

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



Ministry of Women and Child Development
Government of India



Towards a new dawn

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CHILD Protection & Child Rights : The Protection of Children from Sexual Offences Act 2012



The Protection of Children from Sexual Offences Act, 2012

- **India is home to the largest percentage of children in the world**
- **One of the biggest evils the country is battling is Child Sexual Abuse**
- **Government of india report on child sexual abuse in 2007 showed that 50% children were sexually abused.Over 57% of these were boys.21.90% children face severe form of sexual abuse.72% said they did not report the abuse to anyone**

WHY ???

- Existing laws (IPC, IT Act 2000, JJ Act 2000) not enough to address all sexual offences pertaining to child
- No specific provisions or laws for dealing with sexual abuse of male children

- ***In order to address the problem of child sexual abuse through less ambiguous and more stringent legal provisions ,the POCSO act was formulated in June 2012 and implemented on 14th November 2012***

What is POCSO Act 2012 ?

- **The Protection of Children from Sexual Offences (POCSO Act 2012) is a comprehensive law to provide for protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated special courts**

- **The POCSO act defines a child as any person below 18yrs of age ,and defines different form of sexual abuse,including penetrative and non penetrative assault,as well as sexual harassment and pornography**
- **Categorizes offence as aggravated /non aggravated**
- **People who traffick children for sexual purposes are also punishable under the provisions relating to abetment in the said act**

- **The said act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine**
- **The act also provides for mandatory reporting of sexual offences**
- **This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months imprisonment and/or fine.**

- **The act also casts the police in role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child**
- **The police are also required to bring the matter to the attention of the child welfare committee within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child**

Types Of Sexual Offences, Defenses & Punishments

- 1. Penetrative Sexual Assault (S.3)**
- 2. Aggravated Penetrative Sexual Assault(S.5)**
- 3. Sexual Assault (S.7)**
- 4. Aggravated Sexual Assault (S.9)**
- 5. Sexual Harassment (S.11)**
- 6. Using child for Pornographic Purposes (S.13)**

AGGRAVATED SEXUAL ASSAULT

- Committed by a person in position of trust or authority such as police /army/security/public servant/family member
- Staff in management –medical educational,religious institutions
- Staff of jail,remand home,protection home,observation home,any other place of care and custody
- Gang assault

- When offence causes grievous hurt
- Causes mental or physical disability
- Child is mentally or physically ill
- Offence committed more than once
- when attempt is made to murder child
- Child less than 12 yrs of age
- Person committed offence is already convicted once
- Child is raped as communal course or made to parade in public place

- **Penetrative sexual assault(section 3)**
 - i. **Inserting any object or using any part of body /penis to cause penetration in to any part of the body of the child(vagina,mouth,urethra or anus) or making the child to do so.For example: rape, buggery, or oral sex.**

- **Non penetrative sexual assault(section7)**
 - i. **Touching penis,vagina,anus,breast of a child with sexual intent or making the child to do so. Making physical contact to child with sexual intent or making the child to do so.**

- **Sexual harassment(section11)**
 - i. **Making any sound or gesture or exhibiting any object or part of body ,with sexual intent,so that it will be heard or seen by the child.Making a child exhibit his body or make a gesture so that it is seen by the child or other person with sexual intent Constantly following or watching child either directly or through digital or any other means with sexual intent**

- **Use of child for pornography(section 13)**
 - i. **Whoever, uses a child in any form of media(including programme or advertisement telecast by television channels or internet or any other electronic form or printed form,whether or not such programme or advertisement is intended for personal use or for distribution),for the purpose of sexual gratification,which includes**
 - a) **representation of the sexual organs of a child**
 - b) **usage of child engaged in real or simulated sexual acts(with or without penetration) or**
 - c) **the indecent or obscene representation of a child**

Punishments for Offences covered in the Act are:

1. **Penetrative Sexual Assault (Section 3)** - Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
2. **Aggravated Penetrative Sexual Assault (Section 5)** - Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
3. **Sexual Assault (Section 7)** - Not less than three years which may extend to five years, and fine (Section 8)
4. **Aggravated Sexual Assault (Section 9)** - Not less than five years which may extend to seven years, and fine (Section 10)
5. **Sexual Harassment of the Child (Section 11)** - Three years and fine (Section 12)
6. **Use of Child for Pornographic Purposes (Section 13)** - Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

Special Courts for trial of offences

a court of session in each district to be designated as special court for speedy trial(sec 28)

State govt to appoint a special public procecutor every special court(sec32)

May take cognizance of any offence without accuse being committed to it for trial upon receiving a complaint

Cross examinaton or rexamination of child through special court

SPECIAL PROVISION IN COURT

- Frequent breaks for child during trial
- Presence of parents/guardian /friend /relative
- Child not to be called repeatedly for trial
- No aggressive questioning or character assassination of child
- In camera trial
- Identity of child not disclosed
- Not to see accused at time of trial

