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***Mens rea* required for the application of section 3(2)(v) of  
the SC & ST (P & A) Act, 1989**

We rarely come across a society, in which crime is not committed by a person on another. There are number of penal laws to punish the offenders of such crimes. Such laws apply to every offender, irrespective of his caste or creed. However, taking into consideration the indignities to which persons belonging to scheduled castes or scheduled tribe were and are subjected and atrocities committed on them only on the ground that such persons belonged to such caste, the Parliament has enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to prevent atrocities on the persons belonging to scheduled castes or scheduled Tribes. The object behind clause (v) of Section 3(2) of the Act is to punish the persons, who commit offences under the Indian Penal Code punishable for a term of ten years or more, against a members of Scheduled Castes or Scheduled Tribes **on the ground** that such person belongs to Scheduled Castes or Scheduled Tribes or such property belongs to such person, by higher and more severe punishment.

The High Court of Madhya Pradesh in **Karansingh v. State of M.P. (1992 Crl. L. J. 3054)** has observed that as special and stricter provisions have been made in the Act, it is the duty of the prosecution to examine the case more carefully. Registration of the offence under the Act, only because the complainant party belonged to a Scheduled Tribe and the accused persons did not belong to a Scheduled Tribe or Scheduled Caste was a mechanical exercise of authority and it has to be deprecated. It is also observed that the courts have to see immediately after a case is brought to it, whether an offence under the Act is made out prima facie on the material available in the case diary. According to the Apex Court, (**State of Madhya Pradesh v. Chunnilal alias Chunnisingh, reported in 2009 AIR SCW 5335**), when a case relating to any offence punishable under Scheduled Castes and Scheduled Tribes Act, is not investigated by a competent officer under the provisions of section 9 of the Act and rule 7 of the Rules made there under, the entire investigation become illegal and invalid, as no officer below the rank of Deputy Superintendant of Police can act as Investigating officers even when such investigation is supervised by an officer in the rank of Supritendant of Police. According to the said provision all offences punishable under the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are to be investigated by a police officer not below the rank of Deputy Supereintendant having past experience, abilities and sense of justice to perceive the implications of the case.

Presently, the issues relating to the provision of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ,1989, are being discussed, in the light of recent judgement of High Court of Madhya Pradesh in the case of **Azad v. State of Madhya Pradesh**, Criminal appeal number 1251/2013 decided on 29th July, 2013.

For ready reference, the provision is being reproduced hereinbelow.

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(i) to (iv) \*\*\*\*\*

(v) Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property **on the ground** that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(Emphasis supplied)

From the language used by the Legislature in Section 3(2)(v) of the Act, it is clear that this Section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled tribe commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member, then enhanced punishment of life imprisonment would be awarded in such cases, meaning thereby that conviction and sentence under Section 3(2)(v) SC/ST Act, simpliciter is not permissible and in cases where an offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more is committed against a person or property **on the ground** that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, then in such a case the accused will be convicted and sentenced for the offence under Indian Penal Code read with Section 3(2)(v) SC/ST Act, with imprisonment for life and also with fine. Thus, in order to attract the provision of Section 3(2)(v) the following ingredients must be established :

- (1) The offender should not be a member of a Scheduled Caste or a Scheduled Tribe;
- (2) He must commit an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more;
- (3) The commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;
- (4) The offences must have been committed **on the ground** that such person is a member of a Scheduled Caste or a Scheduled Tribe.

The words “on the ground” have not been used in anywhere in the Act, except in clause (v) of Section 3(2) of the Act. It will be seen that only serious offences under the Indian Penal Code which are punishable with imprisonment for a term of 10 years or more are covered by clause (v). However, the provisions of

the I.P.C. are universally applicable whereas the clause (v) is applicable only where the victim is a person belonging to a Scheduled Caste or Scheduled Tribe. The law therefore expects a graver kind of mens rea denoted by the words “ on the ground”, to render already serious offences under the Indian Penal Code more serious, which has the effect of making it punishable by no less a punishment than imprisonment for life. In order to constitute an offence under Section 3(2) (v), something more than 'intention' is needed – the offence against the victim must have been committed with a particular object., i.e., it must have been committed **'on the ground'** that he was a member of a Scheduled Caste or Scheduled Tribe.

