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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN
MINISTRY OF LAW AND JUSTICE

NOTIFICATION

Islamabad, the 14th February, 2023

S. R. O. 186(I)/2023.—In exercise of powers conferred by sub-section (1) of section 19 of the Anti-Rape (Trial and Investigation) Act, 2021 (XXX of 2021), the Ministry of Law and Justice, upon the recommendations of the Special Committee, is pleased to make the following rules, namely:-

CHAPTER-I

Preliminary

1. **Short title and commencement.**—(1) These rules shall be called the Anti-Rape (Trial Procedure) Rules, 2022.

(2) These rules shall come into force at once.

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2. **Definitions.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

- (a) “Act” shall mean the Anti-Rape (Investigation and Trial) Act, 2021 (No. XXX of 2021).

3. **Scheduling of trial.**—(1) After framing the charge, on the first day when a case is received for trial, a scheduling hearing shall be held with all parties’ counsel. A trial schedule shall be issued, which shall specify the dates for each stage of the trial. The counsel of victim and accused and the special prosecutor shall be taken on board while scheduling the trial.

(2) For convenience, days may be earmarked for lawyers when scheduling a trial. The Judge exercising jurisdiction of the concerned Special Court shall issue a trial scheduling certificate.

(3) The original trial scheduling certificate shall be placed in the case file and copies thereof shall be supplied to the victim and the defense counsels, the special prosecutor, and the Court’s Information Technology (IT) wing.

(4) While managing its diary, the Special Court concerned shall prioritize a trial case according to the dates filed and shall hear previously filed cases first.

(5) A Special Court having jurisdiction to try cases of scheduled offences shall not schedule more than three cases for trial at a time.

(6) The special prosecutor shall confirm to the Special Court concerned availability of witnesses, evidence and expert reports three days before commencement of the trial.

CHAPTER-II

Conduct of Trial in Special Courts

4. **First hearing (1).**—On the first hearing, the Special Court shall—

- (a) issue the trial schedule certificate;
- (b) hear and preferably settle all technical and legal issues affecting maintainability, form and jurisdiction, etc.;
- (c) establish modalities and technicalities of how the trial shall run to reduce delays;
- (d) decide upon the *modus operandi* for recording evidence, whether through the ordinary procedure or via alternative ways, which may include:

- (i) use of a screen within the courtroom so that the victim is not able to see the defendant;
 - (ii) removal of the accused from the courtroom towards an appropriate place outside the courtroom where the victim is not physically present; or
 - (iii) use of video link or similar electronic means etc.
- (e) ensure the attendance of an independent support advisor, if appointed;
 - (f) assess and address the need for interpreters or any other special arrangement related to the different-ability of a victim or the fact that the victim is a child;
 - (g) assess and address the need for any protection order for the victim or any vulnerable witness;
 - (h) assess and address the need for any other special protection mechanism to be put in place as per law;
 - (i) verify the witness availability; and
 - (j) address any other pre-trial applications.

5. **Procedure for trial.**—(1) Upon commencement, the trial shall continue to proceed preferably on a day-to-day or weekly basis.

(2) The Court shall not grant more than two adjournments during the trial of a case, out of which one adjournment shall be upon payment of costs by the person seeking adjournment.

(3) Upon commencement of the trial, if the accused person does not have a counsel, the statement of the witnesses shall nevertheless be recorded. The accused person shall be asked if he or she wishes for a defense counsel to be appointed by the Special Court. If the accused gives consent, the Special Court shall appoint a defense counsel with at least seven years of standing in criminal matters. The Special Court may issue an order regarding the payment of the defense counsel based on the income and economic standing of the accused person.

(4) If the defense counsel does not appear after two consecutive adjournments for which there is no sufficient cause the Special Court may appoint another defense counsel with at least seven years of standing in criminal matters. In case the accused is unable to afford the fee of the advocate appointed

by the Special Court, the matter may be referred to the concerned District and Sessions Judge for providing legal assistance from the funds available under the head of the relevant district free legal aid committee.

(5) On conclusion of the trial's arguments, the judgment shall be announced immediately or not later than three working days.

6. **Court environment.**—(1) The Special Court shall provide a conducive trial environment, which protects all parties, including the victim from secondary victimization and takes into consideration the victim's specificities such as age, gender, mental state, different abilities.

CHAPTER-III

Recording of Evidence

7. **Examination of the victim or witness.**—(1) The Judge of the Special Court may adopt appropriate measures for examination of victim or witness. This includes but is not limited to:

- (a) use of screens;
- (b) examination to be conducted in camera;
- (c) examination to be conducted with no one present in Special Court except the essential staff, including the accused or his representative; and
- (d) use of video-link where the victim is sitting in the video-link testimony room in or outside the courtroom notified by the concerned High Court.

