

Recording of Child Victim Statement (164 Cr.P.C)
-an appropriate approach

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There is a wide difference between the recording of witness statement and the statement of child victim who suffered sexual assault. The statement of child victim is not just an evidence but a voiced consonant of agony she is undergoing, the out burst of her defaced soul, an expression of pain she experiences for someone's wrong on her, the initial pour of anguish on her lost future, no less than horrific dying.

A statement in general is defined as a clear and definite expression of something in speech or writing a formal account of facts or events especially one given to the police or in court. Till the enactment of Protection of Children from sexual offences, Act 2012 and the amendment of Criminal law in the year of 2013 the investigating agency was not very much bothered to record the statements of the victims/witnesses and it was a rare phenomenon. The anti-rape law (Criminal Law (Amendment) Act, 2013) made it mandatory for the investigating officer to record the statement of the victim under section 164(5A) Criminal Procedure Code, 1973. The POCSO Act, 2012 mandated the investigating officer to record the statement of the child victim during investigation. In this formatting era the Judicial Magistrates get confused with procedural aspect of recording both statements. This is an attempt made to explain the procedures contemplated under the present laws for recording of the victim statement especially child victim under POCSO, Act 2012.

The Criminal Procedure Code, 1973 provides for recording of the statements of the witnesses by the Magistrate for the purpose of aiding the investigation agency. Section 164 of the act confers a power on any Metropolitan Magistrates/Judicial Magistrates specified in Sub-section (1) thereto to record any statement or confession made to them in the course of investigation by the police before the commencement or the enquiry or trial. A statement shall be given by,

- i) An accused,
- ii) One who may ultimately become an accused, or
- iii) A witness capable of giving useful information.

The object of recording a statement:

- (1) To use them as confession in case the person making them is ultimately charged with an offence,
- (2) To deter a witness from changing his version later by succumbing to temptations, influences, or blandishments. The recording of victim statement in the cases of the offences committed against

women and the sexual offences committed against children has made mandatory. The victim statement can be dealt with in two heads.

1. Victim or witness statement other than child witness (164(5) Cr.P.C.)
2. Child Victim Statement recorded under POCSO, Act 2012.

Former one is to be recorded as an ordinary evidence of witness before the court. But latter one have few mandatory procedures to be complied with.

Procedures for recording of statement of Child Victim:

The Procedure for recording the statement of child victim is contemplated under section 164(5) Cr.P.C, Section 25, 26 of POCSO Act, 2012 and Rule 11 of The Criminal Rules of Practice 2019. Important directions as to recording Statements under Section 164 Cr.P.C including POCSO Cases given by Hon'ble High Court of Madras in *Murugasamy v. State - 2017 (4) MLJ (CRL) 129*. is incorporated in rule 11 of CRP,2019.

The procedures to record the statement of child victim is branched as follows for better understanding:

- 1.Application for examination of witness
- 2.Ordering of Summons/Appearance
- 3.Competency of the child victim to depose evidence
- 4.Examination of child victim
- 5.Procedure After recording the statement.

1. Application for examination of witness :

- a. A statement of a witness/victim can be recorded under section 164 only at the instance of the Investigating Officer of the case.
- b. The investigating agency need not approach the CJM/CMM with an application for nominating a Magistrate to record the 164(5) Cr.P.C. statement of a witness in a case.
- c. The Special Courts constituted under various enactments need not forward such requests to the CMM/CJM for nominating a Magistrate to record the statement of a witness under Section 164(5) of the Code as they can record the same, themselves.
- d. A Magistrate whether he has got jurisdiction or not, to inquire into or try the case, can record the statement of a witness/victim under section 164 Cr.P.C. on the request of the Investigating Officer.

2. Ordering of Summons/ Appearance

The summons for appearance of the child victim should not be as a formal summons as send to the other witnesses. The docket order should read as to the following and summons for examining the child victim need to

- a. Specify the exact time of recording of the statement.

- b. Specify that the child victim to be accompanied by any one of the parents/person who is in trust and confidence with child.
- c. If the court finds that the Interpreter/Expert/Translator is necessary for examination of child victim necessary summons need to be ordered on requisition of the Investigating officer. Police officer not to be employed to interpret the evidence of witnesses in cases prosecuted by the police.

