



STUDY MATERIAL
FOR
JOINT WORKSHOP
ON
MEDICAL JURISPRUDENCE, BALLISTICS
EVIDENCE, CYBER CRIME & HANDLING,
ADMISSIBILITY & APPRECIATION OF
ELECTRONIC EVIDENCE
FOR
JUDICIAL OFFICERS, POLICE OFFICERS,
DOCTORS, FORENSICS & BALLISTICS
EXPERTS, DGCS/ADGCS & PROSECUTION
OFFICERS
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AN OVERVIEW OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

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graph TD; A[AN OVERVIEW OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012] --> B[Obligation of the State under Constitution and UN Convention on the Rights of the Child]; B --> C[UN Convention on the Rights of the Child, 1989 requires the State to take measures to protect children from unlawful sexual activities and sexual exploitation to prostitution or pornography. Article 15 (3) of the Constitution of India mandates the state to create special laws for the Children. Article 39, Directive Principles of State Policy mandates the state to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]; C --> D[AIM OF POCSO ACT]; D --> E[To protect Children from the offences: Sexual Assault, Sexual harassment, Pornography. To safeguard Interest of Child: Child friendly mechanism for reporting, Special procedures for investigation, medical examination, recording of evidence, Speedy Trials through designated courts];
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Obligation of the State under Constitution and UN Convention on the Rights of the Child

- **UN Convention on the Rights of the Child, 1989** requires the State to take measures to protect children from unlawful sexual activities and sexual exploitation to prostitution or pornography.
- **Article 15 (3)** of the Constitution of India mandates the state to create special laws for the Children.
- **Article 39**, Directive Principles of State Policy mandates the state to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

AIM OF POCSO ACT

To protect Children from the offences:

- Sexual Assault
- Sexual harassment
- Pornography

To safeguard Interest of Child:

- Child friendly mechanism for reporting
- Special procedures for investigation, medical examination, recording of evidence
- Speedy Trials through designated courts

Child and Vulnerable Witness



- Child - Any person below the age of 18 years

A Gender-Neutral Act

- POCSO Act, gender neutral
- victim could be either male or female

Nipun Saxena v. Union of India, (2019) 2 SCC 703.



POCSO Act is gender neutral and applies to all children.

Sexual Offences



- Penetrative Sexual Assault
- Aggravated Penetrative Sexual Assault
- Sexual Assault
- Aggravated Sexual Assault
- Sexual Harassment
- Child Pornography
- Storage of pornographic material involving a child
- Abetment to commit above
- Attempt to commit above

Attorney General v. Satish, (2022) 5 SCC 545,



In this case Hon'ble Supreme Court has discussed in detail what is "Sexual assault"

Aggravated Penetrative Sexual Assault (S.5)

- Based on 'how', 'when', 'where', 'by whom' and 'what act'.
- By Custodian (relative; management or staff of institution for children)
- Situation of trust (police officer; armed force; public servant; management or staff of hospital, educational or religious institution)
- In a gang
- using deadly weapons, fire, heated substance or corrosive substance
- Serious mental / physical incapacity

Aggravated Penetrative Sexual Assault (S.5) ...



- Attempt to murder
- Pregnancy
- Repeatedly
- More vulnerable child
- During riots (communal or sectarian violence)
- Assault followed by attempt to murder child
- Assault followed by stripping and parading child naked in public.

Aggravated Penetrative Sexual Assault ...



- Penetrative sexual assault that results in
 - a. grievous hurt or bodily harm and injury to any part of the body of the child
 - b. Physical incapacitation, mental illness or temporary/permanent impairments because of the assault
 - c. Pregnancy
 - d. HIV or any other dangerous infection or disease

Penetrative sexual assault on

- child with disability
- child below 12 years of age
- a child, with the knowledge that she is already pregnant

Special Personnel



- Special Court / Children Court
- Jurisdiction to try offences u/Information Technology Act, 2000
- Cognizance without committal
- Special Public Prosecutor
- Facilitators
- Guardian at litem
- Support person
- Translators
- Experts

Recording statement of the child



- By the police
- Child not to see / come in contact with accused
- Police officer not to be in uniform
- The statement of the victim shall be recorded verbatim
- The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear
- The statement should be recorded promptly without any loss of time.
- Statement has to be recorded either in the presence of parents or
- In the presence of any person child has trust or confidence.
- The Investigating Officer recording the statement of the child
- victim shall ensure that the victim is made comfortable before
- proceeding to record the statement and that the statement carries
- accurate narration of the incident covering all relevant aspects of the case.
- No detention of child in the night in police station for any reason
- No disclosure of identity of child to public Media unless directed by the Special Court in the interest of child.
- Investigating Officer may take the assistance of a psychiatrist.
- If possible, the statement of child to be recorded by audio -video electronic means.
- The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within twenty-four hours (in accordance with Section 184BNSS) at the nearest government hospital or hospital recognized by the government.
- The Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.

- The Investigating Officer shall promptly refer for forensic examination clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.
- The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation
- shall be periodically supervised by senior officer/s.

Recording statement of the child By the court

- Child statement u/s183 BNSS be recorded by the magistrate as spoken by the child
- Child not to see / come in contact with accused
- Appointment of guardian et litem
- Support person
- Assistance of Special Educator may be taken in case of victim mental or physical disability
- Facilitators / translators
- In the presence of any person child has trust or confidence.
- If possible the statement of child to be recorded by audio -video electronic means

Medical examination of a Child

- Medical examination of the victim of offence of this Act is mandatorily conducted whether any case is registered or not.
- If victim is a girl, only woman doctor can conduct the medical examination.

- In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.
- The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim
- Medical examination has to be conducted in the presence of the parents of a child or any person in whom child has trust and confidence.
- In the absence of aforesaid persons, in the presence of a woman nominated by the medical institution.
- In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.
- Emergency medical treatment wherever necessary should be
- provided to the child victim.
- The child victim shall be afforded prophylactic medical treatment against STDs.
- In the event the child victim is brought to a private/nursing home the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.

Procedure and Powers



- Questions by Special Public Prosecutor / Defence counsel to be given to the judge
- Judge alone to put questions to child
- Frequent breaks if needed
- Child friendly atmosphere –family member, guardian, a friend or relative of child, in whom the child have trust and confidence.
- Not called frequently

- No aggressive questioning or character assassination
- In camera proceedings
- Dignity of child has to be maintained
- Non-disclosure of identity
- Compensation to victim
- Evidence of a child to be recorded within 30 days from taking cognizance of the offence
- Reasons to be cited in case of delay in recording evidence
- Trial to be concluded within 1 year from the date of taking cognizance of the offence
- No exposure of child to the accused.
- Special Court to record the statement of a child through video conferencing or
- By utilizing single visibility mirrors or curtains or any other device.

Proactive measures



- Pre-trial court visit
- Evidence of child from either side
- Explain court procedure

Compulsory Reporting (Sec.19)

Reporting of matter to

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

By anyone who

- apprehends that an offence under this Act is likely to be committed
- has knowledge that such an offence has been committed
- comes 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
- Punishment for non-reporting – six months of imprisonment

A sexual offence against a child is revealed/ disclosed to

- close relative
- Teacher
- Mediator

**Presumption of commission of offence
u/S.3, 5, 7, 9**

- S. 29
- ... the special court shall presume
- that such person has committed or abetted or attempted to commit the offence, as the case may be,
- unless the contrary is proved

**Presumption of culpable mental state.
S. 30**

- If the offence requires a culpable mental state
- The courts shall presume such mental state
- Burden to prove otherwise on the defence
- The standard of this proof is beyond reasonable doubt and not preponderance of probability.

Explanation: “Culpable mental state” includes intention, motive, knowledge of a fact, and belief in or reason to believe a fact.

**Punishment for false complaint or
false information by**

- Child – nil action
- Others – 1 year imprisonment / fine / both

**Section 42 of POCSO providing for
alternative punishment**

If any act is punishable under POCSO or under any other law, the punishment which is greater in degree should be awarded.

Key Features of POCSO, Act 2012

- The definition of sexual offences is broad and not restricted to rape. The Act protects children of both sexes from offences of sexual assault, sexual harassment, and pornography.
- POCSO Act ensures effective access to justice as it establishes of special procedure for reporting of cases, medical examination, investigation, recording statement of a child, and Special Courts for the trial of such offences.
- POCSO Act makes abetment of, and attempt to commit an offence under the POCSO Act punishable.

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745

Para 19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant.

**Opinion of Medical Expert not
Binding on Court**


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graph TD; A[Opinion of Medical Expert not Binding on Court] --> B[State of Haryana v. Bhagirath, (1999) 5 SCC 96]; B --> C[Para 15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.]; C --> D[State of Karnataka v. Shivanna, (2014) 8 SCC 913,]; D --> E[Hon'ble Supreme Court has issued following directions]; E --> F[10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.];
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**State of Haryana v. Bhagirath, (1999)
5 SCC 96**

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**State of Karnataka v. Shivanna, (2014)
8 SCC 913,**

Hon'ble Supreme Court has issued following directions

10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.

10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

10.5. Medical examination of the victim: Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of investigating officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

Irrelevance of consent

In a heinous and abhorrent crime of sexual assault if consent of minor is treated as mitigating circumstance, it may lead to disastrous consequences particularly in view of Protection of Children from Sexual Offences Act, 2012.

