



**CHILD SEX ABUSE –SPIRIT OF POCSO ACT**

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**ABSTRACT**

Child Sexual Abuse (CSA) is the use of a child for sexual gratification by an older or more powerful person. Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was passed in an effort to address growing rates of child sexual abuse and poor rates of conviction. Most children reveal their experience of abuse after a long time has passed. In such cases, the medical examination can reassure the child about their well-being and address any worries the child may have about the injuries they suffered due to the abuse. In this paper we are discussing highlights of legal and medical aspect covered under POCSO Act.

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**INTRODUCTION**

India is home to nearly 19% of the world's kids. More than 33% of the nation's populace, around 440 million, is underneath 18 years. Children, who require the guardianship and care of grown-ups, are among the most powerless and innocent casualties of violations. Wrongdoings against children incorporate physical and psychological mistreatments; disregards; and abuse, for example, through child porn or sex trafficking of minors. In a report of 2007 by the Ministry of Women and Child Development in relationship with the United Nations Children's Fund (UNICEF) and a couple of Indian NGOs working for Children rights discovered that over 53% of kids in India are subjected to sexual mishandling; however, most don't report it. Indian Parliament passed the Protection of Children from Sexual Offences (POCSO) 2012 to manage Child sex abuse(CSA).It defines exclusively the crime of sexual offences against children and fulfils the mandatory obligations of India as a signatory to the United Nation Convention on the Rights of the Child, acceded to on December 11, 1992.It came into force from 14 November 2012<sup>1</sup>.

**Salient features of POCSO Act 2012**

POCSO is a sexually impartial act. The law characterizes a Child as any individual underneath the age of 18 years. The Act identifies six types of sexual offences namely:<sup>2</sup>

- Penetrative Sexual Assault (Sec. 3)
- Aggravated Penetrative Sexual Assault (Sec. 5)
- Sexual Assault (Sec. 7)

- Aggravated Sexual Assault (Sec. 9)
- Sexual Harassment (Sec. 11)
- Using child for Pornographic Purposes (Sec. 13)

The Act deems a sexual assault to be “aggravated” under certain circumstances,such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, a family member, police officer, teacher or doctor.

The law accommodates help and reclamation when the complaint is made to the Special Juvenile Police Unit or the local police, who are required to make quick courses of action for care and assurance. Unique accentuation has been put on guaranteeing the fast transfer of trials in special children’s courts, special public prosecutor and in addition special methods to keep the accused far from the kid at the time of affirming. The spirit of the bill lies in the fact that it is more child-friendly while during recording of evidence, reporting, investigation and trial.

Dissimilar to the IPC Section 375 Exception 2, which treats sex by a man with his better half over the age of 15 years as an exemption to assault, the POCSO Act does not allow any special case. However, this exception of IPC 375 has been struck down by Supreme Court in recent judgement.<sup>3</sup>

The National and State Commissions for Protection of Child Rights have been depended with the duty of observing the execution of the arrangements of the POCSO Act, 2012, to lead request and to report the exercises attempted under the POCSO Act, 2012, in their Annual Reports.<sup>4</sup>

To exacerbate things the greater part of the victim knows their predators as reported by National Crime Records Bureau (NCRB), 2015 showed that neighbours were the biggest

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abusers in such cases in 2015 — 3,149 (35.8%). In over 10 per cent of cases, children were subjected to rape by their own family members or relatives. Overall, in 94.8 per cent of cases, children were subjected to rape by someone known to them.<sup>5</sup>

| Cases  | 2014  | 2015  |
|--|-------|-------|
| Cases registered under child rape (section 376 IPC)  | 13766 | 10854 |
| Cases registered under Assault on Women (girl children) with intent to outrage her modesty (section 354 IPC) | 11335 | 8390  |
| Cases registered under Insult to the Modesty of Women (girl children) (section 509 IPC)                      | 444   | 348   |
| Cases registered under Protection of Children from Sexual Offences Act, 2012                                 | 8904  | 14913 |

### **Role of Medical Professionals in the context of the POCSO Act, 2012**

Medical examination is to be conducted as per the provisions of Section 27 of the POCSO Act, 2012 and Section 164A of the CrPC, 1973:<sup>6</sup>

