

REVISED CHARTER OF DUTIES
OF THE
LEGAL SERVICES ADVOCATES EMPANELLED WITH DSLSA
(for providing Legal Aid to Children in Need of Care and
Protection who are produced before Child Welfare
Committees of NCT of Delhi)



Delhi State Legal Services Authority

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Background and Rationale

While adopting the declaration of the Rights of the Child on 20 November, 1959, the General assembly of the United Nations laid down ten principles designed to enable children, irrespective of race, colour, sex, language, religion, or origin, to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), 1985 calls upon the States to ensure that throughout the proceedings, the Juvenile shall have the right to be represented by a Legal Advisor or to apply for free legal aid where there is provision for such aid in the country.

The United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive and internationally binding agreement on the rights of children, adopted by the UN General Assembly in 1989. The purpose of the UNCRC is to outline the basic human rights that should be afforded to children. There are four broad classifications of these rights. These four categories cover all civil, political, social, economic, and cultural rights of every child.

The ‘Protection Rights’ enshrined therein ensure that the children are safeguarded against all forms of abuse, neglect, and exploitation, including special care for refugee children, safeguards for children in the criminal justice system, protection for children in employment and protection and rehabilitation for children who have suffered exploitation or abuse of any kind.

Article 39(e) of the Constitution of India lays down a Directive Principle of State Policy to the effect that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f) provides that the State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.

Further, Article 39 A of the Constitution lays down foundation of State sponsored Free Legal Services to weaker and vulnerable sections of the society. Accordingly, the Delhi State Legal Services Authority (hereinafter "DSLISA") was constituted under the Legal Services Authorities Act, 1987.

As provided under Section 12 of the Act, free and competent legal services are provided to women, children, people in custody, workmen etc.

For the welfare and rehabilitation of Child in Need of Care and Protection (hereinafter "CNCP"), Child Welfare Committees have been constituted under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015.

Section 2(14) of Juvenile Justice (Care and Protection of Children) Act, 2015 defines CNCP as:

"Child in need of care and protection" means a child—

- (i) Who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of [the provisions of this Act or labour laws for the time being in force or is found begging, or living on the street]; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, and protect or who is abandoned or surrendered him; or

- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be; or
- (viii) Who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) who is found vulnerable or is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage.

Pursuant to the decision of division bench of Hon'ble High Court of Delhi in WP(c) no. 6830 of 2007 titled as *"Child Welfare Committee Versus. Govt. of NCT of Delhi and others"*, dated 03.09.2008, the DSLSA had appointed Legal Services Advocates (hereinafter "LSAs") at each of the eight Child Welfare Committees operating and functioning in Delhi, with a view to safeguard the interest of CNCP as well as their parents to determine whether they have been abused, and if so, to identify, whether any gang or organised crime is involved in their trafficking.

Then CNCP are produced before Child Welfare Committees(CWC) which

are statutory authorities vested with the powers of Metropolitan Magistrate and are empowered to take decisions for care, protection, rehabilitation, restoration, and social reintegration of such children.

Orders and decisions of CWCs are appealable before Children's Courts and in case of Foster Care, After Care and Sponsorship, before District Magistrate. Revision against orders and decisions of CWCs which suffer from illegality or impropriety apparent on the face of record etc. are filed before Hon'ble High Court of Delhi.

CNCP are holders of certain rights enshrined in various laws. In order to avail these rights, such children require legal representation before CWCs.

Vide order dated 03.09.2008 in "*Child Welfare Committee v. Government of NCT of Delhi and Others*", Hon'ble Delhi High Court has observed, "*Before parting with the case, this Court would like to make an observation as regards providing legal services and legal aid to children under the JJ Act and CLPRA. Despite each child being mandatorily entitled to free legal aid under Section 12 of the Legal Services Authorities Act, 1987 and there being a specific provision in the form of Rule 14 of the JJ Rules very often the CWC and JJB are having to resort to the services of NGOs.*" Hon'ble Delhi High Court has further observed that, "*...it is essential that both the District Legal Services Committees as well as the Delhi State Legal Services Authority, on a priority basis, constitute a special panel of advocates with the requisite degree of sensitivity to such cases to handle on a daily basis in the proceedings in the JJB as well as CWC. They should be available round the clock on call and a complete list of names with their telephone and mobile numbers should be made available to these authorities for that purpose.*"

This court would add that the payment for rendering such services should be commensurate with the expertise and standing of such advocates so that their continued assistance at all times is available to the JJB and the CWC. The Panel should be constantly reviewed after getting a feedback."

