

 <p>ISSN NO. 2320-5407</p>	<p>Journal Homepage: -<a href="http://www.journalijar.com">www.journalijar.com</a></p> <p><b>INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)</b></p> <p>Article DOI:10.21474/IJAR01/9407 DOI URL: <a href="http://dx.doi.org/10.21474/IJAR01/9407">http://dx.doi.org/10.21474/IJAR01/9407</a></p>	
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### RESEARCH ARTICLE

#### CHILD SEXUAL ABUSE AND MEDICAL CARE IN INDIA - A LEGAL REVIEW.

**Hind T Rasheed.**

Research scholar, NUALS, Kochi.

#### Manuscript Info

##### Manuscript History

Received: 20 May 2019

Final Accepted: 22 June 2019

Published: July 2019

#### Abstract

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#### Introduction:-

Child sexual abuse is a serious problem in India as across all the countries in the world. According to the nationwide study conducted by Government of India 2007 revealed that more than 53% children report facing one or more forms of sexual abuse in India (Kakkar.L et al 2007). It is a grave violation of many of the human rights of the children. Sexual abuse is also a grave public health problem with both short- and long-term effects on victim's physical, mental, and sexual and reproductive health. If the victim of the sexual abuse is a child, it becomes more vulnerable. Right to health and medical care is one of the most important rights included in the very definition of child abuse. According to the World Health Organization "child abuse or maltreatment constitutes all forms of physical and or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity, in the context of a relationship of responsibility, trust or power"(WHO 1999). The ingredient of 'child health' is more relevant in the context of child sexual abuse. The WHO also defines child sexual abuse as "the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to the inducement or coercion of a child to engage in any unlawful activity, the exploitative use of a child in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performances and material"(WHO 1999).

#### Right to health and effects of sexual abuse

The right to health is an important ingredient of basic human rights and an essential part of dignified life of a human being. Internationally the term health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity" (Constn WHO 1946). The concept of right to health is first recognized by the Universal Declaration of Human Rights 1948 and lays down that "Everyone has the right to standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services"(UN 1948). The Declaration does not define the components of a right to health; however, they both include and transcend medical care. The right to health was also recognized as a human right in the International Covenant on Economic, Social and Cultural Rights, 1966(UN 1966).

The impacts of sexual abuse on children are wide ranging. When we trace deep into the impacts of child sexual abuse in the perspective of human rights, all forms of sexual abuse violate the rights of children to liberty and security, privacy and integrity, health and, in some cases, even the right to life. On a close scrutiny of the effects of

the sexual abuse it is shocking that children suffering from sexual abuse develop a range of maladaptive anti social and self destructive behaviors and thoughts by trying to cope with the abuse. The secrecy shrouded around the problem prevents the child from actual disclosing the issue which always leads to several lifelong effects and causes to deprive the child from having real and healthy social relationships and causes various physical and mental traumas in children and it always adversely affects the health of the children. In the instances of child sexual abuse children are always prone to many health issues and also vulnerable to sexually transmitted diseases, including HIV/AIDS and in cases of adolescent child also to early and unwanted pregnancies. So children's right to health is therefore dependent on medical care that respects confidentiality and privacy and includes appropriate mental, sexual and reproductive health services and information.

#### **Medical care of sexually abused children and Law**

At the international level, the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, 2005* (ECOSOC 2005) provides for good practices that can be adopted by States in accordance with domestic law and judicial procedures and highlight the importance of guiding professionals to assist and support in dealing the child victims and witness of crime in a sensitive manner. The WHO Guidelines for medico-legal care for victims of sexual violence provides for the appropriate practices for the child sexual abuse victims medical care that is assessment and examination of child victims, collecting medical and forensic specimen, and also treatment and follow up care of the victims (WHO 2013). Victims of sexual assault require comprehensive, gender-sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event. The types of services that are needed include pregnancy testing, pregnancy prevention (i.e. emergency contraception), abortion services (where legal), STI testing and/or prophylaxis, treatment of injuries and psychosocial counselling. In addition to ensuring urgent health care, the medical sector has to perform as an important referral source for other services that the victim may later go through, for example, legal assistance and social benefits. Health workers are also well placed to collect and document the evidence necessary for corroborating the circumstances of the assault and for identifying the perpetrator and the health consequences of the event). Such evidence is often crucial to the prosecution of cases of sexual violence.