(2) The data regarding the video link testimonies obtained during the virtual hearings of cases, shall be transmitted to the relevant authority *via* an encrypted copy of the video recording of the victim's evidence, and kept as part of the Special Court's record.

(3) Transcript of the victim's oral testimony *via* the video-links shall be produced in Special Court, in the presence of the Judge after the evidence is recorded. The transcript shall be read over and signed by the victim on conclusion of the hearing.

(4) The Judge shall ensure that the language used throughout the trial and especially during the examination, cross-examination and re-examination of witnesses, particularly the victim, shall be gender-sensitive taking into

consideration the victim's age, educational level, cultural background, physical or mental disability.

(5) The Judge shall intervene with the examination or cross-examination of the victim where scandalous questions are being asked as per Article 146 *Qanun-e-Shahadat*, 1984. In respect of any scheduled offence, any evidence to show that the victim is generally of immoral character, shall be inadmissible.

(6) The Judge may intervene to limit the questions asked to the victim where appropriate and direct the lawyer not to ask repetitive questions when answers have already been provided.

(7) Any objection by either party to questions being asked by the opposing lawyer and its decision shall be noted and placed on record.

(8) The whole of the evidence of the victim, including examination, cross-examination and re-examination, as far as possible to be conducted on the same day.

(9) The Court shall allow a support person of the victim's choice and upon consent that shall be documented in writing, to be present during the trial.

(10) Where the victim gives evidence from the video-link testimony room, any documents *e.g.*, photographs, sketches, written statement, letters should be made available in the video-link.

(11) If the victim does not attend the Court on the day set for recording the victim's evidence, the case may be adjourned to another date and further summons maybe issued for the victim's attendance.

(12) If further summons is so issued, then the Judge should give directions on the manner in which the victim is to be brought to the Court, to ensure this is undertaken sensitively.

(13) If the victim does not appear in the Court to participate in the trial or give evidence, or if the victim accepts a compromise outside of the Court in a non-compoundable offence, the prosecution shall regardless still proceed with the trial.

8. Court's power to ask question, call witness etc.—Powers as provided under Article 161 *Qanun-e-Shahadat*, 1984 and section 540 in the Code of Criminal Procedure, 1898 shall be exercised to avoid any technical flow which may result in unnecessary cause of acquittal.

CHAPTER-IV

Use of Video Conferencing

9. **Recording of evidence through video conferencing.**—(1) Video conferencing facilities may be used at all stages of the judicial proceedings and proceedings conducted by the Court.

(2) All proceedings conducted by a Special Court *via* video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical Court shall apply to these virtual proceedings.

(3) All relevant provisions applicable to the judicial proceedings including provisions of *Qanun-e-Shahadat*, 1984 (P.O 10 of 1984) shall if not inconsistent with the provisions of the Act apply to proceedings conducted *via* video conferencing.

(4) Subject to maintaining independence, impartiality and credibility of the judicial proceedings and subject to such directions as the High Court may issue, the Court may adopt such advanced technology whenever available.

(5) There shall be no recording, publishing or broadcasting in relation to any proceedings under the Act except with the permission of the Special Court.

10. **Facilities recommended for video conferencing.**—The following state of the art equipment and information communication technology gadgets are recommended for conducting proceedings *via* video conferencing at the Court Point and the Remote Point:

- (a) desktop, laptop, mobile devices with internet connectivity and printer;
- (b) device ensuring uninterrupted power supply, in case of load shedding an alternative electricity source such as UPS or generator;
- (c) camera;
- (d) microphones and speakers;
- (e) display unit;
- (f) document visualizer;
- (g) adequate seating arrangements ensuring privacy;
- (h) adequate lighting; and

- (i) availability of a quiet and secure space.

11. **Coordinator for video conferencing.**—(1) There shall be a Coordinator physically present at the remote point from where a person is to be examined or heard.

- (2) The Coordinator at the Remote Point may be any of the following:

- (a) an official of Pakistani Consulate authorized by High Commissioner or the Ambassador;
- (b) an authorized official nominated by the concerned Sessions Judge;
- (c) the concerned Jail Superintendent, officer in charge of prison or his nominee;
- (d) medical Superintendent, officer in-charge of the Hospital or his nominee;
- (e) the Superintendent or person in-charge of that facility or his nominee; and
- (f) any person appointed by the concerned Court who is deemed fit and proper to render services as a Coordinator to ensure that the proceedings are conducted in an impartial and independent manner and according to directions issued by the Special Court in that behalf.

[File No. 2(2)/2022-AC(R).]

J. R. SULTAN,
Section Officer (AR).