

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 696/2008

DELHI COMMISSION FOR WOMEN -----Petitioner

Through Ms. Aparna Bhat, Ms. Madhulika Mohta,
Advocates

Versus

DELHI POLICE -----Respondent

Through Ms. Mukta Gupta, Standing Counsel for the
State.

Coram:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL**

ORDER
23.4.2009

Pursuant to the order dated 10.9.2008, Delhi Commission for Women has filed draft guidelines to enable the authorities to effectively tackle sexual offences including incest and child sexual abuse offences. The guidelines have been prepared in consultation with all departments, police and the judges of Delhi Higher Judicial Service. A modified draft has also been placed on record keeping in view of the suggestions made by the State as well as the Registry of the High Court. Having considered the modified draft and also the submissions made at the Bar, we issue the following guidelines to police, hospitals/ doctors, Child Welfare Committees, Sessions Court,

Magistrate Courts, Prosecutors and other concerned authorities. The guidelines enumerated hereinafter shall be read in the context of the following definitions:

- a. "Crises Intervention Centre" means a recognized agency, appointed by the Delhi Police and the Delhi Commission for Women for responding to calls of sexual assault at the police station to provide counseling and other support services to victims of rape;
- b. "Expert" means a person who is qualified and has experience in dealing with cases of sexual violence;
- c. "Guardian" includes besides the natural guardian, support person or any person appointed by the Child Welfare Committee for a specified period to take care of the victim during the pendency of the trial;
- d. "Rape Crises Cell" means a cell established under the Delhi Commission for Women to provide legal assistance in the cases of sexual assault who would coordinate the Crises Intervention Centres and provide legal support to the victim and her family;
- e. "Support Person" means a person working in the capacity of a counselor working with a recognized and registered crises intervention centres, approved by the Delhi Commission for Women;

- f. The expression "offence for the purpose of these guidelines shall mean and include offences of rape, attempt to rape and unnatural offences.

1) POLICE

- a. Every Police Station shall have available round the clock a lady police official/ officer not below the rank of Head Constable.
- b. As soon as a complaint of the offence is received, the duty officer receiving the complaint/ information shall call the lady police official/ officer present at the police station and make the victim and her family comfortable.
- c. The duty officer, immediately, upon receipt of the complaint/ information intimate to the "Rape Crises Cell" on its notified helpline number.
- d. After making preliminary inquiry/ investigation, the Investigation Officer along with the lady police official/ officer available, escort the victim for medical examination.
- e. The Assistant Commissioner of Police shall personally supervise all investigation into the office.
- f. The statement of victim shall be recorded in private, however, the presence of family members while recording statement may be permitted with a view to make the victim comfortable. In

- incest cases where there is a suspicion of complicity of the family members in the crime such family members should not be permitted.
- g. The Investigating Officer shall bring the cases related to "child in need of care and protection" and the child victim involving in incest cases to the Child Welfare Committee.
 - h. The accused should not be brought in the presence of victim except for identification
 - i. Except the offences which are reported during the night no victim of sexual offence shall be called or made to stay in the police station during night hours. The Social Welfare Department of the Government of NCT of Delhi shall ensure that Superintendents of the Foster Home for Women will provide necessary shelter till formal orders are secured from the concerned authorities.
 - j. The Investigating Officer shall endeavor to complete the Investigation at the earliest and he shall ensure that in no case the accused gets the undue advantage of bail by default as per the provisions of Section 167 Cr.P.C. It is desirable that in cases of incest the report under Section 173 Cr.P.C. is filed within 30 days.

- k. Periodically training to deal with rape cases should be provided to the police officers, juvenile police officers, Welfare Officers, Probationary Officers and Support persons. A Training Module be prepared in consultation with the Delhi judicial Academy.
- l. The Police should provide information to the Rape Crisis Cell regarding the case including the arrest and bail application of the accused, the date of filling of the investigation report before the Magistrate;
- m. The Police should keep the permanent address of the victim in their file in addition to the present address. They should advise the victim to inform them about the change of address in future.
- n. Subject to the outcome of the W.P.(C) 2596/2007 titled Rajeev Mohan Vs. State, pending before this Hon'ble Court in cases where the victim informs the police about any threats received by the accused family, the concerned DCP should consider the matter and fresh FIR must be registered under Section 506 of the Indian Penal Code.