#### **Indian legal scenario**

In India, the Protection of Children from Sexual Offences Act (hereinafter referred to as POCSO Act), 2012 has provided some special progressive procedures to be followed by the medical practitioners in dealing with child sexual abuse cases. The victims of child sexual abuse have to undergone medical examination as part of the legal procedures for prosecuting these offenses. And the law also prescribes the treatment for the victim and rehabilitation to a healthy life on free of cost. The registered medical practitioner providing medical care shall also do some more duties as (i) collect evidence on abuse after a careful medical examination, (ii) give treatment for the physical and genital wounds and injuries, (iii) assess the age of the victim (if required), (iv) suggest prophylaxis for sexually transmitted diseases including HIV, (v) talk about emergency contraceptives with the adolescent child and her parent, (vi) do fundamental evaluation for mental health impacts of abuse, (vii) monthly follow up at least for six months to look for development of psychiatric disorders, (viii) do family counseling and (ix) assist the court in interviewing the child and take evidence in the court.

Section 27 of POCSO Act mandates that if victim of a sexual offence is a female child, the medical examination has to be done by a registered lady medical practitioner. That should be done in the presence of the parent of the child or any other person in whom the child reposes trust or confidence. In addition, in case the parent of the child or other person cannot be present, for any reason, during the medical examination of the child, that should be carried out in the presence of a woman insisted by the head of the medical institute. Criminal Law (Amendment) Act, 2013 has inserted an important section in Criminal Procedure Code, 1973. According to new section 357C, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies, or any other person, shall immediately provide the first aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D, and 376E of the IPC, and shall immediately inform the police of such an incident. Section 166B of the IPC provides for whoever in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of Section 357C of CrPC, shall be punished with imprisonment for a term which may extend to one year or with fine or both.

CrPC Section 164A states that (1) when during investigation, medical examination of victim of rape/attempted rape is to be conducted; such examination shall be carried out by a registered medical practitioner of a government hospital or a hospital run by local government bodies. And if there is any absence of such a practitioner, by any

other registered medical practitioner, with the consent of such woman or of a person capable of giving such consent on behalf of the victim child and such woman should be sent to a registered medical practitioner within 24 hours from the time of receiving the information regarding the commission of the crime. (2) The registered medical practitioner, to whom such woman is sent, should examine her, without any delay and prepare a report of her examination comprising the preliminary details with meticulous mention of injuries over the body, general mental condition of the female with detailed description of all materials taken for investigation. (3) The report should specifically speak all the reasons for each conclusion arrived at. (4) The report shall specially record that the consent of the woman or of the person competent to give such consent on behalf of victim for such examination had been obtained. (5) The accurate time of beginning and end of the examination shall also be stated in the report. (6) The report should be forwarded without any delay to the investigating officer, who shall forward it to the magistrate. (7) nothing in this section shall be interpreted as legally valid any examination without the consent of the woman or of any person competent to give such consent on her behalf.

The Medical Termination of Pregnancy (MTP) Act, 1971 Section 3 (2) (b) (i) states that a pregnancy may be terminated by a registered medical practitioner where the continuance of the pregnancy has a risk to the life of the pregnant woman or will cause serious harm to her physical and mental health. Where any pregnancy is alleged to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the woman. No pregnancy can be terminated except with the consent of the pregnant woman. Age of consent is 18 years and for pregnant woman below 18 years of age or who is mentally ill, consent of her guardian is sufficient. The act does not mention of reporting to investigating authorities in cases of pregnancy because of alleged rape or determination of age of the pregnant woman if she does not appear to be of 18 years of age.

The Ministry of Health and Family Welfare, Government of India provided Guidelines and Protocols for Medico legal Care for Survivors/Victims of Sexual Violence in 2014 enhancing the appropriate guidelines for doctors and medical professionals to handle the victims of sexual crimes (MHFW 2014). These guidelines mandate compulsory reporting to police of any case of sexual assault even though the victim or parent is not consented with the same. When any case of consensual or non-consensual sexual act is either brought to a doctor he/she has to examine it with the purpose to form an opinion as to (1) whether a sexual act has been attempted or completed, (2) whether such a sexual act is recent and whether any harm has been caused to the survivor's body, (3) what is the age of the adolescent girl who is probably a victim of sexual offence, and (4) whether there is any role of any intoxicated substance in the alleged act. Apart from the same required for medico legal purposes, the said victim is entitled for treatment that includes care for injuries, sexually transmitted diseases, HIV, testing for pregnancy, use of emergency contraception, psychological counselling, and followup care.

### **Challenges and gaps**

Child sexual abuse is a multidimensional problem having legal, social, medical and psychological implications (Behere PB et al 2013). There are some challenges and controversies in the existing legal frame work regarding the medical care of child sexual abuse victims.

