

MINUTES OF THE EMERGENCY MEETING OF THE FIFTH NATIONAL COMMISSION FOR SCHEDULED CASTES HELD ON 22.03.2018 AT 2.00 P.M.

Emergency Meeting of the Fifth National Commission for Scheduled Castes (NCSC) was called for on 22.03.2018 under the Chairmanship of Dr. (Prof.) Ram Shankar Katheria, Chairman, NCSC. List of participants is at **Annexure-I**. The following Agenda items were taken up for discussion & decisions were taken thereon:

Agenda Item No. 5.3.1: 1(a) Recent judgment of Hon'ble Supreme Court viz. direction in the case of Dr. Subhash Kashinath Mahajan against the Bombay High Court Judgment on misuse of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended Act 2015) and 1(b) other decision dated 08.12.2017 regarding implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended Act 2015).

Decision Taken: The Commission approved the following action on the Hon'ble Supreme Court's recent judgments:

- (i) Commission may write a detailed letter to the Hon'ble President of India and Prime Minister detailing its views and concern on the above judgements. The Government is to be requested to file a revision petition against the judgements at the earliest so that the implementation of the Act is not diluted.
- (ii) Commission may also seek an appointment with Hon'ble President and Prime minister for personal briefing by the Commission on the issue.
- (iii) Original petitioner may be called in and discussed this issue in the ensuing hearing.

(Action: C.Cell &APCR)

Agenda Item No.5.3.2: Order issued on 5.3.2018 by UGC on changing the guidelines for reservation in Universities/Colleges despite out Commission letter on 1.11.2017 advising UGC/MHRD to not formulate any policy without consultation of NCSC.

Decision Taken: The Commission approved that Ministry of HRD, UGC and DoPT may be advised to file a review petition in Hon'ble Supreme Court at the earliest, in the Special Appeal (c) no. 16515/2017. UGC may be asked to withdraw its order dated 05.03.2018. MSJE may also be requested for the same. Further, Ministry of HRD and UGC may be asked to inquire into the matter as to how the instructions/orders dated 05.03.2018 on preparation of reservation roster for Universities were issued without considering the Commission's letter dated 01.11.2017 and without consultation of NCSC under Article 338(9) of the Constitution of India.

(Action: SSW-II)

Agenda Item No. 5.3.3: Ministry of Social Justice & Empowerment's reference to Amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended Act 2015).

Decision Taken: The Ministry of Social Justice & Empowerment has requested to offer the views of the Commission on the Amendment in Section 9 of the Scheduled Castes & Scheduled Tribes (Prevention of atrocities) Act, 1989 by 31.01.2018.

2. Section 9 of the POA Act relates to conferment of powers of arrest, investigation and prosecution, on any officer exercisable by a police officer under the Code, in regard to cases under the POA Act, by the State Government by notification in the Official Gazette; Rule 7(1) of the Scheduled Tribes (Prevention of Atrocities) (POA) Rules, 1995, made by the Central Government, in exercise of powers conferred by sub-section (1) of Section 23 of POA Act, specifies that an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police.

3. In regard to validity of Rule 7 of the POA Rules, the crux of the judgment dated 23.3.2017 of the Supreme Court of India in SLP(C) No. 27524-27 of 2011, with Civil Appeal No. 4401 of 2017, is as under:-

(i) In regard to validity of Rule 7 of the POA Rules, keeping in view of the serious and harsh consequences emerging from any violation of the provisions of the POA Act, the Central Government was fully competent and justified, in requiring that the investigative process be conducted by an officer not below the rank of a Deputy Superintendent of Police. The Central Government had exercised its jurisdiction within the framework of the authority vested in it. Therefore, the validity of Rule 7 of the POA Rules is affirmed. (As stated in Para 12 of the judgment).

(ii) As against the national character of the Rule making power vested with the Central Government under Section 23 of the POA Act, the delegated power contemplated under Section 9 of the POA Act, is State specific. The power exercised by a State, keeps in mind the circumstances prevailing in the concerned State. The legitimacy and validity of the exercise of the instant delegated power vested in a State Government, has therefore, to be determined, with reference to the peculiar facts and circumstances prevailing in an individual State. In case the State Government found it necessary and expedient, for an effective implementation of the provisions of the POA Act, it had the right and the responsibility, to vest the power of arrest, investigation and prosecution, in additional personnel. (As stated in Para 18 of the judgment)

(iii) As regards, whether the State Government could in its discretion, in furtherance of the power vested with it under Section 9 of the POA Act, relax the provision made by Rule 7 of the POA Rules; each individual State Government in exercise of the power vested under Section 9 of the POA Act, had the authority to extend to any officer of the State Government, powers of arrest, investigation and prosecution. The provision made under a Rule of the POA Rules can not negate a right extended through the parent Legislation (POA Act). Thus, the power conferred on the State Government under section 9(1) (b) of the POA Act cannot be neutralized by any rule of the POA Rules framed under section 23 of the POA Act. By way of a notification published in the Official Gazette under section 9(1) (b) of the POA Act, the State Government was competent to relax Rule 7 of the POA Rules. (As stated in Para 17, 18 of the judgment)

4. The aforesaid judgment seemingly leads to an inference that existing provisions of Section 9 of the POA Act and Rule 7(1) of the POA Rules are not in harmony and rather incompatible, notwithstanding the emphasis stated in para 3 (i) above. It is, thus, considered essential that to establish in principle amongst all concerned State Governments/Union Territory Administrations, a uniform applicability of investigation of the POA Act related cases by an officer not below the rank of Deputy Superintendent, existing stipulation of Section 9 of the POA Act needs to be amended to distinctly specify therein that an offence committed under the POA Act shall be instigated by a police officer not below the rank of a Deputy Superintendent of Police (as presently provided under Rules 7(1) of the POA Rules) and to do away with the existing provisions wherein states by notification in their Official Gazettes can confer it to any officer holding the ranks below the rank of the Deputy Superintendent of Police.

