

Report Of Judicial Conference on "POCSO Act-2012 and Human Trafficking"
24-25 September 2016

Introduction

A two days Judicial Conference on "**POCSO Act- 2012 and Human Trafficking**" for special Sessions Judges notified under POCSO Act-2012 and Senior Judges of District Judge cadre was held on 24-25 September 2016 at 'Conference hall' Rajasthan State Judicial Academy.

Hon'ble Rajasthan High Court while showing deep concern over speedy, timely and effective disposal of cases under POCSO Act, has directed Rajasthan State Judicial Academy to organize a seminar/conference to sensitize the Judges designated for POCSO Act. Similarly, The Government of India taking various steps to check and tackle menace of Human Trafficking in India. To sensitize and train the Judicial Officers throughout the country about various issues concerning Human Trafficking & to ensure speedy court process. Judicial colloquiums are to be held at the High Court level. In order to achieve this object, the subject of human trafficking has also been included in this Judicial Conference.

The academy focuses on capacity building of our officers and is accomplishing its aim through various training programmes. This conference was organized to strengthen capabilities of Judicial Officers in dealing with child Sexual Abuse Cases under this special Law i.e. POCSO Act- 2012 and to Sensitize and train the Judges on issues of trafficking.

The Conference was inaugurated by Hon'ble Mr. Justice Govind Mathur Chairman, RSJA. His lordship welcomed the participating judges and requested them to keep themselves open and gain more and more from this Training Programme. It witnessed the participation of 51 Sessions Judges including 33 designated Judges under POCSO Act, from all over Rajasthan. There were 8 training Sessions during the workshop in which Hon'ble Judges of Rajasthan High Court, Rtd. District Judge, ADGP(HG) and Project Director from UNICEF enlightened the participants on various topics. The Training Module with faculties is as under:-

DAY AND DATE	SESSION & TIMING	TOPIC	RESOURCE PERSON/ FACULTY
24.09.2016 (SATURDAY)	10.00 am to 11.30 am <u>SESSION I</u>	Introductory address	Hon'ble Mr. Justice Govind Mathur
		POCSO Act, 2012 – Legislative background and intent.	
	11.45 am to 1.00 pm <u>SESSION II</u>	Salient features of POCSO Act, 2012 and a comparative study with other related enactments.	Hon'ble Mr. Justice Sandeep Mehta
	2.00 pm to 3.15 pm <u>SESSION III</u>	POCSO Act, 2012 – The issue relating to age of victim/ accused and the challenges when both victim and accused are child.	Hon'ble Mr. Justice Pankaj Bhandari

	3.30 pm to 5.00 pm <u>SESSION IV</u>	POCSO Act, 2012 – Trial and recording of evidence of Victim.	Sh. Umesh Sharma Retd. District & Sessions Judge
25.09.2016 (SUNDAY)	10.00 am to 11.30 am <u>SESSION I</u>	POCSO Act, 2012 – Appreciation of evidence and Standard of Proof regarding Presumption of Culpable Mental State.	Hon'ble Mr. Justice Sandeep Mehta
	11.45 am to 1.00 pm <u>SESSION II</u>	Compensation and Interim Compensation under POCSO Act 2012 , with reference to victim compensation scheme and Sec. 357 A of Cr.P.C.	Hon'ble Kumari Justice Nirmaljit Kaur
	02.00 pm to 3.00 pm <u>SESSION III</u>	Policing in the cases of human trafficking.	Sh. N.Morris Babu (IPS) ADG(Home guards)
	3.00 pm to 4.00 pm <u>SESSION IV</u>	Convention of united nation for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Provisions under various enactments to Protect child rights in the sprit of Article 23 and 24 of the Constitution of India, with special reference to Human trafficking.	Sh. Govind Beniwal (UNICEF)

Deliberations during the Conference

POCSO ACT 2012

First session (24.09.2016): In the opening session Hon'ble Mr. Justice Govind Mathur enlightened the participants with his ideas on "**Legislative intent and background of POCSO Act-2012**". His lordship made aware about various conventions for human rights and said that long back in 1924, League of Nations initiated steps upon issues of violation of human rights in South Asia, on various grounds concerning education, poverty, unemployment, child labour etc. Conventions on human rights and prohibition of child labour and protection of children from human trafficking were also introduced.

