



सत्यमेव जयते

दिल्ली बाल अधिकारी संरक्षण आयोग ²⁵⁸

दिल्ली सरकार

दिल्ली-110006

DELHI COMMISSION FOR PROTECTION OF CHILD RIGHTS

GOVT. OF NCT OF DELHI

DELHI - 110006

ARUN MATHUR

Chairperson

<p>★ CENTRAL DIARY ★</p> <p>Directorate of Health Services Govt. of Delhi.</p>	<p>January 22, 2013</p>
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F/DCPCR/12-13/39/4083

Dear Sh. Kamal

Delhi Commission for Protection of Child Rights (DCPCR) has been constituted under the Commissions for protection of Child Rights Act, 2005 read with the Govt. of India, MHAs Notification F. No U-11030/1/2007-UTL dated 15th January, 2008, gazette by the Govt. of NCT of Delhi on 7th July, 2008. Further, u/s 13 (1j) of the Commissions for Protection of Child rights Act 2005, this Commission is empowered as a Civil court to undertake inquiry in to complaints and to take suo-motu notice of matters relating to: (i) Deprivation and violation of child rights (ii) Non-implementation of laws providing for protection and development of children. (iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to ensuring welfare of the children and to provide relief to such children or to take up the issues arising out of such matters with the appropriate authorities. Further u/s 44 of the **Protection of Children from Sexual Offences Act, 2012** the Commission is empowered to monitor the implementation of the Act in the National Capital Territory of Delhi.

2. This is to bring to your notice that Section 44 of the **Protection of Children from Sexual Offences Act, 2012** reads as follows:

44. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005.

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005."

3. Further, Rule 6 of the Protection of Children from Sexual Offences Rules, 2012 reads as follows:

6. Monitoring of implementation of the Act – (1) The National Commission for the Protection of Child Rights (hereafter referred to as "NCPCR") or the State Commission for the Protection of Child Rights (hereafter referred to as "SCPCR"), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005, perform the following functions for implementation of the provisions of the Act:-

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- (a) To monitor the designation of Special Courts by State Governments;
 - (b) To monitor the appointment of Public Prosecutors by State Governments;
 - (c) to monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organizations, 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, and to monitor the application of these guidelines;
 - (d) to monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act;
 - (e) to monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.
- (2) The NCPCR or the SCPCR, as the case may be, may call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
- (3) The NCPCR or the SCPCR, as the case may be, may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-
- (i) Number and details of offences reported under the Act;
 - (ii) Whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;
 - (iii) Details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
 - (iv) Details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.
- (4) The NCPCR or the SCPCR, as the case may be, may use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the Annual Report of the NCPCR or the SCPCR.
4. Keeping in view the provisions of the Law and Rules please find annexed herewith the legal obligations to be performed by different hospitals of Delhi.
5. Section 27 of the Act provides for medical examination of a child who is victim of sexual abuse whereas Rule 5 of the Protection of Children from Sexual Offences, Rule 2012 provides for detailed emergency medical care to be provided to a child victim of Sexual Offence, where an offence has been committed u/s 3 (Penetrative Sexual Assault), 5 (Aggravated Penetrative Sexual Assault) ,7(Sexual Assault) or 9(Aggravated Sexual Assault) of the Act.

6. The Commission has brought the relevant sections of Acts and Rules with respect to the legal obligations of different hospitals of NCT of Delhi, to your notice to facilitate proper implementation of the Act. I am sure you will issue further instructions/guidelines by way of notification or otherwise to different hospitals, in the light of the provisions of the Act. We would also, as per our mandate laid down under the Protection of Sexual Offences Act, 2012, be regularly monitoring Action Taken in the matter.

With regards


(Arun Mathur)
Chairperson
22.01.2013

Dr. N.V. Kamat
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ROLE OF HOSPITALS

Preamble :

To protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, *inter alia*, empowers the State to make special provisions for children; AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State Parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

Section 2 : Some Important Definitions :

- (d) "child" means any person below the age of eighteen years;
- (e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
- (h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;
- (k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;

Provision in the Act :

27. Medical Examination of a Child : (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

COMMENTS – 5

(Based on Notes on Clauses of the Bill)

This section provides for medical examination of a child. It provides that the medical examination of a child in respect of whom any offence has been committed under the Act shall be conducted in accordance with section 164 A of the Code of Criminal Procedure, 1973 (2 of 1974) whether or not the first information report or complaint has been registered for the offence.

Provision in the Rules :

5. Emergency medical care – (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including --

(i) Treatment for cuts, bruises, and other injuries including genital injuries, if any;

(ii) Treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;

(iii) Treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;

(iv) Possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,

(v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

(5) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.