



*Achieve Perfection by unattached action*

**Report on**

**WEBINAR ON EFFECTIVE IMPLEMENTATION OF  
SC/ST (PREVENTION OF ATROCITIES) ACT**

**Held on: 19<sup>th</sup> July 2020**

**Organised by:** Rajasthan State Judicial Academy, Jodhpur

**Hon'ble Resource Person(s):**

Hon'ble Mr. Justice Sandeep Mehta

(Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial  
Academy)

Co-Speaker: Shri Mahendra Kumar Dave

(ADJ No.2, Udaipur)

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“Cultivation of mind should be the ultimate aim of human existence.”

**Bhimrao Ramji Ambedkar**

- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”.
- With the restrictions on physical gathering due to the spread of novel coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology it is possible to continue imparting knowledge through webinars. A novel solution indeed for a novel crisis.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, The Rajasthan State Judicial Academy on **19<sup>th</sup> July 2020** organized a **Webinar on Effective Implementation of SC/ST (Prevention of Atrocities) Act at 11 am**, which was presided over by **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)**, also, **Shri Mahendra Kumar Dave (ADJ No. 2, Udaipur)** acted as co-speaker of the session.
- The webinar saw a participation of a total 48 Presiding Officers and Link Officers of the SC/ST (Prevention of Atrocities) Cases Courts across the various Judgeships of the State of Rajasthan.
- **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** addressed the queries of the participants and provided them valuable suggestions on how to overcome them, to ensure effective implementation of the SC/ST (Prevention of Atrocities) Act.
- The Hon’ble Resource Person started the discourse by discussing the objective behind the implementation of the Act and the need for an expeditious trial in such matters. There exists a very pertinent need to change the mindset of the society; as such offences occur due to a rigid frame of mind. This change can be effected by sending out a positive message to the society.
- The changes in the Act after the Amendment of 2016, were discussed with the participants especially with regards to the establishment of Special Courts and Exclusive Special Courts. Further, intention of the accused which used to be very important in order to prove an offence i.e. the accused must have committed the offence with the intention of harming a person belonging to the SC/ST community has now been substituted.
- As per the amended law, a mere knowledge of the identity of the person is sufficient to attract the offence of atrocity as provided under Section 3 of the Act, no element of intention is now necessary to prove the commission of an offence.
- With regards to the issue that the Act does not provide that, whether the nature of offences under it is bailable or non-bailable; The Hon’ble Resource Person stated that as per Section 4(2) of the Cr.P.C. which states:  
*Sec. 4(2). Trial of offences under the Indian Penal Code and other laws. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences;*  
The provisions envisaged under CrPC shall apply. If the offence is prescribed to be covered by IPC, then the offence covered ipso facto will be bailable or non-bailable as per the relevant provisions of the IPC.
- Another special feature of the amendment is that now as per Section 14A, any order of the Special Court can only be challenged via appeal. No revision, bail or power under Section 482 CrPC lies to such orders. And, it is also mandated by the legislature that the said appeal should be disposed off within three (3) months.
- Another special feature of Section 14A is that, in case of acquittal of the accused, the victim has the right to appeal and this right is not reliant on the State Government or the Special

Public Prosecutor to file a leave to appeal. The victim can straight away file an appeal against a discharge order or even a bail granting order. Thus, every order passed is amenable to appeal.

- Also, Section 15A of the Act mandates a notice of all the proceedings to be provided to the victim. Section 15A (5) provides for hearing of the victim before all the proceedings of the court such as bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing. Further, 15A (6) also provides for taking care of the travel expenses of the victim, their dependants, informant or any other witnesses.

#### **15A. Rights of victims and witnesses**

*(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.*

*(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses—*

*(a) the complete protection to secure the ends of justice;*

*(b) the travelling and maintenance expenses during investigation, inquiry and trial;*

*(c) the social-economic rehabilitation during investigation, inquiry and trial; and*

*(d) relocation.*

- The Hon'ble Resource Person also addressed the queries of the participants on the issue pertaining to grant of anticipatory bail and conduct of preliminary inquiry in such matters which was recently settled by the Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan v. Union of India and Others 2020 SCC OnLine SC 159**, wherein the Hon'ble Apex Court held that:

*“10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply.”*

- The issues pertaining to the filing of a partial chargesheet i.e. a case in which the police files chargesheet only against a certain number of people and not all those named by the complainant, was also discussed with the participants. The law on this issue is well settled by the judgment of the Hon'ble Supreme Court in **Bhagwat Singh v. Commissioner of Police and Anr AIR 1985 SC 1285**, that the complainant has to be informed of non-filing of chargesheet against certain number of persons.
- Valuable suggestion with regards to expeditious disposal of cases was also provided by **Sh. Vikrant Gupta (District and Sessions Judge, Sirohi)** wherein the learned officer provided valuable suggestions such as drawing of continuous dates, identification of cases which have been lingering on for more than 3 years, giving reasonable opportunity to the witnesses to turn up and active involvement in cross-examination by boosting the confidence of the witnesses; such measures can go a long way in speedy and expeditious disposal of cases pertaining to SC/ST (Prevention of Atrocities) Act.
- **Sh. Dinesh Nagori (Presiding Officer, SC/ST (Prevention of Atrocities) Cases Court, Udaipur)** enlightened the participants on aspects related to compensation and protection of witnesses as provided for under the Act. Courts must actively ensure that due compensation and witness protection is provided to the witnesses. The relevant provisions for ensuring the above are Section 15A (6) as quoted above and Rule 11 of the SC/ST (Prevention of Atrocities) Rules, 1995.
- Co-Speaker of the Webinar, **Shri Mahendra Kumar Dave (ADJ No. 2, Udaipur)** enlightened the participants on aspects relating to determination of whether an offence is of bailable or non-bailable nature, as SC/ST (Prevention of Atrocities) Act does not provide for the same. The same is to be guided by Section 4(2) of CrPC as quoted above.

- The Co-Speaker also discussed the retrospective application of the amended law which now provides for cognizance to be taken by Special and Exclusive Special Courts only even for offences that have occurred prior to the amendment by quoting the judgment of the Hon'ble Apex Court in **Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors., AIR 1994 SC 2623** wherein the court held that:  
*“A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application”*
  - The problem of serving summon was also discussed with the participants, wherein as per the case of **Ganesh Ram v. State of Rajasthan S.B. Crim. Mis. Bail Application No. 9568/2015 decided on 01.12.2015**, the Hon'ble Rajasthan High Court directed the Director General of Police to ensure that a nodal officer preferably not below the rank of Circle Inspector of Police shall be appointed in furtherance of the circular dated 08.1.2013, in each district for ensuring service of summons and attendance of police witness for giving evidence in the courts and thereby authorizing concerned trial court to directly forward the summons to such nodal officer who shall be responsible to effect service of the summon and ensure the attendance of the witness in the court. In the event of noncompliance of trial court's direction, the nodal officer shall be personally liable to face the consequence thereof. This measure was brought to the attention of the participants as the courts were facing difficulties regarding the issue of process.
  - The webinar concluded with a vote of thanks by **Sh. Sanuj Kulshrestha (Deputy Director, Academic RSJA)** thanking **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** and the Resource Persons for imparting their valuable knowledge with regards to Effective Implementation of SC/ST (Prevention of Atrocities) Act.
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