Guidelines to summon Interpreter/Expert/Translator		
Interpreter		
1.	Types of Disability	Person to be summoned
	Hearing and Speech disability	1. Teacher of any Government/ Aided schools 2. Any Professionals/Special Educator from Non-Governmental Organization 3. Any person familiar with the manner of communication of the child (explained in Rule 2 (e) of POCSO, Rules 2012)
	Visionary disability	1. Teacher of any Government/ Aided schools 2. Any Professionals/Special Educator from Non-Governmental Organization 3. Any person familiar with the manner of communication of the child (explained in Rule 2 (e) of POCSO, Rules 2012)
	Any other physical disability which prevents the child from Speaking/Hearing/Vision	1. Teacher of any Government/Aided schools 2. Any Professionals/Special Educator from Non-Governmental Organization 3. Any person familiar with the manner of communication of the child (explained in Rule 2 (e) of POCSO, Rules 2012)
	Intellectual Disability (Verify the previous certificate they possess) Mild/able to converse in language/signs (or any mild developmental disorders)	1. Teacher of any Government/ Aided/Private schools 2. Any Professionals/Special Educator from Non-Governmental Organization 3. Trained counselors working in Governmental/ Non-Governmental organizations 4. Any person familiar with the manner of communication of the child (explained in Rule 2 (e) of POCSO, Rules 2012)
Translator		
2.	Child victim speaks other languages than regional and the court needed the assistance of translation	1. Teachers of any Government/ Aided/Private schools with the skill of conversing in said language 2. Any person who is well-conversant with the language the child speaks and also the regional language.

Expert	
3.	<p>When the child victim suffers moderate/severe intellectual disability and unable to converse or whose ability to communicate has been affected by trauma</p> <p>1.You can refer to Psychiatrist/Clinical Psychologist seeking opinion about possibility of recording the statement from child victim. 2.If there is possibility of recording the statement then can be recorded with assistance of any person trained in mental health, medicine, child development or related discipline who may be required to facilitate communication with child 3.Any person familiar with the manner of communication of the child (explained in Rule 2 (e) of POCSO, Rules 2012)</p>

d. If video recording of the child victim is necessary, when no official videographers available, requisition may be received for appointing private videographer from the investigating officer and pass suitable orders on the same.

3.Competency of the child victim to depose evidence

The competency of the child victim need to be tested under Section 118 IEA,1872. This *voir dire test* to be done before we proceed the recording of the statement of the child. It is a summary inquiry. This is to satisfy yourself that the child witness is competent to give the statement. Model questions is given in table below. This is not exhaustive and the Judicial Magistrate can decide on the circumstances of each case. The simple formula is **INPUT=PROCESS=OUTPUT**. The information recorded in child mind from his/her social/economic status/family back ground/culture will only be the result as output (answers). So please do not formatize the questions, do customize as per the age of the child and economic status of the child.

