

## Child sexual abuse in India: A review

**Dr.DS Bhullar.**, Associate Professor (D), Department of Forensic Medicine & Toxicology, Government Medical College & Rajindra Hospital Patiala (Punjab) India

**Dr.P Mittal**, Professor, Department of Paediatrics, Government Medical College & Rajindra Hospital Patiala, (Punjab) India

**Dr.A Singla**, Junior Resident, Department of Forensic Medicine & Toxicology, Government Medical College, & Rajindra Hospital Patiala (Punjab) India

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<p><b>Article history</b></p> <p>Received: Feb 1, 2015  Received in revised form: June 20, 2015  Accepted: July 20, 2015  Available online: December 7, 2015</p>	<p><b>Abstract</b></p> <p>The Prevention of Children from Sexual Offences Act (POCSO) 2012 is the first comprehensive law in India on child sexual abuse which expands the scope and range of forms of sexual offences, making reporting of abuse mandatory and defines guidelines for child friendly police and procedures. Doctors and health care professionals are often the first point of contact with abused children and their families. They play a key role in detecting abuse and providing immediate and longer term care and support to children and their families. Hence, they must have an overview of child sexual abuse – prevention, detection and management of abuse from a legal, medical and mental health angle.</p>
<p><b>Corresponding author</b></p> <p><b>DS Bhullar</b>  Associate Professor (D),  Department of Forensic Medicine &amp; Toxicology,  Government Medical College &amp; Rajindra Hospital  Patiala (Punjab) India</p> <p>Phone: +91-9814543131  Email: drdsbhullar@yahoo.in</p>	<p><b>Keywords:</b> Sexual abuse, taboo, POCSO Act 2012, penetrative, non-penetrative, pornography, grooming, post-traumatic stress disorder</p>
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### Introduction

India is home to the largest child population in the world, with almost 41 per cent of the total population under eighteen years of age. The UN convention on the rights of the child urges states to ensure the right of children to protection from abuse, violence, neglect and exploitation. Sexual abuse is an extremely traumatic experience that can affect the body as well as mind and the reaction of the body and the mind to such an occurrence could leave a lasting impact on the health conditions for any person at any age. Available data on child sexual abuse is often not reflecting the real magnitude of the phenomenon due to the taboo and culture of silence around it and the difficulties to research the subject. Adult survivors of childhood physical, emotional or sexual abuse are not only at increased risk for depression and other mental health disorders, but new evidence suggests they are increasingly more likely to suffer from heart disease, obesity, and other potentially fatal physical

conditions. Thus, it is imperative that the right kind of intervention and opportunity for recovery be provided at the right time. The law on child sexual abuse “The Protection of Children from Sexual Offences Act, 2012” came into force in November 2012 to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography. After the enactment of this law in India, again it has become imperative for the experts who can deal with cases of child sexual abuse, to have a review in this field before and after this law came into force to suggest short term as well as long term planning for effective implementation of the law in this country.

### What are sexual offences against children?

Child Sexual Abuse (CSA) refers to the involvement of a child in any sexual activity (1) that:

- The child does not understand;
- The child is unable to give informed consent to;

- The child is not developmentally prepared for and cannot give consent to; and,
- Violates the laws or norms of society

Under the Protection of Children from Sexual Offences (POCSO) Act 2012 (2) any sexual activity with a child below 18 years, whether boy or girl, is a crime. As defined in the Act, sexual offences which include penetrative sexual assault (Section 3), sexual assault (i.e. non-penetrative – Section 7), sexual harassment (Section 11) and use of a child for pornography (Section 13).

#### **Sexual offences under the Act include:**

- Actual or attempted penetrative sexual intercourse with a child;
- non-penetrative sexual activity, e.g. rubbing the penis between the child's thighs or genitals;
- fondling a child's sexual parts, i.e. genitals, breasts or buttocks;
- oral sex with a child, i.e. mouth to sexual parts;
- forcing a child to masturbate another person;
- masturbating a child;
- the adult showing his or her private parts to the child;
- inappropriate watching a child undress or using the bathroom;
- photographing a child in sexual poses;
- the exploitive use of a child in prostitution or any other unlawful sexual practice;
- the exploitive use of children in pornography;
- showing pornography or any pictures of a sexual nature to the child that he or she does not want to see; and
- Letting the child watch or hear an act of sexual intercourse.

