

NATIONAL JUDICIAL ACADEMY



Application of Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities), Act, 1989 [SC &ST (POA) Act].

[P-971]

11th- 14th February, 2016.

Rapporteur: Ms. Sanidhya Sadanand Nayak.

7th Semester, B.A., LL.B.

Bangalore Institute of Legal Studies,

Karnataka State Law University.

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CONTEXT:

Prof. (Dr.) Geeta Oberoi initiated the session stating the object of the seminar to be a discussion of higher principles and not the law. The Director-In-Charge then discussed as to the prejudices, bias and prejudices which exist in all of us irrespective of its acknowledgment by us. It was further stated as to how we think what is ours to be superior and the one belonging to others being inferior.

The Director also referred as to how these biases have developed to become a routine and natural part of our lives. The restriction we have inevitably put around ourselves act as a barrier to let ourselves grow and have further created an obstruction to even acknowledge the existence of other worlds.

The Director further stated as to how the purpose of the assembly is to overcome the prejudices, and acknowledgement & acceptance of every human being.

The coordinator for the program was Mr. Sumit Bhattacharya, Research Fellow National Judicial Academy.

The Resource Persons for the Seminar included:

Hon'ble Mr. Justice K. Chandru- Former Judge, Madras High Court.

Hon'ble Ms. Justice Prabha Sridevan- Former Judge, Madras High Court.

Mr. Pawan Kumar Singh- Faculty, Indian Institute of Management, Indore.

Ms. Nisigandha Bhuyan- Asst. Professor, Indian Institute of Management, Calcutta.

Dr. Parul Rishi Associate Professor, Indian Institute of Forest Management, Bhopal.

Ms. Pritarani Jha- Justice Reseachrer & Faculty, Institute of Law, NIRMA University.

SUMMARY:

The amendment of the SC &ST Act, 1989 and the seminar on its application has been collaborated really well. The questions were as to the fact that caste discrimination still exists in India. Even after 66 years of Independence the society has failed to eradicate the discrimination from its root.

The key points raised in this 4 day seminar is that young children who don't yet realise this discrimination are questioning as to why there exist a different class, uniform and timings for school for certain kids. These kids who are till now free from the chains of caste are now subject to difference among themselves. This was an instance wherein the provision mandating private schools to provide for education to about 25% children belonging to SC and ST communities was twisted to again create differentiation between kids.

The other question was relating to the fact that even in death people are not treated equally. The villages in various States in India still do not allow the SCs and STs to carry their dead to a burial ground from a common pathway. This is the stark reality of the country. The sensitivity has become so nil in the country that the suicide of Rohith Vemula was questioned as to what was the reason for the occurrence but as to whether the said deceased was a SC or not.

The amendment of the stated Act provides for establishment of exclusive special courts to deal with the matters relating to atrocities against SCs and STs. The Protection of Children from Sexual Offences (POCSO) Act, 2012 also provides for establishment of special courts. Both of them are to be established at a district level. The question which was deliberated was if the charges include offences under the SC & ST (POA) Act, 1989 and POCSO Act, 2012, which special court is to try the offence. The views of different High courts in India vary on this aspect. The Supreme Court of India is to direct as to which court is to try the matter.

Day 1. Session 1.

ON: PSYCHOLOGICAL PERSPECTIVES ON CASTE BASED ATROCITIES.

Issue Raised: The equality is not even provided even in death. The last rites are subject to prejudices of grave nature.

The gathering was addressed by Hon'ble Justice K. Chandru who is a Retired High Court Judge of the State of Tamil Nadu. The Hon'ble Justice also pointed out how there exists only 3 % of conviction rate in cases relating to atrocities against the SCs and STs. The Justice the stated as to how misuse of a legislation is not a possibility without the help of the judiciary/court. The courts are to supervise the use and misuse of law. The checks and balances are to be put by the court.

The Hon'ble Justice further stated that the definition of Scheduled Caste and Scheduled Tribe is well known to the participants and would not state it as it would be repetitive. Each caste has a different name in different states. It is shameful that the caste names are now used as words of abuse and as derogatory terms.

The said Justice depicts an instance wherein the Supreme Court of India used a caste name as a derogatory term in deciding a mercy petition matter. The object of the order was to depict that a certain person cannot turn good overnight. It is not clear as to whether this done wittingly/unwittingly.

The Justice also points out as to how sometimes the judges become insensitive. It is further pointed out as to an instance where a person is murdered for the reason that the person was eating something which was 'prohibited'. The Justice envisages that now the legislature is permeating in the manner of clothing, food, etc. The insensitivity levels have reached such a level that the Rohith Vemula case the matter was to determine whether he was an SC/ST or not.

The Justice also stated as to caste and religion not only being an issue in the society but also in the judiciary. It was further pointed as to ignorance not wishing away the reality. The Justice detailed instances wherein the statues of Dr. B. R. Ambedkar are protected by iron cages with locks. The keys are held by the local police station. This even exists with the idol at the High Court complex in Tamil Nadu wherein the idol is protected by a fibreglass bifurcation.

A fifth part of the country's population comprises of people belonging to SCs/STs communities and yet we have not been able to provide them proper enforcement of rights and respect they deserve as citizens of India. The said Justice then pointed as

to the practice of Annual Confidential Reports (ACR) with regard to the bureaucrats in India. This report consists a column wherein the attitude of each bureaucrat towards SCs/STs is adjudged. The said Justice opines that even in the ACRs of judges this column should be included even though Judges are to be free of prejudices and are to have an open mind. The existence of such column was questioned but it is an inevitable fact that such instances occur to even have such a column.

The Justice itemized as to instances wherein Judges find out the Caste of the peons assigned to them and if they find that they belong to SCs/STs communities they are not retained. Furthermore, there are instances the misuse of law is said to be the reason to withdraw the law. There are instances where even in death there is no equality. This is in the manner where the dead bodies are not allowed access to burial ground within the pathways in the village.

The Justice then enumerated a case which he had adjudged wherein a public servant had ordered that a certain bus would stop in the village and not go to the colony. The instance was that the last stop on the bus route was the colony outside the village wherein most of the members belonging to SCs/STs community are residing. The bus would be full as there were fewer seats by the time it reached the stop in the village. The villagers said that it was wrong that the Dalits were sitting while they were standing. The officer then addressed a letter to the manager of the Transport committee asking to stop the bus route at the village stop. The Justice then adjudges in the matter stating that the original route quoting that we do not need a Rosa Parks incident to determine the instance being wrong as we have Art. 17 of Constitution of India

Hon'ble Justice addressed the matter of the atrocities suffered by the Scheduled Castes and Tribes even to register an FIR. It was brought to notice a case regarding a 60-year-old woman, a Scheduled Caste (SC) member named Mariammal who was raped. It was stated by the Hon'ble Justice that the woman had to fight to prove that she was an SC member to even be considered to register an FIR regarding the offence against the accused.

The said woman does not remember the date of the rape but states that the said woman is said to be a 27 years old sand mafia leader, China Durai who belongs to an upper caste. The village in which she resides has very few houses which have electricity and her house is not one of them. The house in which the lady resides in is a single room house which is a little distance away from the other houses in the

village. She is a widow and resides all alone in the said house. The son of the lady is a coolie in the city and reside there with his family.

The lady states that the assailant entered from the back door which she says is a tin sheet. The lady further states that for a few minutes she could not comprehend what was happening and when the assailant started beating her she tried to resist. She remembers that she grabbed his cellphone and threw it away. She also bit his hand and then the assailant threw her outside the house and stripped her.

The lady states that the assailant committed rape on her for the next half an hour and then threw her into to some thorny bushes asking her why she was not dead yet? The 60-year-old further depicts that as he walked away he declared that he was from Singikulam, a village dominated by upper castes.

The son of the lady has then rushed to the village as soon as the neighbors called him regarding the state of his mother. The lady is said to have somehow managed to drag herself to a neighboring house where she lay in a pool of blood till the next morning. The son has then found the mobile of the assailant in the house and found that there were only 3 phone numbers in the contacts. One of them is believed to be that of Sub- Inspector Mohammed Iqbal, the police officer to whom the lady and the son would soon approach regarding the registration of complaint.

The said officer has then registered the case under the Tamil Nadu Protection of Women against Harassment rather than the SC & ST (POA) Act. The latter provides for enhanced punishment with regard to atrocities against a member of Scheduled Castes (SC) and Scheduled Tribes (ST). The said officer has misrepresented the name of the lady as Maryamma and depicted her to be a Christian wherein she belonged to a Scheduled Caste. The officer had a false community certificate forged confirming that the lady was a lower caste Christian committing an offence punishable u/S. 4 of SC & ST (POA) Act i. e. (Punishment of Neglect of Duties).

