

## Agenda Note

**Agenda Item No.1:-** Draft Cabinet Note of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendments in the Section 14 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

### **A. Proposal**

Ministry of Tribal Affairs vide their D.O. No.16/9/2008-CP&R dated 07.11.08 have forwarded a Draft Cabinet Note 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 thereafter, on the lines of sub-section(1)(d) of Section 36 of the NDPS Act :

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court specified under sub-section (1) may, upon perusal of police report of the facts consisting :

- a) an offence under this Act, and
- b) an offence, if any, under any other law for the time being in force,

take cognizance of such offence or, as the case may be, offences, without the case being committed to it for trial.”

**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 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.

**C. Proposed recommendation of the Commission on the proposal in the Draft Cabinet Note.**

The Commission discussed the proposal for amendment to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in its meeting on 29.07.2008 and unanimously agreed to give consent to the proposed amendments. The Commission also desired that the following steps to be taken to make the proposed amendment meaningful:

- (i) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 should also be amended to carry out the provisions of the Act as per the proposed amendment.
- (ii) The Commission noted that information about registration of cases of atrocities on Scheduled Tribes is regularly collected and compiled by National Crime Records Bureau. Now in view of the provision under new sub section 2(A) under Section 21, proposed to be inserted vide the amendment, the information will be reported to the National Commission for Scheduled Tribes also. On receipt of information in National Commission for Scheduled Tribes about registration of cases under PoA Act, the National Commission for Scheduled Tribes will have to investigate the cases as per mandate of the Commission under Clause (5) of Article 338A of the Constitution. Consequently, the workload relating to investigation and monitoring of cases of atrocities on Scheduled Tribes in this Commission will increase manifold. The Commission desired that to enable it to concentrate on such cases, a Special Cell, fully equipped with adequate manpower and infrastructure facilities will be required to be created in the Hq. Office. The Commission accordingly suggested that

Ministry of Tribal Affairs request the Ministry of Social Justice & Empowerment to make a provision for creation of a Special Atrocity Cell/ Unit with requisite complement of staff in the Commission in the financial memorandum to be enclosed with the Bill for amendment of the Act. A detailed proposal for setting up this Cell/ Unit will be submitted to the Ministry of Tribal Affairs in due course after the proposed amendments are notified.

Keeping in view the previous recommendations and the recommendation of the Commission on the subject in its meeting on 29.07.2008, the proposed amendment as per Draft Cabinet Note may be supported by the Commission along with related amendment in the Scs and STs(POA) Rules,1995.