

GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
'A' WING, SHASTRI BHAWAN,
NEW DELHI – 110 001

No. 3105/63/2011-BC-III

Dated: 28th March, 2013

To

All TV Channels

Subject : (i) Violation of the statutory provisions including Section 21 of the Juvenile Justice Act by way of alleged disclosure of identity of the minor accused in media reports – Reference from National Commission for Protection of Child Rights (NCPCR).
(ii) Implementation of the provisions of the Protection of Children from Sexual Offences Act, 2012 – Reference from Delhi Commission for Protection of Child Rights (DCPCR).

Sir/Madam,

National Commission for Protection of Child Rights (NCPCR) has forwarded, vide its D.O No.17033/42734/2012-13/COMP/26899 dated 1.2.2013, a copy of the petition/complaint dated 31.1.2013 from Mr. Anant Asthana, Advocate regarding violation of the statutory provisions, including Section 21 of the Juvenile Justice Act, by way of alleged disclosure of identity of the minor accused in the Delhi gang rape case, in media reports. The complaint is self-explanatory.

2. It is also noteworthy that pursuant to earlier references received from NCPCR, this Ministry had issued a Directive dated 8.8.2012 to news and current affairs TV channels as also the representative bodies of TV channels i.e. News Broadcasters Association (NBA) and Indian Broadcasting Foundation (IBF) regarding protection of identity of children in need of care and protection and juveniles in conflict with law and had also issued a letter dated 23.11.2012 to TV channels, NBA and IBF regarding 'Guidelines for Media Reporting on Children'. The channels were required to ensure compliance with the said directive and guidelines. The same are already available on the Ministry's website: www.mib.nic.in.

3. In its aforesaid letter dated 1.2.2013, NCPCR has requested to ensure all necessary action as required under laws, especially as per the provisions of Section 21 of the Juvenile Justice Act (Care & Protection of Children) Act, 2000 and the guidelines issued by the Hon'ble High Court of Delhi for "Media Reporting on Children". NCPCR has also requested to ensure that further labeling of the minor accused does not take place in the media in any manner.

4. Delhi Commission for Protection of Child Rights (DCPCR), vide its letter No.F.DCPCR/12-13/39/4217-20 dated 30.1.2013 (copy enclosed), has stated that under section 44 of the Protection of Children from Sexual Offences Act, 2012, it is empowered to monitor the implementation of the Act in the National Capital Territory of Delhi. DCPCR has prepared a note on 'Role of Media' (copy enclosed) containing the relevant sections of the Act for performance by the media.

5. Accordingly, all the TV channels are required (i) to ensure strict compliance with directions given by NCPCR in its aforesaid letter, all statutory provisions, including Section 21 of the Juvenile Justice Act, 2000 while media reporting on children; and (ii) to ensure compliance with the directions given by DCPCR in its aforesaid letter and the note on 'Role of Media'.

Yours faithfully,



(D.C. PATHAK)
Under Secretary (BC-I)
Tele. No.23387930

Copy to:

1. Shri K.V.L. Narayanrao, President, News Broadcasters Association ME-5, Sah Vikas Apartments, 68, Patparganj, Delhi – 110092.
2. Shri Man Jit Singh, President, The Indian Broadcasting Foundation, B-304, 3rd Floor, Ansal Plaza, Khelgaon Marg, New Delhi – 110049.



JS(P&A)

93
D2

दिल्ली बाल अधिकारी संरक्षण आयोग

दिल्ली सरकार

दिल्ली-110006

DELHI COMMISSION FOR PROTECTION OF CHILD RIGHTS

GOVT. OF NCT OF DELHI

DELHI - 110006

ARUN MATHUR

Chairperson

P-63398
05/01/2013

Dear Sh. Verma

F/DCPCR/12-13/39 / 12.17-20

Handwritten signature and initials
SSCP(A)

Dis (IP)
Instructions wa need to circulate
all media units
US (M/28) 6/2/13
Sd/-
6/2

January 30, 2013

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

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

- 44. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.
- (2) The National Commission or, as the case may be, the State Commission, referred to in subsection (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005.
- (3) The National Commission or, as the case may be, the State Commission, referred to in subsection (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005."

