

The structural flaw in the Prevention of Atrocities Act

A preventive statute is meant to impose costs on caste-based humiliation before it recurs, not reward parties for choosing their words carefully on record.

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The row over the shuddhikaran (purification ritual) performed at Haldwani's Ramlila ground on August 10, after Congress president Mallikarjun Kharge spoke at a rally there, has been fought entirely on the terrain of intent. Kharge says the ritual made him feel "the sting of untouchability". The organisation that performed it points instead to slogans raised at the rally and to Kharge's own remarks — an explanation, in effect, that the shuddhikaran meant something other than ritual caste purification.



Leader of the Opposition Rahul Gandhi escalated Kharge's charge to a constitutional one, invoking Article 17 of the Constitution. (Photo credit: PTI)

Leader of the Opposition Rahul Gandhi escalated Kharge's charge to a constitutional one, invoking Article 17 of the Constitution; the outfit that conducted the ritual answered with an FIR against him and a countercharge of political opportunism. Uttarakhand BJP president Mahendra Bhatt characterised the ceremony as wholly unconnected to caste. At the time this article was being written, the only case registered over the ritual itself named no one — an FIR against "unknown persons", lodged nearly a month after sustained public pressure. The case against Gandhi, by contrast, named him directly within days of his statements on the ritual's alleged casteist nature.

The entire episode underlines issues with how the statute itself is structured.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3 opens with a definitional wall: Its offences can be committed only by "whoever, not being a member of a Scheduled Caste or a Scheduled Tribe". The protection runs

one way. Under this Act, a person in the SC/ST category cannot be prosecuted for an offence against another person in the SC/ST category; that is settled law. The complainant in the FIR against Gandhi is reported to be a member of the Valmiki community (a Scheduled Caste) and an office-bearer of the outfit that conducted the ritual. This shows how the same Act invoked against the ritual could be turned against Gandhi, who doesn't belong to an SC/ST community, but not against Kharge, who does.

The second structural feature concerns Section 3(1)(r) itself, which punishes whoever “intentionally insults or intimidates with intent to humiliate” an SC/ST person in public view. The word intent appears twice in a single clause. Courts applying this provision have read it narrowly and consistently: An insult, however wounding, is not enough without a demonstrable intent to humiliate the person subjected to it on caste grounds. It is a reading that hands considerable advantage to whoever can keep their motive unstated, ambiguous, or supplied only after the fact.

Political communication rarely announces its own intent. A ritual performed at a particular site, at a particular moment, following a particular event, does not need an accompanying declaration to be understood by the people it reaches — and Indian jurisprudence already has a tradition of asking exactly that question under the broader constitutional framework. The Rajasthan High Court, examining purification imposed on Dalit devotees at a Nathdwara temple in 1988, did not require the temple authorities to confess a discriminatory purpose; it looked at what making entry conditional on purification achieved, in the context of the caste-based ideas of pollution that the practice invoked. The Supreme Court, striking down caste-based labour divisions in prisons in 2024, similarly read those classifications against the history and social meaning they carried, not merely against what prison manuals said their purpose was. Neither court needed to establish what anyone intended. Both asked what the practice did, and what meaning it carried by itself. Section 3(1)(r) is the one place in this architecture where the law insists on the opposite question — not what a purification ritual performed on that ground, at that moment, did or signified, but what its performers can be shown to have meant by it.

This matters because the Act is not merely a punitive legal framework to attend to the offences of atrocities narrowly. It is also aimed at preventing atrocities, drawing on the Constitution's guarantee of equality and, most directly, Article 17's abolition of untouchability “in any form”. A statute built as prevention is built to deter — to impose heavy costs on caste-based humiliation before it recurs, not to reward whichever party is more careful about what it says on record. A provision that can be defeated by silence about motive, and a structure that can be turned against the very person who raises the alarm, both cut against that preventive purpose.

None of this argues that Gandhi's account of the ritual is correct, or that the organisers' explanation is false. Those are questions of fact that only investigation and, potentially, trial can settle — and they deserve that forum, not a verdict rendered in a press conference or a newspaper column. What the past few weeks in Haldwani have exposed is something that goes beyond those facts: A law meant to prevent caste humiliation is structured in a way that a wounding act can be met with an FIR naming no one, and may never reach a named individual if that person belongs to an SC/ST community. And the ordinary act of raising an alarm can be used to turn the law on a named individual immediately if the person is not from a community that the Act protects. That is worth

examining independent of who is right about what happened in Haldwani — because whichever way this case ends, that structure will still be the same, with the same vexing problems.

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