In the year 1992, Government of India has exceeded on 11-12-1992 to the convention of the rights of the child, (adopted by the General Assembly of the United Nation) to secure the best interest of the child. In order to fulfil the spirit of these conventions, DV Act 2005, Child Marriage Restraint Act 2006, Right to Education Act and various constitutional amendments were implemented and ultimately protection of children from Sexual Offences Act -2012 was introduced to prevent sexual exploitation and sexual abuse of children. Before passing of this act our Parliament witnessed a long debate on real social issues and problems, which inspired it to make stringent provisions not only to report and punish those who abuse and exploit the innocence of children but also to curb the occurrence of these offences effectively and deterrently. His lordship clarified that this Act is a gender neutral legislation and has a very wide perspective.

His lordship requested the participating officers to give their suggestions for effective implementation of this special Act in its true spirit to provide expeditious

timely and effective justice in child abuse cases. His lordship conveyed that proposal to establish independent special court is under consideration and Rajasthan Judicial Academy will also organize training programme to sensitize Police Officers, Special Prosecutors and all other key players associated with prevention of child sexual abuse cases.

Second Session: This Session was on topic "**Salient features of POCSO Act, 2012 and a comparative study with other related enactments**" which was addressed by Hon'ble Mr. Justice Sandeep Mehta. His lordship while referring important salient features of this Act, mentioned that the special Courts while trying the offences under this Act, should protect the best interest of a child at every stage of the judicial process and must create a child friendly atmosphere. Procedures for reporting, investigation, recording of statement/evidence and trial of offences should always be very conducive and favourable to child. Every person including the child is under an obligation to report the matter of child abuse to special juvenile police or the local police. Such report should be recorded in a simple language.

His lordship emphasized that children must be made aware and need to be sensitized about these abuses and this subject may be a part of regular curriculum of school education. Judicial Academy, Legal Services Authority and other Academies may play an important role to sensitize the stake holders. It was also emphasized that special procedure envisaged under sections 24, 25, 26, 31, 33 and 38 of POCSO Act, for recording of statement of child should be complied with in its true spirit. Police Officers/Magistrates and Special Courts should be very conscious at the time of recording of statement of a child having mental or physical disability.

It was also discussed that where charges are to be framed under the provisions of two special Acts e.g. under I.P.C or SC/ST(P & A) Act 1989 and POCSO Act 2012 then looking to the provisions of section 28 (2) of POCSO Act, the special Court notified under POCSO Act shall have jurisdiction to try the case.

Third Session: This session was presided over by Hon'ble Mr. Justice Pankaj Bhandari on the topic: "**POCSO Act, 2012- The issue relating to age of victim/accused and the challenges when both victim and accused are child**"

While addressing the participants on the topic, His lordship gave reference of section 94 of Juvenile Justice (Care & Protection of children) Act, 2015 and section 34 of POCSO Act, 2012 and explained that when an offence under POCSO Act is committed by a child, he will be dealt with under the provisions of JJ Act. Special Court under POCSO Act has power to determine the age of such child. Section 94 of JJ Act has prescribed the standards to determine the age of 'child' which is applicable for both i.e. victim and juvenile in conflict with law.

His lordship stated that JJ Act is a beneficial legislation. Age of the child should be determined preferably on the basis of date of birth certificate from the school or matriculation certificate from examination board and in absence of these the birth certificate issued by local authority and in the absence of both on the basis of ossification test or any other latest medical age determination test. His lordship

referred Hon'ble Apex Court's verdicts given in cases of Shantnu Mitra Vs State of West Bengal, Om Prakash Vs State of Rajasthan and Jyoti Prakash Roy Vs State of Bihar. It was also stated that two different yard sticks can not be there, to determine the age of victim and accused (juvenile in conflict with law). His lordship cautioned the sessions Judges to try these cases with extra sensitivity and by following all precautionary measures provided by these Acts.

Session Fourth: This session was addressed by Shri Umesh Kumar Sharma Rtd. District & Sessions Judge and PO of Food Safety Appellate Tribunal on the topic: **"POCSO Act, 2012- Trial and recording of evidence of victim"**.

While explaining the special provisions for trial and recording of evidence of victim Shri Sharma stated that this Act is gender neutral legislation and provides protection from sexual abuse to all children below 18 years of age irrespective of their gender. All trials before the special court must be conducted in camera and in the presence of parents of the child or any other person in whom the child has trust or confidence so that a child friendly atmosphere may be created. Identity of the child should not be disclosed and he/she should not be called repeatedly to testify in court. The evidence of child must be recorded within 30 days from the cognizance.

All precautionary measures and guidelines laid down by Hon'ble Supreme Court in the pronouncements of State of Punjab Vs Gurmit Singh (1996) 2SCC 384 & Sakshi Vs Union of India AIR 2004 SC 3566 should be strictly complied with. Judges have to strike a balance between protecting the accused's right to a fair trial and the rights of the victim.

