

## Debate, Discourse and Dilemma: Putting Dr. *Subhash Kashinath Mahajan vs State of Maharashtra* in Context

By *Ayan Guha\** and *Neha Chauhan\*\**

**Abstract:** The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Act was enacted to safeguard the Scheduled Castes (SCs) and Scheduled Tribes (STs) from atrocities and violence. Recently the Supreme Court pronounced a verdict in order to prevent misuse of this Act. This verdict led to protests by various *dalit* groups who complained about the dilution of this landmark legislation. In this context, this report critically engages with the Supreme Court verdict and also attempts to understand its implications.

\*\*\*

### A. Introduction

2018 has been a very eventful year for the Supreme Court of India so far. On the one hand, questions were raised about its functioning and impartiality by the sitting judges of the Supreme Court. On the other hand, the Supreme Court has delivered some landmark verdicts this year while dealing with some extremely sensitive issues. The Supreme Court is one of the very few institutions which enjoy a high degree of credibility and public trust in India. A recent study conducted by Azim Premji University (APU) and Lokniti (Centre for the Study of Developing Societies) has found out that in India, the Supreme Court enjoys the second highest level of "effective trust"(the difference between percentage of respondents who opted for a "great deal of trust" at one end of the scale and "no trust at all" at the other) after the army. Nearly 77 percent respondents showed the most trust in the army, followed by 54.8 percent in the Supreme Court and 48 percent in the High Courts.<sup>1</sup> Findings of this survey are demonstrative of the fact that a large number of people look up to the Supreme Court as the protector and guardian of the Constitution and people of this country.

\* Assistant Professor of Political Science at Hamdard Institute of Legal Studies and Research (HILSR), School of Law, Jamia Hamdard, New Delhi-110062, India. E-Mail: ayanguha@jamiyahamdard.ac.in.

\*\* Research Scholar at the Indian Law Institute (ILI), New Delhi-110001, India. E-Mail: chauhan\_neha@yahoo.com.

1 *Shreehari Paliath*, Military Most Trusted in India; Govt Officials, Parties Take Back Seats, Business Standard (September 30 2018), [https://www.business-standard.com/article/current-affairs/military-most-trusted-in-india-govt-officials-parties-take-back-seats-118071300139\\_1.html](https://www.business-standard.com/article/current-affairs/military-most-trusted-in-india-govt-officials-parties-take-back-seats-118071300139_1.html)(last seen on 4 July, 2018).

However, despite the widespread public trust the Supreme Court enjoys, its recent verdict on the *Dr. Subhash Kashinath Mahajan vs State of Maharashtra* which has allegedly led to the dilution of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 seems to have created widespread disillusionment and resentment among the SCs and STs. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent the SCs and STs from violence and atrocities stemming from caste and communal hatred. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has clearly defined ‘atrocities’ and provided for harsh punishments for committing atrocities on the SCs and STs. To prevent crimes against the SCs and STs, it also debars anticipatory bail. Willful neglect of duty under this Act by a public servant not belonging to the SC/ST has also been made a punishable offence. This Act has also made provisions for relief and compensation for the victims of atrocities and establishment of special authorities like special courts for the purpose of monitoring and implementation.

In India atrocities against the SCs and STs in forms of harassment at the hands of police, illegal land encroachments and forced evictions are still frequently reported from different parts of the country. In view of this harsh reality many activists and experts have called for strengthening of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Allegedly, the implementation of the Act has also not been up to the mark. On the other hand, allegations have also been made about the frequent abuse of the Act for personal and political purposes. Therefore, there have also been demands to amend this Act to prevent its misuse. A few months back the Supreme Court passed a verdict in order to minimize the scope of misuse of this Act. While many have seen this as an unwelcoming dilution of a socially transformative and progressive legislative measure, others have hailed the Supreme Court for its intervention. Thus, the Supreme Court verdict has sparked off a very politically charged nation-wide debate on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In this context, this report intends to critically engage with this debate.

