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## TWELFTH REPORT

**Recommendations for suitable amendment  
to the provisions of the Code of Criminal  
Procedure, 1973 for expeditiously  
completion of trial of all rape cases and for  
expeditiously concluding such cases**

**NOVEMBER, 2018**

*M. B. Shah*

**JUSTICE M. B. SHAH  
FORMER JUDGE,  
SUPREME COURT OF INDIA  
AND  
CHAIRMAN,  
GUJARAT STATE LAW COMMISSION**

Recommendation for suitable amendment to the provisions of The Code of Criminal Procedure, 1973 for expeditiously completion of trial of all rape cases and for expeditiously concluding such cases

**RECOMMENDATION FOR SUITABLE AMENDMENT TO THE  
PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE, 1973  
FOR EXPEDITIOUSLY COMPLETION OF  
TRIAL OF ALL RAPE CASES  
AND  
FOR EXPEDITIOUSLY CONCLUDING SUCH CASES**

**OBJECTS AND REASONS**

1. Chapter XII of the Code of Criminal Procedure, 1973 (Cr.P.C.) refers to "Information to the police and their powers to investigate". Section 154 refers to "Information in cognizable cases". It says that *"every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."*

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Therefore, irrespective of jurisdiction over the local area as contemplated under Section 156(1) of Cr.P.C., it is the duty of the officer in charge of the police station to follow the mandatory provisions contained in Section 154 of Cr.P.C.

Sub-Section (2) of Section 156 Cr.P.C. indicates that no proceedings of a police officer in such case shall at any stage be questioned on the ground that the officer was not empowered to investigate.

Sub-Section (1) of Section 154 of Cr.P.C. without referring to the jurisdiction casts a duty on the police officer in charge of the police station to record the FIR.

If one turns to Section 155 of Cr.P.C. for information to an officer in charge of a police station within the limits of such station of a non-cognizable offence and investigation of such cases, one would find the reference to the jurisdiction. Section 154 of Cr.P.C. specifically states that an officer in charge of the police station to record the FIR.

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The question is — whether the police are bound to record the information of a cognizable offence alleged to have been committed outside the territorial jurisdiction of the police station?

The Parliament, while making a provision wisely, mandated the officer in charge of a police station to record the information as contemplated in Section 154 (1) of the Code. The police, therefore, cannot abdicate its function and ask the informant to go to the other police station. By the time, the informant reaches the other police station, there may be an unreasonable delay by which time the accused may run away and the victim may suffer a lot. In such a situation, the police should not only record the information but should take effective measures to protect the victim by sending the victim to the hospital and should also take immediate action to see that the accused is not out of the reach of the police. After recording the FIR and forwarding the victim to the hospital, the police may refer the FIR to the police station which will have a jurisdiction.

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2. If the victim is only informant and there is no urgency, the police should record the FIR. However, when there is urgency to forward the victim to the hospital, the police should make arrangement to record the information from others, (accompanying the victim) and commence the investigation and after reaching the hospital, should record the statement of the victim. When a person is examined by the medical expert, the notes are made immediately or the findings are recorded immediately and not after sometime and, therefore, the police should collect the medical papers immediately along with the opinion of the medical officer. The State Government should issue the directions to all the medical officers for issuance of certificate and other papers with the opinion immediately but not later than 24 hours. This procedure will help both the victim and the accused. If there are no findings corroborating the version of the victim, it is the duty of the police to see that the person having committed no offence or of gravity much less than alleged, should not suffer.

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If, in the opinion of the medical officer, there was sexual assault on a female, the police officer shall request the nearest Magistrate to record the statement of victim under Section 164 of the Code. The officer in charge of the investigation shall continue to investigate the matter even during the time, when the Magistrate is recording the statement of the victim. It shall be the duty of the investigating officer to complete the investigation within a period of 30 days and the charge sheet shall be filed without waiting for the reports from the experts, if any. (It is not necessary for the investigating officer to wait for a statutory period so as to entitled the accused to get bail).

- 3.** With regard to filing of a charge sheet before the Court of Sessions, it is required to be stated that the provisions contained in the Code with regard to filing of a charge sheet in such cases are required to be amended. In various other statutes, provisions have been made for submitting the copy of the FIR to the

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Court of Sessions within 24 hours from filing of the FIR and also with regard to filing of a charge sheet before the Court of Sessions. Similarly, for such heinous crimes against the female, the provision should be made for filing of the copy of the FIR within 24 hours from recording the FIR as well as submitting the charge sheet before the Court of Sessions.

Upon receipt of the charge sheet, the accused should be summoned to appear before the District Judge or the Principal Judge of the Court on the next working Monday for framing of the charge and the Court should fix the case for recording the evidence in the next week from framing of the charge to record evidence day-to-day and after completion of the recording of the evidence, the statement of the accused should be recorded and soon thereafter, the Court hearing the case should render the decision after hearing the learned Counsel for the State as well as the accused.