#### **Surveys & Statistics on Child Sexual Abuse in India: (3)**

- In the year 1998, the Indian NGO Recovery and Healing from Incest (RAHI) conducted India's first study of child sexual abuse. It surveyed 600 English-speaking middle and upper-class women, 76 percent of whom said they had been abused in childhood or adolescence, 40 percent by at least one family member, most commonly an uncle or cousin.

- Tulir-CPHCSA's study in 2006 conducted among 2211 school going children in Chennai, indicates a CSA prevalence rate of 42%. Children of all socio-economic groups were found to be equally vulnerable. While 48% of boys reported having been abused, the prevalence rate among girls was 39%. 15 % of both the boys and girls were severely abused.
- In the year 2007, the Indian government backed a survey of 125000 children in thirteen states conducted by the Ministry of Women and Child Development. Of the children interviewed, more than half (53%) said that they had been subjected to one or more forms of sexual abuse. Over 20% of those interviewed said they were subjected to severe forms of abuse. Of those who said they were sexually abused, 57% were boys. Needless to say, however there has been a steady increase in sexual crimes against children.
- The Human Rights Watch Report in 2013 "Breaking the Silence" presents a dismal picture of child protection in the country particularly when it comes to preventing sexual abuse of minors within homes, schools and institutions. A comprehensive 82 page report, complete with case studies and expert comments, it proves beyond doubt the existence of child sexual abuse across classes. Highlighting inaction against the perpetrators, Human Rights Watch revealed that child sexual abuse in homes, schools and institutions for care and protection of children is quite common. They further stress that a government appointed committee in January 2013 itself found that the government child protection schemes, "have clearly failed to achieve their avowed objective."

#### **Prominent Cases before and after the enactment of POCSO Act 2012:**

##### **A. Before POCSO Act:-**

##### **a. Mathura Rape Case:-**

The Mathura rape case was an incident of custodial rape in India on 26 March 1972, wherein Mathura, a tribal girl who was a minor at the time, was allegedly raped by two policemen on the compound of Desai Ganj Police Station in Chandrapur district of Maharashtra. After the Supreme Court acquitted

the accused, there was public outcry and protests, which eventually led to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983 (46 of 1983).

**b. BharwadaBhoginbhaiHirjibhai v. State of Gujarat 1983.**

The accused, a middle aged man had confined 2 friends of his daughter aged around 10, who had come to his house to meet the daughter, and had raped them. The trial court convicted the accused for rape, violating modesty and wrongful confinement. The High Court upheld conviction while reducing the charge from rape to attempt to rape. The Supreme Court upheld the judgment of the trial court on the ground that minor discrepancies in the evidence were not relevant. The court further remarked that corroboration for conviction in rape cases is not necessary. This judgment was relied on in later judgments to secure conviction when they were no other eyewitnesses to support evidence given by the victim (4).

**c. State of Punjab Vs. Gurmit Singh 1996**

In this case, the Supreme Court was highly critical of the acquittal of persons accused of gang-raping a 16 year old girl. The trial court had referred to the young village girl as a person of loose character who had invented the story of rape to justify spending a night out of home. It had refused to rely on her statement. The Supreme Court observed that the appreciation of evidence by the trial court was "not only unreasonable but perverse". It held that: "The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury"(5).

**d. Sakshi Vs. Union of India 2004**

The NGO Sakshi filed a writ petition in Public Interest to broaden the definition of rape in cases involving children where the child is abused by insertion of objects into the vagina or insertion of the male organ into body parts such as anus or mouth. The Supreme Court rejected the Plea & dismissed the PIL. But it issued valuable guidelines for trial of rape and sexual abuse which concern children(6).These are known as the Sakshi guidelines:-

- A screen or an arrangement where victim or witnesses do not see the body or face of the accused.
- Questions put in cross examination on behalf of accused, if they relate directly to the incident, must be given in writing to the presiding Officer of the court who may put them to the victim/witnessed in a language that is clear and not embarrassing.
- Victims of child abuse or rape should be allowed sufficient breaks as and when required during the testimony.

**e. Anchorage Case 2006**

Duncan Grant, a charity worker and UK citizen, had set up Anchorage shelter in Colaba, Mumbai, in 1995. Allan Waters, another UK citizen, was a visitor to the home. The pair was charged in 2001 with sexual assault after five boys complained to the police about repeated sexual and physical abuse by the men. They were acquitted by the High Court in Mumbai in 2008 for lack of evidence. But the Supreme Court overturned that decision and upheld guilty verdicts from the trial court in 2006 which sentenced the men to six years(7).

