

**NATIONAL CONFERENCE OF THE PRESIDING OFFICERS OF THE SPECIAL
COURTS UNDER SC/ST (POA) ACT 1989 [P- 892] January 23-25, 2015**

Program Report

National Judicial Academy organized a national conference of the presiding officers of the special courts established under SC/ST (POA) Act from January 23rd to 25th. 25 judges from across the country participated in the conference. Dr. Gobind Pal, Director, Indian Institute of Dalit Studies, Delhi, Mr. Martin Macwan, Dalit rights activist from Ahmedabad, Mr. S. L. Thausen, I.G. (AJK), M.P. , Dr. Sirivella Prasad, Dalit rights activist, Justice K. C. Bhanu, Judge, Andhra Pradesh High Court, Ms. Uma Soumya, researcher, NLSIU, Mr. Sumit Baudh, researcher, Dr. Uma Ramanathan and Ms. Nidhi Gupta, Associate Professor National Judicial Academy addressed the participants during this three day conference. Justice KC Bhanu chaired the sessions on 24th and 25th January.

SESSION 1

Mr. Gobind C. Pal explained social and economic context of Marginalization and Caste based atrocities in India. He explained that a reason for caste based atrocities lies in the fact that one group, usually those who are powerful and have control over resources, desires to maintain authority over those who are weak. This group is obsessed with the concept of “self.” Economically the dominated group suffers from lack of freedom. He also mentioned that in India the caste based atrocities have increased due to gradual social mobility of those sections of society who have been marginalized and were in subservient situation.

He mentioned that law has not been able to adequate impact due to gaps in laws. Many a times, he argues, state is also irresponsible for non compliance of the Act. Data suggests there is an increase in PoA crimes. There is more often attack on soft targets- women, children, etc. There are also delays in judicial disposal of the cases. There is also a suggestion made by the reports that monitoring agencies lead the victims into vicious circle of the system. It was also suggested that majority of such offences are committed by the OBCs. There is a provision for atrocity prone districts. There is also a common belief that there is a cyclic relation between caste atrocities, social exclusion and poverty.

Participating judges made certain replies to the above presentation. While all agreed that we need to work towards achieving a casteless society, there were different views in relation to non-effectiveness of the Act. A participant said that prejudice towards dominant caste cannot be assumed by the judges. He said that increase in crime may also mean more registration of cases due to awareness. Another participant attributed it to increase in population. Another participant explained the dilemma that complainants and witnesses do not turn up.

There was a unanimous agreement over need for witness protection. Another participant talked about misuse of the act due to frivolous complaints.

SESSION 2

Mr. Martin shared his experiences from different villages of Gujarat and the caste dynamics in rural areas. Trying to explain the complexities in caste relations in rural areas he narrated story of a lower caste woman, who was treated outcaste by her caste people due to the fact that she maintained relations with upper caste men. He discouraged the practice of manual scavenging. There are also practices existing in India where people from lower castes are still not allowed to enter into the temples. He said that caste is entrenched in the roots of our system. There existed certain rules in the times of Peshwas in Pune on how many meters a Dalit may walk. In Punjab once upon a time Dalits had no right to property. He explained how Gandhi also had to face isolation by his own caste as he had crossed the sea. He discussed of the existence of Ram Patra pratha, in which dalits have separate cups.

A participant asserted that with the passage of time things are changing. Another important issue of discussion is inter-caste marriages. Mr. Martin said that voters maybe untouchables but votes are not. Another participant said that Dr. Ambedkar aimed that caste should be annihilated in India but system ensures that the caste remains. Mr. Martin lamented on separate churches of Untouchables in South India. Dr. Pal talked about two important lacunas. One is that there are counter researches which aim to falsify previous researches with smaller samples. Another is that honor killing is not included in Act. Another participant said that there is a deep rooted mindset in the society. One participant said that religion does not justify caste atrocities and we should not condemn religion due to this.

