

No. U1 / 14771 /2010  
Police Headquarters,  
Kerala, Thiruvananthapuram.  
Dated: 18 /02 /2010.

**CIRCULAR No. 09 /2010.**

Sub:- Code of Criminal Procedure (Amendment) Act, 2008 – Changes in Police procedure – Instructions issued – regarding

The provisions of the Code of Criminal Procedure Code (Amendment) Act, 2008 have been notified by S.O. 3313 (E) dated 30-12-2009 of Ministry of Home Affairs and have come into force on December 31, 2009. The Act which substantially amends the Code of Criminal Procedure Code, 1973 contains 32 sections. All sections except Sections 5, 6 (both relating to amendments to Section 41- Power of police to arrest without warrant) and 21(b) (relating to Section 309 – Power to postpone or adjourn proceedings) have been notified. Some amendments of which we should take due note are dealt with under the following heads:-

**I. AMENDMENTS RELATING TO ARREST:**

- a) MANNER OF ARREST:- Section 46 has been amended by adding proviso to sub section 1 which prescribes that the **“where a women is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest is presumed”** and “unless the circumstances otherwise require or unless the police officer is a female, the police officer **shall not touch the person of the woman for making her arrest.**”
  
- b) MEDICAL EXAMINATION:- Section 54 in the pre-amended Cr PC required examination of arrested person by a medical practitioner at the request of arrested person on production before a Magistrate. The substituted Section 54 states that “when any person is arrested, he **shall be examined** by a medical officer in the service of Central or State Governments and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner. The medical officer so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested and the approximate time when such injuries or marks may have been inflicted. Where such an examination is made, a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case maybe, to the arrested person or the person nominated by such arrested person.” **In essence, Section 54 mandates compulsory medical inspection in all cases of arrest by the police. A copy of the medical report is to be provided to the arrested person or his nominee.**

- c) POLICE RESPONSIBILITY FOR SAFETY:- Section 55A has been incorporated. It bestows upon the person having custody of the accused, the duty to take reasonable care of the health and safety of the accused. **Thus the police are duty bound to take all reasonable care of the health and safety of the accused in custody.**

## II. DETENTION OF ACCUSED:

In sub clause (b) of the proviso to Section 167 (2), amendment has been incorporated making it mandatory that the detention in police custody of the accused will be authorised only on physical production of the accused. **Significantly detention in judicial custody can be extended by the production of accused either in person or through the medium of electronic video linkage.** The amendment further mandates that the production of accused persons before the magistrates directly or through the video linkage is to be proved by the signature of the accused on the detention order or by the order certified by the magistrate as to the production of the accused person through the medium of electronic linkage, as the case may be.

## III. STATEMENT OF WITNESSES:

Section 161(3) has been amended with a proviso which enables 161 statement taken by the police to include recording by audio, video or electronic means. **Thus legal sanction has been accorded to the preparation of an electronic record of the statement of witnesses under S.161 in the CrPC, in keeping with changes in the Indian Evidence Act and Information Technology Act, 2000.**

Section 164(1) has also been amended by permitting electronic recording by audio-video means of the statement/confession recorded under the section before a magistrate as long as it is in the presence of the advocate of the person accused of an offence.

Section 275 which deals with recording of evidence of witnesses in warrant cases has been amended providing for the evidence to be recorded by audio/video means in the presence of the advocate of the person accused of the offence.

Section 242 which deals with prosecution evidence in trial of warrant cases instituted on a police report by magistrates has been amended by providing that the magistrate shall supply, in advance to the accused, the statements of witnesses recorded by the police.

## IV. CASE DIARY:

Section 172 has been amended making it mandatory for the **statement of witnesses recorded during the course of investigation to be inserted in the case diary. The case diary has also to be duly paginated and in a volume.**

## **V. INVESTIGATION OF OFFENCES RELATING TO WOMEN:**

Section 26 of the Code of Criminal Procedure, 1973 has been amended by prescribing that the offences under sec. 376 and 376 A to D of IPC, are to be tried, as far as practicable, by a court presided by a woman.

Section 157 has been amended to prescribe that **in relation to rape, recording of the statement of the victim shall be conducted at the residence of the victim or at the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardians or near relatives or social workers of the locality.**

**Section 173 has been amended to state that the investigation of a case of rape of a child may be completed within 3 months from the date on which the information was recorded by the officer in charge of a police station. The final report under Section 173(1)(g) will also have to mention whether report of medical examination of the woman has been attached where the investigation relates to an offence under Section 376, and 376A to D of the IPC.**

Section 327 (2) which prescribes in camera trial in cases of offences under Section 376, 376 A to D has been amended by providing that 'in camera' trial shall be conducted as far as possible by a women judge or magistrate.

Section 327(3) which bars printing/ publishing any matter in relation to such 'in camera' proceedings except with the previous permission of the court has been relaxed by mandating that the ban may be lifted subject to maintaining confidentiality of names and addresses of the parties.

## **VI. INTIMIDATION OF WITNESSES:**

The amended Act permits the witness or any other person to file a complaint in relation to threatening of any person to give false evidence prescribed u/s 195 A of the IPC. This procedure is prescribed by the insertion of Section 195 A of the Cr PC.

## **VII. COMPOUNDING OF OFFENCES:**

The scope of compounding under Section 320 has been enhanced. Section 335, 343, 344, 346, 379, 403, 407, 411, 414, 417, 419, 421, 422, 423, 424, 428, 429, 430, 451, 482, 483 and 486 are newly incorporated in the list of offences which can be compounded by the persons detailed in the table (i.e. victims of the offence). All these sections which earlier required the permission of court as well for compounding no longer require the same after the 2008 amendment. Section 312 has been included in the list of offences which, with the permission of court before which such prosecution is pending, can be compounded by the persons detailed in the table. It is to be noted that S.354 has been deleted from the table of compoundable offences.

## VIII. RIGHTS OF THE VICTIM:

- a) Section 2 has been amended by including clause (wa) which define victim as a "person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir".
- b) COMPENSATION:- The new Section 357A mandates that the State Government in coordination with the Central Government shall prepare schemes for providing funds for compensation to victims. On recommendation of the Court for compensation, **the District/State Legal Services Authorities are to decide on the quantum of compensation to be awarded.** This recommendation may be made if the compensation under Section 357 is not adequate or if the victim needs to be rehabilitated. Even in cases where no trial occurs and where the accused is unidentified or untraced (undetected cases), on an application by the victim or his dependents to the State/District Legal Services Authorities, compensation may be awarded. This process, from recommendation to award after due enquiry, should be completed within 2 months. **The State/District Legal Services Authority also has the power to order immediate free first aid/other medical facilities, or any other interim relief as deemed fit in order to alleviate the suffering of the victim on the certificate of the police officer not below the rank of the officer in charge of a police station or the magistrate of the area concerned.**
- c) RIGHT OF APPEAL:- Section 372 of the Cr PC has been amended. The victim shall have the right to prefer an appeal against any order passed by a Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.
- d) PERMISSION TO ENGAGE ADVOCATE:- Section 24 of the Cr PC has been amended by adding sub section 8 enabling the court to permit the victim to engage an advocate of his choice to assist the prosecution.

SD/-

**DIRECTOR GENERAL OF POLICE  
KERALA**