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**SENSITIZATION OF SPECIAL PUBLIC PROSECUTORS & POLICE
OFFICIALS DEALING WITH POCSO ACT CASES**

Held on 25th August, 2021

Organised by: Rajasthan State Judicial Academy, Jodhpur

Report prepared by: Heli Pathak

Legal Researcher, Rajasthan High Court, Jodhpur

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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 25th August, 2021 organized a Webinar on 'Sensitization of Special Public Prosecutors & Police Officials dealing with POCSO Act Cases'.
- The Webinar saw a virtual gathering of Presiding Judicial Officers of POCSO Act Courts, Public Prosecutors & Police Officials.
- The Resource Persons for the webinar were:
 - ❖ **Hon'ble Mr. Justice Sandeep Mehta** (Judge, Rajasthan High Court and Chairman, RSJA)
 - ❖ **Ms. Preeti Jain**, Superintendent of Police, Hanumangarh
 - ❖ **Mr. Dinesh Tyagi**, Registrar (Rules), RHC, Jodhpur
 - ❖ **Ms. Alka Bansal**, Judge, POCSO Court No. 1, Bundi
 - ❖ **Ms. Rekha Sharma**, Judge, POCSO Court No. 2, Jaipur Metro II
 - ❖ **Mr. Prahlad Rai Sharma**, Judge, POCSO Court No. 1, Pali

The Webinar commenced at 03:00 P.M. on 25th August 2021 wherein **Mrs. Nandini Vyas** (Director, Rajasthan State Judicial Academy) along with **Mr. Kamal Chhangani** (Additional Director-Academic, RSJA), **Mr. Ganpat Lal Bishnoi** (Additional Director-Admin., RSJA), **Mr. Anutosh Gupta** (Deputy Director-Academic, RSJA) & **Mr. Vikas Kaler** (Deputy Director-Admin, RSJA) and welcomed all the participants and panelists.

- The Webinar subsequently began with deliberations by the Hon'ble Resource Persons.

SESSION I

Investigation of POCSO Cases: Challenges & Solutions

By

Ms. Preeti Jain, Superintendent of Police, Hanumangarh

The Resource Person commenced the session by giving a brief overview of the intent and purpose of POCSO Act and how it contributes in making law more accessible for children. It was further added that the POCSO Act is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative

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assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances.

The major challenge faced by the Investigating Officers is that Guardians of the victims generally do not report such cases. Thankfully the Act provides for mandatory reporting of such cases. The Resource Person further stated that the special feature of the said Act is the concept of “Aggravated Sexual Assault” and explained when the certain section would be applicable.

Police officers have been designated as child protectors during the process of investigation. When the case is registered it becomes the duty of the officer to present the child before the CWC and to provide all the care that is necessary.

The resource person discussed the role of the police officials with regard to the proceedings before the courts and categorically iterated that the identity of the child as well as the family has to be kept in secrecy and not to be revealed. Further the process has to be made child friendly and it has to be kept in mind that between the proceedings of investigation authority and the Learned Courts the victim is not subjected to repeated abuse or secondary victimization leading to trauma.

The resource person further discussed the essentials of the investigation and the compliance of the Standard Operating Procedure issued by the Ministry of Women and Child Development which requires the FIR to be lodged without any delay and further provides guidelines to the Investigation Officer to interact with the victim in civil clothes and have sensitivity towards the victim.

The resource person also highlighted the need to collect the medical samples within a period of 24 hours so that the same can be sent for examination at the earliest. The need for coordination between various departments was also highlighted so as to provide the victim with compensation and regular reports can be submitted in this regard before the Trial Courts.

The importance of the Test Identification Parade was also stressed as being quintessential and it was highlighted to strictly comply with the timeline to submit the charge sheet within 60 days as enshrined under law.

Resourceful Inputs by Hon’ble Justice Sandeep Mehta, Judge, Rajasthan High Court

The Hon’ble Resource Person highlighted that the foundation of the criminal trial is the investigation. That an important role during the investigation is also played by the Public Prosecutor to further mold and guide the direction of the investigation.

The Hon’ble resource person suggested that at the stage of remand of the accused the Public Prosecutor is required to examine the entire material as well as the case diary and share his input with the investigation authority. The Hon’ble resource person further stressed minute ways wherein we need to be aware of victim sensitization and the Hon’ble resource person shared an example of Rajsamand District Court wherein the way of entrance and exit being common for both the accused and victim and hence it was possible to cross each other and facing trauma to the victim.

