

A Case Report Of Sexual Abuse in a Minor Girl Evoking the POCSO Act And the MTP Act – Challenges Faced By Medical Providers

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I. Introduction

Sexual abuse in children is an under reported offence in India, which has reached epidemic proportion. A study conducted by the government of India in 2007 involving 17,220 children and adolescents to estimate the burden of sexual abuse, revealed shocking results and showed every second child in the country was sexually abused^[1]. The government of India enacted the Protection Of Children from Sexual Offences [POCSO] Act, 2012 to prevent and address sexual abuse in children less than 18 years. The Medical Termination of Pregnancy [MTP] Act, 1971 governs induced abortion services in India. It very clearly defines by whom, where and when abortion services should be provided. These two acts overlap where the POCSO act requires medical providers to report sexual abuse among minors and the MTP act allows registered medical providers to terminate pregnancies resulting from rape on social grounds. The intersection between the MTP act and the POCSO act creates confusion, delays and sometimes denial of abortion services for young girls^[2]. This case report provides clarity about provisions of the two acts and role of medical practitioners.

II. Aim & Objectives

1] To provide clarity to the medical service providers regarding the management of a minor girl with sexual abuse or pregnancy.

2] To bring the awareness to the medical practitioners regarding the legal responsibility in such critical cases.

III. Case Report

An unmarried minor girl of 15 years of age was admitted in the department of Obstetrics & Gynaecology, Government General Hospital, Vijayawada, Andhra Pradesh referred from near by district hospital for Medical Termination of Pregnancy. She was accompanied by her parents, police and a person from Child Welfare Committee [CWC]. She and her parents registered a case in local police station in view of sexual assault and subsequent pregnancy and the case was registered under POCSO Act and she was referred to GGH Vijayawada for MTP. On examination she was ill built, ill nourished and anaemic. Her height is 130cm and weight 32kgs and BMI 18.93. She attained menarche 2 years back and her Last Menstrual Period was not exactly known. All blood investigations and ultrasound scan was done and it revealed single intrauterine gestation of 18 weeks of age and her haemoglobin was 6.5gm%. She received two packed cell transfusions for improvement of anaemia and her general condition was improved. She was referred to forensic department for confirmation of the age. A three member committee was formed constituting two gynaecologists and one administrative officer. On careful evaluation 2nd trimester MTP was recommended and consent was taken from the child and her parents after explaining all the risks. Tablet Mifepristone 200mg was given orally followed by extraamniotic ethacridine lactate instillation after 24 hrs in Operation Theatre [OT] under intravenous anaesthesia. Tablet misoprostol 200micrograms was kept vaginally after 6hrs. She delivered fetus spontaneously 12 hrs after the procedure, part of placenta was retained and could not be removed in toto. As there was excessive bleeding patient was shifted to OT and digital evacuation of placenta was done in piecemeal under anaesthesia as it was adherent. Gentle Suction Evacuation of retained products was done. Post operatively another two units of packed cells were transfused and recovery was uneventful. Products of conception along with placenta were collected in separate containers in normal saline and handed over to the police to be sent to Regional Forensic Sciences Laboratory for DNA analysis and further investigations. Testing for HIV and other Sexually

transmitted diseases was done and option was given for Post Exposure Prophylaxis .Psychiatric referral and counselling was done.She was discharged after one week and advised follow up after one week.In this case patient developed severe depression [Rape trauma syndrome] and she was referred for psychiatric counseling and treatment in the follow up visit.

IV. Discussion

Protection Of Children From Sexual Offences [POCSO] Act 2012

This Act was formulated to effectively address the heinous crimes of sexual abuse and sexual exploitation of children .POCSO Act 2012 is a gender neutral legislation .It defines a child as an individual below 18 yrs and provides protection to all children from sexual abuse.

Definition of sexual abuse is comprehensive and encompasses the following :

- 1.penetrative sexual assault
- 2.aggravated penetrative sexual assault
- 3.sexual assault
- 4.aggravated sexual assault
- 5.sexual harassment
- 6.using child for pornographic purpose
- 7.trafficking of children for sexual purposes

The above offences are treated as “aggravated” when the abused child is mentally ill or when abuse is committed by a person in a position of power,authority and trust or in certain circumstances.This act incorporates child friendly mechanism for reporting,recording of evidence ,investigation and speedy trails of offences and without revealing the identity of child through designated special courts.It also provides for special court to determine the amount of compensation to be paid to a child who has been sexually abused ,so that this money can then be used for child’s medical treatment and rehabilitation^[1]

Role of Doctors in Providing Care in Present Legal Framework

POCSO Act also makes provision for medical examination of the child in a manner that is least distressful.The Act also clearly vocalizes that doctors shouldnot demand legal records or legal procedure or documentation to be completed before initiating the treatment or examination.Legal procedures can be done later after initiating the medical care.It is now mandatory for doctors to register a medico-legal case in all cases of child sexual abuse.Failure of reporting could result in **SIX MONTHS IMPRISONMENT AND /OR FINE** under sec 21 of the POCSO Act ,2012.

