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Manual of

Medicolegal Issues

No More Litigations Please

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CHAPTER 2

Protection of Children from Sexual Offences Act

Bipin Pandit, Shreya Prabhoo

INTRODUCTION

The sexual offences against children have been rising and hence it was important to have a law in place and that is how the POCSO (Protection of Children from Sexual Offences) Act was amended and came into force with effect from 14th November 2012. It is a comprehensive law for the protection of children from the offences of sexual assault, sexual harassment and pornography, at the same time it safeguards 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 18 years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and 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, like a family member, police officer, teacher, or doctor. People who traffick children for sexual purposes are also punishable under the provisions relating to abetment in the Act. 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 Act also makes it mandatory for reporting these sexual offences. That makes it the legal duty of 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 6 months imprisonment and/or a fine.

The Act also casts the police in the 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, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report,

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so the CWC may then proceed where required to make further arrangements for the safety and security of the child. The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. 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.

The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues thus require an integrated and coordinated approach. The achievement of these objectives requires a coordinated response of all the key players, which include the police, prosecution, Courts, medical institutions, psychologists, and counselors, as well as institutions that provide social services to the children.

INTERVIEWING THE CHILD

- The child should be comfortable in the surrounding, if required keep some toys to make the place child friendly so that he/she feels free and secured to talk. Preferably a neutral place.
- Identify yourself and build a rapport with the child, avoid asking leading questions.
- A variety of nonverbal tools may be used to assist young children in communication, including drawings, toys, dollhouses, dolls, puppets, etc. Since such materials have the potential to be distracting or misleading, they should be used with care.
- The child should be seen individually, except when the child refuses to separate from a parent/guardian. Discussion of possible abuse with the child in the presence of the caregiver during evaluation interviews should be avoided except when necessary to elicit information from the child.
- Extra care needs to be taken in cases of children with special needs. They are usually often victimized repeatedly by the same offender. Caretakers, family members, or friends may be responsible for the sexual abuse so avoid having any of them as interpreters. Only in cases where children are deaf, dumb or blind and they are not able to convey their message then a person who is familiar to their mannerism may be allowed.

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ROLE OF A MEDICAL PROFESSIONAL

- Doctors have a dual role to play in terms of the POCSO Act, 2012. They are in a position to detect that a child has been or is being abused (for example, if they come across a child with an STD); they are also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse.
- *Mandatory reporting:* 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 (i.e. the police or the relevant person within his/her organization who will then have to report it to the police). Failure to do this would result in imprisonment of up to 6 months, with or without fine.
- *Consent:* 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. The right to informed consent implies the right to informed refusal.
- *If child resists examination:* If the child still refuses, the examination may need to be deferred or even abandoned. The child should not be held down or restrained for the examination (exception for infants or very young toddlers). Sedation is rarely needed if the child is informed about what will happen and there is adequate parental support for the child.

The Protection of Children from Sexual Offences (Amendment) Bill, 2019.

The POCSO Act, 2012 has been amended recently on 6th August 2019, the following changes have been made.

Penetrative Sexual Assault

Under the Act, a person commits "penetrative sexual assault" if he: (1) penetrates his penis into the vagina, mouth, urethra, or anus of a child, or (2) makes a child do the same, or (3) inserts any other object into the child's body, or (4) applies his mouth to a child's body parts. The punishment for such offence is imprisonment between 7 years and life, and a fine. The Bill increases the minimum punishment from 7 years to 10 years. It further adds that if a person commits. Penetrative sexual assault on a child below the age of 16 years, he will be punishable with imprisonment between 20 years and life, along with a fine.

Aggravated Penetrative Sexual Assault

The Act defines certain actions as "aggravated penetrative sexual assault". These include cases when a police officer, a member of the armed forces, or a public servant commits penetrative sexual assault on a child. It also covers cases where the offender is a relative of the child, or if the assault injures the

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sexual organs of the child or the child becomes pregnant, among others. The Bill adds two more grounds to the definition of aggravated penetrative sexual assault. These include: (1) assault resulting in the death of child, and (2) assault committed during a natural calamity. Currently, the punishment for aggravated penetrative sexual assault is imprisonment between 10 years and life, and a fine. The Bill increases the minimum punishment from 10 years to 20 years, and the maximum punishment to death penalty.

Aggravated Sexual Assault

Under the Act, "sexual assault" includes actions where a person touches the vagina, penis, anus, or breast of a child with sexual intent without penetration. "Aggravated sexual assault" includes cases where the offender is a relative of the child, or if the assault injures the sexual organs of the child, among others. The Bill adds two more offences to the definition of aggravated sexual assault. These include: (1) assault committed during a natural calamity and (2) administrating any hormone or any chemical substance, to a child for the purpose of attaining early sexual maturity.

Pornographic Purposes

Under the Act, a person is guilty of using a child for pornographic purposes if he uses a child in any form of media for the purpose of sexual gratification. The Act also penalizes persons who use children for pornographic purposes resulting in sexual assault.

- *Use of child for pornographic purposes*: Minimum—5 years
- *Use of child for pornographic purposes resulting in penetrative sexual assault:* Minimum—10 years; Maximum—life imprisonment
- *Use of child for pornographic purposes resulting in aggravated penetrative sexual assault:* Minimum—20 years; Maximum—life imprisonment, or death.
- *Use of child for pornographic purposes resulting in sexual assault:* Minimum—3 years; Maximum—5 years.
- *Use of child for pornographic purposes resulting in aggravated sexual assault:* Minimum—5 years; Maximum—7 years.

Storage of Pornographic Material

The Act penalizes storage of pornographic material for commercial purposes with a punishment of up to 3 years, or a fine, or both. The Bill amends this to provide that the punishment can be imprisonment between 3 years and 5 years, or a fine, or both. In addition, the Bill adds two other offences for storage of pornographic material involving children. These include: (1) failing to destroy, or delete, or report pornographic material involving a child, and (2) transmitting, propagating, or administering such material except for the purpose of reporting it.

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The recent advances like the POCSO Amendment ACT, 2019 and the One-stop Centre at KEM Hospital for victims of Sexual Offence are steps towards providing better care and a statement that these offences are not going to be tolerated and those who commit these crimes will have to face serious consequences. After all, "*No matter how much evil you see, it is important for everyone to understand that there is much more light than darkness*."

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