



TAMIL NADU STATE JUDICIAL ACADEMY
In association with
UNICEF



PROFESSIONAL DEVELOPMENT PROGRAMME ON
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012
AND
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989
22ND AUGUST 2021

EVENT REPORT

The programme started as per schedule on 22nd August 2021, Sunday at 10.00 am. This was the second day of the Professional Development training Programme for Special Judges, Principal Magistrates and District Judges. The welcome address was delivered by Mr. D. Lingeswaran, Director, TNSJA.

Introductory Address

The introductory speech was delivered by Hon'ble Mr. Justice V.Sivagnanam, Judge, High Court of Madras. His Lordship flagged the beginning of the second day with a descriptive background on the evolution of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, from 1947 to date. His Lordship commenced the speech commenting upon the interdisciplinary link between law and literature. His Lordship emphasized to read law not for the purpose of statute books but for developing literature. His Lordship stressed on, the age-old practice of untouchability which prevails everywhere in the world in one form or the other, India is no exception and untouchability is still practiced in the remote regions. The problem of untouchability in India is imbibed in the society and is deep rooted. His lordship pointed out

that, many scholars have tried to trace the history and origin of untouchability. Several great personalities have condemned the practice of untouchability. His Lordship spoke about Article 17 of the Constitution of India which abolishes the practice of untouchability. His Lordship threw light on the background of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, other special Acts that prevailed prior to enactment of this Act. His Lordship explained how SC/ST (POA) Act is a special legislation. It provides for compensation to aggrieved persons at various stages. Certain presumptions are provided under the Act, which is against the principles of settled criminal jurisprudence. Concluding his speech, His Lordship, reflected that, social harmony should not be ousted while effectively implementing the Act.

Presentations on Effective Implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The session further continued with presentations on Effective Implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Constraints and Solutions with special focus on children. The moderator for this session was Mr. B. Karthikeyan, Chief Judge, Court of Small Causes, Chennai. The moderator gave a few insights to the judges on how to conduct effective trial of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He further engaged the participants on a discussion on the grey areas that hinder the Effective Implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Constraints and Solutions with special focus on children.

The first presenter was Dr. Sathya, Family Court Judge, Pudukkottai. She gave an overview of Constitutional Provisions, Main

Provisions of the Act and Rules. She also discussed Amendment of the Act 2016 & 2018 and Rules, Responsibility for implementation of the Act. Further, she elaborated on Duties of the Central & State Government for implementation of the Act, Structures & Mechanisms for Implementation & Monitoring the Act and she laid special focus on Women and Children who are victims of crime. Many questions were posed to the presenter and moderator during the session and they gave effective solutions through discussion.

The next presenter was Mr. A.K. Babulal, Sessions Judge, Special Court for POCSO Act, Sivagangai. The main focus of the presenter was on the reasons for Delays and Causes of Acquittal in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He explained what constitutes an offence under section 3 of the Act. He emphasized that judicial delays are due to the following reasons, (1) Failure to follow up with cases, (2) Additional charges of sessions court or special courts, etc., (3) Failure of prosecution to prove motive, (4) Delays in procedure. The Judge cautioned that, NHRC had observed that nearly 80% cases of discrimination do not reach police station. There are variations in states on rate of conviction.

The next presenter was Mr. S. Uthamaraj, Sessions Judge, Spl. Court for SC/ST (PoA) Act, Cuddalore. He discussed the evolution of the Act - Article 17 of the Constitution, The Civil Rights Act Scheduled Castes and then the emergence of Scheduled Tribes (Prevention of Atrocities) Act. He also dealt with several case laws pertaining to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

After a short tea break the programme commenced with Mr. Sunder Mohan, Advocate, High Court of Madras dealing with the topic

"Defects in Pre-trial Procedures and Investigation: Impact on Adjudication". He started the discussion with the quotation of Justice V. R. Krishna Iyer, "***Procedure is a handmaid of justice and not it's mistress***". Justice V. R. Krishna Iyer emphasized that, it should be the lubricant and not a resistant in the landmark decision of *State of Punjab v. Shamlal Murari*, (1976) 1 SCC 719. Advocate, Mr. Sunder Mohan started his session from Chapter XXXV of Cr. P. C and highlighted various defects in trial procedures and investigation that could impact adjudication. He discussed,

- a. Some irregular proceedings which the legislature felt would not affect the dispensation of justice. (Section 460)
- b. Irregular proceedings which the legislature has presumed would occasion the failure of justice and hence declared it as void. (Section 461)
- c. Irregular proceedings where discretion is given to the Court to decide whether the same has occasioned a failure of justice.
- d. Section 462 – Proceedings in wrong place
- e. Section 463 – Non-compliance of Section 164 or 281, where non-compliance has injured the accused in his defence
- f. Section 464 – Error or omission in charges
- g. Section 465 – Error or omission in complaint or any proceedings or in any sanction for prosecution.

