony with social good envisaged in the Directive Principles in Part IV of the Constitution. Freedom cannot last long unless it is coupled with order. Freedom can never exist without order. Freedom and order may coexist. It is essential that freedom should be exercised under authority and order should be enforced by authority which is vested solely in the executive.

- j. Because, The Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by the police for extraneous reasons against other citizens. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution.

- k. Because, after amendment the 1989 Act denies anticipatory bail to the suspected offenders. The law is therefore used to rob a person of his personal liberty merely on the unilateral word of the complainant.

1. Because, as per the observations made by this Hon'ble Court in Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & Anr. *“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.”*

These directions were made by this Hon'ble Court to protect the interest of the innocent members of the society, who are also the citizen of this country.

- g. Because, review petition that was filed by the government is still pending before this Hon'ble Court. And the Respondents ought to have waited for the verdict of this Court. Passing of the said Act has in a way overruled the verdict of this Court, which is a legislative-over reach and

violative of the principles of separation of powers in the Constitution.

h. Because, the Respondent arbitrarily decided to amend this act and restored the previous provisions in such a manner, so that an innocent can't access to avail the right of Anticipatory bail.

g. Because, this rare moved was adopted by the respondent, to get the political millage and as the respondent was under pressure from alliance partner and also worried over the prospects of antagonizing huge vote bank of Dalit ahead of parliamentary elections.

g. Because the general community of this country, deserve to be treated equally and not with inequality. They are living in this country as second grade citizen.

h. Because there cannot be any mandate under the law for arrest of an innocent; Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a

person of his liberty without an opportunity before an independent forum or Court.

- i. Because a great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.
- q. Because the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41A Cr.P.C.
- q. Because in the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.

r. Because the Law Commission in July 2002 has severely criticized the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this Article to the 41st Report of the Law Commission wherein the Commission saw “no justification” to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind.

s. Because, the Act should amend in such a manner which promote fraternity and integration of society as the

Constitution envisages “a cohesive, unified and casteless society.”

- t. Because the object of the Act was to prevent commission of offences of atrocities against members of SCs and STs and it must be in consonance with the intent of the Act to provide for punishment for members of SCs and STs for falsely implicating a person. If punishment would not be provided, it means someone from the SC/ST community can get away with a false complaint against a person even if a court of law finds the complaint to be frivolous.
- u. Because there is no safeguard against false implication, undue harassment and uncalled for arrest thus, for the innocent citizen of country there shall be amendment in such manner which incorporate safeguards against unreasonable and arbitrary power of arrest in such cases.
- v. Because, while Parliament and the State Legislature in India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on

the validity of the Legislation sought to be implemented. One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights.

4. That the petitioner has not filed any other similar petition before this Hon'ble Court or any other courts for the similar relief.

P R A Y E R

In the premises of aforesaid it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Issue an appropriate order, to declare the provisions inserted in the new amendment of *the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018* as ultra vires to the Article 14, 19 & 21 of constitution of India apart from the basic structure of the Constitution; and/or

- b. Issue appropriate writ in the nature of mandamus to stay the provisions of the new amendment in *the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018* during the pendency of this Writ Petition; and/or
- c. Pass such other order (s)/ direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL EVER PRAY.

DRAWN ON: 17/09/2018

FILED ON: /08/2018

PLACE: NEW DELHI

A-1

PROFORMA FOR FIRST LISTING

SECTION: X

The case pertains to (Please tick/check the correct box):

•	Central Act: (Title) – Article 32 of Constitution of India	
•	Central Rule : (Title)	NA
•	Rule No(s):	NA
•	State Act: (Title)	NA
•	Section :	NA
•	State Rule : (Title)	NA
•	Rule No(s):	NA
•	Impugned Common order : (Date)	NA
•	Impugned Final Order/Decree/ Notice : (Date)	NA
•	High Court: (Name):	NA
•	Names of Judges: NA	

10 .	Special Category (first petitioner/appellant only): <input type="checkbox"/> Senior citizen > 65 years <input type="checkbox"/> SC/ST <input type="checkbox"/> Woman/child <input type="checkbox"/> Disabled <input type="checkbox"/> Legal Aid case <input type="checkbox"/> In custody	NA
11 .	Vehicle Number (in case of Motor Accident Claim matters):	NA
12 .	Decided cases with citation:	NA