In consideration of the above, DSLSA had earlier issued a Charter of Duties of LSAs deployed at CWCs. However, since there were a few issues riddling its implementation, a need was felt to revise the Charter of Duties. Similar prayer has also been made by the petitioners in W.P.(C) No. 7340 of 2017 titled as "*Light Life Freedom v. Government of NCT of Delhi. & Ors.*" Accordingly, a fresh Charter of Duties is being issued for LSAs empanelled with DSLSA and deployed at the CWCs.

1. DUTIES & POWERS OF CWC IN ENTRUSTMENT OF LSAs

- 1.1 The Ld. CWC may entrust matter of a CNCP brought before it to a LSA, by way of mentioning such entrustment in the order passed by it, on the first production of the child or at any subsequent stage of inquiry. Order of Ld. CWC in this regard shall mention name and contact details of LSA so entrusted, and these details shall also be furnished and explained by the Ld. CWC to the Child and his/her guardians or parents.
- 1.2 In case a Child has been produced before an individual member of Ld. CWC as per duty roster or in case a CWC has reached out to a Child beyond its office premises or in case Ld. CWC has taken *suo-moto* cognizance of any matter, entrustment of LSA, as the case may be, shall be done on the next date of proceeding before Ld. CWC and the interaction shall be allowed with the child.
- 1.3 Ld. CWC shall provide reasonable time and opportunity to LSA to

interact with the Child and grant opportunity to LSA to make submissions, oral or in writing, before passing orders.

- 1.4 CWC shall allow the LSA to inspect the case file, and copy of orders passed by CWC should also be supplied to the LSA, upon request.
- 1.5 The CWC shall not appoint the LSA, so entrusted as a **Support person** also, in case, the child is a victim under the Protection of Children from Sexual Offences Act, 2012.

2. DUTIES OF LSAs TOWARDS CNCP AND HIS/HER PARENTS/GUARDIANS

- 2.1 The LSA shall take reasonable steps to build a rapport with the Child/ parents/guardian of Child by having a personalised interaction with them.
- 2.2 LSA shall also ensure that the Child feels comfortable while appearing before the CWC.
- 2.3 On being entrusted with a Child's matter, the LSA concerned shall provide legal representation to the Child before the CWC. LSA shall inform the Child/ parents/guardian of Child about relevant laws and their rights.
- 2.4 The LSA concerned shall ensure that post-restoration follow up of the CNCP restored to the parents/guardian is done and also bring to the knowledge of CWC issues the CNCP might face or is facing post-restoration.
- 2.5 The LSAs shall maintain confidentiality and privacy of children whose

cases are being handled by them, and no information or documents pertaining to them shall be divulged to anyone, not entitled to receive such information.

- 2.6 Once a case is marked to any LSA, such LSA shall continue to provide legal aid to the child till the final disposal of the case or till the end of term of empanelment of such LSA, whichever is earlier. In case on any given date, any other LSA appears in the matter on account of absence of entrusted LSA, Ld. CWC will record presence of such LSA as Substitute Counsel for the originally entrusted LSA. This is to be done to avoid any confusion as to who is actual LSA of the matter. In case of any such eventuality, it shall be the responsibility of LSA concerned to provide required instruction in advance to the Substitute counsel who will be appearing in place of such LSA and also apprise the parents or guardians in advance about a Substitute LSA appearing in the matter on the given date of hearing.
- 2.7 Whenever the empanelment of any LSA comes to an end, LSA concerned shall inform the Ld. CWC as well as DSLSA, about the same and then the CWC shall entrust the case of the CNCP to a new LSA. The earlier LSA shall be required to hand over the entire case record to the newly entrusted LSA so that the case of the CNCP can be diligently and seamlessly pursued. Ld. CWC shall inform the child and his/her parents or guardians about change of LSA and shall also record such change of LSA in their order on case file.
- 2.8 In cases where child and his/her parents or guardian have conflicting and divergent views on any relief or order required from Ld. CWC,