The said officer ridiculed the lady stating that how can somebody rape her as she is so old. The said officer then framed the charges u/S. 377 of Indian Penal Code, 1860 (IPC) which states punishment for an unnatural offence. As this incident had happened after the amendment of S. 376 of IPC, 1860, the charges were to be framed u/S. 376 (1) of the said enactment which provides for enhanced punishment for the offence committed.

The lady had to prove that she belonged to a Scheduled Caste though her lawyer who showed the alterations to the district collector who further ordered a probe by

the revenue divisional officer. It was then found that she belonged to a Scheduled Caste which attracted a charge to be framed u/S. 3 (2) (v) of the SC & ST (POA) Act i. e. Punishment for Offences of Atrocities.

Day 1 Session 2.

ON: PRECONCIEBD NOTION AND PERCEPTIONS.

Issue Raised: Discrimination faced by SCs & STs even at the level of Doctorate. The insufficient knowledge of the provision leading to hostile witness cases.

The gathering was addressed by Justice Prabha Sridevan. The Hon'ble Justice id a Retired Judge from the High Court of Madras. The Hon'ble Justice initiated the session with an exercise wherein six volunteers were sought to participate as a character as detailed by the said Justice in a piece of paper. The 6 characters were:

- An urban middle-class boy;
- A Muslim man with a beard and a cap;
- A woman whose face was marred by an acid attack;
- A visually impaired girl;
- A person who is a transgender;
- A Dalit boy from the village.

The stated volunteers were to stand in a same horizontal line. The Hon'ble justice then instructed that she would be putting 6 questions. She then said that they have to play the character and answer the questions put up and if it is affirmative then they have to step forward and if it is in the negative they have to step backward.

The questions put up were:

1. Is it is easy for you to make friends?
2. Will your classmate eat the food you brought from home?
3. Do you feel excluded in your class?
4. Standing at a lonely bus stop, will your classmate give you a lift?
5. Will your classmate invite you home?
6. If Lata Singh/ her brother fall in love with you, will it be accepted?

Out of the 6 characters played, the first 5 took steps forward and backward but the last character played i. e. a Dalit boy from the village took steps only backward and not one step forward. This is how the Hon'ble Justice beautifully portrayed how a Scheduled Caste or a Scheduled Tribe member would feel even after more than 60 years of India's independence.

The Hon'ble Justice put the question in our mind as to how we think that the discrimination on the basis of caste especially regarding discrimination against "lower caste" does not exist anymore. But it is not true; there exist many levels of

discriminations against the Scheduled Castes and Scheduled Tribes. The Hon'ble Justice also pointed out how we still have the prejudice of casteism still engrained in our minds.

The Hon'ble Justice then stated that how Art. 14 of Constitution of India ensures equality only in word and how hard it is for so many to bring it into practice.

The Hon'ble Justice further noted the case of Rohit Velmula. The said Justice also read out the suicide letter of Rohith Vemula who was found hanging from the ceiling at a hostel. The heart-wrenching reality and hatred toward this young man who wanted to become a Scientist pursuing his Ph.D. were painfully depicted in this letter.

The said Justice then asked that each one of the participants attending the seminar to share a positive story from their respective districts if they could. There was only one person who shared a positive story.

The discussion then shifted to the part were the members of the SC and ST communities do not show an effort to fight against atrocities or to accrue the benefits provided by the Government in the country. The awareness of rights and the witnesses turning hostile was connected by stating that how the witnesses who belong to SC and ST communities are unaware of their rights; being apprehensive turn hostile. The Hon'ble Justice also pointed out how in the Tamil Nadu the people belonging to certain communities have to face discrimination even in death; when being cremated and in life; while celebrating festivals.

The Justice then pointed out how we have not been able to eradicate the curse of Casteism from our country. She also cited the case stated by Justice K. Chandru in the previous Session.

The Justice further stated that it is shameful that we are unable to root out untouchability from our minds after more than 60 years of independence. The importance of judges as decision makers was pointed out by the Hon'ble Justice especially regarding the cases were atrocities faced by the SCs and STs.

The Hon'ble Justice finally pointed out how a judge has to be proactive to eliminate the gap between the general, SCs and STs.

Day 1 Session 3.

ON: MORAL VALUES vis-à-vis CONSTITUTIONAL VALUES.

Issue Raised: The existence of conflict between societal norms and organizational counter-norms. The stages of resolving the dilemma between the moral values and constitutional values.

The session was addressed by Mr. Pawan Kumar Singh (hereinafter referred to as Resource Person) who is a Faculty at IIM Indore. The session was to address Moral Values vis-a-vis Constitutional Values.

The Resource Person addressed the seminar with the fact that the Constitution of India is the most sacrosanct legislation in India and yet is flexible to have been amended for about hundred times. The Resource Person further stated that the objective of the session would be to align constitutional values with moral values.

The Resource Person depicted the definition of morals as the personal standards of thoughts and conduct indicating how one should behave based on duties and virtues arising from principles about right and wrong. It was further stated how morals originate from wisdom

The Resource Person further portrayed the definition of moral reasoning as a process by which we transform our values and beliefs into actions. This reasoning affects the way one makes decisions.

The Resource Person described the definition of ethics as the social standards of thoughts and conduct indicating how one should behave based on duties and virtues arising from principles about right and wrong

The Resource Person further that values are core beliefs/ desires that guide motivate attitudes and actions, alternatively basic conviction that a specific mode of conduct/ end-state of existence is personally socially preferable to an opposite/ converse mode of conduct/ end state of existence.

The Resource Person further initiated an exercise wherein the participants had to place 7 values depicting the intensity of each value Number 1 being the most important. The 7 values listed were:

Prosperity, Contribution, Peace, Freedom, Respect, Wisdom, and Recognition.

The Resource Person then stated that in judgments moral values must be developed.

The Resource Person then started talking about stages of moral development. They can be listed as follows:

- Sticking to rules to avoid physical punishment.
- Following rules only when it is in your immediate interest
- Living to what is expected by people close to you
- Marinating conventional order by fulfilling obligations to which you have agreed.
- Valuing rights of others and upholding values and rights regardless of the majority's opinion.
- Following self-chosen ethical principles even if they violate the law.

The Resource Person then discussed Constitutional values. They can be detailed as follows:

Sovereignty; Socialism; Secularism; Democracy; Republican Character; Justice: social, economic & political; Liberty: thought, expression, belief, faith & worship; Equality: status & opportunity; Fraternity; Dignity of Individual and Unity & Integrity of Nation:

The resource the talked about how we face conflicts between societal norms and organizational counter-norms in the perspective of management. The society requires us to be open & honest; follow rules at all cost; take responsibility and to be a team player. The organization we work for requires us to be deceitful; do anything to get the job done; pass the buck (blame) and take credit for not only for our own work but for the work of others as well.

The Resource Person further discussed how the judges are to resolve the dilemma between moral and constitutional values. They can be briefly stated as follows:

- ✓ Abate: The attempt to reduce the number situations which counted as ethical dilemma should be made. Where it is a clear choice, chose the clear ethic.
- ✓ Negate: An offer should at the get go be said no to, if that is what one wants to say. The attempt to logically arrive at no should not be done. The answer can be further substantiated if required.
- ✓ State: In an instance, communication is very key. The attempt to convey adequately should always be made.
- ✓ Debate: It is well known that making a choice clearly is not always a possibility. In many circumstances, there is a gray area in the territory of

choice of action. Endeavor to create a healthy environment to deliberate the issues for more clarity.

- ✓ **Relate:** The choice should relate to your past experiences as well as the past and present experiences of others. The empathy to see oneself in the position of others should exist.
- ✓ **Contemplate:** One should mull over dilemma faced. The visualization of the outcomes of the action chose. The questioning of the strengths and weaknesses of your choice in the long run are to be determined. An individual should always act to make oneself stronger and stronger.
- ✓ **Meditate:** An individual should meditate. When as a distinct creature devotes hours and hours in a day to others, then a few minutes reserved for oneself by being with oneself without doing anything clears the conscience, the seat of making choice of action.
- ✓ **Operate:** The choice made should be implemented as an action in life/organization.
- ✓ **Perpetrate:** Standing by the choice made after satisfactory analysis of your ethical parameters is important. This is not for the sake of proving yourself right, but for the sake of broader issues with a sense of humility.

Day 1 Session 4

ON: INTERPERSONAL INSENSITIVITY.

Issue Raised: The approaches in sensitivity were envisaged. The perception shortcuts which are knowingly/ unknowingly created in minds of people.

The session was lectured by Mr. Pawan Kumar Singh (hereinafter referred to as Resource Person) who is a Faculty at IIM Indore. The session was to address the topic of Interpersonal Sensitivity.

