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सरकारी राजपत्र OFFICIAL GAZETTE



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भारत सरकार
Government of India

संघ प्रदेश दमण एवं दीव प्रशासन

U.T. ADMINISTRATION OF DAMAN & DIU

प्राधिकरण द्वारा प्रकाशित
PUBLISHED BY AUTHORITY

U. T. ADMINISTRATION OF DAMAN & DIU,
(SOCIAL WELFARE DEPARTMENT),
COLLECTORATE, DHOLAR, MOTI DAMAN,
DAMAN.

No. SW/ICPS/DD/2013-14/226

Dated : 29th January, 2014.

NOTIFICATION

The Protection of Children from Sexual Offences Act, 2012 (No. 32 of 2012) and the rules thereof which has been published by the Ministry of Law and Justice (Legislative Department), Government of India, New Delhi in Gazette of India, Extraordinary, Part II, Section 1, No. 3 dated 20/06/2012 is hereby re-published in the Official Gazette of U.T. of Daman & Diu for information of general public. The Act has come into force w.e.f. 14/11/2012 in the U.T. of Daman and Diu.

By Order in the name of
Administrator, Daman & Diu
and Dadra & Nagar Haveli.

Sd/-
(Seema Bawa)
Deputy Secretary (SW)
UT of Daman & Diu, Daman.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 20th June, 2012/Jyaistha 30, 1934 (Saka)

The following Act of Parliament received the assent of the President on the 19th June, 2012, and is hereby published for general information:—

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012
[No. 32 OF 2012]

[19th June, 2012]

An Act 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;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:---

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires, ---

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

(c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;

(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;

43 of 2005.

(f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;

41 of 1988.

(i) "sexual assault" has the same meaning as assigned to it in section 7;

(j) "sexual harassment" has the same meaning as assigned to it in section 11;

(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;

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

45 of 1860.
2 of 1974.
56 of 2000.
21 of 2000.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A. PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Penetrative
sexual assault.

3. A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. Punishment for penetrative sexual assault.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child — Aggravated penetrative sexual assault.

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or 14 of 1987.

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

Punishment for aggravated penetrative sexual assault. 6. Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Sexual assault. 7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine. Punishment for sexual assault.

D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

9. (a) Whoever, being a police officer, commits sexual assault on a child— Aggravated sexual assault.
(i) within the limits of the police station or premises where he is appointed; or
(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
(iii) in the course of his duties or otherwise; or
(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the security or armed forces; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (f) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public,
is said to commit aggravated sexual assault.

Punishment for aggravated sexual assault.

10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

Sexual harassment.

11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves "sexual intent" shall be a question of fact.

Punishment for sexual harassment.

12. Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Use of child for pornographic purposes.

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

14. (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

Punishment for using child for pornographic purposes.

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

15. Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

Punishment for storage of pornographic material involving child.

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. A person abets an offence, who—

Abetment of an offence.

First.— Instigates any person to do that offence; or

Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.— Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.— Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Punishment for abetment.

Explanation. — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

18. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the

Punishment for attempt to commit an offence.

offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

Reporting of offences.

19. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,--

2 of 1974.

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

(2) Every report given under sub-section (1) shall be--

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

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

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

Punishment for failure to report or record a case.

21. (1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Punishment for false complaint or false information.

22. (1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

23. (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy. Procedure for media.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

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

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

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

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

2 of 1974. 25. (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child: Recording of statement of a child by Magistrate.

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.

(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.

26. (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. Additional provisions regarding statement to be recorded.

(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.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

Medical examination of a child.

27. (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 of 1974.

(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.

CHAPTER VII

SPECIAL COURTS

Designation of Special Courts.

28. (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

4 of 2006.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

21 of 2000.

Presumption as to certain offences.

29. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, 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.

30. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.

31. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

2 of 1974.

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

Special Public Prosecutors.

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

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

2 of 1974.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE .

33. (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.

Procedure and powers of Special Court.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

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

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.

2 of 1974.

34. (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

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

56 of 2000.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

Period for recording of evidence of child and disposal of case.

35. (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

Child not to see accused at the time of testifying.

36. (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

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

Trials to be conducted *in camera*.

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

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

2 of 1974.

Assistance of an interpreter or expert while recording evidence of child.

38. (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.

(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.

CHAPTER IX

MISCELLANEOUS

Guidelines for child to take assistance of experts, etc.

39. 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.

Right of child to take assistance of legal practitioner.

40. Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

2 of 1974.

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Provisions of sections 3 to 13 not to apply in certain cases.

41. The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

Alternative punishment.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

43. The Central Government and every State Government, shall take all measures to ensure that--

Public awareness about Act.

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

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.

Monitoring of implementation of Act.

4 of 2006.

(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.

4 of 2006.

(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.

4 of 2006.

45. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;

(b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;

(c) the payment of compensation under sub-section (8) of section 33;

(d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

46. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947 (3 of 1947);
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

V. K. BHASIN,
Secretary to the Govt. of India.

महिला और बाल विकास मंत्रालय

अधिसूचना

नई दिल्ली, 14 नवम्बर, 2012

सा.का.नि. 823(अ).—केंद्रीय सरकार, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) की धारा 45 की उपधारा (2) के खंड (क) से खंड (घ) के साथ पठित उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात् :-

1. संक्षिप्त नाम और प्रारंभ -- (1) इन नियमों का संक्षिप्त नाम लैंगिक अपराधों से बालकों का संरक्षण नियम, 2012 है।

(2) ये नियम राजपत्र में प्रकाशन तारीख को प्रवृत्त होंगे।

2. परिभाषाएं -- (1) इन नियमों में जब तक कि संदर्भ से अन्यथा अपेक्षित न हो,--

(क) "अधिनियम" से लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) अभिप्रेत है ;

(ख) "जिला बाल संरक्षक एकक" से किशोर न्याय (बालकों की देखरेख और संरक्षण) संशोधन अधिनियम, 2006 की धारा 62क के अधीन राज्य सरकार द्वारा स्थापित जिला बाल संरक्षक एकक अभिप्रेत है ;

(ग) "विशेषज्ञ" से मानसिक स्वास्थ्य, औषधि, बाल विकास या अन्य संबंधित शाखा में प्रशिक्षित ऐसा व्यक्ति अभिप्रेत है, जिससे किसी ऐसे बालक के साथ, जिसकी उपाघात, निःशक्तता या किसी अन्य भेद्यता द्वारा संसूचित करने की योग्यता प्रभावित हो गई है, संपर्क को सुकर बनाने की अपेक्षा की जाए ;

(घ) "विशेष शिक्षक" से विशेष आवश्यकताओं वाले बालकों के साथ किसी बालक की व्यक्तिगत भिन्नताओं और आवश्यकताओं का, जिसके अंतर्गत विद्वता और संसूचना, भावात्मक और व्यावहारिक विकारों, शारीरिक निःशक्तता और विकासात्मक विकारों की चुनौतियां भी हैं, पता लगाने की दृष्टि से संपर्क करने में प्रशिक्षित व्यक्ति अभिप्रेत है ;

(ङ) "बालक के साथ संपर्क करने की रीति से सुपरिचित व्यक्ति" से किसी बालक के माता-पिता या कुटुंब का सदस्य या उसकी सांझी गृहस्थी का कोई सदस्य या कोई

ऐसा व्यक्ति अभिप्रेत है, जिसमें बालक भरोसा या विश्वास रखता है, जो बालक की अद्वितीय संपर्क रीति से सुपरिचित होता है और जिसकी उपस्थिति बालक के साथ अधिक प्रभावी संपर्क के लिए अपेक्षित या सहायक हो सकेगी ;

(घ) "सहायक व्यक्ति" से बाल कल्याण समिति द्वारा नियम 4 के उपनियम (8) के अनुसार बालक को अन्वेषण और विचारण की प्रक्रिया के माध्यम से सहायता देने के लिए नियुक्त कोई व्यक्ति या अधिनियम के अधीन किसी अपराध की बाबत विचारण-पूर्व या विचारण प्रक्रिया में बालक को सहायता करने वाला कोई अन्य व्यक्ति अभिप्रेत है ।

(2) उन अन्य शब्दों या पदों के, जो इन नियमों में प्रयुक्त हैं और परिभाषित नहीं हैं, किंतु अधिनियम में परिभाषित हैं, वही अर्थ होंगे, जो अधिनियम में क्रमशः उनके हैं ।

3. दुभाषिया, अनुवादक और विशेष शिक्षक--(1) प्रत्येक जिले में जिला बाल संरक्षण एकक, अधिनियम के प्रयोजनों के लिए दुभाषियों, अनुवादकों और विशेष शिक्षकों के नाम, पते और अन्य संपर्क ब्यौरों के साथ एक रजिस्टर रखेगा और यह रजिस्टर विशेष किशोर पुलिस यूनिट (जिसे इसमें इसके पश्चात् 'एस.जे.पी.यू.' कहा गया है), स्थानीय पुलिस, मजिस्ट्रेट या विशेष न्यायालय के लिए, जब कभी अपेक्षित हो, उपलब्ध रहेगा ।

(2) अधिनियम की धारा 19 की उपधारा (4), धारा 26 की उपधारा (3) और उपधारा (4) और धारा 38 के प्रयोजनों के लिए नियुक्त दुभाषियों, अनुवादकों, विशेष शिक्षकों और विशेषज्ञों की अर्हताएं और अनुभव वह होगा, जो इन नियमों में उपदर्शित किया जाए ।

(3) जहां किसी दुभाषिए, अनुवादक या विशेष शिक्षक की उपनियम (1) के अधीन जिला बाल कल्याण एकक द्वारा अनुरक्षित सूची से भिन्न, नियुक्ति की जाती है, वहां इस नियम के उप नियम (4) और उप नियम (5) के अधीन विहित अपेक्षाओं को सुसंगत अनुभव के साथ या औपचारिक शिक्षा या प्रशिक्षण या दुभाषिए, अनुवादक या विशेष शिक्षक द्वारा सुसंगत भाषाओं में प्रदर्शित धारा प्रवाहिता के सबूत के आधार पर, जिला बाल कल्याण एकक, विशेष न्यायालय या अन्य संबंधित प्राधिकरण के समाधानप्रद रूप में शिथिल किया जा सकेगा ।