the concerned LSA shall keep in the mind that they are primarily required to ensure the best interest of the child, and their instructions should follow accordingly.

- 2.9 LSAs shall assist the CNCP to move applications for protection under the Delhi Witness Protection Scheme, 2018.
- 2.10 LSAs shall be under an obligation to inform the CNCP about lawful entitlements under different beneficial schemes of the Government.
- 2.11 Applications for restoration of the CNCP and for other reliefs shall be moved by the LSAs as expeditiously as possible, and in any case within 7 working days from the date of interaction between the child and the LSA.

3. DUTIES OF LSAs TOWARDS CWC

- 3.1 Based on the interaction with the child, parents or guardian of the child, LSAs shall fill up an interaction sheet and may submit a copy of it, as per his discretion depending upon the need of the matter, and keeping in mind the best interests of the CNCP, to the CWC so as to assist it in passing a detailed order regarding the Child. Format of interaction sheet as may be used is annexed herewith as **Annexure 'A'**.
- 3.2 The LSA concerned shall file appropriate written submissions or applications, as may be required, before Ld. CWC seeking reliefs and specific orders (including applications for special relief under POCSO Rules, 2020) which are required for the care, protection,

rehabilitation including cases of surrender as per law, and reintegration of the CNCP. The LSA shall in consultation with the Legal-cum-Probation Officer, Probation Officer, Child Welfare Officer, as the case may be, and considering the findings of the Social Investigation Report or Individual Care Plan make an application on behalf of the CNCP and also bring any other relevant fact to the notice of the CWC, so that the same may be considered by the CWC while passing an order qua the CNCP.

3.3 The LSAs may accompany Ld. CWCs during their statutory inspections of Child Care Institutions, whenever Ld. CWCs specifically requests the LSAs to accompany them only for the purpose of assisting them and to secure best interest of the child. However, it is clarified that for such visits with CWCs, LSAs shall not be entitled to any additional fees or expenses nor the LSAs shall become party to the inspection reports of Ld. CWC.

3.4 The LSAs may also assist the CWC in any other work requiring legal opinion or legal assistance, which is necessary in the best interest of the child and for ensuring that the CWC takes an appropriate view.

4. DUTIES OF LSAs TOWARDS DSLSA

4.1 The LSA concerned shall refer any such matter which requires an appeal or revision to be preferred or any other legal remedy regarding orders passed by Ld. CWC to the DSLSA, so as to enable the Authority to take a decision on the legal recourse to be taken. For this purpose, LSA concerned shall prepare a written brief of subject matter and send it to the Authority along with certified copies of impugned order(s) and any other supporting document.

Subsequently, LSA concerned shall also coordinate for obtaining vakalatnama and affidavit etc. for the LSA, as may be assigned by DSLSA or DHCLSC in this regard.

- 4.2 The LSAs shall visit the Children's Home for the purposes of providing legal services to the children residing there as per the monthly roster prepared and circulated by DSLSA and shall submit details regarding such visits in their monthly work done reports. LSAs shall further inform DSLSA about any such matter which requires urgent attention of the Authority so that proper steps can be taken in a timely manner.
- 4.3 The LSAs shall be required to submit a monthly Work Done Report and Attendance Certificate duly verified by Head of the Office of the concerned Child Welfare Committee along with bills to the DSLSA. Such monthly work done report shall contain number of new cases entrusted upon the LSAs in the month, details of cases in which LSAs have appeared before Ld. CWCs, visits to the Child Care Institutions carried out by them as per roster issued by DSLSA in this regard and details of matters which have been referred to DSLSA for appeal, revision or any other legal remedy. If any LSA has appeared in a case as substitute LSA on any date, it shall be reflected in their monthly Work Done Report.
- 4.4 All the LSAs shall maintain diary of cases entrusted to them and shall also keep a record of dates of each case in the said diary.