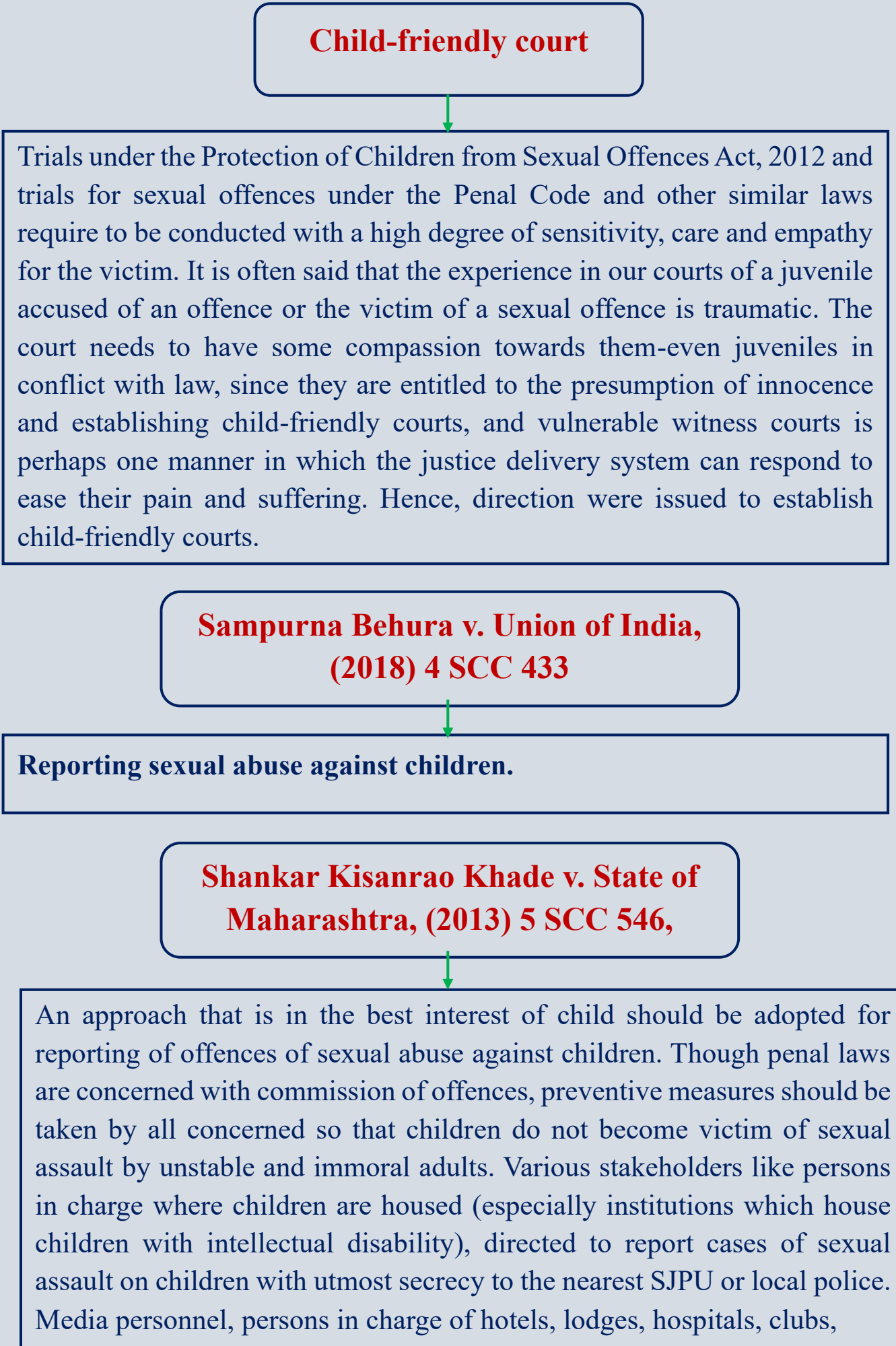
**Satish Kumar Jayanti Lal Dabgar v.
State of Gujarat, (2015) 7 SCC 359,**



Procedure under POCSO

The framers of the Act were conscious of the fact that children are vulnerable and cannot be exposed to the regular court procedure. Whole effort underlines the procedure to put the children at ease and to protect their dignity and confidence to elucidate true and complete facts to serve the ends of justice. An effort to incorporate the child friendly procedure suggested in 'Sakshi v. Union of India (2018) 4 SCC 433 was done for the first time.

Child-friendly court



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graph TD; A[Child-friendly court] --> B[Trials under the Protection of Children from Sexual Offences Act, 2012 and trials for sexual offences under the Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. It is often said that the experience in our courts of a juvenile accused of an offence or the victim of a sexual offence is traumatic. The court needs to have some compassion towards them-even juveniles in conflict with law, since they are entitled to the presumption of innocence and establishing child-friendly courts, and vulnerable witness courts is perhaps one manner in which the justice delivery system can respond to ease their pain and suffering. Hence, direction were issued to establish child-friendly courts.]; B --> C["Sampurna Behura v. Union of India, (2018) 4 SCC 433"]; C --> D[Reporting sexual abuse against children.]; D --> E["Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546,"]; E --> F[An approach that is in the best interest of child should be adopted for reporting of offences of sexual abuse against children. Though penal laws are concerned with commission of offences, preventive measures should be taken by all concerned so that children do not become victim of sexual assault by unstable and immoral adults. Various stakeholders like persons in charge where children are housed (especially institutions which house children with intellectual disability), directed to report cases of sexual assault on children with utmost secrecy to the nearest SJPU or local police. Media personnel, persons in charge of hotels, lodges, hospitals, clubs,
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**Sampurna Behura v. Union of India,
(2018) 4 SCC 433**

Reporting sexual abuse against children.

**Shankar Kisanrao Khade v. State of
Maharashtra, (2013) 5 SCC 546,**

An approach that is in the best interest of child should be adopted for reporting of offences of sexual abuse against children. Though penal laws are concerned with commission of offences, preventive measures should be taken by all concerned so that children do not become victim of sexual assault by unstable and immoral adults. Various stakeholders like persons in charge where children are housed (especially institutions which house children with intellectual disability), directed to report cases of sexual assault on children with utmost secrecy to the nearest SJPU or local police. Media personnel, persons in charge of hotels, lodges, hospitals, clubs,

studios and photograph facilities directed to comply with Section 20, 2012 Act. The manner in which various child welfare organisations and NGOs should deal with complaints of sexual assault on children, clarified. State and Central Government directed to constitute SJPU in all districts if not already constituted and give wide publicity to provisions of 2012 Act.

Grant of bail

**In State of Bihar v. Rajballav Prasad,
(2017) 2 SCC 178,**

The Hon'ble S.C. has held that

“General presumption of innocence of accused is not applicable to cases where there is contrary statutory presumption of his guilt such as when prosecuted under Sections 3, 5, 7 and 9 of POCSO Act, 2012. Prime consideration is fair trial for which witnesses must feel protected for free, frank and fearless deposition. Chances of accused fleeing from justice or tampering with evidence/trial if released on bail must be carefully assessed. Court should adopt a liberal approach and properly balance individual liberty and possibility of accused interdicting fair trial if released on bail, which is a social or public interest. Social interest should outweigh personal interest.”

Storing and Watching Child Pornography

Section 15 of the POCSO and Section 67-B of the IT Act penalise any form of use of child pornography, including storing and watching of such pornographic content,

Just Rights for Children Alliance v. S. Harish, 2024 SCC OnLine SC 2611.

Meaning of Possession

Meaning of Possession



**In Just Rights for Children Alliance v.
S. Harish, 2024 SCC OnLine SC 2611,**



The Hon'ble S.C. has held that

“Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual or physical possession or storage of such material in any device or in any form or manner would also amount to ‘possession’ in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession.”

Sexual Abuse and Rape of Minor Girls in Shelter Homes/Child Homes.



Repeated interrogation, questioning, visiting/interviewing of victims regarding incident by officials and journalist is hardly conducive for the welfare and well-being of minor victims of sexual abuse and rape in Shelter Homes/Child Homes. Media must be restrained from publishing images of victims even in morphed or blurred form. Media directed to keep interests of victims in mind while dissemination of news. Process to be followed by investigating agencies dealing with case, set out.

**Sampurna Behura v. Union of India,
(2018) 9 SCC 555**

Presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. ‘Foundational facts’ for raising presumption under Sections 29 and 30 of the POCSO Act were clearly constituted on establishment in evidence that the deceased-victim was subjected to a brutal sexual assault and the injury on the prepuce of the penis of the accused along with the matching of the blood group coupled with other circumstantial evidence indicated the same,

**Sambhubhai Raisangbhai Padhiyar v.
State of Gujarat, (2025) 2 SCC 399.**

Compensation to victim

In Eera v. State (NCT of Delhi), (2017) 15 SCC 133, the Hon’ble S.C has laid down that:

“Special Court has power on its own or on application filed by or on behalf of child to pass interim order for grant of compensation to meet immediate needs of child for relief or rehabilitation at any stage after registration of FIR or to recommend award of compensation where accused is convicted, or where case ends in acquittal or discharge or accused is not traced or identified and where child has suffered loss or injury, taking into consideration all relevant factors. Such compensation to be paid by the State Government.”

Determination of age by the POCSO Court



Section 34 of the POCSO Act is the substantive provision which empowers the Special Judge to determine the age of the person whether he is a Juvenile or an adult person and that particular person has to be tried before the Juvenile Justice Board or before the Special Court. Sub-clause (2) of Section 34 clearly indicates that if any question arises in a proceeding before the Special Court, whether the person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person. In this provision stress has to be given to the words - “for satisfying itself” and how this satisfaction can be arrived at by the court has to be tested by other surrounding circumstances like oral and documentary evidence placed before the court and also the relevant rules under the law for the time being in force.

Siddu v. State, 2016 SCC OnLine Kar 8347.



Restrictions on media

“Considering relevant provisions of POCSO Act and intention of legislature to protect the privacy and reputation of a child victim, It was held by the Hon’ble S.C that media cannot disclose any material/information which may lead to disclosure of identity of a child victim. Any violation in this regard will amount to an offence under Section 23(4) of POCSO Act.”

**Nipun Saxena v. Union of India, (2019)
2 SCC 703.**

Child victims of sexual offences

Bar as to disclosure of name and identity of child victims of sexual offences, under POCSO Act applies even to dead victims.

