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**Report on
TRAINING OF PROSECUTORS ON
WOMEN'S SAFETY**

Phase-I (9th December 2019 to 13th December 2019)

&

Phase-II (20th January 2020 to 24th January 2020)

Organised by: Rajasthan State Judicial Academy, Jodhpur

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- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”. Keeping up with the constitutional mandate in mind, the Rajasthan State Judicial Academy is regularly organizing various training programmes, refresher courses, seminars, judicial colloquiums, conferences and workshops for Judicial Officers and other stakeholders.
- In furtherance of the above, a training programme for “Training of Prosecutors on Women’s Safety” was organized in two phases of 5 days each in which a total of 22 Prosecutors in Phase I and 33 Prosecutors in Phase II from the State of Rajasthan Participated.

The First Phase of Training, concluded in Fifteen (15) independent sessions:

- Session I
Goal, Role and Mission of Court: Constitutional Vision of Justice
- Session II
Criminal Jurisprudence with special reference to crime against Women
- Session III
- Elements of Judicial Behavior: Values, Ethics, Neutrality and Professionalism
- Session IV
Victims (Women of Assault); Compensation and their Rehabilitation: Role of Prosecutors
 1. Parameters for Determining the Quantum of Compensation
 2. Interim Compensation
 3. Legal and Medical Aid to Victims
 4. Counseling/ Trauma Counseling
 5. Services to Victims
- Session V
Investigation in Crimes against Women
 1. Sensitivity in dealing with Women victims
 2. Non-stigmatization & Non-disclosure of Identity
 3. Mandatory Reporting & its Feasibility
- Session VI
Framing of Charges: Role of Prosecutors
- Session VII
Human Rights: Fair and Impartial Investigation, Inquiry and Trial vis-à-vis Role of Prosecutor
- Session VIII
Collection, Preservation and Transportation of Evidence related to Sexual Assault offences against women
- Session IX
Recording & Appreciation of Evidence of Victims in cases related to sexual assault offences against women.
Scope of Discussion
 1. Statutory Provisions
 2. Effective Recording of Evidence
 3. Protection of Witnesses vis-à-vis Vulnerable Victims in Court
 4. Video Evidence
- Session X
Forensic and Medico –Legal Evidence in Criminal Trial:-
 1. DNA Profiling
 2. Brain Mapping
 3. Voice Analysis
 4. Medical Examination of Accused and Victim in Crime against Women
- Session XI and XII
Law related to Cyber Crimes: Advantages and Bottlenecks
- Session XIII

Stress Management

- Session XIV
Law related to Hostile Witnesses
- Session XV
- Psychology: Victims vis-à-vis Criminals

The Resource Persons for the Training were Mr. Dinesh Kumar Gupta (Judge, Special Court, POCSO Cases, Sawai Madhopur), Mr. Arun Kumar Beriwal (Special Judge, CBI Cases No.2, Jaipur Metro), Dr. K. Parameswaran (Dean of Alumni Relations & Associate Professor of Law, GNLU), Mr. Mahendra Kumar Dave (ADJ No. 2 Udaipur), Mr. Manoj Kumar Goyal (ADJ Sawai Madhopur), Mr. Ashwani Vij (Legal Advisor, RPSC), Mr. Dinesh Kumar Tyagi (Special Judge 2, POCSO Cases Court, Udaipur), Dr V.N. Mathur (Former Director, FSL, Jaipur), Mr. Nishit Dixit (Cyber Law Expert, Jaipur), Dr. Arpita, Dr. Abhishek and Ms. Amrita S. Dudia (Motivational Trainer TEDx Speaker).

The workshop was inaugurated at 10:00 A.M. on December 9th, 2019 by Mr. Dinesh Kumar Gupta, Dr. K Parameswaran, Ms. Poonam Durgan (Addl. Director (Academic) RSJA) and Ms. Raina Sharma (Addl. Director (Administration) RSJA) by lighting the lamp.

Welcome address was given by the Additional Director (Academics), Rajasthan State Judicial Academy wherein she briefly introduced the objective behind convening Training Session for Prosecutors on issue of major concern nowadays i.e. Women's Safety.

SESSION I BY MR. DINESH KUMAR GUPTA

The Hon'ble Resource Person while referring to Article 51A and 50 stresses on the demarcation of sphere of interference as a must for Independence of Judiciary. He further explained that it is assumed that Prosecution is subordinate to State and governed by the latter but in reality Prosecution ipso facto is separated from the State and Executive. To fortify this he referred to catena of Judgments prominent being Zahira Habibullah Sheikh and Anr Vs. State of Gujarat and Kishan Bhai Vs. State of Gujarat. While resorting to Section 321 of CrPC the discussion revolves around in clarifying that nowhere the code prescribes that Prosecutor should consult State Government or the latter should direct Prosecutor thus reaching to a conclusion that Prosecutor is independent officer of Judiciary.