The Resource Person depicted how interpersonal sensitivity has 2 approaches i. e.

Religious Approach- wherein the concept does not exist as there exists one another self as all the beings are extensions of one another.

Psychological Approach- which relates to how we think about others and communicate with them.

The Resource Person further stated that it is the psychological approach is what is to be discussed in the current gathering.

The Resource Person further stated about attitudes and cognitive dissonance; attribution and causation; Fundamental Attribution errors and self-serving bias.

Perception shortcuts we use:

Halo and Godmen Effect- It is a process in which the observer's overall impression of anything/ anyone is influenced. An observer's feelings and thoughts about that entity's character or properties is set even before analyzing.

Projection: This is a cognitive bias method wherein one's personal attributes to others. This compromises one's ability to respond to individual differences.

Similarity: The similarity between oneself and another is also apperception shortcut. In this a person compares the similarities and perceives notions about the other to be good / bad.

Recency: The mind is already occupied to do a lot. The most recent behavior of another is a fresh registration as to the previous registrations which fade with time. The perceptions are majorly based on the recent events.

Stereotype: This a short-cut were we attribute our idea about a certain group to a person belonging to the group. This may result in clouded analysis and can have a negative effect on our descisions.

Day 2 Session 5

ON: DISCRIMINATION IN SCHOOLS (CASE STUDY -I).

Issue Raised: Even in after appointment on posts of teachers belonging to SCs and STs communities discrimination still exists. The objectification of people is deeply engrained in our minds.

The day was initiated by the Hon'ble Justice K. Chandru. The sessions were to concentrate on the application of theoretical knowledge to practical instances.

The Hon'ble Justice discussed how reservations for the posts of teacher are made for members of SC and ST communities. But the said justice also pointed out how the teachers so appointed face discrimination and remarks objectifying being a member of a certain community are suffered by them. Even though the judgments given try to revolutionize the aspect that such discrimination should end, the judgments just remain on paper and are never truly implemented. The essence of such judgments is not realized. The said justice also pointed out how the reservation of 25% seats in private schools is not being implemented. The said Justice further pointed out that the mid- day meals for school children are observed to be majorly exploited with regard to the resources by the teachers in the school.

The session was to concentrate on a case study regarding discrimination faced by SCs and STs in schools.

The case involved was Namita Agnihotri v. Dr. Rekha Barethia and Ano. from the High Court of Madhya Pradesh. The Hon'ble Judge adjudging the matter passed an order of framing charge against the petitioner to be set aside and that the case will only proceed with the co-accused being the accused.

The participants were given the cases in the form of a current case in front of them wherein they have to adjudge the case with regard to the conviction / acquittal. It was then found that the matter is to decide on whether the charge exists / not.

Case No. 1.

Case of the Prosecution:

The case of the prosecution as portrayed in the complaint is that one Rekha (hereinafter “R”) and the accused (Hereinafter “A”) were posted on the teaching staff of the department of zoology in Government Degree College of which co-accused (hereinafter “B”) was the in-charge principal. On 27-2-2013 at about 2-3 P.M. “R” was sitting in the staff room of the department of zoology. “A” was also present there. It is alleged that the “A” intentionally insulted or intimidated “R” in order to humiliate her being a member of the scheduled caste. “R” made a complaint to her superiors but on the insistence of the staff members; she forgave “A” on tendering an apology in writing,

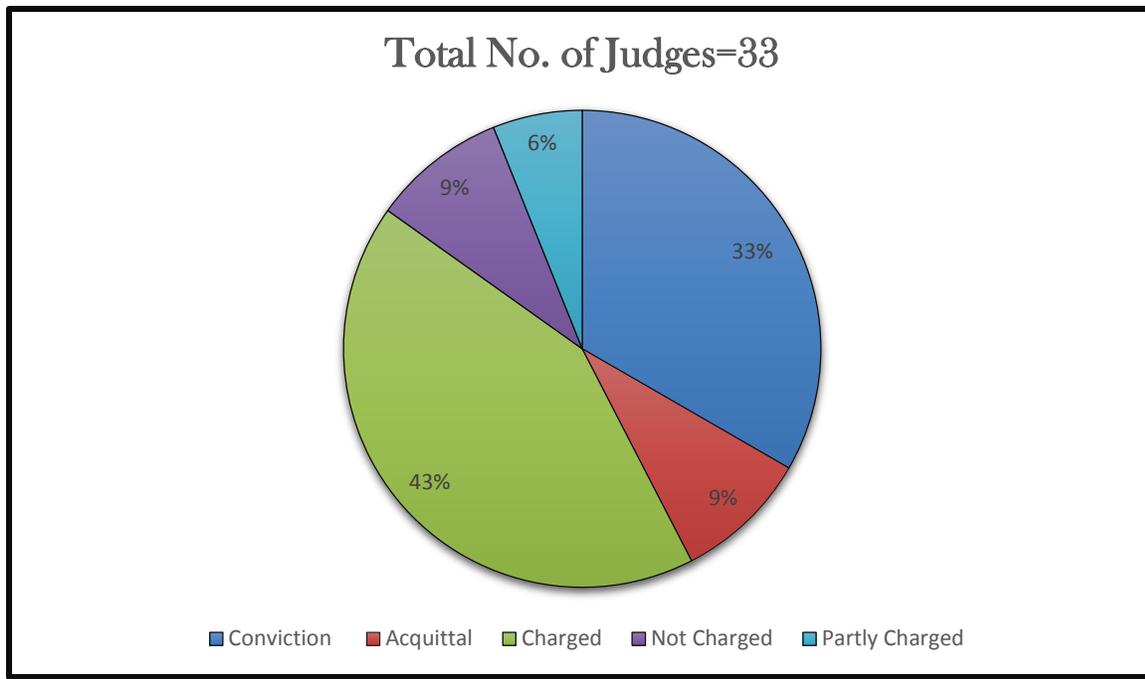
A further case of the prosecution is that on 25-9-2015 at about 3.00 P.M. when the “R” was sitting in the staff room, “B” called her in his office. At that time “A” was also seated there. “B” and “A” intentionally insulted and intimidated the “R” with intent to humiliate her being a member of the scheduled caste.

So far as the incident alleged to have occurred on 25-9-2015 is concerned. It was alleged that this incident occurred within the view of “W1” and “W2”.

Case of the Defense:

“A” submitted that “R” filed the complaint on imaginary facts. Her case is that “R” harbored enmity against her, as she had gained seniority in service, superseding the complainant. “R” has also filed a petition before the State Administrative Tribunal at Jabalpur and had lost the same. Out of sheer frustration, a totally false case has been instituted against her.

Moreover, from the statements of the complainant and other witnesses it is quite clear that it was “B” who was responsible for insulting and intimidating the complainant. Admittedly, at that time “A” was simply sitting in the office of “B” and she did not utter a word, which may amount to insult or intimidation with an intention to humiliate the “R”.



[Figure No.1]

As depicted in Figure No. 1 above, out of the 33 Participants, most of them held that the party is to be partly charged. The Judges here meant that only one of the accused in the cases was to be punished. The majority of the participants were of the opinion similar to that of the High Court of Madhya Pradesh in the case on which this situation was based.

Day 2 Session 6.

ON: DISCRIMINATION AT HOME (CASE STUDY- II).

Issue Raised: The main contention was how guests belonging to backward communities are differentiated against in homes. The fact that even domestic help is mistreated for the reason of caste is blunt truth.

The session was initiated by the Hon'ble Justice K. Chandru. The sessions were to concentrate on the application of theoretical knowledge to practical instances.

The session was to concentrate on the caste based discrimination at home. This meant the discrimination based on how people treat their domestic help or people who come as guests to house. This further means how people belonging to "upper caste" react to the members who belong to "lower caste" when they visit the homes of the former.

The Hon'ble Justice further detailed a kind of a practice wherein the homes in Tamil Nadu have separate glass for guests who are SCs and STs. Furthermore, the said Justice also pointed out how when people are not able to figure out the caste of a person they give paper cups.

The case involved was Kuriminelli Chinna v. State of Andhra Pradesh from the High Court of Andhra Pradesh. The Hon'ble Judge adjudging the matter passed an order stating that the accused would be partly convicted u/S. 3(1)(xi) of SC and ST Act, 1989 and would be acquitted u/S. 354 of IPC, 1860.

The participants were given the cases in the form of a current case in front of them wherein they have to adjudge the case with regard to the conviction / acquittal. They further discovered that there is a possibility of part conviction.