## **B. Dr. Subhash Kashinath Mahajan vs State of Maharashtra: Facts of the Case**

In 2006 a SC employee of the technical education department of the government of Maharashtra, Bhaskar Karbhari Gaikwad, registered a criminal complaint under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against his two superior officers who had written adverse comments about his performance in his annual confidential report. Gaikwad complained that those comments were motivated by caste prejudices. In order to proceed with the investigation the investigating officer asked for prosecution sanction against the two accused in December, 2010. However, the Director of technical education, Dr. Subhash Kashinath Mahajan denied the prosecution sanction in January 2011. Gaikwad then registered a FIR (First Information Report) under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against Mahajan in March 2016 for denying sanction. Mahajan approached the Bombay High Court in May 2017 for anticipatory bail but his bail

plea was rejected by the High Court. He then went to the Supreme Court in 2017, and in March 2018, the Supreme Court delivered an order quashing criminal proceedings against Mahajan. The highlights of the Supreme Court order are as follows-

- i) There is no absolute bar against grant of anticipatory bail in cases under the Scheduled Castes and Scheduled Tribes (Prevention of 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 (para 83).
- ii) In respect of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District (para 81).
- iii) To avoid false implication, before an FIR is registered, preliminary enquiry should be conducted to ascertain whether the case falls in the parameters of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and is not frivolous or motivated (para 81). Preliminary enquiry should be conducted by the concerned Deputy Superintendent of Police (para 83).

This judgement caused massive protests by the *dalit* groups and it also came under heavy criticism from scholars and commentators. Agitations rocked various parts of the country and even an all India shut down (*Bharat Bandh*) was organized. The protests soon turned violent with incidents of arson and vandalism being reported from various parts of North India. Violence even claimed a few lives. To tackle the situation and douse the fire of *dalit* anger the government moved fast and filed a review petition. The verdict of the Supreme Court has met with appreciation as well as condemnation. The issues involved are extremely complex and sensitive and therefore, an analysis of the verdict demands a nuanced assessment rather than outright acceptance or rejection. In this backdrop, this report seeks to undertake a scrutiny of this verdict through a dispassionate discussion.

### C. Analysing Arguments and Rationale

The most common charge which is levelled against the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is that it is frequently abused. The concern of misuse of the Act seems to have greatly perturbed the Supreme Court too. It observed that 'there are instances of abuse of the Act by vested interests against political opponents in Panchayat, Municipal or other elections, to settle private civil disputes arising out of property, monetary disputes, employment disputes and seniority disputes. 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'.<sup>2</sup> It further held that 'innocent citizens are termed as accused, which is not intended by the leg-

2 Subhash Kashinath Mahajan vs State of Maharashtra 2018: para 66.

islature. The legislature never intended to use the Atrocities Act as an instrument to blackmail or to wreak personal vengeance. The Act is also not intended to deter public servants from performing their bona fide duties'.<sup>3</sup> Thus, expressing concern that this Act is prone to misuse, the Supreme Court found it prudent to build some procedural safeguards within this Act to reduce the chance of victimisation of innocents.

In this context, the Supreme Court considered low rate of conviction as an evidence of widespread misuse of this Act. It cited NCRB (National Crime Records Bureau) Report of 2016 which shows that in 2015 almost 75 per cent of all the cases tried by the courts did not result in conviction of the accused. From the NCRB data it also becomes evident that the conviction rate in cases of atrocities against the SCs and STs has consistently remained much lower than the conviction rate for all crimes under the Indian Penal Code (IPC) (see table 1). While the conviction rate has remained low, the number of reported cases of atrocities against the SCs and STs has been increasing (see table 2). This raises a pertinent question: whether it is right to presume on the basis of low rate of conviction that most complaints under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are frivolous or motivated? One could alternatively argue that low rate of conviction reflects the widespread caste bias and prejudices which help the perpetrators to get away. Hence, legitimate concerns have been expressed about the conflation of acquittals with false cases. It has been pointed out that conviction rate has remained low mainly owing to 'poor investigation and incompetence of prosecution'.<sup>4</sup> Acquittal does not necessarily mean innocence but suggests 'inadequate investigation and evidence on record, or procedural infirmities'.<sup>5</sup> Even the Supreme Court in the *National Campaign on Dalit Human Rights vs Union of India* (2017) case observed that 'there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and the Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities.' National Commission for Scheduled Castes has also expressed serious worry about the low rate of conviction. It has recommended that 'the law enforcing agency is to be sensitized about the PCR/POA Act, 1989 and the underlying reasons (for low conviction) may be studied'.<sup>6</sup>

3 *Subhash Kashinath Mahajan vs State of Maharashtra* 2018: para 67.