Model questions that can be asked to test the competency of the child witness		
	Below 12 years	12 years and above
Orientation to person	1. உங்கள் பெயர் என்ன? 2. உங்கள் அப்பா பெயர் என்ன? 3. நான் யார் என்று தெரியுமா? எதிரியின் பெயர் தெரியுமா? (தவறு)	1. உங்கள் பெயர் என்ன? 2. உங்கள் அப்பா பெயர் என்ன? 3. நான் யார் என்று தெரியுமா எதிரியின் பெயர் தெரியுமா? (தவறு)
Orientation to time	1. இப்போது இரவா அல்லது பகலா? சரியாக எத்தனை மணிக்கு என்ன நடந்து என்று சொல்வீம்? (தவறு)	1. இன்று தேதி என்ன? 2. நாம் எந்த மாதத்தில்/ வருடத்தில் இருக்கிறோம் சரியாக எத்தனை மணிக்கு என்ன நடந்து என்று சொல்வீம்? (தவறு)
Orientation to place	1. இது என்ன இடம் என்று தெரியுமா? 2. நீங்கள் எந்த ஊரில் வசிக்கின்றீர்? உங்கள் ஊர் எந்த மாவட்டத்தில் உள்ளது?(தவறு)	1. இது என்ன இடம் என்று தெரியுமா? 2. நீங்கள் எந்த ஊரில் வசிக்கின்றீர்? உங்கள் ஊர் எந்த மாவட்டத்தில் உள்ளது(தவறு)
Memory	1. காலை சாப்பிட்டீங்களா? 2. என்ன சாப்பிட்டீங்க? 5. உங்க பிறந்த நாள் எப்போ? 6. போன பிறந்த நாளுக்கு என்ன என்ன செய்தீங்க? நீங்கள் பிறந்த கிழமை.மாதம் என்ன?(தவறு)	1. காலை சாப்பிட்டீங்களா? 2. என்ன சாப்பிட்டீங்க? 5. உங்க பிறந்த நாள் எப்போ? 6. போன பிறந்த நாளுக்கு என்ன என்ன செய்தீங்க? நீங்கள் பிறந்த கிழமை.மாதம் என்ன?(தவறு)
Awareness	1. என்ன படிக்கிறீங்க? 2. என்ன பள்ளியில் படிக்கிறீங்க? 3. உங்களுடைய தந்தையின் தந்தையை எப்படி அழைப்பீர்/ உங்களின் தந்தையின் தந்தை எந்த முறை வேண்டும்? 4. நான் எந்த நிறத்தில் உடை அணிந்து இருக்கிறேன்? உங்கள் வகுப்பில் எத்தனை பேர் உள்ளனர்(தவறு)?	1. என்ன படிக்கிறீங்க? 2. என்ன பள்ளியில் படிக்கிறீங்க? 3. உலகம் முழுவதும் தற்போது பரவி இருக்கும் வைரஸ் கிருமியின் பெயர் என்ன? உங்கள் வகுப்பில் எத்தனை பேர் உள்ளனர்?(தவறு)
Naming objects	இந்த படத்துல இருக்கிறது என்னென்னு சொல்லுங்க? (Show some animal, fruits, birds, colours picture books) நம் நாட்டின் பிரதமர் யார் (தவறு)?	இந்த படத்துல இருக்கிறது என்னென்னு சொல்லுங்க? (Show some animal, fruits, birds, colours picture books) நம் நாட்டின் பிரதமர் யார் (தவறு)?
Verbal and mathematical abilities	1. தமிழ் ஆயுத எழுத்துகளை/English Alphabets வரிசையாக தெரிந்த வரை கூறவும்? 2. 5+5 என்ன?	1. தமிழ் ஆயுத எழுத்துகளை/English Alphabets வரிசையாக தெரிந்த வரை கூறவும்? 2. 5+5 என்ன?
Judgment and reasoning	1. உங்களுக்கு எந்த டீச்சரை/ பாடம் ரொம்ப பிடிக்கும்? 2. ஏன் அவரை/ அதை ரொம்ப பிடிக்கும்?	1. உங்களுக்கு எந்த டீச்சரை/ பாடம் ரொம்ப பிடிக்கும்? 2. ஏன் அவரை/ அதை ரொம்ப பிடிக்கும்?

	<p>3. உங்களுக்கு பிடித்த இரண்டு பழங்களின் பெயரை கூறுங்கள்?</p> <p>3. நீங்கள் பெரியவர் ஆனவுடன் என்ன ஆகவேண்டும் என்று ஆசைபடுகிறீர்கள்?</p> <p>4. பள்ளியில் உங்களுடைய புத்தகத்தை/ பொருளை யாரேனும் எடுத்துக்கொண்டால் நீங்கள் என்ன செய்வீர்கள்?</p>	<p>3. நீங்கள் பெரியவர் ஆனவுடன் என்ன ஆகவேண்டும் என்று ஆசைபடுகிறீர்கள்?</p> <p>4. பள்ளியில் உங்களுடைய புத்தகத்தை/ பொருளை யாரேனும் எடுத்துக்கொண்டால் நீங்கள் என்ன செய்வீர்கள்?</p>
Veracity	<p>1 உங்களுடைய dress colour white தானே (மாற்றி கேட்கவும்)</p> <p>2வானத்தின் நிறம் pink தானே?</p> <p>3. இப்போது நீங்கள் கூற இருப்பதை நீங்களே கூறுகிறீர்களா அல்லது வேறு யாரேனும் சொல்லி கொடுத்து சொல்லிறீர்களா?</p> <p>4. பொய் கூறுவது சரியா அல்லது தவறா?</p>	<p>1. இப்போது நீங்கள் கூற இருப்பதை நீங்களே கூறுகிறீர்களா அல்லது வேறு யாரேனும் சொல்லி கொடுத்து சொல்லிறீர்களா?</p> <p>2. பொய் கூறுவது சரியா அல்லது தவறா?</p> <p>என்று தெரியுமா?</p>