II) DOCTORS/ HOSPITALS/ HEALTH DEPARTMENT

- a. Special rooms to be set up in all government hospitals for victims to be examined and questioned in privacy.

b. A sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault should be available with all the Government Hospitals. A sexual assault evidence collection kit should contain commonly available examination tools such as:

- Detailed instructions for the examiner
- Forms for documentation
- Tube for blood sample
- Urine sample container
- Paper bags for clothing collection
- Large sheet of paper for patient to undress over
- Cotton swabs for biological evidence collection
- Sterile water
- Glass slides
- Unwaxed dental floss
- Wooden stick for fingernail scrapings
- Envelopes or boxes for individual evidence samples
- Labels

Other items needed for a forensic/ medical exam and treatment that may be included in the rape kit are:

- Woods lamp
 - Toluidine blue dye
 - Drying rack for wet swabs and/or clothing
 - Patient gown, cover sheet, blanket, pillow
 - Needles/ syringes for blood drawing
 - Speculums
 - Post-it Notes used to collect trace evidence
 - Camera (35 mm, digital, or Polaroid) film, batteries.
 - Medscope and/ or colcoscope
 - Microscope
 - Surgilube
 - Acetic acid diluted spray
 - Medications
 - Clean clothing and shower/ hygiene items for the victims use after the examination
- c. A detailed description of "Assault/ Abuse History" be mentioned by the attending doctor on the MLC of the victim; The doctor must ensure that the complete narration of the history of the case detailed by the victim and her escort is recorded.
- d. After the examination is complete the victim should be permitted to wash up using toiletries provided by the hospital.

The hospital should also have clothing to put on if her own clothing is taken as evidence.

- e. All hospitals should co-operate with the police and preserve the samples likely to putrefy in their pathological facility till such time the police are able to complete their paper work for dispatch to forensic lab test including DNA.

III) CHILD WELFARE COMMITTEE

- a) In cases of incest and child in need of care and protection, the Child Welfare Committee shall examine the victim to ascertain the nature of support she is getting from her family and initiate steps for ensuring best interest of the child. In such cases the Child Welfare Committee shall conduct a home study to assess and ensure the safety of the victim;
- b) In cases where the child is placed in the shelter, the Committee shall monitor the condition of the victim closely.
- c) In cases of incest, while the victim stays in the foster home the family members should be allowed to meet the victim only in the presence of the support person and care be taken by the staff of the home that the meeting be not

used to pressurize/ influence the victim to change for statement.

- d) Child Welfare Committee shall ensure that rehabilitation facilities are provided to the victim in appropriate cases. In cases of a prolonged stay, the victim should be given educational and vocational training in order to enable the victim to support herself after she leaves the foster home. The Social Welfare Department and Child Welfare Committee will develop and implement Foster Care Services within two months.
- e) Before passing any order of restoration of custody of child to the family, the Child Welfare Committee shall conduct an inquiry to assess the suitability of the victim being restored to the family. The custody of the child will be altered by the Child Welfare Committee only after consultation with the stakeholders;
- f) Child Welfare Committee shall ensure that the victim is provided with necessary medical and psychological aid during her stay in foster home for the purpose of her rehabilitation;

g) Child Welfare Committee shall maintain a list of all registered Foster Homes providing residential support, special services and rehabilitation facilities to the victim.

IV PROSECUTORS

a) In cases where the child is placed in a shelter following the orders of the Child Welfare Committee or a Metropolitan Magistrate, the application seeking custody of the child made by the parents/relatives of the victim should not be acceded to till such time, the Public Prosecutor gets the status of the applicants verified with the Rape Crisis Cell and also call for the records of the Child Welfare Committee if it is not available.

