



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.911 OF 2019

Dr. Hema Suresh Ahuja
and others

....Appellants

Versus

The State of Maharashtra
and another

... Respondents

.....

Mr. Vaibhav Salvi, Advocate a/w. Mr. Ashwet Bhoir i/b. Mr. Shailesh Kharat for the Appellants.

Dr. Birendra Saraf, Advocate General i/b. Mr. H.S. Venegaokar, Public Prosecutor a/w. Mr. S.V. Gavand, APP for the Respondent-State.

Mr. Devang Vyas, Additional Solicitor General, a/w. Mr. D.P. Singh and Mr. Sheelang Shah for the Respondent – Union of India.

Mr. Mayur Khandeparkar, *Amicus Curiae* a/w. Mr. Vikramjit Garewal and Ms. Aneesa Cheema, present.

Mr. Amit Arvind Katarnaware, Advocate a/w. Mr. Aditya Arvind Katarnaware for the Respondent No.2 / Victim.

Mr. Alankar Kirpekar, Advocate a/w. Mr. Susmit Phatale, Mr. Ashish Ingle, Mr. Ayush Tiwari, Mr. Somnath Kale and Mr. Nikhil Adkine i/b. Susmit Sanjay Phatale for Intervener.

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
SARANG V. KOTWAL, J.**

**RESERVED ON : 31st JANUARY, 2024
PRONOUNCED ON : 13th MARCH, 2024**

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. This matter is placed before us to answer the reference made by a Single Judge Bench of this Court (Coram: Smt. Sadhana S. Jadhav, J.) in Criminal Appeal No.911/2019 vide the order dated 9.8.2019. Following are the issues referred for our decision:

- (1) Whether proceeding under 15A(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 would amount to a judicial proceeding as contemplated under section 2(i) of the Code of Criminal Procedure, 1973 ?
- (2) Whether it would be necessary to video record any proceeding relating to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, especially when the proceedings are held in open court, as contemplated under section 327 of the Code of Criminal Procedure, 1973 and what would be the objective to be achieved ?
- (3) Whether hearing of a bail application under section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is a judicial proceeding as contemplated under section 15A of the said Act ?
- (4) Whether section 15A (10) of the said Act could be implemented in the absence of rules framed under the Act or formulation of a scheme for implementation ?

2. Before proceeding further, it is necessary to refer to the brief history as to why this reference was made.

3. This reference arose out of Criminal Appeal No.911/2019. It was an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as 'the Atrocities Act'). The Appellants in that Appeal were, in effect, asking for the relief of their release on bail in connection with C.R. No.157/2019 registered with Agripada police station, Mumbai on 23.5.2019 under Section 306 read with 34 of IPC, under Section 4 of the Maharashtra Prohibition of Ragging Act, under sections 3(1)(r),(s), (u), (za), (E) of the Atrocities Act and under Section 67 of the Information Technology Act. It is not necessary to refer to the facts and rival contentions on the merits of that Appeal. During the course of the hearing of that Appeal, an issue was raised by the original complainant that hearing of the Appeal should be video recorded in view of Section 15-A(10) of the Atrocities Act. For

convenience, reference can be made to the said Section which reads thus :

“15-A. Rights of victims and witnesses. –

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(10) All proceedings relating to offences under this Act shall be video recorded.”

4. This question was considered by the learned Single Judge (Coram: Dama Sheshadri Naidu, J.) who was hearing that Appeal at that point of time. He passed a reasoned order dated 25.7.2019 and held that the proceedings ought to be video recorded. After considering the submissions made before him by both the sides, the learned Judge observed that he could not ignore the statutory mandate even if it may cause delay in deciding those proceedings. Section 15-A is concerned with the rights of the victims and the witnesses and if the demand for video recording came either from the victim or from the witness, the provision assumes greater importance. He further observed that the expression ‘proceedings in relation to’ is important. Chapter II of the Atrocities Act comprises Sections 3 to 9. They deal with the punishments for offences of

atrocities, punishment for neglect of duties, enhanced punishment for subsequent conviction, application of certain provisions of the Indian Penal Code, forfeiture of property of certain persons, the presumption as to offences, and conferment of powers. All these proceedings relate to the offences under the Atrocities Act and they came within the provisions of sub-section (10) of Section 15-A of the Atrocities Act. He further held that the bail proceedings are the proceedings in relation to offences under Chapter II and, by extension, under the Atrocities Act. According to him, it did not lie in the province of the Court to question the legislative wisdom, much less, legislative competence unless the constitutional invalidity is set up. Having observed thus, he held that the proceedings ought to be video recorded.