Nipun Saxena v. Union of India, (2019) 2 SCC 703.

Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14

For assisting the victims of rape Hon'ble Court has issued some directions

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

**In Anil v. State of Maharashtra (2014)
4 SCC 69,**

The Hon'ble Supreme Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected. We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process the samples remain in pristine, hygienic and biologically suitable conditions.

**Prakash Nishad v. State of
Maharashtra (2023) 16 SCC 357,**

This case was related to the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted. DNA evidence was rejected by the Hon'ble S.C on the grounds that there was a delay in sending the samples to the FSL, which was unexplained. It was observed by the Hon'ble Court that because of the delay, the concomitant prospect of contamination could not be ruled out. The need for expediency in sending samples to the concerned laboratories was underscored.

**In Kattavellai @ Devakar Vs State of
Tamil Nadu, 2025 INSC 845,**

The Hon'ble S.C.in para 44-has issued various directions for collection, packaging, storage& examination of DNA evidence.

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48- hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken

3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorization of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.

How to prepare Panchnama



- A panchnama is a formal document prepared by an investigating officer in the presence of two or more independent witnesses (called "panchas") to record observations, facts, and findings from an investigation. While there is no specific format prescribed in law, a valid panchnama must accurately reflect the events, be free from coercion, and follow established principles for different types of investigations.
- **General steps for preparing a panchnama**
- Engage independent witnesses (Panchas)
- Identify respectable individuals: The witnesses must be independent, impartial, and respected members of the locality. The complainant, owner of the premises, or anyone with a vested interest should not be a panch.
- Explain the purpose: Clearly inform the panchas about the purpose of their presence—whether it is for a search, seizure, or inspection.
- Record their details: Note the name, parentage, age, and full address of each panch.
- Record their details: Note the name, parentage, age, and full address of each panch.

Record the preliminary details



- **Heading:** Clearly state "Panchnama" and the specific type, such as "Spot Panchnama," "Seizure Panchnama," or "Inquest Panchnama".
- **Authority:** Mention the name and rank of the officer conducting the proceedings and the authority under which the action is being taken (e.g., a search warrant or section of the law).
- **Date, time, and place:** Record the exact date, the time the proceedings began, and the complete address of the location where it is being conducted.

Detail the proceedings



- Officer's personal search: Before the search begins, the investigating officer and the team should offer to be personally searched by the panchas to prove their integrity. This fact must be recorded.
- State the reason for the search: The panchnama must state the specific reason for the search or inspection.
- Document observations: Detail everything observed by the panchas. This should include a description of the location and the positions of objects, as with a spot panchnama.

Detail the proceedings



- Record seizure details: If items are seized, list each one in detail, including its type,
- quantity, color, serial numbers (for currency or electronics), and any distinguishing marks.
- These items should be sealed in front of the witnesses.
- Draw samples: If samples are taken (e.g., chemicals), record the details of the sample drawn and how it was sealed.
- Note any lack of findings: If no incriminating documents or articles are found, a "Nil
- Panchnama" must be prepared.
- Involve the concerned party: If a person or property is being searched, the panchnama should note that the occupant or concerned party was present during the entire process.

Medical Examination of Victim/Accused



- In legal cases involving certain crimes, particularly sexual assault, a medical examination is a critical part of the investigation for both the victim (survivor) and the accused. It serves to gather forensic evidence, provide necessary medical care, and document injuries.
- Medical examination of a victim/survivor
- The legal provisions and protocols for examining a victim of sexual violence in India are designed
- to be sensitive and supportive while ensuring evidence is properly collected.

Legal requirements and consent:



- **Prompt examination:** The examination should be conducted by a registered medical practitioner within 24 hours of receiving information about the offense.
- **Free treatment:** All hospitals, public and private, must provide immediate and free first aid or medical treatment to survivors of sexual violence. Failure to do so is a punishable offense.
- **Informed consent:** The examination must be performed with the informed consent of the victim or a person competent to give consent on her behalf. The survivor has the right to refuse the medico-legal examination or evidence collection at any stage, but this does not affect their right to medical treatment.
- **Child victims:** Under the Protection of Children from Sexual Offences (POCSO) Act, 2012, the medical examination of a child must be done by a female doctor. A parent or person the child trusts can be present during the examination. A child over 12 can consent to the examination.

Example interpretation: FSL evidence



- The FSL report for a rape and murder case might contain the following conclusions:
- "DNA profile of the suspect matched the DNA profile from semen found on the vaginal swab of the victim." This directly links the suspect to the rape.
- "Fibers matching the suspect's sweater were found on the victim's clothes." This places the suspect in close physical contact with the victim.
- "No sperm was detected in the samples from the victim." This could happen if a significant amount of time passed between the assault and the examination, or if the assailant did not ejaculate. It does not disprove the sexual assault.

Post Mortem of deceased



- A post-mortem, or autopsy, is a medical examination of a deceased body to determine the cause and manner of death. It is performed by a forensic pathologist and involves a thorough external and internal examination of the body, collecting samples for testing, and documenting all findings in a report.
- Purpose of a post-mortem
- Post-mortems are conducted to achieve several objectives, particularly in cases of sudden, suspicious, or unnatural death:

Establish the cause of death:



The specific injury, disease, or other factor that led to death.

- **Establish the cause of death:** The specific injury, disease, or other factor that led to death.
- **Determine the manner of death:** The circumstances that led to the cause of death. These are generally categorized as natural, accidental, suicidal, or homicidal.
- **Estimate the time of death:** Using physical changes that occur after death, known as post-mortem changes, to determine the time interval (or PMI) since death.
- **Confirm the identity of the deceased:** Especially in cases involving severe trauma, decomposition, or when identity is unknown.
- **Corroborate or refute other evidence:** The findings can be compared with other evidence to support or challenge witness testimonies or suspect statements.
- **Assist in legal proceedings:** The resulting report is used as evidence in court.
- **Advance medical knowledge:** In non-forensic cases, post-mortems can provide valuable information for research and public health.

The post-mortem process



- The examination is a systematic, step-by-step procedure performed in a mortuary or hospital. External examination
- **Documentation:** Before any handling, the body is photographed, and any clothing or external items are carefully documented and collected.
- **Physical description:** The pathologist notes the body's general condition, including identifying features, marks, tattoos, and any external injuries.

- **Post-mortem changes:** The pathologist analyzes the body for three main signs that help determine the time of death:
- **Rigor mortis:** The stiffening of the body's muscles.
- **Livor mortis:** The purple-red discoloration caused by blood settling due to gravity.
- **Algor mortis:** The cooling of the body temperature.

Internal examination

- **Incision:** The pathologist makes a surgical incision, typically a Y-shaped or vertical cut, to open the chest and abdominal cavities.
- **Organ removal and inspection:** Organs are removed, weighed, and examined for any signs of disease, injury, or other abnormalities. All findings are meticulously recorded.
- **Brain examination:** A separate incision is made on the scalp to remove and examine the brain.
- **Sample collection:** Small tissue samples from various organs are taken for microscopic and toxicological analysis. Body fluids, such as blood and urine, are also collected for testing.

Preparation of medical report & post mortem report by the doctor

- Preparing medical and post-mortem reports for legal proceedings, also known as medico-legal reports, requires a high degree of accuracy, objectivity, and adherence to formal procedures. The doctor's role is to document facts and provide expert opinion based on clinical findings, not to assign blame.

Preparation of a medical report



- This report is prepared for a living patient involved in a medico-legal case, such as an assault, accident, or poisoning.
- **Information to collect: -**
- **Patient information:** Full name, age, sex, address, and at least two identification marks.
- **Attendant details:** The name and particulars of the person accompanying the patient, such as a family member or police officer.

Preparation of a medical report



- **Case details:** The date and time of the incident and the date and time of the medical examination.
- **Brief history:** Document the patient's account of the incident in their own words.
- **Physical examination:** Record all injuries in detail, including their type (e.g., cut, abrasion), size, shape, color, location, and dimensions. Diagrams are often used to supplement descriptions.
- **Investigations and treatment:** Note all lab tests, X-rays, and procedures performed, including the treatment provided and the patient's condition at the time of discharge.
- **Final opinion:** Based on the findings, provide a medical opinion on the nature and extent of the injuries, clearly stating if they are severe or life-threatening.

Recording the statement of Doctor & other witnesses by the I.O

- In India, the Investigating Officer (I.O.) records the statements of doctors and other witnesses under Section 161 of the Code of Criminal Procedure (CrPC), now Section 180 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)
- While serving as a crucial tool for investigation, these statements are not considered substantive evidence in court unless confirmed by the witness during trial.

What is “Police Report”

Definition:

Police Report means a report forwarded by a police officer to a Magistrate under subsection (3) of Sec. 193 BNSS vide the definition given in Section 2 (t) BNSS. {Sec. 173 (2) Cr.PC & Section 2 (r) Cr.PC.}

Opinion of Investigation Officer:

It is an opinion or intimation of the investigating officer to the concerned court that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.

Forwarding the “Police Report”



Completion of Investigation- As soon as investigation of a case involving at least one cognizable offence is completed by the police, the officer-in-charge of the police station, where the case has been registered, has to submit a report to the Magistrate.

E-charge sheet- Police Report may be forwarded through electronic communication.

Jurisdictional Magistrate- The Magistrate here refers to any Magistrate empowered to take cognizance.