Thus the session was concluded with vibrant discussion and debate on vital issues relating to reasons for entrenched caste system in India.

SESSION 3: Ms Nidhi Gupta, Assistant Professor, National Judicial Academy addressed this session and the theme for the session was “Role of Law in protecting Human Dignity.” Emphasising role of judges as instruments of social change, she mentioned that what lies at the root of the caste system is the idea of treating or considering some human beings as inferior as compared to others. Dignity involves being worthy of respect and honor. Role of law is to ensure that no work should be entrusted on anyone because of his or her parentage. Denied opportunity has to be addressed by law. Treatment of some people inferior to others is a universal problem. In India caste gives different colour to such discrimination. She discussed the concept of “Purity and pollution.” Every human being is an "end" in himself or herself, not a means to an end. Equal opportunity should be given to everybody to realize one's own (human) potential. Women are in double jeopardy by caste and gender in a dominated group. Issue in caste system is that certain people are not considered worthy of honor or respect. She also described the existence of Ram patra. She stated that some people justify such practices associating it with hygiene.

She also pointed that in India, caste issues are not only about a Brahmins oppressing the scheduled castes or other lower castes. She highlighted the issue of sub-casteism even within Brahmins. There are also taboos in eating habits. Root problem to be addressed is prejudice and bias because of caste which is unique to India. There are certain symbols of inferiority. Law should check such behavior of human beings. She pointed out a trend in the Indian legislations dealing with the issue of caste discrimination and caste based atrocities. She pointed out that journey of law can be described as” addressing disabilities to dealing with the consequences of addressing disabilities.” She highlighted that earlier legal measures in 19th century were only enabling measures which were meant to address the issue of disabilities imposed on people of lower castes. However, gradually as the enabling legislations gave rise to resentments and clashes, the State introduced the penal legislations. She discussed Article 17 of Indian Constitution. She quoted Dr. Ambedkar that main aim is not to enter a temple but it is no doubt a beginning. According to Ms. Gupta judges have play an important role in bringing about social change. She pointed out influence of caste based prejudices on the process of judicial decision making. Judges agreed that appreciation of evidence varies from judge to judge. There should be no justification for violation of dignity.

Session 4:

Mr. SL Thaosen, IG (AJK) addressed the participants on the theme, *Investigation and Prosecution of Cases under the SC/ST (POA) Act: Challenges and Issues*. He talked about major massacres in post Independent India. He mentioned that need for a special legislation for dealing caste based atrocities was felt as IPC was found insufficient and inadequate in its approach. The act has brought about major changes in the Indian legal system. He pointed out that while Atrocity as such is not defined under the Act, section 3 of the Act gives various instances of the atrocities. The act provides for stringent measures under its provisions. He then discussed the

challenges faced in proper implementation of the Act: non-gazetted officers conducting investigation whereas the Act prescribes an officer of certain rank can only investigate; delays in getting lady office; mandatory requirement of completing investigation in 30 days, which affects quality of investigation, issue of caste certificate; out of court compromises; witnesses or complainant turning hostile; carelessness in recording FIR; lack of motivation for certain prosecutors, lack of sensitivity, bias, prejudice, etc. He also listed causes of acquittal as follows: dominating position of the accused, out of court compromises, standard of police investigation, illiteracy of complainants and over burdened courts chasing points. Participants added to the list the following issues: case diaries not properly maintained, non compliance of summons by IOs, lack of motivation in IOs and non acquaintance of police with local language. Judicial delays are due to following reasons-failure to follow up with cases, additional charges of sessions court or special courts, etc. He further discussed the way forward. It is important that there should be awareness. There should be sensitization in training of stake holders. Improvements in investigation skills are also needed. It is vital to the judicial system that witness protection and assistance schemes should be initiated. Certain participant added that case officers should also be appointed.

