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Final Report on

**WORKSHOP ON
SENSITIZATION OF JUDGES DEALING WITH
POCSO ACT CASES**

(With physical presence of participants at RSJA Jodhpur)

Held on 10th February 2021

Organised by: Rajasthan State Judicial Academy, Jodhpur

Report prepared by: Shubham Shandilya (Research Scholar, Rajasthan State Judicial Academy, Jodhpur)

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Alice Miller, a Swiss psychologist, speaking about child abuse has said:

“Child abuse damages a person for life and that damage is in no way diminished by the ignorance of the perpetrator. It is only with the uncovering of the complete truth as it affects all those involved that a genuinely viable solution can be found to the dangers of child abuse.”

Alakh Alok Srivastava v. Union of India and Ors. (2018) 7 SCALE 88

INTRODUCTION

- It is imperative that the law operates in a manner that the best interest and well-being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.
 - Child sexual abuse, inherently being an act of perverse imposition of power and subsequent subjugation of a weaker entity, may possibly lead to a negative alteration of a child's cognitive and emotional development. In order to deal with matters pertaining to child sexual abuse, it becomes critical for judges to understand the sensitivity of the subject matter and intricacies involved therein.
 - In furtherance of the above, the Rajasthan State Judicial Academy on 10th February, 2021 organized a Workshop on 'Sensitization of Judges dealing with POCSO Act Cases'.
 - The workshop saw a participation of 47 Presiding Judicial Officers of POCSO Act Courts and Judges having additional charge of POCSO Courts/power to hear cases under the POCSO Act.
 - The workshop was organized to sensitize and raise awareness amongst the Judicial Officers of their role in POCSO Act implementation, in order to have the necessary understanding on how to prevent and respond to child sexual abuse.
 - The workshop concluded in 5 (Five) independent sessions
Session I: **Child Sexual Abuse: Understanding Behavioral and Psychological Impairments in Victims.**
Session II (Virtual Session): **Cyber Offences and POCSO Act: Legal Provisions.**
Session III: **Recording and Appreciation of Evidences in POCSO Cases & Presumption and Burden of Proof under POCSO Act.**
Session IV: **Rehabilitation and Compensation for Child Victims of Sexual Offences.**
Session V: **POCSO Adjudication: Challenges and Solutions**
 - The Resource Persons for the workshop were:
 1. Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, RSJA)
 2. Sh. Farzand Ali (AAG, RHC, Jodhpur)
 3. Sh. Dinesh Kumar Tyagi Registrar (Rules), Rajasthan High Court
 4. Sh. Ashwani Vij, District and Sessions Judge, Sawai Madhopur
 5. Sh. Nisheeth Dixit, Cyber Law Expert
 6. Ms. Krinna Shah, Freelancer in Capacity Building, New Delhi
 - The workshop was inaugurated at 10:00 A.M. on February 10, 2021 by **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court & Chairman, Rajasthan State Judicial Academy), Mrs. Nandini Vyas (Director, Rajasthan State Judicial Academy)** and other officers of the Academy by lighting the lamp.
 - **Ms. Reshma Khan [Deputy Director (Admin), Rajasthan State Judicial Academy]** welcomed the Hon'ble Dignitaries and the participating Judicial Officers to the workshop.
 - The workshop subsequently began with deliberations by the Hon'ble Resource Persons.
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Session I

Child Sexual Abuse: Understanding Behavioral and Psychological Impairments in Victims

By

Ms. Krinna Shah, Freelancer in Capacity Building, New Delhi

- The Resource Person conducted activities such as word association test by displaying pictures, seeking opinions on various case studies to help the Judicial Officers in understanding the various facets of childhood and the impact of child sexual abuse.
 - The object behind the POCSO Act was conveyed to the participants with the message that all children are different and a child is much more than a case number.
 - The Resource Person actively engaged with the Judicial Officers and sought their opinions on what they believed were the harm/difficulties that children experience during sexual abuse and the disclosure/reporting of the same to a trusted person.
 - Excerpts from the book *Resolving Childhood Trauma: A Long Term Study of Abuse Survivors by Catherine Cameroon*, were also discussed with the participants to sensitize them.
 - The challenges that Judges face under POCSO Act cases were also discussed with the participants, some of them being:
 - a) The victim turning hostile
 - b) Evidence related issues such as non-receipt of DNA/FSL reports on time.
 - The session also saw discussion on the data pertaining to the institution, disposal and pendency of POCSO Act cases in the State of Rajasthan.
 - The session was concluded after a detailed discussion on the long term effects of the trauma due to child sexual abuse and thus, the need for handling such cases in a sensitive manner.
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Session II (Virtual Session)