The Hon’ble resource person also highlighted that in cases of unwanted pregnancies and abortion the remains of the aborted fetus can be examined for

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DNA traces and the said technology can be beneficial to provide foolproof evidence.

The Hon'ble Resource person has also stressed the need for developing child friendly rooms in the Court premises in the available resources.

The Hon'ble resource person also stressed the need to develop the trust of the child and gain his/her confidence in the entire process of investigation as well as trial and not to formalize the interaction with the child.

SESSION II

Collection of Evidence and Challenges Faced

By

Mr. Dinesh Tyagi, Registrar (Rules), RHC, Jodhpur

The resource person focused upon the challenges faced in regard to collection of biological evidence and preserving the sample till it reaches the investigation laboratory and simple issues like maintaining the temperature of the sample so as to not destroy the sample.

The resource person highlighted that DNA examination and its report is one of the most clinching piece of evidence which stands the test of Section 29 and 30 of the Indian Evidence Act. The resource person further highlighted the importance of age determination of the victim and its procedure. The resource person highlighted the need of collection of matriculation certificate of the victim in compliance of Section 94 of the Juvenile Justice Act 2015. The role of Public Prosecutors was also highlighted to ensure the collection of these documents.

The resource person discussed the cases of the Hon'ble Supreme Court as well as the Hon'ble Rajasthan High Court, some are as follows:

V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 588: The Hon'ble Supreme Court in this case held that Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC.

Birad Mal Singhvi v. Anand Purohit AIR 1988 SC 1796: The Hon'ble Supreme Court in this case 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.

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SESSION III

Role of Special Public Prosecutor at the Pre Trial Stage and Trial Stage

By

Ms. Alka Bansal, Judge, POCSO Court No. 1, Bundi

The resource person discussed the type of evidence and categorisation of same into 4 segments namely age related, medical related, direct evidence arising out of statement of victim and scientific evidence.

The resource person discussed the application of section 94 of Juvenile Justice Act 2015 in light of judgement passed by the Hon'ble Supreme Court in Jarnail Singh case.

The resource person stressed on the importance of matriculation mark sheet as well as Transfer certificate for proving the age of the victim.

The resource person discussed the following case laws in support of her presentation:

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.

The resource person also highlighted that the name of person issuing the age certificate should also be mentioned in the charge sheet.

The resource person also stressed the need for training the persons recording the statement of the victim in light of Chapter VI of the POCSO Act. The resource person also stressed that scientific evidence should be handled carefully and led by example that in case of obscene pictures where IP address is not traced then hard disk should be recovered. Also mandate of certificate under S. 65B of Indian Evidence Act was stressed upon, as prescribed by the Hon'ble Supreme Court in the **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.** AIR 2020 SC 4908.

SESSION IV

Role of Investigation Authority to Ensure Stronger prosecution Case

By

Ms. Rekha Sharma, Judge, POCSO Court No. 2, Jaipur Metro II

The resource person while discussing the aspect of delay in registration of FIR opined that the delay should be explained at the time of registration of FIR itself.

The resource person further discussed that in case of missing person report being lodged and details not being provided in details the investigation authority after discovery of corpus should examine her with regard to of offence if committed on her or not.

The resource person also stressed that certificate under Section 65 should be taken compulsorily where mandated.

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SESSION V

**Coordination of Special Public Prosecutor at the Pre Trial Stage and
Investigation Authority**

By

Mr. Prahlad Rai Sharma, Judge, POCSO Court No. 1, Pali

The resource person discussed the need to link evidence more particularly careful preparation of secondary evidence.

The resource person also elaborated upon the importance of preparation of charge sheet under Section 173 and the submission of all relevant documents.

The resource person stressed that list of witness should be prepared cautiously and every witness be explained the documents to be proved by him.

The resource person discussed the issue with regard to non-maintenance of the malkhana record leads to credibility of evidence.

The webinar concluded with an interactive session consisting of a question and answer round which lead to various valuable inputs not only by the panelists but also the participants pertaining to dealing of victims and their families in POCSO cases. This led to a highly fruitful understanding of the intent of the law and precautions to be taken by the administrative wing in implementing such a law to sensitive situations. It was followed by a vote of thanks delivered by **Mrs. Nandini Vyas** to the Hon'ble Dignitaries and to all those who contributed in organizing the workshop.