(4) उपनियम (1) के अधीन नियुक्त दुभाषिए या अनुवादक को किसी बालक द्वारा बोली जाने वाली भाषा और राज्य की राजभाषा से, या तो ऐसी भाषा उसकी मातृभाषा होने के परिणामस्वरूप या कम से कम प्राथमिक स्तर तक विद्यालय में शिक्षा का माध्यम होने के परिणामस्वरूप या दुभाषिए या अनुवादक द्वारा उसके व्यवसाय या वृत्ति या उस क्षेत्र में, जहां वह भाषा बोली जाती है, निवास स्थान होने के कारण अर्जित ज्ञान के परिणामस्वरूप कार्यात्मक रूप से सुपरिचित होना चाहिए ।

(5) उपधारा (1) के अधीन रजिस्टर में प्रविष्ट किए गए संकेतभाषा दुभाषियों, विशेष शिक्षकों और विशेषज्ञों के पास किसी मान्यताप्राप्त विश्वविद्यालय या भारतीय सुधार परिषद् द्वारा मान्यताप्राप्त किसी संस्था से संकेत भाषा या विशेष शिक्षा में अथवा किसी विशेषज्ञ की दशा में सुसंगत शाखा में सुसंगत अर्हताएं होनी चाहिए ।

(6) ऐसे दुभाषिए, अनुवादक, विशेष शिक्षक या विशेषज्ञ की सेवाओं के लिए, जिनका नाम उपधारा (1) के अधीन अनुरक्षित रजिस्टर में या अन्यथा प्रविष्ट किया जाता है, भुगतान, राज्य सरकार द्वारा किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 की धारा 61 के अधीन अनुरक्षित निधि से या जिला बाल संरक्षण एकक के नियंत्रणाधीन अन्य निधियों से, उनके द्वारा अवधारित दरों पर और ऐसे प्ररूप में, जो राज्य सरकार द्वारा इस निमित्त विहित करे, अध्यपेक्षा की प्राप्ति पर किया जाएगा ।

(7) अधिनियम की धारा 19 की उपधारा (1) के अधीन सूचना की तारीख के पश्चात्, दुभाषिए, अनुवादक, विशेष शिक्षक या विशेषज्ञ के लिंग के बारे में बालक द्वारा व्यक्त की गई किसी अधिमानता पर विचार किया जा सकेगा और जहां आवश्यक हो, वहां एक से अधिक ऐसे व्यक्ति को, बालक के साथ संपर्क को सुकर बनाने हेतु नियुक्त किया जा सकेगा।

(8) अधिनियम के प्रयोजनों के लिए सेवाएं उपलब्ध कराने हेतु नियुक्त दुभाषिए, अनुवादक, विशेष शिक्षक विशेषज्ञ या बालक के साथ संपर्क करने की रीति से सुपरिचित व्यक्ति निष्पक्ष और समदर्शी होगा और किसी वास्तविक या विदित हित विरोध को प्रकट करेगा। वह दंड प्रक्रिया संहिता, 1973 की धारा 282 के अनुसार किन्ही परिवर्धन या लोप के बिना पूर्ण और यथार्थ निर्वचन या अनुवाद करेगा।

(9) विशेष न्यायालय, धारा 38 के अधीन कार्यवाहियों में यह सुनिश्चित करेगा कि क्या बालक पर्याप्त रूप से न्यायालय की भाषा बोलता है या नहीं और किसी दुभाषिए, अनुवादक, विशेष शिक्षक या बालक के साथ संपर्क करने की रीति से सुपरिचित अन्य व्यक्ति, जिसे बालक के साथ संपर्क को सुकर बनाने के लिए नियुक्त किया गया है, जी नियुक्ति में कोई हित विरोध तो अंतर्वलित नहीं है।

(10) अधिनियम या उसके नियमों के उपबंधों के अधीन नियुक्त कोई दुभाषिया, अनुवादक, विशेष शिक्षक या विशेषज्ञ, भारतीय साक्ष्य अधिनियम, 1872 की धारा 126 के साथ पठित धारा 127 के अधीन यथा वर्णित गोपनीयता के नियम से आबद्ध होगा।

4. देखरेख और संरक्षण - (1) जहां किसी एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस को किसी व्यक्ति से जिसके अंतर्गत बालक भी है, अधिनियम की धारा 19 की उपधारा (1) के अधीन कोई भी सूचना प्राप्त होती है वहां ऐसी सूचना की रिपोर्ट प्राप्त करने वाली एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस रिपोर्ट करने वाले व्यक्ति को तुरंत निम्नलिखित ब्यौरे प्रकट करेगी :-

(i) उसका नाम और पदनाम ;

(ii) पता और दूरभाष नंबर ;

(iii) उस अधिकारी का नाम, पदनाम और संपर्क ब्यौरे जो सूचना प्राप्त करने वाले अधिकारी का पर्यवेक्षण करता है।

(2) जहां, यथास्थिति, किसी एसजेपीयू (विशेष किशोर पुलिस यूनिट) या, स्थानीय पुलिस को अधिनियम की धारा 19 की उपधारा (1) के अधीन अंतर्निष्ठ उपबंधों के अनुसरण में किसी ऐसे अपराध की बाबत जो किया गया है या करने का प्रयत्न किया गया है या जिसका किया जाना संभाव्य है, की सूचना प्राप्त होती है वहां संबंधित प्राधिकारी, जहां लागू हों,-

(क) दंड प्रक्रिया संहिता, 1973 की धारा 154 के उपबंधों के अनुसार प्रथम इतला रिपोर्ट अभिलिखित और रजिस्ट्रीकृत करने के लिए जाएगा और संहिता की धारा 154 की उपधारा (2) के अनुसार ऐसी रिपोर्ट करने वाले व्यक्ति को उसकी एक प्रति मुफ्त देगा ;

