

(r) intentionally insults or intimidates any member of a Scheduled Tribe in any place within the Scheduled Tribe area;

(s) abuses any member of a Scheduled Tribe in public view;

PROBLEM OF PUBLIC VIEW

LOOPHOLE IN SECTIONS 3(1)(r) & 3(1)(s) OF THE PREVENTION OF ATROCITIES ACT

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Problem of Public View

Loophole in Sections 3(1)(r) & 3(1)(s) of the Prevention of Atrocities Act

There are three scenarios in which a person can hurl caste-based insults or abuse using the “C-word” and still evade liability under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: (1) when the insult or abuse occurs in a private place, not within public view; (2) when the insult or abuse occurs in a private place, not within public view, but in the presence of the complainant’s relatives or friends; and (3) when the insult or abuse occurs during a private conversation conducted over a phone call or through electronic messages. In all these scenarios, evidence such as audio or video recordings, even if provided by the complainant, does not affect the outcome.

Caste-based Insult & Abuse: The “C-word”

Just as the “N-word”¹ (*nigger*) in the United States is used as a racial slur to abuse Black people, India has a similar six-letter “C-word”² (*chamar*), which is used by individuals from upper castes as a caste-based slur to abuse those from lower castes. This act of abuse is a criminal offense in India. However, there is a condition.

The law requires that the “C-word” must have been used in a “place within public view.” This statutory requirement has manifested itself into a legal loophole. Perpetrators exploit this loophole by abusing only in private settings, intentionally avoiding public view. They abuse during in-person private conversations, over phone calls, and through electronic messages.

¹ NAACP Official Position on the Use of the Word “Nigger” and the “N” Word, National Association for the Advancement of Colored People, naacp.org/resources/naacp-official-position-use-word-nigger-and-n-word (last visited Dec. 1, 2024).

² *Chamar*, Britannica, [britannica.com/topic/Chamar](https://www.britannica.com/topic/Chamar) (last visited Dec. 1, 2024).

These acts cannot be prosecuted, even if there is evidence of the abuse. The only effective solution is to close this loophole by way of a strategic legislation in the form of an amendment to the statutory provisions.

Root of Abuse: The Caste System

The root of this abuse is the caste system³, a form of social stratification that divides society into rigid hierarchical groups based on hereditary status. These groups are typically categorized as upper and lower castes, with the lowest group considered untouchables by the upper castes. The “C-word” was originally the name of one of the lowest castes, but the upper castes have reduced this name to a slur. The lowest castes prefer to identify themselves as *Dalits*⁴; however, the government classifies them under a specific schedule and refers to them as the *Scheduled Castes*⁵.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989⁶ (hereinafter referred to as “the Act”), was enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes in India. Section 3 of the Act defines all the offences of atrocities perpetrated against these communities.

Sections 3(1)(r)

Section 3(1)(r) of the Act states that any person who, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates a member of either community with the intent to humiliate them in any place within public view, shall be liable to punishment.

³ *Definition of Caste*, Merriam-Webster, merriam-webster.com/dictionary/caste (last visited Dec. 1, 2024).

⁴ *Dalit*, Britannica, britannica.com/topic/Dalit (last visited Dec. 1, 2024).

⁵ *Constitution (Scheduled Castes) Order, 1950*, The Schedule.

⁶ *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989*.

Section 3(1)(s)

Similarly, Section 3(1)(s) of the Act specifies that any non-member who abuses a member of a Scheduled Caste or a Scheduled Tribe by using their caste name in any place within public view shall also be liable to punishment. While Section 3(1)(r) criminalizes acts of insult or intimidation that result in caste-based humiliation, Section 3(1)(s) specifically criminalizes acts of abuse involving the use of caste names, such as the “C-word.”

Disclosing the Loophole

The legal loophole in Sections 3(1)(r) and 3(1)(s) of the Act stems from the statutory requirement that the offense must occur in a “place within public view.” The offense is deemed complete only when the act is committed in a place within public view.