V) COURTS

a) The Magistrate unless there are compelling reasons shall record the statement of the victim under Section 164 Cr.P.C. on the day on which the application is moved by the Investigating Officer. The Magistrate before proceeding to record the statement shall ensure that the child is made comfortable and she is free from any extraneous pressure.

b) An endeavour shall be made to commit such cases of offence to the Court of Sessions expeditiously and preferably within 15 days.

c) The Hon'ble Supreme Court in Delhi Domestic Working Women Forum Vs Union of India, 1995 (1) SCC 14 and reiterated by this Hon'ble Court in Khem Chand Vs State of Delhi 2008 (4) JCC 2 497 had directed that the victim be provided with a counsel. The existing practice of the victims being represented by a counsel from Rape Crisis Cell may continue. In cases where the victim has a private lawyer, she may be allowed to retain the private lawyer.

d) That as far as possible chief examination and cross examination of the victim must be conducted on the same day;

e) The Additional Session Judge/District Judge shall maintain a panel of psychiatrists, psychologists and experts in sign language etc., who would assist in recording the statement of witnesses as and when requested by the Sessions Courts.

f) If it is brought to the notice of the Court from a support person/Rape Crisis Cell Advocate/victim, regarding threats received by the victim or her family members to compromise the matter, the judge shall immediately direct the ACP to look into the matter and provide an action taken report before the Court within 2 days. The Court must ensure that protection is provided to the victim and her family.

g) In cases in which the witness is sent back unexamined and is bound down, the Court shall ensure that at least the traveling expenses for coming to and from for attending the Court are paid.

VI) SUPPORT SERVICES

a) A 24 hour helpline that can be contacted by the victims, police or any member of the public will be created. The Commission shall notify and widely publish its existing telephone number and that number will be used till such time a toll-free number is made available.

b) The Rape Crisis Cell will have with them accredited support services for shelter, social workers, counselors, mental health professional, lawyers;

c) The list of these accredited support services will be provided to the Prosecution Branch, the Commissioner of Police as well as to the Registrar of this Hon'ble Court;"

2. The Commission shall prepare a brochure which will contain these guidelines along with summary and directions passed by the Supreme Court and this Court in **Delhi Domestic Working Women's Forum Vs Union of India** 1995 (1) SCC 14, **Sakshi Vs Union of India** (2004) 5 SCC 518, **Chairman Railway Board Vs Chandrima Das** (2000) 2 SCC 465 **Sheeba Abidi Vs State & Anr.** 113 (2004) DLT 125, **Khem Chand Vs State of Delhi**, 2008 (4) JCC 2,497, **X(Ms.) Vs State of NCT and Anr** 149 (2008) DLT 194. The brochure shall be prepared in consultation with the Registrar General of this Court and learned Standing Counsel for the State Government so that it may be circulated to all the departments/police/courts/ Child Welfare

Committees/Hospitals/doctors/prosecutors to enable effective implementation of the guidelines.

3. The brochure shall be maintained and kept with all the agencies/authorities dealing with the victims of sexual assault and the guidelines contained therein shall be strictly followed and implemented.

4. A copy of this order shall be circulated to all the Delhi Government hospitals/Central Government hospitals and MCD hospitals for enforcement of the guidelines and directions contained in part II of the guidelines. The concerned Medical Superintendents of the respective hospitals shall submit an action taken report to the Registrar General of this Court within a period of two months. In so far as the Child Welfare Committees are concerned, they shall file quarterly action taken report(s) to the juvenile Justice Committee of Delhi High Court.

5. Women's Commission shall prepare a training module for training of police officers, juvenile police officers, welfare officers, probationary officers and support persons in consultation with the Delhi Judicial Academy. The Principal, Police Training College, Delhi shall hold periodical training programmes and ensure that all concerned persons undergo training/sensitization programme in one year.

6. Learned Standing Counsel for the State Ms. Mukta Gupta states that the draft rules for the foster care services have been prepared and the rules will be notified within a period of two months from today.

7. We are informed by the counsel for Delhi Women Commission that pursuant to the directions issued by the Supreme Court in **Delhi Domestic Working Women's Forum Vs Union of India** (Supra) the Commission has submitted a draft scheme to the Delhi Government for payment of compensation to victims of rape which is under consideration of the State Government. The State Government is directed to consider the draft scheme submitted by the Commission and file a status report in this Court within a period of two months.

List on 29th July, 2009 for further directions.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

APRIL 23, 2009