### **Medical examination**

Availability of trained medical professionals and doctors is a problem in this area of medical examination of the victim. All medical practitioners now need to be aware of detailed examination and reporting of victims of sexual assault. Preparing of detailed report on the examination of victim is now mandatory and the refusal to conduct examination is an offense. Not only the availability of trained doctors but also the availability of woman doctors in case of female child victim is also difficult to get practical especially in hospitals in remote areas. This may also caused to delay in medical examination.

### **Consent**

The consent of victim or the consent of parent in case of child is mandatory for medical examination. if the victim child refuses to undergo medical examination but the family member or investigating officer is consented for the medical examination, the POCSO Act is not explicitly give any instruction. However, it would be careful to take informed consent from parent when the victim 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).The consent issue is not arising in providing emergency medical care to the victim. The issue of consent raises in the context of victims affected with sexually transmitted diseases or victims approaching the psychological counseling or treatment in result of sexual assault, the question is

whether the doctor is mandated to report the crime. The problem is the asking of reporting the crime may result in the victim will discontinue the further treatment.

### **Pregnancy cases**

If a girl victim of sexual abuse or her parents approach a medical facility for medical termination of pregnancy, it is the right of every girl to get pregnancy terminated, if it has occurred as a result of rape, with maintenance of confidentiality. This confidentiality will be beaten if the same is intimated to police. Hence, again people may resort to criminal abortion, thus risking their lives. A pregnancy allegedly due to an act of rape may be terminated as per MTP Act, 1971; it is noteworthy to mention that henceforth it is the duty of every such medical practitioner to collect samples for DNA typing to help the investigating authorities. Failure to intimate all such cases is now made punishable. Even failure to collect and preserve sample for DNA typing in cases of pregnancy resulting from rape can be punishable for loss of evidence of a crime.

### **Treatment cost**

The law has stated legal obligation on the medical fraternity and establishment to provide free medical care to the survivors. If there are no appropriate facilities available or any high cost treatment procedure is required, the State should give reimbursement of such cost; otherwise hospital may provide insufficient medical treatment procedure or may deny the victim from complete care and treatment. But the extent of the same is not prescribed by the law that whether the immediate medical care, medical examination and follow up care of victim altogether coming under this free of cost. Another question is if any such sexual assault results in pregnancy of the child, whether the pregnancy and delivery expenses too will cover under the free treatment is not clear from the Act.

### **Consented sexual intimacy:**

Sexual activities between two children below 18 years or between a child and an adult are regarded as (even in case of adolescents) not legal and considered as an offense under the POCSO Act 2012, irrespective of consent or the gender or marriage or age of the victim or the accused person. However, it is proposed that any consensual sexual activity should not be an offense when it is between two consenting adolescents, otherwise both the adolescents will be charged with sexual offenses under the POCSO Act, 2012. On the other hand, the latest amendment of the Indian Penal Code concerning rape laws in 2013 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 year can be charged with rape, which may increase the number of rape cases. The doctors have to mandatorily report the instances of consented sexual activity as sexual offense if the victim approaches him or her for pregnancy treatment or for termination of pregnancy.

### **Role of mental health professional**

The definitive signs of genital trauma are seldom seen in cases of child sexual abuse (Adams JA et al 1994). So, the medical examination and medical care of child sexual abuse victim requires special skills and techniques in history taking, interviewing forensic data collection and also in physical examination. The role of mental health professional is vital in interviewing the child in the court of law. Child sexual abuse has both short-term and long-term harmful mental health effect. Mental health professionals required to be engaged in follow up care of the victim with regard to emergence of any psychiatric disorders, by giving individual counselling, family therapy and rehabilitation (Sathyanarayana Rao TS. et al 2013).

### **Conclusion:-**

Thus we can see that Indian legal framework provides for specific progressive provisions in various Acts and in the special law for the protection of child from sexual abuse to deal with the medical care of the victims of child sexual abuse. The rise in the reported cases sexual violence against children and women and the gaps in responding to the needs of survivors of sexual violence at various levels, we also have standardized protocols (MHFW 2014) for care, treatment and rehabilitative services for survivors of sexual violence. But there are certain complexities in dealing with the medical care of the victims of child sexual abuse. In order to tackle this main strategy recommended is to provide immediate training and awareness for the various stakeholders including doctors. A multi-dimensional, multi-agency team and multi-tier approach including access to psychological support is to be made available to deliver holistic comprehensive care under one roof for victims of child sexual abuse (Harbisetar v et al 2014).

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