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4. The Court should strictly follow the procedure laid down in Section 231 read with Section 309 of the Code and once the Court has commenced the recording of the evidence, the case should not be adjourned and should be taken day-to-day till it is culminated in the final order. It is bounden duty of the prosecution to produce all material witnesses, as the police officer who recorded the statement of the witnesses is aware about where witnesses are residing. When a serious case is being conducted by a Court of Sessions, it is the duty of the investigating officer to remain present throughout before the Court of Sessions, when the proceedings commences. (Earlier under the old Code, when Sessions cases were being conducted, the investigating officer would remain present throughout and even if he is transferred, he used to remain present, as he was the investigating officer.) The trial used to commence in all sessions cases within a period of 3 to 6 months from the date of offence or the arrest of the accused, despite the fact that the committal proceedings were required

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to be conducted by the judicial magistrate. In any case, by and large judgement used to be delivered within a period of 6 to 9 months from the date of occurrence of the crime or the arrest of the accused and the appeal would be over within a period of year or year and ½. In those days, appeals were not being admitted as a routine and at the stage of admission after giving an opportunity to the learned Counsel to go through the evidence; the appeals were disposed of as a result of which the arrears were not as large as it is today.

5. With regard to scientific procedure to be followed while recording evidence, it is to be stated that the latest technology for recording the evidence being available without the assistance of a stenographer should be adopted by every Judge so that there is fast recording of the evidence and as per earlier practice, the Presiding Judge should dictate the evidence in open Court, when the witness is deposing which would be immediately transcribed on the paper and a bench clerk

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or a Shirestedar of the Court would record the evidence in vernacular simultaneously which would reduce the cost of litigation and the litigants would be saved from translating cost of the Court record.

The earlier practice of reading the evidence of a witness in the presence of advocates was providing an opportunity to correct the version, if any recorded incorrectly or by a mistake and that was much helpful and why it has been stopped, one does not know. When the evidence is dictated in the Court, while witness under examination, the Counsel for the prosecution as well as the defence would obviously get the copies of the evidence recorded during the course of the day and that would facilitate the speedy disposal of cases.

There should be videography along with recording of evidence which would be easily available at any time. It is required to be noted that the witness is judged by the Judge recording the evidence and his demeanour would be in the mind of the Judge to appreciate the

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evidence of a witness. Now-a-days, the Appellant Court is examining the evidence which is only on paper, but, if in view of the technology available the videography of the trial being available, the Appellate Court would also have a time to see the behaviour of a witness in the Court and that may help a lot to appreciate the evidence of a witness in one way or the other.

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## RECOMMENDATIONS

In view of the aforesaid detailed objects and reasons, it is recommended as under:—

1. Rape cases should be investigated without any delay.
2. As soon as the victim or her relative/s approaches the police station for filing complaint for rape or such other cases, the police officer of the police station shall record her statement immediately without asking her to go to other police station on the ground that it comes within the jurisdiction of other police station. In case the jurisdiction is of other police station, the recorded FIR should be forwarded to that police station.
3. Even before recording the statement of the victim, she may be sent for medical examination and the superintendent of the concerned hospital should be directed that her medical examination should be completed without any delay. **Thereafter, the report of the medical examination shall be forwarded to the police station at the earliest and in any case, not later than 24 hours.**

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4. If the report of the medical examination discloses offence of rape, the statement of the victim should be recorded under Section 164 of Cr.P.C. During that time, it would be open to the investigating officer to carry out further investigation without any delay and collect the evidence relating to the offence.

**The investigation should be completed within thirty days from the date of filing of FIR, that is to say, without waiting for statutory period of ninety days and if required, additional charge sheet can be filed for which no objection should be raised.**

5. After collecting the evidence, instead of filing charge sheet before the Magistrate, the same should be filed before the District Sessions Judge.

**The District Court should frame the charge at the earliest, within three days from the date of receipt of the charge-sheet.**

**Pending trial:**

It would be open to the investigating officer to file additional charge sheet with recorded statement of the victim and the Court shall permit the same.

- 6. Trial of all such rape cases should be completed within two months, without fail, from the date of filing of the charge sheet.** For this, there should be direction to the Court to decide the matter on the day-to-day basis as prescribed under Section 309 read with Section 231 of Cr.P.C. and the matter shall not be adjourned on any ground including the ground of sick leave of the advocate.
- 7. At the time of recoding of evidence, it shall be the duty of the investigating officer to remain present with the witnesses.**

The Police Commissioner or the In-charge of the concerned Police Station shall see that the investigating officer is not assigned any additional work so that it may not disturb preparation of charge sheet.

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**Secondly, it shall be the duty of the Police Commissioner or the concerned Head of the Department to direct the investigating officer to remain present with the witnesses before the Court, at the time of recording of evidence.**

8. After evidence is recorded, on the next day, arguments should be heard and the Judgment should be pronounced at the earliest.
9. For the aforesaid purpose, if required, Cr.P.C. be amended so as to include the aforesaid guidelines with a specific direction that the investigating officer as well as the Court shall abide by the aforesaid procedure and would not grant adjournment, once the recording of evidence has commenced.

**(i) Recording of evidence:--**

As far as possible, in such criminal proceedings, the Courts may be provided with audio recording through tamper-proof technology for recording of statements of witnesses so that the Appellate Courts can also refer to the same for determining the exact statement made by the witnesses.

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**(ii) Machines:--**

All Criminal Courts ought to be provided with transcription machines with the help of which the audio-recorded statements can automatically be transcribed and supplied to the counsel & witnesses on the same day.

Date : 30.11.2018  
Place : Ahmedabad

  
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JUSTICE M. B. SHAH  
Former Judge,  
Supreme Court of India  
**AND**  
Chairman,  
Gujarat State  
Law Commission