

Forensic issues in Child Sexual Abuse

By

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Objectives

- To understand what are the **legal issues** in medical examination of a case of CSA
- To understand what is the **evidence** to be collected depending on nature of assault/violence
- To know what constitutes **medical opinion** & why?
- To know the **solutions for FAQs** (frequently asked questions) during medical examination of a case of CSA

Recent Advances

- **POCSO 2012** – Protection of Children from Sexual offences Act, 2012 & Rules 2012
- **CLA 2013** - Criminal Law Amendment Act, 2013
- changes in IPC, CrPC, IEA.....
- Guidelines from **Ministry of H&FW**,
Central Government of India, 2014
- Guidelines from **Ministry of WCD**,
Central Government of India, 2013
- Judgments from **Supreme Court & High Court**

Can you examine without a police requisition?

- Yes
- SC in State of Karnataka V Manjanna
(2000 SC (Crl) 1031/CriLJ3471/2006(6)SCC188)
- **Medicolegal Emergency**
 - Voluntary reporting to the Hospital
- **POCSO Act 2012**
 - Sec 27 POCSO Act 2012 &
 - Rule 5 POCSO Rules 2012
- **Section 357 C CrPC**

Informed Consent/ Informed Refusal?

• I.....D/o or S/o.....hereby give my consent for:

a) medical examination for **treatment** Yes /No

b) this **medico legal examination** Yes /No

c) **sample collection** for clinical & forensic examination Yes /No

I also understand that **as per law the hospital** is required to inform police and this has been explained to me.

I want the information to be revealed to the **police** Yes /No

I have understood the purpose and the procedure of the examination including the risk and benefit, explained to me by the examining doctor. My right to **refuse** the examination at any stage and the consequence of such refusal, including that my medical treatment will not be affected by my refusal, has also been explained and may be recorded. Contents of the above have been explained to me in language with the help of a special educator/interpreter/support person (circle as appropriate)

If **special educator/interpreter/support person** has helped, then his/her name and signature.....

Name & signature of survivor or parent/Guardian/person in whom the child reposes trust in case of child (<12 yrs) With date, time & place.....

Name & signature/thumb impression of Witness With date, time & place

Purpose of Medical examination

- Evidence based model -----→ **TREATMENT** model
- **Rule 5 POCSO**.... Injuries, STDs – HIV, pregnancy, Emergency Contraception, psychological counseling
- **Section 357 C CrPC**
..... First aid / treatment, **free of cost**
Sec 33(8) & Rule 7 POCSO – Special Court
- **Section 166 B IPC** 1yr, fine, both

Comprehensive care

- Informed Consent & Documentation
- Physical & surgical needs
- Emergency contraceptive & pregnancy advice
- Mental assessment & Counseling
 - RapeTrauma Syndrome (PTSD)
 - CSA Accomodation syndrome
- STD care including HIV & Hepatitis B
- **Rehabilitation** – shelter homes / occupation / **monetary relief**
- **Follow up** – delayed injuries / STD

Is it mandatory to inform police?

- Mandatory reporting under POCSO Act 2012
 - Sec 19 ... less than 18 yrs (Child cannot report/complain so responsibility on surrounding Adult)
- **Sec 357C CrPC** Sec 166B IPC or Sec 21 POCSO
- Section 164A CrPC CONSENT (WCD guidelines ?!)
- Examination / evidence collection / treatment / Photography / Police intimation???
- Informed refusal?????? NO..... As per Law....?
(HFW guidelines)
- Rule 4 of POCSO **FIR !**

Problems of Mandatory reporting

- Care & Treatment affected
- MTP services under MTP Act ?
- Confidentiality , Privacy, Trust !??
- International scenario – **Support agencies!!!!**
- David McQuoid-Mason, Mandatory reporting of sexual abuse under the Sexual Offences Act and the ‘best interests of the child’, SAJBL, December **2011**, Vol. 4, No. 2 SAJBL
- Strode, J. Toohey, C. Slack, S. Bhamjee, Reporting underage consensual sex after the Teddy Bear case: A different perspective, SAJBL, November **2013**, Vol. 6, No. 2.

Is it mandatory to go to Government hospital for Sexual Assault examination?

- Sec 357 C CrPC & WCD guidelines
.....Public or **Private**
Central Govt, State Govt, Local body, **Any person**
- Rule 5 POCSO Nearest Hospital
- Sec 27 POCSO As per Sec 164 A CrPC
- Sec 164 A CrPC Absence of Govt..... **Any RMP**

Is presence of injuries a must???

