

## **Agenda Note**

**Sub :** Copy of summary of Report of the Committee on draft Policy on Criminal Justice along with the copy of Chapter 8.4 " Criminal Justice involving Dalits and Tribals" received from Ministry of Tribal Affairs.

### **I Issue in brief**

A Copy of summary of Report of the Committee on draft Policy on Criminal Justice along with the copy of Chapter 8.4 " Criminal Justice involving Dalits and Tribals" is received from Ministry of Tribal Affairs vide their letter dated 12.09.2007 for furnishing of comments (summarized below).

One of the distinguishing feature of the Indian Constitution is the concern it shows to Dalits and Tribals. The protection of law is needed most by the deprived and under-privileged classes including Dalits and Tribals. The functionaries of the criminal justice system should adopt differential standards when they deal with legislations like the PCR Act and the SC/ST (PoA) Act. There must be time limit for disposal of cases of atrocities. The Policy of investigation and prosecution of such cases should be under constant review by the authorities.

It is important for enforcement agencies and the judiciary to sensitize their personnel, allocate adequate resources and give priority in the matter of cases involving Dalits and Tribals. Legal aid personnel should be persons familiar with tribal language and customs. Legal aid schemes have to adopt imaginative strategies including a public defender system in this regard. Despite the directive to separate Executive from Judiciary, there is an express reservation in its application to Schedule Areas.

### **II Proposed Comments of the Commission on the matter.**

The PCR Act and the SC/ST (PoA) Act warrant a sympathetic mind set and a pro-active approach from the enforcement machinery. These and related laws designed to give protection and equal justice to the disadvantaged sections of society require special attention of judicial officers involved. Legal aid services also have to be developed to suit the requirements of SC/ST persons.

In the meeting of the Commission held on 03.07.2009, it was decided to recommend amendment of PoA Act to provide a time limit of 6 months for disposal of atrocity cases. The same may be reiterated as our comments on para 8.4.1 of the Report of the Committee.

The suggestions in para 8.4.2 may be agreed. However, it is not understood how the “public defender system” will be different in practice from the notification of special panel of Public Prosecutors / engagement of senior Advocates in Special Courts under the SC & ST (PoA) Rules, 1995.

As regards para 8.4.3, the Constitution provides that all laws (affecting Scheduled Tribes) may not apply / be extended to Scheduled Areas by the Governor with modifications (clause 5/ Fifth Schedule, clause 12/ Sixth Schedule). Under this provision, the Cr.P.C., 1973 does not apply to some Scheduled Areas. This runs counter to the general principle of separation of judiciary / executive since Executive Magistrates still wield judicial authority in these areas ( as per the earlier Cr.P.C.). The Committee seems to favour continuation of existing arrangements; though in the prevailing culture of misgovernance, it is difficult to cite advantages !

The Commission may deliberate over the issue in the meeting.