Existing provisions of Section 9 of the Scheduled Castes & Scheduled Tribes (Prevention of atrocities) Act, 1989:-

Section 9: (1) Notwithstanding anything contained in the code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do-

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official 50 Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made there under.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1)

Proposed amendment in Section 9 of the Scheduled Castes & Scheduled Tribes (Prevention of atrocities) Act, 1989 are as under:-

(i) The State Government/Union Territory Administration shall notify in the official Gazette that notwithstanding anything contained in the Code of Criminal Procedure or in any other provision of this Act, an offence committed under this Act shall be

investigated by a police officer not below the rank of a Deputy Superintendent of Police/Assistant Commissioner of Police. The investigating officer in the rank of the Deputy Superintendent of

Police/Assistant Commissioner of Police, shall be appointed by the State Government/Union Territory Administration/Director General of Police/Commissioner of Police/Additional Director General of Police/Special Commissioner of Police/Inspector General of Police/Additional Commissioner of Police/Deputy Inspector General of Police/Senior Superintendent of Police/Deputy Commissioner of Police, after taking into account his/her past experience, sense of ability and justice to perceive the implications of the case and investigated it along with right lines within the shortest possible time.

- (ii) All officers of police and all other officers of Government shall assist the Investigating Officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made there under.

In this regard, clarification was sought from the M/o Social Justice & Empowerment whether Section 9 (1), 9(1)(a) and 9(3) of the existing Act will remain or are they being replaced by Section 9(1) and 9(2) only.

The M/o Social Justice & Empowerment has clarified that the draft formulation of the Section 9 of the POA Act is towards substituting the entire existing Section 9 of the POA Act.

The Commission approved to support the amendment to Section 9 of the SC/ST (POA) Act, 1989.

(Action: APCR)

Agenda Item No. 5.2.4: Further amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended Act 2015) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules 2016.

Decision Taken: The Ministry of Social Justice & Empowerment has requested to offer the views of the Commission on the further amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended Act 2015) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules 2016. In exercise of the powers conferred by sub-section (1) of section 23 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), the Central Government had made the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) {POA} Rules, 1995, which were last amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016 notified in the Gazette of India, Extraordinary, on 14.04.2016.

The following amendments in the POA Rules are being further considered in the POA Rules, which are primarily based recommendations received from National Commission for Scheduled Castes:-

Rule	Sub-rule	Clause	Existing provision in the POA Rules	Proposed amendment in existing provision in the POA Rules
2	-	(i) (new)	-	“Voluntarily” means a person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. (as in IPC 39).
12	5	-	The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury to, or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.	The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury to, rape, gang rape, voluntary carnal intercourse against the order of nature with any man or woman, voluntarily causing grievous hurt by use of acid, voluntarily throwing or attempting to throw acid , or damage to property, shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.
16	1	-	“of not more than 25 members”	To be deleted
Annexure-I to the Schedule				
Sr. No.	Existing provision		Proposed amendment in existing provision	
24	Section 326B of the India Penal Code (45 of 1860)—Voluntarily throwing or attempting to throw acid. [Section 3(2)(va) read with Scheduled to the Act]		326 of the India Penal Code (45 of 1860)-Voluntarily causing grievous hurt by use of acid, etc., Section 326B of the Indian Penal Code (45 of 1860)—Voluntarily throwing or attempting to throw acid.” [Section 3(2)(v), 3(2)(va) read with Schedule to the Act.]	
44(i)	Rape of Gang rape. Section 375		Rape or Gang rape, voluntary carnal intercourse against the order of nature with any man or woman Section 375, 376(A to E), 377	

In this regard, the proposed amendments are due to the recommendation of the Commission on the same i.e. at Sl. No. 44 (i) in the existing provision Section 375 “rape and gang-rape” as proposed “section 375, 376 (A to E), 377” and Ministry has proposed the further amendments.

The Commission approved to support the further amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended Act 2015) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules 2016.

(Action: APCR)

The meeting ended with the thanks to the Chair.

LIST OF PARTICIPANTS IN EMERGENCY MEETING OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES HELD AT 2.00 PM ON 22.03.2018 AT NEW DELHI.

PRESENCE OF MEMBERS AND OFFICERS

S.NO. Name & Designation

MEMBERS OF THE COMMISSION

1. Prof. Ram Shankar Katheria, Chairman
2. Shri L. Murugan, Vice-Chairman
3. Shri K. Ramulu, Member
4. Dr.Yogendra Paswan, Member
5. Dr. (Mrs.) Swaraj Vidwan, Member

OFFICERS OF THE COMMISSION

1. Shri Arun Jha, Secretary
2. Dr. (Mrs.) Smita S. Chaudhri, Joint Secretary
3. Shri Ajit Kumar Sahu, Dy. Secretary (Admn. &C.Cell)
4. Shri Kaushal Kumar, Director (SSW)
5. Shri Santosh Kumar Dubey, Under Secretary (Admn. &C.Cell)