SESSION II BY MR. ARUN KUMAR BERIWAL

The Hon'ble Resource Person started with the contribution of women in different spheres in today's arena. He further briefly accentuates upon the Policy's/ Ministry's working upon their emancipation, Reservation benefit being granted to them, Special Constitutional Provisions and Catena of legislations Safeguarding their rights. He explained in detail the trajectory of Criminal Jurisprudence of Women with the aid of judicial pronouncements prominent being commencing from Vishaka Vs. State of Rajasthan, Mohd. Ahmed Khan Vs. Shah Bano, Shakshi Vs. UOI, Apparent Export Promotion Council Vs. AK Chopra, Jessica Lal Murder Case, Priyadarshini Mattoo Case, Naina Sahni Case and culminating into Mukesh and Anr. Vs. State (NCT of Delhi). With the catena of judgments in hand he also discussed vital topics such as Sexual Harassment, Acid Attack, Maintenance Rights, Victim identity, POCSO Cases, Right to Share household, Relief under Domestic Violence Act and domain of right as to personal choices.

SESSION III BY DR. K PARAMESWARAN

The Hon'ble Resource Person traces the role of Prosecutor from the Preamble of the Constitution of India. He then dealt with the difference between Behavior and Conduct, Nature and Sources of Values and Ethics, the thin line of difference between Ethics and Moral, Concept of Neutrality / Professionalism and Bangalore Principles of Judicial Conduct. The discussion then revolves around the elements of Judicial behavior and Prosecutor behavior. Lastly he dealt with the various approach to be adopted by the Prosecution in enhancing Knowledge and the ways in which challenges posed can be encountered.

SESSION IV BY MR. DINESH KUMAR GUPTA

The Hon'ble Resource Person dealt in detail the Victim Compensation Scheme. He also explained the relevant provisions dealing with the aspect of compensation and rehabilitation such as Section 357, Section 357-A, Section 357-B, Section 53-A, Section 164 A of Criminal Code, Rule 7 of POCSO Rules, 2012 and age determination provisions as Section 34 of POCSO Act

2012 read with Section 94 of Juvenile Justice (Care and Protection of Children) Act 2015. In addition to this he also dealt with aspects such as medical treatment, relevance of consent and Scientific tests vital being DNA. He even referred landmark judgments such as Selvi Vs. State of Karnataka and Raja Rajmal Vs. State of UP. Lastly he stresses on the need of applying MACT (Motor Accident Claim Tribunal) parameters in determining Compensation in Sexual Assault cases.

SESSION V BY MR. MAHENDRA KUMAR DAVE

The Hon'ble Resource Person commenced with explaining in detail the provisions dealing with the Camera Trial and the Non disclosure of identity; relevant being Section 74 of Juvenile Justice (Care and Protection of Children) Act 2015, Section 23 of POCSO Act 2012 and Section 327 of CrPC 1973. He then dealt in detail the 8 directions enumerated in Nipun Saxena and Anr. Vs. UOI. He further accentuates upon the provisions as to Mandatory reporting in CrPC and POCSO Act 2012, Catalyst of anti rape campaign i.e. Mathura Rape Case, Sensitivity issue in Sexual Assault and finally Witness Protection Scheme having its genesis in Mahendra Chawla Vs. UOI.

SESSION VI BY MR. MANOJ KUMAR GOYAL

The Hon'ble Resource Person stated that Prosecutor is treated as officer of court and not as mouthpiece of investigator . It is incumbent upon all the Prosecutors to assist the Court in every way and also to take note of the fact that the rights of both Accused and Victim are taken care of. He then explained the rationale behind victim to be represented by Public Prosecutor in Criminal Justice System. He reiterated catena of judgments wherein role of Public Prosecutor was highlighted prominent being Sheonandan Paswan Vs. State of Bihar, Manu Sharma Vs. State 2010 (6) SCC 1 and Ganga Ram Meena Vs. State of Rajasthan 2014 (13) SCC 674. He stresses that framing of Charge is the backbone of Criminal Trial wherein role of Prosecutor takes a front seat. He then dealt with relevant provisions as to framing of charge ranging from Section 211 CrPC to Section 216 CrPC.

SESSION VII BY ASHWANI VIJ

The Hon'ble Resource Person initiated the session by explaining role, duties and strength of Public Prosecutor. He then posed question to participants as to difficulties faced by them in recording evidence of women/child in Sexual Assault cases. Thereafter he explained the manner in which prosecutrix and child witness ought to be treated by Court and Public Prosecutor. While resorting to concept of fair trial he cautioned Public Prosecutor to bear in mind while discharging duties that victim is not suffering more and accused is not taking undue advantage of poor investigation.