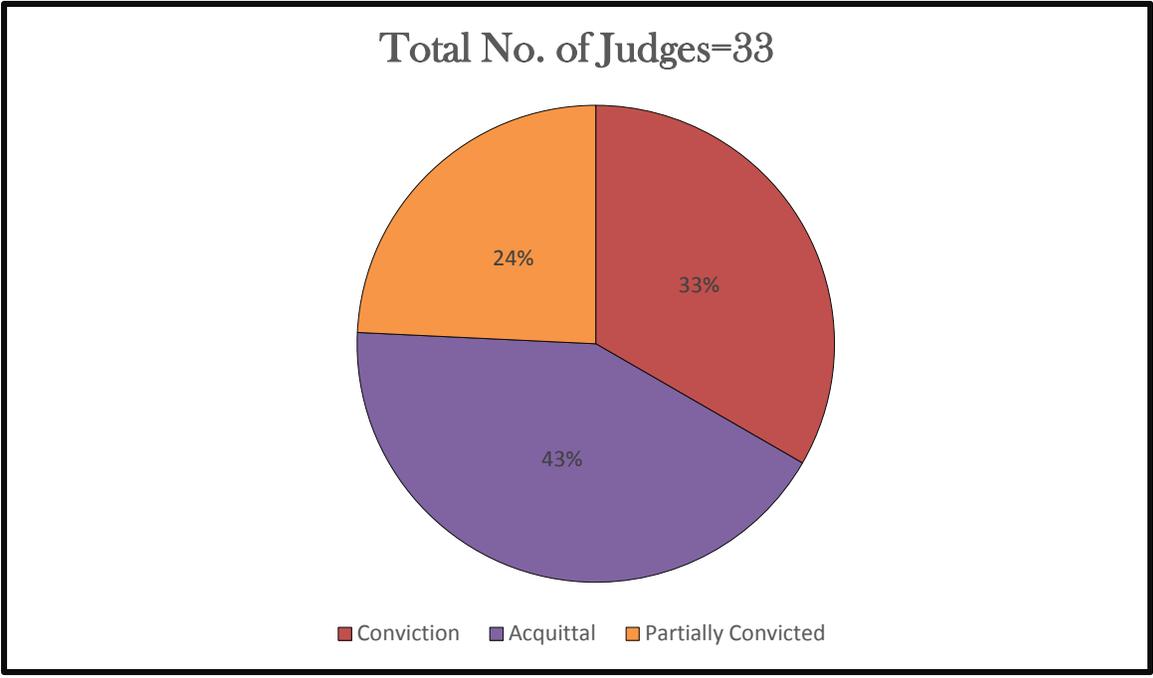
Case No. 2

Case of the Prosecution:

On 6-3-2015 at about 5.00 p.m. during evening time, the accused (hereinafter “A”) caught hold the hand of Victim (hereinafter “V”, an SC woman) and dragged her into his motor shed, and thereupon, she got herself released from his clutches and reported the same to her husband. Later, a complaint was lodged with the police at about 9:30 p.m. on the same day under Section 354 of IPC.

Case of the Defense:

The plea of “A” was one of denial for the said charges. Moreover, “A” alleged that he tried to mediate the dispute between husband of “V” and an aluminum vessel vendor and there was an altercation between the husband of “V” and “A”, and the said incident took place at the house of “X”. It was also contended that the sketch does not show any motor shed and there is discrepancy regarding the direction where the opening is facing. Reliance is also placed on another circumstance about the discrepancy found regarding holding of shoulder and dragging by hand mentioned in “V’s” statement recorded by the Investigating Officer (IO) and as deposed by “V” in her evidence.



[Figure No.2]

As depicted in Figure No. 2 above, out of the 33 Participants, most of them held that the party is to be acquitted. The minority of the participants were of the opinion similar to that of the High Court of Andhra Pradesh in the case on which this situation was based.

Day 2 Session 7.

ON: DISCRIMINATION IN ACCESS TO EDUCATION (CASE STUDY-III).

Issue Raised: The discrimination faced at the access to education is heart wrenching. India is as a country is to develop on the development of its young. The levels of average education is what will decide the degree of development.

This session was to concentrate on the discrimination faced in access to education. The Hon'ble Justice K. Chandru stated that how the right to education has remained on paper with regard to access to education.

The access to education was pointed out by the Hon'ble Justice as to how the discrimination is faced by students at every level. The Hon'ble Justice stated the instance of Rohith Vemula stated by Justice Prabha Sridevan in one of the previous sessions. Justice K Chandru further pointed out as to how many a times schools in Tamil Nadu are seen closed due to the fact that the community members are not ready to allow their children to study with children who belong to SCs and STs.

The case given to the participants was based on the cases of Shri Ghasi Ram v. NCT of Delhi & Ano. adjudged in the Hon'ble High Court of Delhi. The Hon'ble Justice adjudging the matter ordered that as far as it relates to the offence u/S. 3 (1) (x) of SC & ST (POA) Act, 1989, it requires to be set aside and as far as the offence u/S. 3 (1) (xv) SC & ST (POA) Act, 1989 is concerned there existed no sufficient material to frame the charge. The petition deserves to be partly allowed; the trial court shall proceed to frame the charge u/S. 3(1) (x) of SC & ST (POA) Act, 1989.

The participants were given the cases in the form of a current case in front of them wherein they have to adjudge the case with regard to the conviction / acquittal. They further discovered that the party is to be summoned/ not summoned is the adjudging matter. The possibility of being partially summoned was also explored.

Case No. 3:

Case of the Prosecution:

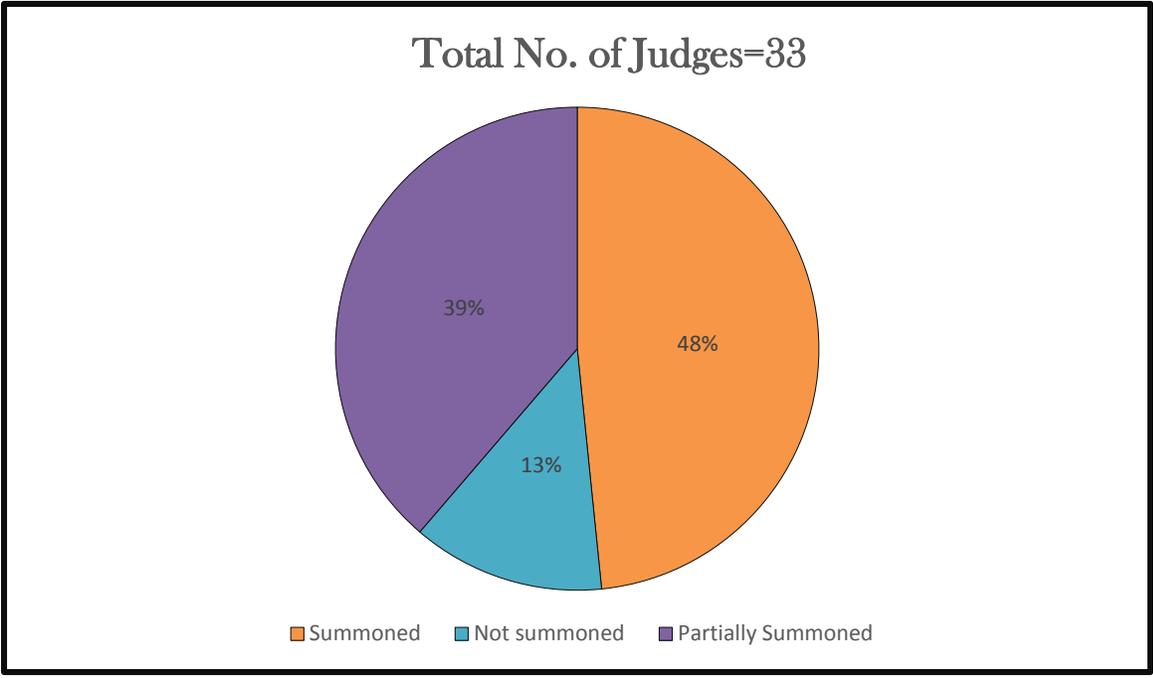
It is alleged that the victim “V” works as an Engineer in the Press Trust of India (PTI). On 1-4-2015, at about 2:30 PM, when he was coming out of the messenger room, “A”, who saw him coming out, stopped and abused “V”. He also allegedly used threatening language. “A” who is also an employee of PTI said to “V” "Dedh Chamar, apni aukat me rahe, dekhta hun tu ab kaise Delhi mein rehta hai". It was alleged that two other staff members, “S1” and “S2” who were also present tried to stop “A”, but he did not stop; he further threatened “V” that if he failed to resign as Joint Secretary, he would be transferred from Delhi. He allegedly said "Kutte Ko Kutta Nahin to Haathi Kahenge". He allegedly hurled out further threats.

Counsel for “V” submitted that the complaint and materials brought before the Court clearly revealed allegations of the accused having committed the offences. It was submitted as to whether the words were uttered in public view or not is a matter of trial and that prima facie the statement of “V” and other witnesses disclosed that the incident took place in public view, in an office. It was contended that “V” had no commercial dealings with “S1” & “S2” nor was he in any manner linked with them.