The Registered Medical Practitioner rendering medical care shall

- 1.Collect evidence after a thorough medical examination
- 2.Treat the physical and genital injuries
- 3.Conduct age assessment of victim[if required]
- 4.Offer prophylaxis for sexually transmitted diseases including HIV
- 5.Discuss emergency contraceptives with pubertal child and her parent
- 6.Do baseline evaluation for mental health issues
- 7.Monthly follow up at least for six months to look for development of psychiatric disorders
- 8.Do family counseling
- 9.Assist the court in interviewing the child and testifying in the court

Another significant provision made in this law is that no hospital under the jurisdiction of the Indian constitution can refuse to admit the victim of child sexual abuse for examination and treatment.This issue has been re-emphasized in Section 23 of 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 sexual offence.If hospital staff is involved in rape, then law dictates punishment for a minimum of seven years^[1]

Medical Examination of a Child According To Section 27 of POCSO Act 2012

A medical examination of a child shall be conducted :

- 1.Even before a FIR or a complaint is registered
- 2.By a government doctor in a government hospital or a hospital run by a local authority.If government doctor is not available the examination can be conducted by any other Registered Medical Practitioner
- 3.With the consent of the child or of a person competent to give consent on behalf of child
- 4.In the presence of the parent of the child or any other person in whom the child reposes trust or confidence
- 5.Within 24hrs from the time of receiving information about the offence.
- 6.In case the victim is a girl child ,the medical examination shall be conducted by a female doctor

7. For any reason, the parent of the child or other person could not be present, the head of the medical institution will nominate a woman and examination shall be conducted

8. The doctor shall forward the report to the investigating officer without any delay, who shall forward it to the magistrate^[3]

The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act, 1971 provides a legal framework for making Comprehensive Abortion Care [CAC] services available in India. Termination of pregnancy is permitted for a broad range of conditions up to 20 weeks of gestation as detailed below:

- When continuation of pregnancy is a risk to life of a pregnant woman or could cause grave injury to her physical or mental health
- When there is substantial risk that the child, if born, would be seriously handicapped due to physical or mental abnormalities
- When pregnancy is caused due to rape [presumed to cause grave injury to the mental health of the woman]
- When pregnancy is caused due to failure of contraceptives used by married women or her husband [presumed to cause grave injury to mental health of the woman].
- The MTP Act specifies -1) who can terminate a pregnancy 2) till when a pregnancy can be terminated 3) where can a pregnancy be terminated.
- As per MTP Act pregnancy can be terminated only by a Registered Medical Practitioner (RMP) who meets the following requirements:

1) Has recognized medical qualification under the Indian Medical Council Act

2) Whose name is entered in State Medical Register

3) Who has such experience or training in Gynaecology and Obstetrics as per MTP rules

▪ All government hospitals are by default permitted to provide CAC services. Facilities in the private sector however require approval of the government. The approval is sought from a committee constituted at district level called the "District Level Committee" with three to five members. As per the MTP rules, 2003 the following forms prescribed for approval of private place to provide MTP services:

1) Form A [Sub-Rule (2) of Rule 5]: Application form for approval of a private place

2) Form B [Sub-rule (6) of Rule 5]: Certificate of approval of a private place

Consent for Termination of Pregnancy

As per the provisions of the MTP Act, only the consent of a woman whose pregnancy is being terminated is required. However, in case of a minor i.e. below the age of 18 yrs, or a mentally ill woman, consent of guardian [MTP Act defines guardian as someone who has care of the minor. This does not imply that only parents are required to consent] is required for termination. The MTP rules, 2003 prescribe that consent needs to be documented on **Form C [Rule 9]** consent form

Opinion Required For Termination Of Pregnancy

The MTP Act details that for terminations up to 12 weeks, the opinion of a single Registered Medical Practitioner [RMP] is required and for termination between 12 and 20 weeks the opinion of two RMPs is required. However, termination is conducted by one RMP. The MTP Regulations, 2003 prescribe the following Forms:

1) Form 1 [Regulation 3]: Opinion form of RMPs for termination of pregnancy

2) Form 3 [Regulation 5]: Admission register of facility

3) Form 2 [(Regulation 4(5))]: Monthly statement of facility

MTP Act, Amendments, 2002

1) District level committee is empowered to approve a private place to offer MTP services in order to increase the number of providers.

