

SCHEDULED CASTES IN SEARCH OF JUSTICE

- Madanlal IPS, IG, PCR cell, CID

The caste system forms the Kernel or the “Steel frame” of Hinduism. It divides its adherents into four distinct classes – Brahman, Kshatriya, Vysya and Shudra. Till recent past, untouchables were to go off the road not only when a Brahman passed, but even when their food was carried. The social order of the Hindus was found not upon the principle of equality. Distinctions were made in civil and criminal law between castes.

During the days of freedom struggle, Dr. Ambedkar championed the cause of untouchables and under took the responsibility to educate and organize the untouchables to fight for their Civil rights. He pleaded for adult franchise and demanded separate statutory representation for the depressed classes in the legislature and local bodies and accordingly the British Prime Minister announced the Communal Award, which provided separate representations for them. After the attainment of freedom several enactments like SCs/STs (POA) Act 1989, PCR Act 1955, SCs/STs (POA) Rules 1995. constitutional safeguards, establishment of the office of the Commissioner for SCs and STs etc. have come into existence to provide safeguards against the exploitation of SCs and STs. Unfortunately, the implementation of legislation has been slack and half-hearted. Officials have generally failed to come to the rescue of victims and they have willfully delayed the investigation and acted against the interest of the dalit victims, which gets reflected in lopsided investigation, poor rate of conviction etc.

In view of the above, it becomes necessary for the Police Department to follow certain legal norms and principles to be followed in Toto and some of them are mentioned as under:

1. As and when a representation/complaint is received pertaining to any offence under the provisions of SCs/STs (POA) Act / PCR Act either in writing or orally at the Police Station, the S.H.O. shall register a case, as provided under Rule 5(1) of the POA Rules of 1995 r/w 154 Cr.PC. and if the SHO fails to follow the provision under Rule 5 (1) and (2) it amounts to “Willful neglect of duty” as envisaged u/s 4 of the POA Act.
2. The Investigating Officer in such cases must explain the reasons for delay in lodging the complaint after the incident, as in the absence of such explanation, the benefit of doubt will be given to the accused by the court.
3. While issuing FIR, it should be ensured that correct Sections and Sub Sections under the appropriate Act only are applied. Any effort of burking or minimizing the gravity of the offence, so reported shall also be treated as “Willful neglect of duty” and the concerned officer is liable u/s 4 of POA Act.
4. The I.Os. should desist from unnecessarily adding or deleting Sections of Law under IPC, POA Act or PCR Act with a view to help the accused either in getting the bail or acquittal by the court, would also attract the provisions of Section 4 of POA Act.

5. Generally, the land disputes are treated as of civil nature, but in cases of wrongful occupation or cultivation or dispossession of the land owned by SCs/STs by non SCs/STs should be treated as an offence u/s 3(1)(iv) & (v) of SCs/STs (POA) Act, 1989.
6. All the cases referred u/s 156(3) Cr.PC. by the court should be promptly registered and the FIR copies should be sent to the court and other concerned officers without any delay. If there is any dereliction of duty on the part of the I.O., he is not only liable for contempt of court but also liable for Departmental action.”
7. Humiliating/intimidating words as envisaged u/s 3(1)(x) of the Act need to be proved and that such words were spoken in public view.
8. During the course of trial by the Court in a complaint case, there is no bar to go ahead with the investigation in to the same subject matter of trial. On laying of the charge sheet, the court shall club both the cases for the purpose of trial. Section 210 Cr.PC.
9. All the cases of atrocities on SCs/STs by non SCs and STs should be registered under the provisions of SCs/STs (POA) Act, 1989 only, whereas, the cases of forcing any disability on account of preaching and practicing untouchability should be booked under the provisions of PCR Act.
10. The Investigating Officer i.e., D.S.P. should be appointed by name, by the Ss.P./DGP, to investigate the case booked under (POA) Act, 1989 as envisaged under Rule 7(i) of SCs/STs (POA) Rules of 1995 and such appointment order/orders should be enclosed along with the Charge Sheet, otherwise it would vitiate the proceedings. – (Case laws referred - (1) 2000 Cri.LJ (AP) 3125 - (2) 2001)
11. In case the said appointed I.O. is transferred another Dy.S.P. should be appointed by the Ss.P./DGP to take up further investigation.
12. On receipt of the appointment order from the S.P./D.G.P., the I.O should take up investigation from the stage of F.I.R. if the earlier investigation was done by another officer. If the non-competent officer has filed the charge sheet, then the specially appointed Dy.S.P. shall seek permission of the court by filling petition u/s 173(8) Cr.PC. and then proceed with the investigation from the initial stage. – (1) 1999 (1) ALD (SC) 468 - (2) AIR 1999 (SC) 2332 - (3) 1997 Cri LJ (SC) 4636 and after completion of investigation, he should file charge sheet in the concerned J.F.C.M. Court for committal sake, – 2000(1) CR.LJ (Mad) 958 - (2) 2001 Cri LJ (ker) 1664 - (3) 2002 - (4) Crimes (Orissa) 93.
13. The Investigating Officer should examine the important and relevant witnesses only as that would help to complete the investigation within a stipulated period of 30 days, as provided under Rule 7(2) of said Rules, 1995, under the SCs/STs (POA) Act, 1989 and submit the report to the S.P., accordingly -- (1) AIR 1985 SC 48 -- (2) AIR 1981 SC 451 (to prove the case)
14. The evidence of the complaint alone shall be sufficient for laying the charge sheet in the court if it is capable of inspiring the confidence of the court. – 1990(1) crimes (Gujarat) P.83 (Relied on AIR) 1983 SC 680.
15. In these cases, the I.O. must have the evidence to the effect that the accused was aware of the victim’s caste at the time of committing the offence. Otherwise it is

fatal to the case of prosecution. – (1) 1999 Cri LJ (AP) 1773 (2) 2001 Cri LJ (Gujarat) 3193 (3) 2001 Cri LJ (kant) 3566