- ✓ Take the written consent of the child.
- ✓ Where the child is too young or otherwise incapable of giving consent, consent should be obtained from the child's parent, guardian or other person in whom the child has trust and confidence.
- ✓ In the case of a victim girl, a medical examination is to be conducted by women doctor.
- ✓ Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.
- ✓ Mandatory Reporting (section 19): When a doctor has reason to suspect that a child has been or is being sexually abused, he/she is required to report this to the appropriate authorities. Failure to do this would result in imprisonment of up to six months, with or without fine.
- ✓ Obtain and document medical history of the child.
- ✓ Conduct the examination in a sensitive manner. It is important that the exam is never painful. Stop the examination if the child indicates discomfort or withdraws permission to continue.
- ✓ Focus on asking simply worded, open-ended, non-leading questions.
- ✓ Do not ask uncomfortable questions related to details of the abuse.
- ✓ Using the child's words for body parts may make the child more comfortable with
- ✓ difficult conversations about sexual activities.
- ✓ Always ensure patient privacy. Do not conduct the examination in a labor room or other place that may cause additional trauma to the child
- ✓ If the child is old enough, and it is deemed appropriate, ask whom they would like in the room for support during the examination. Some older children may choose a trusted adult to be present.
- ✓ Sexual abuse of children is usually not physically violent. A normal or non-specific exam does not rule out sexual abuse.
- ✓ Carefully collect and preserve forensic evidence. Clothing collection is critical when evidence is collected. Clothing, especially underwear, is the most

likely positive site for evidentiary DNA. Evidence from clothing and other objects is more likely to be positive than evidence from the patient's body.

- ✓ Emergency medical care- No medical practitioner, hospital or other medical facility center 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.
- ✓ Children often report weeks or months after the abuse event, and physical injuries to
- ✓ the genital or anal regions usually heal within a few days. Medical provider should always consider differential diagnosis and alternative explanations for physical signs and symptoms.
- ✓ In the case of a child with special needs, ensure that the procedures are explained to the child in a manner which he/she understands and that he/she is asked what help he/she requires, if any. However, do not assume that the child will need special aid. Also, ask for permission before proceeding to help the child.
- ✓ Wherever necessary, refer the child for counselling
- ✓ Wherever applicable, refer the child for testing for HIV and other Sexually Transmitted Diseases.
- ✓ The report should avoid restating incidental trivia and give preference to examining and analyzing the crucial issues of the case.
- ✓ The expert must not rely solely on quoted research to support his/her arguments, and should refer to clinical experience as well.

### **DISCUSSION**

CSA is a point few are prepared to talk about, substantially less address. While quiet enough mindfulness has been raised about sexual savagery against ladies in India, considerably less is thought about the issue of child sex abuse in India. Preceding that the Protection of Children from Sexual Offences Act, diverse types of child sex abuse in India was secured by laws not intended to address them. Along these lines, if a female child endured non-penetrative sexual assault it would be secured under 354, and if a male child endured manhandling it would be secured under 377 according to the counter homosexuality law.<sup>7</sup>

Once in a while child can't give definitive testimony. In such cases, the testimony of an expert Medical witness can be valuable. Doctors can give testimony that depends on the CSA history, articulations, and medical examination, regardless of whether the doctor's examination of the child uncovers no solid physical proof strong of the children assertions.

A disheartening part is that there is an unfeeling state of mind of the medical fraternity in managing child sex abuse victim. Most specialists essentially don't have enough training what it takes to perform such a vital examination. Shockingly, no specialist, regardless of whether a general professional or a gynecologist or a pediatrician has been given any preparation at all with respect to CSA examination, communication, what are reclamation approach, medical and psychological requirements of the kid.