Police Report – what it should contain [Sec. 193 (3)(i) BNSS]



- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether the accused has been released on his bond or bail bond;
- (g) whether the accused has been forwarded in custody under section 190;
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;
- (i) the sequence of custody in case of electronic device;

Police Report reflects police opinion

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graph TD; A[Police Report reflects police opinion] --> B[The final step in the investigation of an offence is the formation of opinion by the OIC of the PS. The opinion ought to be based on the evidence collected in course of investigation. The ultimate opinion to be formed by the police is whether the case in hand is one which ought to be sent up for trial or close the case.]; B --> C[Right of informant or victim [Sec. 193 (3)(ii) BNSS]]; C --> D[The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;]; D --> E[Communication to informant [Sec. 193 (3)(iii) BNSS]]; E --> F[The officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.];
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Right of informant or victim [Sec. 193 (3)(ii) BNSS]

The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

Communication to informant [Sec. 193 (3)(iii) BNSS]

The officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

**Forward the report to Magistrate [Sec. 193
(6) BNSS]**

When such report is in respect of a case to which section 190 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

**Exclusion some part from the copies to be
granted to the accused [Sec. 193 (7) BNSS]**

If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

**Number of copies to be submitted by IO
[Sec. 193 (8) BNSS]**

The police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230.

Provided that supply of report and other documents by electronic communication shall be considered as duly served.

Further investigation after forwarding the report [Sec. 193 (9) BNSS]