SESSION VIII AND IX BY MR. DINESH KUMAR TYAGI

The Hon'ble Resource Person initiated the discourse by referring to HN Rishbud Vs. State of Delhi wherein emphasis was cast on the duty of Investigating Officer in collecting evidence. He then dealt in detail provisions of Criminal Procedure Code embarking upon the evidential aspect such as Section 53, 53A, 54, 164A and 173 A. He also dealt in depth the cases where in medical evidences and that too DNA especially made a difference such as Richard Buckland Case of 1986, Tomy lee of 1987, Garry Dorson of 1989, Swami Parmanand Case and ND Tiwari Case. He also accentuates upon the Guidelines for FSL Department in India as to handling of evidence in Sexual Assault cases. He also enlightened participants about the SAFE (Sexual Assault Forensic Evidence) Kit and the manner of collecting evidence. Lastly he dealt in depth the accused victim confrontation issue with the aid of judicial pronouncements such as Shakshi Vs UOI, Aatma Ram Vs. State of Raj., State of Maharashtra Vs. Dr. Praful B Desai, Manju devi Vs. State of Rajasthan and Tahsildar Singh Vs. State of Uttar Pradesh. Lastly he also threw light upon the recent judgment State of Kerala Vs. Rasheed wherein Apex court formulated guidelines for conducting criminal trial.

SESSION X BY DR. V. N. MATHUR

The discussion of this session was premised on the Forensic and Medico legal Evidence. The Hon'ble Resource Person explained with cases the Forensic Application of DNA , DNA Profiling/DNA Fingerprinting, Paternity Identification, Bite Marks Lifting Procedure, Exhumation, Age/Sex Determination, Lie Detection or Polygraphy, Truth Serum, Voice Analysis and Brain Mapping. He further expounded upon Evidence in Acid Attack, Bride burning,

Strangulation and Hanging. He then deliberated upon Constitutional validity of Medico Legal evidence in light of Article 20(3) of Constitution of India.

SESSION XI AND XII BY NISHITH DIXIT

The Hon'ble Resource Person initiated the session by giving insight into nature of cyber crime and the conventional crime. He also explained the manner in which terminology differs by resorting to various provisions of IPC and IT Act 2000. He further accentuates upon Meerut Mystery Case, Synthetic Audio Case, Ajmal Kasab Case and DDos attack on Yahoo Amazon Estonia. He emphasized on E-Crime Chapter of IT Act 2000. The deliberation discussed some of the judgments like Sharad babu Digumati Vs. State(NCT), Ajay Murlidhar Vs. State of Maharashtra and Syed Asifuddin Vs. State of Andhra Pradesh.

SESSION XIII BY AMRITA S DUDIA

The session was premised on achieving the peaceful coordination of mind and soul. She emphasized on directional approach of mind and also suggested ways in which negative energy can be kept away from affecting the soul. She then discussed secretion of different types of hormones in body depending upon the circumstances posed in front of mind.

SESSION XIV BY MS. POONAM DURGAN

The Resource Person started the session by posing query to the students as to what they understand with the concept of Justice. She then discussed two prominent reasons for witnesses turning hostile; first being improper investigation and secondly witness telling lie. Attention was drawn to emerging need of sensitization and acceptance of responsibility. She stressed upon inculcation of strong value system and urges all to come out of the theory of convenience. She also dealt in depth Section 141, 142, 143, 145 and 154 of Evidence Act 1872, Section 193 of IPC, and Section 280 of CrPC.

SESSION XV BY DR ABHISHEK AND DR ARPITA.

The Hon'ble Resource Person dealt with prominent areas having bearing upon the Psychological aspect of Victims and Criminals such as Concept of Insight, Signs and Symptoms of link with criminal behavior, Theoretical explanations, Background contributors, Integral elements in psychology of victim and lastly effects of Criminal Victimization.

- Training Session was concluded with the vote of thanks to the Hon'ble Dignitaries and all those who contributed in organizing the same.
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PHASE II

- Phase II of the training programme for “Training of Prosecutors on Women’s Safety” was organized from 20th January 2020 to 24th January 2020 in which a total of 33 Prosecution Officers from the State of Rajasthan participated.
- Phase II of the training programme concluded in Fifteen (15) independent sessions.
- The Resource Persons for the conference (Phase-II) were:
 1. Mr. Hari Om Attri (Director, RSJA)
 2. Mr. Mahendra Kumar Dave (ADJ No. 2, Udaipur)
 3. Mr. Murlidhar Vaishnav (Former District & Sessions Judge, Jodhpur)
 4. Mr. Samrendra Singh Sikharwar (Secretary, District Legal Services Authority, Jodhpur District)
 5. Mr. Balkrishna Mishra (Judge, Rent Appellate Tribunal, Jaipur Metro)
 6. Dr. Nidhi Gupta (Associate Professor, NLU-Jodhpur)
 7. Mr. Vishwa Bandhu (Addl. District and Sessions Judge No.1, Jodhpur Metro)
 8. Mr. Nisheet Dixit (Advocate and Cyber Law Expert)
 9. Ms. Poonam Durgan (Addl. Director (Academic), RSJA)
 10. Ms. Amrita S. Dudia (Self-Empowerment Coach, Growth Mindset Facilitator, TedX Speaker)
 11. Dr. Abhishek Sharma (Assistant Professor, Sardar Patel University of Police, Security and Criminal Justice, Jodhpur)
 12. Dr. V.N. Mathur (Former Director, State Forensic Science Laboratory)
 13. Mr. Dinesh Kumar Tyagi (Special Judge No. 2, POCSO Cases Court, Udaipur)

Day 1, 20th January, 2020

Session I by Mr. Hari Om Attri (Director, RSJA)

Goals, Role and Mission of Court: Constitutional Vision of Justice

- The Hon’ble Resource Person stated that all laws have their realm in the constitution. The constitution is not a mere textbook but a living document. The participants were made aware of the scheme of the constitution and the responsibility it entails.
- With regards to the scheme of “Rights” as provided under the constitution, the participants were enlightened on how the same were to be implemented.
- Rule of Law is an ideology which runs through the entire Constitution of India. The legal framework of the country forms a part of the Rule of Law.
- The session also involved active discussion of law and emotions and the responsibility on the prosecution to create a positive environment in the legal proceedings especially in an adversarial system like India.

