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Review Article

A roadmap for saviours: role of doctors in medicolegal care in relation to POCSO ACT

Dhananjay Kumar*, Satish Kumar Khalkho**, S.K. Pandey***

*Junior Resident III, Department of Forensic Medicine, Institute Of Medical Sciences, Banaras Hindu University, Varanasi

**Senior Resident, Department of Forensic Medicine, Institute of Medical Sciences, Banaras Hindu University, Varanasi

*** Professor & Head, Department of Forensic Medicine, Institute Of Medical Sciences, Banaras Hindu University, Varanasi

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Correspondence:

Dr Dhananjay Kumar

Junior Resident III,

Department of Forensic Medicine,

Institute Of Medical Sciences,

Banaras Hindu University, Varanasi

Email: drdhananjaykumar@bhu.ac.in

Abstract: Doctors have a dual role to play in terms of the POCSO Act 2012. They are in a position to detect that a child has been or is being abused and also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse. Studies have shown that doctors are less equipped to deal with POCSO even though they are the first point of contact and first one to report such cases. With cases of sexual offences being reported frequently from across the nation there is need to sensitize doctors not to miss cases and pick up early.

The Ministry of Women and Child Development enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012 in response to the rising incidence of child sexual abuse in India. The Act was beneficial, yet it had many loopholes which paved the way of the Amendment Act of 2019. Thus, the Amendment Act was a highly welcomed legislation.

Objectives: To elaborate on the provisions of POCSO Act, and to explain the doctors on how to identify victims of sexual abuse, how to report cases, how to certify such cases, also what are the limitations of medical practitioners, to protect the children from exploitation.

Material and Methods: 1. Gazette of India, ministry of law and justice 20 June 2012, The POCSO Act 2012 (India), 2. Gazette of India, ministry of law and justice 06 August 2019, The POCSO (Amendment) Act 2019 (India).3. Ministry of Women and Child Development, Study on Child Abuse India 2007.

Conclusion: While the principles of medical examination and treatment for children remains the same as that for adult sexual victims, it is important for doctors to keep some specific guidelines in mind in relation to children and also to know their limitations and play the role of saviour in prevention of child exploitation.

Keywords: sexual abuse, POCSO ACT, doctors.

Introduction: WHO defines child sexual abuse (CSA) as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violates the laws or social taboos of society.[1]

Child abuse and neglect is a global public health concern [2,3]. It is a prevailing problem

in all generations, socioeconomic strata and societies. In a study carried out by Ministry of Women and Child Development (2007) interviewing 1,25,000 children in 13 Indian states, it was found that sexual abuse had taken place in about half of them [4]. 10,854 cases of child rape were reported from India in 2015, according to National Crime Records Bureau. Several reports indicate that neighbours, friends, close relatives, acquaintances and employers at workplaces are the most common abusers. The Delhi High Court observed that in 2014, of the 1704 cases of rape registered in the capital, 215 cases were instances of incestuous rape. Acts of CSA are usually repeated over longer periods and cause serious short and long term adverse effects [5].

Families, society and intellectuals will have to take the responsibility to prevent child sexual abuse and provide a nurturing environment to protect the future of children. Doctors also have a dual role to play in terms of CSA. They are in a position to detect that a child has been or is being abused and also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse. Studies have shown that doctors are less equipped to deal with CSA even though they are the first point of contact and first one to report such cases. With cases of sexual offences being reported frequently from across the nation there is need to sensitize doctors not to miss cases and pick up early. Hence, it is important that they acquire the necessary expertise and must be aware of their role in prevention of CSA and the POCSO Act, which clearly mentions their responsibility in the management of CSA. This living document describes the management of CSA, focusing on history taking, physical and sexual examination and medico-legal aspects.

Evolution of POCSO ACT: Fundamental rights of children, need of special care and protection to children, lack of schemes and insufficient budgetary allocations to deal with CSA; all these factors led to formulation of an enabling environment through legislation to address the issue of CSA. Finally, POCSO Act was enacted in 2012 after the Ministry of Women and Child Development conducted a National Study on Child Abuse in India, in 2005

supported by UNICEF and Save the Children. The Report was published under the name of "Study on Child Abuse: India 2007". The Act was designed to protect children from sexual assault, sexual harassment and pornography offences, as well as to provide for the establishment of special courts for the trial of such offences, in response to the rising incidence of CSA in India. The Act was beneficial, yet it had many loopholes which paved the way of the Amendment Act of 2019. The Amendment Act was a highly welcomed legislation by enhancing the punishments for specific offences to deter abusers and ensure a dignified childhood.

Conspiracy of Silence –

Often people feel that this is a western problem, and that CSA does not happen in India. Parents and guardians fear to talk about the matters of CSA. This silence encourages the abuser and they continue to abuse and press their advantage to subject the child to more severe forms of sexual abuse. With cases of sexual offences being reported frequently from across the country, it has become a necessity to sensitize doctors. Doctors should identify victims of sexual offences early to prevent the offence from being repeated.

Section 164 (A) of the Criminal Procedure Code lays out following legal obligations of the health workers in cases of sexual violence [9].

- Examination of a case of rape shall be conducted by a RMP employed in a hospital run by the government or a local authority and in the absence of such a practitioner, by any other RMP.
- Examination to be conducted without delay and a reasoned report to be prepared by the Registered Medical Practitioner [RMP].
- Record consent obtained specifically for this examination.
- Exact time of start and close of examination to be recorded.
- RMP to forward report without delay to Investigating Officer (IO), and in turn IO to Magistrate.

