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ವಿಭಾಗ / ವಿಷಯ : DEPARTMENT / SUBJECT: Constitutional matters

ಪತ್ರಿಕೆಯ ಹೆಸರು : NAME OF THE NEWS PAPER: The Hindu

ದಿನಾಂಕ : DATE : 11/2/2020

Supreme Court upholds changes to SC/ST atrocities law

11/2/20
TAT

In exceptional cases, High Courts can quash cases to prevent misuse

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NEW DELHI

The Supreme Court on Monday upheld a 2018 amendment which barred persons accused of committing atrocities against those belonging to the Scheduled Castes and the Scheduled Tribes from getting anticipatory bail.

But two of the judges on the Bench, Justices Arun Mishra and Vineet Saran, held in their joint opinion that a High Court would also have an "inherent power" to grant anticipatory bail in cases in which *prima facie* an offence under the anti-atrocities law is not made out.

The two judges held that a High Court, in "exceptional cases", could quash cases to prevent the misuse of the anti-atrocities law.

Justice Bhat's caveat

The third judge on the Bench, Justice S. Ravindra Bhat, in his separate opinion, however, added a caveat to what his two companions judges on the Bench said about the use of this "inherent power" by the High Courts.

Justice Bhat stressed that the courts should take care to use this power to grant anticipatory bail "only sparingly and in very exceptional

Strengthening the law

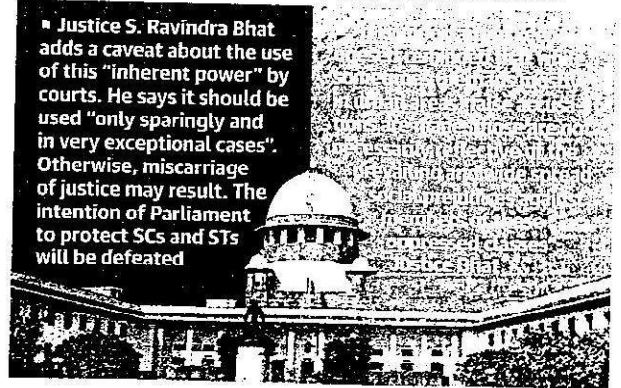
■ The SC, in *Dr. Subhash Kashinath Mahajan vs State of Maharashtra*, held on March 20, 2018: No absolute bar against grant of anticipatory bail under the anti-atrocities law if no *prima facie* case is made out or if judicial scrutiny reveals the complaint to be *prima facie mala fide*

■ Parliament introduces an amendment in 2018. Inserts Section 18A in the original Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989. Section 18A re-affirms the original legislative intention that Section 438 CrPC (pre-arrest bail) is not applicable to accused booked under the atrocities law

■ Prathvi Raj Chouhan and other petitioners challenge the amendments as arbitrary

■ February 10, 2020 judgment in Prathvi Raj Chouhan case: Justices Arun Mishra and Vineet Saran uphold Section 18A. However, the judges add that the High Courts will have an "inherent power" to grant anticipatory bail in cases in which *prima facie* an offence under the 1989 law is not made out

■ Justice S. Ravindra Bhat adds a caveat about the use of this "inherent power" by courts. He says it should be used "only sparingly and in very exceptional cases". Otherwise, miscarriage of justice may result. The intention of Parliament to protect SCs and STs will be defeated



cases". It should not become a norm lest it leads to miscarriage of justice and abuse of the process of law. The intention of the Parliament to protect the oppressed classes would suffer a defeat, he said.

"I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament," Justice Bhat ex-

plained. "It is important to reiterate and emphasise that unless provisions of the Act (anti-atrocities law) are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalisation of Scheduled Caste and Scheduled Tribe communities is an enduring exclusion and is based almost solely on caste identities," Justice Bhat observed.

The judge said the express provisions of the Constitution and statutes like the Act, meant to protect the oppressed classes, underline the social or collective resolve to ensure that "all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams".

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SC upholds changes to SC/ST atrocities law

Despite Justice Bhat's caveat, all three judges on the Bench have upheld the constitutionality of Section 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act of 2018. The sole purpose of Section 18A was to nullify a controversial March 20, 2018, judgment of the Supreme Court diluting the stringent anti-bail provisions of the original Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989.

A two-judge Bench of the Supreme Court had on March 20, 2018, held that there was no "absolute bar" on accused person obtaining anticipatory bail under

Section 438 CrPC, "if no prima facie is made out or if judicial scrutiny reveals the complaint to be prima facie mala fide".

The March 20, 2018 judgment was a response to the court's belief that the law was abused to file false complaints.

The verdict had led to widespread violence. Consequently, Parliament amended the 1989 law and inserted Section 18A into it. Section 18A re-affirmed the original legislative bar on pre-arrest bail.

A number of petitions were filed in the Supreme Court to declare Section 18A "arbitrary and unconstitutional".