

Role of Medical Practitioners in Child Sexual Abuse Cases as witness and Measures to be appreciated in Treating the Victim

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Abstract: *The Government of India enacted the Prevention of Children from Sexual Assault Offences (POCSO) Act, 2012 which deals with child sexual abuse cases and will provide protection to children from sexual offences and safeguard their interests & and their identity through child-friendly mechanisms for reporting, medical examination, evidence collection, investigation and speedy trial. Whenever a doctor suspects that a child has been or is being sexually abused, he shall immediately report the matter to the concerned police. The Non-compliance shall be caused by imprisonment of up to six months, with or without a fine. Section 27 (POCSO Act) and section- 164-A (Cr. PC) prescribe that medical examination and collection of forensic evidence shall be carried out within twenty-four hours of receiving the information regarding the offence. This paper is an attempt to give detailed guidelines that a medical practitioner must follow in CSA cases and also elucidates the witness of the doctors is only a corroborative one.*

Keywords: *Child Sexual Abuse, POCSO Act, Medical Examination, Witness.*

Introduction:

WHO defines child sexual abuse as "the involvement of a child in sexual activity that he or she does not fully comprehend and is unable to give informed consent to, or for which the child is not developmentally prepared, or that otherwise violates societal laws or social taboos." Child sexual abuse (CSA) is defined as "intercourse, attempted intercourse, oral-genital contact, fondling of genitals directly or indirectly through clothing, exhibitionism or showing children to adult sexual activity or pornography, and child use for prostitution or pornography." According to a 2009 survey, around 7.9% of boys and 19.7% of females worldwide have experienced sexual abuse while under the age of eighteen. Africa has the highest prevalence rate of CSA at 34.4% in the globe, with Europe, America, and Asia reporting 9.2%, 10.1%, and 23.9% CSA, respectively. According to the 2011 census, India has 19% of the world's children population and 41% of the entire population is under the age of 18. Approximately 40% of youngsters are vulnerable to homelessness, trafficking, drug abuse, forced labour, and crime. In 2011, India reported the most cases of child sexual abuse and rape in the world: 33,098 cases of child

sexual abuse and 7,112 cases of child rape. A child under the age of 16 is raped every 155th minute, and a child under the age of 10 is raped every 13th hour. At any given time, one child in every ten is sexually molested. Every second child is subjected to some type of sexual abuse. Every fifth child is subjected to severe types of sexual abuse. According to a UNICEF report, between 2005 and 2013, 10% of Indian girls aged 10-14 years and 30% aged 15-19 years suffered sexual violence. In total, 42% of Indian girls had experienced sexual violence before the age of adolescence.

In response to the alarming CSA cases, the Government of India promulgated a special comprehensive law, The Protection of Children from Sexual Offences (POCSO) Act, 2012, which went into effect on November 14, 2012, to deal with child sexual abuse cases and to protect children from sexual assault, sexual harassment, and pornography. The statute establishes principles to protect children's interests at all stages of the legal procedure. by including child-friendly methods for reporting, evidence recording, investigation, and fast trial of violations through special courts. The POSCO legislation defines a child as someone under the age of eighteen. The

legislation distinguishes between penetrative and non-penetrative sexual abuse/assault, sexual harassment, and pornography. When the abused child is mentally ill, the offence becomes more serious, and when it is perpetrated by someone in a position of trust or authority, such as a family member, police officer, teacher, or doctor. The statute provides for harsh punishment based on the nature of the offence, with a maximum sentence of rigorous imprisonment for life and a fine. Furthermore, reporting sexual assaults is required by anybody who has knowledge that a child has been sexually abused. If he/she does not comply, he/she may be sentenced to six months in prison and/or a fine. Section 27 of the POSCO Act of 2012 requires a medical evaluation of a victim child. A victim child's medical examination must be carried out in accordance with the provisions of Section 27 of the POSCO Act, 2012 and Section 164-A of the CrPC, 1973.

