

# POCSO AND POLICE





# POLICE-COULD BE CHILD'S BEST FRIEND OR HIS/HER WORST ENEMY

- ▶ LAW TRIES TO DEAL WITH THE HISTORICAL PROBLEMS AND STILL ENVISION A DIFFERENT RELATIONSHIP BETWEEN CHILDREN AND POLICE.
- ▶ POC SO LAYS DOWN A WHOLE SET OF GUIDELINES AND PROCEDURES TO TRANSFORM THE POLICE-CHILD VICTIM RELATIONSHIP AND AT THE SAME TIMES LAYS DOWN SOME STRINGENT PROVISIONS TO ENSURE ACCOUNTABILITY.
- ▶ POLICE ARE THE PUBLIC FACE OF THE STATE AND HOW STATE TREATS ITS CHILDREN WILL IN A LARGE MEASURE DETERMINE WHETHER THE ACT SUCCEEDS IN ITS TRANSFORMATORY VISION OF CHANGING THE WAY WE SEE OUR CHILDREN AS AUTONOMOUS BEINGS WITH RIGHTS RATHER THAN DEPENDENTS TO PROTECT.



# Child friendly procedures for Police

Copy of FIR to be given free of cost to the complainant or the parent/guardian if they have made the complaint.

Inform child/guardian/parents or the person in whom the child has trust that that the child has right to be assisted and represented by a lawyer of his choice (Rule 4(2)(f).) This right applies from before making the statement to Police till end of case.


Police should also inform re support services such as counselling as Rule 4(2) and help them access such services if so required or desired by the child.

FIR in simple language so the child can understand it .S19(3)



# Child Friendly procedures contd

- ▶ In case FIR recorded in a different language to that which child knows, a translator must be provided to explain contents of FIR to child.S.19(4).
- ▶ Child's statement to be taken at the child's residence or at a place where the child is comfortable in presence of someone child trust usu. Parents or guardian.( section 24).



## Rule 4- about accountability/right of a child victim.

- ▶ 4. Care and Protection – (1) Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving report of such information shall forthwith disclose to the person making the report, the following details:- (i) his name and designation; (ii) the address and telephone number; (iii) the name, designation and contact details of the officer who supervises the officer receiving the information.

# Rule 4(2)

(2) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

- (a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;
- (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;
- (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;
- (d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;
- (e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;
- (f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.



# DUTIES OF POLICE





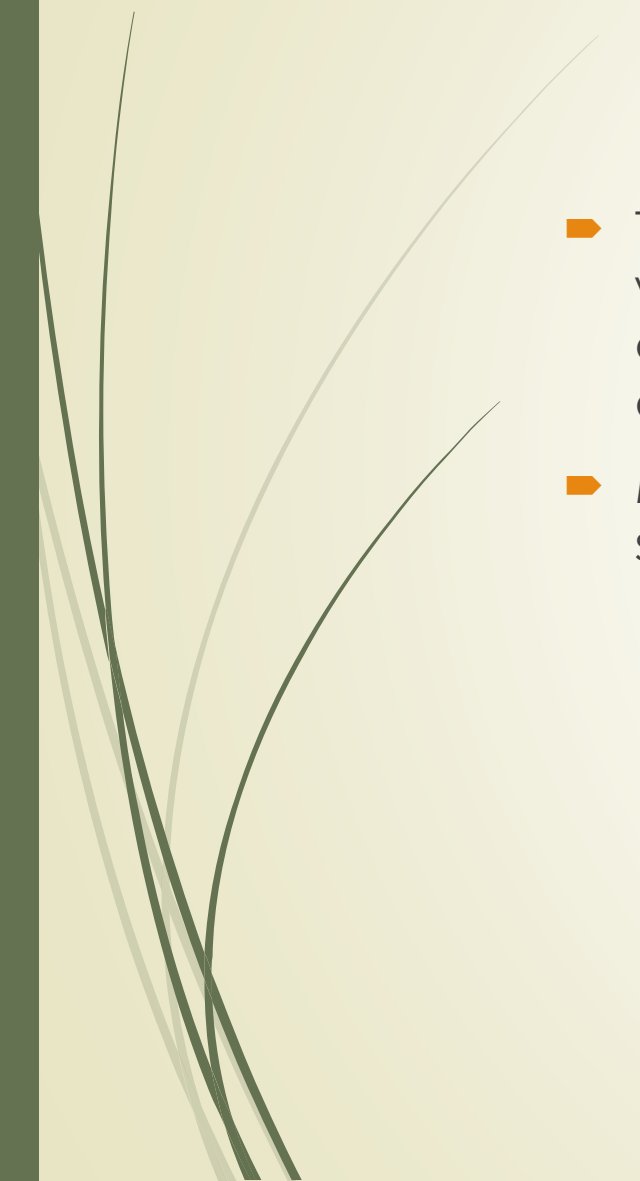
# Emergency Medical Examination

- ▶ Assess the need for emergency medical intervention plus if required take the child to the nearest medical facility-does not matter if the nearest facility is not a govt.hospital-Private hospitals are duty bound to give emergency treatment –if they don't they can be prosecuted under **section 166 B of the IPC. Also, no need to register FIR first0section 19(5), Rule 4(2)(b)(c) and rule 5.**
- ▶ Nirbhaya's case-loss of time fatal.
- ▶ Other cases, battles over jurisdiction have led to delay in filing of case





