

**CIRCULAR**

Hon'ble Governor of J&K State has promulgated on 16th May 2018 an Ordinance "The J&K Protection of Child from Sexual Violence Ordinance 2018", to protect children from sexual violence including offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

The copy of the ordinance has already been forwarded from this Headquarters to all District SSsP of J&K State including SSP Crime of J&K and SSP Railway J&K vide PHQ letter dated 29-06-2018 for its circulation among the officers/officials working in field formations and to sensitise them about its strict implementation wherever required. The provisions of the Ordinance have been implemented in some cases across the J&K State and the Law enforcement officials must ensure its implementation in letter and spirit.

The relevant sections of the ordinance are reproduced hereunder for ready reference and compliance among others:

➤ **Section 2(d)** defines child as:-

"Child" means any person below the age of eighteen years.

Procedure for Reporting of cases:-

➤ **Section 19**

Reporting of offence:

(1) Notwithstanding anything contained in the code of Criminal Procedure, Samvat 1989, any person (including the child), who has apprehension that an offence under this Ordinance 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 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 where child is temporarily or permanently physically disabled, a translator or

an interpreter or a special educator or a medical officer, having such qualifications, experience as may be prescribed, shall be provided to the child free of cost wherever it is deemed necessary:

Provided that if the child making the statement is temporarily or permanently disabled, the statement made by the child with the assistance of an interpreter or special educator or medical officer may be video graphed.

- (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).

➤ **Section 20:**

Obligation of media, studio and photographic facilities to report cases----

Any Personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall on coming across any material or object which is sexually exploitative of the child (including pornographic sexually related or making obscene representation of a child or children) through the use of any medium shall provide such information to the special Juvenile Police Unit, or to the local Police, as the case may be.

➤ **Section 21:**

Punishment for failure to report or record a case----

- (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 incharge 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 ordinance.

Section 22:

Punishment for false complaint or false information----

- (1) Any person who makes false complaint or provides false information against any person, in respect of an offence committed under section 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.
- (2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.
- (3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Ordinance, shall be punished with imprisonment which may extend to one year or with fine or with both.

➤ Section 23:

Procedure for media:

- (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.
- (2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child.
Provided that for reasons to be recorded in writing, the special Court, competent to try the case under the Ordinance, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
- (4) Any Person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both

Procedure for Recording Statements of the Child

➤ Section 24

Recording statement of child:

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

➤ **Section 25:**

Recording statement of a child by Magistrate:

- (1) If the statement of the child is being recorded under section 164 or 164-A of the Code of criminal procedure code samvat 1989, the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child.
- (2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 205-B of the code of Criminal Procedure, Samvat 1989, upon the final report being filed by the Police under section 173 of the code of Criminal Procedure Samvat 1989.

➤ **Section 26:**

Additional provisions regarding statement to be recorded:

- (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 qualification experience free of cost 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.

➤ **Section 27:**

Medical Examination of a child:

- (1) The medical examination of a child in respect of whom any offence has been committed under this ordinance, shall, notwithstanding that a FIR or complaint has not been registered for the offences under this Ordinance, be conducted in accordance with section 164B of CrPC 1989.
- (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.

Special Courts:

➤ **Section 28:**

Designation of Special Courts:

- (1) For purpose of providing a speedy trial, the Government shall in consultation with the Chief Justice of the High Court, by notification in the Government Gazette designate for each district, a court of Session to be Special Court to try the offences under the ordinance.
- (2) While trying an offence under this Ordinance, a special Court shall also try an offence other than an offence under this Ordinance, with which the accused may, under the Code of Criminal Procedure, Samvat 1989, be charged at the same trial.
- (3) The Special Court designated under this Ordinance, notwithstanding anything in the Information Technology Act, 2000 (Central Act No. 21 of 2000) shall have Jurisdiction to try offences under section 67-B of that Act in so far as it relates to Publication or transmission of sexually explicit material depicting children in any act or conduct or manner of facilitates abuse of children online.