4 *Faizan Mustafa*, Sending the Wrong Signal: SC Order in SC/ST Act Case, *The Hindu* (March 29 2018), <https://www.thehindu.com/opinion/op-ed/sending-the-wrong-signal/article23375824.ece> (last seen on 4 July, 2018).

5 *Kalpna Kannabiran*, SC/ST Act: A Hostile Environment and an 'Atrocious' Interpretation, *The Wire* (March 26 2018), <https://thewire.in/law/sc-st-act-a-hostile-environment-and-an-atrocious-interpretation> (last seen on 4 July, 2018).

6 *National Commission for Scheduled Castes*, First Annual Report, New Delhi 2004-05, p. 239 (hereafter *National Commission for Scheduled Castes*).

Table 1. Conviction Rate (of total cases where trial is over) under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

Year	Conviction Rate in case of Crimes against the SCs under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act	Conviction Rate in case of Crimes against the STs under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act	Overall conviction rate in total cognizable IPC-crimes
2010	35.1	23.5	40.7
2011	31.7	19.4	41.1
2012	23.6	19.9	38.5
2013	22.00	17.4	40.2
2014	28.8	37.9	45.1
2015	27.6	27.6	46.9
2016	25.7	20.8	46.8

Source: NCRB Reports on Crimes in India

Table 2. Crimes against SCs and STs

Year	Number of Reported Cases of Crimes against the SCs	Number of Reported Cases of Crimes against the STs
2010	32,712	5,885
2011	33,719	5,756
2012	33,655	5,922
2013	39,408	6,793
2014	40,401	6,827
2015	38,670	6,276
2016	40,801	6,568

Source: NCRB Reports on Crimes in India

A study of underlying reasons of low conviction will point out numerous difficulties at every stage, which prevent the complainants from achieving redress. For seeking legal remedy a victim first goes to a police station to file an FIR. But it is an uphill task for the SCs and STs to register FIRs because of the social stigma attached to their identities. National Human Rights Commission has pointed out that the ‘police resort to various machinations to discourage Scheduled Castes/Scheduled Tribes from registering case, to dilute the seriousness of the violence, to shield the accused persons from arrest and prosecution and, in some cases, the police themselves inflict violence.’<sup>7</sup> According to a fact finding survey by

7 National Human Rights Commission, Report on Prevention of Atrocities against SCs and STs, National Human Rights Commission, Government of India, New Delhi 2002, pp. 114.

Women against Sexual Violence and State Repression, a network of NGOs in Haryana, when a *dalit* in Haryana goes to the police station to report a case of violence, he/she is threatened leave out terms of caste abuse or caste insults from the report. Nine out of ten complaints of atrocities against the *dalits* are thereby not registered.<sup>8</sup> Thus, it is matter of common knowledge and experience that the SCs and STs have to struggle extra hard to register their complaints. This is not to deny that a few false complaints do get registered. But the overall scenario is not favourable to the SCs and STs. Their complaints are routinely disregarded and ignored and therefore, don't get officially registered. But the Supreme Court in order to prevent victimisation of innocent people has ordered that the registration of FIRs should be made contingent upon the completion of preliminary enquiry. By doing so the Supreme Court has tended to assume that registering an FIR is an effortless exercise for the SCs and STs. But filing of an FIR is a herculean task for them. And, with registration of FIRs becoming conditional upon completion of preliminary enquiry, the police will now have more legal ammunition to reject complaints of the SCs and STs.

In this context, it also needs to be pointed out that a large number of cases don't go the court even after filing of FIRs. National Commission for Scheduled Castes has pointed out that a substantial number of cases get closed after the filing of Final Report (FR) with the police certifying that they don't deserve to go to the courts.<sup>9</sup> Sthabir Khora's inquiry has yielded to some interesting revelations. It has disclosed that most of those registered complaints which get rejected are rejected on the ground of falsity not 'mistakes of fact'. But Sections 182 and 211 of the IPC which should be applied in cases of false complaints are rarely recommended in Final Reports (FRs). According to him non-recommendation of actions under Sections 182 and 211 despite using the label 'false' reflects the hostile attitude of the police towards the SC and ST victims.<sup>10</sup> The SCs and STs also face many hurdles during trials. The socially dominant perpetrators often use their political and economic power to tamper with evidence and influence the complainants and witnesses. This often results in complainants and witnesses turning hostile. As per a report submitted to the Maharashtra State Police by its Protection of Civil Rights (PCR) cell, of the total 889 acquittals state-wide between 2014 and 2016, at least one of every four acquittals reflects a hostile complainant. Further, 243 witnesses, in serious offences involving murder, rape, dacoity, and registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and whose statement weighed in favour of the victim, turned hostile. Together, they constitute 54.33 per cent of the acquittals.<sup>11</sup>

8 *Women against Sexual Violence and State Repression*, Rape as Atrocity in Contemporary Haryana, Economic & Political Weekly 50 (44) (2015), p. 54.