Medical examination of a child is required;

1. Prior to the filing of an FIR or complaint.
2. In a government hospital or a hospital run by a local authority, by a government doctor. If a government doctor is not present, any other certified medical practitioner may conduct the examination.
3. With the child's or a competent person's consent
4. In the presence of the victim child's parent or any other person in whom the child has trust or confidence.
5. Within 24 hours after receiving the information concerning the offence.
6. If the victim is a female child, the medical examination must be performed by a female doctor.
7. If the parent of the child or another person referred to in sub-section (3) is unable to be present for any reason, the head of the medical institution will designate a woman, and the medical examination will be done in her presence.
8. The doctor must immediately transmit the report to the investigating officer, who must then forward it to the Magistrate. Medical examination content. The physician has expertise and comprehension of sexual victimisation and can detect that a child has

been or is being abused, they are the ones who confirm that a child is a victim of sexual abuse.

The following are the examination contents:

First, clinicians must obtain the child's thorough, informative, and voluntary written consent after explaining the process of medical examination. Second, they should allow ample time to comprehend the content and address any doubts. Finally, the child and/or his or her parent/guardian should agree to the examination voluntarily and without feeling compelled to do so. When a victim child is under the age of 12 or is unable to give consent, consent should be obtained from the parent /guardians or any other person in whom the child has trust and confidence.

Examination and medical history:

During the evaluation of the child, take a medical history, perform a thorough examination, and create a medical report with photographic/video evidence of all discoveries as a result of the offence. After that, make a sexual abuse diagnosis and provide treatment. When there is no direct claim of sexual abuse but the child is complaining about (i) vaginal discharge (ii) abdominal pain (iii) has no complaint but an incidental finding of an expanded hymeneal ring, the doctor's role becomes even more important in making the diagnosis of sexual abuse. These findings may be related to the likelihood of sexual abuse, either directly or indirectly. The nature of the assault, including anal, vaginal, and/or oral penetration, should be documented by the doctor. Any bruises, burns, scars, or rashes on the skin or breasts should be examined by a physician, who should explain the size, position, pattern, and colour of the injuries. The child should also be evaluated for vaginal or anal pain and bleeding, as well as any discharge and pain/difficulty defecating or urinating, among other things. Look for any evidence of force and/or constraint, especially around the neck, extremities, and genitals. If the child is menstruating when examined, a second examination is required to record the injuries more readily and clearly. The majority of children have normal findings, however normal or non-specific findings do not rule out sexual assault. During the assessment, the child should be asked questions in his or her native language, avoiding leading inquiries such as what, when, where, and how.

These are critical questions to ask during a medical evaluation of a suspected case of child sexual abuse. Allergies, immunisation status, and other drugs should also be included in the medical history. Sometime. Physical findings/injuries to the vaginal or anal regions are minimal/healed or absent when children recall the incidence after weeks or months. These cases will be thoroughly investigated. The medical officer should Collect and maintain forensic evidence carefully, including clothing, particularly knickers, for evidential DNA. The child's privacy should be protected, and the inspection should be as painless as possible. The examination does not take place in a location that could cause additional trauma to the child. Privacy must be protected while still being sympathetic to the child's sentiments of humiliation. If the child is uncomfortable or refuses to continue, the inspection should be terminated. If the child is old enough to understand, the doctor can ask who they want to accompany them during the examination.

Reporting requirements of a Medical Practitioner:

When a doctor feels that a child has been or is being sexually assaulted, even in the absence of the child's or parents' permission, he or she is required by law to report the situation to the appropriate authorities. If he does not succeed If he fails to do so, he may face imprisonment for up to six months, with or without a fine. If there is a need for counselling or testing for HIV or other sexually transmitted infections, the child may be referred to the appropriate centre. When a child refuses the test, the physical examination should be done with the utmost comfort and care and should not cause any stress to the child; therefore, if a child denies the genital-anal examination at any time, the inspection should be postponed. The examination should not be done forcefully, as this may cause more trauma to the child. Doctors should notice probable reasons of a child's fear and anxiety. The doctor should grasp the child's fears and concerns, as well as identify probable sources of discomfort and try to remedy the situation. Sedation or anaesthetic is rarely utilised, however it may be used if the child refuses or is unable to comply for examination and evidence gathering, or if the child is in a situation that requires immediate medical assistance, such as bleeding or a foreign body. Under anaesthesia, a speculum examination should be performed on a pre-pubertal girl.

