

NATIONAL JUDICIAL ACADEMY



SEMINAR ON THE WORKING OF THE SPECIAL COURTS ESTABLISHED UNDER THE SC/ST (POA) ACT, 1989

03rd & 04th November, 2016

PROGRAM REPORT

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***Seminar on the Working of the Special Courts Established under the
SC/ST (PoA) Act, [P-1003]***

December 3&4, 2016

PROGRAMME REPORT

**Programme Coordinator – Sumit Bhattacharya, Research Fellow, National Judicial
Academy**

A two day National Seminar on Working of the Special Courts established under the SC/ST (PoA) Act was organized on December 3rd and 4th, 2016, attended by nominated special court judges presiding over the special courts constituted under the SC/ST (PoA) Act, 1989, providing a unique platform to share experiences and assimilate ‘Best Practices’. Total number of participating judges were 35 representing 18 High Courts.

The Seminar intended to explore the evolution and contours of marginalization & social exclusion in India and effective implementation of the legislation. The deliberations included judicial issues under the SC/ST (PoA) Act, 1989 and gender based atrocities against SC/ST women in India. The law and practices relating to award and standardization of victim compensation formed an integral part of the seminal discourse. Core areas such as role of morality and ethics in judging was explored and debated. The seminar also provided an opportunity to help participating judges identify their personal ‘ego-state’ thereby enabling them to perform and deliver better.

The Seminar provided a forum for discussing common challenges and helped in evolving solutions from the shared experiences and expert opinions and viewpoints culminating from the resource persons during the discourse in the Sessions.

Day I

Session 1

Theme - *Marginalization & Social Exclusion in India: Evolution & Constitutionalization*

Speaker – Hon’ble Justice K. Chandru & Hon’ble Justice R. Basant

The program commenced with the introductory remarks by the Director NJA, Hon'ble Justice G. Raghuram. After deliberating on the need to have a seminar on the topic at NJA, Justice Raghuram initiated the seminar by explaining the broad scheme and the expected outcome of the seminar. Welcoming the resource persons and the participating judges Justice Raghuram handed over the Session to the speakers Hon'ble Justice K. Chandru and Hon'ble Justice R. Basant.

Speaker essentially covered the historic perspective of the evolution of the caste system in India and discussed its prevalence even today after seven decades of India's independence. Justice Chandru encapsulated the development of the legislative jurisprudence in the forms of enactments on the subject matter as on date. He explained the challenges faced by the society in general and legislature, executive and the judiciary in particular to address and demolish the caste based menace prevailing in modern India. The deliberation also touch based on the caste based issues with the "rights & duties" based approaches. The speakers shared the conflicts between Constitutional provisions and the practice based (im)moral approaches prevalent in the society.

Session 2

Theme - *Judicial Issues under the SC/ST (PoA) Act*

Speaker -Hon'ble Justice R. Basant, Hon'ble Justice K. Chandru & Hon'ble Justice Anjana Mishra.

The speaker deliberated in order to give the insight of the vision of framers of our Constitution regarding socio-economic atmosphere of future India and the perceivable frame of mind of the people of India cited Dr. B.R. Ambedkar in the constituent Assembly on November 25, 1949 in *State of Karnataka v. Appa Balu Ingale*¹. The speaker exemplifying the *Bhopal Gas Tragedy Case* discussed how delay in case disposal servers as a motivator to the perpetrators. In an attempt to curb a common problem having very limited legal ramification, Section 4(v) of the newly amended law was discussed which covers the aspect of disrespect by words written or spoken or by any other means to any late person has been made punishable. Manipulation of facts by the police rendering acquittal and low rates of convictions were discussed in the light of Section 4 of the

¹ K. Ramaswami, J; 1995Supp(4)SCC469, AIR1993SC1126

amended Act and the Supreme Court decision *Arumugam Servai Vs. State of Tamil Nadu*². Issues like dealing with complex and conflicting situation while considering bail application were discussed. Addressing the issue of abuse of the provisions of the Act, the speaker said that every welfare legislation is first abused then it is used, the possibility of abuse cannot be completely eliminated, it is a judicial officer's duty to prevent abuses. Problems of compliance to Section 15 A(10) i.e. video recording of proceedings was discussed. Non-compliance to the victims right under Section 15A (4) was discussed wherein compliance as an issue even with the High Courts was highlighted.

Session 3

Theme - Gender based Atrocities against SC/ST Women in India

Speaker –Hon'ble Justice K. Chandru & Hon'ble Justice Anjana Mishra.

Justice Anjana Mishra expressed the progressively deteriorated status of a dalit women today by explaining the historic evolution from the primitive days to date. The plight of Dalit women is increased by their birth, firstly they born as a woman, secondly they are poor and thirdly they are Dalit. Quoting Dr. Ambedkar who recognizing the evils in our society to curb which relevant provisions had been introduced under Article 15, 17, 21,46³ in our constitution. She expressed that, The civil rights Act, 1955 was hardly addressing the grievances of SC/ST women and consequently the SC/ST PoA, Act, 1989 was enacted and after the recommendations of Justice Verma committee Report post *Nirbhaya Case*, several changes in the Act including the criminal legislations of the nation, were made. Appealing to the judicial officer to keep a strict vigil on the application and execution of the Act, she discussed the improper, application of the provisions by the police officers owing to possible ignorance, lack of sensitization or currency of the new amendments or

² (2011) 6 SCC 405.