9 *National Commission for Scheduled Castes*, Note 6, p. 239.

10 *Sthabir Khora*, Final Reports under Sec-498A and the SC/ST Atrocities Act, Economic & Political Weekly 49 (41) (2014), pp. 17-20.

11 *Smita Nair*, Maharashtra Police Report Challenges Maratha Claim: Hostile Witnesses behind Most Acquittals under SC/ST Act, Indian Express (December 6 2016), <https://indianexpress.com/article/i>

In this connection, it also needs to be pointed out that an alternative perspective regarding the interpretation of NCRB data has also been offered in support of the Supreme Court decision. As per this perspective, the IPC covers many crimes which are not caused by hatred for the marginalized communities. Therefore, while we study crime and conviction rates, comparison should be made between matching crime headings under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and IPC and this exercise will show that crimes and conviction rates are not skewed against the SCs and STs, but relatively favourable to them.<sup>12</sup> If this approach is followed and all major violent crimes are taken into consideration, then according to Sashittal in the year 2016 the crime rates turn out to be 39.46% for the overall population, 10.9% for the SCs and 4.3% for the STs and conviction rates turn out to be 24.8% for the overall population, 29.3% for the SCs and 22.1% for the STs.<sup>13</sup> Prima facie, there appears to be some merit in this alternative reading of data. But if no wide mismatch is found between conviction rates for the overall population, the SCs and the STs with regard to major violent crimes, then the argument that the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act is widely misused also does not stand. Moreover, it could further be asked as to whether it is prudent to entirely rely on data on this issue. Data may not always reflect the actual social scenario. In this case data don't testify to the social bias and prejudices which act as impediments for the SCs and STs at every stage of the legal process for grievance redressal. We can't figure out from data that complaints of the SCs and STs are routinely rejected at the initial stage and don't get registered as FIRs. Data also don't tell us as to how biased investigation and insincere prosecution motivated by caste prejudices and fear of social backlash faced by the witnesses thwart delivery of justice to the SCs and STs. Therefore, while social issues are involved we can't bury our heads in the sand and pretend to be data centric all the time. Moreover, it also needs to be pointed out that available data are also not full proof. Crime rate for overall population is currently calculated by the NCRB on the basis of the projected population. The projected population figures are estimated by the Office of Registrar General of India on the basis of the 2001 census, not the latest 2011 census. The NCRB has even given a

ndia/maharashtra-police-report-challenges-maratha-claim-scs-act-4412665 (last seen on 4 July, 2018).

- 12 See, *Nihar Sashittal*, Do SCs and STs Face Disproportionately more Violent Crimes in India? Financial Express (June 21 2018), <https://www.financialexpress.com/opinion/do-scs-and-sts-face-disproportionately-more-violent-crimes-in-india/1203863/> (last seen on 22 November, 2018) (hereafter *Sashittal*, Do SCs and STs Face Disproportionately more Violent Crimes in India?); *Nihar Sashittal*, Amnesty Lied on Caste Violence and it Lies again, Financial Express (August 5 2018), <https://www.financialexpress.com/opinion/criminal-mistake-in-reading-data/1212708/> (last seen on 22 November, 2018).
- 13 *Nihar Sashittal*, Have Crimes against SCs and STs increased of Late? Here are the Facts, Financial Express (May 22 2018), <https://www.financialexpress.com/opinion/do-scs-and-sts-face-disproportionately-more-violent-crimes-in-india/1203863/> (last seen on 22 November, 2018); *Sashittal*, Do SCs and STs Face Disproportionately more Violent Crimes in India? Note 12..

disclaimer that it ‘does not claim the precise accuracy of the estimated population.’<sup>14</sup> On the other hand, the rate of crimes against the SCs and STs is currently calculated on the basis of the actual population of the SCs and STs as per the 2011 census. In this connection, it has been pointed out that this methodology is problematic and does not portray an authentic picture.<sup>15</sup> Therefore, the entire issue needs to be perceived through an outlook imbued with social sensitivity rather than data centrality.