Session II by Mr. Mahendra Kumar Dave (ADJ No. 2, Udaipur)

Investigation in Crimes against women:

- i. *Sensitivity in dealing with women victims*
- ii. *Non-stigmatization & Non-disclosure of identity*
- iii. *Mandatory Reporting and its feasibility*

- The Hon’ble Resource Person started the discussion by discussing with the audience, the Mathura rape case and how from there the concept of sensitivity in dealing with women victims has evolved.
- The session involved active discussion on preservation of evidence; filing of FIR and medical treatment of the victim. It was strongly suggested that there should be no delay in the filing of FIR. Also, in the case of **Nipun Saxena & Anr v. Union of India (2019) 2 SCC 703**, on the issue of non-disclosure of identity of the victim, the Hon’ble Supreme Court has held that “No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which

should make her identity known to the public at large. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.”

- The Hon’ble Resource Person also brought to the attention of the participants the provisions of Rajasthan Witness Protection Scheme 2018. Also in the case of **Mahender Chawla & Ors v. Union of India & Ors. (2018) 15 Scale 497**, the Hon’ble Supreme Court held that protection of witnesses assumes significance to enable them to depose fearlessly and truthfully, thereby ensuring a fair trial. In this particular case; the Hon’ble Supreme Court held that it is paramount need to have witness protection regime, in a statutory form and thus directions were given for the same which were to be treated as law under Article 141.
- The session concluded after a healthy discussion on mandatory reporting of offences and its feasibility. The Hon’ble Resource Person thoroughly explained the points of non-stigmatization and non-disclosure of identity of the victim to the audience.

Session III by Mr. Murlidhar Vaishnav (Former District & Sessions Judge, Jodhpur)

Elements of Judicial Behaviour: Values, Ethics, Neutrality and Professionalism

- The session involved active discussion with the participants on the conflicts between a prosecutor as an individual and a moralist. The Hon’ble Resource Person explained in detail, the ethics and values that are to be imbibed in a professional like a prosecutor.
- Ethics are nothing but a totality of values which reflects on the personality of an individual; it is the eternal values of the person.
- The session also saw discussion on the issues of Modern technology such as DNA profiling and how the same can be used to further the ends of justice.

Day 2, 21st January, 2020

Session IV by Mr. Samrendra Singh Sikharwar (Secretary, District Legal Services Authority, Jodhpur District)

Victims (Women) of Assault; Compensation and their Rehabilitation: Role of Prosecutors

- i. *Parameters for determining the quantum of Compensation*
- ii. *Interim Compensation*
- iii. *Legal and Medical aid to Victims*
- iv. *Counselling/Trauma Counselling*
- v. *Services to Victims*

- The Hon’ble Resource Person stated that law has come a long way from the earlier notion of protection to rehabilitation nowadays. The Old CrPC under Section 595 merely had the provision for compensation in the cases of substantial loss only; but keeping up with the needs of the society; the law relating to compensation has undergone substantial change.
- In the case of **Ankush Shivaji Gaikwad v. State of Maharashtra AIR 2013 SC 2454**, the Hon’ble Supreme Court has observed that “*While the award or refusal of compensation in a particular case may be within the Court’s discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case.*”
- Further in the case of **Dilip S Dahanukar v. Kotak Mahindra Co. Ltd. & Anr. 2007 (2) Crimes 435 (SC)**, the Supreme Court discussed on what factors would the court determine compensation to be awarded to the victim and held that compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit.
- The philosophy underlying victim compensation was discussed in the case of **In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014 (2014)4 SCC 786**; wherein the Hon’ble Supreme Court has held that

“No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation.”

- The Hon'ble Resource Person discussed in detail with the participants the relevant provisions such as Section 357 (3) and 357A of CrPC and Sections 33 and Rule 7 of POCSO Act, 2012. The role of District Legal Service Authority in providing legal aid was also discussed.
- The Hon'ble Resource Person concluded the session by discussing in detail the order of the Hon'ble Supreme Court regarding extension of NALSA Scheme to minors; the Hon'ble Supreme Court in the case of **Nipun Saxena v. Union of India W.P.(C) 565 of 2012 order dated 05.09.2018** has held that *“...the NALSA Compensation Scheme (of 2018) should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government. The Special Judge will, of course, take the provisions of the POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order.”*

Session V by Mr. Balkrishna Mishra (Judge, Rent Appellate Tribunal, Jaipur Metro)