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graph TD; A[Further investigation after forwarding the report [Sec. 193 (9) BNSS]] --> B[No bar on further investigation after police report has been forwarded to the Magistrate. Where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence.]; B --> C[Permission of Court and Time Limit:]; C --> D[Further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.]; D --> E[Police Report in Prescribed Form]; E --> F[The police report should be in the form prescribed by the State Government.];
```

No bar on further investigation after police report has been forwarded to the Magistrate. Where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence.

Permission of Court and Time Limit:

Further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.

Police Report in Prescribed Form

The police report should be in the form prescribed by the State Government.

**Dablu Kujur Vs Stae Of Jharkhand 2024
INSC 197**

“We have found that the investigating officers while submitting the chargesheet/Police Report do not comply with the requirements of the said provision. Though it is true that the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the Police Report/Chargesheet are laid down in Section 173, more particularly sub-section (2) thereof.”

**Proper compliance with sub-section (3) of
Section 193 BNSS**



sub-section (2) of Section 173 CrPC



Statutory requirement of the report under Section 173(2) would be complied with if various details prescribed therein are included in the report.

The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5).

Dinesh Dalmia vs. CBI (2007) 8 SCC 770

Whether the Magistrate has power to direct the Police to file a charge-sheet, on receipt of a police report?

No.

‘..he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion.’

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**Abhinandan Jha v. Dinesh Mishra 1967
SCC OnLine SC 107**

Can a Magistrate pass an order for police investigation on receipt of a complaint?

Yes.

In the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Sec. 156(3) Cr.PC/175(3) BNSS

The police will then investigate and submit a report under Sec. 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Sec. 190(1)(b) Cr.PC/210(1)b BNSS and straightaway issue process.

H.S. Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh) (1980) 4 SCC 631



What recourse should be adopted by Police, when a cognizable case reported to the police but the case after police investigation is found to be non-cognizable?

In such a situation, the report submitted by the police should be deemed to be a complaint. The term complaint is defined under sec. 2(h) BNSS/ 2(d) Cr.P.C.

Can the police make further investigation after a police report u/s 193 (3) BNSS has been submitted to the Magistrate?

Yes.

The provisions as contained in subsection 9 of section 193 BNSS recognize the right of the police to make further investigation, even after the submission of a final report u/s 193 (3).

Police may, therefore, reopen investigation and submit a supplementary charge sheet.

Under what circumstances could the power to make further investigation be invoked by the Court?

**Vinubhai Haribhai Malaviya & Ors. vs.
State of Gujarat & Anr. (2019) 17 SCC 1**

Further investigation could at best have been ordered till the commencement of the trial.

**Ram Lal Narang vs. State (Delhi
Administration) (1979) 2 SCC 322**

Where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or where it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, it may be the duty of the investigating agency to investigate the genuineness of the same and submit a report to the court.

**Devendra Nath Singh vs. State of Bihar &
Ors., (2023) 1 SCC 48**

Whether further investigation should or should not be ordered is within the discretion of the Magistrate and the said discretion is to be exercised on the facts of each case in accordance with law.

**K. Vadivel vs. K. Shanthi & Ors. 2024
INSC 746**

However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the applicant for further investigation, has not whispered about anything new in his/her evidence in the application. There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/permitting of further investigation.

Vinay Tyagi vs. Irshad Ali alias Deepak & Ors., (2013) 5 SCC 762

Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report.

Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

Case Diary and Statement recorded under section 180 BNSS/ 161 CrPC.

Shamshul Kanwar v. State of U.P. (1995) 4 SCC 430

Whether accused has a right to use Case Diary?

There is no such right of the accused but it is the discretion of the Court or the will of the Police Officer to refresh his memory that shall provide a right to the accused to use a diary but only for the purpose of cross examination of the statements that are made by Police Officer.

State of NCT of Delhi v. Ravi Kant Sharma, (2007) 2 SCC 764

Whether statement of witnesses u/s 161 are the part of case diary?

The gist of statements recorded under Section- 161(3) CrPC forms a part of the case diary, then such “gist” shall be provided to the accused but only after the Court is satisfied factually after due examination that it is not other than the “gist of statements”.

**P. Chidambaram v. Directorate of
Enforcement, (2019) 9 SCC 24**

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graph TD; A["P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24"] --> B["Use of case diary by Court?"]; B --> C["The Court can peruse the case diary/ materials collected during investigation by prosecution even before the commencement of trial in circumstances like-"]; C --> D["Deputy Commissioner of Police v. D.K. Sharma, 2010 SCC OnLine Del 4554"]; D --> E["Is a person entitled to get a copy of Case Diary by filing an RTI?"]; E --> F["Unless and until a Trial is concluded, a person is not entitled to get a copy of the case diary by filing a RTI application, as Section- 8(1) (h) of the Right to Information Act, 2005 restricts the flow of information which would impede the process of investigation or apprehension or prosecution of offenders."];
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Use of case diary by Court?

The Court can peruse the case diary/ materials collected during investigation by prosecution even before the commencement of trial in circumstances like-

- To satisfy itself that the investigation is in right direction
- There is no misuse of power
- Whether bail u/s 438 is to be granted or not

these instances are illustrative and not exhaustive.

**Deputy Commissioner of Police v. D.K.
Sharma, 2010 SCC OnLine Del 4554**

**Is a person entitled to get a copy of Case
Diary by filing an RTI?**

Unless and until a Trial is concluded, a person is not entitled to get a copy of the case diary by filing a RTI application, as Section- 8(1) (h) of the Right to Information Act, 2005 restricts the flow of information which would impede the process of investigation or apprehension or prosecution of offenders.

**Copy of Police Report and documents to
Accused**



MISS 'A' v. State of U.P. 2020 INSC 580



It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 of the Code, to copies of the documents referred to in said provisions. The filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of the Code, unless the stages indicated above are undertaken.

**Accused is not entitled for copy of statements
of victim under section 183 BNSS/164 CrPC?**



**State of Karnataka v. Shivanna (2014) 8
SCC 913**



10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.

**POLICE INVESTIGATION
FIRST INFORMATION REPORT**

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graph TD; A["POLICE INVESTIGATION  
FIRST INFORMATION REPORT"] --> B["FIR: What is?"]; B --> C["The information disclosing commission of a cognizable offence only sets in motion the investigating machinery with a view to collect necessary evidence, and thereafter, taking action in accordance with law."]; C --> D["Amish Devgan v. Union of India, 2020 SCC  
OnLine SC 994"]; D --> E["FIR is not an encyclopedia"]; E --> F["FIR is not an encyclopedia disclosing all facts and details relating to the offence."]; F --> G["Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1"]; G --> H["It is not meant to be a detailed document containing chronicle of all intricate and minute details. FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court."];
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FIR: What is?

The information disclosing commission of a cognizable offence only sets in motion the investigating machinery with a view to collect necessary evidence, and thereafter, taking action in accordance with law.

**Amish Devgan v. Union of India, 2020 SCC
OnLine SC 994**

FIR is not an encyclopedia

FIR is not an encyclopedia disclosing all facts and details relating to the offence.

Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1

It is not meant to be a detailed document containing chronicle of all intricate and minute details. FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court.

**Dharma Rama Bhagare v. State of
Maharashtra, (1973) 1 SCC 537**

FIR is not a Substantive Piece of Evidence

First information report is not a substantive piece of evidence and it can be used only to discredit the testimony of the maker thereof and it cannot be utilized for contradicting or discrediting the testimony of other witnesses.

**Pandurang Chandrakant Mhatre v. State
of Maharashtra (2009) 10 SCC 773**

Confessional FIR

Confessional FIR is not Admissible in Evidence.

**Narayan Yadav Vs. State of Chhattisgarh
2025 INSC 927**

Consideration of Delay in FIR

There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration.

**Amar Singh Vs. Balwinder Singh AIR 2003
SC 1164**

Clear indication of Fabrication in FIR

Mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication.

**Zahoor & Ors. v. State of U.P. AIR 1991
SC 40**

Delay in FIR is not a Parameter

Delay by itself is not a circumstance to doubt the prosecution case.

**Jamna & Ors. v. State of Uttar Pradesh,
AIR 1994 SC 79**

Inordinate delay in FIR

When inordinate in lodging the FIR, then reasons for the inordinate delay should be given by the prosecution.

**Ramji Surjya & Another vs State Of
Maharashtra AIR 1983 SC 810**

False accusation in FIR

But when we turn to the first information report which was lodged by Raghubar, Dayal, we do not find in it any mention of the names of Sajjan

Kumar and Laxmi Chand came out with Lathis and started assaulting the appellants and their companions in exercise of the right of private defence of the person of Raghubar Dayal and Shyam Lal. It is indeed strange that if Sun Kumar and Laxmi Chand did in fact come out of the house and start wielding lathis for saving Raghubar Dayal and Shyam Lal from further attack from the appellants and their companions, their names should not have been mentioned in the first information report. The first information report does mention the names of Ram Kishan, Prem Nalwala, Budh Sen, Bhagwan Das and Raj Bahadur, but it makes no mention of Sajjan Kumar and Laxmi Chand. Moreover, there is no explanation offered in the first information report as to how appellants Nos. 2 and 3 and Chandra Prakash came to receive the injuries. The evidence given by the prosecution witnesses in regard to the incident cannot, therefore, be accepted at its face value and it cannot be relied upon implicitly for the purpose of founding the conviction of the appellants.

**Mitter Sen and Others Vs State of U.P. AIR
1976 SC 1156**



Consideration of Delay in FIR

There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration.

**Amar Singh Vs. Balwinder Singh AIR 2003
SC 1164**

FIR: After due consultation

Therefore, the possibility of FIR, having been written by Om Prakash at the Police Station, after due consultation and deliberation can not altogether be ruled out. This being so, the FIR in the instant can not be implicitly relied upon. The FIR is the foundation on which the entire structure of the prosecution case is built and if the foundation becomes shaky, the entire structure is bound to collapse.

Sarwan v. State of U.P. 1994 (31) ACC 216. (Allahabad HC)

Grounds of Arrest

**Vihaan Kumar Vs. State of Haryana 2025
INSC 162**

- a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);
- b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;
- c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

Kasireddy Upender Reddy v. State of Andhra Pradesh 2025 SCC OnLine SC 1228, (Para 18)



a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.

b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.

c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).

d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).

e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal.

**EFFECTIVE INVESTIGATION:
NECESSITY OF A FAIR TRIAL
ROLE OF I.O.**



An investigator is the kingpin of criminal justice delivery system.

Amitbhai Anilchandra Shah v.CBI (2013) 6 SCC 348

DUTY OF I.O.



It is the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused.

The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness.

Babubhai vs State Of Gujarat (2010) 12 SCC 254

RESPONSIBILITIES OF INVESTIGATING AGENCIES



The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth.

The entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction

Investigating agencies are guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves on them of seeing that innocent persons are not charged on an irresponsible and false implication.

R. P. Kapur Vs. State of Punjab, AIR 1960 SC 866

IMPORTANCE OF FAIR TRIAL



An accused is entitled to a Fair Investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. A victim of a crime, is equally entitled to a fair investigation.

Nirmal Singh Kahlon vs State Of Punjab (2009) 1 SCC 441

DEFECTIVE INVESTIGATION: EFFECT



The Court held that while lapses in investigation do not automatically vitiate a trial, when the investigation appears deliberately unfair or manipulated, the prosecution's case becomes unreliable. It reiterated that courts must ensure justice is not compromised by procedural irregularities or fabricated evidence. Since the investigation in this case was found to be tainted and improperly conducted, the accused was acquitted, underscoring the need for fair and impartial investigation.

State (Inspector of Police) v. Surya Sankaram Karri, (2006) 7 SCC 172

COMPLAINANT AND INVESTIGATION OFFICER IS SAME FABRICATION OF RECORDS



When the complainant himself conducts the investigation, it amounts to a serious procedural irregularity suggesting possible fabrication or bias in official records. The Assistant Sub-Inspector, being both complainant and investigator, deprived the accused of legal safeguards against manipulation of evidence under the CrPC and Evidence Act. Declaring the investigation incurably defective, the Court set aside the concurrent convictions, emphasizing that impartial investigation is essential to prevent fabrication of police records and ensure fair trial rights.

Xavier v. State of Kerala, 1998 Cri LJ 3182

Informant himself investigating case: Impermissible



As a matter of law, informant and the investigator must not be the same person. There is no question of the accused having to show prejudice from such an investigation or to establish bias or a real likelihood of bias on the part of such an investigator, as held in certain judgments of two-judge Benches of the Supreme Court, which are overruled to that extent. Any possibility of bias or a predetermined conclusion has to be excluded as a matter of law, and cannot be left to the adjudication of the individual facts of the case. This requirement is all the more imperative in laws carrying a reverse burden of proof, such as the NDPS Act. Narcotics, Intoxicants and Liquor.

Mohan Lal v. State of Punjab, AIR 2018 SC 3853

Dual roles by police officers do not automatically vitiate the criminal proceedings



The Supreme Court's Constitution Bench settled a significant question under the Narcotic Drugs and Psychotropic Substances (NDPS) Act regarding procedural fairness when the same police officer acts as both informant and investigating officer in an NDPS case. Overruling the earlier Mohan Lal ruling, the Court held that such dual roles by police officers do not automatically vitiate the criminal proceedings or render the trial unfair. It clarified that each case must be assessed on its own facts, and unless specific prejudice or miscarriage of justice is demonstrated, prosecution is not invalid merely because of this overlap. The decision balanced the need for robust enforcement of NDPS laws with safeguarding procedural rights, emphasizing that a blanket assumption of bias is unwarranted and upholding a merit-based case analysis in future NDPS.

Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 164

If the investigation was faulty, whether it was not the fault of the victims or the witnesses

Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation.

Zahira Habibullah Sheikh vs State of Gujrat (2004) 4 SCC 158

**DELAY IN COMMENCEMENT OF INVESTIGATION:
WHEN FETAL**

There was much delay in commencement of the investigation of the case. The incident took place on 24.11.1979, whereas the investigation was started on 15.12.1979. There is no explanation for this delay.

Acquittal of accused was upheld.

Harnam Singh v. State, 1982 SCC OnLine All 1134, 1982 CrLJ 1818

NON-EXAMINATION OF IO: WHEN NON-FETAL

The Orissa High Court addressed an incident on June 2, 1988, where Shyama Naik and others assaulted Braja Naik and his father Sankar Naik with a knife, causing serious injuries. The prosecution examined eight witnesses, but some turned hostile and did not support the prosecution's version. Notably, one injured witness failed to name the assailant, weakening the prosecution's case. However, based on the consistent testimony of Braja Naik and his mother, the trial court convicted Shyama

Naik under Section 307 of the Indian Penal Code for attempt to murder. On appeal, the High Court examined whether the non-examination of the investigating officer and inconsistencies in witness statements caused prejudice to the accused. Ultimately, the court upheld the conviction, finding sufficient corroborative evidence of Naik's involvement in the assault, and confirmed the sentence imposed by the trial court.

Shyama Naik v. State of Orissa, 1995 SCC OnLine Ori 152, 1995 CrLJ 3204

**Recovery In pursuance of disclosure made by the Accused
Section 27 Indian Evidence Act, 1872**



Proviso to Section 23 Bharatiya Sakshya Adhiniyam, 2023

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

**Narayan Yadav Vs. State of Chhattisgarh 2025 INSC
927**



The conditions necessary for the applicability of Section 27 of the Act of 1872 are:

- i. That consequent to the information given by the accused, it led to the discovery of some fact;
- ii. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact for the first time was derived from the information given by the accused;
- iii. The discovery of a fact which is the direct outcome of such Information;
- iv. Only such portion of the information as connected with the said discovery is admissible;
- v. The discovery of the fact must relate to the commission of some offence.

RECOVERY OF WEAPON USED IN CRIME



Hon'ble Supreme Court restored the acquittal of Modan Singh, overturning the High Court's conviction for the murder of Prithvi Singh. The prosecution relied on circumstantial evidence: recovery of the pistol and cartridge, ballistic expert testimony, and "last seen" evidence provided by witnesses. However, the Court found that the prosecution failed to conclusively prove that the weapon belonged to Modan Singh or that he fired the fatal shot, noting that both Modan Singh and the acquitted co-accused were armed that night, and the evidence did not clearly establish the accused's sole presence with the deceased. The Supreme Court held that the circumstantial evidence was insufficient to sustain conviction, and there was no substantial proof directly linking Modan Singh to the crime. Accordingly, the appeal was allowed and the acquittal by the trial court was restored.

Modan Singh v. State of Rajasthan, (1978) 4 SCC 435

Recovery of Dead Body on basis of information already known



Since the dead body was recovered on the basis of information already known, Section 27 of the Evidence Act has no application. A recovery of the incriminating articles alleged to have been made by the accused while in custody is inadmissible in evidence if the police already knew where they were hidden. That takes the case out of the purview of Section 27 of the Evidence Act.

However, if a witness can be believed that in his presence the accused person gave recovery of something (of course while not in police custody) it may be a suspicious circumstance, de hors Section 27 of the Evidence Act. But, as noted above, the High Court has analysed the evidence in the present case in great detail to find the evidence to be contradictory and unacceptable in relation to the extra-judicial confession and alleged recovery.

State of Haryana v. Jagbir Singh, (2003) 11 SCC 261: 2003 CrLJ 5054

SCRUTINY THE CREDIBILITY OF RECOVERY WITNESSES



The appellant, along with another accused, was charged with murder and destroying evidence by disposing of the deceased's body. Both the trial court and the Madhya Pradesh High Court confirmed the conviction against Babudas and sentenced him to life imprisonment. The case was based solely on circumstantial evidence, primarily focusing on recoveries of the deceased's property from the accused and the accused's false alibi. The Supreme Court scrutinized the credibility of recovery witnesses and the evidence's completeness. It found the recoveries doubtful and held that a presumption of guilt under Section 114(a) of the Evidence Act could not be drawn without clear proof.

Babudas v. State of M.P. (2003) 9 SCC 86: 2003 CrLJ 2536

INJURY: EXPLANATION