5. The Appeal thereafter was adjourned and it was listed before another learned Judge (Coram: Smt. Sadhana S. Jadhav, J.). This time the learned Judge took a contrary view and disagreed with the view expressed by the earlier Bench. Her reasoning was that every proceeding would not include bail proceeding, since it was not concerned with any evidence to be recorded or legally

taken on oath. The learned Judge referred to the definition of the 'judicial proceedings' contemplated under Section 2(i) of Cr.PC.. According to her the reason to record the proceeding is to protect the victim and witnesses, whereas the sanctity of the proceeding is protected by the Court. According to her, the conclusion that is to be drawn by the Court would be affected by public inference and public opinion. Perils of misuse of technology cannot be ignored. She reasoned that recording of court proceedings may take a different turn when the proceedings are being recorded. The texture of the whole process would bring in artificiality. The demeanour of the witnesses, the victims and the counsel appearing would be subjected to public scrutiny for no reason, especially when the witnesses are the eyes and ears of the Court. After making these observations, the learned Judge proceeded to frame the above issues.

6. Considering the importance of the issues, we felt it necessary to hear the Advocate General and the Additional Solicitor General for assistance. We also appointed Shri Mayur Khandeparkar as *amicus curiae* to assist the Court. In the interest

of justice, we have heard learned counsel Shri Katarnaware and Shri Kirpekar for the Interveners.

7. Before proceeding to record submissions of all the learned counsel appearing before us, it must be noted that all of them unanimously have submitted before us that the said provision is mandatory and there is no scope to interpret it otherwise.

SUBMISSIONS OF SHRI KHANDEPARKAR :

8. Shri Khandeparkar referred to the statement of objects and reasons of the Amending Act 1 of 2016 which introduced Section 15-A under Chapter IV-A. He submitted that the Objects and Reasons of the Amending Act makes it amply clear that those amended provisions are introduced with a definite object of protecting the rights of the victims and the witnesses. He submitted that the expression 'all proceedings' used in Section 15A(10) would include the proceedings relating to bail applications as well. It would naturally include all the criminal proceedings. He relied on the Division Bench judgment of the Gujarat High Court in the case of **Hemal Ashwin Jain (Sheth) Vs. Union of India**¹ which held

1 2020 SCC OnLine Guj 3285 [Gujarat High Court]

that Section 15-A(3) was mandatory. Said Section is in respect of the right of the victim to have timely notice of any Court proceedings, including the bail proceeding. He submitted that by extending the same reasons, Section 15-A sub-section (10) will have to be held to be mandatory. The availability of video conferencing would afford an option to such protected parties to appear physically or through video conferencing. Recording of such proceedings would include complete recording of these proceedings in the manner in which all the parties, the victims and the witnesses are protected. The video recording of all proceedings would deter all participants in the course of these proceedings in any manner from attempting to cause any embarrassment to the protected parties.

9. Shri Khandeparkar submitted that the specific expressions in Section 15-A(10) regarding 'all proceedings' and 'relating to' have definite purpose which has to be given effect. Section 15-A(10) is a measure to ensure compliance of various rights provided under Section 15-A. Shri Khandeparkar further submitted that implementation of Section 15-A or any part thereof was not subject

to the framing of any rules. Even otherwise this Court has framed the High Court of Bombay Rules for Video Conferencing of Courts, 2022. These Rules set out the procedure for the Courts in the State of Maharashtra for video conferencing and recording of hearing and specifically provides that audio-visual recordings shall be preserved by encrypting a master-copy with hash value and retaining the same on record. Shri Khandeparkar relied on the judgment of the Hon'ble Supreme Court in the case of **Surinder Singh Vs. Central Government and others**² and submitted that framing of the rules is not a precondition for implementation of the statute. For the same proposition he referred to another judgment of the Hon'ble Supreme Court in the case of **Sonvir alias Somvir Vs. State (NCT of Delhi)**³.

10. Shri Khandeparkar submitted that the expression 'relating to' used in Section 15-A(10) will have to be given a wide meaning. In support of this contention he relied on the judgment of the Hon'ble Supreme Court in the case of **Mansukhlal Dhanraj Jain and others Vs. Eknath Vithal Ogale**⁴.