2) The word 'lunatic' was substituted with words 'mentally ill person'

3) Strict penalties were introduced for MTPs being conducted in unapproved sites by untrained medical providers

MTP RULES, 2003

1) Composition and tenure of district level committee

2) Approved place for providing medical termination of pregnancies

3) Inspection of private place

4) Cancellation or suspension of a certificate of approval for a private place

Proposed Amendments For MTP Act ,2014

- 1)Expanding provider base : To increase the base of legal MTP providers including ayurveda,siddha,unani ,homeopathy ,ANMs etc
- 2)Provisions to increase the gestation limit for abortions beyond 20wks if fetus is diagnosed with severe abnormalities,for survivors of rape and incest,single women(unmarried/divorced/widowed) & for women with disabilities
- 3)Increasing access to legal abortion services for women
- 4)Extending the indication of contraception failure to include unmarried women^[4]

Protection of action taken in good faith:No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act^[5]

Does a provider have a legal duty to inform the authorities if a minor girl is pregnant?

YES.Section 19[1] of the POCSO act requires anyone who knows that a sexual offence has been committed , to report the case to the appropriate authorities [the local police/special juvenile police/child protection committee] or to the relevant person in the organization who could report the pregnancy to the appropriate authorities [eg: chief medical officer].Therefore ,a pregnant minor girl married/unmarried is considered a victim and the CASE SHOULD BE INFORMED TO APPROPRIATE AUTHORITIES ,EVEN IF THE GIRL HAS NOT EXPRESSED A DESIRE TO TAKE LEGAL ACTION.Marital status makes no difference to the reporting requirement under POCSO act.Anyone who knowingly fails to make this report can be punished upto **SIX months** imprisonment and fine.^[2]

WHAT CONDUCT IS SUFFICIENT TO SATISFY A PROVIDER'S DUTY TO REPORT UNDER POCSO ACT WHILE OFFERING MTP SERVICES TO A MINOR GIRL?

A provider is not obligated to file an FIR or to conduct an investigation.The providers duty is only to inform the authoritieswhen providing safe abortion service under MTP act^[2]

DOES A MEDICAL PROVIDER HAVE TO WAIT FOR ANY MEDICO-LEGAL PROCEDURE BEFORE PERFORMING ABORTION?

NO. Rule 5[3] of the POCSO rules states that no medical practitioner ,hospital or 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.Providing treatment and necessary medical investigations is the prime responsibility of the examining doctor and that admission evidence collection or filing a police complaint is not mandatory for providing treatment.Providers can inform the authorities about pregnant minor after performing abortion.

Rape is a legal ground for terminating a pregnancy under section 3 of MTP act upto 20 wks of gestation.After 20 wks abortion is permissible under section 5 of MTP act if provider is of opinion that it is necessary to terminate the pregnancy to save the life of woman.Therefore it is important to provide medical care at the earliest while legal proceeding can continue simultaneously.^[2]

DOES THE MEDICAL PROVIDER HAVE A LEGAL OBLIGATION TO PRESERVE THE PRODUCTS OF CONCEPTION FOR ABORTION SERVICES FOR MINOR GIRLS?

Providers who dispose of the products of conception (PoC) for a good faith reason (inadequate preservation facilities,or following standard operating procedures,for example) should be shielded from prosecution under Section 201 of IPC.Although we donot have a clear answer ,since a minor girl who is pregnant is considered a rape victim under the law ,the products of conception might be the evidence of an offence that the medical provider must preserve under section 201 if possible.^[2]

V. Conclusion

This case was reported to highlight the POCSO Act and overlapping between MTP and POCSO Acts.It creates awareness regarding the primary duties and responsibilities of medical practitioners whenever a minor girl was brought with suspected sexual assault or pregnancy requesting for MTP.Appropriate action and information to the higher authorities should be given as early as possible even if the child had not expressed her desire to take a legal action.Detailed and complete records of the case should be maintained to be produced in court of law as and when necessary. The POCSO Act is certainly a law which was very much helpful to prevent sexual assault against a child.The effective implementation of this Act would be a great tool in delivering of justice to the victim and punishment to culpricts.All medical service providers should fulfill their reporting requirements and legal obligations under MTP Act and the POCSO Act after ensuring essential services^[2]

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