

Review Article

Unmarried Minor Girls and Pregnancy: Medico-Legal Issues

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ABSTRACT

Sexual abuse of children is a heinous crime and violation of basic of human rights as well as child rights. When a minor girl becomes pregnant after an incidence of sexual abuse, the Protection of Children against sexual offences Act (POCSO Act) requires medical provider to report the case and the Medical Termination of Pregnancy Act (MTP Act) allows the medical practitioner to terminate pregnancy. The overlap between POCSO and MTP Acts creates confusion, delay, and sometimes denial of abortion service to minor girl. MTP Act allows a medical practitioner to terminate a pregnancy resulting from a sexual assault. As per the act, the written consent of girl is required before conducting the abortion; if the girl is a minor or a mentally ill person, then written consent of the guardian is required. It is recommended that when a minor girl pregnant after sexual assault consults a medical practitioner for abortion, the practitioner, public or private must ensure safe legal abortion in persuasion of MTP Act.

Keywords: Medical termination of pregnancy, Minor, Pregnancy.

INTRODUCTION

Children and adolescents (less than 18 years of age) are contributing about 44.4% of total population in India.¹ Sexual abuse of children is a heinous crime and violation of basic human rights as well as child rights. Sexual abuse in children is an under reported offence in India.² It is necessary for the proper development of child that his/her right to privacy and confidentiality be protected and respected by every person.³ The Government of India enacted the Protection of Children against Sexual Offences Act (POCSO Act, 2012) to prevent and address sexual abuse in children legally defined as less than 18 years of age.³ According to

National Crime Record Bureau data, 32608 cases were reported in 2017 and 39827 cases were reported in 2018 under POCSO Act.⁴ The Medical Termination of Pregnancy Act (MTP Act, 1971) guides induced abortion in India. When a minor girl becomes pregnant after an incidence of sexual abuse, the POCSO Act requires the medical provider to report the case and the MTP Act allows the medical practitioner to terminate pregnancy. The overlap between POCSO and MTP Acts creates confusion, delay, and sometimes denial of abortion service to minor girl. This review provides valuable information about these two acts and guide to medical practitioners regarding the medico-legal aspects of management of a case of unmarried minor girl with pregnancy.

UNMARRIED MINOR GIRLS WITH PREGNANCY AND RELATED LAWS

POCSO Act, 2012: The Parliament of India passed the Protection of Children against Sexual Offences bill in 2011 regarding child sexual abuse and on 22nd May 2012 in to an Act. This act provides a robust legal framework for the protection of children from offences of sexual assault, sexual harassment, and pornography while safeguarding the interest of the child at every stage of the judicial process.^{3,5}

Statutory rape: It is defined in Section 375 of Indian Penal Code (IPC) (amendment of 2013), that any male does intercourse with any female who is below age of 18 years, with or without her consent will be constituting a statutory rape. The consent of minors is immaterial and will not be considered as defence. Sexual intercourse with wife above fifteen years of age is not rape.⁶

Section 357C of Criminal Procedures Code (Cr.P.C): It states that all hospitals, public or private should immediately provide medical treatment free of cost to the victims

of sexual assault and immediately inform the police. Non-treatment of victims by any hospital, public or private should be punishable under Section 166B IPC.⁷

Section 19(1) of POCSO Act: It binds a person who has knowledge or has an apprehension that an offence punishable under the act has been committed or is likely to be committed to report the same to the police. Failure to report the commission of an offence is punishable under section 21 of POCSO Act.^{3,5} As per sub clause 5(3) of the POCSO Act^{3,5} “no medical practitioner, hospital, or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a prerequisite to rendering such care.”

Section 39 Cr.P.C: This section states that every person is bound to give information relating to the commission of certain offences to the nearest magistrate or police officer. This section is also binding to medical men for giving information of a crime to the nearest police station.⁸ Noncompliance is punishable under section 176 IPC.⁹

Medical Termination of Pregnancy Act, 1971: This act governs medical practitioner on induced legal abortion service delivery in India. MTP Act section 3 allows a medical practitioner to terminate a pregnancy resulting from rape. The continuation of pregnancy would involve a risk to the life of the woman or of grave injury to her physical and mental health.¹⁰ Consent for MTP: As per this act, the written consent of woman is required before conducting the abortion; if woman is a minor or a mentally ill person, then written consent of the guardian is required.¹⁰

As per Medical Termination of Pregnancy (Amendment) Act, 2021 (1) If the period of pregnancy is below 20 weeks, it can be terminated by the opinion of a single doctor; (2) If the period of pregnancy is between 20 weeks to 24 weeks, then minimum two medical practitioners, or a medical board must agree for termination of pregnancy.¹¹

MTP Act and Confidentiality: The medical practitioner/head of hospital should maintain a MTP register, case sheet, and operation theatre register. The name of the patient and other information should not be disclosed. All documents (consent form, certified opinion of doctor, and procedure of MTP) should be kept under safe custody for five years.¹⁰

The Ministry of Health and Family Welfare Guidelines

and Protocols: Medico-legal Care for Survivors/Victims of Sexual Violence¹² (2013) states, “Providing treatment and necessary medical investigations is the prime responsibility of the examining doctor” and that “admission, evidence collection, or filing a police complaint is not mandatory for providing treatment.” This means that providers can inform the authorities about the pregnant minor after performing the abortion.

