

Agenda Note

Agenda Item No.1:- Proposal of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

A. Proposal

Ministry of Tribal Affairs vide their letter No.16/9/2008-CP&R dated 18.07.08 have forwarded a proposal from Ministry of Social Justice & Empowerment on the Agenda Item and requested comments from NCST on the same.

Ministry of SJ&E have proposed following amendments in the SC & ST POA Act 1989:-

(i) Proposed Amendment in Section 14 of the Act

The existing Section 14 of the POA Act, whose text is reproduced below, may be re-numbered as Section 14(1):-

Section 14(1)

"For the purpose of providing for speedy trial, the State Govt. shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try offences under this Act."

The following new sub-section(2) may be added in Section 14:-

"(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court specified under sub-section (1) shall be competent to try offences under this Act as a Court of original jurisdiction without the case having been committed to it by a Magistrate under the said Code."

(ii) Proposed Amendment in Section 21 of the POA Act.

In Section 21 ("Duty of Government to ensure effective implementation of the Act"), the following new sub-section (2A) may be added after existing sub-section (2):-

"(2A) Whenever a First Information Report is registered for an offence punishable under sub-clause (i), (iv) or (v) of sub section (2) of Section 3, the concerned State Govt., the Union Territory Govt. (in the case of Union Territory with

Legislature) or the Administrator of the Union Territory (in the case of the Union Territory without legislature), as the case may be shall submit a detailed report in the matter to the Central Govt. and to the National Commission for Scheduled Castes and/or the National Commission for Scheduled Tribes, as the case may be, within four days of the registration of the First Information Report, in such manner as may be prescribed."

B. Earlier Recommendations of the Commission:

Erstwhile National Commission for SCs and STs and National Commission for STs have made recommendations on this subject from time to time as follows:-

(i) First Report of NCST 2004-05 and 2005-06

In all the districts of the Fifth Schedule States, Special Courts may be exclusively set up instead of designating Additional Session Courts or Session Courts as a Special Courts. There is also need to appoint Special Public Prosecutors.

(ii) First Report of NCSCST 1992-93

Special courts as provided in the SC and the ST (Prevention of Atrocities) Act, 1989, should be set up in all the concerned States as quickly as possible.

(iii) Third Report of NCSCST 1994-96

The Commission, therefore, recommends that the State Govts. who have not established exclusive Special Courts may establish the same for speedy trial of cases under the Act especially where the number of cases or level of pendency is high.

(iv) Fourth Report of NCSCST 1996-98

- (i)** The Central & State Govts. should monitor and review the working of these Acts & Rules as provided for, and send the necessary returns & reports required to be tabled in the Parliament. It is seen that so far only one report regarding SC/ST (POA) Act, 1989 has been submitted by the Ministry of Welfare.
- (ii)** State/UT Govts. should ensure that timely information regarding major incidents of atrocities & crimes against SC/ST reach the National

Commission for Scheduled Castes and Scheduled Tribes within 24 hours of occurrence of the incident through NIC-NET.

(v) Fifth Report of NCSCST 1998-99

- (i) The Special Enquiry Cell set up under the provision of Rule 8 of the Rules 1995 should be given special powers to register the FIR, investigate and submit charge sheet/final report before the Special Court. The cell should be providing at least primary requirements like sufficient stationery, typewriter, telephone and vehicles etc.
- (ii) For better performance of the Special Courts, and to improved the rate of conviction, as per the Rule, the Chief Justice of M.P. High Court should depute a justice of the High Court to review the working of the Special Courts and judgements delivered by these Courts, at least once in a year. The judicial review would ultimately highlight all those legal and administrative aspects/facts responsible for acquittal of accused, weak prosecution and the quality of judgements.

Keeping in view the previous recommendations, the proposed amendment may be supported by the Commission.

C. Proposed requirement in the Commission for Implementation of the Amendments.

Separately, draft guidelines for examination, monitoring and disposal of atrocity cases in the Commission have been circulated to the Members for comments (copy annexed). The proposed amendment will result in a significant number of atrocity cases (more than 1000) to be handled by the Commission. A separate Unit should therefore be established in the Commission for processing and monitoring of these cases. The Commission may, therefore, consider approval, in principle, for establishment of a separate Atrocity Unit with requisite complement of officers and staff and suggest the same as part of comments on the proposed amendment. A proposal for requirements in this regard will be separately formulated for approval of the Ministry.