Role of a doctor [6,7] **-**

1. **First-line support-**

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.

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.

Section 23 of the Criminal Law Amendment Act, which inserts Section 357C into the Code of Criminal Procedure,1973. This section provides that all hospitals are required to provide first-aid or medical treatment, free of cost, to the victims of a sexual offence.

2. **Medical history:** The purpose of this is to find out why the child is being brought for health care at the present time and to obtain information about the child's physical or emotional symptoms. The medical history may involve information about the alleged abuse, but only in so far as it relates to health problems or symptoms that have resulted there from, such as bleeding at the time of the assault, or constipation or insomnia since that time.

3. **Informed consent for examination and evidence collection-**

The doctor is expected to explain the procedure to the child and his/ her parents and obtain their consent prior to conducting the examination, as well as answer any questions they may have. The three main elements of consent are information, comprehension and voluntariness. A rule of thumb is that the physical exam should not cause any trauma to the child.

- The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of her examination giving the following particulars, namely:-

(1) the name and address of the woman and of the person by whom she was brought; the age of the woman;

(2) the description of material taken from the person of the woman for DNA profiling; marks of injury, if any, on the person of the woman;

(3) general mental condition of the woman; and other material particulars in reasonable detail.

- The report shall state precisely the reasons for each conclusion arrived at.
- The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- The exact time of commencement and completion of the examination shall also be noted in the report.

- The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

  In the above legal provision, the term "woman" may be substituted by the term "child", and applied in the context of the POCSO Act, 2012.

4. Physical and sexual examination-

The medical examination is a very important tool in evaluating sexual abuse. The physical examination can identify both new and old injuries, detect sexually transmitted diseases and provide evidence of sexual contact. If done in a sensitive manner, the examination can answer any questions or concerns the child may have and reassure the child about their well-being and that their body is private. The exam also has evidentiary value in a court of law.

i) Record the height and weight of the child (neglect may co-exist with sexual abuse). Note any bruises, burns, scars or rashes on the skin. Carefully describe the size, location, pattern and colour of any such injuries.

ii) Check for any signs that force and/or restraints were used, particularly around the neck and in the extremities.

iii) Record the child's sexual development stage and check the breasts for signs of injury.

iv) If the survivor is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly.

v) Some amount of evidence is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault/examination.

vi) The same applies to bathing, douching, defecating, urinating and use of spermicide after the assault.

5. Necessary investigations-

The following investigations are routinely carried out:

• Gram stain of vaginal or anal discharge

• Genital, anal, and pharyngeal culture for Gonorrhea

• Genital and anal culture for Chlamydia.

• Serology for syphilis

• Wet preparation of vaginal discharge for Trichomonas vaginalis

• Culture of lesions for herpes virus

• Serology for HIV (based on suspected risk)

Collection of forensic evidence employing the Rape Kit and Urine toxicology screen (if the abuse or assault was likely to be substance-facilitated) may be required.

6. **Collection of evidence from medico legal aspect [8]-**

The purpose of a forensic examination is to ascertain the following:

• Whether a sexual act has been attempted or completed. The absence of injuries does not imply consent of the victim for the act.

• Whether the sexual act is recent and if any injury has been caused to the child's body.

• The age of the survivor in cases involving of children and adolescents.

• Whether alcohol or any other intoxicating substances have been administered to the child.

7. **Appropriate treatment of physical and mental injuries -**

Emergency medical care and emotional support must be provided in a case of CSA.

Referral to a mental health specialist should be made in all cases, which is required for evaluation and treatment of acute stress reaction, and subsequently posttraumatic stress disorder (PTSD).

Referral to other specialists should be made as required and psychological health interventions should be made for short term and longer term.

8. **Post-exposure prophylaxis for HIV and other STDs -**

Treatment of sexually transmitted diseases (STDs) is carried out with appropriate medications.

9. **Pregnancy prevention and management among girls who have been sexually abused-**

In post-menarchal girls, the likelihood of pregnancy and the need for emergency contraception must be considered.

10. **Ethical principles and human rights standards for reporting child or adolescent sexual abuse-**

The POCSO Act calls for mandatory reporting of sexual offences so that the doctor or any other

health care professional who has the knowledge that a child has been sexually abused is obliged to report the offence, failing which he may face legal punishment (6 months imprisonment and/ or fine (Sections 19 and 21 of the POCSO Act).

Conclusion: CSA is a criminal act. The practice is globally prevalent and occurs in all sections of society. Health care professionals are often the first contact for CSA victims and thus need to have the expertise for its adequate clinical evaluation and treatment, and be knowledgeable of the legal aspects. They are in a unique position to protect children from sexual assault and its consequences. They can –

- teach parents about safe, unsafe and uncomfortable touch and how to keep their children safe.
- teach children how to protect themselves.
- provide appropriate care and treatment to the survivor.
- give social, psychological and legal guidance to the survivor and the family.
- help the process of justice delivery by conducting accurate and complete forensic medical examination and be willing to testify in court.

The POCSO Act envisages a multidisciplinary approach that will be conducive to medical care and justice delivery for a sexually abused child. And in the end as a society, everyone should also regard themselves as custodians of children, and be ready to speak up for them and protect their rights. Government should also create an interactive environment of different professionals, and use social media platforms for spreading public awareness. Commitment to ensure the safety and security of children must not be regarded as acts of generosity; it is their right.

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