The conviction of appellants Mohar Rai and Bharath Rai, challenging the prosecution's case. The incident involved an attack on Mohar Rai, who sustained multiple injuries and was allegedly forced to use a revolver which was later thrust upon him. The Court found significant discrepancies in the prosecution's evidence, including failure to explain the injuries on the appellants properly and doubts about the revolver's use by Mohar Rai. The Court observed that the prosecution failed to prove beyond reasonable doubt the version of events it presented and ignored the significance of the injuries on the appellants, which were substantiated by medical evidence as not self-inflicted.

Mohar Rai v. State of Bihar, 1968 SCC OnLine SC 49

UNEXPLAINED INJURIES ON ACCUSED



Hon'ble Apex Court emphasized that unexplained injuries on the accused and procedural gaps did not outweigh the reliable eyewitness evidence. The Supreme Court dismissed the appeal, confirming the conviction of Surendra Paswan for the murder, highlighting the loyalty shift as the motive behind the crime.

Surendra Paswan v. State of Jharkhand (2003) 12 SCC 360

MEDIA TRIAL



“No report/discussion/debate/ interview should be presented by the press/media which could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, with a view to satiate the thirst of stealing a march over competitors in the field of reporting.”

Nilesh Navalakha v. Union of India, 2021 SCC OnLine Bom 56

LEAKAGE OR DISCLOSURE OF MATERIAL



If indeed there is leakage or disclosure of materials, which has the potential of stifling a proper investigation, it could pave the way for such information being laid before the competent court having powers to punish for criminal contempt under Section 2(c) of the Contempt of Court Act and in an appropriate case, for being dealt with in accordance with law.

Nilesh Navalakha v. Union of India, 2021 SCC OnLine Bom 56

Appointment of an Officer as a Link between the Investigator and Media Houses



Police, as well as the other investigating agencies, may consider the desirability of appointing an officer who could be the link between the investigator and the media houses for holding periodic briefings in sensitive cases or incidents that are likely to affect the public at large and to provide credible information to the extent such officer considers fit and proper to disclose and answer queries as received from the journalists/reporters but he must, at all times, take care to ensure that secret and confidential information/material collected during the investigation, the disclosure whereof could affect the administration of justice, is not divulged.

Nilesh Navalakha v. Union of India, 2021 SCC OnLine Bom 56

DEFECTS IN PROSECUTION



Hon'ble Supreme Court acquitted the appellants of charges including murder and attempted murder due to lack of sufficient evidence. The case involved Bir Singh, a 14-year-old boy, and others accused of shooting incidents leading to death and injury. Despite serious allegations and initial convictions by the High Court, the Supreme Court found grave lapses in the investigation, such as failure to examine key witnesses and secured weapons, and suspicious alterations in police records. The Sessions Judge had noted possible substitution of names and inconsistencies in the prosecution's case.

The Court emphasized the importance of thorough and impartial investigation for securing justice.

Bir Singh v. State of U.P., (1977) 4 SCC 420

INDEPENDENT PROSECUTION



Hon'ble Supreme Court addressed the issue of the independence of public prosecutors from the police department. The Court held that Assistant Public Prosecutors, appointed under Section 25 of the Code of Criminal Procedure, could not remain under the administrative and disciplinary control of the Police Department or its head, the Inspector General of Police. The Court declared that such prosecutors must be freed from police control and placed in a separate prosecution cadre or department, directly responsible to the government. This was to ensure fair and impartial prosecution, eliminate conflicts of interest, and uphold prosecutorial autonomy. The ruling emphasized that the state government has a statutory obligation to create an independent prosecution department for effective and unbiased administration of justice. Hence, the judgment mandated the separation of prosecution from police to maintain the integrity and autonomy of the prosecutorial function in the criminal justice system.

S.B. Shahane v. State of Maharashtra, 1995 Supp (3) SCC 37

ROLE OF COURT IN INVESTIGATION



Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.

Union of India vs. Prakash P. Hinduja 2003 (6) SCC 195

MONITORING BY MAGISTRATE



Section 156(3) CrPC states that: Any Magistrate empowered under Section 190 may order such an investigation as abovementioned (investigation by the officer in charge of the Police Station. Section 156(3) CrPC provides check by the Magistrate on the police performing its duties. In case the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

Sakiri Vasu v. State of Uttar Pradesh (2008) 2 SCC 409

When the investigating officer submits Police Report -



- only qua some of the persons-accused named in the FIR, keeping open the investigation qua the other persons-accused, or
- all the documents as required under Section 193(6) BNSS/ 173(5) CRPC are not submitted,
- whether accused be entitled to default bail?
- Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case.

Para 15. There cannot be any disagreement with the well-settled legal position that the right of default bail under Section 167(2) CrPC is not only a statutory right but is a right that flows from Article 21 of the Constitution of India. It is an indefeasible right, nonetheless it is enforceable only prior to the filing of the challan or the charge-sheet, and does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to the accused after the filing of the challan.

Para 22. In view of the above settled legal position, there remains no shadow of doubt that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). As settled in the aforesaid case, it is not necessary that all the details of the offence must be stated.

“Para 23. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C.”

Police Report filed but cognizance has not been taken before the expiry of 60 days.

Can an accused demand release on default bail on the ground that cognizance has not been taken before the expiry of 60 days?

“filing of a charge-sheet is sufficient compliance with the provisions of Section 167 CrPC and that an accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken.”

SFIO v. Rahul Modi, (2023) 15 SCC 311



Charge-sheet was filed within the stipulated time but the cognizance was not taken by the court, for want of sanction to prosecute the accused.

Can an accused demand release on default bail on the ground that though the charge-sheet was filed within the stipulated time, the cognizance was not taken by the court, for want of sanction to prosecute the accused?

Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court.

“Whether an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (for short, “CrPC”) is maintainable at the instance of an accused while he is already in judicial custody in connection with his involvement in a different case?”

**DHANRAJ ASWANI v. AMAR S.
MULCHANDANI & ANR. 2024 INSC 669**

There is no express or implied restriction in the CrPC or in any other statute that prohibits the Court of Session or the High Court from entertaining and deciding an anticipatory bail application in relation to an offence, while the applicant is in custody in relation to a different offence. No restriction can be read into Section 438 of the CrPC to preclude an accused from applying for anticipatory bail in relation to an offence while he is in custody in a different offence, as that would be against the purport of the provision and the intent of the legislature.

When Bail may be cancelled?

In **Himanshu Sharma Vs. State of MP, (2024) 4 SCC 222 (Paras 10 & 11)**, the Hon'ble Supreme Court has held that the law is well settled that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the court is satisfied that after being released on bail,

- (i) the accused has misused the liberty granted to him;**
- (ii) flouted the conditions of bail order;**
- (iii) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; or**
- (iv) that the bail was procured by misrepresentation or fraud.**

Whether a person who has not been arrested by the investigation agency, during investigation, should be taken into custody by the court upon filing of Chargesheet and his appearance in such court?

Satender Kumar Antil Trilogy



(‘Antil-1’)

Satender Kumar Antil v CBI (2021) 10 SCC 773, dated 07.10.2021

(‘Antil-2’)

Satender Kumar Antil v CBI 2021 SCC OnLine SC 3302, dated 16.12.2021

(‘Antil-3’)

Satender Kumar Antil v CBI 2022 SCC OnLine SC 825, dated 11.07.2022

Guidelines laid down in Antil-1 decision

Satender Kumar Antil v CBI (2021) 10 SCC 773

The Supreme Court, in its Antil-1 decision, categorized various offences into four (4) categories and laid down certain guidelines for the procedure to be followed in cases which meet the pre-requisite conditions that,

- (i) the person should not have been arrested during the investigation, and
- (ii) the person should have co-operated throughout the investigation including appearing before the investigating officer whenever called for.

Category A

After filing of charge-sheet/complaint taking of cognizance:

- (a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.
- (b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.
- (c) NBW on failure to appear despite issuance of bailable warrant.
- (d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- (e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category A deals with both police cases and complaint cases:

- Where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit.
- The trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D (5) of the UAPA, POCSO, etc.”

Clarifications given in Antil-2 decision

**Satender Kumar Antil v CBI 2021 SCC
OnLine SC 3302**

The intent behind Antil-1 guidelines was to ease the process of bail and not to restrict it. The guidelines do not impose additional fetters, rather, they intend to enlarge the scope of bail;

Merely by categorizing certain offences as economic offences (Category D) which may be non-cognizable, no different meaning should be given to the Antil-1 order; and

If during the course of investigation, there has been no cause to arrest the accused person, merely the filing of chargesheet would not be an ipso facto cause to arrest him, an aspect already clarified in the decision in the case of *Siddharth v State of UP (2022) 1 SCC 676*.

Clarifications given in Antil-3 decision

Satender Kumar Antil v CBI 2022 SCC OnLine SC 825

Regarding the general bail jurisprudence, the court reiterated its various earlier decisions with regard to the procedure for,

- arrest (ss. 41, 41A, and 60A of CrPC),
 - issuance of warrants and taking bonds (ss. 87 and 88),
 - default bail (s. 167(2)),
 - custody and chargesheet (s. 170),
 - issue of process and committing cases to court (ss. 204 and 209),
 - adjournments (s. 309),
 - suspension of sentence pending appeal (s. 389),
 - bail on half sentence served as undertrial (s. 436A),
 - bail provisions (ss. 437 and 439), and
 - amount of bond (s. 440).
- The Supreme Court reiterated its decision in the case of Siddharth v State of UP (supra) and held that strict compliance has to be made with the decision.
 - The court held that in a case where the prosecution does not require the custody of the accused, there is no need for an arrest under section 170 of CrPC; there is not even a need for filing a bail application as the accused is merely being forwarded to the court for framing of charges and issuance of process for trial.
 - It was held that the court may fall back on the provisions of section 88 of CrPC and take bonds and ensure presence of the person during trial.
 - The same observations were made by the court for s. 209 of CrPC also.
 - The court has clarified that there should not be any insistence of a bail application while considering the application under sections 88, 170, 204, and 209 of CrPC.
 - The court has also clarified that bail applications should be disposed off within a period of two weeks and anticipatory bail applications within six weeks.

Regarding Category A and B offences, the court stated that the general bail principles as reiterated above would apply to these categories of offences. Further, in Category A, one would expect a better exercise of discretion on the part of the court in favour of the accused while for Category B, cases will have to be dealt with on a case-to-case basis but keeping in view the general principles of law and the provisions.

Regarding Category C offences (special Acts), the court, without going through the provisions of the statutes individually, observed that the general principle governing delay would apply to these categories also and the rigors contained in the special Act regarding bail would not apply if substantial delay was being caused.

The most important thing that the court clarified for this category is that in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court (Para 65 of the decision).

The court held that the observations regarding section 170 of CrPC (supra) would apply to this category also.

Regarding Category D offences (economic offences), the court importantly clarified that it is not advisable on the part of the court to categorize all the offences into one group (i.e., economic offences) and deny bail on that basis.

It means that the court rejected the idea that just because the committed offence is an economic offence, the bail cannot be granted and observed that each case should be seen separately and the decision on bail should be decided on the gravity of the offence, the object of the Special Act, and the attending circumstances along with the period of sentence [the court referred to *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791].

SEVEN DIRECTIONS TO AVOID DELAY IN RELEASE OF PRISONERS



AFTER GETTING BAIL



The Hon'ble Supreme Court in In Re Policy Strategy for Grant of Bail SMW, 2023 SCC OnLine SC 483 issued certain directions:

- 1) The Court which grants bail to an under-trial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].
- 2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.
- 3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.
- 4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.
- 5) In cases where the under trial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.

DAILY CASE STUDY



(On Real Case Study)

Let us assume a criminal case of exam paper leak.

In a high-profile criminal case involving the leak of a examination paper, several accused individuals have been arrested and charged with offenses under the relevant anti-corruption, criminal conspiracy, and information theft laws. During the investigation, a subset of the accused have admitted to paying bribes to officials in exchange for access to the leaked exam paper. These individuals have expressed willingness to become government witnesses and have formally submitted applications seeking a tender of pardon in return for their full cooperation and truthful testimony against the remaining accused.

The prosecuting authority must now determine the legal framework and conditions under which the tender of pardon can be granted to these co-conspirators, balancing the interests of justice, deterrence, and the integrity of the examination system.

The court is also tasked to evaluate the credibility of these witnesses, the scope of their confessions, and the impact of their statements on the prosecution of the other accused persons.

Key legal issues include:

- Whether the admission of guilt coupled with the offer to become a government witness satisfies the criteria for tender of pardon under applicable laws.
- The extent of prosecutorial discretion in granting pardon to accomplices who have benefited financially from the crime.
- The procedural safeguards required to ensure testimonies obtained under tender of pardon are voluntary and credible.
- The implications of these pardons on sentencing and punishment of other accused individuals involved in the paper leak.
- Balancing the interests of public trust in the examination system with the need to effectively prosecute offenders.

TENDER OF PARDON TO APPROVER

- Tender of Pardon to Accomplice. [Sec. 306 CRPC/ 343 BNSS]
- Power to direct tender of pardon. [Sec. 307 CRPC/ 344 BNSS]
- Trial of person not complying with conditions of pardon. [Sec. 308 CRPC/ 345 BNSS]

RELEVANT PROVISIONS LAW CAN BE SUMMARIZED AS-

- Accomplice [Competent witness]
- Approver [Unworthy of credit].
- Tender of Pardon. [Application]
- Obtain evidence of approver to facilitate conviction of others.
- Full and true disclosure statement.

- Without evidence of approver, conviction of other accused not possible.
- Double Test >>>> Reliable and corroborated in material particulars.
- “Detained in judicial custody” until the termination of the trial, if not on bail.
- Repentance (less role in crime).
- Public Policy.

Procedure

- Chief Judicial Magistrate or a Judicial Magistrate may tender of pardon to an accused person at any stage of the investigation or enquiry into, or the trial of, the offence.
- The Court after commitment of a case to it, may also tender a pardon at the stage of trial.
- The primary object of tender a pardon is to obtain the evidence of an accomplice (person supposed to have been directly or indirectly concerned in the offence) so as to facilitate conviction of others.
- Tender a pardon may be given to an approver on condition of his making a full and true disclosure of the whole circumstances within his knowledge related to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.
- The disclosure must be complete as to himself and as to any other person concerned as principal or abettor.
- It is necessary to include a person arraigned as accused in a joint trial or deemed joint trial.
- The approver should be detained in the custody until termination of the trial unless he has already been enlarged on bail.
- An Approver receives a lighter sentence or perhaps a pardon as compensation for his confession and testimony.
- The evidence of an approver being that of an accomplice is prima facie of a tainted character, and has therefore to be scrutinised with the utmost care and accepted with caution.

- The grant of pardon can always be revoked on the “certificate of the Public Prosecutor” in accordance with the procedure laid down in Section 345 BNSS, if in the prosecutor's opinion, the approver has willfully concealed material or given false evidence.
- An approver, who is an accomplice granted pardon in exchange for their testimony, can be convicted in court, but only if he breaches the conditions of their pardon or give false evidence.

Medico Legal Aspects of Wounds & Injuries in Investigation of Crimes



Forensic Medicine



- Application of knowledge of medicine & allied subjects to law, to aid in administration of Justice. Hence, Forensic Medicine, as a field, deals with use of Medical knowledge & expertise to help in police investigation/ Investigation of Crime.

Locard's Principle of Exchange



- Every crime: There are 2 or more parties at the scene
- Perpetrator(s) & Victim(s)
- In theft/ accident, etc., Crime scene and other party
- Important principle in the investigation of crime

- Locard's Principle of Exchange
- When two objects come together, they leave their trace on each other
- If you touch an object -
- you leave your finger prints on object & take- dust/ fibers/ stains, etc.
- Finger Prints, bite marks/ injuries by pointed weapons, bullets from body, shoe prints/ lip prints and evidence that can lead to culprit
- One has to be vigilant to detect, collect & analyze the evidence
- If so, culprits can be connected to the crime & caught
- This is the crux of the Scientific Investigation of a Crime

Common sense of investigator plays a very important role (to visualize the crime, reconstruct it & then search for evidence)

Section 44 IPC/ 2(14) of BNS



- Any harm, illegally caused to any person in Body, Mind, Reputation or Property
- Forensic medicine deals with first 2 – body & mind
- If harm to a person's Reputation or Property leads to physical/ mental harm –Forensic Medicine comes into play

Hurt (114 BNS)



- Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt
- 115 (1): Voluntarily causing Hurt
- 115 (2): Punishment for (1)

Cases: Forensic Medicine comes to play



- **Physical injury**
- **Assault:**
 - Blunt object/ weapon
 - Sharp Object/ weapon
 - Pointed object/ weapon
 - Firearms ☐ Smooth bore/ Rifled bore
 - Explosions
 - Fall from height
 - Accidents Vehicular/ train/ aeroplane

Cases: Forensic Medicine comes to play



- **Asphyxial deaths:** Hanging/ Strangulation/ Drowning/ suffocation: smothering/ gagging/ choking/ traumatic asphyxia
- **Poisoning**
- **Burns Flame/ scalds**
- **Electricity**
- **Chemical burns**
- **Sexual Offences**
- **Abortion/ miscarriage**
- **Fabricated Injuries** Self suffered/ Self-inflicted/ chemicals

Classification of Injuries

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graph TD; A[Classification of Injuries] --> B["• Based on Causative Factors:  
• Mechanical Injuries: (Produced by Physical Violence)  
• Abrasions  
• Contusions (Bruises) Blunt Weapon  
• Lacerations  
• Incised Wounds → Sharp Weapon  
• Stab wounds → Pointed Weapon  
• Fire arm Injuries  
• Fracture/ Dislocation of bone or tooth"]; B --> C[Classification of Injuries]; C --> D["• Thermal Injuries:  
• Due to application of heat  
• Burns (Due to dry heat – flame)  
• Scalds (due to wet heat – Steam/ boiling liquid)  
• Due to application of cold  
• Hypothermia  
• Frost bite/ trench foot/ chill blains"]; D --> E[Classification of Injuries]; E --> F["• Others:  
• Chemical Injuries  
• Electrical Injuries  
• Lightning Injuries  
• Blast injuries"];
```

