

**Circular No. 10/2013**

**Sub: - The Criminal Law (Amendment) Act 2013 - Instructions Issued**

The Criminal Law (Amendment) Act 2013 substantially amends the Indian Penal Code, Criminal Procedure Code 1973, Indian Evidence Act 1872 and the Protection of Children from Sexual Offence Act 2012. The new Amendment Act has come into force on 3<sup>rd</sup> February 2013. Some important amendments of which the police should take due note, are dealt with under the following heads. All police officers should be conscious of these amendments, while investigating cases.

**I. Amendments to the Indian Penal Code**

- 1. Right of Private Defence:** - Section 100 has been amended by inserting seventh proviso that "An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act".
- 2. Offence by Public Servant / Hospital Authorities:** - After Section 166, Section 166A has been inserted which deals about a Public Servant who disobeys the direction under law and also prescribes rigorous imprisonment for minimum six months which may extend to two years and fine. Section 166B has been inserted which prescribes imprisonment for one year or fine or both for a person in charge of a hospital, public or private, for non treatment of victim.
- 3. Disclosure of Identity of Witness:** - In Section 228A, Sub-Section (1) has been amended by adding Section 376E also which deals with punishment for repeat offenders.
- 4. Voluntarily causing grievous hurt by use of acid etc:-** After Section 326, Section 326A has been inserted which deals with voluntarily causing grievous hurt by use of acid etc and also prescribes punishment with imprisonment for not less than 10 years but which may extend to imprisonment for life and with fine to be paid to the victim. Section 326B has been inserted which deals with voluntarily throwing or attempting to throw acid and also prescribes punishment with imprisonment for five years but which may extend to seven years with fine.

5. Assault or criminal force to woman with intent to outrage her modesty: - Section 354 which deals with assault or criminal force to woman with intent to outrage her modesty has been amended by enhancing the punishment for imprisonment of one year which may extend to five years and with fine. After Section 354, Section 354A has been inserted which deals with sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pornography against the will of a woman and prescribes imprisonment which may extend to three years or with fine or with both. For making sexually coloured remarks the punishment is imprisonment which may extend to one year, or with fine, or with both. Section 354B has been inserted which deals with assault or use of criminal force to woman with intent to disrobe and prescribes punishment with imprisonment of not less than three years but which may extend to seven years, and with fine. Section 354C has been inserted which deals with voyeurism and prescribes imprisonment of not less than one year, but which may extend to three years, and with fine for first conviction and imprisonment of not less than three years but which may extend to seven years and with fine for second or subsequent conviction. Section 354D has been inserted which deals with the offence of stalking and prescribes punishment for imprisonment up to three years and with fine for first conviction and imprisonment up to five years and with fine for second or subsequent conviction.

6. Trafficking of person and exploitation of a trafficked person: - For the present Section 370, new Sections 370 and 370A have been substituted which defines the offences of trafficking of person and exploitation of a trafficked person and prescribes separate punishment for the offences such as trafficking a person, trafficking of more than one person, trafficking of minor, trafficking of more than one minor etc.

7. Sexual Offence:- The present Sections 375, 376, 376A, 376B, 376C and 376D which deals with sexual offences have been substituted with new Sections 375, 376, 376A, 376B, 376C, 376D redefining the offences with substantial changes and also inserted a new Section 376E. Section 375 redefines the offence of rape and Section 376 prescribes punishment for rape. As per Sub Section (1) of Section 376, person commits rape except in cases provided for in Sub Section (2) shall be punished with rigorous imprisonment of not less than seven years, but which may extend to imprisonment for life, and with fine. Sub Section (2) of Section 376 prescribes the punishment for rape by a Police Officer or

a Public Servant or Member of Armed Forces or a person being on the Management or on the Staff of a Jail, remand home or other place of custody or women's or children's institutions or by a person on the Management or on the Staff of a Hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped shall be punished with rigorous imprisonment of not less than ten years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, and with fine. Section 376A deals with a person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state and the punishment is rigorous imprisonment of not less than twenty years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death. Section 376B deals with sexual intercourse by husband upon his wife during separation and prescribes punishment with imprisonment for not less than two years but which may extend to seven years with fine. Section 376C deals with sexual intercourse by a person in authority and prescribes punishment with rigorous imprisonment for not less than five years but which may extend to ten years and with fine. Section 376D deals with gang rape and prescribes punishment with rigorous imprisonment for not less than twenty years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim. Section 376E deals with punishment for repeat offenders and prescribes punishment with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.

**8. Insult to the Modesty of Woman:** - Section 509 has been amended by enhancing the punishment for three years simple imprisonment and with fine.

## **II. Amendment to the Code of Criminal Procedure, 1973**

**1. Court by which the offence is triable:** - The newly inserted section 376E IPC has been included in the proviso to clause (a) of Section 26, which deals the courts by which the offences are triable.