Human Rights: Fair and Impartial Investigation, Inquiry and Trial vis-à-vis Role of Prosecutor

- The Hon'ble Resource Person started off the discussion by stating the types of Justice as envisaged under the Preamble to our constitution, which provides of Justice, social, economic and political.
- In the case of **Jitendra Kumar@ Ajju v. State (NCT of Delhi) Crl. W.P. 216/99** decided by the Hon'ble Delhi Court, the prosecutor has been envisaged as the minister of justice.
- The Hon'ble Supreme Court has expressed its displeasure in the case of **Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors. 2006 2 Crimes(SC) 36** wherein it was again upheld that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not; The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. Further, it was also held that *“role to be played by Courts, witnesses, investigating officers, public prosecutors has to be focused, more particularly when eyebrows are raised about their roles.”*
- It is imperative that a Prosecutor should be just, reasonable and impartial. In the case of **Yakub Ismailbhai Patel v. State Of Gujarat AIR 2004 SC 4209**, it was held by the Hon'ble Supreme Court that while the prosecution is not necessarily required to call upon each and every witness, it is bound to call all witnesses who are material to the unfolding of the narrative and failure to do so, leads to an adverse inference.
- In **State of M.P. v. Badri Yadav and Anr. AIR 2006 SC 1769**, the Hon'ble Supreme Court held that provisions of Section 233(3) Cr.P.C. cannot be understood as compelling the attendance of any prosecution witness examined, cross examined to be juxtaposed as defence witness.
- In **Hukam Singh and Ors v. State of Rajasthan (2000) 7 SCC 490**, the Hon'ble Supreme Court held that merely based on the fact that the eyewitnesses were kith and kin of victim, their evidence cannot be rejected dubbing them as interested witnesses.
- It was also stated to the audience that with regards to certain formal points like a specimen in a forgery matter, there is no need to physically examine the witness and the same can be done via affidavits as well. The same has been held by the Hon'ble Court in its various judgments as it will take less time and fasten trial.
- In **State of Punjab v. Naib Din (2001) 8 SCC 578**, the Hon'ble Supreme Court held that evidence of a formal character in a Criminal Trial can be given by affidavits but if any party to the lis wishes to examine the deponent he can move application u/s 296(2) Cr.P.C.,1973 to the Court. Court in such a case can call such person for the purpose of being examined.
- In the case of **Shivaji Sahebrao Bobade and another v. State of Maharashtra (1973) 2 SCC 793**; talking about the effect of formal points, the Hon'ble Supreme Court observed that one of the misfortunes of our criminal process, which stultifies penal justice, is the counter-productive course of trial and appeal "at each stage to remove a lengthening chain".

- The session was concluded after discussing the judgment of the Hon'ble Supreme Court in **State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568**; wherein it was held that at the stage of framing of charge, material as produced by the prosecution alone is to be considered and not the one produced by the accused.

Session VI by Dr. Nidhi Gupta (Associate Professor, NLU-Jodhpur)
Criminal Jurisprudence with special reference to crime against women

- The Hon'ble Resource Person stated that the reasons for the lack of safety of women were:
 1. Existence of a Patriarchal Society
 2. Weak Law Enforcement Agency
- The audience was also enlightened with the new aspects of the Criminal Law Amendment Bill 2018 and the concept of reverse burden as envisaged under the POCSO Act.
- In the case of **Tukaram v. Maharashtra (1979) 2 SCC 143**; the Hon'ble Supreme Court held that sole testimony of the victim would be sufficient for conviction and the past history or character is irrelevant.
- In the case of **State of Maharashtra and Another v. Madhurkar Narayan Mardikar (1991) 1 SCC 57**; the Hon'ble Supreme Court has held that a woman is entitled to privacy and privacy of her person and entitled to protection of law. The Hon'ble Resource Person also discussed with the participants the cases pertaining to modesty of a women and eve teasing, the same being:
- In the case of **Rupan Deol Bajaj v. KPS Gill (1995) 6 SCC 194**; the Hon'ble Supreme Court held that the test for ascertaining whether modesty of a woman has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman.
- In **DIG v. Samuthiram (2013) 1 SCC 598**; the Hon'ble Supreme Court observing the menace of eve teasing held that there is a need for a special legislation to curb it.
- The issues pertaining to the identity privacy of the victim and compensation were also discussed with the participants via different judgments, the same being:
- **Nipun Saxena v. Union of India (2019) 2 SCC 703**; in this case the Hon'ble Supreme Court has held that no person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
- In **Shakti Vahini v. Union of India (2018) 7 SCC 192**; the Hon'ble Supreme Court has held that honour crimes including honour killing are illegal.

The session concluded after a discussion on cases pertaining to Section 498-A of IPC:

- In **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273**; due to rise of arrests in cases pertaining to dowry, the Hon'ble Supreme Court held that the attitude to arrest first and then proceed to investigate is despicable. No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so.
- In **Rajesh Sharma and ors. v. State of U.P. (2018) 10 SCC 472**; the Hon'ble Supreme Court expressing concern over misuse and abuse of section 498A, gave directions for curbing the menace.