(ख) जहां बालक को अधिनियम की धारा 19 की उपधारा (5) के अधीन या इन नियमों के अधीन यथावर्णित आपात चिकित्सा देखरेख की आवश्यकता है वहां बालक की नियम 5 के अनुसरण में ऐसी देखरेख करवाने की व्यवस्था करेगा ;

(ग) बालक को अधिनियम की धारा 27 के अनुसरण में चिकित्सा प्रक्रिया के लिए अस्पताल ले जाएगा ;

(घ) यह सुनिश्चित करेगा कि न्यायालयिक जांच के लिए एकत्रित नमूने शीघ्रातिशीघ्र न्यायालयिक प्रयोगशाला में भेज दिए गए हैं ;

(ङ) बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को सहायक सेवाओं, जिसमें मंत्रणा भी है, की प्राप्यता के बारे में सूचना देगा और उनकी ऐसे व्यक्ति से संपर्क करने में सहायता करेगा जो ऐसी सेवाएं और अनुतोष देने के लिए उत्तरदायी हैं ;

(च) बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को अधिनियम की धारा 40 के अनुसरण में बालक को विधिक सलाह का अधिकार और परामर्शी और किसी अधिवक्ता द्वारा प्रतिनिधित्व किए जाने के अधिकार के बारे में सूचना देगा ।

(3) जहां एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस अधिनियम की धारा 19 की उपधारा (1) के अधीन सूचना प्राप्त होती है और यह युक्तियुक्त आशंका है कि बालक की उसी या साझी गृहस्थी में रहने वाले किसी व्यक्ति द्वारा अपराध किया गया है या करने का प्रयत्न किया गया है या किया जाना संभाव्य है या बालक किसी बाल देखरेख संस्था में रह रहा है और माता पिता की सहायता के बिना है या बालक किसी भी गृह या माता पिता की सहायता के बिना पाया गया है तो संबंधित एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस ऐसी रिपोर्ट प्राप्त होने के 24 घंटे के भीतर सीडब्ल्यूसी द्वारा ब्यौरेवार निर्धारण के अनुरोध सहित

जिसमें लिखित में दिए जाने वाले ऐसे कारण भी होंगे कि क्या बालक को अधिनियम की धारा 19 की उपधारा (5) के अधीन देखरेख और संरक्षण की आवश्यकता है, बालक को बाल कल्याण समिति (जिसमें इसमें इसके भरचार "सीडब्ल्यूसी" कहा गया है) के समक्ष पेश करेगी।

(4) उपनियम (3) के अधीन किसी रिपोर्ट की प्राप्ति पर संबंधित सीडब्ल्यूसी को स्वप्रेरणा से या किसी सामाजिक कार्यकर्ता की सहायता से किशोर न्याय अधिनियम, 2000 की धारा 31 की उपधारा (1) के अधीन अपेक्षी शक्तियों के अनुसरण में तीन दिन के भीतर यह अवधारण करने के लिए अग्रसर होना चाहिए कि क्या बालक को उसके कुटुंब या साझी गृहस्थ की अभिरक्षा से अलग ले जाने और उसे किसी बालगृह या आश्रयगृह में रखने की आवश्यकता है।

(5) उपनियम (4) के अधीन अवधारण करते समय सीडब्ल्यूसी बालक द्वारा अभिव्यक्त किसी भी अधिमान या राय के साथ ही साथ बालक के सर्वोत्तम हित पर निम्नलिखित बातों को ध्यान में रखते हुए विचार करेगा :-

(i) बालक की तुरंत देखरेख और संरक्षण आवश्यकताओं की पूर्ति करने के लिए, जिसके अंतर्गत चिकित्सीय आवश्यकताएं और मंत्रणा भी है, माता पिता या माता या पिता या कोई अन्य व्यक्ति, जिस पर बालक को भरोसा और विश्वास है, की समर्थता ;

(ii) बालक की उसके माता पिता, कुटुंब और विस्तृत कुटुंब में रहने की आवश्यकता और उनके साथ संबंध बनाए रखना ;

(iii) बालक की आयु और परिपक्वता का स्तर, लिंग और सामाजिक और आर्थिक पृष्ठभूमि ;

(iv) बालक की निःशक्तता, यदि कोई हों ;

(v) ऐसी कोई भी दीर्घकालिक रुग्णता जिससे बालक ग्रस्त हो सकता है ;

(vi) बालक या बालक के कुटुंब के किसी सदस्य को अंतर्वलित करने वाली कौटुंबिक हिंसा का कोई इतिहास ; और

(vii) कोई अन्य सुसंगत कारण जो बालक के सर्वोत्तम हित पर प्रभाव डालता हो ;

परंतु ऐसा अवधारण किए जाने के पूर्व एक जांच ऐसे रूप में की जाएगी जिससे बालक को अनावश्यक रूप से कोई क्षति या असुविधा नहीं हो।

(6) बालक और उसके माता पिता या संरक्षक या किसी ऐसे व्यक्ति, जिस पर बालक का भरोसा और विश्वास है और जिनके साथ बालक रह रहा है जो कि ऐसे अवधारण से प्रभावित हुआ है, को यह सूचना दी जाएगी कि ऐसे अवधारण पर विचार किया गया है।

