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Report on:

**WEBINAR ON “SENSITISATION OF JUDGES DEALING WITH GENDER SENSITIVE
CASES”**

Held on: 24th August, 2021

Organized by: Rajasthan State Judicial Academy, Jodhpur

Resource Persons:

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Rajasthan State Judicial Academy

- Objective of Rajasthan State Judicial Academy is to educate and sensitise its officers and other stakeholders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”.
- With the restrictions on physical gathering due to the spread of Novel Coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology it is possible to continue imparting knowledge through webinars.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, the RSJA on **24th August 2021** organized a **Webinar for Judicial Officers who have imparted Training in 2000 and 2002 on “Sensitisation of Judges dealing with Gender Sensitive Cases”, from 3:30 pm onwards.**
- The Webinar was conducted under the aegis and guidance of **Hon’ble Mr. Justice Sandeep Mehta** (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy) and was presided over by **Dr. Nidhi Gupta** (Associate Professor, NLU Jodhpur), **Ms. Namita Vashishth** (ADJ No. 2, Kishangarh) and **Mr. Bharat Chugh** (Advocate, Supreme Court of India).
- The webinar witnessed the participation of esteemed Lordship [Chairman, RSJA], Mrs. Nandini Vyas [Director, RSJA], Kamal Chhangani [Addl. Director (Academic), RSJA], Mr. Ganpat Lal Bishnoi [Addl. Director (Admin), RSJA], Mr. Anutosh Gupta [Deputy Director (Academic), RSJA], Mr. Vikas Kaler [Deputy Director (Admin), RSJA] and 54 Special Judges of POCSO Courts, 6 Judicial Officers dealing with Women Atrocities Cases and 61 Additional District Judges (batch 2000 and 2002) serving in various Districts of Rajasthan.
- **Mrs. Nandini Vyas, Director, RSJA** extended gratitude to Chairman Sir, Hon’ble Justice Sandeep Mehta, for his constant support and encouragement

and welcomed the esteemed resource persons and all the participants to the webinar. Ma'am explained the subject for deliberation and requested all the participants to take maximum benefit of this webinar.

SESSION

- **Dr. Nidhi Gupta** started the presentation with the discussion on the *Aparna Bhat v. State of MP* judgment of the Supreme Court, dismissing the MP High Court bail order precedent where *Rakhi* was attached as the bail condition for the accused charged for the offence under section 354 of IPC. Ma'am presented a hypothetical legal problem for the deliberation for which offence has been committed or if there was any offence committed in the problem. **Hon'ble Justice Sandeep Mehta** also participated in the deliberation with all the other participants and presented his observation on the hypothetical problem. Dr. Gupta explained that the objective of presenting a hypothetical problem at the start of the webinar, was to understand that justice has a very wide connotation and what justice can mean to one, may not mean to another. But reasonability and unbiased approach is universal and the process of delivering justice this way, cannot be prejudicial.
- **Ms. Namita Vashishth** gave presentation on how judgments are ought to be written with sensitive and unbiased approach while maintaining the dignity of the Court as an institution. Ms. Vashishth emphasised on the fact that Judges can play a very crucial role in the elimination of the gender disparity existing in the country. But, Ma'am also admitted the fact that Judges are humans as well and while dealing with cases, sometimes, their biases come to play, which needless to say, cannot be excused or made a defence. Ma'am discussed the evolution of the debate on gender equality in India and the constitutional mandate of achieving the same across all the sections of the society in the country.

Ms. Vashishth, while discussing the landmark judgments of the Supreme Court on the subject of gender equality, emphasised on the fact that the

Supreme Court in all these judgments has stressed upon the role of the judicial officers at trial courts in eradicating the gender disparity. Judgments like **Vishakha v. State of Rajasthan** [where, right against sexual harassment at work place was recognised], **Gaurav Jain v. UOI** [where, right to reproductive choices and right to equal opportunity to children of prostitutes were recognised], **State v. Ram Singh** (*Nirbhaya* case) [where, the Court held that no sympathy to the accused be granted for committing a heinous offence], **Laxmi v. UOI** [where, over the counter selling of acid was banned], **Shayara Bano v. UOI** [where, the practice of Triple Talaq was held unconstitutional and in violation of the fundamental rights of Muslim women], **Indian Young Lawyers' Association v. UOI** [where, Sabarimala Temple's custom of excluding women aged between 10-50 years, was held unconstitutional]. Ma'am discussed the very latest observation of the Supreme Court in **Kush Kalra v. UOI** that co-education in defence should not be bar based on gender and passed an interim order for allowing women to appear for NDA Examination 2021.