Competency observation on Child Witness

சாட்சி குழந்தை சாட்சி என்பதால் சில அடிப்படைக் கேள்விகள் கேட்கப்பட்டது இந்நீதிமன்றத்தில் கேட்கப்பட்ட கேள்விகளுக்கு கேள்விகளை உணர்ந்து, தெளிவாக, பகுத்தறிவுடன் பதில் அளித்துள்ளார் என்பதால், மேற்படி நபர் சாட்சியமளிக்க தகுதியானவர் என்று இந்நீதிமன்றம் முடிவு செய்து சாட்சிக்கு சத்திய பிரமாணம் செய்விக்கப்பட்டு சாட்சியம் பதிவு செய்யப்பட்டது.

***** If the child is unable to give rational answers you may proceed to record her statement giving the said observation and record her statement without administering the Oath.

4. Examination of Child Victim

- The examination of the child victim to be in a child friendly manner in the presence of one of parents/person whom she trust and have confidence. (If the child is above 17 years age and wish to depose by herself the same shall be permitted)
- To be recorded in own language of the children
- To be recorded in-camera

- d. If typist/staffs is sought for assistance while recording, possibly to be female typist/staffs.
- e. Frequent breaks to be given
- f. Do not curtail/stop the narration of the child in between unless necessary to the circumstance of the case. If the child is too young don't curtail or stop her from moving around, use a friendly approach in handling the child.
- g. Examine the child with an eye to eye contact. Body language also to be friendly. You are the first to give the impression on the child witness about judicial proceedings.
- h. Do not offer any sweets or chocolate in open court/chamber before examination. Snacks may be given outside the court hall with help of staffs.
- i. If assistance of Interpreter/Translator/Expert taken ascertain their expertize in the field before commencing the recording and also to administer oath twice before commencement and after trial as per Rule 37/39 of Criminal rules of Practice, 2019
- j. In the course of recording such statement, if the Magistrate finds that the statement is self incriminating he shall not proceed to record further. Further statement of such deponent should be recorded by following the procedure in rule 10 Criminal rules of Practice,2019.
- k. During the course of inquiry if the Judicial Magistrate finds that the child victim suffers mental trauma due to the incident/need emergency medical assistance/need special care and protection/need interim financial or educational assistance, to the best interest of child he/she shall by himself/herself or on the application from the parent/care giver shall address District legal services authority on the same.**

5 After recording the statement from Victim/witness:

- (1) to take two photocopies of the statement under direct supervision, and
- (2) after certifying them as true copies, issue one to the Investigating Officer, free of cost with direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report is filed.
- (3) keep the other certified copy in his custody and
- (4) If the Magistrate who had recorded the statement is not the jurisdictional magistrate, then he shall send the original to the jurisdictional Court either through a special messenger or by Registered Post with Acknowledgment Due. If to be despatched to the court in same premises can be sent in sealed enveloped through local tapal.
- (5) If the Magistrate who had recorded the statement is himself the jurisdictional magistrate he shall keep the original statement in the case records
- (6) If the examination is video recorded and copied version in form of CD/DVD/Pendrive/Memory card, other than Original Chip from the recording instrument is submitted before you then 65-B IEA

1872, certificate from the videographer is mandatory. (format enclosed in Annexure II)

Further guidelines under *Murugasamy v. State (supra.)*

(i) The presence of Police officer at the time of recording statement:(Para 18)

If the Magistrate is of the opinion that the assistance of the police is essential to elicit relevant facts from a witness whose 164 Cr.P.C. statement is being recorded, it is not illegal for the Magistrate to have the assistance of the police officer in clarifying the points on which the Magistrate should question the witness.

(ii) Under special circumstances, the child victim statement can be treated as chief examination. (Para 25).

Section 164(5-A), Cr.P.C. is of far-reaching significance in relation to trial of a rape case. Section 164(5-A) Cr.P.C. states that if the maker of the statement is temporarily or permanently, mentally or physically disabled, the statement made by such a person shall be considered as substantive evidence by the Trial Court and the maker need not be examined-in-chief, but, can be subjected to cross-examination on the basis of the statement recorded under Section 164(5-A) Cr.P.C. This is to save the victim from the embarrassment of explaining to the trial Court, repeatedly, as to how she was sexually assaulted. Since, the statement recorded is to be treated as the chief examination due care to be taken while recording the statement and it is to be ensured that all the guidelines are followed.