15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

17. Abolition of Untouchability Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

the reason being that 3(1)(x) provides for lesser punishment. The speaker opined that the police officers generally tend to apply Section 3(1)(x)⁴ instead of 3(1)(xi)⁵ or 3(1)(xii)⁶. Commenting on the construction of this section she said that the word “*knowing*” used in in section 3(1)(w)(i)⁷ and 3(1)(w)(ii)⁸, is a very clever device adopted by perpetrators of crime, they take defense that they were not aware of the caste of women. The only part which helps the women under this Section is Proviso read as *that a women’s sexual history, including with the offender shall not imply consent or mitigate the offense*. Since, describing the women of low moral is a good excuse to avoid the wrath of this Section. It was suggested by the speaker that as a judge, whenever a case come before him/her, the first step he/she should take is to examine that whether right provisions of the Act has been applied or not. Secondly, at the first instance he/she should examine the women in person, since often it happens that the picture given by police is not a true, police might fabricate the story in view to save the culprit. Thirdly, if once a judge is sure that there is no stay order from High Court, then he/she should proceed with further trial, he/she need to wait for the disposal of bail application. Moreover, if police refuses to file FIR by the power of the Magistrate of a Special Court cognizance must be taken and complaint may be filed directly by the magistrate.

Session 4

Theme - Recognizing “Ego State” to Deliver Better

Speaker - Dr. Amitabh Deo Kodwani.

⁴ Section 3(1) (x) says “*intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view*”.

⁵ Section 3 (1) (xi) says “*assaults or uses force to any women belonging to a scheduled Caste or a Scheduled tribe with intent to dishonor or outrage her modesty;*”

⁶ Section 3(1) (xii) “*says being in a position to dominate the will of a women belonging to a scheduled caste or Scheduled Tribes and uses that position to exploit her sexually to which would not have otherwise agreed;*”

⁷ In Amended Act, Section 3(1) (w) (i) says *intentionally touches a women belonging to Scheduled Caste or Scheduled Tribe, **knowing** that she belongs to Scheduled Caste or Scheduled Tribe when such act of touching is of sexual nature and without the recipient’s consent.*

⁸ Section 3 (1) (w) (ii) uses words, acts or gestures of sexual nature towards a women belonging to a Scheduled Caste or Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation- For the purpose of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act.

Provided further that a women belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity;

Chair - Hon'ble Justice R. Basant

The object of this session was to enable the Participants to recognize their ego and to overcome the same so they can serve better. The speaker said that each of us is governed by one or more kind of ego, to identify to the ego traits among the participant judges he conducted Transactional Analysis , A mode for explaining:

Day II

Session 5 & 6

Theme - *Qualities of a Good Judge*

Speaker - Hon'ble Justice Manju Goel, Hon'ble Justice Gita Mittal

Chair - Hon'ble Justice Anjana Mishra

Sessions 6 & 7 were activity based. Justice Goel conducted an exercise with the participating judges to voluntarily come out with the intrinsic and developed qualities that a judge must possess in order to be a qualitatively good judge. She induced participating officers to discuss the various qualities of the legendary judges who left their mark in the premise of Indian judiciary through their distinct and unique qualities. The sessions involved introspection, retrospection and prospective mentoring. In the above pretext the case law *Kailash Govind Wadekar & others v. State of Maharashtra*⁹ was discussed.

Session 7

Theme – *Award & Standardization of Victim Compensation*

Speaker - Hon'ble Justice Gita Mittal.

Chair - Hon'ble Justice Anjana Mishra & Hon'ble Justice Manju Goel

Speaking on the provision of compensation of fine under the SC/ST Act, Justice Gita Mittal said that SC/ST Act does not have any express provision about fine or compensation. However, Rule

⁹ AIR 2011 SC 598, (2011) 1 SCC 793.

12(4)¹⁰ and Rule 12(5)¹¹ were discussed. The scheme of *Manodhairya*¹² in the State of Maharashtra was discussed. Speaking that how the act of offender destroys the life of victim and also causes burden on taxpayer's money, the question which arises is that victim compensation scheme is from general fund of the state and as result the burden of a crime falls completely on the taxpayer. So is it fair to burden the state completely without looking at the offender to make some compensation? In the current national scenario as it exists, one should look at victim compensation from the offender pocket. But since most of the offender are poor they are not able to pay the compensation so therefore we have to draw the compensation from the State funds. An endeavor to lessen the burden on State can be made by considering jurisdiction under section 357 of CrPC. The Apex Court in many cases insisted upon the liberal use of the said provisions such as; *Rattan Singh v. state of Punjab*¹³; *Hari Singh v Sukhbir Singh*¹⁴

The Program Coordinator Sumit Bhattacharya concluded the program by expressing thanks and gratitude to the resource persons for sharing their in-depth knowledge on the subject-matter and the participants for candidly floating their experiences in the form of operational bottlenecks, and success stories. Expressing hopes to not only implement the best practices shared and accumulated during the two day seminar, the program coordinator requested to kindle and induce the shared learning experiences with the colleagues and co-judges of the participants who could not attend the Seminar.

¹⁰ Rule 12(4) The District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the schedule annexed to these Rules (Annexure-I read with Annexure-II). Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for human beings.

¹¹ Rule 12(5) The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury to, or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.

¹² A scheme in Maharashtra aimed at providing financial, medical and legal aid, rehabilitation and counselling to victims of rape and child abuse.

¹³ (1979) 4 SCC 719.

¹⁴ (1988) 2 SCC 551.