While discussing the Supreme Court's judgment in **Mathura Gangrape** case, Ms. Vashishth emphasised on the Court's observation on the Trial Court and High Court's judgment, where the plight of the victim was not considered, only because she was sexually active. The Supreme Court in its celebrated judgment on this issue observed that judges should not write judgments where their stereotypes and prejudices play a role in deciding the case, the findings of the case should be unbiased and the language of the judgment should not in any manner display the personal opinion or biases and must at all times maintain the dignity of the court. Ma'am cited the latest judgment of the Bombay High Court in **State of Maharashtra v. Mahadu Dagdu Shinde** where the objectionable language of the trial court same as that in the *Mathura Rape case* was called out by the Court.

In **Nipun Saxena's** judgment, it has been categorically made clear by the Supreme Court that the judgment should not make a disclosure of the identity of the sexual offence victim in any manner. Ms. Vashishth remarked

at the sad state of affairs in the trend of judicial orders that are not adhering to the guidelines, observations and precedents set by the Hon'ble Supreme Court. The Supreme Court has issued guidelines for avoiding gender stereotypes in **Sakshi v. State**. While making the concluding remark, Ms. Vashishth iterated that the presiding officers/judges of courts should ensure that their language is respectful and not derogatory to anyone showcasing their individual stereotypes for judiciary as an institution. It is important that they unlearn their stereotypes and prejudicial thoughts, change their mindset and write an unbiased order and make sure that while considering a bail application, the conditions of bail should have nexus with the offence.

- **Advocate Bharat Chugh** thanked the previous speakers for covering the topic for the session extensively. Adv. Chugh asserted that judgments are the ambassadors of thought. They have a great responsibility on the society. While continuing his presentation, Mr. Chugh cited **Vikas Garg v. State of Punjab** case of Punjab and Haryana High Court, wherein the Prosecutrix was denied to be believed by the court because she was sexually active. Sir also made reference to the trial court judgment in **Tarun Tejpal's** case where apart from appreciating the evidence on record, the trial court also discussed and deprecated the behaviour of the victim after the alleged offence on her. The said court had a stereotypical myth of how the victims of the sexual offence should behave in a certain way. Advocate Chugh also discussed the concept of "consent", Sir reiterated the interpretation of the Supreme Court in various landmark cases that "submission" or "passive submission" does not amount to "consent". Sensitivity while giving the findings of a sexual offence case needs to be adopted by the courts like in the Divorce cases. Advocate Chugh discussed the recurring instances of witnesses turning hostile. In these cases they are generally forced or induced or the parties enter into compromise outside court to change their standing.
- In **Ramphal v. State of Haryana** case, it has been held by the Supreme Court that compromise between the survivor and the accused is of no relevance. It is important that in cases of sexual offences where there is a doubt of such practices, courts should take note of it and make it

inadmissible and aware the prosecution that such practices are inadmissible and instil the confidence in the prosecutrix and the prosecution witnesses for the court. Taking note of the such malpractices by the accused, the Delhi High Court has made 'Sensitive Witness Guidelines' which are for the protection for the prosecution witnesses in these cases. When a query was raised by one of the participants regarding the limited statements recorded by JMFCs under section 164 CrPC of the prosecutrix. Sir agreed with this problem and discussed that in such cases, a bar is created on the prosecution when the victim changes her statement in the court and then neither the presiding judge nor the public prosecutor can question her statement that she made to the Magistrate under section 164 CrPC. Judicial Magistrates need to be extra cautious while recording statements u/s 164 CrPC. With this Advocate Chugh ended his presentation and requested the participants to ask their questions and queries to him.

- **Mrs. Nandini Vyas**, opened the panel for questions and answers and requested the participants to share their best practices where they have stepped up and portrayed the gender sensitive approach towards the victim by leaving their biases behind.
- After the question and answer round, **Mrs. Nandini Vyas**, while addressing all the participants, extended vote of thanks to the resource persons, Dr. Nidhi Gupta, Ms. Namita Vashishth and Advocate Bharat Chugh, for holding the deliberation on the subject and clarifying doubts of all the participants.