Session 5:

On day two, in session five Dr. Sirivella Prasad, made participants play a game with the aim of explaining the concept of discrimination in society. A bindi was put on the heads of all participants. Green bindi should be interacted with, red bindi should be touch me not and black should be ignored. All participants were told to interact with each other outside the room. After this exercise all were told to reflect their thoughts on such an experience. Participants talked about their observations. Participants with black bindi realized that certain participants avoided them in the beginning and they realized that they are getting lesser replies. A participant with red bindi made breach of rules and talked to all. She said that such rules are not good. Another participant said that rules should be made to join people rather than dividing them. Another participant said that the participants with black bindi in the end restricted themselves. The game and the reflections on the game was followed by a 15 minutes documentary. This documentary highlighted many sensitive issues such as how manual scavengers face discrimination in society. It was also shown that Varna system is oldest hierarchy in human civilization. There was a depiction of various kinds of atrocities in the society, ranging from physical violence to simple discrimination in schools and other public places.

Mr. Prasad shared his personal experiences of discrimination which he faced as a child. He told the participants that he does not use reservation. He said that his mother-father were teachers, they were posted in a village. They could not get house on rent. He said that we have no caste. But still they are discriminated. Mr. Prasad talked about how untouchables are not allowed to enter into the village. He said caste system has also crept into education system. Talked about

how people are forced to change names due to castism. He said people face problem while registering cases under Prevention of Atrocities Act. NHRC observed nearly 80% cases of discrimination do not reach police station.

He said that system is also prejudiced. Conviction rate is less under this social legislation. He said that this law should be used beneficially. Its compliance is also poor in terms of procedural aspects. He discouraged procedural delays in relation to this legislation.

He said there should be strict liability as punishment for crimes under the act. He talked about right to protection of witnesses of victims. We should not work on belief that all social legislations are misused. These legislations should give directions for social transformation.

SESSION 6

In session 6 Mr. Sumit Baudh, a doctoral researcher and Ms. Uma Suamya from NLSIU presented their research study on the performance of the courts established under the SC/ST Act. There were two parts of his research: How of it (3 sub parts- what are we looking for, how are we going to find what we are looking for, challenges in our way) and Findings.

Efficacy shall be disposal of task- in terms of conviction rate. Efficiency shall be about time taken for disposal, cases filed per court per year, clearance rate, cases pending, etc. allocation of time from FIR to disposal. Ms. Saumya proceeded to the findings of the study: (i) discrepancies in record keeping, (ii) delays in disposal of cases, (iii) weak witness protection, out of court compromises, low bargaining power of victims, certain instances where settlement was facilitated by judges or police, (iv) Functions of special courts- additional charges, in some cases transfer to Fast Track Courts, variations in states on rate of conviction

Some of the participating judges raised doubts about authenticity of the some of the findings. One of the judges raised objection to the finding the judges facilitate compromise in such cases as he mentioned that the offences under the Act are not compoundable. Participants also did not accept the finding of transfer of cases to fast track court. Participants explained the concept of fast track court mentioning that the term fast track court was a misnomer, since in practice this simply meant, cases transferred to judges with lesser pendency.

Participants said that there is no authentic data in India on Conviction rate. Mr. Prasad said he also agreed that there is no data on conviction rate. Cases are where there are acquittal under PoA and Conviction under IPC.

Session 7:

J. Bhanu addressed the participants in session 7 and 8. While the discussions so far were focused on social and economic context of caste discrimination, Justice Bhanu made a shift towards the

