NATIONAL JUDICIAL ACADEMY

REFRESHER COURSE FOR SC/ST (PREVENTION OF ATROCITIES) COURTS

[P-1104]

24th to 26th August, 2018

Programme Report

PROGRAMME CO-ORDINATOR

Mr. Shashwat Gupta, Law Associate

The National Judicial Academy organized the Refresher Course for SC/ST (Prevention of Atrocities) Courts from 24th to 26th August, 2018 which was attended by 27 participants. The objective of the conference was to provide platform for the participants to share experiences and to facilitate discussions on vital issues relevant for Special Courts constituted under SC/ST (Prevention of Atrocities) Act, 1989 including objectivity and neutrality in judging, challenges in trail process; rights of victims and responsibilities of special court. The course also aimed to initiate deliberations on constraints in effective implementation of the Act and to develop optimal solutions to the emerging challenges.

DAY I

Session 1

Theme–Objectivity and Neutrality in Judging: Overcoming Bias and Prejudices
Speaker–Justice U.C. Dhyani

The speaker initiated the discussion in the session by expounding upon the concept of objectivity in judging and stated that judges should adjudicate cases according to the law without imposing their personal views in their judgment. He also discussed the Bangalore Principles of Judicial Conduct and highlighted the various qualities which should be possessed by a judge. It was also stated that no individual is qualified to be judge genetically and therefore they should strive to inculcate the qualities which are expected of their position. The principles of "audi alteram partem" and "nemo judex in re causa sua" were discussed in detail and it was stated that judges should always give a reasoned order. Thereafter the speaker stated that no individual is completely unbiased and every judge should strive to recognize their inherent bias and prejudice which are formed due to various factors including their cultural upbringing, economic condition, caste, religion etc. This step would assist the judge in analysing the case objectively. Subsequently, it was discussed that the standards of law should be applied by the judge irrespective of their personal view regarding the veracity of any allegation made under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It was also opined that the judges should never be guided by class or caste bias while adjudicating a case since it would adversely affect their judgment.

Session 2

Theme-Defects in Pre-trial Procedures and Investigation: Impact on Adjudication
Speaker – Justice U.C. Dhyani

The speaker focused on Rule 5,6 and 7 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.The speaker elaborated upon the duty of the police officer in- charge of the a police station to record information relating to commission of offence under the Act and spot inspection of place of crime by officers. Thereafter the speaker discussed about the investigation of the offence by an officer not below the rank of a Deputy Superintendent of Police as mandated by the act and the consequence of non- observance of the rule. The speaker highlighted Rule 7(2) which states that the charge sheet should be filed within a period of 60 days. The judgment of the apex court in *State of Bihar and others versus Anil Kumar and others* [(2017) 14 SCC 304] was also discussed during the session. Lastly, it was discussed that cognizance by the special court without committal by the magistrate would not vitiate the trial.

Session 3

Theme- Trial Process under SC/ST (POA) Act, 1989: Issues and Challenges (Group Discussion and Presentation)
Chair–Justice U.C. Dhyani

The session involved group discussion and presentation by the participants on the issues and challenges faced by them in cases under the SC/ST (Prevention of Atrocities) Act. The following important issues were discussed by the participants during the course of the session:

1. Necessity of production of caste certificate before the Court by the victim.
2. Prior property disputes leading to filing of false cases between the parties.
3. Difficulty in complying with the timeframe provided in the Act.
4. Scope of presumption under Section 8(c) of the Act.
5. Conflict between punishment provided in SC/ST (Prevention of Atrocities) Act, 1989 and the Indian Penal Code, 1860.
6. Conflict between SC/ST(Prevention of Atrocities) Act,1989 and POCSO Act, 2012

7. Filing of complaint by an individual belonging to SC/ST after his conversion to another religion.
8. Filing of complaint by an individual belonging to SC/ST in a state where his caste does not come within the ambit of Scheduled Caste.

DAY II

Session 4

Theme– Contemporary Developments-The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

Speakers – Justice Anjana Mishra, Justice Atul Sreedharan and Justice Anjana Prakash

The speaker commenced the session by discussing the Untouchability Act, 1955 and the Protection of Civil Rights Act, 1955 and stated that these legislations failed to fulfill their objective which resulted in the legislature enacting the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The legislation was enacted with the aim to prevent the aim to prevent the commission of atrocities against the members of the Schedules Castes and Scheduled Tribes and providing relief and rehabilitation to the victims.

It underwent a major overhaul in 2015 and several provisions were introduced for expeditious disposal of cases under the Act. The speaker highlighted the various new definitions inserted by the amendment apart from the new offences added under Section 3 of the Act. The speaker also elaborated upon Section 4 of the Act which deals with punishment to public servant for neglect of duties. Subsequently, the speaker discussed Section 14 of the Act which was amended in 2015 and provided for establishment of Exclusive Special Court. The provision also stated that the cases under the Act should as far as possible, be disposed of within a period of 2 months. It was stated that the judges should not give unnecessary adjournments and should strive to comply with the timeframes provided in the Act. The speaker also highlighted that Section 15A has been inserted in the Act which provides various rights of victim and witnesses. The session also involved discussion on the presumption introduced under section 8 (c) and it was stated that the burden of proof to rebut the presumption is now on the accused. The participants also deliberated upon various methods to expedite the trial so that it is completed in the shortest possible period.