It needs to be understood that law has a symbolic function in the society. This Act has responded well to the changing social scenario. Land reforms over the years have played an important role in diminishing the economic might of the traditional rural elite. On the other hand, as a result of affirmative action programmes, a relatively well-off group of professionals has emerged among the *dalits*.<sup>16</sup> As a consequence of these developments, the old social hierarchy has perished to a considerable extent paving the way for political assertion of caste identities, which has led to caste conflicts and caste violence.<sup>17</sup> A number of studies have demonstrated that the emergence of an educated and relatively well-off *dalit* middle class paved the way for political assertion of the *dalits*.<sup>18</sup> However, *dalit* mobilization since the 1990s has met with violent backlash primarily from those castes who are mainly categorised as OBC (Other Backward Classes). Since they are just above the untouchables in caste hierarchy, they feel particularly threatened by the prospects of *dalit* empowerment.<sup>19</sup> Analysing the *Khairlanji* incident Teltumbde has argued that violence against *dalits* is mostly committed by the so-called backward castes.<sup>20</sup> For example, in UP most of the atrocities against the untouchable communities have been committed by the *Yadavs* and *Kurmis*.<sup>21</sup> Gundimeda has also argued that in UP the *Bahujan Samaj Party*’s two-pronged agenda of social justice for the *dalits*- horizontalisation of vertical social order and democratisation of undemocratic political order has faced greatest defiance and hostility from the OBCs.<sup>22</sup> Thus, the economic and political gains made by the *dalits* have become

14 *National Crime Records Bureau, Crime in India 2015*, New Delhi.

15 See, *Dipti Jain and Roshan Kishore, Why India’s Official Crime Rate Figures are Unreliable*, Livemint (August 10 2018), <https://www.livemint.com/Politics/XoO0zMCOYsun0XHKApFgLJ/Why-Indias-official-crime-rate-figures-are-unreliable.html> (last seen on 22 October 2018).

16 *D. L. Sheth, Secularisation of Caste and Making of New Middle Class, Economic and Political Weekly* 34 (1999), pp. 2502-10.

17 *Dipankar Gupta, Caste and Politics: Identity over System, Annual Review of Anthropology* 34 (2005), pp. 409-27; *Dipankar Gupta, Whither the Indian Village: Culture and Agriculture in Rural India, Economic and Political Weekly* 40 (8) (2005), pp. 751-58.

18 See, *Sudha Pai, Dalit Assertion and the Unfinished Democratic Revolution: The Bahujan Samaj Party in Uttar Pradesh*, New Delhi 2002 (hereafter *Pai*); *Hugo Gorringer, Untouchable Citizens: Dalit Movements and Democratisation in Tamil Nadu*, New Delhi 2005.

19 *Hugo Gorringer, Caste and politics in Tamil Nadu*, Seminar, 633 (2012).

20 *Anand Teltumbde, Khairlanji and its Aftermath: Exploding Some Myths, Economic and Political Weekly* 42(12) (2007), pp. 1019–25.

21 *Pai*, note 18, p. 167.

22 *Sambaiah Gundimeda, Dalit politics in contemporary India*, Abingdon 2016.

major cause of caste conflicts. A recent study has revealed that changes in relative economic position between the lower castes and upper castes are positively correlated with changes in the incidence of crimes, such that a widening of the gap in expenditures between the lower and upper castes is associated with a decrease in crimes against the *dalits*.<sup>23</sup> This implies that economic gains made by the *dalits* tend to invite backlash from the caste Hindus. In such a situation, there should be special legal provisions to safeguard the *dalits*. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) has been making available to the SCs and STs, necessary avenues to resist caste oppression. Any change in this landmark legislation, which may be construed as a dilution of its provisions is likely, to frustrate the new-found spirit and determination of the *dalits* to resist caste oppression. Moreover, the perpetrators of caste crimes are also likely to become more emboldened. This may adversely affect the ongoing struggle against caste.

