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Editorial

Child sexual abuse: Issues & concerns

The child sexual abuse is an under-reported offence in India, which has reached epidemic proportion. A recent study on prevalence of sexual abuse among adolescents in Kerala, reported that 36 per cent of boys and 35 per cent of girls had experienced sexual abuse at some point of time[1]. A similar study conducted by the Government of India in 17,220 children and adolescents to estimate the burden of sexual abuse revealed shocking results and showed that every second child in the country was sexually abused; among them, 52.94 per cent were boys and 47.06 per cent were girls. Highest sexual abuse was reported in Assam (57.27%) followed by Delhi (41%), Andhra Pradesh (33.87%) and Bihar (33.27%)[2].

Sexual abuse and sex trafficking remain highly prevalent and are among the serious problems in India. In the last two decades, an increase in the prevalence of sexually transmitted diseases has been shown in children[3]. Children who are victims of sexual abuse often know the perpetrator in some way[4]. Hence, the problem of child sexual abuse needs to be addressed through less ambiguous and more stringent punishment. The Protection of Children from Sexual Offences (POCSO) Act, 2012[5-7] was formulated to effectively address the heinous crimes of sexual abuse and sexual exploitation of children. Legal provisions were made through implementation of the Criminal Law (amendment) Act, 2013[8] which amended the Indian Penal Code, the Code of Criminal Procedure, 1973, The Indian Evidence Act, 1972, and the Protection of Children from Sexual Offences Act, 2012. This Criminal Law (Amendment) Act 2013, also dictates punishment on stalking, voyeurism, disrobing, trafficking and acid attack.

The Protection of Children from Sexual Offences (POCSO) Act, 2012

The POCSO Act, 2012[6] is a gender neutral legislation. It defines a child as any individual below 18 yr and provides protection to all children from sexual abuse. Definition of child sexual abuse is comprehensive and encompasses the following: *(i)* penetrative sexual assault, *(ii)* aggravated penetrative sexual assault, *(iii)* sexual assault, *(iv)* aggravated sexual assault, *(v)* sexual harassment, *(vi)* using child for pornographic purpose, and *(vii)* trafficking of children for sexual purposes. The above offences are treated as "aggravated",when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority *vis*-ã-*vis* the child. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

The POCSO Act further makes provisions for avoiding re-victimization, child friendly atmosphere through all stages of the judicial process and gives paramount importance to the principle of "best interest of the child". It incorporates child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences, trial in-camera and without revealing the identity of the child through designated Special Courts. It also provides for the 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 the child's medical treatment and rehabilitation[7].

Role of doctors in providing care in the present legal framework

The Act also makes provisions for the medical examination of the child in a manner that is least distressful. The Act also clearly vocalizes that doctors should not 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 a fine

under Sec 21 of the POCSO Act, 2012. The registered medical practitioner rendering medical care shall *(i)* collect evidence after a thorough medical examination, *(ii)* treat the physical and genital injuries, *(iii)* conduct age assessment of the victim (if required), *(iv)* offer prophylaxis for sexually transmitted diseases including HIV, *(v)* discuss emergency contraceptives with the pubertal child and her parent, *(vi)* do baseline evaluation for mental health issues, *(vii)* monthly follow up at least for six months to look for development of psychiatric disorders, *(viii)* do family counselling and *(ix)* 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 the Criminal Law Amendment Act, which inserts Section 357C into the Code of Criminal Procedure, 1973[8]. 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. The amended Act, Section 166B of Indian Penal Code[8] specifies that no hospital whether the private or public can deny treatment to a rape victim. Treatment should be provided immediately and free of cost. If a hospital staff is involved in rape, then law dictates punishment for a minimum of seven years.

Challenges and controversies

Child sexual abuse is a multidimensional problem having legal, social, medical and psychological implications[9]. There are certain drawbacks in the law around the following issues:

(a) Consent: If the child/adolescent refuses to undergo medical examination but the family member or investigating officer is insisting for the medical examination, the POCSO Act is silent and does not give clear direction. There is an urgent need to clarify the issue of consent in such cases. However, it would be prudent to take informed consent from parent when the survivor is a child (below 12 yr) and consent from both parent and the victim, if the survivor is an adolescent (age group from 12 -18 yr). However, emergency treatment needs to be initiated without getting into this consent issues or legality to protect the life of the child.