Session 5

Theme– Contemporary Developments- Dr. Subhash Kashinath Mahajan v State of Maharashtra and beyond

Speakers – Justice Atul Sreedharan and Justice Anjana Prakash

The session witnessed intense deliberation on the recent judgment of *Dr. Subhash Kashinath Mahajan v. State of Maharashtra* [(2018) 6 SCC 454]. It was followed by discussion on the changes brought by the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. Section 18A (1) as inserted by the amendment provides that preliminary enquiry shall not be required for registration of a First Information Report against any person. It also provides that the investigating officer shall not require approval for the arrest, if necessary, of any person. Furthermore, Section 18A(2) provides that the provision of Section 438 of the Code of Criminal Procedure shall not apply to a case under the Act, notwithstanding any judgment or order or direction of any Court. Thereafter the participants discussed the enhanced punishment under Section 3(2)(v) to the accused for offence committed against a victim from a scheduled caste knowing that such person is a member of the Scheduled Caste or Scheduled Tribe.

Session 6

Theme– Protection of the Rights of Victims and Witnesses: Role of Courts

Speakers – Justice Anjana Mishra, Justice Atul Sreedharan and Justice Anjana Prakash

The session was initiated by the speaker by highlighting the various important definitions under the Act i.e. “victim”, “dependent” and “witness”. Thereafter the speaker briefly discussed the rights of victims and witnesses as provided under Section 15A of the Act. The speaker also highlighted Section15A (8) and discussed the various measures which can be undertaken to protect the witnesses .The speaker stated that the court should play a more proactive part and should ensure that the investigating officer provides adequate and necessary protection to the victim. The speaker also discussed that Section 15A(6) casts a duty upon the court to provide travelling and maintenance expenses to the victim, his dependent and witnesses during

investigation, inquiry and trial. Furthermore it was discussed that the court has been given wide powers under Section 15A(6) (c) which can be used as a tool by the court to provide necessary monetary assistance to the victims. The speaker also advised that Section 15A (10) providing for video recording should also be followed. The speaker also discussed that court has also been given powers to conceal the names and addresses of the witnesses in its orders or judgments. The judges were also advised to take assistance of District Legal Services Authority to apprise the victims of their rights and to provide them necessary legal aid.

DAY III

Session 7

Theme– Responsibilities of Special Courts: Protection, Rehabilitation and Victim Compensation
Speakers – Justice K. Chandru, Justice Ved Prakash Sharma and Justice Anjana Mishra

The session was initiated by the discussion on the SC/ST (POA) Amendment Act, 2015 and it was stated that the court should strive to provide immediate relief and compensation to the victims. It was discussed that the court should use their power to protect the victims since most of victims come from the downtrodden section of the society and the accused often utilize all means and measures to harass and intimidate them. The speaker also stated that the courts should try to ensure that their directives are followed by the executives so that the victims are given the compensation at the earliest. It was suggested that the court can also give directions for payment of relief amount to the victim. It is the duty of the state to relocate the victim if there is any anticipation of any violence against him. It was stated that under Section 15A (11) the state is duty bound to ensure implementation of rights and entitlements of the victims and witnesses. The speaker also highlighted the power of externment which is provided to the court under Section 10 through which it can direct any individual to leave a particular area or territory. Lastly, it was discussed whether a victim can be provided compensation under both SC/ST (Prevention of Atrocities) Act, 1989 and Section 357 of the Code of Criminal Procedure,1973.

Session 8

Theme– Effective Implementation of the Act: Constraints and Solutions

Speakers – Justice Ved Prakash Sharma

The speaker initiated the session by stating that the implementation of the Act should be in accordance with the constitutional mandate and the legislative intent. It was elaborated that the constitutional mandate against discrimination is provided under Article 14, 15 and 17. He discussed the enactment of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and stated that it was enacted because the previous legislations failed to have the desired effect. It was also stated that the Act was amended in 2015 and now contains various provisions providing for protection, relief and rehabilitation of the victims. He also explained the structure provided in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 for effective implementation which includes:

- Nodal officer (Rule 9)
- State level vigilance and monitoring committee (Rule 16)
- District level vigilance and monitoring committee (Rule 17)
- Sub -division level vigilance and monitoring committee (Rule 17A)

The speaker opined that the legislature inserted Section 14(2) in the Act by SC/ST (POA) Amendment Act, 2015 with the aim to provide speedy justice to the atrocity victims. Subsequently, various reports and statistics regarding the act were discussed and it was stated that the present legislation has also failed to achieve its desired objectives .Thereafter, the speaker focused upon on the role of the executive and the judiciary under the Act. It was stated that Section 21 of the Act casts a duty upon the State government to ensure effective implementation of the Act. It was also opined that the judges should treat the witness and victims with respect and dignity and should not be biased towards any of the parties. The judges were also advised to take the direct the District Legal Services Authority to organize awareness programs to educate about the rights of the victims under the Act. It was stressed that courts can enhance their productivity by court and case management. It was also discussed that the courts should frame rules so that the victim get maintenance amount, travelling expenses and compensation at the earliest.