Mens Rea, Actus Reus & Locus Delicti

In other words, the *mens rea* (guilty mind) cannot be established unless the *actus reus* (guilty act) is committed in a specific *locus delicti* (place of the crime). The phrase “place within public view” has not been defined in the Act.

Meaning of the Phrase “Place Within Public View”

In *Swaran Singh & Ors. v. State*⁷, the Supreme Court of India interpreted the phrase “place within public view.” The Court held that if an offense is committed outside a building (e.g., in a lawn outside a house), and the lawn is visible from the road or lane outside the boundary wall, the lawn would be considered a place within public view. Conversely, if an offense is committed inside a building but some members of the public are present, it would still constitute an offense, as it is within public view. However, the complainant’s relatives or

⁷ *Swaran Singh and Ors. v. State through Standing Counsel and Anr.*, (2008) 8 SCC 435.

friends cannot be considered as part of the public. In other words, while a place may be private, it can still be within public view, if the offense is committed in the presence of an unrelated third party.

Evading Liability: Three Scenarios

Therefore, there are three scenarios in which a person can hurl caste-based insults or abuse using the “C-word” and still evade liability under Sections 3(1)(r) and 3(1)(s) of the Act: (1) when the insult or abuse occurs in a private place, not within public view; (2) when the insult or abuse occurs in a private place, not within public view, but in the presence of the complainant's relatives or friends; and (3) when the insult or abuse occurs during a private conversation conducted over a phone call or through electronic messages. In all these scenarios, evidence such as audio or video recordings, even if provided by the complainant, does not affect the outcome.

Exploitation of the Loophole

This loophole can be illustrated in the following ways:

Illustration 1

X, who does not belong to a Scheduled Caste, with an intent to humiliate Y, a member of a Scheduled Caste, calls him “untouchable.” The act of insult occurred in Y’s house and in the presence of his relatives—a place not in public view. Although Y has a recording from his home camera as evidence, X’s action does not constitute a violation of Section 3(1)(r).

Illustration 2

X, who does not belong to a Scheduled Caste, verbally abuses Y, a member of a Scheduled Caste, by using the “C-word” during a phone call—a private conversation not in public view.

Although Y has a recording of the call as evidence, X's action does not constitute a violation of Section 3(1)(s).

Illustration 3

X, who does not belong to a Scheduled Caste, abuses Y, a member of a Scheduled Caste, by using the “C-word” in a WhatsApp message—a private exchange not in public view. Although Y has a record of the message as evidence, X's action does not constitute a violation of Section 3(1)(s).

Manifestations of the Loophole

The following judgments serve as examples of how this loophole has been misused in practice:

(1) In *Hitesh Verma v. State of Uttarakhand*⁸, the accused entered the complainant's building and hurled caste-based abuses at her. The Supreme Court of India held that the alleged abuse occurred within the four walls of her building, and since there were no members of the public (excluding relatives or friends) present at the time of the incident, the basic ingredient that the words be uttered in a “place within public view” was not made out.

(2) In *Pramod Suryabhan Pawar v. State of Maharashtra*⁹, the accused directed caste-based insults at the complainant via WhatsApp messages. The Supreme Court of India held that messages sent over a private platform like WhatsApp, accessible only to the recipient, do not fall within public view. It observed that there was no need to conduct a detailed analysis of the content of the messages, as it was evident that they were not within public view.

(3) In *Pardeep Kumar v. State of Haryana*¹⁰, the accused directed caste-based insults at the complainant during a phone call. The High Court of Punjab & Haryana held that a private

⁸ *Hitesh Verma v. State of Uttarakhand and Anr.*, (2020) 10 SCC 710.

⁹ *Pramod Suryabhan Pawar v. State of Maharashtra and Anr.*, (2019) 9 SCC 608.

¹⁰ *Pardeep Kumar v. State of Haryana and Anr.*, (2020) SCC OnLine P&H 671.

conversation between two individuals over the phone does not qualify as a “place within public view,” as it is neither in the public gaze nor witnessed by any third party.