Thus, unless the procedural violations have occasioned the failure of justice, the violations can be ignored.

He discussed the case of *Shamnsaheb M. Multtani v. State of*

Karnataka, (2001) 2 SCC 577 (**Para 21 - 34**), a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice. One of the cardinal principles of natural justice is that no man should be condemned without being heard, (*audi alteram partem*)....

He discussed procedures that are unique under the Act, special procedures during investigation,

1. Cognizance can be taken directly (Section 14(1))
2. Appeals will lie to the High court against bail or refusal notwithstanding section 378(3) Cr.P.C. (Section 14A(2))
3. Appeal shall lie from any order not being interlocutory order (Section 14A(1))
4. Right to be informed about "Any" proceedings. Public prosecutor or state government shall inform about proceedings including bail.(Section 15A(3))
5. Victim shall have right to summon parties for production of any material, witnesses and examine any person. (Section 15A(4))
6. Right to be heard at every stage (Section 15A(5))
7. The special court to provide to victim, his dependent, informant or witnesses: (section 15A(6))
 - a. Complete protection
 - b. Travelling expenses and maintenance
 - c. Socio economic rehabilitation and
 - d. Relocation
8. Notwithstanding Rule 4 (1), the District Magistrate shall engage eminent senior advocate for conducting cases if deemed necessary or if desired by victims under Rule 4 (5)

9. The special court review protection offered to them periodically (Section 15A(7))
10. Names and identity/addresses of the witnesses to be concealed in the judgment or order on an application to the court (Section15A(8))
11. Section 360 Cr.P.C., or Probation of offenders Act not applicable
12. All proceedings to be video recorded (section15A(10))
13. The proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined and Speedy disposal preferably within two months from the date of filing charge sheet (Section 14).
14. Power to declare movable, immovable property used for commission of offence be forfeited. (Sec 7(1))
15. Power to attach properties of accused pending trial in order to realize the fine amount. (Sec 7 (2)).
16. Section 438 not applicable (Sec 18)
17. Rule 7 – DSP to investigate.
18. Charge sheet to be filed within a period of 60 days.
19. Public servant - Dereliction of duty, prosecution u/S. 4.

He also discussed various Supreme Court Case laws relevant to the subject, some of which are mentioned below:

On the issue, trial not vitiated by irregularities, ***R.A.H. Siguran v. Shankare Gowda, (2017) 16 SCC 126 : (2018) 2 SCC (Cri) 110 : 2017 SCC Online SC 1082 at page 128,*** "if the plea of invalidity of investigation is raised at sufficiently early stage, the court, instead of taking cognizance, direct reinvestigation by competent investigating

officer. But, after cognizance is taken, the trial cannot be quashed for invalidity of investigation" were discussed.

State of Rajasthan v. Kishore, (1996) 8 SCC 217 : 1996 SCC (Cri) 646 at page 227, "...Mere fact that the investigating officer committed irregularity or illegality during the course of the investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account" were discussed.

Jalal v. State of Kerala, (2021) 1 SCC 733, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where a bar is interposed by the provisions of Section 18 and sub-section (2) of Section 18-A on the application of Section 438 Cr. P. C, this Court has held that the bar will not apply where the complaint does not make out "a prima facie case" for the applicability of the provisions of the Act were discussed.

Interactive discussion on POCSO Act

Post lunch the session commenced with an interactive discussion by Hon'ble Dr. Justice G. Jayachandran, Judge, High Court of Madras/Member, Board of Governors, TNSJA. His Lordship interacted with the participant judges, appreciated and encouraged the efforts of the judges in speedy and effective disposal of cases. Many queries were raised by the participating judges, which were clarified.

Procedure for trial in cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The next session was handled Mr. N. Swaminathan, Advocate, Mannargudi on the topic "Effective trial in cases under Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Act, 1989". He threw light on the nuances in conducting an effective trial under the Act. He also explained various measures that can be adopted by the judges, specifically the special judges dealing with cases under the Act. The resource person meticulously described the procedures with the help of several case laws. The resource person posed several questions to the judges and the session was very engaging.

The two-day professional development programme for Special Judges, Principal Magistrate and District Judges was well appreciated by the participating judges during their feedback session. Mr.R.A.S.Anandraj, Deputy Director of Tamil Nadu State Judicial Academy, Chennai proposed the vote of thanks and concluded the programme.