real legal issues faced by judges in implementation of the Act. He discussed various legal principles evolved through jurisprudence over the years which can help judges in deciding cases under the Act. He discussed degrading dignity has undermined Article 21. We have Right to live in the society with Human dignity. He discussed the following cases: Ratiram v. State of Madhya Pradesh; Vidhyadharan v. State of Kerala; State of MP v. Chunnilal. He talked about Article 141 of the Constitution. For Articles 341 and 342 the President issues public notification specifying caste, tribe and races in SC ST; no one can delete alter or change it. He further discussed other constitutional bench decisions: 1965 SC Bhaiya Lal v. Harikrishna & ors; 2011 State of Maharashtra v. Milind. He said that, "Person born with caste; Dies with caste; May change religion; But not caste". He discussed about 1994 Action Committee for issuance of caste certificate for SC and ST in Maharashtra. He discussed following issues- Prosecution failed to prove motive, Delays in procedure, Evidence of victim uncorroborated, No independent witnesses, Material witnesses unexamined, Irregularities in investigation, etc. These by itself are not ground for acquittal rather considerations for acquittal. There are two elements of crime- mens rea and actus rea. Statute also says mental element required- but under certain offences intention and knowledge not required. He further discussed following judgments: 1951 Rewala Hari Prasad Rao, SC- 4 judges bench; 1965 State of Maharashtra v. Mayor Hans George- SC, 3 judges bench. About motive 3 decisions: 1953 Atley v. State of UP- 3 judges bench SC, 1966 Rajendra kumar-SC, 3 judges bench.

Session 8:

J Bhanu continued above discussion in this session also. He said Section 172(2) is also important. Suppose police examines witnesses and records statement, sometimes police may not show them as witness in chargesheet: SC 1954 Habeeb Mohd. v. State of Haryana; SC 1991 Malkait Singh. He discussed Sabarmati express case. According to him it is statutory duty of police to protect witnesses: 2006 Union Territory of Dadra and Haveli case; 1996 State of Rajasthan v. Kishore; 2004 Rambali; 2010 S. Munniappa v. State of Tamil Nadu; 2009 case of Ram Chaudhary. He explained to the participants evidentiary value of police reports, police diaries etc. It is essential to differentiate between admissible and non admissible parts. Hearsay evidences are inadmissible: 1978 Rameshwar Dayals case; 1975 Podda Narayana; 1991 Khujji@Surendra Tiwari v. State of MP

He discussed section 174 CRPC and Medical evidences also. He discussed the issues of non examination of important witness and circumstantial evidences: 1952 Hanumanth Govind Nargundkar; 1995 Sharda v. State of Maharashtra; 1990 Padara Veera Reddy. Always there is burden on prosecution to prove guilt unless statute provides to the contrary. He discussed various types of witnesses: 1957 Vadivelu Tewar v. State of Madras

Reliability of witnesses is important in appreciation of evidences. He discussed evidentiary value of relatives: 1959 SC Basan Singh's case; 1965 Masalti v. State of UP case; 1981 Hariobul Reddy; 1965 Darya Singh v. State of Punjab; 1953 Dalip Singh case

Session 9:

In session 9 Dr. Ramanathan discussed about status of tribals in India. She acquainted participants with key findings of a High Level Committee report on the status of tribals in India, which was released by the Ministry of Social Justice, Government of India in December 2014. She discussed issues relating to the alienation of tribal land. She discussed the concept of Schedule 5 areas. Extension of towns is taking place. Parliament has a draft law in this regard which is not passed. Provisions which shall not affect tribals are necessary. Sensitive interpretation of land acquisition laws is needed. Growth project and development project are different and development should be inclusive. Cabinet committee can make decisions on land acquisition and forest removal.

SESSION 10

In session 10, bringing the focus back to the legal issues, Justice Bhanu addressed the participants on the theme, *Ensuring effective use of law to protect human dignity and role of court in it*. He mentioned that an act or omission can be an offence. Section 3(1) xi and section 354 of IPC are similar. If no evidence on caste then no action based on this act should be taken.

Ms. Nidhi Gupta concluded the discussions. She mentioned that the entrenched belief about misuse of legislation has made the task of fulfilling objectives of the act really difficult but rightful use of discretion of judges may be a way forward. She pointed out that it is important to take measures to protect dignity of all individuals by the judges in their day to day conduct and also in judicial work. She also mentioned that it is extremely important for the judges to remain aware of the fact that judges, as human beings are, susceptible to various kinds of biases and prejudices and that in India caste-based prejudices also influence the process of decision making.