(7) सीडब्ल्यूसी, अधिनियम की धारा 19 की उपधारा (6) के अधीन किसी रिपोर्ट की प्राप्ति पर या उपनियम (5) के अधीन अपने निर्धारण के आधार पर और बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति, जिस पर बालक का भरोसा और विश्वास है, की सहमति से अन्वेषण और विचारण की प्रक्रिया के माध्यम से बालक की सहायता करने के लिए एक सहायक व्यक्ति की व्यवस्था कर सकेगी। ऐसा सहायक व्यक्ति बालक अधिकारों के क्षेत्र में कार्य करने वाला कोई व्यक्ति या संगठन या बाल गृह या बालक की अभिरक्षा रखने वाले आश्रयगृह का कोई पदधारी या डीसीपीयू द्वारा नियोजित कोई व्यक्ति हो सकेगा :

परंतु इन नियमों की कोई बात बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को इस अधिनियम के अधीन कार्यवाहियां करने के लिए किसी व्यक्ति या संगठन की सहायता मांगने से नहीं रोकेंगी।

(8) सहायक व्यक्ति हर समय बालक से संबंधित सभी सूचनाओं, जिन तक उसकी पहुंच है, की गोपनीयता बनाए रखेगा। वह बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, मामले की कार्यवाहियों के बारे में सूचित करता रहेगा जिसके अंतर्गत उपलब्ध सहायता, न्यायिक प्रक्रियाएं और संभावी परिणाम भी है, वह बालक को न्यायिक प्रक्रिया में उसके द्वारा अदा की जा सकने वाली भूमिका के बारे में भी सूचित करेगा और यह सुनिश्चित करेगा कि बालक से संबंधित उसकी अभियुक्त से सुरक्षा और वह शक्ति जिस पर वह अपना परिसाक्ष्य देना चाहेगा, के बारे में सुसंगत प्राधिकारियों को बताएगा।

(9) जहां बालक को कोई सहायक व्यक्ति दिया गया है, वहां एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस ऐसे समनुदेशन करने के 24 घंटे के भीतर लिखित में विशेष न्यायालयों को सूचना देगा।

(10) सीडब्ल्यूसी (बालक कल्याण समिति), बालक और उसके माता पिता या संरक्षक या उस व्यक्ति के, जिस पर बालक का भरोसा और विश्वास है, अनुरोध पर सहायक व्यक्ति की सेवाएं समाप्त कर सकेया और ऐसा अनुरोध करने वाले बालक से ऐसे अनुरोध के लिए कोई भी कारण देने की अपेक्षा नहीं की जाएगी। विशेष न्यायालय को ऐसी सूचना लिखित में दी जाएगी।

(11) एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस का बालक और उसके माता पिता या संरक्षक या किसी अन्य व्यक्ति की, जिस पर बालक का विश्वास और भरोसा है और जहां सहायक व्यक्ति समनुदेशित किया गया है वहां ऐसे व्यक्ति को मामले की प्रगति के बारे में सूचना देने का उत्तरदायित्व होगा जिसके अंतर्गत अभियुक्त की गिरफ्तारी, फाइल किए गए आवेदन और अन्य न्यायालयिक कार्यावाहियां भी हैं।

(12) एसजेपीयू (विशेष किशोर पुलिस यूनिट), स्थानीय पुलिस, या सहायक व्यक्ति, द्वारा बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को दी जाने वाली सूचना में निम्नलिखित है किंतु निम्नलिखित तक ही सीमित नहीं है :-

- (i) लोक और निजी आपात और संकटावस्था सेवाओं की उपलब्धता ;
- (ii) किसी दंडिक अभियोजन में अतर्वलित प्रक्रियात्मक कदम ;
- (iii) पीड़ित के प्रतिकर फायदों की प्राप्यता ;
- (iv) अपराध के अन्वेषण की प्रास्थिति, जहां तक उसकी सूचना पीड़ित को देना उपयुक्त है और जहां तक इससे अन्वेषण में हस्तक्षेप नहीं होगा ;
- (v) किसी संदिग्ध अपराधी की गिरफ्तारी ;
- (vi) किसी संदिग्ध अपराधी के विरुद्ध आरोप फाइल करना ;
- (vii) न्यायालयिक कार्यावाहियों की समयानुसूची जिस पर या तो बालक के उपस्थित होने की अपेक्षा की गई है या वह उपस्थित होने का हक रखता है ;
- (viii) किसी अपराधी या संदिग्ध अपराधी की जमानत, उसे छोड़े जाने या निरोध की प्रास्थिति ;
- (ix) विचारण के पश्चात् किसी अधिमत का दिया जाना ; और

(x) किसी अपराधी पर अधिरोपित दंडादेश ।

5. आपात चिकित्सा देखरेख - (1) जहां एसजेपीयू (विशेष किशोर पुलिस यूनिट), या स्थानीय पुलिस के किसी अधिकारी को अधिनियम की धारा 19 के अधीन यह सूचना प्राप्त होती है कि अधिनियम के अधीन का कोई अपराध किया गया है और उसका समाधान हो जाता है कि उस बालक को, जिसके विरुद्ध कोई अपराध किया गया है, तुरंत चिकित्सा देखरेख और संरक्षण की आवश्यकता है तो वह यथाशक्य शीघ्र किंतु ऐसी सूचना प्राप्त होने के 24 घंटे के अपश्चात्, ऐसे बालक को आपात चिकित्सा देखरेख के लिए निकटतम अस्पताल या चिकित्सा देखरेख प्रसुविधा केन्द्र ले जाने की व्यवस्था करेगा :