# Duty to arrange Medical Examination

- ▶ The SJPU/POLICE are duty-bound to take victim for medical examination within 24 hours of receiving the report –Medical examination must be conducted irrespective of the FIR or Complaint of the offence-section 27(1) and see section 164 A of CrPC
  - ▶ Medical examination to be done accordance with section 27. Important section-lets read it together.
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Medical  
examination  
of a child.

27. (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

2 of 1974.

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

## **Section-164 A of Cr.P.C.- Medical examination of the victim of rape.**

### **164 A. Medical examination of the victim of rape. –**

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-

(I) the name and address of the woman and of the person by whom she was brought;

(II) the age of the woman;

(III) the description of material taken from the person of the woman for DNA profiling;

(IV) marks of injury, if any, on the person of the woman;

(V) general mental condition of the woman; and

(VI) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report



# POCSO- Rule 5

- ▶ 5. Emergency medical care –
- ▶ (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care: Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.
- ▶ (2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.
- ▶ (3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).



PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

Recording of statement of a child.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

2 of 1974.

25. (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Recording of statement of a child by Magistrate.

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

26. (1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

Additional provisions regarding statement to be recorded.



# POCSO- RULE 12

(12) The information to be provided by the SJPU, local police, or support person, to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victims' compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;



# POCSO –RULE 12.

(vi) the filing of charges against a suspected offender;

(vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;

(viii) the bail, release or detention status of an offender or suspected offender;

(ix) the rendering of a verdict after trial; and

(x) the sentence imposed on an offender.

## SECTION 21- ACCOUNTABILITY OF SOCIETY AND POLICE VERSUS AGENCY OF SURVIVOR AND HIS/HER CARERS.....

Special Juvenile Police Unit, or to the local police, as the case may be.


21. (1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

22. (1) Any person who makes false complaint...





Bangalore police file FIR against officer who allegedly attempted to dilute charges in rape case-SOURCE

:<http://www.thenewsminute.com/karnatakas/82>

POSTED ON THURS JULY 2014

- ▶ M Mohammed Rafi with the Fraser Town police station was accused of toning down the complaint of the post-graduate students who was kidnapped outside her house and sexually assaulted by a group of men.
- ▶ When she went to the police station to file a complaint, Rafi allegedly told her to water down the complaint and asked her not to insist on including rape as one of the charges. The case had initially been registered under Sections 341 (wrongful restraint), 384 (extortion), 34 (acts done with a common intention), 323 (hurt), 354 (use of force to outrage a woman's modesty) of the Indian Penal Code. Of all the sections, Section 384 carries the maximum sentence of three years. After public outrage, charges of rape were included.
- ▶ The Bangalore police have now filed a case against him under Sections 166A of the Indian Penal Code which relates to public servant disobeying the law with intent to cause injury to any person. He has been accused of revealing the identity of the woman to the media.
- ▶ - See more at: <http://www.thenewsminute.com/karnatakas/82#sthash.p0BVTrQp.dpuf>

## Bangalore inspector who delayed filing rape case arrested – Posted by Indian Express Bangalore on July 19<sup>th</sup> 2014.

- ▶ The Bangalore police on Friday arrested inspector Mohammed Rafique for negligence of duty after he allegedly delayed the registration of a sexual assault case filed by a 22-year-old post-graduation student in east Bangalore last week. His arrest came amid pressure from the opposition BJP in the state assembly. The inspector was first suspended Wednesday for watering down charges in the initial FIR filed at Pulkeshinagar police station. On Thursday, the police filed a case against him under the recently created Section 166 A of the IPC ..
- ▶ The 22-year-old was allegedly kidnapped and sexually assaulted last Thursday by a group led by Nasir Hyder (24), the son of local BSP leader Sheikh Bahadur. The victim was with a male friend in a car outside her apartment complex when the youths approached them pretending to be police officers-They then forced the couple to drive around with them in the car, following which Hyder allegedly sexually assaulted her.

# LAST BUT BY NO MEANS LEAST-PLEASE NOTE

Insertion of new sections 166A and 166B.

Public servant disobeying direction under law.

3. After section 166 of the Penal Code, the following sections shall be inserted, namely:—

“166A. Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

2 of 1974.