(iii) Whether accused can get a copy of 164 Cr.P.C. statement before filing of final report:

Murugasamy case (Para 28)- At this juncture, it is pertinent to point out that one should not get confused with the demand of the accused for statements, because, an accused will not be entitled to these records until the final report is filed, as laid down by a Full Bench of this Court in ***Selvanathan @ Raghavan v. State by Inspector of Police [1988 L.W. (Crl.) 503]***.

State Of Madras v. G. Krishnan reported in AIR 1961 Mad 92, 1961 CriLJ 382, answering a reference made to the Full Bench, held as follows (1) The statements recorded under Section 164, Cr. P. C., would be public documents falling under Section 74(1)(iii) of the Indian Evidence Act. (2) The accused will be entitled to copies of the same as a person interested; (3) but his right to obtain such copies before the filing of the charge-sheet has been taken away by implication by the provisions of Section 173(4) of the Cr.P.C., and that he will be entitled to the copies of the documents only in accordance therewith. The said decision was follows in ***Natarajan v. State of Tamil Nadu 2012 SCC ONLINE MAD 1532***

(iv) Examination of Magistrate as witness: (Para 46)

A Division Bench of this Court, in ***R. Murugesan v. State [2014-(1)-LW (Crl.) 339]***, has elaborately

discussed the evidential value of the statement of a witness recorded under Section 164 Cr.P.C., 1973. Despite the directions of the said Division Bench that the Magistrate recording the statement under Section 164 Cr.P.C., 1973 need not be examined as a witness, the essence of those directions has not percolated into the subordinate judiciary. In the said judgment, the Division Bench has set out the procedure as to how Public Prosecutors in the Trial Courts should deal with a witness, *vis-a-vis*, his statement recorded under Section 164 Cr.P.C., 1973. The Division Bench has placed reliance upon the judgment of the Supreme Court in *State of Delhi v. Shri Ram Lohia* [AIR 1960 SC 490] and the Division Bench judgment of the Andhra Pradesh High Court in *Bashapaka Laxmiah and another v. State of Andhra Pradesh* [2001 Cr.L.J. 4066], to conclude that a Magistrate recording the statement of a witness under Section 164 Cr.P.C., 1973 need not be examined as a witness in the trial of the case.

(v) How to receive statements under s.164 Cr.P.C. in evidence: (Para 48,49).

The practice of omnibus marking of Section 164 statement of witness deserves to be deprecated. The relevant portion of such prior statements of living persons used for contradiction or corroboration under section 145/157 of the Evidence Act deserves to be marked separately and specifically."

In the light of the above discussion, we seek to build upon the Division Bench judgment of this Court in *Murugesan* (*supra.*) by holding that even in cases, where, the witness completely denies having given a statement under Section 164 Cr.P.C., 1973 the Magistrate need not be examined as a witness and the factum of the witness having given such a statement to the Magistrate and the contradiction between his evidence and his previous statement can be proved in the examination of the Investigating Officer, on whose sponsorship, the said witness was produced before the Magistrate for the purpose of recording his statement.

A statement recorded under Section 164 Cr.P.C., 1973 is a public document within the meaning of Section 74(iii) of the Evidence Act as held by a Full Bench of this Court in *State of Madras v. Krishnan* [AIR 1961 Madras 92]. The original of the statement, which would form part and parcel of the Court records, is a primary evidence under Section 62 of the Evidence Act for proving the fact that the said witness had appeared before the Magistrate on the date found thereon and had given a statement, but, it does not prove the veracity of its contents.

Victim statement/Confession statement

A statement by a victim/witness and a statement by an accused admitting his commission of offence in a particular case is perpendicular in nature and therefore have few different procedures. The Judicial Magistrates who are recording the victim statement get confused with the procedures

of recording both statements and it is seen that the preliminary questions asked to the accused like "கதவு, ஜன்னல் மூடப்பட்டுள்ளதா? "போலீசார் பார்வையில் தெரிகின்றனரா?" are asked to child victim and the certificate of recording confession is endorsed below the recording of victim statement. Therefore, the similarities of both the statements and the differences has been explained.