**B. After POCSO Act**

Protection of Children from Sexual Offences (POCSO) Act 2012 received the President's assent on 19 June 2012 and was notified in the Gazette of India on 20 June 2012. The Act has come into force.

**a. State of Maharashtra vs. Dattatraya:-**

Accused was found guilty under POCSO and punished with the death penalty. Accused was neighbour of the victim aged 5 years. He took the victim to his house forcibly had vaginal & anal sex, caused her head injuries and smothered her as a result of which she died (8).

**b. Sarath Chandra Pottala V. Union of India:-**

Petitioner challenged the constitutional validity of POCSO on the grounds that if a question arises over the age of the accused, the Special Court has the power to determine the same. However it has no power to seek determination of the age of the victim if there is a dispute regarding it. The petition was dismissed in view of article 15 (3) of constitution and beneficial nature of POCSO (9).

**Some facts and realities about Child Sexual Abuse (10)**

There are a number of myths and misconceptions about the problem but contrary to these the facts and realities about some of these are: -

- Up to 95% of the time, the abuser is known to the victim.
  - Incest happens in all types of families, irrespective of class, race, economic status, nationality and religion. The saddest thing about incest is that the child is not safe in the one place he or she should feel safe, i.e. in his home.
  - Society generally does not want to believe that we do this to our children and prefers to believe that children are pretending or making it up. The fact that adults do not believe them is the most difficult problem children face. Children often fantasise about positive events, but they rarely make up stories about severely traumatic events.
  - Men who have unfulfilling sexual relationships with their wives do not usually turn to children. Those who do usually suffer from role confusion and a variety of personality disorders.
  - Children do not report sexual abuse for a number of reasons that may include fear, shame or anxiety. The child is also very often sworn to secrecy, threatened, bribed or blamed.
  - Pregnancy, sexually transmitted infections, and genital trauma may be physical results of sexual abuse. However, a child who has been sexually abused always suffers psychological trauma.
  - Adults who are sexually aroused by children and who act on this arousal are confused about their own sexuality and are not able to exercise a socially acceptable level of control over their own sexual behaviour.
  - All sexually abused children need to be assessed and treated by professionals. If they are not attended to, there may be major problems later on in the child's life.
  - The sexual attraction of men to other men is distinct from the attraction of men to young boys, just as all heterosexual men are attracted to and abuse young girls.
- Child sexual abuse can take place in the family – by a parent, step-parent, sibling or other relative. It is almost always by someone the child knows: friend, neighbour, childcare giver, teacher etc. Offenders come from all walks of life and cannot be picked out or identified by appearance.

### **Where does CSA take place?**

Child sexual abuse can occur in a variety of settings, including home, school or workplace in places like India where child labour is common.

### **Grooming**

It is a method of building trust with a child and adults around the child in an effort to gain access to the child and increase the chances that the child will not consider the sexual advances of the perpetrator untoward or improper. However, in extreme cases, offenders may use threats and physical force to sexually assault or abuse a child.

### **Consequences**

Child sexual abuse leads to a range of physical as well as emotional / mental health consequences. These depend on a number of factors, such as the duration of abuse, age of the child, type and availability of support (11). Some of the symptoms and indicators that should raise an alarm if detected by a medical professional include:

- a. **Physical Symptoms:** Sexually transmitted diseases, pregnancy, complaints of pain or itching in the genital area, difficulty in walking or sitting, repeated unusual injuries, pain during urination and/or defecation and frequent yeast infections.
- b. **Behavioural indicators:** it is important to pay attention to changes in a child's behaviour as children communicate how they are feeling through their behaviour.
- c. **Emotional consequences:** Children who have been sexually abused often continue to suffer even after the abuse has ended. Some of the psychological harms will be obvious to the family members, others may remain hidden. The effects of abuse may take the forms as confusion, guilt, shame, fear, grief, anger, helplessness or depression.

### **Mandatory Reporting**

The POCSO Act provides for mandatory reporting of sexual offences, so that any adult, including a doctor or other health care professional, who knows 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.

### **Role of health professionals under the POCSO Act 2012:**

Studies have consistently demonstrated that sexual abuse and physical problems that persist into adulthood; these include anxiety, depression, Post-Traumatic Stress Disorder (PTSD), self-destructive behaviour, dissociation, substance abuse, sexual maladjustment, and a tendency towards re-victimization in subsequent relationships (12).