5. SUPERVISION OF DSLSA OVER FUNCTIONING OF LSAs

- 5.1 In case of any violation of this Charter of Duties or the terms of

empanelment with DSLSA or in case any complaint against a LSA is received, **the DSLSA, after conducting inquiry, may serve a Memo to the concerned LSA. Issuance of three Memos to any LSA by DSLSA shall result in de-panelment.**

6. MISCELLANEOUS

- 6.1 The overall supervision and control over the LSAs deputed at CWCs shall be with the DSLSA and the decisions taken in this regard by DSLSA shall be binding and final.
- 6.2 There shall be regular communication, coordination and consultative meetings for the purpose of functioning of LSAs in CWCs. These meetings, on a quarterly basis, will be conducted between the DSLSA and the Department of Women and Child Development, Govt. of NCT of Delhi.

LEGAL AID COUNSEL INTERACTION SHEET

Date:

Case/Diary No.:

1. IDENTIFICATION PARTICULARS OF CHILD:

Name of Child:		Date of Birth:	
Father's Name:		Mother's Name:	
Address:			
Mobile No./Email ID:		Approx. Annual Income of Parents/Father:	
School Name:		Educational Qualification of Child:	
Hobbies:		Date of rescue/recovery/tracing, if any:	
Category of Case:	Child Labour <input type="checkbox"/> Found Child (abandoned/street child/orphaned) <input type="checkbox"/> Child Marriage <input type="checkbox"/> Trafficking <input type="checkbox"/> POCSO <input type="checkbox"/> Special Child <input type="checkbox"/> Substance Abuse <input type="checkbox"/> Runaway with friends/opposite sex/alone <input type="checkbox"/> Offence under Indian Penal Code <input type="checkbox"/> Any other/Specify _____		

2. CASE PARTICULARS:

FIR No.:		Under Section IPC/POCSO/ Any other Act:	
Police Station:		Judicial District:	
Name of Investigating Officer:		Phone No. of I.O./SHO:	

3. DOCUMENTS SUBMITTED:

Medico Legal Certificate (MLC)	Yes <input type="checkbox"/> No <input type="checkbox"/>	Date of Birth Proof	Yes <input type="checkbox"/> No <input type="checkbox"/>
Form A & B provided under POCSO Rules, 2020	Yes <input type="checkbox"/> No <input type="checkbox"/>	Any other document, Specify	

4. LEGAL COMPLIANCE:

Any delay in production beyond 24 hours	Yes <input type="checkbox"/> No <input type="checkbox"/>	Any violation of any Act If yes, Specify	
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5. INTERACTION:

Interaction with Child (in his/her own words)			
Interaction with Parent/Guardian (in his/her own words)			
Interaction with IO			
Is the Child being produced as "A Child in Need of Care & Protection (CNCP)"?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, under which Section of JJ Act, 2015 _____	Whether role of Child Welfare Committee explained to Child	Yes <input type="checkbox"/> No <input type="checkbox"/>

6. ASSESSING THE NEEDS OF THE CHILD:

What does the Child Need?	Placement in CCI <input type="checkbox"/> Restoration <input type="checkbox"/> Rehabilitation Needs <input type="checkbox"/> Educational Needs <input type="checkbox"/> Reintegration Needs <input type="checkbox"/> Special Assistance Needs <input type="checkbox"/> Medical Needs identified <input type="checkbox"/> Legal Needs Identified <input type="checkbox"/> Any other/Specify _____
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7. RESTORATION:

Recommendation for restoration		Reasons for non restoration	
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8. LSA OPINION TO THE COMMITTEE:

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Signature of Child

Signature of LAC with Date

Signature of Parent/Guardian

Name of LAC: _____