परंतु जहां कोई अपराध अधिनियम की धारा 3, धारा 5, धारा 7 या धारा 9 के अधीन किया गया है वहां पीड़ित आपात चिकित्सा देखरेख के लिए ले जाया जाएगा ।

(2) आपात चिकित्सा देखरेख, ऐसी रीति में, जिससे बालक की निजता की सुरक्षा हो सके, और उसके माता पिता या संरक्षक या किसी ऐसे व्यक्ति की उपस्थिति में जिस पर बालक का भरोसा और विश्वास है, की जाएगी ।

(3) किसी बालक की आपात चिकित्सा देखरेख करने वाला कोई भी चिकित्सा व्यवसायी, अस्पताल या अन्य चिकित्सा प्रसुविधा केन्द्र ऐसी देखरेख करने के लिए पूर्व अपेक्षा के रूप में किसी भी विधिक या मजिस्ट्रेट की अध्यक्षता या अन्य प्रलेखीकरण की मांग नहीं करेगा ।

(4) आपात चिकित्सा देखरेख करने वाला रजिस्ट्रीकृत चिकित्सा व्यवसायी बालक की आवश्यकताओं की पूर्ति करेगा जिसके अंतर्गत निम्नलिखित भी है :-

(i) कट (विदारण), नीलों, और अन्य क्षतियों जिसके अंतर्गत जननेन्द्रिय क्षति, यदि कोई हों, भी है, का उपचार ;

- (ii) लैंगिक पारेषित रोग (एसटीडीज) के उच्छन्न जिसके अंतर्गत परिलक्षित एसटीडीज का रोग निरोध भी है, का उपचार ;
- (iii) सक्रामक रोग विशेषज्ञ से आवश्यक परामर्श के पश्चात् ह्यूमन इम्यूनोडेफिकेंसी वायरस (एचआईवी) के उच्छन्न जिसके अंतर्गत एचआईवी का रोग निरोध भी है, का उपचार ;
- (iv) यौवनागम बालक और उसके माता पिता या किसी अन्य व्यक्ति से, जिस पर बालक का भरोसा और विश्वास है, के साथ संभाव्य गर्भास्तित्व और आपात गर्भ निरोधक के बारे में चर्चा करनी चाहिए ; और
- (v) जहां आवश्यक हो, मानसिक या मनोवैज्ञानिक स्वास्थ्य के लिए संदर्भालोकन या परामर्श या अन्य मंत्रणा की जानी चाहिए ।
- (5) आपात चिकित्सा देखरेख करने के प्रक्रम पर एकत्रित किए गए किसी भी न्याय संबंधी साक्ष्य को अधिनियम की धारा 27 के अनुसरण में एकत्रित किया जाना चाहिए ।

6. अधिनियम के कार्यान्वयन की मॉनीटरी - (1) यथास्थिति, राष्ट्रीय बालक अधिकार संरक्षण आयोग (जिसे इसमें इसके पश्चात् "एनसीपीसीआर" कहा गया है) या राज्य बालक अधिकार संरक्षण आयोग, (जिसे इसमें इसके पश्चात् "एससीपीसीआर" कहा गया है), बालक अधिकार संरक्षण अधिनियम, 2005 के अधीन उनको समनुदेशित कृत्यों के अतिरिक्त अधिनियम के उपबंधों के कार्यान्वयन के लिए निम्नलिखित कार्य करेगा :-

- (क) राज्य सरकारों द्वारा विशेष न्यायालयों के पदाभिधान को मॉनीटर करना ;
- (ख) राज्य सरकारों द्वारा लोक अभियोजकों की नियुक्ति को मॉनीटर करना ;
- (ग) राज्य सरकारों द्वारा, बालक की विचारण पूर्व और विचारण के स्तर पर सहायता से सहबद्ध गैर सरकारी संगठनों, व्यवसायियों और विशेषज्ञों या मनोविज्ञान, सांभाजिक कार्य, शारीरिक स्वास्थ्य, मानसिक स्वास्थ्य और बालक विकास का ज्ञान रखने वाले

व्यक्तियों के उपयोग के लिए अधिनियम की धारा 39 में वर्णित मार्गनिर्देश बनाने को मॉनीटर करना और इन मार्गनिर्देशों को लागू करने को मॉनीटर करना ;

(घ) इस अधिनियम के अधीन अपने कार्यों के प्रभावी निर्वहन के लिए प्रशिक्षण पुलिस कार्मिकों और अन्य संबंधित व्यक्तियों, जिसके अंतर्गत केन्द्रीय और राज्य सरकारों के अधिकारी भी है, के लिए निश्चायिका के डिजाइन और कार्यान्वयन को मॉनीटर करना ;

(ङ) मीडिया, जिसके अंतर्गत टेलीविजन, रेडियो और प्रिंट मीडिया भी है, के माध्यम से नियमित अंतरालों पर अधिनियम के उपबंधों से संबंधित सूचनाओं के प्रसार के लिए केन्द्रीय सरकार और राज्य सरकारों को मॉनीटर करना और उनकी सहायता करना जिससे अधिनियम के उपबंधों के प्रति जनसाधारण, बालकों के साथ ही साथ उनके माता पिता और संरक्षकों को जागरूक किया जा सके ।