- **WHO evidence** – 30%
Bowyer L, Dalton ME. *Female Genital Injuries*. *ObstetGynaecol.*1997;10
- **CEHAT evidence** (ht
19% body injuries, 38% g
- **23% cases only had injur**
:Female Genital Injuries I
Vaginal Intercourse, *Fore*
- **Unconscious** – drug,
- Explanation 2 to Section
no physic
- **WCD guidelines** - in CSA

Guidelines for
medico-legal care
for victims of
sexual violence



WORLD HEALTH ORGANIZATION
GENEVA

Limitations of Medical Evidence?

- **When was the examination done?** Documentation
- Mucosal injuries
(<http://pediatrics.aappublications.org/content/116/2/506.long>)
- Healing of injuries
- **Post assault activities** – Urination/ Defecation ??, Washing, douching, bathing!!!!
- **Use of Condom** which is not recovered

No medical evidence **DOES NOT MEAN** No Offence

Is it necessary for a female doctor ONLY to examine sexual assault victims?

- Liberal interpretation of Section 53 (2) CrPC
- Section 164A CrPC
 - any RMP
- Section 27 POCSO Act
 - woman doctor for girl survivor
- Guidelines & Protocols, Ministry of **HFW**, 2014
every possible effort..... If not... male doctor

Who can be present while the doctor conducts examination?

- No other persons – if it's a Female doctor
- If it's a Male doctor
 - Disinterested, Sound, Major, Female
- Sec 27 POCSO Act 2012
 - Parent or any person whom she/he trusts
 - if not Hospital has to provide

How should the examination be?



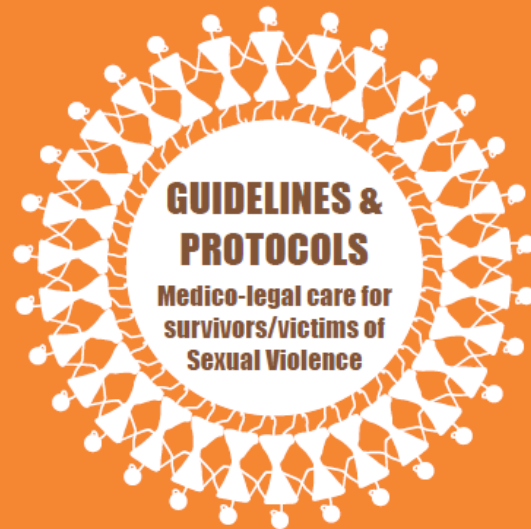
MINISTRY OF WOMEN AND CHILD
DEVELOPMENT

Model Guidelines under Section 39 of
The Protection of Children from Sexual Offences
Act, 2012

September, 2013

Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012

 Ministry of Health
& Family Welfare
Government of India



Are past sexual practices still documented in Sexual assault examination?

- Sec 146 IEA ... Amended in 2005 & 2013
- Two finger test
- Old hymenal injuries
- Past Pregnancies / Abortions / Contraceptive practices / Last consensual sexual intercourse
- Built / Height / Weight

When relevant

- Chronic sexual abuse
- If within one week - consensual sexual intercourse

Suspect CSA

As Child often does not complain of CSA

MoHFW Guidelines

- Pain on urination and/or defecation
- Abdominal pain / generalized body ache
- Inability to sleep
- Sudden withdrawal from peers / adults
- Feelings of anxiety, nervousness, helplessness
- Weight loss
- Feelings of ending one's life

MoWCD Guidelines

- Vaginal discharge
- Abdominal pain
- Encopresis (Soiling)
- **Enlarged hymenal ring???**

Sec 41 POCSO?

- The provisions of sections 3 to 13 (both inclusive) shall not apply in case of **medical examination or medical treatment** of a child when such medical examination or medical treatment is undertaken with the **consent of his parents or guardian**.
- Child wants examination but **parents oppose?**
- Consent for **Sexual Intercourse V Medical Exam?!!!**
- Section 375 IPC excludes all medical examinations
- **Sec 42A POCSO**

Is it necessary to do age estimation?

- Borderline cases
- Sec 15 (5A) ITPA (Immoral Traffic Prevention Act) 1956
Sec 164A CrPC..... Sec 27 POCSO
- SC judgment in 2013.....Ashwani Kumar Saxena **V** State of M.P. 2013(I) OLR(SC)-214
Documentary proof of age **V** Medical age

Is it necessary to do age estimation?

- Only in cases where those documents or certificates are found to be **fabricated** or **manipulated**, the court, the J.J. Board or the Committee need to go for medical report for age determination.

{SC judgment in 2013.....Ashwani Kumar Saxena
V State of M.P. 2013(I) OLR(SC)-214}

- **Model guidelines by Ministry of WCD, 2013**

What is the status of **Marital Rape**?