Case of the Defense:

The counsel for “A” placed reliance upon the judgment in *Daya Bhatnagar & Ors. v. State 109 (2004) DLT 915* and urged that even if the allegations were accepted as truth, they did not constitute the offence complained against, as the acts were not done in “public view”. In that judgment the Court had held that the expression “public view” contemplated presence of independent and impartial persons not having any commercial, business or family relationship with complainant/informant and that would also exclude persons having any previous enmity for falsely implicating the accused.

It was further submitted that even otherwise the basic ingredients of the offences were not made out. It was submitted that if charges are to be framed on the basis of such flimsy materials, innocent persons would be put to great harassment and prejudice.



[Figure No.3]

As depicted in Figure No. 3 above, out of the 33 Participants, most of them held that the party is to be summoned. The 39% of the participants were of the opinion similar to that of the High Court of Delhi in the case on which this situation was based.

Day 2 Session 8.

ON: INDIVIDUAL BIASES PREJUDICES AND IDIOSYNCRACISES & IT'S EFFECTS ON A JUDGE.

Issue Raised: the prejudices engrained in our mind regarding certain sect are not to exist especially in the minds of judiciary. The extremes of within a person and the requirement to pull oneself to the higher capacity is prominent.

The session was swapped with a session of the next day. Thus instead of case study the session dealt with Individual Biases, Prejudices and Idiosyncrasies- Effect on a Judge.

The speaker for this session was Resource Person Ms. Nisigandha Bhuyan, (hereinafter referred to as Resource Person) who is a Faculty at IIMC Calcutta. The speaker addressed the participants with the view to point out the biases, prejudices and idiosyncrasies within oneself.

The Resource Person initiated the session with the analysis of how there exist 2 different conceptions of self. The Resource Person also talked about as to how a people find themselves in situations; intentionally/ unintentionally in their childhood conception or in their adult conception. There exists a paradox of the universal and individual selves is what is stated by the Resource Person. Everyone is influenced by the stages of their living. There is nothing like objective rationality / objective decision-making.

The Resource Person further noted as to how there exist 2 extremes in a person. The one extreme is wherein people think of them alone and the other being the extreme more universally thoughtful.

The two extremes were depicted as follows by the Resource Person:

One Extreme:

Individual.
Egoist.
Cater to the Base
-desires and instincts.
Fundamental Force.
-Instinct for survival of Self

Other Extreme:

Social.
Altruist.
Cater to the Highest
-Relatedness to the universe.
Search for the meaning of Life.

The Resource Person further more states as to how actions are moderated by universal reasons. The Resource Person also state as to how the fundamental force is the longing to expand limitlessly and not by subjugation.

The Resource Person further discusses about the complex human nature wherein 2 extreme of lower and higher capabilities exist.

The experience of society treating you / people treating you have an effect in the decision making process. The transpiration of past effect the decisions making of cases. The attempt should be objectivity if not action but in contemplation. One has to drag oneself especially in vital institutions which shape the society to come from lower capabilities to higher capabilities in a democratic society. Human beings are not just instinctive but thinking beings. The object is to be to drag oneself from this base of instinct to the level of thinking.

The Resource Person also pointed out as to how we are stuck with particularities regarding caste, gender, etc. Internal and external conditions both effect the decision. But the decision based on the internal conditions are comparatively more objective. Every person has the capacity to act universally where all the particularities of caste, past, gender, experiences, etc. can be downplayed. But this capacity being harnessed is what the issue becomes.

Caste is particularity distinctive to Indian Society. We are in a way or another promoting caste system and its discrimination, hierarchy & division. This seems to be a permanent particularity and till now we have not been able to find a way to eradicate it from the society. The ground reality is that we have not been free from the particularities though the aim is to make a community which is class less and caste less.

Day 3 Session 9.

ON: RATIONALITY IN DECISION MAKING.

Issues Raised: The basis of rationality in decision making especially with regard to adjudicating bodies. The contemplation of legitimacy to decision was pondered over.

The day was initiated by Justice K. Chandru. The day was to comprise of 5 sessions.

The first session was addressed by Resource Person Ms. Nisigandha Bhuyan, (hereinafter referred to as Resource Person) who is a Faculty at IIMC Calcutta. The session was to address Rationality in Decision Making.

The session started with a view of defining the term 'rationality' a set procedure of systematic analysis that supports the decision. The Resource Person further stated that reason is the source of knowledge and also is the power of mind that could filter out clarity and relevance from contamination and irrelevance as per the enlightenment view.

The Resource Person then stated as to how the reason of each field differs from each other. The reason of economics is for the benefit to outweigh cost. The reason for psychology is to superiority over emotions. This way the various subjects' with their reasons were stated.

The concept of rationality in law was then observed by the Resource Person. The concept of rationality in law is pure logic. To further add to the point, rationality with regard to law is logic + social experience. The question is law a rule based reasoning/prescriptions was pondered. The aspect was further looked into from the aspect if every component of decision can be explained through the rule. If the answer is negative, then how do we attempt to explain the tacit bases of preferences in judiciary which influence decision? The aspect whether rationality in its essence fails to guarantee legitimacy was contemplated.

The next aspect envisaged was the rule of law. The legitimacy of rule of legal institutions depends on the rule of law. The society is ruled by law, order and justice. The concept that no one is above the law is also a part of rule of law. There are 3 senses derived from the rule of law.

- Firstly, the existence of state and sovereignty of the state over citizens is legitimized. If state does not exist then the rule of the jungle i. e. survival of the fittest will come into force. Thus it is important that the sovereignty of the

citizens is handed over to the state and is discussed to be an important object to protect the well-being of all the citizens.

- Secondly, the existence of rule of law will result in the society being more fair, balanced and truth centered. The power in the hand of individuals will result in the arbitrary existence of humans in society. The rule of law in the hands of the capable will make sure that there is a certain order in life.
- Lastly, the rule of law objects at judicial enforcement of legal rights and duties. The strong always have a way to encroach upon the weak. The judiciary ensures that this does not happen.

The application to reason in law the enlighten view of it has strong appeal to decision making process. The rational resolution of dispute is to be just, fair and objective. The necessity of rational law for political legitimacy guarantees good governance. The legal rules are a check against and antidote to arbitrary power and are capable of filtering out the legally relevant from the legally irrelevant. The legal reasoning must aim to yield clear, predictable and consistent legal standards.

The Resource Person then talked as to how legal rationality has limitations within its applications. The aspect where legal rationality has a possibility of failing to achieve objective outcomes was explored. The nature of the cases vary in so many different manner that it is practically a humongous task to even objectify outcomes. This is far more applicable in contentious cases which are political and social in nature. The cases in our country need extra considerations from the legal point of view.

The Resource Person then envisaged the aspect of justice from the view point of John Rawls. John Rawls has defined the term justice as a virtue of social institutions, measured by fairness in allocating benefits and burdens. Jon Rawls has further stated that the allocation is defined by 2 principles i. e. Liberty and Difference.

The principle of Liberty was explained to be that that every person participating in a certain practice/ someone affected by it has a right to the extensive liberty equal to the others participating/affected by in the stated practice. The Resource Person further stated as to the principle of Difference by John Rawls. It was stated that inequalities are arbitrary unless they are reasonable. It is further stated that they will work to the advantage of the least advantaged and this is reasonable to be expected. The positions and the offices to which these attach are open to all, under conditions of fair competitions.

The Resource Person also stated as to who is to be termed as least was advantaged. The term 'least advantaged' is to signify those with lowest expectations to the access

to primary goods. These goods are something free and equal persons need as citizens of a State.

The Resource Person also discussed about the classification of kinds of primary goods as stated above by John Rawls. Rawls specifies 5 kinds of goods i. e.

- i) Basic rights and Liberties;
- ii) Freedom of movement, free choice of occupation;
- iii) Powers and prerogatives of offices and positions of Responsibility;
- iv) Income and wealth;
- v) Social bases for self-respect.

All of these are in a way or other envisaged in the Constitution of India. The judiciary has the holy task of ensuring the implementation of these in a rational manner.

Day 3 Session 10.

ON: MORAL DEVELOPMENTS & ETHICS FOR JUDGING.

Issue Raised: The change in ethical standards nowadays is yet to be acknowledge. This is not negative. It is just a different perspective of the world today.

The session was initiated by Resource Person Dr. Parul Rishi (hereinafter referred to as the Resource Person) who had to address the session with regard to Stages of Moral Development.