2 (1986) 4 SCC 667

3 (2018) 8 SCC 24

4 (1995) 2 SCC 665

11. Shri Khandeparkar again referred to the judgment of a Division Bench of the Gujarat High Court in the case of **Hemal Jain (Sheth)** (supra) wherein it was held that Section 15-A(3) was mandatory; and by implication, according to Shri Khandeparkar, Section 15-A(10) was also mandatory.

12. Shri Khandeparkar finally referred to a judgment of the Kerala High Court in the case of **State of Kerala represented by the Deputy Superintendent of Police, Represented by Public Prosecutor Vs. Nowfal**⁵. In this judgment, the issue of video recording under Section 15-A(10) was directly considered; and it was held that it was mandatory if a victim makes a request to video record the criminal proceedings relating to the offences under the Atrocities Act.

SUBMISSIONS OF LEARNED ADVOCATE GENERAL DR.BIRENDRA SARAF :

13. Learned Advocate General referred to the scheme of the entire Act. He submitted that there are certain provisions under the Atrocities Act which are departure from the ordinary procedure under Cr.P.C. This was necessary to achieve the object of the

5 2022 SCC Online Ker 775 [Kerala High Court]

Atrocities Act. He submitted that the term 'proceedings' is a very comprehensive term and its meaning will be governed by the statute. In support of this contention, he relied on the judgment of the Hon'ble Supreme Court in the case of **Babu Lal Vs. M/s. Hazari Lal Kishori Lal and others**⁶. According to Dr. Saraf, the use of expression 'all' before the expression 'proceedings' shows the intention of the legislature which was to give widest amplitude and applicability to the provisions of Section 15-A. Similarly the term 'relating to' also emphasized the intention of the legislature to give a wide applicability to the provisions of Section 15-A(10). He further submitted that the expression 'judicial proceedings' defined under Section 2(i) of Cr.P.C. is an inclusive definition and it will not exclude from its ambit the bail proceedings.

14. Dr. Saraf referred to the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. SK Bannu and Shankar**⁷. It has been held in this case that though the bail proceedings took place at a stage when the offence against the accused was under police investigation, they were still the judicial

6 (1982) 1 SCC 525

7 (1980)4 SCC 286

proceedings before a Court. He further submitted that the expressions in a beneficial piece of legislation have to be given a liberal and wider interpretation which would sub-serve the purpose and object of the Act. An interpretation which in any manner curtails the expression ought not to be taken. He relied on the decision of Hon'ble Supreme Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar and others**⁸. Dr. Saraf submitted that the Hon'ble Supreme Court has held in the case of **State of Andhra Pradesh and others Vs. McDowell & Co. and others**⁹ that the Court cannot sit in judgment over the wisdom of the Parliament and the legislatures.

SUBMISSIONS OF LEARNED ADDITIONAL SOLICITOR GENERAL SHRI DEVANG VYAS :

15. Learned A.S.G. Shri Devang Vyas submitted that a Division Bench of the Gujarat High Court, as mentioned earlier, has held that the Section 15-A(3) is mandatory. By the same reasons, Section 15-A(10) is also mandatory. He referred to the Objects and Reasons of the Atrocities Act. He submitted that there was no ambiguity in the said Section at all. Therefore, it had to be read and

8 (2008) 9 SCC 527

9 (1996) 3 SCC 709

interpreted as it was mentioned in the statute. There was no scope for any other interpretation. He supported the submissions made by Shri Khandeparkar and Dr. Saraf.

SUBMISSIONS OF SHRI KIRPEKAR :

16. Shri Kirpekar appearing for one of the interveners submitted that when the statute provides for a particular procedure, the authority has to follow the same. Where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. He submitted that this is a well settled principle of law which is reiterated by the Hon'ble Supreme Court in the case of **Selvi J. Jayalalithaa and others Vs. State of Karnataka and others**¹⁰. He also supported the submissions made by all other counsel.