This is why the role of health sector is such an important one. Doctors, nurses and other health sector professionals are important stakeholders in the prevention and response to sexual violence against children. According to the Adverse Childhood Experiences (ACE) Study, a major American research project examining the effects of adverse childhood experiences on adult life and well-being, a powerful relationship has been established between emotional experiences during childhood and physical and mental health during adulthood (13).

Doctors have a dual role to play in cases of child sexual abuse. They are in a position to detect that a child has been or is being abused; they are also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse.

- Under Section 27 of the POCSO Act, the doctor must conduct a medical examination as per the provisions of Section 164 A of Criminal Penal Code.
- When the victim is a girl, the medical examination is to be conducted by a woman doctor.
- It is to be conducted in the presence of the parent of the child or any person in whom the child reposes trust or confidence.
- If such person cannot be present, the examination is to be conducted in the presence of a woman nominated by the head of the medical institute.
- Under Rule 5 of the Act, emergency medical care is to be provided by any medical facility, private or public; and no magisterial requisition or other document is to be demanded as a precondition to providing emergency medical care.
- The role of the doctor may include:
  - a. Obtaining a medical history of the child's experience in a facilitating, non-judgmental and empathetic manner.
  - b. Meticulously documenting historical details.
  - c. Conducting a detailed examination to diagnose acute and chronic residual

trauma and STDs, and to collect forensic evidence.

- d. Considering a differential diagnosis of behavioural complaints and physical signs that may mimic sexual abuse.
- e. Documenting all diagnostic findings that appear to be residual to abuse;
- f. Assessing the child's emotional and physical well-being and making appropriate referrals.
- g. Formulating a complete and thorough medical report with diagnosis and recommendations for treatment.
- h. Testing in court when required.
- i. Informed consent to be taken for examination, sample collection for clinical and forensic examination, treatment and police intimation. According to the Indian Penal Code, where the child is over twelve years old, consent for the medical examination should be sought from the child himself or herself. Where he or she is below the age of twelve, a parent or the guardian may be asked for such consent.
- j. Diagnosis and management.
- k. Forensic evidence includes blood, semen, sperm, hair or skin fragments that could link the assault to an individual person, as well as debris that could link the assault to a location.
- l. Mental health professionals play a key role throughout the process in assisting the child and his / her family by more than one ways.

There are several reasons that health professionals, particularly paediatricians, should be involved with child sexual abuse (CSA) prevention efforts. Most of us understand and appreciate the linkages among prevention, intervention, and treatment. It is equally critical that we embrace the importance of our role in prevention beyond merely treating and reporting suspected CSA. Ray Helfer, a physician who spearheaded the creation of the Children's Trust Funds to promote prevention, suggested decades ago that we are an important part of our community response to child maltreatment, and what we do complements the varied strategies

being used: community commitment, mass media messages, training for new parents, early childhood development programs for all pre-schoolers, interpersonal skills programs for all school-aged children, and adult education programs for those caring for children (14). Child Sexual Abuse is a preventable health problem that has been allowed to spread unabated due to scientific and social neglect (15).

#### Who else is involved?

The POCSO Act (6) envisages a multi-sectoral approach that will be conducive to the justice delivery process, minimize the risks of health problems, enhance the recovery of the child and prevent further trauma. This is to be achieved through coordination and convergence between all the key players. It would therefore be very useful for hospitals and medical professionals to maintain links with their local police station, Special Juvenile Police Unit, Child Welfare Committees and District Child Protection Units. The Model Guidelines under the POCSO Act, published by the Ministry of Women and Child Development, contain descriptions of the functions of each of these professionals under the Act, and also lays down guidelines for how these duties are to be discharged.

#### Conclusion

The health and security of the country's children is integral to any vision for its progress and development. The law on Child Sexual Abuse "The Protection of Children from Sexual Offences Act, 2012" defines different forms of sexual abuse, including penetrative or non-penetrative assault, as well as sexual harassment and pornography. It includes children friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. Doctors, nurses and other health sector professionals are important stakeholders in the prevention and response to sexual violence against children and they can understand and appreciate the linkages among prevention, intervention, and treatment. The multi-sectoral approach to the problem will be conducive to the justice delivery process, minimize the risks of health problems, enhance the recovery of the child and prevent further trauma.

#### Conflict of Interest

None

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