Child emergency medical care:

Whenever an officer of the Special Juvenile Police Unit (SJPU) or local police receives information about an offence and is satisfied that the child need immediate medical treatment and protection, he must act as soon as practicable, but no later than 24 hours after getting the information. He must take the victim child to the nearest hospital (public or private) for emergency medical attention. According to Section 23 of the Criminal Law Amendment Act, which includes action 357C into the CrPC, 1973, all hospitals are required to give free first-aid or medical treatment. During emergency medical care, the child should provide as much privacy as possible. The examination must be conducted in the presence of the child's parent or guardian, as well as any other person in whom the youngster has trust and confidence. The medical practitioner or hospital providing emergency medical care may not request any documents, legal or magisterial requisition for treatment. Injuries to the child, particularly genital injuries, must be treated. The infant will also be treated for STDs and HIV exposure. Prophylaxis can be provided wherever it is needed. The treating doctor may also consult with an infectious disease expert. In the event of a prospective pregnancy After consulting with the pubertal youngster and her parent, emergency contraception should be administered. A referral or appointment for mental or psychological health psychotherapy should be sought if necessary. Section 27 of the POSCO statute requires the collection of forensic evidence.

Compensation for Medical expenses:

According to section 33(8) of the act, special tribunals have the authority, in addition to punishment, to give compensation to the child for treatment or prompt rehabilitation of any bodily or mental trauma. Rule 7(1) of the act stated that compensation could be provided on an interim basis. basis, to satisfy the child's immediate needs at any moment following the First Information Report. Rule 7(3) specified the criteria to be considered when determining the compensation amount. These factors include the severity of the child's injuries or physical harm and/or emotional anguish. In addition, the money incurred or projected to be incurred on medical care for physical and/or mental sickness, as well as any other disability caused by a sexual offence.

Medical practitioners' roles as expert witnesses:

Child sexual abuse cases are frequently difficult to decide and establish because most CSA incidents occur in secret, leave no physical evidence, and frequently occur over a long period of time. Time passes, and often no one other than the child himself/herself remains as an eyewitness. Children's testimony is frequently useless since many children are unable to provide conclusive witnesses. As a result, expert medical witness testimony can be beneficial in such cases under sections 45 to 51 of the IEA. Medical practitioners can give conclusive opinions about sexual abuse based on the history, assertions of the child, and subsequent medical evaluation. The doctor cannot say definitively whether the victim agreed to any sexual activity or how much force was used by the abuser. Because medical professionals treated or evaluated the child, it is reasonable to conclude that there is no sign of a recent sexual encounter, no recent injury, and the history and medical examination are consistent with sexual abuse. Medical practitioners should always write their reports in simple/layman's English so that the court, advocate, and parties can easily understand them. When professionals write a report, they should include clinical experience as well as written research/literature. According to the standards, the expert's opinion must have a fair degree of certainty and be accepted. Expert opinions are not final, and the court is not bound by them. Expert opinion is corroborative evidence, and the court will decide how much weight to give to other evidence submitted before the court.

In the case of **Achyut Turi @ Babatu vs The State of Assam**, it was held that, in terms of the evidence of Medical Officer (PW.9), while he examined the victim, he did not express any opinion regarding sexual intercourse. upon the sufferer. He simply stated that: (1) her age is approximately 14 years below 16 years; (2) there is no evidence of recent sexual intercourse on her person; and (3) there is no injury detected on her person at the time of examination; however, during her cross-examination, she stated that fresh blood was oozing out of her vagina, but this injury was not mentioned in his report. A comprehensive review of the Medical Officer's evidence reveals that his conclusion contradicts his own findings, because he stated in his report on genital inspection that there was swelling, redness present, with

soreness on touch on the valve. Another hymen was ruptured at the 6 o'clock position, on the margin of the tear, and there was discomfort at the vagina and cervix. Despite this finding, the medical officer stated in the report that any sexual contact with the victim is not appropriate. The medical official appeared to have offered her opinion mechanically and without proper appreciation, which was her bounded job. The entire inspection of such a medical record clearly suggests some type of injury on her private parts, as mentioned above, which appears to be indicative of sexual assault on the victim girl. As a result, such medical evidence can be considered supportive of the victim girl's verbal testimony.

Conclusion:

The POSCO Act of 2012 is undoubtedly a regulation that was long overdue, and it is now extremely useful in preventing sexual assault against children. The provisions of the law give victims complete privacy for medical examinations and the collecting of forensic evidence samples. The time range prescribed for medical examination and reporting is critical, as is reporting by a doctor whenever they come across cases of child sexual abuse. The successful implementation of the POSCO act would be an excellent weapon for providing justice to victims and punishment to perpetrators.

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