Session First (25.09.2016): The first session on 25.09.2016, was addressed by Hon'ble Mr. Justice Sandeep Mehta on the topic: **"POCSO Act, 2012- Appreciation of evidence and Standard of Proof regarding Presumption of Culpable Mental State"**

His lordship stated that there are some laws like NSA, RAJPASHA, COFE POSA etc. where a person can be condemned unheard and presumption is taken against him but sections 29 and 30 of POCSO Act, which are also about presumption and culpable mental state of the accused stand at different footings. During this interactive session comparative provisions under section 66, 67 and 35 of the NDPS Act and 101 Customs Act were also discussed in the light of Hon'ble Apex Court pronouncements given in the cases of Gopal Das, Ramesh Chandra Mehta and Veera Ibrahim.

There was an active deliberation took place among participants about the stage, when presumption of culpable mental state can be drawn and how the word 'prosecution' would be interpreted? His lordship while clarifying the confusion among participants explained that section 29 and 30 of POCSO Act are complimentary to each other and should be read as a whole. Term "Unless the Contrary is proved" in section 29 should be read first, and it is the duty of prosecution to establish & prove its case and only then a presumption under section 30 can be drawn. His lordship stated

that standard of proof will comparatively be lesser on prosecution and yard stick for cross-examination will also be different.

Session Second: Second day's second session which was on the topic: "**Compensation and Interim Compensation under POCSO Act 2012, with reference to victim compensation scheme and Section 357 A of Cr.P.C**" was addressed by Hon'ble Kumari Justice Nirmaljit Kaur.

Her lordship stated that victim compensation is an important aspect of Criminal Justice System. It is also the duty of a state to rehabilitate the victim of crime and protect her from legitimization. Under POCSO Act 2012 which deals with serious sexual abuse cases with children victims' privacy and personal integrity causes physical as well as serious physiological harm also. A murderer destroys the physical body of the victim, while a rapist or accused of sexual abuse degrades the very sole of the helpless female. Though this loss cannot be compensated in money, but a reasonable compensation helps the child to overcome from physical and mental trauma or for her medical treatment and rehabilitation.

During interaction participating officers appraised about the actions and measures taken by them in awarding interim and final compensation. It was informed that some times this beneficial welfare scheme is also misused by the victim and in cases where the victim turns hostile, no compensation is awarded. It was also stated that the members comprising of the committee for awarding compensation to victims are much in number and some times due to difference of opinion it creates problem also.

Her lordship discussed the 'Victim Compensation Scheme' and stated that while awarding or refusing compensation personal satisfaction should be recorded and reasons must be specifically stated. These powers must be exercised by following guidelines provided by Rajasthan Victim Compensation Scheme 2011 and in the light of Hon'ble Supreme Courts pronouncements in the cases of Ankur Shivaji Gaikwad Vs State of Maharashtra S.L.P (cri) No. 6287 of 2011 and Suresh Vs State of Haryana criminal appeal of 2012. Shri Bodhi Sattwa Gautam Vs Ms. Shubra Chakraborty AIR 1996 SC 922.

Her lordship expressed deep concern over the issue where the victim is seriously injured and there are apparent circumstances which show the brutality of the offence and due to some undue pressure victim turns hostile, and compensation is refused. In such cases while recording personal satisfaction, based upon record if the trial court at the conclusion of the trial is satisfied that the compensation awarded earlier is not adequate for rehabilitation or the case ends in acquittal or discharge, court may looking to the need of rehabilitation including medical treatment may make recommendation for compensation.

Human Trafficking

Fundamentally, trafficking in persons violates the universal human rights to life, liberty and freedom from slavery in all its forms. The judiciary as an important and powerful ally of the government and the other stake holders involved in the common

objective of combating trafficking of women and children are ensuring that the traffickers are brought to the book. Without sensitization the judicial system may not be able to deliver the desired outcomes. Department of Justice has taken an initiative for the judiciary to acquaint and sensitize our officers regarding trafficked women and children.

Prevention of human trafficking and exploitation of women and children are not isolated issues the achievement of these objectives requires a coordinated response of all the key players which include the police, prosecution, courts, medical institutions etc. The police are the first responders to the victims in crimes of human trafficking. Successful conviction of offenders and consequent prevention of crimes of human trafficking is possible when the police respond to the challenges effectively. It is the need of the time to develop constructive synergies of police with the prosecution agencies and judiciary.