The Resource Person is a Faculty of HRM at IIFM, Bhopal. The origin of ethics was to be explored. The Resource Person put up three sources as a question to explore. The concept of whether ethics are written codes for Judges; are enforced by law or are engrained in our minds was to be judged. The Resource Person further posed a question as to what make us ethical/ otherwise and stated that three factors decide this i. e. our culture, values and mind set. These were stated to be individual characteristics affecting our ethical behavior.

The values are our basic convictions about what is right/ wrong on a varied range of issues. The Resource Person then reconnoitered the contradictions between value, morals and ethics. It was observed that all operate at 3 normative levels. The difference was that values are defined by ourselves; morals by society and ethics by organization/subgroups of society. It was further stated that all the 3 have the same philosophy i. e. characterizing between right and wrong. It was further stated that values are just a chunk of the world of ethics.

The Resource Person then stated as to how there exist conflicts between kinds of values i. e. stated values and operational values. The difference is that the former is documented to be followed whereas the latter actually drives the judicial decisions. Many a time there exists disconnect between the two and then it was stated as to why this disconnect exists. The Resource Person also states that many times we do not know that we are doing something unethical and the question as to who will tell us what is unethical arose. The Resource Person then stated that the answer to this question is ask yourself. It is further stated that even if minutest fear of what will happen if someone knows about it being a result of bad intention exists then we are to not do it. The Resource Person also stated as to how we are to consider it as the voice of our conscience to save ourselves and describes it to be the best test to check a behavior to be ethical/not.

The Resource Person talked as to how there are threats to morality and even if we are on the right path we have make sure that we are not run over. The Resource Person further stated as to how we have to be active to stand by our ethics to even if they are right.

The session further observed as to why it is difficult to be ethical. The Resource Person stated as to how we feel conflicted to do the right thing and to do the things which are right only for us. The Resource Person further states that it is not difficult to be ethical. Furthermore, the Resource Person stated that it is a myth that being ethical is difficult. In fact it is easy to be ethical. The Resource Person suggest the smell test decide on whether the instance is ethical or not. The Resource Person suggests that if something stinks then don't do it. The consequential framework is to be set for every decision made as to will the result in harm / benefit to the society. The Resource Person also as to how a deontological framework is also to be set to decide as to the justice, rights and virtue with an emphasis on integrity of actor.

The Resource Person then discusses the part wherein the conceptions of ethics have changed as to how unethical behavior is said to be the result of bad apples, ethics in judiciary can be managed through ethical codes, ethical behavior is linked to ethical leadership and people are less ethical than they used to be. The Resource Person stated that these were misconceptions about ethics. Each of them are just falsely engrained in our minds.

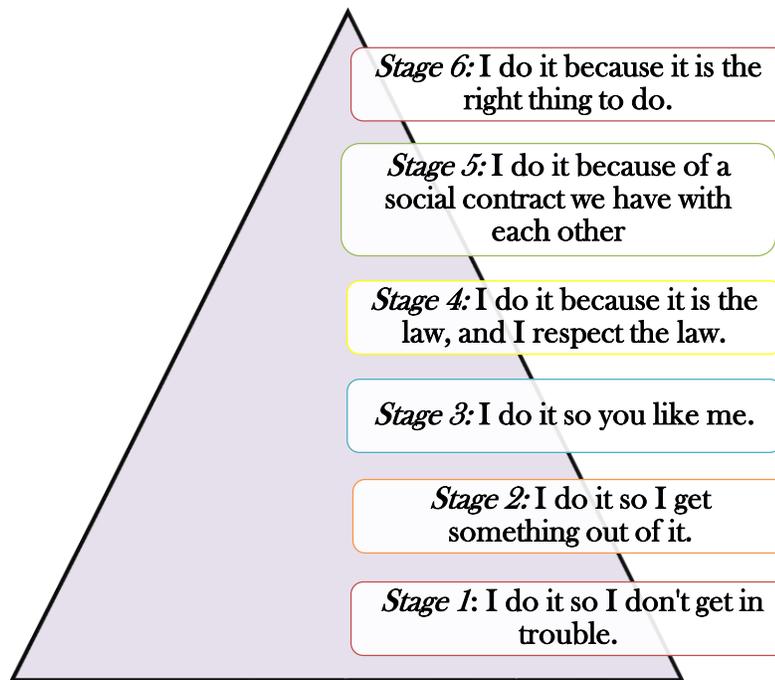
The Resource Person then gave a 9 dot puzzle to the participants. The participants had to connect the all of the 9 dots with 4 straight lines without lifting the pencil/pen. The Resource Person further states that from this puzzle that:

- In cases all dots are not so simple to connect.
- Certain cases challenge mental capacity in order to make a right judgment.
- To go beyond logical sequence of events to adopt out of box thinking.
- See beyond what your eyes see.
- Listen beyond what your ears hear.
- Feel beyond what your mind says.
- Move from Logical to lateral thinking.

The Resource Person then stated as to how judges confront real ethical dilemma. These are situations in which any of the alternatives do not seem available to be ethically acceptable in writing a judgement. The obligations of giving any judgment

ethically is to keep in mind human rights, corruption, environment and societal concerns.

The Resource Person then discussed the 6 stages of moral development in the view of Kohlberg. The stages in a descending order can be listed as:



The Resource Person then put up a picture of a column of pebbles. Each of them were in different sizes, shapes and colors. All of them were well balanced. The largest one is at the bottom and the smallest at the top. All of them were connected to each other. The Resource Person then stated that this row of pebbles in this context depicts the society wherein people of different caste, class, creed, religion, ethnicity, etc. all co-exist together. The Resource Person further stated as to how the object of the judiciary is maintain a balance between all these different categories of people. The Resource Person described the largest pebble at the bottom to be the base of judiciary. The responsibility to keep all courts down the line connected with judicial values and to make sure that the smallest one on the top is not felling down due to any imbalance was also stated. It was also stated that if they stand strong and connected, no one can roll then in their own way.

Day 3 Session 11.

ON: RECOGNIZING “EGO STATE” TO DELIVER BETTER.

Issue Raised: The fluctuation between ego states is what results in inadequate decisions. The person being stuck in one state is what leads to rigidity in thinking.

This session was initiated by Justice K. Chandru. The speaker of this session was Resource Person Dr. Parul Rishi (hereinafter referred to as the Resource Person) who is a Faculty of HRM at IIFM, Bhopal. This session was to concentrate on transactional analysis.

The Resource Person stated that this is huge subject and she would just be giving an overview with regard to its application to judiciary.

The Resource Person defined the concept of transactional analysis as a method of analyzing understanding human relationships and communications between people. The Resource Person also stated as to how the concept was first developed by an American psychiatrist Eric Berne drawing on theories of Sigmund Freud, a psychoanalyst.

The Resource Person then went on to talk about the basis for transactional analysis. There exist 3 principles of transactional basis i. e.

- ❖ Id - Pleasure Principle
- ❖ Ego- Realistic Principle
- ❖ Super-Ego- Ethical Principle

The Resource Person further stated as to how the Realistic Principle i. e. the adult is stuck between the Pleasure Principle i. e. the child and the Ethical Principle i.e. the parent. The action is usually based as to which principle is dominant state in a person. The Resource Person states then shifted the emphasis to Berne’s ego states wherein a person goes through 3 states i.e. Child; Adult & Parent. The child and parent egos are divided into 2 parts.

The Resource Person stated as to how a child ego state can be a natural child and adapted child. The natural child ego state questions/ rebels the parent whereas the adapted child ego agrees to whatever the parent says. The Resource Person also stated as to the 2 states on parent ego state being nurturing parent and punishing parent. The nurturing parent is passive and tries to convince the child to do come on the right path whereas the punishing parent is a bit aggressive and attempts to control

the child. The person's ego state can be determined through their verbal and non-verbal behavior which characterizes each ego state.

The Resource Person then went on to list out the advantages of Transactional Analysis. Transactional Analysis gives a positive communication tool. It provides an insight which is better to determine the personalities and transactions. The process of it helps us to solve problems faced personally & in regard to family. Transactional analysis is a non-threatening self-evaluation approach and it is simple to learn.

The Resource Person then envisaged the basic structure of human personality. The Child ego state is a felt concept of life; the Adult ego state is thought concept of life and the Parent ego state is the taught concept of life. The Resource Person then described each of the states as stated by Eric Berne.

The Child Egos state is majorly based on the thinking, feeling, behaving as one did as a child. The Adult ego state is a direct result of current happenings from the thoughts, feelings and behaviors of the person. The Parent ego state is when one thinks, feels and behaves in methods of an imitation from one's parents. The Resource Person also stated that the key point in this is that people shift in & out of these states.

The Resource Person then initiated an exercise wherein the participants were to connect the statements to the respective ego states. All of the participants were successful in connecting the statement accurately with the ego states.