16. The I.O. on knowing about the attempts of the accused regarding threatening the witnesses or tampering with the evidence, etc., should bring it to the notice of the Court while seeking cancellation of his bail., as provided u/s 437 (5) Cr.PC.
17. On knowing that Anticipatory Bail petition has been filed in the Sessions' Court or High Court by the accused, the I.O. should immediately meet the concerned APP/PP and apprise him the facts of the case to enable him to oppose the bail. However, if the court entertains such petition, the I.O./A.P.P. should rely upon Section 18 of POA Act. However, it is open to the court to still grant or deny the bail basing on the reliability of the complainant's version.
18. The I.O. should proceed u/s 82 & 83 Cr.PC. against the sureties in cases where the accused are absconding and as a result NBWs against them are not getting executed.
19. The I.O. should take prompt and effective steps in consultation with the PP to get the stays vacated, if granted by the Superior Courts.
20. The I.Os. should refrain from becoming parties to the compromises / out of court settlements, since, the case of atrocities cannot be compromised.
21. The I.Os. also should refrain from, getting the statements of witnesses, recorded u/s 164 Cr.PC., is it is likely to weaken the case of prosecution.
22. The I.O. should enclose Wound Certificate, FSL Report, and Medical Opinion etc. along with the Charge Sheet while being filed in the Court.
23. All the cases of bogus caste certificates should be booked u/s 420 IPC and appropriate Sections of A.P. (SC, ST & BC) Regulation of Community Act of 1993.
24. In cases of bogus caste certificates, the I.O. should also investigate into the conduct and character of the issuing or processing authorities like MRO/RI/VAO for prosecution as provided u/s 13 of A.P. (SC/ST and BC) Caste Community Regulation of Act, 1993. Moreover, the I.O. must write to the concerned department for initiating departmental action against the accused and the I.O. must furnish the relevant material to be relied upon by the appropriate authority.
25. The original bogus Caste Certificate should be enclosed while filing the charge sheet in the court.
26. If the witnesses in attendance in courts are to be sent back without examination by the Court on the request or due to absence of the accused, the Prosecuting Officers should insist on the examination of such witnesses or insist on payment of cost to the witnesses by the accused, as provided u/s 11 of SCs/STs (POA) Rules, 1995.
27. Summons on the Police Officers to give their evidence should be served promptly and it must be ensured that they attend the court to give their evidence.
28. In the cases booked against the public servants, the concerned I.Os. should seek permission of the Govt. to prosecute the accused u/s 197 Cr.PC.
29. In case, the I.O. intends to refer the case as M.F./False, he must seek permission of the S.P./IG PCR Cell to do so as provided u/s 158 Cr.PC.

30. In all the cases likely to be charged, Draft Charge Sheet along the APPs opinion should be sent to the concerned S.P. or to the Inspector General of Police, PCR Cell as the case may be, for scrutiny and approval.
31. The Charge Sheet under the provisions of POA Act should be filed in the jurisdictional Magistrate Court for committal orders, as provided u/s 193 Cr.PC. -- (a) 1999 Cri LJ (AP) 4173 (b) 2000 Cri LJ (SC) 819 (c) 2001 Cri LJ (AP) 4495
32. The I.O. must keep the required number of copies of the relevant material, meant to be supplied to the accused and he should promptly produce of the accused in the court to get the charges framed in Sessions Court expeditiously.
33. The Investigating Officer should produce the witnesses before the A.P.Ps. for refreshing their memory before they are put before the court. The witnesses of whom 164 statements are already recorded must be warned of action u/s 193 IPC if they turn hostile in the court.
34. The dilatory tactics adopted by the accused should be effectively and honestly countered by way of formally opposing the applications for adjournments u/s 309 Cr.PC. and requesting the court to proceed with the trial as provided u/s 317 (1) Cr.PC.
35. In cases where some of the accused are not attending the court for a long time, the I.O./APP should get the case split up against the absconding accused, who are not likely to be arrested in near future, as provided u/s 317(2) Cr.PC.
36. Where there is no likelihood to secure the presence of the accused in near future after framing of the charges, the I.O./A.P.P. should request the court to examine the witnesses u/s 299 Cr.PC. and get the case treated as L.P.C.
37. In all the acquittal cases, the judgment copies should be obtained from the court at the earliest to send the same to the concerned S.P. or Inspector General of Police, PCR Cell, along with the opinion of APP within (20) days.

The main responsibility to eradicate untouchability is of the police.. The untouchables have every right to question the police, the leaders and the nation as to why the caste Hindus have been practicing untouchability and committing atrocities on them even after 56 years of independence. Thus, the Police have to play a bigger role than others in the society as it is entrusted with a duty to implement the existing laws and to get the culprits punished adequately and severely. Hence, let all of us take an oath to work towards removal of untouchability and secure the civil rights, civil liberty and statutory safeguards to the untouchable.