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

6. Monitoring of implementation of the Act – (1) The National Commission for the Protection of Child Rights (hereafter referred to as "NCPCR") or the State Commission for the Protection of Child Rights (hereafter referred to as "SCPCR"), as the case may be, shall in

Old U.S. (MSP)
By. No. 63398
Date. 6/2

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 organizations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;
 - (d) to monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act;
 - (e) to monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.
- (2) The NCPCR or the SCPCR, as the case may be, may call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
 - (3) The NCPCR or the SCPCR, as the case may be, may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-
 - (i) Number and details of offences reported under the Act;
 - (ii) Whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;
 - (iii) Details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
 - (iv) Details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.
 - (4) The NCPCR or the SCPCR, as the case may be, may use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the Annual Report of the NCPCR or the SCPCR.
4. Keeping in view the provisions of the Law, please find annexed herewith the legal obligations to be performed by the Department of Information and Broadcasting.

91
11

5. Section 13 of the Act, talks of use of a child for pornographic purposes. Section 14 deals with punishment for using child for pornographic purpose. Section 15 addresses the issue of punishment for storage of pornographic material involving a child. Section 20 deals with obligation of media. Section 23 of the Act deals with procedure for media and punishment for its contravention.

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

with regards


(Arun Mathur)
Chairperson
30.01.2013

Shri Uday Verma
Secretary
Ministry of Information and Broadcasting
Govt. of India
Shastri Bhawan
New Delhi- 110001

ROLE OF MEDIA

Preamble:

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

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

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

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

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

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

Section 2 : Some Important Definitions :

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

Provisions of Law

13. Use of child for pornographic purposes -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. Punishment for aggravated sexual assault. Sexual harassment Punishment for sexual harassment. Use of 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.

COMMENTS

(Based on Notes on Clauses of the Bill)

This section defines the offences of use of child for pornographic purposes. It provides that 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) ; or (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

It further clarifies that for the purposes of this section the expression ‘‘use a child’’ shall includes 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. Punishment for using child for pornographic purpose - (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.

(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 for 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. **Punishment For storage of Pornographic material involving child** : 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.

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

COMMENTS

(Based on Notes on Clauses of the Bill)

This section provides for obligation of media, studio and photographic facilities to report cases. It provides that if 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 or persons employed therein, comes across any material or object which is sexually exploitative of the child (including pornographic, sexually – related or making obscene representation of a child or children) through the use of any medium, then he shall provide such information to the Special Juvenile Police Unit, or the local police, as the case may be.

87

7

23. **Procedure for Media :** (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.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighborhood 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.



SHANTHA SINHA
Chairperson

भारत सरकार
GOVERNMENT OF INDIA

राष्ट्रीय बालक अधिकार संरक्षण आयोग
NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

D.O. No.17033/42734/2012-13/COMP.16899
Dated the 1st February, 2013

*JS (P&A)
Pl take action &
inform the body.
K
01/02/13*

Dear *Sri Uday Verma,*

Kindly refer to a petition/complaint received from Mr. Anant Asthana, Advocate regarding violation of the statutory provisions, including Section 21 of the Juvenile Justice Act, by way of alleged disclosure of identity of the minor accused in the Delhi gang rape case, in media reports. The complaint has been formally taken cognizance of by the NCPDR.

The complaint is self-explanatory in terms of the nature of violations of child rights, as safeguarded under law.

In the light of the above, you are requested to ensure all necessary actions as required under law, especially as per the provisions of Section 21 of the Juvenile Justice (Care & Protection of Children) Act, 2000, and the guidelines issued by the Hon'ble High Court of Delhi for "Media Reporting on Children".

I would appreciate to have a positive response in the above regard. Please also ensure that further labeling of the minor accused does not take place in the media in any manner.