Procedural similarities in recording Victim Statement and Confession Statement

- 1.Both the statements are to be recorded in-camera.
- 2.Both the statements to be made pending investigation and at any time afterwards before the commencement or the enquiry or trial.
- 3.There should be voluntariness to give the statement.
- 4.Both statements shall be recorded by any Metropolitan Magistrate/Judicial Magistrate, Jurisdiction does not matter. (Directions of CJM/CMM necessary if confession to be recorded)
- 5.Both statements to be kept in secret until final report has been filed. (copies to be furnished to Investigating officer adopting procedures contemplated)
6. To be recorded in own language (as far as possible). (assistance of translator may be obtained if victim/accused converse in language other than regional language)
- 7.Audio-Video recording means can be used.
8. There is a presumption that the statement is documented genuinely (Section 80 Indian Evidence Act,1872).
9. The questions put forth by the Magistrate as well as the answers given by the victim/accused shall be reduced to writing.
- 10.The Magistrate shall record the statement of the victim/accused in Court and during Court hours, save for exceptional reasons to be recorded in writing.
- 11.After recording the statement of the victim/accused, the same shall be read out and explained to her/him in the language known to her/him and the fact of having read the statement to the victim/accused and the victim/accused having admitted its correctness shall be recorded.
12. Use of Abbreviations need to be avoided.
- 13.Magistrate can record the question and answer put to the accused/victim to clarify any general noun stated by the accused/victim.
- 14.Assistance of Translator/Expert/Interpreter may be sought for if required for the circumstances of the case.
15. Necessary entries to be made in Judicial Form No.13.

Procedural differences in recording Victim Statement and Accused Statement

Victim Statement	Accused Statement
Can approach the Judicial Magistrate/Presiding officer of Special Court with an application to record the statement of a witness/victim under 164 Cr.P.C	Need to approach the CJM/CMM with an application for necessary nomination of Judicial Magistrate to record the statement of a accused under 164 Cr.P.C
Oath need to be administered (for child witness after testing the competency)	Oath need not be administered
Can be used for corroboration/contradiction	Can be used against the accused/corroboration/contradiction
No Reflection time is necessary	Need to grant reflection time and is mandatory
Child victim competency certificate is mandatory under section 118 of IEA Act	Memorandum of Magistrate recording the statement in the foot of confession is mandatory
No such explanation necessary	Before recording confession, the Magistrate shall explain to the person making it that he is not bound to make a confession and if he do so, it may be used as evidence as against him. This is <i>sine qua non</i> for recording confession.
The Magistrate can interact with police officer if necessary for any clarification	The Magistrate shall ensure that during the questioning of the accused and the recording of his statement, there are no police officers in the vicinity.
Only on instance of the Investigating officer	Not necessarily. Accused can also voluntarily come front to give his statement
Advocate need not present at the time of recording	Advocate can be present at the time of recording
A statement recorded under clause(a) of a person, who is temporarily or permanently	No confession shall be recorded by a police officer on whom any power of magistrate has

<p>mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial)(Exception of principle laid down in Section 145 IEA, 1872)</p>	<p>been conferred under any law for the time being in force</p>
<p>While examination of the child victim, she should be accompanied by one of the parent/or person whom she has trust and confidence</p>	<p>The magistrate shall not record the confession unless upon questioning the person making it and he has reason to believe that it is being made voluntarily</p>

ANNEXURE I**PROVISIONS OF LAW**

The Code of Criminal Procedure, 1973

164 (1)	Recording of confessions and statements: Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial: "(Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence: Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force).
164(5)	<p>Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.</p> <p>(5-A) (a) In cases punishable under section, 354, section 354-A, section 354-B, Section 354-C, section 354-D, sub-section(1) or sub-section (2) of section 376, section 376-A, section 376-B, section 376-C, section 376-D, section -376-E, or 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:</p> <p>Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:</p> <p>Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.</p> <p>(b) A statement recorded under clause(a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial)</p>
164(6)	The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

Indian Evidence Act, 1872	
Section 80	<p>Presumption as to documents produced as record of evidence- Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceedings or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any judge or Magistrate or by any such officer as aforesaid the Court shall presume--</p> <p>that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.</p>
Section 118	<p>Who may testify - All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.</p> <p>Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.</p>
Section 145	<p>Cross-examination as to previous statements in writing -</p> <p>A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.</p>