Recording the statement

- **Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector**
- **No child to be detained in the police station in the night for any reason.**
- **Police officer to not be in uniform while recording the statement of the child**
- **The statement of the child to be recorded as spoken by the child**
- **Child not to come in contact with accused**

- Recording to be done in presence of parents or person of trust
- Assistance of translator /interpreter/special educator as case may be(section 26[2])
- Wherever possible recording by audiovideo electronic means
- Statement may also be recorded by magistrate

The Protection of Children from Sexual Offences Act, 2012

- **The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized.**
- **The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence.**
- **To prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent.**
 - **Such punishment has been kept relatively light (six months) to encourage reporting.**
 - **If false complaint is made against a child, punishment is higher (one year).**

The Protection of Children from Sexual Offences Act, 2012

- **The media has been barred from disclosing the identity of the child without the permission of the Special Court.**
- **For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days.**
- **The Special Court is to complete the trial within a period of one year, as far as possible**

The Protection of Children from Sexual Offences Act, 2012

- **To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police.**
- **These will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report.**
- **The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.**

Role of CWC in POCSO Act

- **Child Welfare Committees (CWC) play a vital role under the POCSO Act, cases registered under this act need to be reported to the CWC within 24 hours of recording the complaint.**
- **The CWC should take into account the opinion of the child to decide on the case within three days and conclude whether the child should remain in an institution or be with the family.**
- **The CWC should nominate with the consent of the child parent / guardian / other person who the child trusts, a support person to assist the child during the investigation and trial of the case.**

Medical Examination of a Child

- **The medical examination of a child, shall be conducted in accordance with section 27 of the POCSO Act and 164 A of the Code of Criminal procedure, 1973.**
- **In case the victim is a girl child, the medical examination shall be conducted by a woman doctor only**
- **The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.**
- **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.**



POCSO Act 2012

- **As per this act, the child's medical examination can be conducted even prior to registration of an FIR. This discretion is left up to the Investigation Officer (IO).**
- **The IO has to get the child medically examined in a government hospital or local hospital within 24 hours of receiving information about the offence. This is done with the consent of the child or parent or a competent person whom the child trusts and in their presence.**
- **The rules laid down in this act also had defined a criteria of awarding the compensations by the special court that includes loss of educational and employment opportunities along with disability, disease or pregnancy as the consequence of the abuse. This compensation would be awarded at the interim stage as well as after the trial ends.**

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.**

- 1. 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.**
- 2. The doctor shall forward the medical examination report to the IO without any delay, who shall forward it to magistrate**

THE ROLE OF HEALTH PROFESSIONAL

- **Informed, comprehensive, informative, and voluntary written consent of the child for medical examination.**
- **In case the child is under 12 years of age, consent for examination needs to be sought from the parent or guardian.**
- **Taking medical history of a child in facilitating, non judgemental and empathetic manner.**
- **Documentation of all details meticulously.**