➤ **Section 32:**

Offences to be cognizable and non bailable—

- (1) The offences under this Ordinances shall be cognizable and non-bailable.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, no person accused of an offence punishable under this Ordinance shall if in custody be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release.
Provided that such accused person shall not be released on bail or on his own bond if the Court, on perusal of the case diary or the report made under section 173 of the Code of Criminal Procedure, Samvat 1989, is of the Opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.
- (3) The restrictions on granting of bail specified in sub-section (1) shall be in addition to the restrictions under the Code of Criminal Procedure, Samvat 1989 or any other law for time being in force on granting of bail.
- (4) Nothing in Section 497A of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence under the provisions of this Ordinance.

➤ **Section 33:**

Special Public Prosecutor:

- (1) The State Government shall, by notification in the Government Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Ordinance.

(2) A person shall be eligible to be appointed as a special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of section 492 of the Code of Criminal Procedure, Samvat 1989 and provision of that Code shall have effect accordingly.

Procedure and powers of Special Courts and Recording of evidence:

➤ Section 34;

Procedure and powers of Special Court:

- (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts
- (2) The Special Public Prosecutor or as the case may be the counsel appearing for the accused shall, while recording the examination-in-chief, cross examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.
- (3) The special Court may, if it considers necessary permit frequent breaks for the child during the trial.
- (4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.
- (5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.
- (6) The special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.
- (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial.

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation-

For the purposes of this sub. Section, the identity of the child shall include the identity of the child's family, School, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

- (8) In appropriate cases, the Special Court may in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
- (9) Subject to the provisions of this Ordinance, a Special Court shall for the purpose of the trial of any offence under this Ordinance, have all the Powers of a Court of

Session and shall try such offence as if it were a Court of session, and as far as may be in accordance with the procedure specified in the Code of Criminal Procedure, Samvat 1989 for trial before a Court of session.

➤ **Section 35:**

Procedure in case of commission of offence by child and determination of age by Special Court:

- (1) Where any offence under this Ordinance is committed by a child, such child shall be dealt with under the provisions of J&K Juvenile Justice (Care and Protection of Children) Act 2013.
- (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
- (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

➤ **Section 36:**

Special procedure for recording of evidence of child and disposal of case:

- (1) The trial of offences under this ordinance shall commence within one week from the date of presentation of the police report under section 173 CrPC., Samvat 1989 and shall as far as possible be completed within a period of three months. The proceedings of the Court shall preferably be held on day to day basis:

Provided that a report on the status of the trial shall be sent by the trial court to the High court after every three months with reasons of non-conclusion of trial.

- (2) The evidence of the child shall be recorded within a period of thirty days of the special Court taking cognizance of the offence and reasons for delay, if any shall be recorded by the special Court.
- (3) The witnesses of the prosecution shall be bound to appear before the Court on the date fixed for the hearing on a notice received from Investigating Officer, Public Prosecutor or Court.
- (4) The list of defence witnesses shall be submitted by the accused within two working days of the closure of prosecution evidence and recording of statement of the accused, if any. These witnesses shall be summoned and served by the court.

Provided that the Court may at the request of the defence summon witnesses other than those included in the list for reasons to be recorded.

➤ **Section 37:**

Child not to see accused at the time of testifying:

- (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring

that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purpose of sub-section (1) the Special Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

➤ **Section 38:**

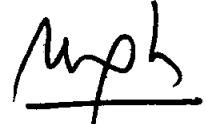
Trial to be conducted in camera:

The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.

Provided that where the Special Court is of the Opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 504 of the Code of Criminal Procedure, 1989.

It is once again enjoined upon all the officers/officials in field formations to ensure the strict compliance of the said ordinance in letter and spirit.

Any deviation will be viewed seriously.



(V.K.Singh)-IPS
Spl. Director General of Police,
(Hqrs)J&K, Srinagar

No: Legal/Misc-01/S/2018 52455-90

Dated: 27 07/2018

Copy to the:-

1. IGsP Jammu/Kashmir Zones/IGP Crime/Railway J&K
2. All Range DIsG of Police J&K.

.....for information

3. All District SSsP/SsP of J&K for information and necessary action.

- ~~4. I/C IT Section (J&K Police website)~~

5. Office file for records.