The Criminal Rules of Practice 2019

Rule 11	<p>Recording of statement of victim/witness under section 164 of the Code :-</p> <p>(1) A statement of a witness/victim can be recorded under section 164 of the Code only at the instance of the Investigating Officer of the case.</p> <p>(2) It is not necessary for the Investigating Officer to approach the Chief Metropolitan Magistrate/Chief Judicial Magistrate with an application for nominating a Magistrate to record the statement of a witness/victim under section 164 of the Code.</p> <p>(3) A Magistrate, whether he has got jurisdiction or not, to inquire into or try the case, can record the statement of a witness/victim under section 164 of the Code, on the request of the Investigating Officer of the case.</p> <p>(4) The Presiding Officer of a Special Court which has been empowered to take cognizance of an offence without there being a need for committal, may also record the statement of a witness/victim under section 164 of the Code, on the request of the Investigating Officer.</p> <p>(5) After recording the statement of a witness/victim under section 164 of the Code, the Judge/Magistrate shall arrange to take two photocopies of such statement, under his direct supervision and certify the same as true copies.</p> <p>(6) He shall furnish one such certified photocopy of the statement to the Investigating Officer free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed.</p> <p>(7) The other certified photocopy of such statement shall be kept in a sealed cover in the safe custody of the Judge/Magistrate.</p> <p>(8) If the Magistrate who had recorded the statement under section 164 of the Code is not the jurisdictional Magistrate, he shall send the original statement to the jurisdictional Court, either through a special messenger or by Registered Post with Acknowledgment Due.</p> <p>(9) If the Magistrate who had recorded the statement under section 164 of the Code is himself the jurisdictional Magistrate, he shall keep the original of the statement in the case records.</p> <p>(10) The Magistrate may also take the services of a Translator, if circumstances so require.</p> <p>(11) In the course of recording such statement, if the Magistrate finds that the statement is self incriminating, he shall not proceed to record further. Further, statement of such deponent should be recorded by following the procedure provided in rule 10.</p> <p>(12) After the completion of the process, the Magistrate shall make necessary entries in Judicial Form No.13.</p>
Rule 36	<p>Officer administering oath.— The oath to witnesses and interpreters shall be administered in open Court by the Presiding Officer or by such other person empowered by him in this behalf or where the witness is examined on commissions by the Commissioner.</p>
Rule 37	<p>Form of Oath.— (1) The following shall be the form of oath to be taken by the witness:</p> <p>"I do swear in the name of God that what I shall state shall be the truth, the whole truth and nothing but truth".</p> <p>(2) Witness who objects to make an oath may solemnly affirm in the following form:</p>

	"I do solemnly affirm to my conscience that what I shall state shall be the truth, the whole truth and nothing but truth".
Rule 38	Form of oath by interpreter.– When a witness is examined with the aid of an interpreter, the interpreter shall also be administered an oath or affirmation in the following form:– “I do swear in the name of God / I solemnly affirm to my conscience that I will well and truly interpret and explain all questions put to and evidence given by witnesses”.
Rule 39	Translation of oath by interpreter.–When the witness is unable to understand the language in which the oath or affirmation is administered, the oath or affirmation shall be translated by the interpreter and put to the witness and the witness allowed to take the oath or affirmation in the language known to him.
Rule 40	Police officers not to be employed as interpreters.– Police Officers shall not be employed to interpret the evidence of witnesses in cases prosecuted by the police.
Rule 41	Competence of a witness.– The Court may test the competence of a witness under section 118 of the Evidence Act (Central Act 1 of 1872) by holding a summary inquiry.
Rule 42	Deposition of a witness.– (1) In the heading of the deposition of witnesses, the full name, including the family name of the deponent, if any, and his or her father's or mother's or husband's name shall be recorded. The heading shall also state the age, profession and residence of the witnesses. The name of the interpreter, if any, shall be written below the particulars stated above. [vide Judicial Form No.53]. (2) While recording the evidence of witnesses,– (a) Usage of abbreviations should be avoided, e.g., A.N. for afternoon and instead, the full form should be used; (b) The name of the particular accused should be specifically mentioned adding within brackets, the rank of the accused, eg., name (A1), name (A2), etc.; (c) In Sessions Cases, the medical evidence shall contain with precision the nature and effect of the injuries, the time of death, etc.
Rule 44	Examination of witness.– The Court may, having regard to the circumstances of any particular case, order the examination of any witness in camera.
Rule 50	Procedure for examination of child victim.– (3) The victim of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required.