Day 3, 22nd January, 2020

Session VII by Mr. Vishwa Bandhu (Addl. District and Sessions Judge No.1, Jodhpur Metro)

Framing of Charges: Role of Prosecutors

- It was stated by the Hon'ble Resource Person that framing of charges is the duty of the court and not of the prosecutor. Also, the Prosecutor should be creative while dealing with the issue of time limit on reporting of the incident.
- In **Japani Sahoo v. Chandra Sekhar Mohanty (2007) 7 SCC 394**; the Hon'ble Supreme Court held that if the complainant has filed the complaint and initiated the criminal proceeding within

the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence.

- Also in the case of **Dr. Nallapareddy Sridhar Reddy v. The State of A.P. and Ors. Criminal Appeal No. 1934 of 2019**; the Hon'ble Supreme Court has held that additional charges can be framed even after completion of evidence, arguments and reserving of the judgment.
- The session also saw active discussion on the issue of presentation of documents during trial.
- In **CBI v. RS Pai and Anr AIR 2002 SC 1644**; the Hon'ble Supreme Court has held that prosecution can produce additional documents which are gathered during investigation, after submitting charge-sheet under section 173 of the Cr.P.C., 1973
- In the case of **Supdt. And Rememberancer of Legal Affairs, West Bengal v. Anil Bhunja and Ors (1979) 4 SCC 274**; it was held that the standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence.
- The Hon'ble Supreme Court in **Stri Atyachar Virodhi Parishad v. Dilip Nathumal Chordia and Another (1989) 1 SCC 715**; with respect to interaction of two sections i.e. 227 and 228 of CrPC on the question of a charge framed by the Sessions Court and the scope of interference by the High Court held that self-restraint on the part of the High Court should be the rule unless there is a glaring Injustice.
- The session was concluded after discussing the case of **State of Bangarpeth Police v. Ambati Murari Mohan 1998 CrLJ 4526**; in this particular case, the Karnataka High Court held in respect of question regarding framing of charge in trial of warrant case; whether personal appearance of accused is necessary to satisfy requirement of reading and explaining charge to accused and asking him whether he pleads guilty or claims to be tried. In the instant case, order of Trial Court already passed dispensing with personal appearance of accused and the same already given effect on undertaking given by the accused, thus no interference required here.

Session VIII and IX by Mr. Nisheet Dixit (Advocate and Cyber Law Expert)

Law Related to Cyber Crimes: Advantages and Bottlenecks

- The Hon'ble Resource person started off by discussing what cyber-crime is and what constitutes cyber space. It was stated that cyber space is where the data is processed through the means of the internet. The Information Technology Act is part of the measure to tackle the menace of Cyber Crime.
- The participants were also made aware of the challenges of cyber-crime Investigation. Section 10(A) of IT Act talks about electronic contracts and how the same are different from those envisaged under the Indian Contract Act and the challenges it presents.
- The motives of cyber crimes could be varied such as personal revenge, anger, fraud, extortion etc. The biggest factor being that usually in a cyber crime, the crime happens in a cyber space but the impact is in physical space. The participants were also made aware of the reasonable security practices for corporates and how a digital signature is different from an electronic signature. The concept of click-wrap contract was also explained in great detail.
- Section 75 of the IT Act talks about having extra territorial jurisdiction and the Act covers within its ambit a "Computer", "Computer Network", "Computer Resource", "Computer System", "Communication Device" etc.
- In the case of **Sharat Babu Digumarti v. Govt of NCT of Delhi (2017) 2 SCC 18**; the Hon'ble Supreme Court held that the Information Technology Act, 2000 being a special Act shall prevail over the Indian Penal Code, 1860. Also held, that if a charge relating to obscene electronic record has not been made out under Section 67 of the IT Act, the person cannot be subjected to prosecution under Section 292 IPC.
- In **Ajay Murlidhar Batheja v. State of Maharashtra and Ors. Criminal Application**

No.1217 Of 2018; the Hon’ble High Court of Bombay held that “*We are therefore not inclined to quash the said FIR as far as the offences under the Information Technology Act are concerned, however, we hold that the invocation and application of the provisions of the Indian Penal Code and specifically, Section 420, is not sustainable in light of the judgment Sharat Babu Digumarti v/s. Government (NCT of Delhi)* Thus we see that the provisions of this IT Act will prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

- The Hon’ble Resource Person also explained in great detail to the participants cyber torts as provided under Section 43.
- In **Bhim Sen Garg v. State of Rajasthan 2006 CrLJ 3643;** dealing with question of quashing of First Information Report it was held by the Hon’ble Rajasthan High Court that the first information report at its face value cannot said to be false and prima facie constitute offence and make out the case against the accused.
- In the case of **Fatima Riswana v. State Rep. by A.C.P., Chennai & Ors 2005 1 SCC 582;** the Hon’ble Supreme Court held that in a case alleging exploitation of certain men and women by one of the accused, a Doctor, for the purpose of making pornographic photos and videos in various acts of sexual intercourse, High Court was not justified in transferring the trial by presuming embarrassment to the Judicial Officer solely on the ground that she is a lady officer.
- In the case of **Tomaso Bruno & Anr. v. State of U.P. Criminal Appeal No. 142/2015** which lead to the acquittal of the appellants on the basis of the prosecution failing to adduce CCTV footage. The Supreme Court Observed that “*The courts below have ignored the importance of best evidence i.e. CCTV camera in the instant case and also have not noticed the absence of symptoms of strangulation in the medical reports. Upon consideration of the facts and circumstances of the case, we are of the view that the circumstances and the evidence adduced by the prosecution do not form a complete chain pointing to the guilt of the accused and the benefit of doubt is to be given to the accused and the conviction of the appellants is liable to be set aside*”.