However, in this context, it also needs to be pointed out that the Supreme Court's perspective can't be dismissed altogether. It is difficult to deny that there is indeed sufficient scope for the misuse of this Act. But we should look for ways in which scope of misuse could be curtailed without diluting the Act. One way could be to impose harsher punishment for perjury. Similarly, another way could be providing some immunity to the government servants from certain provisions of this Act. The Supreme Court has exactly proposed this. It has been pointed out in support of the Supreme Court judgement that if cases are filed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on the basis of the remarks made in the annual performance appraisal reports then it would become impossible for caste Hindu officers to honestly judge the performance of their SC/ST subordinates. It is true that caste discrimination being ubiquitous also exists in bureaucracy. However, its remedy must be first through administrative means, then civil courts, and the provisions of criminal law must be invoked only as the last resort.<sup>24</sup> The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted because, the lack of cultural and economic resources would render the SCs and STs defenceless against discrimination and mistreatment at the hands of other social groups without some special protection of the legal system. A number of studies have divulged that the *dalits* face discrimination owing to their weaker social connections and lack of resources.<sup>25</sup> However, those members of the SC and ST who are in possession of government jobs can't be said to be suffering from

23 *Smriti Sharma*, Caste-based Crimes and Economic status: Evidence from India, *Journal of Comparative Economics* 43 (1) (2014), pp. 204-26.

24 *Abhinav Kumar*, Rhetoric to Reasoned Debate, *Indian Express* (April 7 2018), <https://indianexpress.com/article/opinion/columns/sc-st-act-bharat-bandh-violence-supreme-court-review-dalit-rhetoric-to-reasoned-debate-5126771/> (last accessed on 4 July, 2018).

25 See, *Ashwini Deshpande/Katherine Newman*, Where the Path Leads: The Role of Caste in Post-University Employment Expectations, *Economic and Political Weekly* 42 (41) (2007), pp. 4133-40; *Surinder Jodhka/Katherine Newman*, In the Name of Globalisation: Meritocracy, Productivity and the Hidden Language of Caste, *Economic and Political Weekly* 42 (41) (2007), pp. 4125-32; *Sukhadeo Thorat/Paul Attewell*, The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India, *Economic and Political Weekly* 42 (41) (2007), pp. 4141-45.

absolute lack of cultural and economic resources and therefore, they are in a better position to deal with discrimination and mistreatment in the workplace without any special legal protection. Hence, some justification could be offered for giving immunity to the government servants from certain provisions of the Act. However, if the symbolic value and social utility of this law are taken into consideration, then this issue becomes more complex. Grant of immunity to the government servants from certain provisions of this Act could further strengthen the impunity with which discrimination against the SCs and STs is allegedly planned and executed within a bureaucratic set up. Furthermore, it could send a wrong signal to the larger society about the overall disposition of the state towards the weaker sections of the society. This may aggravate the vulnerability of the SCs and STs and dent their current eagerness and readiness to take recourse to the legal avenues provided by the state. Hence, sufficient care must be taken to ensure that the confidence of the marginalized sections of the society in the institutions of the state remains strong and enduring. Being the apex court of the country and guardian of the Constitution the Supreme Court can't afford to be beset by trust deficit and legitimacy crisis which other institutions are currently facing owing to lack of confidence the people have in them.

#### D. Conclusion

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has recently become a massive political issue in India. The judgement of the Supreme Court met with wholehearted denunciation from the *dalit* groups. This led the government to bring a constitutional amendment bill in Parliament to restore the original provisions of the Act. This action of the government also came under a lot of criticism from the upper caste groups and in poll bound Madhya Pradesh and Rajasthan protests were also organized by them. Some petitions were also filed against the government move to bring a constitutional amendment bill to overturn the verdict of the Supreme Court. This led the Supreme Court to issue notice to the central government seeking its response on the legality of the amendment. Recently the government submitted its response in the form of an affidavit in the Supreme Court. In this affidavit the government submitted that it would be wrong to assume that high acquittal rates in cases under the act were due to false cases and there was misuse of the law. The government referred to statistics and said there was no decrease in the atrocities committed on the members of the SC and ST communities. Referring to the factors which led to acquittal in cases registered under the act, the government mentioned delay in lodging of the FIRs, lack of corroborative evidence and witnesses turning hostile. Thus, the government has more or less reiterated the view points and evidences presented by the experts and scholars who have been critical of the Supreme Court judgement. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is a landmark legislative measure enacted to cater to a desired social transformation. The issues involved here are primarily social in nature. Hence, it would be inappropriate to understand them by simply analysing crime and conviction related data. We need to adopt a broader analytical frame-

work accommodative of and sensitive to not only legal aspects but also socio-economic dynamics.