So a health care provider is not obligated to file a FIR or to conduct an investigation; the health care provider's duty is only to inform the authorities when providing safe abortion service under the MTP Act.

Samples to be preserved

- (1) The examining doctor is to contact the respective police station, ask them to collect the DNA Kit from the Forensic Science Laboratory (FSL) and bring it to the hospital to coincide with the time of MTP. The aborted foetus/products of conception must be preserved in normal saline in a glass container, sealed, labelled, and handed over to the investigating officer of police. The sample is to be transported by police in an ice-box, maintaining the temperature at around 4°C at all times. This sample will be used for DNA profiling of foetus, for establishing paternity or cross matching with accused.¹² Non-compliance of this is punishable under section 201 and 202 IPC.⁹
- (2) Blood samples of the victim should be taken on blood collection card (termed as FTA card) for DNA proofing of victim and cross matching.

The medical practitioner must ensure that samples should be properly sealed, labelled, and handed over to the police while maintaining the chain of custody. If a fool proof chain of custody is not maintained, the evidence can be rendered inadmissible in the court of law. The doctor has the responsibility of properly preserving samples till handed over to police.⁶

The medical practitioner/ Forensic Medicine expert should prepare a medico-legal report and without delay forward it to the investigating officer, who shall forward it to the magistrate in section 173 Cr.P.C as a part of documents.⁸

DISCUSSION

MTP Act allows a medical practitioner to terminate a

pregnancy resulting from sexual assault. The continuation of pregnancy would involve a risk to the life of the woman or grave injury to her physical and mental health. The name of patient and other information should not be disclosed. All relevant documents should be kept under safe custody for five years.¹⁰ Section 39 Cr.P.C and section 176 IPC binds the medical practitioners to give information relating to the commission of certain offences to the nearest magistrate or police officer.^{8,9} Section 357 C Cr.P.C and section 166B IPC bounds the hospitals, public or private, to immediately provide medical treatment, free of cost to the victims of sexual assault and immediately inform the police.^{7,9} Section 19(1) and 21 of POCSO Act bounds a medical practitioner to inform the police about the crime.^{3,5}

When a minor girl becomes pregnant after an incidence of sexual abuse and wants to take medical services then Sections 39 Cr.P.C., 357 Cr.P.C. and POCSO Act, 2012 requires that the medical service provider must report the case to the nearest police or magistrate irrespective of the will of the victim and the MTP Act allows the medical practitioners to terminate such pregnancy and to keep secret all related documents with name of victim. Overlap between these acts and law (POCSO Act, related Cr.P.C. and MTP Acts) creates confusion for the medical men, resulting in reluctance, delay, and sometimes denial of abortion services to minor girls, which results in encouragement of criminal and unsafe abortions leading to avoidable complications. The doctors refuse abortion citing law and legal procedures in case of minors, which is a threat to the health of the minor. As per available records, 56% of abortions performed in India are unsafe with 10 women dying due to these each day.¹³ The criminal abortion and its complications may lead to infection, sepsis, future infertility, bowel injury, injury to internal organs, and even death.¹⁴ The burden of unsafe abortion lies not only with the women and families but also with the public health system.¹⁵

CONCLUSION

It is hence recommended that, when a minor girl pregnant after sexual assault consults a medical practitioner for abortion, the practitioner, public or private must ensure safe legal abortion in persuasion of MTP Act. The practitioner should obtain the consent of the guardian, document the procedure, monitor medico-legal report preparation, preserve relevant samples, and inform the

police as per POCSO Act and related Cr.P.C. The medico-legal report and samples must be handed over to police as per the above-mentioned guidelines. The medical practitioners must provide appropriate medical services to these victims without hesitation, thus assuring quality medical services to victims without delay. The victim of sexual assault may be in need of psychological counselling, proactive treatment of sexually transmitted diseases, and other relevant actions or interventions like prevention of conception. Proper management, adequate follow-ups, and medico legal formalities are mandatory for all medical service providers to prevent legal action and medical negligence suits.

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