(2) यथास्थिति, एनसीपीसीआर या एससीपीसीआर किसी सीडब्ल्यूसी की अधिकारिता के भीतर आने वाले बालक लैंगिक दुरुपयोग के किसी भी विनिर्दिष्ट मामले पर रिपोर्ट मांग सकेंगे ।

(3) यथास्थिति, एनसीपीसीआर या एससीपीसीआर स्वप्रेरणा से या सुसंगत अभिकरणों से लैंगिक दुरुपयोग के रिपोर्ट किए गए मामले और अधिनियम के अधीन स्थापित प्रक्रिया के अधीन उनके निपटारे की बाबत सूचना और आंकड़े एकत्रित कर सकेंगे जिसके अंतर्गत निम्नलिखित सूचना भी है :-

(i) अधिनियम के अधीन रिपोर्ट किए गए अपराधों की संख्या और ब्यौरे ;

(ii) क्या अधिनियम और नियमों के अधीन विहित प्रक्रियाओं का अनुसरण किया गया है जिसके अंतर्गत समयसीमा से संबंधित प्रक्रिया भी है ;

(iii) अधिनियम के अधीन अपराधों के पीड़ितों की देखरेख और संरक्षण के लिए व्यवस्था के ब्यौरे जिसके अंतर्गत आपात चिकित्सा देखरेख और चिकित्सा परीक्षा की व्यवस्था भी है ; और

(iv) संबंधित सीडब्ल्यूसी द्वारा किसी भी विनिर्दिष्ट मामले में किसी बालक की देखरेख और संरक्षण के लिए आवश्यकता के निर्धारण की बाबत ब्यौरे ।

(4) यथास्थिति, एनसीपीसीआर या एससीपीसीआर इस प्रकार एकत्रित सूचना का प्रयोग अधिनियम के उपबंधों के कार्यान्वयन को निर्धारित करने के लिए कर सकेगी। अधिनियम की मॉनीटरी पर रिपोर्ट को एनसीपीसीआर या एससीपीसीआर की वार्षिक रिपोर्ट में एक अलग अध्याय में सम्मिलित किया जाएगा।

7. प्रतिकर - (1) विशेष न्यायालय, समुचित मामलों में स्वप्रेरणा से या बालक द्वारा या उसकी ओर से फाइल किए गए आवेदन पर प्रथम इत्तला रिपोर्ट के रजिस्ट्रीकरण के पश्चात् किसी भी स्तर पर बालक के अनुतोष या पुनर्वास की तुरंत आवश्यकता की पूर्ति के लिए अंतरिम प्रतिकर का आदेश पारित कर सकेगा। बालक को संदत्त ऐसे अंतरिम प्रतिकर को अंतिम प्रतिकर, यदि कोई हों, के विरुद्ध समायोजित किया जाएगा।

(2) विशेष न्यायालय, स्वप्रेरणा से या पीड़ित द्वारा या उसकी ओर से फाइल किए गए किसी आवेदन पर जहां अभियुक्त को दोषसिद्ध किया गया है या जहां मामले का परिणाम दोषमुक्ति या उन्मोचन है या अभियुक्त का पता नहीं लगा है या पहचान नहीं की गई है और विशेष न्यायालय की राय में बालक ने उक्त अपराध के परिणामस्वरूप हानि या क्षति उठाई है तो प्रतिकर अधिनिर्णीत करने की सिफारिश कर सकेगा।

(3) जहां विशेष न्यायालय दंड प्रक्रिया संहिता की धारा 357क की उपधारा (2) और उपधारा (3) के साथ पठित अधिनियम की धारा 33 की उपधारा (8) के अधीन पीड़ित को प्रतिकर अधिनिर्णीत करने का निदेश देता है तो पीड़ित को हुई हानि या क्षति से संबंधित सभी सुसंगत कारणों पर विचार करेगा जिसके अंतर्गत निम्नलिखित भी है :-

(i) दुरुपयोग का प्रकार, अपराध की संगीनता और बालक द्वारा उठाई गई मानसिक और शारीरिक अपहानि और क्षति की गंभीरता ;

(ii) शारीरिक और/या मानसिक स्वास्थ्य के लिए उस पर उपगत या उपगत किए जाने के लिए संभाव्य व्यय ;

(iii) अपराध के परिणामस्वरूप शैक्षिक अवसरों की हानि जिसके अंतर्गत मानसिक आघात, शारीरिक क्षति, चिकित्सा उपचार, अपराध के अन्वेषण और विचारण के कारण या किसी अन्य कारण से विद्यालय से अनुपस्थिति भी है ;

(iv) अपराध के परिणामस्वरूप नियोजन की हानि जिसके अंतर्गत मानसिक आघात, शारीरिक क्षति, चिकित्सा उपचार, अपराध के अन्वेषण और विचारण के कारण या किसी अन्य कारण से नियोजन के स्थान से अनुपस्थिति भी है ;

(v) अपराधी के साथ बालक का संबंध, यदि कोई हो ;

(vi) क्या ऐसा दुरुपयोग एक अकेली घटना थी या ऐसा दुरुपयोग अलग-अलग समय पर बार-बार पर होता रहा ;

(vii) क्या बालक अपराध के परिणामस्वरूप गर्भवती हो गई है ;