The Resource Person then stated as to communication between the persons in different egos states. The Resource Person also as to how the difficulty lies with the cross communication between 2 different ego states.

The Resource Person then explained as to how this applies in the day-to-day activities of a judge. The Resource Person then gave an exercise as to determine what kind of personality each of them were and they had to self-analyze on the basis of their answers and mark themselves accordingly. The Resource Person then portrayed all possible results and asked each of the participants to evaluate as to where they need to work.

The Resource Person then talked about managing all of the states and attributing the compromising style of managing all of the states in life.

Day 3 Session 12.

ON: DISCRIMINATION AT WORK PLACE (CASE STUDY- IV).

Issue Raised: The discrimination faced by backward people at work places is slo to be determined and adjudged. The casteist comments are not escaped even at places were people come to earn a livelihood.

As stated in Session 8 the sessions were swapped and the current session was to envisage a case study. The session was initiated by Justice K Chandru.

The Hon'ble Justice notified the participants of the practice in Tamil Nadu wherein cooks are appointed in schools where mid-day meals are being provided to children. The discrimination faced by the 'lower caste' with regard to appointment as opposed to the 'upper caste'. The discrimination is that the parents of the children oppose to send the latter to study in schools wherein a SC/ST member is a cook.

The said Justice enlists such an incident wherein the school was shut down due to the reason that the cook appointed was a lady belonging to a schedule Caste. The parents refused their children to the said school and they were to go the school to another place.

The cases given was based on Swaran Singh and Ors. V. State through Standing Counsel & Anr. a case adjudged by the Hon'ble Supreme Court of India. The Hon'ble Justice who adjudged the case held that the appeals of Accused No. 2 and 3 are to be quashed whereas the appeal of the first accused is allowed.

The participants were given the said cases in the form of a current case in front of them wherein they have to adjudge the case with regard to the conviction / acquittal. They further discovered that there existed the possibility of holding some of the accused guilty.

Case No. 4:

Case of the Prosecution:

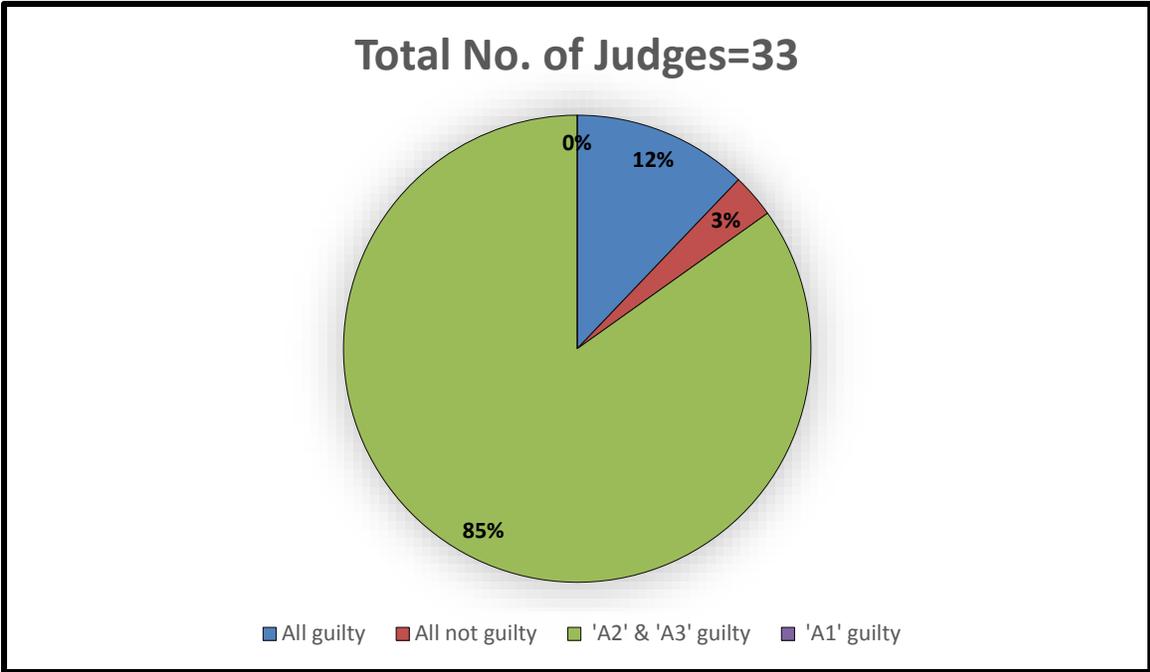
It is alleged that the victim “V” is deeply hurt by the humiliation consistently done by “A2” & “A3”. Even “E” when approached “A1”, he misbehaved with him and insisted that he should move “V” out of the society where they resided.

“A1” had earlier instituted a Court case against “E” on some other issue too.

On 10.12.2015 around 8.45 a.m. in the morning when “V” came for his duties to the house of “E”, and started cleaning the vehicle. Both “A2” & “A3” threw dirty water on him and said that chamar and yelled as to why did “V” come on their repeated insistence at the time when “A3” goes to office? Hence, by putting the water on him they were making him to take bath and clean the path.

Case of the Defense:

It was argued that “A2” & “A3” being women, would find it uncomfortable when “V” would always make sure that he stares at them and does all such activities which would make him conspicuous to the ladies. “V” would also size the women whenever they have to come down to the parking area and would sing some indicative songs to attract their attention. Learned Counsel for accused submitted that so far as “A1” is concerned, his case even treating the allegations in the FIR to be correct, does not attract Section 3(1) (x) of the Act. Learned Counsel submitted that in the FIR it is mentioned that when the first informant “V” complained to “A1” that “A2” & “A3” were insulting him by calling him ‘Chamar’, “A1” said that actually he “V” is a “Chamar” and hence they did not say anything wrong. A perusal of the F.I.R. shows that “A1” didn’t use these offensive words in the public view. There is nothing in the F.I.R. to show that any member of the public was present when “A1” uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public.



[Figure No.4]

As depicted in Figure No. 4, majority of the participants held to the view similar to that of the Hon’ble Supreme Court of India in the case on which this instance was based on. None of the participants held ‘A1’ guilty.

Day 3 Session 13.

ON: AMENDMENT OF SC/ST (POA) ACT, 1989.

Issue Raised: The various changes in the Act. The additions of new chapter and definition plugging the loopholes for possibility of atrocities.

The session was initiated by Justice K Chandru. This session was to concentrate on the amendment of the SC & ST (POA) Act, 1989. This amendment was brought into force on 26th January, 2016. The Amendment was pending from the year 2013 and the object was to bring about stricter laws to ensure stringent punishment for atrocities against the SCs and STs.

The amendment has brought in some new terms which are defined u/S.2 of the said Act. The new terms are 'dependent'; 'economic boycott'; 'Exclusive Special Court'; 'forest rights'; 'manual scavenger'; 'public servant'; 'social boycott'; 'victim' and 'witness'. The amendment also states that the terms used but not defined in the Act are to have the meaning (if termed in) as defined in the IPC, 1860 and CrPC, 1973.

The amendment has broadened the effect of the Act. It has also provided a safer enactment to prevent atrocities against the SC/ ST members.

The Amendment brings about various changes which will ensure that there will not exist exploitation of certain sections in the Act. The amendments can be listed as follows:

- i) The amendment of the said Act has brought in the aspect of what actions are to be treated as offences. This has broadened the scope of the act regarding to actions to be considered to be offence. The amendment has added new categories of offences. The act wherein an SC/ ST individual is forced to vote/ not vote for a certain candidate is to be treated as an offence. The condition is that the person forcing should be a non-SC/ ST. The amendment also impedes certain acts relating to voting to be considered as an offence.
- ii) The amendment even enlists wrongful occupation of land which belongs to a SC/ ST as an offence. The term 'wrongful' has also been defined clearly giving the ingredients to comprise the offence.
- iii) The offence assault/ sexual exploitation on a woman belonging to a SC/ ST community is to be an offence under the amended Act. The amendment adds that intentionally touching an SC/ST woman in a sexual manner without consent; using words/acts/gestures of a sexual nature;

dedicating women as devadasi to a temple who belong to SC/ ST communities or any similar is to be considered an offence. The term consent has been defined as verbal/ non-verbal communication of voluntary agreement.