Cyber Offences and POCSO Act: Legal Provisions

By

Mr. Nisheeth Dixit, Cyber Law Expert

- The Resource Person started off the session by discussing the various categories of Cyber Crimes and explaining the same to the participants in great detail. It was stated that depending upon the victim of the Cyber Crime, it may be broadly classified under three heads:
 - i. Against individuals
 - ii. Against organizations and
 - iii. Against society at large
- The Resource Person discussed important statutory provisions and the protections provided therein, pertaining to Cyber offences that are committed against children. The aspect of child pornography and how to deal with such cases in a sensitive manner was also explained to the participants.
- The participants were also enlightened on the aspects pertaining to the reporting of child sexual abuse material.
- Provisions of the IT Act that were discussed in detail with the participants included Sections 67B, 66C, 66E.
- The various investigation challenges were also discussed with the participants such as the non-seizure of mobile phones used in the commission of the offence by the I.O. during the investigation, non-collection of the call details from the concerned authorities, not using scientific techniques such as photography, videography etc. during investigation by the I.O. at the time of spot memo, seizing of articles, drawing of samples etc.
- The legal provisions were explained by drawing the attention of the participants to various landmark judgments such as:

- A. **P.Gopalakrishnan @Dileep v. State of Kerala and another Criminal Appeal No. 1794 of 2019**, wherein the Hon'ble Apex Court dealt with the question whether the contents of a memory card/ pen- drive would qualify as a document covered by Sec.3 of the Evidence Act and defined under Sec. 29 of the Penal Code; and, if so, whether furnishing a cloned copy of such memory card/ pen-drive produced with police report, to an accused facing accusation of rape is obligatory in terms of Sec.207 of the Cr.P.C. where infringement of privacy, dignity and identity of the victim involved by misuse of copy is canvassed to deny supply. The court concluded that cloned copy of a memory card/pen-drive is a document and a fair trial postulates supply of its copy to the accused in tune with the mandate under Sec.207 Cr. P.C.
- B. **Fathima v. State Of Kerala, (2020) 4 KHC 239**: In this case, a mother asked her two minor children, aged 14 (boy) and 8 (girl) to paint on her naked body above the navel. The children painted on her naked body. The petitioner recorded it as a video. After that, the video was uploaded on social media. It was held by the Hon'ble Kerala High Court that:
- Whoever uses a child in any form of media for the purpose of sexual gratification, it is punishable under Section 14 of the Act. The main ingredient of the Section is that, the child should be used in any form of medium for the purpose of sexual gratification. Section 13(c) says that, the offence includes the indecent or obscene representation of a child. Whether the action of the petitioner amounts to an offence under Section 13 is a question to be decided during the time of the investigation. What is now available is only an F.I.R. Whether an offence under Section 13 of the POCSO Act is attracted in this case, is a matter to be decided at the time of the investigation.*
- C. The judgment of the Hon'ble Bombay High Court in **Datta Somnath Jadhav v. The State of Maharashtra Criminal Appeal No. 921 of 2014**, dated 02.11.2018 dealing with offences punishable under POCSO Act and Section 67-B of the Information Technology Act,2000 was also discussed with the participants.
- The Resource Person also discussed the legal framework of digital evidence documentation and concepts pertaining to Primary electronic evidence and legally admissible secondary electronic evidence. The judgment of the Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao & Ors. (2020) 3 SCC 216** on position of law on the point of Section 65-B of the Indian Evidence Act, 1872 was also discussed.

Session III

Recording and Appreciation of Evidences in POCSO Cases & Presumption and Burden of Proof under POCSO Act

By

Mr. Dinesh Tyagi, Registrar (Rules), Rajasthan High Court

- The Resource Person discussed the judgment of **The State of Punjab v. Gurmit Singh & Ors., (1996) 2 SCC 384**, wherein the Hon'ble Supreme Court while dealing with criminal trial of crimes against women elaborated on how the statement of victim is to be recorded and the appreciation of evidence regarding the same. It was held that harassment during cross examination is to be avoided at all costs.
- The Hon'ble Supreme Court in **Sakshi v. Union of India & Ors. (1999) 6 SCC 591**, gave the following directions regarding holding of trial of child sexual abuse or rape:
 - “i) A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;*
 - (ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;*

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required. These directions are in addition to those given in State of Punjab v. Gurmit Singh.”