- Civil Law

- ✓ - **PWDVA**- Protection of Women from Domestic Violence Act..... **any age**

- Criminal Law

- X - **Sec 375 IPC**..... more than **15 years** of age

- ✓ - **POCSO Act**..... **less than 18 years** of age

Minimum age for marriage

is **18 years** legally for female

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What is Medical Evidence?

Trace evidence

- Locard's principle of exchange
- Semen , Spermatozoa, Blood, Hair, cells, Dust, Paint, Grass, Lubricant, Fecal matter, Body fluids, Saliva

Injuries – Body / Genitals..... – Skin / Mucosa

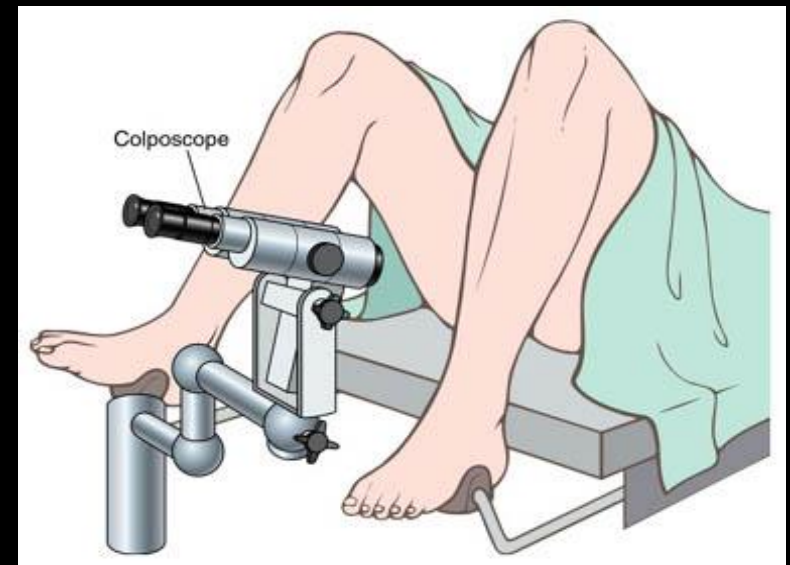
- Abrasions, Contusions, Lacerations, Fractures
Incised / Stab / Chop / Firearm injuries

STIs – HIV, Hepatitis, Gonorrhea

Evidence of treatment

– pain, infection, depression...

Colposcopy



- Magnification / Photo & or Video / Green & white filters
- Introitus, vaginal, cervical – abrasions, lacerations, contusions

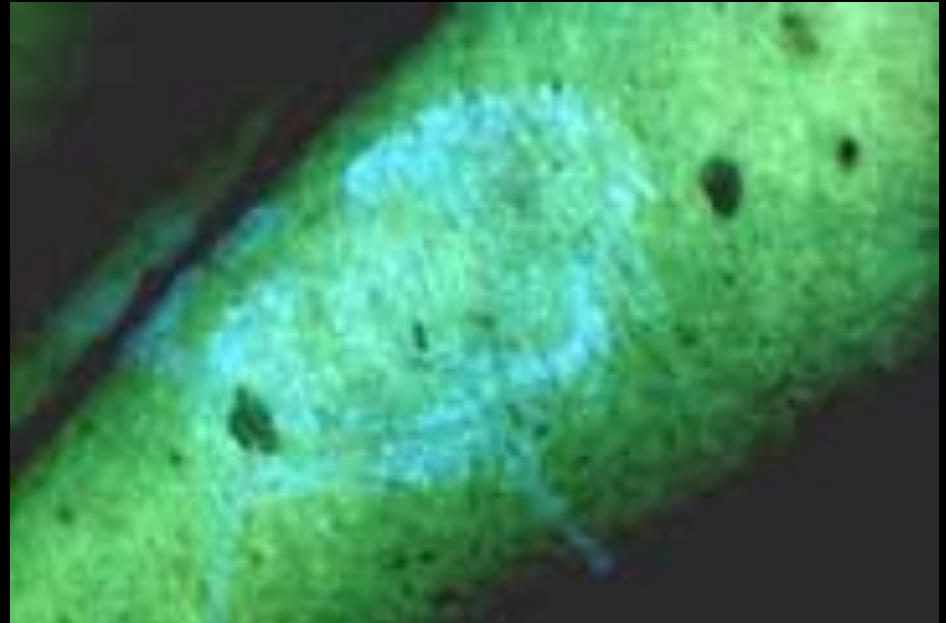
X David J. Templeton, Angela Williams, Current issues in the use of colposcopy for examination of sexual assault victims, *Sexual Health* 04/**2006**; 3(1):5-10 ----- **Child V Adult**