- iv) The amendment enlists new offence. They can be stated as:
- Garlanding of footwear;
 - Compelling to dispose or carry human/ animal cadavers or do manual scavenging;
 - Abusing by caste name in public a SC/ST person;
 - Attempt to promote ill-will feelings against SCs/STs or disrespecting any deceased person held in high esteem;
 - Causing physical harm on allegation of practice of witchcraft;
 - Imposing a social or economic boycott/ threatening to do so.
- v) The amendment also enlists preventing from undertaking certain activities by the SCs and STs as an offence. The activities are a) using common property resources; b) entering a place of worship open to public and c) entering an education/ health institution
- vi) The amendment also states that the court shall presume that the accused was aware of caste/ tribal identity of the victim if accused had personal knowledge of the victim/ his family, unless the contrary is proved. This shifts the burden of proof onto the accused to prove the contrary.
- vii) The amendment further objectifies the role of public servants. The Act now states that a public servant who non- SC/ST who is neglecting his duties relating to SCs/STs shall be liable for an imprisonment of 6 months which may extend to a year. The specifications of these duties has been done in the said Act as well i. e. a) Registration of complaint/ FIR; b) Reading out information given orally before having it signed by the informant; c) Giving a copy of the said information to the informant; etc.
- viii) The amendment conscripts the change in the role of courts. Under the previous Act, a Sessions Court was to be a Special Court to try the offences with a Special Public Prosecutor to conduct the cases in regard to matter under the Act. The amendment states that at district level an Exclusive Special Court is to be established.
- The amendment further states that in districts with fewer cases, a Special Court may be established. The Act also states that an adequate number of courts are to be established to dispose the matters under the Act within 2

months. The Act envisages that the appeal from the said court shall lie to the High Court which are to be disposed within 3 months.

The amended Act provides that a Public Prosecutor and Exclusive Public Prosecutor shall be appointed for every Special Court and Exclusive Special Court.

- ix) The amendment further novices rights of the victims and witnesses. The Act has now a specific Chapter dealing with the said aspect. The State is to ensure it as a duty to make arrangements for the protection of victims, their dependents and witnesses The State Government is to specify a scheme to ensure implementation of the rights of the victims and witnesses.
- x) The amendment of the Act further provides for the courts established as per the Act the option to a) conceal the names of the witnesses; b) take immediate action in respect of any complaint relating to victim/informant/witness harassment; etc. the Act also states that any such complaint shall be tried separately from the main case and will be concluded within 2 months.

Day 4 Session 14.

ON: CASTE CHALLENGES IN BAR AND BENCH.

Issue Raised: The discrimination is not escaped from even in the body which is to provide justice to victims facing atrocities in these matters. The society is not free of prejudices and thus the judiciary is also not free of prejudices

The day was to comprise of 3 sessions. The day was initiated by Justice K. Chandru. The session was to address caste challenges in Bar and Bench.

The said Justice states that the New Year started with a strange incident. The first being a Gujrat High Court Justice stating in a judgement that there is no need for reservation and are irrelevant as it creates divide in the society. The said Justice also stated that maybe this judgment was given in the context wherein a majority community demanded reservation.

The said Justice then pointed to as to how a Judge of Madras High commented in a meeting that anyone opposing reservation is a scoundrel. The context in which the Judge spoke in was controversial to be unethical and against the code of ethics. In another meeting the said Judge came into state that the dictionary meaning of the word scoundrel is to be dishonest and that he still stand by it in the context of dishonesty. The said Justice then stated as to how within the bar and bench opinionated judges with the baggage against and for the matter of Scheduled Caste and Scheduled Tribes.

The said Justice also stated as to how even within reservation in recruitment of Munsiffs the discrimination against people who are comparatively intellectually oriented are further differentiated against. The Justice states an incident wherein a reservation candidate was denied a post in the judiciary via marking for having his own view about a question posed about the greatest event in the century.

The Justice enlisted an instance wherein a Judge faced a discrimination based on his caste. The said Justice that a Judge noticed that in the regular meeting held he always had been a cup of tea in a rose colored cup whereas everyone else picked up the white cups. The said Judge then once picked up one of the white cups and the rose colored cup was then given to the Chairman in the meeting who refused to take the cup stating that there is fly in the tea. The said Judge then said that there is no fly in the cup and is free to exchange the cups upon which the said Chairman stated that it

was ok. The Judge faced this discrimination being a person who is to uphold equality as a constitutional value.

The Justice further brought to the notice that even after 66 years there has been only one Scheduled Caste Member who had been appointed as the Chief Justice of India (CJI). The Justice notifies that to become the CJI, one has to be recruited very young. If the reservation is not there at the level, then how will change for the better as the CJI is appointed on the basis of the seniority.

The said Justice then stated as to how nowadays, the degree of the members of Scheduled Caste and Scheduled Tribes has fast advanced in getting a due share in judicial recruitment.

The Justice then stated as to how the participants should share incidents of discrimination as they have witnessed it.

One of the participants shared an experience. The Judge enlisted an instance wherein a Judge faced a discrimination based on his caste. The said Justice that a Judge noticed that in the regular meeting held he always had been a cup of tea in a different colored cup whereas everyone else picked up the white cups. The said Judge then once picked up one of the white cups and the different colored cup was then given to the District Judge in the meeting who refused to take the cup stating that there is a fly in the tea. The said Judge then said that there is no fly in the cup and is free to exchange the cups upon which the said Chairman stated that it was ok. The Judge faced this discrimination being a person who is to uphold equality as a constitutional value.

Day 4 Session 15.

ON: SEXUAL VIOLENCE AGAINST SC/ST WOMEN IN INDIA.

Issue Raised: The contention as to which court will judge the matters wherein the charges include that of SC & ST (POA) Act, 1989 and POCSO Act, 2012. The feeling to be invested in parties that they heard and tried fairly is to be prominent.

The session was to address the matter of sexual violence against SC/ST Women in India. The session was addressed by Ms. Pritarani Jha, (hereinafter referred to as Resource Person) who is currently Justice Researcher, Activist and teaches in NIRMA University on Gender and Law. She also heads an NGO in Gujarat named Peace and Equality Cell.

The session opened with an interesting question as to which special court is to decide on matters wherein the charges include offences under the SC & ST (POA) Act and the Protection of Children from Sexual Offences Act (POCSO) Act respectively. The views of different High Courts vary and the Supreme Court of India is to adjudge this matter is what was concluded.

The Resource Person stated as to how there are various reports to depict discrimination and sexual violence. The Resource Person then brought about the competence of adjudicating matters and its defects. The aspect compromise has been so common that most of the cases result in acquittal and there is no reaction for it as it has become a norm.

The Resource Person further stated as to how well known that the main problem is poor quality in criminal justice system. The actual work is to start from here. The example of S. 166A of CrPC being amended in 2013 was put up. So far there has been only one instance reported in Bangalore. The amendment of this section states that it is a punishable offence on part of a public servant if certain offences are not registered.

It was further observed that just having the law does not make the problem go away. In a survey in Mumbai it was discovered that if an NGO is involved then there are more chances of case being registered. This is not the right path wherein the access to justice is now to be determined on the basis of access to an NGO.

The Resource Person then stated as to how conviction/ acquittal in every case is not the matter. The fact that the party was heard/ fairly tried is what matters to people. The fact that procedural justice is just as important should be acknowledged. The

Resource Person requested the participants that they make sure that the feeling of respect of the human rights of the parties is invested in the parties. It is a huge culture of silence that the victims have overcome to register case and publically establish it.

The Women and Child Department conducted a survey as to how many instances of POCSO cases are registered cross 13 States with about 12,000 children. It was an astounding fact that of every 100 cases about 3 were reported. The Resource Person further stated that if a similar survey is conducted regarding the atrocities against SC &ST women an analogous result may be observed. It was further seen that about 70% children don't report it to anyone.

The aspect for this statistics is that the idea of marriage being the optimum level for women to achieve will be spoilt. This misconception needs to be rooted out. The Resource Person states that it is also heartening to see that there is a bit of a change in this attitude. The said Resource Person details an instance a father of the child-victim who had been continuously harassed by her teacher had stated that he would keep his daughter unmarried and at home but he would fight until he gets justice.

There exist multiple layers of vulnerability for the Dalit women among whom 70% reside in villages to access to services. The Resource Person enlists an instance wherein a minor disabled girl had been raped and this came into picture when a routine medical checkup was done to discover that the victim was 6 months pregnant. The victim then stated that a certain neighbor had raped her. The DNA test came negative and the Judge had ordered counseling. It was then revealed that the girl had been raped by many men in the locality. All of them were caught and the child birthed by the victim had her paternity test matched with one. The victim then committed suicide within six weeks. The conviction was done but to what effect did it meet justice. The family of the deceased victim was happy that at least one was convicted. In a survey in Mumbai it was observed that in 60 cases the offence of rape is discovered only on the pregnancy of the victim in similar fashion as stated above.

The amendment is to be brought into proper effect. It was also noted as to the inadequacy of shelters wherein the victims prefer to stay with their abuser than to stay in shelter. The condition is such that a victim feels even more unsafe and subject to abuse. This is to be looked upon and the state should strive to condition shelters to be a safe haven and not another place to be abused at.