SUBMISSIONS OF SHRI KATARNAWARE :

17. Learned Counsel Shri Katarnaware appearing for one of the interveners referred to the history of the legislation which necessitated the enactment of the Atrocities Act. He referred to the

¹⁰ Decided on 30.9.2013 in Writ Petition (Criminal) No.154 & 166 of 2013 (Hon'ble Supreme Court)

observations of the Hon'ble Supreme Court in the case of **Swapnil Tripathi Vs. Supreme Court of India**¹¹ wherein the effect and need for live streaming of the proceedings were discussed. He submitted that as held by the Hon'ble Supreme Court the live-streaming would be granting full access to justice to the litigant. The live-streaming was an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the concerns of those who seek justice.

18. Shri Katarnaware submitted that the same principles apply to the video recording contemplated under Section 15-A(10) of the Atrocities Act. He further submitted that as a ground reality, the Courts were not equipped with the facility of video recording and, therefore, the important proceedings, like, recording the statement under Section 164 of Cr.P.C., involving the offences under the Atrocities Act were not video recorded. Therefore, there was dire need of providing infrastructures to create the facility of video recording in the Courts.

¹¹ Decided on 26.9.2018 in Writ Petition (Civil) No.1232 of 2017 with connected Petitions (Hon'ble Supreme Court)

REASONS AND CONCLUSION :

19. The Atrocities Act was enacted in the year 1989. The preamble of the Act mentions that it is an Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and the Exclusive Special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

20. Despite the deterrent provisions made in the Act, the legislature felt that the atrocities against the members of the Scheduled Castes and the Scheduled Tribes continued at disturbing level and, therefore, it was felt necessary to amend the Atrocities Act, 1989 by the Amending Act 1 of 2016. The relevant extract in the Statement of Objects and Reasons of the Amending Act is as follows :

“Statement of Objects and Reasons. – The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of

such offences and for providing relief and rehabilitation of the victims of such offences.

2. *Despite the deterrent provisions made in the Act, atrocities against the members of the Scheduled Castes and Scheduled Tribes continue at a disturbing level. Adequate justice also remains difficult for a majority of the victims and the witnesses, as they face hurdles virtually at every stage of the legal process. The implementation of the Act suffers due to (a) procedural hurdles such as non-registration of cases; (b) procedural delays in investigation, arrests and filing of charge-sheets; and (c) delays in trial and low conviction rate.*
3. *It is also observed that certain forms of atrocities, known to be occurring in recent years, are not covered by the Act. Several offences under the Indian Penal Code, other than those already covered under section 3(2)(v) of the Act, are also committed frequently against the members of the Scheduled Castes and the Scheduled Tribes on the ground that the victim was a member of a Scheduled Caste and Scheduled Tribe. It is also felt that the public accountability provisions under the Act need to be outlined in greater detail and strengthened.*
4. *In view of the above, it became necessary to make a comprehensive review of the relevant provisions of the Act after due consultation with the State Governments, Union territory Administrations, concerned Central Ministries, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes, certain Non-Governmental Organizations and Activists.*
5. *It is, therefore, proposed to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 which, inter alia, provides the following, namely : –*
 - (a) xxxxx
 - (b) xxxxx
 - (c) xxxxx

xxxxx

xxxxx

(h) to insert a new Chapter IVA relating to “Rights of Victims and Witnesses” to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence.”

21. Thus, a new Chapter i.e. ‘Chapter IV-A’ was introduced with specific reference to the rights of victims and witnesses. Section 15-A is a provision made under that Chapter. The relevant sub-sections of said section are as follows :

“15-A. Rights of victims and witnesses. – (1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge,

release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

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(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--

(a) xxxxxx

(b) xxxxxx

xxxxxxx

xxxxxxx

xxxxxxx

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.”

. These are the extensive provisions made specifically to achieve the object of protecting the rights of victims and witnesses.

22. For deciphering the true purport of Chapter IV-A, the statement of Objects and Reasons of the Amending Act 1 of 2016 mentions that it was felt that the public accountability provisions under the Act need to be outlined in greater detail and strengthened. If the provisions in Section 15-A under Chapter IV-A are read in the light of the Objects and Reasons of the Amending Act, they clearly indicate that all these provisions are made to achieve that particular object besides achieving other objects of the Amending Act. The video recording of the proceedings relating to the offences under the Atrocities Act would certainly ensure public accountability in respect of those proceedings. This will ensure that victims and witnesses have adequate briefing on the case and preparation for trial. The information would be available to the organizations and individuals who are providing legal aid to the victim and their dependents. Under Section 15-A(12), it is the right of the victims of atrocity or their dependents to take assistance from the Non-Government Organizations, social workers or Advocates. In many cases, the victims may not be fully aware of the legal procedures or their implications and, thus, in

that case the video recording would facilitate all those who can help the victim to understand the nature of proceedings and details of the facts and the legal aspects of those cases. Thus, sub-section (10) of Section 15-A of the Atrocities Act does not operate in isolation but it encompasses the other provisions and it facilitates their effective implementation.