- Based on Causative Factors:
- Mechanical Injuries: (Produced by Physical Violence)
- Abrasions
- Contusions (Bruises) Blunt Weapon
- Lacerations
- Incised Wounds → Sharp Weapon
- Stab wounds → Pointed Weapon
- Fire arm Injuries
- Fracture/ Dislocation of bone or tooth

Classification of Injuries

- Thermal Injuries:
- Due to application of heat
- Burns (Due to dry heat – flame)
- Scalds (due to wet heat – Steam/ boiling liquid)
- Due to application of cold
- Hypothermia
- Frost bite/ trench foot/ chill blains

Classification of Injuries

- Others:
- Chemical Injuries
- Electrical Injuries
- Lightning Injuries
- Blast injuries

Classification of Injuries

- Based on Nature of Injuries:
- Suicidal
- Homicidal
- Accidental
- Fabricated: Self- inflicted/ Self- suffered/ artificial wounds
- Defense Wounds

Classification of Injuries

- Based on Severity of Injury (legal)
- Simple hurt (S.114 BNS)
- Grievous hurt (S. 116 BNS)
- Dangerous injury?
- Based on Time of Infliction:
- Antemortem
- Postmortem

Dangerous Weapon/ Means (118(2) BNS)

- Any instrument used for shooting, stabbing or cutting
- Which, used as weapon of offence, is likely to cause death
- By means of fire or any heated substance/
- Any poison or any corrosive substance/
- Any explosive substance/
- Any substance which is deleterious to the human body to inhale/ swallow, or to receive into the blood
- By means of any animal
- Punished with imprisonment of either description up to 3 years/ fine upto 20,000/- or both

Related Sections of BNS

- S.3(5)→ common intention
- 2(14) → defines Injury
- Vehicular injuries: 281/ 125/ 106 (2)BNS)
- Homicide: 100 – 105 BNS)
- Suicide: 305/ 306/ 309 (107 – 8 BNS. 309 repealed)
- Attempt to murder: 109
- Hurt & Grievous hurt : 114/115(1)116 &118(2)BNS
- 124 BNS: (1) – Causing grievous hurt by throwing an acid
- 124 BNS: (2) – Attempt to cause GH; Defines Acid
- 506 Criminal intimidation (351 BNS)

Assault Sec 352 IPC (131 BNS)

- An offer of threat/ attempt to apply force to body of another in a hostile manner
- Actual blow is battery
- In Indian law, assault covers both assault and battery

Abrasions

- Types:
- Linear – due to pointed objects like, needles, pins, etc.
- Scratch – due to finger nails, etc.
- Graze – due to rough surface
- Pressure – due to crushing of skin caused by sustained pressure
- Impact – due to crushing of skin caused by a momentary impact
- Appearance of scab and its color changes- probable time since injury

Bite Marks

Abrasion, Scabbed

Linear Abrasion

Grazed Abrasion

Grazed Abrasion

Imprint abrasion

Imprint abrasion

Nail Scratches

Age of Abrasion

- Bright red Fresh
- Red Scab Up to 24 hours
- Reddish brown 2 – 3 days
- Partial shedding of scab 4 -7 days
- Complete healing 10 days

Age estimation.....