- Appreciation of evidence has to be seen in the light of presumption. Under the POCSO Act, presumption of a very wide ambit has been cast on the accused under Section 29 of the POCSO Act.
- The participants were also enlightened in great detail on the provisions pertaining to **Vulnerable Witnesses** as provided for under **Order 34 Rule 5 (Appendix L) of the General Rules (Civil & Criminal), 2018**.
- The judgment of the Hon'ble Supreme Court in **State of Kerala v Rasheed, Criminal Appeal No. 1321 of 2018 [Arising out of Special Leave Petition (Crl.) No. 4652 of 2018], delivered on October 30, 2018**, was also discussed with the participants. The Apex Court in this landmark judgment listed out 'practical guidelines' which needs to be followed by the trial courts in the conduct of a criminal trial.
- The judgment of the Hon'ble Delhi High Court in **The State Govt of NCT of Delhi v Khursheed Criminal Application Number 510/2018, dated 07.08.2018**, was also discussed with the participants to explain them the different types of DNA tests.
- The Resource Person stated that recording and appreciation of evidence are both interlinked to one another and the Courts must be attentive in both.
- Some of the important judgments that were discussed for the knowledge enhancement of the participants included:
 - A. **Parminder alias Ladka Pola v. State of Delhi (2014) 2 SCC 592**: Wherein the Hon'ble Supreme Court has held that penetration is not an essential ingredient of rape. Further, sentence cannot be reduced u/s 376(1), IPC without special and adequate reasons.
 - B. **Puran Chand v. State of H.P. (2014) 5 SCC 689**: It has been held by the Hon'ble Supreme Court that relying upon the amended Section 114-A of the Indian Evidence Act, even if there had been a doubt about the medical evidence regarding non rupture of hymen the same would be of no consequence as it is well settled that the offence of rape would be held to have been proved even if there is an attempt of rape on the woman and not the actual commission of rape.
 - C. **In Re: Assessment of The Criminal Justice System In Response To Sexual Offences SMW (CRL.) Nos.04 of 2019 decided on 18 December 2019**: The Hon'ble Supreme Court has held that previous sexual experience and in effect habituation to sexual intercourse is now irrelevant for the purpose of medical examination. It further held that, Forensic examination and report play important role during investigation as well as trial for linking the culprit with crime.
 - D. **Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore (2019) 7 SCC 716**: The Hon'ble Supreme Court in this case has held that *“absence of semen or blood on body of deceased becomes insignificant on DNA matching.”*
- The session also dealt with the judgments of the Hon'ble Supreme Court and High Court of Rajasthan pertaining to age determination in cases of sexual offences, the case laws discussed being:
 - A. **Jarnail Singh v. State of Haryana (2013) 7 SCC 263**: The Hon'ble Supreme Court in this case has held that the date of birth of a juvenile victim entered in the school first attended by the child, if available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon.
 - B. **Tulachha Ram S/o Deepa Ram v. State of Rajasthan (2019) 2 WLN 371**: The Hon'ble Rajasthan High Court in this case dealing with the allegation of rape of a minor has held that age of the victim was more than 18 years at the time of the incident, therefore, the provisions of Protection of Children from Sexual Offences Act were wrongly applied. The Hon'ble High Court relying upon the judgment of the Supreme Court in **Birad Mal Singhvi v. Anand Purohit AIR 1988 SC 1796**, which had held that *“to render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record,*

secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.” The High Court of Rajasthan in this case thus held that a complete mechanism for determination of age of juvenile has now been provided under section 94 of the Juvenile Justice Act (Care and Protection of Children) Act, 2015.

Session IV

Rehabilitation and Compensation for Child Victims of Sexual Offences

By

Mr. Ashwani Vij, District and Sessions Judge, Sawai Madhopur

- The Resource Person discussed with the participants the provisions related to rehabilitation and compensation as provided under the POCSO Act and more specifically under Rules 6 to 9 of the POCSO Rules of 2020.
 - Some of the key initiatives on POCSO Act, 2012 include:
 - I. Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters - Rajasthan General Criminal and Civil Rules, 2018.
 - II. Rajasthan Witness Protection Scheme, 2018.
 - III. Rajasthan Victim Compensation Scheme, 2011 as amended in 2015.
 - IV. Guidelines for Professionals and Experts notified under Section 39 of POCSO Act, 2012
 - V. Judicial Pronouncements pertaining to Child friendly procedure, victim compensation and privacy and confidentiality etc.
 - The Resource Person also discussed with the participants the basic components of a child protection plan; important aspects of rehabilitation and social re-integration of the child and Compensation and factors affecting compensation under the POCSO Act.
 - 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 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.”*
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Session V

POCSO Act Adjudication: Challenges and Solutions

By

Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court & Chairman, RSJA) and Mr. Farzand Ali (AAG, RHC, Jodhpur)

- The Hon’ble Chairman (Rajasthan State Judicial Academy) stressed on the importance of sensitization of all the relevant stakeholders of the judicial system regarding child sexual abuse.