23. Section 20 of the Atrocities Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of such law. The video recording of all the proceedings are specifically provided under this Act. This, being a special procedure, has to be followed irrespective of any other procedure provided under any other law.

24. In this context, Section 21 of the Atrocities Act is very important. It puts onus on the State Government to take such measures as may be necessary for the effective implementation of this Act. The relevant provision under Section 21(1) and Section 21(2) sub-clause (i) read thus :

“21. Duty of Government to ensure effective implementation of the Act. –

(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,--

(i) the provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

xxxxx

xxxxx

xxxxx”

. Sub-sections (3) & (4) of Section 21 are equally important. They read thus :

“ (3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1)

(4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.”

25. In the reference judgment, it was observed that the ‘proceedings’ mentioned in sub-section (10) of Section 15-A would have to be necessarily read as meaning of ‘judicial proceedings’ as

contemplated under Section 2(i) of Cr.PC.. It was observed that every proceeding would not include judicial proceeding, since it is not concerned with any evidence to be recorded or legally taken on oath especially when investigation is completed and the papers of the investigation are before the Court. This observation was made in the context as to whether the word 'proceedings' used in Section 15-A(10) of the Atrocities Act would cover the bail proceedings; and in the reference judgment it was observed that in case of bail proceedings video recording was not mandatory. We are unable to agree with this view.

Section 2(1)(f) of the Atrocities Act is important which reads thus :

“2. Definitions. – (1) In this Act, unless the context otherwise requires,--

xxxxx

xxxxx

(f) *the words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments.”*

‘Judicial proceeding’ is referred to in Section 2(i) of Cr.P.C.

which reads thus :

“2. Definitions. – *In this Code, unless the context otherwise requires, –*

xxxxx

xxxxx

(i) *"judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;"*

. Thus, it can be seen that the meaning given to the expression ‘judicial proceeding’ is inclusive. It is not an exhaustive definition. It does not exclude any other proceedings before the Court.

26. In **Sk Bannu’s** case (supra) in paragraph-21 it was clearly held that the bail proceedings were judicial proceedings before a Court, although such proceedings took place at a stage when the offence against the accused was under police investigation.

27. In paragraph-17 of **Babu Lal’s** case (supra), it is held that the term ‘proceeding’ is a very comprehensive term and generally speaking, means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning

attached to it but one of the ambit, of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted.

. Thus, meaning which is required to be given to the word 'proceedings' is governed by the entire scheme of the statute. Moreover, the word 'proceedings' is preceded by the word 'all'; and hence in the section 15-A(10), the phrase used is 'all proceedings relating to offences under this Act'. This leaves no doubt that the widest possible meaning will have to be given to this particular use of the words. *(Emphasis supplied by the Court)*

28. In **Mansukhlal Jain's** case (supra), a reference was made to the observations of the earlier judgment of the Hon'ble Supreme Court in the case of **Doypack Systems (P) Ltd. Vs. Union of India**¹² . and the observations made in that judgment were approved. It was observed that the words 'pertaining to' and 'in relation to' have the same wide meaning and have been used interchangeably. 'Relating to' is equivalent or synonymous with 'concerning with' and 'pertaining to'. The expression 'pertaining to' is an expression of

12 (1988) 2 SCC 299

expansion and not of contraction.

. Therefore, even the phrase, 'relating to offences under this Act' will have the widest possible meaning. (*Emphasis supplied by the Court*)

29. As rightly submitted by Dr. Saraf, the Hon'ble Supreme Court in **McDowell's** case (supra) has observed that an enactment cannot be struck down on the ground that Court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

30. Thus, it is more than clear that this particular sub-section is incorporated with a definite purpose.

31. The next question is whether framing of the rules is mandatory. As submitted by Shri Khandeparkar, the High Court has already framed rules in respect of video conferencing, as mentioned earlier. But even otherwise framing of the Rules is not a pre-condition for implementation of the statute as held in the case of **Surinder Singh** (Supra). It is held in paragraph-6 of that judgment

that where a statute confers power on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. Framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute.