Contusions Medico Legal Importance

- Precise site of impact
- May be the only sign of an extensive internal injury
- Direction of application of force
- Patterned abrasion – weapon of offense
- Healing – age of wound
- Throttling, smothering, hanging, strangulation, sexual offenses, etc.

Definition

- Infiltration of blood into tissue following rupture of blood vessels,
- Usually small veins
- Due to application of blunt weapon like stick/ lathi or fist, etc
- No disruption of skin

Features

- Pin head or large (Hematoma)
 - Raised above surface/ appear as Swelling
 - Visible immediately/ after days
 - Re-examine after 48 hours
 - Infra-red photography
 - Careful during autopsy (give incision)
- Staining or lividity?

Site

- At the site of impact
 - Ectopic/ migratory
 - Superficial
 - Deep
- Migratory Bruise
Tramline bruise
Patterned Bruise
How old are the bruises? (Careful!)

- Red Fresh
- Bluish After 24 hours
- Bluish black to brown 2 - 4 days
- Greenish 5 – 7 days
- Yellowish 7 – 10 days
- Normal color of skin 14 days

Bruise – important questions

- Nature of force
- Delayed contusion
- Amount of blood loss in a contusion – Number of contusions, combined effect....
- Migratory bruise

The Case

- History:
 - The subject, an undertrial, alleged that while in custody, in 2008, he was beaten by police on his back with a “multi-fiber rod, about 2 cm in diameter and a leather belt, about 4 cm wide”; while he was pinned, face-down, to the ground.
 - Brought to Emergency next day, for medical examination
 - No ointment/ lotion was prescribed/ applied to the ‘injuries’ on his back
 - Jail authorities found → had applied some ointment, used for treatment of hemorrhoids, on his skin, to produce alleged injuries
 - Once again brought to GMCH for expert opinion by a Board, regarding said ‘injuries’, on same day

Examination findings:

- Total, 20 reddish brown marks of varying length, from 6 - 19 cm, width varying from 1.5 to 3 cm
- All marks → uniform colour, clearly demarcated from surrounding normal skin, with drying up & wrinkling on surface
- Blanched on applying pressure
- Exfoliation of skin was present at places
- **Examination findings:**
- No swelling/ no tenderness over the marks
- When examined without his knowledge.
- No dermatitis, eczema or vesication was present on any of these marks

Artificial Contusions using Dithranol

Fabricated Injuries in Custody

Lacerated wounds

Splits or tears produced by blunt weapon

Lacerations

- Result of application of blunt force/ weapon in which skin & underlying tissue get torn
- Incise looking wounds – present on areas like head, shin, etc
- Depth to be assessed

Types of lacerations

- Split lacerations/ tears
- Stretch lacerations
- Avulsions
- Internal lacerations

Incised -looking wounds

Stretch Laceration

Avulsion Laceration

Tooth injury

Crush Injury Skull with Split Laceration

Internal laceration

Exposure of injury site

Incised wound and Stab wound

INCISED WOUNDS

- Clean cut through the tissues
- Sharp edged weapon
- Length is the largest dimension
- Sharp edged weapon drawn across skin

Features

- Margins clean cut, well defined and no bruising
- All tissues are evenly divided
- Blood vessels cleanly cut
- No tissue bridges

Nature of injury.....??

Defense Wounds

Cut from Broken Glass

CHOP WOUNDS

- Deep gaping wounds
- Caused by sharp splitting edge of heavy weapon
- Axe, sword, meat cleaver
- Margins moderately sharp
- Abrasions & bruises

CHOP WOUNDS

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graph TD; A[CHOP WOUNDS] --> B[Stab wounds<br/>Caused by sharp pointed weapons<br/>Depth is the greatest dimension<br/>Single edged weapon<br/>Single Edged Weapon<br/>Double Edged Weapon<br/>Can the knife be identified with this wound?<br/>Clothes help in deciding the type of injury]; B --> C[Sharp weapon injuries]; C --> D[Was more than one knife used?]; D --> E[Knife can cause variety of cutting & stabbing wounds<br/>Both internal & external wounds can vary by inches<br/>Best chance if numerous stab wounds present as best indicators of the width & length of the blade];
```

- Destruction of underlying tissue & organs
- Depth may be same throughout
- Head face neck shoulders & extremities
- Majority homicidal

Stab wounds

Caused by sharp pointed weapons

Depth is the greatest dimension

Single edged weapon

Single Edged Weapon

Double Edged Weapon

Can the knife be identified with this wound?

Clothes help in deciding the type of injury

Sharp weapon injuries

- Shape and size – opinion on kind of weapon used
- Tailing, bevelling - direction of infliction
- Healing changes – time of infliction
- Depth to be assessed

Was more than one knife used?

- Knife can cause variety of cutting & stabbing wounds
- Both internal & external wounds can vary by inches
- Best chance if numerous stab wounds present as best indicators of the width & length of the blade

Force used to cause the injury?

- Usually cannot tell as no way to measure amount of force needed to break a bone or cause a bruise

Other Q

- How long did he live after he was injured?
- What was he capable of doing after he was injured?
- How much force did it take to cause the injury?

FRACTURE

- Break in the continuity of the bone
- Traumatic fractures
- Pathological fractures

MEDICO – LEGALLY IMPORTANT

- All fractures are grievous
- X – ray should be done
- Permanent evidence/ negligence
- Fat embolism
 - – punctate hemorrhages
 - – Sudan III or Osmic acid stain
- Postmortem fractures
- no vital reaction and no fat embolism

Burn Injuries

Firearm Injuries

Types of Firearm

Shotgun

Rifled Weapons

Smoothbore Firearms

- Shotguns only smoothbore small arm currently in use
- Fire multiple small projectiles (pellets or shot) so accurate aiming not an issue
- barrels smooth rather than rifled
- barrels shaped or indented to control the spread of the shot as it exits the muzzle

Constituents of cartridge (S.B.)

Constituents of cartridge (R.B.)

Characteristics of R B entry wound, Near Range

Smoke & Unburnt Powder

Abrasion Collar

Grease Collar

Range of Fire – Rifled

- **Hand held – Pistols & Revolvers:-**
 - Singeing (flame): up to 8 – 10 cms
 - Blackening (soot): up to 15 – 20 cms
 - Tattooing (un-burnt powder): 30 – 40 cms
- **Rifles:-**
 - Singeing: up to 15 – 20 cms
 - Blackening: up to 30 – 40 cms
 - Tattooing: up to 60 – 80 cms
 - Bernad Knight, 2000

Range of fire: Smooth Bore

- Singeing: up to 15 – 30 cms
- Blackening: up to 30 – 45 cms
- Tattooing: up to 60 – 80 cms
- Disc/ card: up to 2 meters
- Wads: up to 2 – 6 meters

(cause injury up to 3 meters)

Dispersion of pellets: diameter of dispersion (inches) = range in yards (yards)

- starts from 1.5 – 2 meters of fire

Characteristics for Range (S.B.)



Powder tattooing

- Contact range fire – loose contact
- Lower edge
- Powder tattooing spread on lower side showing escape from this area.
- Tattooing vital phenomenon showing inflammatory reaction
- Hence proof of ante-mortem fire

Distant range RB FA Entry wound

- No singeing/ blackening/ tattooing
- Abrasion collar present, elliptical, with projection towards lower outer aspect
- Can determine direction of fire
- Cannot comment on range except distant range

X – Ray findings (S.B.)

Markings of 'fire'



Comparison Microscope

Asphyxial Deaths

- Hanging
- Strangulation
- Drowning
- Suffocation

Classification of Asphyxial Deaths

- Based on position of the Knot:
 - Typical
 - Atypical
- Based on suspension of the victim's body:
 - Complete
 - Partial
- Based on the type of ligature:
 - Fixed Knot
 - Running noose

Hanging



Hanging – rope used as ligature material

Hanging – electrical cord used as ligature material

Ligature mark – patterned abrasion

Oblique ligature mark of hanging

Dependent hypostasis in hanging



- Ligature strangulation
- Manual Strangulation (Throttling)
- Mugging
- Bansdola
- Garroting

Strangulation



- Smothering
- Gagging
- Choking
- Traumatic Asphyxia

Suffocation



- Typical (wet) drowning
- Atypical (dry) drowning

Drowning



Internal airway obstruction with a latex examination glove

Traumatic Asphyxia



Asphyxial death due to forceful immobilization of the external respiratory muscles {chest wall}

Traumatic “positional” asphyxia – the worker is pinned in between an I beam and an elevator

Froth in a drowning victim



Frothy pulmonary edema fluid within the larynx of a drowning victim

Washerwoman’s hands in a body recovered from water

Cadaveric spasm in a drowning victim