(viii) क्या बालक अपराध के परिणामस्वरूप किसी लैंगिक पारेषित रोग (एसटीडी) से संसर्ग-प्राप्त हो गया है ;

(ix) क्या बालक अपराध के परिणामस्वरूप ह्यूमन इम्यूनोडेफियेंसी वायरस (एचआईवी) से संसर्ग-प्राप्त हो गया है ;

(x) अपराध के परिणामस्वरूप बालक द्वारा वहन की गई कोई भी निःशक्तता ;

(xi) उस बालक की वित्तीय स्थिति जिसके विरुद्ध अपराध किया गया है जिससे उसके पुनर्वास की आवश्यकता को अवधारित किया जा सके ;

(xii) कोई अन्य कारण जो विशेष न्यायालय सुसंगत समझे ।

(4) विशेष न्यायालय द्वारा अधिनिर्णीत प्रतिकर राज्य सरकार द्वारा पीड़ित के लिए प्रतिकर निधि या उसके द्वारा दंड प्रक्रिया संहिता की धारा 357क या तत्समय प्रवृत्त किसी अन्य विधि के अधीन पीड़ित के प्रतिकर और पुनर्वास के प्रयोजनों के लिए स्थापित कोई अन्य स्कीम या निधि से किया जाना है या जहां ऐसी निधि या स्कीम नहीं है वहां राज्य सरकार द्वारा किया जाना है ।

(5) राज्य सरकार विशेष न्यायालय द्वारा आदेशित प्रतिकर का संदाय ऐसे आदेश की प्राप्ति के 30 दिन के भीतर करेगी ।

(6) इन नियमों की कोई बात बालक या उसके माता पिता या संरक्षक या किसी अन्य व्यक्ति, जिस पर बालक का भरोसा और विश्वास है, को केन्द्रीय सरकार या राज्य सरकार के किन्हीं अन्य नियमों और स्कीम के अधीन अनुत्तोष नांगने के लिए आवेदन देने से नहीं रोकेंगी।

[फा. सं. 22-14/2012-सीडब्ल्यू-1]

डॉ. विवेक जोशी, संयुक्त सचिव

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 14th November, 2012

G.S.R. 823(E).— In exercise of the powers conferred by sub-section (1), read with clauses (a) to (d) of sub-section (2), of section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Central Government hereby makes the following rules, namely -

1. Short title and commencement - (1) These rules may be called the Protection of Children from Sexual Offences Rules, 2012.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions - (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(b) "District Child Protection Unit" (DCPU) means the District Child Protection Unit established by the State Government under section 62A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006;

(c) "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;

(d) "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;

(e) "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;

(f) "Support person" means a person assigned by a Child Welfare Committee, in accordance with sub-rule (g) 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;

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them under the Act.

3. Interpreters, translators and Special educators - (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be made available to the Special Juvenile Police Unit (hereafter referred to as "SJPV"), local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, Special educators, and experts, engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, shall be as indicated in these rules.

(3) Where an interpreter, translator, or Special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

(4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being his mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through his vocation, profession, or residence in the area where that language is spoken.

(5) Sign language interpreters, Special educators and experts entered in the register under sub-rule (1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognized University or an institution recognized by the Rehabilitation Council of India.

(6) Payment for the services of an interpreter, translator, Special educator or expert whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.

(7) Any preference expressed by the child at any stage after information is received under sub-section (1) of section 19 of the Act, as to the gender of the interpreter, translator, Special educator, or expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(8) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973.

(9) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, Special educator, expert or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

(10) Any interpreter, translator, Special educator or expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872.

4. Care and Protection - (1) Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving report of such information shall forthwith disclose to the person making the report, the following details:-

- (i) his name and designation;
- (ii) the address and telephone number;
- (iii) the name, designation and contact details of the officer who supervises the officer receiving the information.

(2) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

(a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;

(b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;

(c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;

(d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;

(e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(3) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(4) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2000, to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of his family or shared household and placed in a children's home or a shelter home.

(5) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations:

- (i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;
- (ii) the need for the child to remain in the care of his parent, family and extended family and to maintain a connection with them;
- (iii) the child's age and level of maturity, gender, and social and economic background;
- (iv) disability of the child, if any;
- (v) any chronic illness from which a child may suffer;
- (vi) any history of family violence involving the child or a family member of the child; and,
- (vii) any other relevant factors that may have a bearing on the best interests of the child;

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(6) The child and his parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

(7) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

(8) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he has access. He shall keep the child and his parent or guardian or other person in whom the child has trust and confidence, informed as to the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. He shall also inform the child of the role he may play in the judicial process and ensure that any concerns that the child may have, regarding his safety in relation to the accused and the manner in which he would like to provide his testimony, are conveyed to the relevant authorities.

(9) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(10) The services of the support person may be terminated by the CWC upon request by the child and his parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(11) It shall be the responsibility of the SJPU, or the local police to keep the child and his parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

(12) The information to be provided by the SJPU, local police, or support person; to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victims' compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;

- (vi) the filing of charges against a suspected offender;
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and
- (x) the sentence imposed on an offender.

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.

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:-

- (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 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, 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.

7. Compensation -

(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (v) the relationship of the child to the offender, if any;
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- (vii) whether the child became pregnant as a result of the offence;
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- (x) any disability suffered by the child as a result of the offence;
- (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- (xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.

[F. No. 22-14/2012-CW-I]

DR. VIVEK JOSHI, Jt. Secy.