Section 15-A(10) makes no reference to the necessity of framing of the rules and, therefore, it has to operate; whether the rules are framed or not.

32. A Division Bench of the Gujarat High Court in the case of **Hemal Jain (Sheth)** (supra) has laid down that Section 15-A(3) was mandatory. Paragraphs-58 to 61 can be advantageously reproduced here, which are as follows :

“58. *Crawford on 'Statutory Construction' (Ed. 1940, Art. 261, p. 516) sets out the following passage from an American case approvingly as follows:-*

"The question as to whether a Statute is Mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must Govern, and these are to

be ascertained, not only from the phraseology of the Provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

59. *In State of U.P. v. Baburam Upadhyaya, reported in AIR 1961 SC 751, the Hon'ble Mr. Justice Subbarao has observed that:-*

"The Court may consider inter alia, the nature and design of the Statute, and the consequences which would follow from construing it the one way or the other; the impact of other Provisions whereby the necessity of complying with the Provisions in question is avoided; the circumstances, namely, that the Statute provides for a contingency of the non-compliance with the Provisions; the fact that the noncompliance with the Provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the Legislation will be defeated or furthered."

60. *In the same judgment, the Hon'ble Judge has further held that when a Statute uses the word 'shall', prima facie it is Mandatory but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the Statute.*

61. *In May George v. Tahsildar, reported in (2010) 13 SCC 98, the Supreme Court stated the precepts, which can be summed up and usefully applied by this Court, as follows:-*

"(a) While determining whether a Provision is Mandatory or directory, somewhat on similar lines

as afore-noticed, the Court has to examine the context in which the Provision is used and the purpose it seeks to achieve;

- (b) To find out the intent of the Legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such Provision;*
- (c) Whether the Provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;*
- (d) As a factor to determine Legislative intent, the Court may also consider, inter alia, the nature and design of the Statute and the consequences which would flow from construing it, one way or the other;*
- (e) It is also permissible to examine the impact of other Provisions in the same Statute and the consequences of non-compliance of such Provisions;*
- (f) Physiology of the Provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.*
- (g) The test to be applied is whether non-compliance with the Provision would render the entire proceedings invalid or not.*
- (h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it Mandatory or otherwise."*

33. In these circumstances, we are also inclined to hold that Section 15-A(10) of the Atrocities Act is mandatory and not directory.

34. In view of this discussion, the questions referred to us are answered as follows :

(1) The 'proceedings' under Section 15-A(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 would cover all proceedings including a 'judicial proceeding' as contemplated under section 2(i) of the Code of Criminal Procedure, 1973.

(2) It would be necessary to video record any proceeding relating to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 even though the proceedings are held in open court.

The objective to be achieved is effective implementation of the Amended Chapter IV-A of the Atrocities Act, which is meant to protect the rights of victims and witnesses.

(3) Hearing of a bail application under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is a 'judicial proceeding' as contemplated under section 15-A of the Atrocities Act.

(4) Section 15-A (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 can be implemented in the absence of rules framed under the Act or formulation of a scheme for implementation.

35. Having answered the reference thus, the question would arise regarding the fate of the matters which are already decided wherein the proceedings were not video recorded. We are holding in this judgment that Section 15-A(10) of the Atrocities Act is mandatory. This judgment answering the reference will not affect the past proceedings which are not recorded. Effect of this judgment would be prospective.

36. It is also to be kept in mind that as of today all the Courts are not equipped with the facility of video recording. As mentioned earlier, as per Section 21 of the Atrocities Act it is the duty of the State Government to provide these facilities. Therefore, we direct the State Government to provide the facility of video recording in all the Courts in the State of Maharashtra wherever the proceedings under the Atrocities Act are to be taken up. This shall be done at the earliest. However, till the time such facilities are provided, the Courts where the facilities are not provided, may proceed without

video recording the proceedings especially when the personal liberty of an accused is at stake.

37. Before parting with this judgment, we record our appreciation for the efforts put in and assistance provided by all the counsel, including the learned *amicus curiae*.

(SARANG V. KOTWAL, J.)

(CHIEF JUSTICE)

Deshmane (PS)

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