**2. Identification of Person Arrested:** - In Section 54A provisos have been inserted, that if the person identifying the person arrested is mentally or physically disabled, the process of identification shall take place under the supervision of a Judicial Magistrate and such identification process shall be video graphed.



**3. Information to be recorded by a woman officer:** - It is also provided that in Section 154 provisos have been inserted stipulating that if the information is given by the woman against whom an offence under Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E, or 509 of IPC is alleged to have been committed or attempted, such information shall be recorded by a woman police officer or any woman officer. In the event that the person against whom an offence under the above mentioned under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator and the recording of such information shall be videographed. The police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of Sub - Section (5A) of Section 164 as soon as possible.

**4. Police Officer's Power to require attendance of witness:** - Section 160 has been amended that no police officer can require attendance of a witness if he is a male under the age of fifteen years or above the age of sixty five years or a woman or a mentally or physically disabled person at any place other than the place where such person resides.

**5. Statement to be Recorded by a Woman Officer:** - Section 161 has been amended by inserting one more proviso stating "that the statement of a woman against whom an offence under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer".

**6. Recording of Statement by Magistrate:** - Section 164 has been amended by inserting Sub Section (5A) (a), that when an offence as stated in that Sub Section has been committed and as soon as the commission of the offence is brought to the notice of the police, the Judicial Magistrate shall record the statement of the victim in the manner prescribed in sub Section 5. It is also provided that the Magistrate shall take assistance of an interpreter or special educator if required. In such cases that shall be videographed.

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**7. Report of Police Officer on Completion of Investigation:** - In Sub Section (2), in sub clause (h) of clause (i) of Section 173 has been amended by adding Section 376E of Indian Penal Code also.

**8. Prosecution of Public Servants - Sanction not required:** - Section 197 which deals with prosecution of public servants has been amended by adding an explanation that no sanction shall be required for the prosecution of a public servant accused of any offence alleged to have been committed under Sections 166A, 166B, 354, 354A, 354B, 354C, 354D, 370, 375, 376, 376A, 376C, 376D, 509 of Indian Penal Code.

**9. Prosecution of Offence Under Section 376B of Indian Penal Code:** - After Section 198A Section 198B has been inserted stating that no court shall take cognizance of an offence punishable under Section 376B of the Indian Penal Code where the persons are in marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.

**10. Evidence to be taken in the Presence of Accused:** - Section 273 has been amended by inserting a proviso that the court may take appropriate measures to ensure that where the evidence of a woman below the age of eighteen years is to be recorded, such woman is not confronted by the accused and at the same time ensuring the right of cross examination of the accused.

**11. Day to Day Trial:** - Section 309 has been amended by substituting a Sub Section for Sub Section (1) and a proviso that in every enquiry trial shall be continued from day to day until all the witnesses in attendance have been examined.

**12. In Camera Trial:** - The new Section 376E of Indian Penal Code has also been included under Section 327(2) which prescribes In Camera Trial.

**13. Victim Compensation Scheme/Treatment of Victims:** - After Section 357A, Section 357B has been inserted stating that compensation payable by the State Government shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of Indian Penal Code. Section 357C has also been inserted that all hospitals, public or private, whether run by the Central Government, the State government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A, 376B, 376C,

376D or Section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

**14. Amendment of First Schedule:** - Consequent to the above amendments necessary changes have been made in the First Schedule to the Code of Criminal Procedure, under the heading "1- Offences under the Indian Penal Code".

**III. Amendments to the Indian Evidence Act – 1872**

**1. Previous character not relevant:** - Section 53 has been amended by inserting Section 53A stating that evidence of character or previous sexual experience is not relevant in a prosecution for an offence under sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D and 376E of IPC or for attempt to commit any such offence.

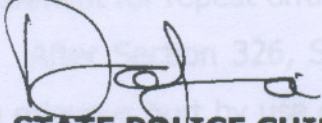
**2. Presumption as to absence of consent:** - For the present Section 114A a new Section has been substituted which deals with presumption as to absence of consent in certain prosecution for rape.

**3. Dumb Witness:** - For the present Section 119 a new Section 119 has been substituted which deals with witness unable to communicate verbally.

**4. Questions lawful in cross examination:** - The present proviso of Section 146 has been substituted with a new proviso.

**IV. Amendment to the Protection of Children from Sexual Offences Act 2012.**

**Alternate Punishment:** - For the present Section 42, new Sections 42 and 42A have been substituted. The Section 42 provides that the offender found guilty that such offence as stated in the section shall be liable to punishment under Protection of Children from Sexual Offences Act or under the IPC as provides for punishment which is greater in degree.

  
**STATE POLICE CHIEF**  
**KERALA**  
23/4/13

To

All Officers in List 'B' for information and necessary action.

Copy to: CAs of all Officers in Police Headquarters for information  
" " LA, Manager, Police Headquarters for information  
" " All SSS and JSs, PHQ/RAC/Stock File/Record Keeper.

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