- The Hon'ble Chairman (Rajasthan State Judicial Academy) stated that prosecution must not engage in aggressively questioning the child. There is already an initiative in different districts to make a child friendly room inside the Court premises. The Prosecution Officers must further be trained on the mannerisms of how to talk to a child.
- The Courts must supervise the practice of abortions in cases of child sexual abuse and subsequently the prosecutrix turning hostile. The assistance from police authorities may be sought in such cases to prevent such activities.
- The evils of misuse of the POCSO Act was also discussed with the participants, wherein it was stated that many a times it has been seen that provisions of this legislation are misused by the family members of the victim to claim compensation. It is also seen in as many as 85% of all the POCSO Act cases across Rajasthan, that, the family members pressurize the victim to turn hostile, thereby defeating the object of the Act. The child is merely used as a tool by such families, resulting in lifelong trauma.
- The problem of the child victim facing pressure from family, society, if the accused is known to the victim was also discussed with the participants.
- The Hon'ble Resource Person also discussed the problem of manpower in the courts, such as the lack of translators to help a judicial officer in better understanding the grievance of the child victim.
- The problem of non-receipt of DNA reports in time was also discussed with the participants.
- It was suggested by the participants that Courts dealing with POCSO Act cases need not be additionally burdened with other cases, to help them discharge their duties in the most efficient manner, keeping in mind the sensitivity of the issue.
- The Hon'ble Chairman (Rajasthan State Judicial Academy) stated that what is needed most currently is an innovative result oriented approach by the officials tasked with such responsibility. Further, the Courts must be very conscious in balancing the Rights of the Accused vis-à-vis the Rights of the Victims.

CONCLUSION

“It is the sensitivity of a Judge, which prevents the justice from being a casualty.”

-Hon'ble Supreme Court in State of Punjab v. Gurmeet Singh (1996) 2 SCC 384

ISSUES FACED BY THE JUDICIAL OFFICERS

Some of the issues commonly encountered by the Judicial Officers during POCSO Act cases, that arose for consideration during the course of the workshop include:

1. Non-receipt of DNA/FSL reports on time.
2. Problem of lack of manpower in courts, such as the lack of translators to help a judicial officer.
3. Investigation challenges, especially in cases of cyber-crimes, such as:
 - a) Non-seizure of mobile phones used in the commission of the offence by the I.O. during the investigation,
 - b) Non-collection of the call details from the concerned authorities,
 - c) Not using scientific techniques such as photography, videography etc. during investigation by the I.O. at the time of spot memo, seizing of articles, drawing of samples etc.
4. Victim Turning Hostile in majority of cases primarily due to pressure from the family members/society.
5. Judicial Officers burdened with other cases apart from POCSO Act cases.

LEARNING OUTCOMES FROM THE WORKSHOP

- The workshop provided a forum to participant Judges to discuss how to effectively address sexual abuse and sexual exploitation of children and also some issues regarding Child-Friendly POCSO Court, Recording & Appreciation of Evidence of Victim in cases of child abuse, Challenges in Adjudication by POCSO Courts, and Child Pornography Law etc.
- In addition to the above, as directed, the Judicial Academy requested the Participating Judicial Officers to provide their judgments pertaining to POCSO Act cases decided during the span of last Six (6) months. An extensive study of the judgments provided with, is in progress by the Authority, to analyze as to whether the statutory mandate enshrined under POCSO Act is implemented throughout the State of Rajasthan in its true letter and spirit.

The following suggestions were received during the course of the workshop, which can have long term impacts on the effective implementation of POCSO Act, sensitizing the stakeholders involved and achieving the object of the Act:

1. Courts dealing with POCSO Act cases need not be additionally burdened with other cases, to help them discharge their duties in the most efficient manner, keeping in mind the sensitivity of the issue.
 2. Problem of lack of manpower in Courts should be addressed on an urgent basis.
 3. Courts lack the physical infrastructure necessary to implement the mandate of POCSO Act in its letter and spirit. Necessary infrastructural facilities like Vulnerable Witness Box should be constructed expeditiously.
 4. It was vehemently suggested that a full day training of Judges, Prosecutors and Investigating Officers be organized to help them understand the intricacies of Cyber Crimes.
 5. Investigating officers must be trained in scientific techniques of investigation.
 6. Members of the Bar and society should be sensitized about not misusing the provisions of the POCSO Act, merely to claim compensation.
 7. Initiative in different districts to make a child friendly room inside the Court premises need must be fast tracked.
- Workshop was concluded with a vote of thanks to the Hon'ble Dignitaries and all those who contributed in organizing the workshop.
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