Strategic Abusing

The awareness of this loophole among potential perpetrators has given rise to what we term “Strategic Abusing.” They deliberately target members of Scheduled Castes or Scheduled Tribes only in private settings, consciously avoiding such acts in public view. If this loophole is not closed, then caste-based insults and the use of the “C-word” as a caste-based slur will continue unabated.

Closing the Loophole

This loophole can only be closed by countering the legislative intent behind the statutory requirement, which assumes that caste-based humiliation is only felt when it occurs in a place within public view. However, any member of the Scheduled Castes, can attest that this assumption is inaccurate. It does not matter when, why, or where he was abused; the mere fact that he was subjected to such treatment is humiliating in itself. The place of the incident neither amplifies nor diminishes the humiliation. Additionally, the intent behind excluding the complainant’s relatives or friends from the definition of “public” is to preserve the credibility and impartiality of eyewitness testimony. However, this condition can be substituted in cases where the complainant can provide a digital record of the abuse.

Strategic Litigation v. Strategic Legislation

There are two possible ways to close this loophole: (1) an amendment to the Act by the Parliament of India, or (2) a Public Interest Litigation (PIL) in the Supreme Court of India under Article 32 of the Constitution. The choice lies between strategic legislation and strategic

litigation. One must choose the approach that can bring about a long-lasting and definitive change to the Act.

Strategic Litigation

If the Supreme Court of India were to close this loophole, it would need to alter its original opinion and reinterpret the meaning of the phrase “a place within public view.” This reinterpretation would require assigning an entirely new meaning to the phrase, one that includes all acts of insult or abuse proven by digital records, irrespective of their place of occurrence. However, the Court, as we know, cannot legislate. It can only modify the interpretation of specific provisions when the legislative intent is unclear.

Alternatively, the Court could issue a finding which says that, in light of recent societal shifts where social interactions have increasingly moved to the digital space, there has come about a legislative gap in the two Sections, where those acts of insult or abuse that are easily provable through digital records are going scot-free. It could further state that, in light of the overall intent of the Act, it would be appropriate to prosecute such acts as well. Using this reasoning, the Court could address the gap by directing the executive to establish guidelines for handling such cases. Even then, such a judgment would remain operative only until the Parliament fills the gap through an amendment to the Act.

Strategic Legislation

Since the ultimate authority rests with the Parliament of India, we believe it is better to adopt the strategy of strategic legislation, allowing the legislative will of the Parliament to close this loophole once and for all. Furthermore, Parliament has the original jurisdiction to amend the legislation it enacts.

Therefore, to close this loophole, the Act should be amended to remove the statutory requirement of a “place within public view” from Sections 3(1)(r) and 3(1)(s). It should

criminalize all acts of insult or abuse which can be proven by digital record irrespective of their place of occurrence. The effect of this would be that all the three scenarios wherein a person was able to get away with an act of insult or abuse would now be a criminal offense if the act can be proven by digital record. The amendment should also add certain illustrations to each individual Sections mentioning all the major hypothetical scenarios in which this offense could play out. This would make the legislative intent of the Parliament crystal clear and would prevent future judges from employing creative interpretations to subserve the legislative intent.

These changes would close this loophole for good and will instill fear in the minds of potential perpetrators and would also act as a deterrence in the use of the “C-word” as a caste-based slur. By aligning the law with the evolving dynamics of social interaction and modern digital communication, we can ensure that no act of abuse using the “C-word” goes unpunished.

References

1. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.
3. The Constitution (Scheduled Castes) Order, 1950.
4. Swaran Singh and Ors. v. State through Standing Counsel and Anr., (2008) 8 SCC 435.
5. Hitesh Verma v. State of Uttarakhand and Anr., (2020) 10 SCC 710.
6. Pramod Suryabhan Pawar v. State of Maharashtra and Anr., (2019) 9 SCC 608.
7. Pardeep Kumar v. State of Haryana and Anr., (2020) SCC OnLine P&H 671.