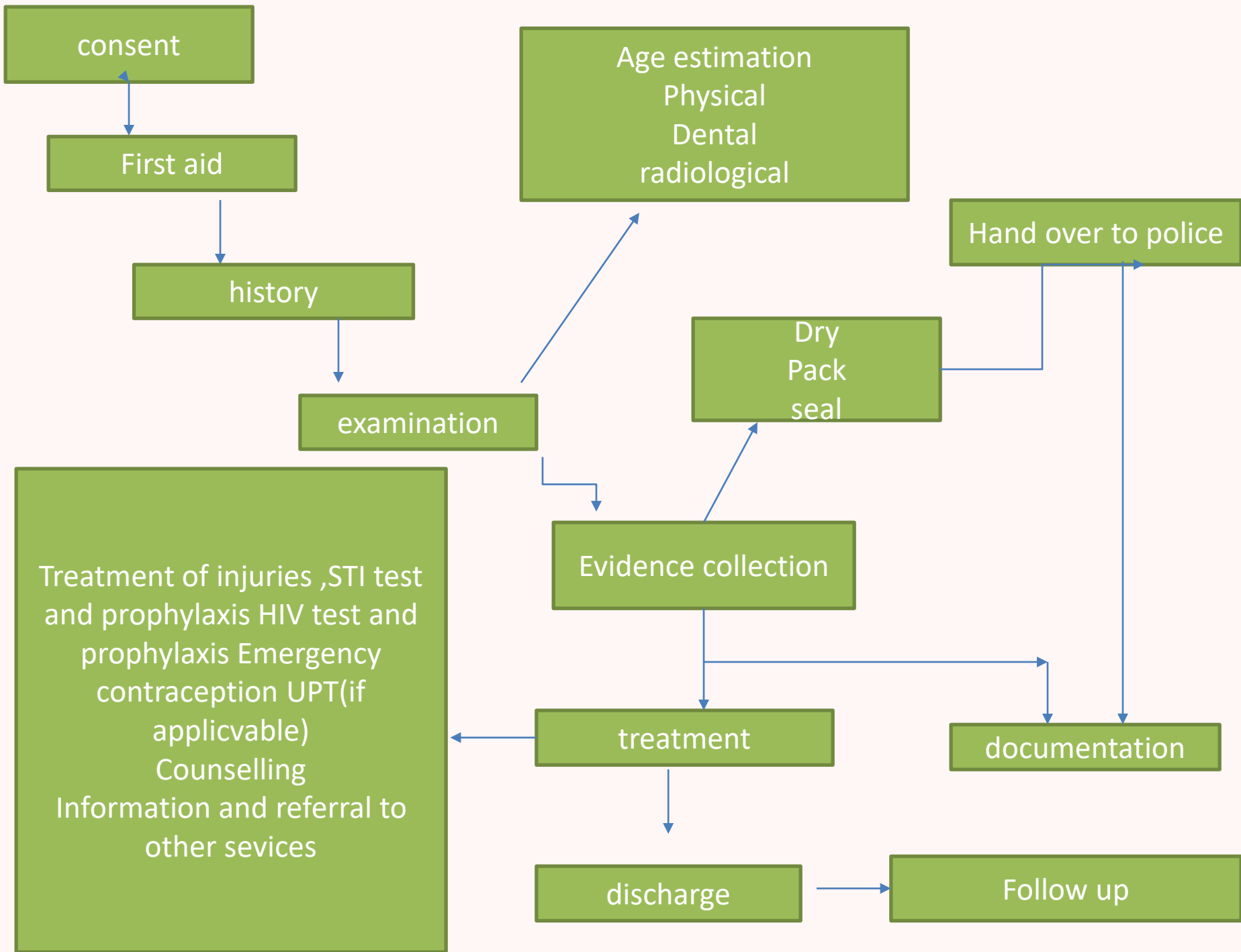
- **Thorough and detailed examination to provide treatment and to collect forensic evidence:**
 - **Prepare a medical report with photographic/video documentation of all findings as result of offence.**
 - **Doctor should record the nature of assault including vaginal,anal and/or oral penetration**

- **Look for any signs of force and/or restraints , particularly around the neck and extremities and genitals.**
- **If the child is menstruating at the time of examination then a second examination is to be done to record the injuries more visibly and clearly.**
- **During examination child should be asked questions in his/her own language without leading questions,like what,when,where,and how.**
- **Medical history should also include for allergies,immunization status and other medications.**

- **Evidence collection: carefully collect and preserve forensic evidence including clothings specially underwear for evidentiary DNA.**
- **Attention should be given to diagnose keeping in mind the things which mimic sexual abuse**
- **Assessing child emotional and physical well being and make appropriate referrals**
- **Formulating a complete medical report**
- **Recommend required treatment including emergency care testifying in court if needed**

Emergency medical care

- 1. Treatment for cuts ,bruises ,and other injuries including genital injuries.**
- 2. Treatment for exposure to sexually transmitted diseases including prophylaxis for identified STDs;**
- 3. Treatment for exposure to HIV, including prophylaxis for HIV after necessary consultation with infectious disease experts;**
- 4. Possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence**
- 5. Referral or consultation for mental health professional /counselor/pshycologist if needed**



VARIOUS SECTIONS OF ACT: IMPORTANT FOR MEDICAL HEALTH PROFESSIONAL

1. **Mandatory reporting**: doctor or other health care professional, who has knowledge that a child has been sexually abused is obliged to report the offence, failing which he may be punished with six months imprisonment and or fine (section 19 and section 21 of the POCSO)
2. **Medical Examination**: under section 27 of act doctor must conduct a medical examination as per provision of section 164 A of criminal penal code. where the victim is a girl, the medical examination to be conducted by a female doctor

- **It is to be conducted in presence of parent of a child or any person in whom the child reposes confidence. if such a person can not be present the examination to be conducted in the presence of a woman nominated by the need of medical institution**
- **under rule 5, emergency care is to be provided by any medical facility either private or public and no magistrate requisition or other document is to be demanded as a precondition to providing emergency care**

TREATMENT COST

- **Rule 7 of the POCSO act provides that expenses incurred in providing medical care to the child may be recovered in compensation awarded to the child**
- **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 or it may deprive the survivor from comprehensive treatment.**



SUMMARY

SIMPLIFYING PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO)



PART II

The provisions made by POCSO are as follows:

- Female children are looked after by lady doctors.
- It ensures that there is no re-victimisation of the child by the judicial system.
- Special courts conduct trials in-camera, without revealing child identity.
- The case of child sexual abuse must be disposed of within one year from the date the offence is reported.
- A compensation is paid for the medical treatment and rehabilitation of the child.



Challenges and controversies

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

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.

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.



Thank You

*Spread awareness of the
helpline number : 1098*