Kindly acknowledge and keep the Commission informed on the action taken in this regard.

With regards,

*US (M&P)
On priority pl.*

Yours sincerely,

Shantha
(Shantha Sinha)

Encl: As above

Shri Uday Verma,
Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
NEW DELHI-110001

*501 P/50
4/2
SH. R.K.
05/02/13*

*63609/Buz
5/2/13*

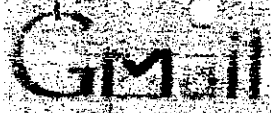
द्वितीय मंत्रालय (सूचना)
Secretary's Office (I&B) 63609
आ. सं. / D.O. No. 17033/42734/2012-13/COMP.16899
दिनांक / Dated: 01/02/13

83
4

N.C.P.C.R.
(C.R. UNIT) KCS

PROGRAM

Dy. No. 42734 Dt. 31/1/13



Representation seeking review of Section 21 and Section 19 of the JJ Act, 2000 by this Commission

From: Anant Kumar Asthana <anant.asthana@gmail.com>
To: "Shantha Sinha" <shantha.sinha@nic.in>, Shantha Sinha <shanthasinha@yahoo.com>
Cc: Binod Kumar Sahu <registrar.ncpcr@gmail.com>, NCPCR Complaints <complaints.ncpcr@gmail.com>
Thu, Jan 31, 2013 at 11:29 AM

**Prof. Shantha Sinha
Hon'ble Chairperson
National Commission for Protection of Child Rights**

Dear Madam,

I am petitioning to you bring your kind attention towards ongoing media coverage of alleged juvenile in conflict with law regarding 16 Dec 2012 Delhi Gang Rape Incident.

While I appreciate that media has also reported on larger issues arising out from this incident yet as a concerned citizen who is equally conscious of disastrous effect of hostile media reporting and undue characterization and vilification of juveniles, I feel disturbed the way "Rule of Law" has been given a blow.

Alleged juvenile has recently been declared juvenile by the Ld. JJB and inquiry is pending. Police investigation Report is yet to be filed in JJB. Yet we see certain reports in media describing this juvenile as "savage", "beast" and "most brutal", attributing alleged acts upon him which are still sub-judice. It is almost a vilification of this juvenile. I wonder how this juvenile will be able to lead a normal life even after he is reformed. This stigma caused by such undue and stigmatizing media reporting will always haunt him.

His name, school, village, district and other details leading to disclose his identity have been made public and it stands in flagrant violation of Section 21 of the Juvenile Justice (Care & Protection of Children) Act-2000.

I also noticed that though the JJ Act regulates media coverage on the point of disclosure of identity but it does not address the problem meaningfully. A media organisation can violate Section 21 and get away with paying a nominal monetary penalty. This is not at all an effective deterrent. Violation of Section 21 should be made a punishable offence as is the case under Protection of Children from Sexual Offences Act-2012.

Moreover the monetary penalty which is prescribed under Section 21 does not go to the juvenile or child, who is the one who suffers. Ideally such child who suffers should get the compensation which is not the case at present.

Another limitation of Section 21 is that it is restricted only to "disclosure of identity". It does not cover the instances of causing stigma or vilification of a juvenile or child. JJ Act which is a comprehensive code on care & protection of children must contain some provision prohibiting stigmatizing and vicious reporting of juveniles in conflict with law as it has direct consequences on mainstreaming of children. A child who stands stigmatized can never lead a normal life, even after he is reformed. This frustrates the very intent and purpose of the JJ Act.

Additionally, power to take cognizance of violation of Section 21 is restricted only to the Juvenile Justice Board. It makes sense in case of juvenile in conflict with law but in case of children in need of care and protection, Child Welfare Committee should be empowered to take cognizance of violation of Section 21

In case where cognizance from this Commission is needed and recommendations from this esteemed Commission on required law reforms in this regard may go to the Ministry of Women & Child Development and Ministry of Law

*Cp on tour. For necessary action (P) -
B. Sahu
31.1.2013*

Member (NN)