Session Third: This session "**Policing in the cases of human trafficking**" was addressed by Shri N. Morris Babu Addl. D.G (Home guards) who is an IPS of 1989 batch and hails from Andhra Pradesh and known for first time institutionalizing human trafficking in Rajasthan.

Shri Morris Babu stated that trafficked victims are often treated as delinquents therefore, they must be protected and prevented from being prosecuted he apprised our officers with the role of a Anti-human Trafficking Unit (AHTU) set up by Ministry of Home Affairs, Government of India and informed that at every Police District Headquarters (AHTU) has been set up under the control of Superintendent of Police. Shri Morris Babu said that police officers should be sensitize in the area of human trafficking so that object of 'prevention, protection & prosecution' may be achieved. He has given some instances where special police officers played vital role in rescuing the trafficked children.

There must be a target that each police officer will recover one girl child and that will be the best social service. There must be a continuous crime concept i.e. to pursue the crime from its starting to destination a victim centric approach should be adopted as victim is not an accused. Shri Morris Babu shown deep concern over the dormant attitude of police and said that sentencing policy, rescue, rehabilitation, reformation, restoration and reintegration are the major challenges before anti-trafficking squad.

Session Fourth: The last session of two days Judicial Conference was on the topic: "**Convention of united nation for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and Provisions under various enactments to Protect child rights in the sprit of Article 23 and 24 of the Constitution of India, with special reference to Human trafficking**"

Initially the topic related to UN Convention was assigned to Hon'ble Mr. Justice M.N. Bhandari, but due to his lordships ailment, he could not attend the Conference.

Therefore, this topic was also been assigned to Shri Govind Baniwal along with his own topic i.e. Constitutional and other provisions with reference to human trafficking. Shri Govind Baniwal is the former member of State Commission for Protection of Child Right and at present Project Director of Antakshari Foundation, a project of UNICEF.

Shri Baniwal stated that the Indian Constitution envisaged a happy and healthy childhood for children who are free from abuse and exploitation and stated that Convention for suppression... 1949 paved the way to enact the Immoral Traffic (Prevention) Act 1956 which has stringent provisions to punish the exploitation of prosecution of others he also referred the UN Convention on Rights of Child 1989 and article 23 & 24 of Indian Constitution he stated that rehabilitation of Childs victims and prevention of their re-trafficking is a major challenge. Giving reference of Hon'ble Supreme Court's verdict given in Sampurna Behera Vs Union of India, Bachpan Bachao Andolan Vs Union of India and Prerna Vs State of Maharashtra. Shri Baniwal stated that judiciary is the best hope of a trafficked women or child. He mentioned the various provisions contained in the ITPA and sections 366, 366A, 367, 370, 371 etc of Indian Penal Code and said that prohibition of trafficking has its source from Constitution of India.

Suggestions

Above mentioned deliberations took place during these two days Judicial Conference on 'POCSO Act 2012 and Human Trafficking'. Consequent to deliberations following suggestions were given by the House:

- 1- Independent special Courts under POCSO Act, 2012, have to be established for speedy, effective and time bound disposal of cases.
- 2- Independent special prosecutors are required to be appointed in special courts.
- 3- Training to special prosecutors, investigating officer and other police personnel's needs to be imparted by judicial or police academy.
- 4- A combined session of all duty holders i.e. judiciary, police, prosecution and other experts should be organized during these conferences.
- 5- Culpability of mental state/presumption is the requirement in child pornography cases under Section 13, 14 and 15 of POCSO Act, 2012.
- 6- Children must be sensitized and made aware about the sexual abuse offences.
- 7- Regular curriculum of school education should include this awareness programme.
- 8- This task may be assigned to school authorities/RSLSA and other authorities.
- 9- Rajasthan State Judicial Academy was requested to send this suggestion to Department of Education.
- 10- Dedicated psychologists, experts and special educators need to be appointed and they should be given special training also.
- 11- It was also suggested that unlike direct recruitment in judicial services, Assistant Prosecuting Officers or Additional Director Prosecutor may be appointed in special courts.

12- It was also suggested that, Judicial Academy may formulate a standard module and send it to cluster wise head quarters at Divisional/District level, where such workshops may be organized for all duty holders.

At the end of the Judicial Conference, Addl. Director, RSJA, Smt. Nandini Vyas expressed gratitude towards the Hon'ble Guest Faculties for enlightening the participants and to the participating officers for attending the conference.

The judicial conference concluded with a success note and the participating officers were benefited greatly by the deliberations and discussions held during the judicial conference.