

No. Q1-129902/2020/PHQ

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Dated: 13/11/2020

Circular No. 41/2020/PHQ

Sub: **Kerala Police - Police Dept. - Mandatory action by Police in cases of crime against women - Reg.**

Read: 1) Letter No.F. No. 15011/ 190/2020- SC/ST-W dated 09/10/2020 of MHA (Women Safety Division), GoI.

2) PHQ Circular No.01/2020 dated 03/01/2020.

3) PHQ CoB message No.Q1-185648/2019 dated 22/01/2020.

4) PHQ COB messageNo. U6-192851/2019/PHQ dated 06/01/2020.

The Government of India, State Govt. and the PHQ have issued various advisories, circulars and orders, from time to time, emphasizing strict action to be taken by the Police in cases of crime against women, including in cases of sexual assault. Such action includes registration of FIR, collection of evidence for forensic examination and use of Sexual Assault, Evidence Collection Kit, completion of investigation in sexual assault cases in two months, use of National Database on Sexual Offenders for identifying and tracking repeat sexual offenders etc., and to ensure more support from the Police to the victims.

02. The following actions to be taken by the Police in cases of crime against women.

- i) Compulsory registration of FIR in case of cognizable offence under sub-section (1) of Section 154 of the Code of Criminal Procedure, 1973 (CrPC). The law also enables the Police to register FIR or a "Zero FIR" (in case the crime is committed outside the jurisdiction of police station) in the event of receipt of information on commission of a cognizable offence, which includes cases of sexual assault on women. No Police Station shall refuse to register such a case on account of jurisdiction. After registration of FIR, case can be transferred to the jurisdictional PS within 24 hours.
- ii) Section 166 A (c) of the Indian Penal Code, 1860 (IPC) provides for punishment to a public servant for failure to record FIR in relation to cognizable offences punishable under section 326 A, Section 326 B, Section 354, Section 354 B, Section 370, Section 370 A, Section 376, Section 376 A, Section 376 AB, Section 376 B, Section 376 C, Section 376 D, Section 376 DA, Section 376 DB, Section 376 E or Section 509 IPC.

- iii) Section 173 CrPC provides for completion of police investigation in relation to rape in two months. In order to facilitate the State Police to monitor compliance in this regard, MHA has provided an On-line portal called Investigation Tracking System for Sexual Offences (ITSSO) for monitoring the same. This is available exclusively for Law Enforcement Officers. That must be used.
- iv) Section 164-A of CrPC provides that in rape/sexual assault investigation, the victim shall be got examined by a registered medical practitioner under consent within twenty-four hours from the time of receiving the information relating to the commission of such an offence.
- v) Section 32 (1) of the Indian Evidence Act, 1872 provides that the statement, written or verbal by a person, who is dead, shall be treated as a relevant fact in the investigation when the statement is made by a person as to the cause of his/her death, or as to any of the circumstances of the transaction which resulted in his/her death. Hon'ble Supreme Court in its Order dated 7th January 2020, in the matter of Criminal Appeal Nos. 194-195 of 2012 in the case of **Purshottam Chopra & Anr. Vs. State (Govt. of NCT Delhi)**, directed that a particular statement, when being offered as dying declaration and satisfies all the requirements of judicial scrutiny, cannot be discarded merely because it has not been recorded by a Magistrate or that the Police Officer did not obtain attestation by any person present at the time of making the statement.
- vi) The Directorate of Forensic Science Services (DFSS), under the MHA, has issued Guidelines for collection, preservation & transportation of forensic evidence in sexual assault cases for Investigation Officers and Medical Officers. In order to facilitate the State Police, Bureau of Police Research and Development (BPR&D) has issued Sexual Assault Evidence Collection (SAEC) Kits to every State/UT. It is necessary to use these SAEC kits in every case of sexual assault reported. **MHA advisory dated 5th October 2020** in this matter may be referred. BPR&D and LNJN National Institute of Criminology and Forensic Sciences (NICFS) have been regularly conducting Training and Training of Trainers (ToT) programmes on procedure for collection, preservation and handling of forensic evidence for Police/Prosecutors and Medical Officers, respectively. Such Trainings must not be missed.

03. However, even with stringent provisions in law and several capacity building measures undertaken, any failure of Police to adhere to these mandatory requirements may not augur well for the delivery of criminal justice in the country, especially in context of women safety. Such lapses, if noticed, need to be investigated/enquired into and stringent action taken immediately against the concerned officers responsible for the same.

04. All concerned must ensure strict compliance with the provisions in the law, as mentioned above. It is also directed to monitor the cases on ITSSO to ensure that suitable follow-up action is taken for charge-sheeting of the accused **timely**, as required in the law. It is also instructed that the statement of a woman, who is a victim of crime, should be recorded only in the presence of a Woman Police Person or a Woman of reputation as already instructed in the Circular No. 01/2020/PHQ, dated 03/01/2020.

05. No Police personnel shall intimidate/dissuade/discourage a victim of crime from reporting of the cognizable offence on the pretext that the victim has to undergo serious social issues during the investigation and trials of the case.

06. The victims should be informed about their rights and also about having the advantages of the victim's body examination by a Lady Medical Officer, recording of Sec 164 statement by a Lady Magistrate, services of Special Prosecutor, in-camera proceedings before a Lady Magistrate, victim protection and witness protection.

07. These rights shall be explained to the women victim by a Lady Police Officer on their arrival/date of reporting of the case itself.

08. Victim Liaison Officers shall be appointed in all such cases as mentioned in Circular No. 25/2017/PHQ, dated 21/10/2017 and also the Case Diary (CD) written once in a week on the basis of the report of the Victim Liaison Officer.

09. Any laxity in this matter will be viewed very seriously and disciplinary action will be initiated, including deterrent action for awarding major penalties.

13.11.2020

**Loknath Behera IPS
DGP/State Police Chief**

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