Day 4, 23rd January, 2020

Session X by Ms. Poonam Durgan (Addl. Director (Academic), RSJA)

Law Related to Hostile Witnesses

- Two prominent reasons for witness turning hostile is; first being improper investigation and secondly witness telling lie. The Hon’ble Resource Person stressed upon inculcation of strong value system and urged all to come out of the theory of convenience. Section 141, 142, 143 ,145 and 154 of Evidence Act 1872, Section 193 of IPC, and Section 280 of CrPC were also discussed with the audience in depth.
- The Hon’ble Resource Person articulately explained in great details the laws relating to hostile witnesses; the same were via the help of certain judgments which included:
 1. **State of U.P. v. Deoman Upadhyaya (1961) 1 SCR 14;**
 2. **Rameshwar Singh v. State of J. and K. (1971) 2 SCC 715;**
 3. **Kanu Ambu Vish v. State of Maharashtra 1971 CrLJ 1547; and**
 4. **Ganga Sahai and others v. State of U.P. (1974) 4 SCC 186**

Session XI by Ms. Amrita S. Dudia (Self-Empowerment Coach, Growth Mindet Facilitator, TedX Speaker)

Stress Management

- The session was premised on achieving the peaceful coordination of mind and soul. The Hon’ble Resource Person emphasized on directional approach of mind and also suggested ways in which negative energy can be kept away from affecting the soul. The secretion of different types of hormones in body depending upon the circumstances posed in front of mind was also explained to the participants.

Session XII by Dr. Abhishek Sharma (Assistant Professor, Sardar Patel University of Police, Security and Criminal Justice, Jodhpur)

Psychology: Victims vis-à-vis criminals

- The Hon'ble Resource Person stated that to understand better the dynamics of violent systems, we must first free ourselves from the binds of politically correct thinking. We must dare to expose the cultural and psychological forces that lead to crime, and to explore the psychology of abusers, abused, and bystanders in such systems.
- The notion of who is a criminal was discussed with the participants. What drives a person to criminal behavior is really complex and complicated mechanism, involving a lot of factors.
- One needs to understand views, thoughts, intentions, actions and also reactions of criminals and all that partakes in the criminal behavior. Offender's cognitive versions of the world, especially his or her thoughts, beliefs, and values and how those that are inconsistent with leading a lawful life.
- The Hon'ble Resource Person explained 4 kinds of theoretical explanations:
 1. Learning Theories
 2. Humanitarian Perspective
 3. Cognitive Perspective
 4. Psychoanalytic Perspective
- Psychologies of all the criminals are not same. Similarly, with regards to psychology of victims these are persons who have experienced either actual or threatened physical, psychological, social, or financial harm as the result of the commission or attempted commission of crime against them.
- The Hon'ble Resource Person explained in great detail, the psychological dynamics within a victim-system, it included:
 1. Firstly, the nature of the interaction between victimizers, victims, and the environment (including bystanders) must be examined. It is of utmost importance that there is no blame or finger pointing towards the victim.
 2. Secondly, one must approach the individual victim with empathy and attempt to understand the present self-destructive behavior in the light of the victim's past and evolution.
 3. Thirdly, there must be an assessment of the victim's level of consciousness, sanity, and ability to plan and control behavior.
 4. Fourthly, cultural and sub-cultural factors present since childhood, such as race, economic status, and gender, must be taken into account.
 5. Finally, the cultural context as revealed through the legal, educational, and political systems, the media, and popular trends, must be considered.
- The Hon'ble Resource Person concluded by stating that in cases when one ends up working with the victim individually, one has to walk the fine line between empathy and collusion.

Day 5, 24th January, 2020

Session XIII by Dr. V.N. Mathur (Former Director, State Forensic Science Laboratory)

Forensic and Medico-legal evidence in Criminal Trial:

- i. DNA Profiling
- ii. Brain Mapping
- iii. Voice Analysis
- iv. Medical Examination of Accused and Victim in crimes
against women

- The discussion of this session was also premised on the Forensic Evidence and DNA Profiling. The Hon'ble Resource Person explained with cases the Forensic Application of DNA, DNA Profiling/DNA Fingerprinting, Paternity Identification, Bite Marks Lifting Procedure, Exhumation, Age/Sex Determination, Lie Detection or Polygraphy, Truth Serum, Voice Analysis and Brain Mapping.