The Protection of Children from Sexual Offences Act, 2012

Section 25	Recording of statement of a child by Magistrate:– (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein record the statement as spoken by the child; Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.
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	<p>(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the code, upon the final report being filed by the police under section 173 of that code.</p> <p>This clause provides that the provisions contained in first proviso to sub-section (1) of section 164 of the code shall, so far it permits the presence of the advocate of the accused shall not apply in this case. It also provides that the magistrate shall provide to the child or his parents or his representative, a copy of the document specified under section 207 of the code of Criminal Procedure, 1973, upon the final report being filed by the police under section 173 of that code.(Notes on clauses)</p>
Section 26	<p>Additional provisions regarding statement to be recorded:-</p> <p>(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.</p> <p>(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.</p> <p>(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.</p> <p>(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.</p> <p>This clause provides additional provisions regarding statement of child to be recorded(Notes on Clauses)</p>
Section 33(1)	<p>Procedure and powers of Special Court:-</p> <p>(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.</p>
Section 37	<p>Trials to be conducted in Camera:- The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.</p> <p>Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the code of Criminal Procedure, 1973 (2 of 1974)</p> <p>This clause provides for trials to be conducted in camera. It provides that the Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence and where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (Notes on Clauses)</p>
Section 38	<p>Assistance of an interpreter or expert while recording evidence of child:-</p>

	<p>(1) Wherever necessary, the court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.</p> <p>(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.</p> <p>This Clause makes provision for assistance of an interpreter or expert while recording the evidence of the child. It provides that wherever necessary, the Court may take the assistance of an interpreter while recording the evidence of the child and if a child has mental or physical disability the Special court may take the assistance of a special educator or an expert in that field to record the evidence of the child (Notes on Clauses)</p>
Section 39	<p>Guidelines for child to take assistance of experts, etc:- Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.</p>
<p>The Protection of Children from Sexual Offence Rules, 2012</p>	
Rule 2(c)	<p>“Expert” means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;</p>
Rule 2(d)	<p>“Special educator” means a person trained in communication with children with special needs in a way that addresses the child’s individual differences and needs, which include challenges with learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders;</p>
Rule 2(e)	<p>“Person familiar with the manner of communication of the child” means a parent or family member of a child or a member of his shared household or any person in whom the child reposes trust and confidence, who is familiar with that child’s unique manner of communication, and whose presence may be required for or be conducive to more effective communication with the child;</p>
Rule 2(f)	<p>“Support person” means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;</p>

ANNEXURE II

(Model of 65B IEA, 1872 certificate to be received from videographer)

IN THE COURT OF HON'BLE _____,

Crime No. ____ / ____

Name of police station :

Affidavit of (deponent) _____ aged ____ years, S/o _____ the Deponent

Sir,

I, the deponent named above do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the Videographer appointed by the court to record the 164 Cr.P.C statement of the child witness before **Judicial Magistrate Number 1, Erode in Crime Number 62/20 of Erode AWPS.**
2. That the recorded video is of the conversation that child had with the Presiding Judge on __/__/____.
3. That deponent hereby files recorded digital Video file in Video CD/DVD/Pen drive/Memory card.
4. That the deponent confirms that the digital Video file in the Video CD is the copy to the originally recorded digital Video file in the original recording device, used by deponent for recording.
5. **That, deponent is making this present affidavit to certify that:**
6. The digital Video file in the Video CD is the copy to the originally recorded digital Video file in the original recording device.
7. The original contents will be kept confidential and not be copied, circulated, disclosed in any form of writing, words or expression.
8. I confirm that I have been informed that revealing of the identity of the child victim and reproducing the contents of evidence in any form is prohibited.
9. I confirm that during the period of conversion in to recording the original camera and its recording instrument were kept in safe custody without any chance of exposure to anyone.
10. I do confirm that I have personally involved into the coping the data on CD/DVD/Pen Drive/Memory card or have been done by technical expert _____ in my presence.

The details of the original camera used for recording the evidence is as below:

Model :

Manufacturer/Year :

The details of the computer which I used to transfer the contents from my camera and copy

CD/DVD/Pendrive/Memory card

Model :

Configuration :

Manufacturer/year :

IP address :

11. That this affidavit, therefore, is on the digital video file which has been copied from deponent's recording device and this certificate is issued u/ Section 65-B of the Indian Evidence Act,1872.

Signature of Deponent

I, (deponent), the deponent, do hereby solemnly affirm and verify that the contents of paragraphs are true to my personal knowledge which all I believe to be true, no material has been concealed in it and no part of the affidavit is false.

Identified, today on in Court, (jurisdiction).

Deponent