Another important issue has been overlooked in the act in demonstrating the age of the child. Since the POCSO Act is quiet on what reports are to be considered for deciding the age of the CSA Victim, the arrangements of the Rule 12 of the

Juvenile Justice Rules have been perused by Courts as applying to CSA casualties also. This rule perceives just the birth certificate, the school certificate of the child, or the matriculation certificate. In absence of these documents ones needs to undergo a bone ossification test. This test can only give a rough gauge of the age of the child in the bestcase scenario.<sup>8</sup>

The Supreme Court in the case tittle *Ms. Eera vs State*, refuses to expand the scope of the word child under section 2(d) of the POCSO act to include the mental age of a person or the age determined by the prevalent science pertaining to psychiatry so that a mentally retarded person or an extremely challenged person which crossed the biological age of 18 years can be included within the holistic conception of the term “child”. The bench turned down a woman's plea seeking prosecution of accused under POCSO for sexually assaulting his 39-year old daughter, who doctors have found to have a mental age of a six to eight years.<sup>9</sup>

In *State v. Suman Dass*, a 15-year-old girl left home and married a 22-year-old man. Her mother filed a complaint alleging that the man had kidnapped and sexually assaulted her. In court, the girl admitted to having gone willingly and to having sexual intercourse. The Judge was of the view that a strict interpretation of the POCSO Act ‘would mean that the human body of every individual under 18 years of age is the property of State and no individual below 18 years of age can be allowed to have the pleasures associated with one’s body.’<sup>10</sup> Regardless of such changes, the conviction rate under the POCSO Act is a merely 24.6 percent and the pendency rate is a disturbing 95.1 percent. The Special courts for attempting these cases are rarely "special". Rather, they are standard sessions courts and the environment in court is a long way from child- friendly.<sup>11</sup>

Recently CSA issues began to be reflected in the media to a more prominent degree, frequently in connection to defects in the legal system and the Medical System. It worked out that the Legal system and the health care system were caught off guard for the mount of cases that began to request their assets. Proper training and sensitization of police person, medical professional, media person, school teachers and NGO’s working for child rights are required to execute the law in full sprit.

## References

1. Annual Report 2014-2015.[accessed on January 8, 2018]. Available from: <http://wcd.nic.in/sites/default/files/AR2014-15.pdf>. [Accessed on January 8, 2018].

2. The Protection of Children from Sexual Offences Act, 2012. Available from: <http://wcd.nic.in/childact/childprotection31072012.pdf>. [Accessed on January 8, 2018]
3. Supreme court judgement. Independent Thought vs Union Of India on 11 October, 2017. Available from: [http://supremecourtindia.nic.in/supremecourt/2013/17790/17790\\_2013\\_Judgement\\_11-Oct-2017.pdf](http://supremecourtindia.nic.in/supremecourt/2013/17790/17790_2013_Judgement_11-Oct-2017.pdf). [Accessed on January 8, 2018].
4. The Protection of Children from Sexual Offences Rule, 2012. Available from: [http://wcd.nic.in/sites/default/files/protection\\_of\\_children2012.pdf](http://wcd.nic.in/sites/default/files/protection_of_children2012.pdf). [Accessed on January 8, 2018].
5. Crime in India. Available from: <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf>. [Accessed on January 8, 2018].
6. Model guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012. Ministry of Women and Child Development. Available from: <http://www.wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>. [Accessed on January 8, 2018].
7. Belur J, Singh BB. Child sexual abuse and the law in India: a commentary. *CrimeSci (2015) 4:26*: p1-6
8. Moirangthem S, Kumar NC, Math SB. Child sexual abuse: Issues & concerns Indian J Med Res. 2015 Jul; 142(1): p 1–3.
9. The Times of India. (2017). Biological and not mental age of victim to be considered under POCSO Act: SC. Available from: <https://timesofindia.indiatimes.com/india/biological-and-not-mental-age-of-victim-to-be-considered-under-pocso-act-sc/articleshow/59704191.cms>. [Accessed on January 6, 2018].
10. The Times of India. (2013). “Consensual sex with minor not a crime, Delhi courtsays”, 26th August. Available from: <http://timesofindia.indiatimes.com/city/delhi/Consensual-sex-with-minor-not-a-crime-Delhi-court-says/articleshow/22056783.cms>. Accessed 06 January 2018. [Accessed on January 6, 2018].
11. Draconian and ineffective. [accessed on January 6, 2018]. Available from: <http://indianexpress.com/article/opinion/columns/child-sexual-abuse-punishments-draconian-and-ineffective/>

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