Session XIV by Mr. Dinesh Kumar Tyagi (Special Judge No. 2, POCSO Cases Court, Udaipur)

Collection, Preservation and Transportation of Evidence related to sexual assault offences against women

- The Hon'ble Resource Person stated that the purpose of the investigation agency is collection of evidence. In that context, the preservation and transportation of evidence assumes great importance. With regards to evidence integrity i.e. the collection and transportation of evidence. It was stated that a foetus is to be preserved at minus (-)20 Degree Celsius and the Urine and Vaginal wash at 4 Degree temperature but this imposes logistical challenges in the months of summer especially in a State like Rajasthan.
- **In Re: Assessment of The Criminal Justice System In Response To Sexual Offences Suo Motu Writ Petition (CRL.) Nos. 04 of 2019 decided on 18 December 2019:** The Hon'ble Supreme Court has held that Forensic examination and report play important role during investigation as well as trial for linking the culprit with crime.
- There is however no statutory guidelines on the preservation and collection of evidence and the same are regulated by the guidelines of Central Science Laboratory Chandigarh.
- The Hon'ble Resource person also discussed with the participants, the procedure for age determination as provided in Section 94 of the JJ Act.
- In the case of the **Rajesh alias Lillu v. State of Haryana (2013) 14 SCC 643**; the Hon'ble Supreme Court disapproved of the two finger test for vaginal examination. It further observed that *"Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of "easy virtues" or a woman of "loose moral character" can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason."*
- The session was concluded after discussing **State of Kerala v. Rasheed (2019) 13 SCC 297** in which the Hon'ble Supreme Court held that with regards to Section 231 of CrPC pertaining to deferral of cross-examination of a witness, until any other witness or witnesses have been examined – It is a matter of Judicial discretion. However it should be granted in special circumstances and for sufficient reasons.

Session XV by Mr. Dinesh Kumar Tyagi (Special Judge No. 2, POCSO Cases Court, Udaipur)

Recording and Appreciation of evidence of victims in cases related to sexual assaults offences against women:

- i. *Statutory Provisions*
 - ii. *Effective Recording of Evidence*
 - iii. *Protection of Witnesses vis-à-vis vulnerable victims in courts*
- Video Evidence*

- The Hon'ble Resource person explained the different sub-topics of this session through the means of various judgments of the Hon'ble Supreme Court. The cases discussed included:
 1. **State of Punjab v. Gurmit Singh and Anr (1996) 6 SCALE 753**; In this particular case the Hon'ble Supreme Court dealing with the question of recovery of dagger, blood stained shirts and report of Forensic Science Laboratory report which corroborated ocular evidence held that this evidence proved that accused (No. 1) assaulted deceased with dagger and accused (No. 2) held deceased and facilitated murderous assault Therefore both accused are liable to be convicted for offences under Section 302 and 304 of IPC.
 2. **Ugar Ahir and others v. State of Bihar AIR 1965 SC 277**: In this particular case the Supreme Court held that the maxim *falsus in uno, falsus in omnibus* (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the Court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

3. **V.K. Mishra & Anr. v. State of Uttarakhand & Anr. 2015 3 Crimes(SC) 193**; the Hon'ble Supreme Court held that:
- FIR is neither meant to be an encyclopedia nor expected to contain all the details of the prosecution case.
 - Statement before police u/s 161 CrPC is not substantive piece of evidence.
 - Mere delay in examining a witness does not make his evidence unreliable.
 - Investigating Officer is not obliged to anticipate all possible defences and investigate in that angle. Any omission on the part of the investigating officer cannot go against the prosecution.
 - In section 304B, IPC 'shown' will have to be read up to mean 'proved' but only to the extent of preponderance of probability; and 'deemed' is to be read down to require an accused to prove his innocence, but beyond reasonable doubt.
4. In the case of **Mahender Chawla & Ors v. Union of India & Ors. (2018) 15 Scale 497**, the Hon'ble Supreme Court held that protection of witnesses assumes significance to enable them to depose fearlessly and truthfully, thereby ensuring a fair trial. In this particular case; the Hon'ble Supreme Court held that it is paramount need to have witness protection regime, in a statutory form and thus directions were given for the same which were to be treated as law under Article 141.
- The Hon'ble Resource Person concluded the session after discussing the following cases with respect to the law concerning video-examination and also shared his personal experiences; the judgments discussed being:
 - **The State of Maharashtra v. Dr. Praful B. Desai & Anr. (2003) 4 SCC 601**: The Hon'ble Supreme Court in this case has held that in a criminal trial evidence of a foreign witness can be recorded by video-conferencing through a commission. It is covered by Sections 273 r/w 284, 285 of Cr.P.C. 1973 and Section 3 of Evidence Act, 1872.
 - **Manju Devi v. State of Rajasthan & Anr. (2019) 6 SCC 203**: The Hon'ble Supreme Court in this case has held that a material witness needs to be summoned. Age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness. A foreign national witness can be summoned/ his evidence recorded as per section 284 and 285 of CrPC.
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- Training was concluded with vote of thanks to the Hon'ble Dignitaries and all those who contributed in organizing the same.

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