(b) Medical examination: The POCSO Act, Section 27(2) mandates that in case of a female child/adolescent victim, the medical examination should be done by a female doctor. However, the law mandates the available medical officer to provide emergency medical care. On the other hand, the Criminal Law amendment Act, Section 166A of Indian Penal Code mandates the Government medical officer on duty to examine the rape victim without fail. This conflicting legal position arises when female doctor is not available.

(c) Treatment cost: The law has casted legal obligation on the medical fraternity and establishment to provide free medical care to the survivors. If there are no proper facilities or costly procedure is required, the State should take responsibility of reimbursing the cost, otherwise hospital may provide substandard medical treatment procedure or may deprive the survivor from comprehensive treatment.

(d) *Consented sexual intimacy*: Sexual contact between two adolescents or between an adolescent and an adult are considered illegal under the POCSO Act 2012, because no exception has been granted in the Act under which an act of sexual encounter with a person under 18 is an offence irrespective of consent or the gender or marriage or age of the victim/the accused. However, it is proposed that any consensual sexual act that may constitute penetrative sexual assault should not be an offence when it is between two consenting adolescents, otherwise both the adolescents will be charged under the POCSO Act, 2012. On the other hand, the latest amendment of the Indian Penal Code concerning rape laws in 2013[8] clearly reports that the age of consent for sex has been fixed to 18 yr, hence, anyone who has consensual sex with a child below 18 yr can be charged with rape, which may increase the number of rape cases. One more serious repercussion is that obstetric and gynaecologists need to report all the MTP (medical termination of pregnancy) cases performed on children (below 18 yr).

(e) Child marriage: Child marriage and consummation of child marriage are considered illegal under the POCSO Act, 2012. In India even though child marriage is prohibited under secular law, it enjoys sanction under certain Personal Law thus complicating matters[10]. These issues need to be addressed when the law is open for amendment.

(f) Training: There is an urgent need to train the medical, teachers, judicial, advocates and law enforcing agencies in the POCSO Act, 2012. Research, information, monitoring and sensitizing the public are the biggest challenges. Training all the stakeholders is one of the important variables in providing comprehensive care and justice. There is also an urgent need to train all the medical undergraduates and

primary health care doctors in providing child friendly interview, structured assessment, collecting evidence, prophylaxis for sexually transmitted diseases and HIV, family counselling and regular follow up.

(g) Role of mental health professional: The definitive signs of genital trauma are seldom seen in cases of child sexual abuse[11]. Hence, the evaluation of child sexual abuse victim requires special skills and techniques in history taking, forensic interviewing and medical examination. The role of mental health professional is crucial in interviewing the child in the court of law. Child sexual abuse can result in both short-term and long-term harmful mental health impact. Mental health professionals need to be involved in follow up care of the victim with regard to emergence of psychiatric disorders, by providing individual counselling, family therapy and rehabilitation[12].

(h) Reporting: It is well known that the cases of child sexual abuse are usually not reported. Further, knowing and reporting child sexual offence is highly difficult and highly personal decision for many family members and also for survivors. Both survivors and family members feel embarrassed and ashamed bearing the guilt, anger, frustration and emotional turmoil of the act. The fear of re-victimization because of medical examination, criminal justice system and poorly informed society members keeps them silent and undergo torture for long duration.

A golden rule to all the medical professionals working with children is to report all reasonable degree of suspicion in child sexual abuse to the legal authorities. Hence, professionals need to keep watch on sexual abuse, explore and assess the child thoroughly. Though the POCSO Act, 2012 is an excellent piece of legislation and it recognizes almost every known form of sexual abuse against children as punishable offence, a few challenges remain to be answered. A multi-dimensional, multi-agency team and multi-tier approach including access to psychosocial support is to be made available to deliver holistic comprehensive care under one roof for victims of child sexual abuse[13].

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