The expression “on the ground” has been subject matter of decision in a number of cases decided under the SC/ST (P.A.) Act. In the case of **Masumsha Hasanasha Musalman v. State of Maharashtra**, reported in AIR 2000 SC 1786 it was held that “ To attract the provisions of Section 3(2)(v) of the Act, the *sine qua non* is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him **on the basis** that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under the Section 3(2) (v) of the Act, is constituted. In the case of **Dinesh alias Buddha v. State of Rajasthan**, (reported in AIR 2006 SC 1267) in paragraph no. 15 it was held as follows; “ sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person **on the ground** that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a member of a Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application." In the Case of **Ramdas and Ors. v. State of Maharashtra**, (reported in AIR 2007 SC 155) on paragraph no. 10 it has been held that “ At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities ) Act, 1989. The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi Community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside.”

Thus the words '**on the ground**' show that the prosecution is required to prove that the target of crime was selected 'on the ground' that he/she belonged to Scheduled Caste or Scheduled Tribe, or that crime was committed for the reason that such person belonged to such community tribe. In other words it must be

shown that if the victim would not have belonged to Scheduled Castes or Scheduled Tribes, the crime would not have been committed. The cause for the offence must contain an element of caste/racial prejudice. Unless it is demonstrated that the accused offended the sensibilities of the victim in relation to his caste, the offence under Section 3(2)(v) is not constituted. If an accused committed rape on a woman belonging to a Scheduled Caste only to satisfy his sexual lust, without any prejudice of caste to which the women belonged or if sexual intercourse was committed by the accused with the consent of Scheduled caste girl, who was a minor under 18 years of age, he would be guilty of an offence of rape under Section 376 IPC but he would not be guilty of the offence under Section 3(2)(v), as he did not commit sexual intercourse with the girl on the ground she was a Scheduled cast girl. Even when accused persons allegedly inflicted injuries on victim and fled away after calling him "CHAMAR" then also in the absence of evidence to show that injuries were inflicted on ground that victim belongs to Scheduled Cast community, the offence under Section 3(2)(v) cannot be said to have been made out. (**Amir v. State of Madhya Pradesh** 2004 Cri. L.J. 3686). Similarly, mere knowledge that the victim belongs to Scheduled Cast or Schedule Tribe community is not sufficient to constitute an offence under Section 3(2)(v) of the Act (**Mekala Raji Reddy v. State of Andhra Pradesh, 2002 Cr.L.J. 3407**)

### **Conclusions :-**

(1) The provision of Section 3(2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, does not constitute a substantive offence. Accused cannot be convicted and sentenced only for offence under Section 3(2)(v) of the Act. The provision can be pressed into service only for enabling the Court to pass a sentence of imprisonment for life and a fine when a person has been found guilty of committing an offence under the IPC which is punishable with imprisonment of a term of 10 years or more against a person belonging to a Scheduled Caste or a Scheduled Tribe.

(2) To attract the above mentioned provisions of Section 3(2)(v) mere knowledge that the victim belonged to a Scheduled Caste or a Scheduled Tribe community or mere intention to commit an offence against a member of a Scheduled Cast or Scheduled Tribe is not sufficient but something more is needed i.e. a graver kind of mens rea denoted by the phrase "**on the ground**" in the provision, is required.

(3) For application of Section 3(2)(v) of the Act, it must be demonstrated that the target of crime was selected '**on the ground**' that he/she belonged to a Scheduled Caste or Scheduled Tribe, or that crime was committed for the reason that such person belonged to such caste or tribe and that if the victim had not belonged to a Scheduled Castes or Scheduled Tribe, the crime would not have been committed. The cause for the offence must contain an element of racial prejudice. Scheduled Tribes (Prevention of Atrocities)Act ,1989

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