- ✓ L C Lenahan, A Ernst, B Johnson, Colposcopy in evaluation of the adult sexual assault victim. *Am J Emerg Med* **1998** ; 16:183-184 ----- **colposcopy V visual exam**

Wood's Lamp Examination

1. Does a wood's lamp effectively detect semen? American Family Physician, May 15, 2000
2. Sexual abuse of children, Detection of semen, Am J Dis Child. 1992 Jun;146(6):700-3
3. Wood's lamp utility in detection of semen. Pediatrics, 1999 Dec;104(6):1342-4

X - water-based lubricant, petroleum jelly, antibiotic ointment and lotion



Toluidine blue dye test



Toluidine blue dye test

- Effect of **per speculum** examination and **digital / manual** examination
- Effect on **evidence collection?????**
- Microinjuries in **consensual sexual act?!!!!!!**

DNA samples

- Sec 164 A CrPC & Sec 53 A CrPC
- Evidence to compare?!
- EDTA vaccutainers – dry gauge – FTA cards?
- Workload on FSL?
- Accreditation NABL / JCI
- Private labs / Defense labs
- **Human DNA Profiling Bill 2015**

Is it relevant to document when was the examination done?

- It all depends on when reported – hours / days / weeks / months after the incident
- Medical evidence ? – washing / bathing / douching / urination / defecation
- Not detected in medical exam **doesnot** mean Crime incident did not occur
- In **Opinion** column
please specify when examination done

Counseling – is it only on paper?

- PTSD – Post Trauma Stress Disorder
- Child Sexual Abuse Accommodation syndrome
- Emotion ?
- Mental status?
- **General mental condition**
- **Calm V Disturbed**
- Model guidelines by Ministry of **WCD**, 2013
- Guidelines & Protocols, Ministry of **HFW**, 2014

MoHFW Guidelines on Psychological Counseling

- Creating **enabling atmosphere**
- Establishing **trust**
- **Facilitation & Demystification** of medical procedures
- Addressing survivor's **emotional well-being**
- **Safety assessment**
- Role of **family, friends & community**

Exercise – What swab to take? Why?

History of sexual violence	Type of swab/s	Purpose	Any other points to consider?
Peno – Vaginal			
Peno- Anal			
Peno-Oral			
Use of Objects			
Use of body parts (Fingering)			
Masturbation			

History of sexual violence	Type of swab/s	Purpose	Any other points to consider?
Peno – Vaginal	Vaginal	<ul style="list-style-type: none"> •Semen / sperm detection •Lubricant •DNA 	<ul style="list-style-type: none"> • whether ejaculation occurred inside vagina or outside •Use of Condom
	Body	<ul style="list-style-type: none"> •Semen / sperm detection •Saliva (in case of sucking / licking) 	<ul style="list-style-type: none"> •If ejaculation occurred outside
Peno- Anal	Anal	<ul style="list-style-type: none"> •Semen / sperm detection •Lubricant •DNA Faecal matter 	<ul style="list-style-type: none"> • whether ejaculation occurred inside anus or outside •Use of Condom
	Body	<ul style="list-style-type: none"> •Semen / sperm detection •Saliva (in case of sucking / licking) 	<ul style="list-style-type: none"> •If ejaculation occurred outside

History of sexual violence	Type of swab/s	Purpose	Any other points to consider?
Peno-Oral	Oral	<ul style="list-style-type: none"> •Semen / sperm detection •DNA • Saliva 	<ul style="list-style-type: none"> • whether ejaculation occurred inside mouth or outside •Use of Condom
	Body	<ul style="list-style-type: none"> •Semen / sperm detection •Saliva (in case of sucking / licking) 	<ul style="list-style-type: none"> •If ejaculation occurred outside
Use of Objects	Swab of the orifice (anal, vaginal,oral)	Lubricant	Detection of lubricant used if any
Use of body parts (Fingering)	Swab of the orifice (anal, vaginal,oral)	Lubricant	Detection of lubricant used if any
Masturbation	Swab of the orifice or body part	<ul style="list-style-type: none"> •Semen / sperm detection •DNA 	<ul style="list-style-type: none"> •whether ejaculation occurred or not •If ejaculated in orifice or

Is it difficult / not possible to issue Provisional Opinion ?

- IO gets stranded / Accused gets benefit of doubt
- Wet smear – Spermatozoa..... Expertise ???!!!
- Injuries – Age of injuries

Final Opinion?

- After investigation reports – FSL – 2 reports!
- **Reasoned opinion** – Sec 164A CrPC
- Spermatozoa **V** Semen
- Absence of evidence including injuries
 - use of condom / unconsciousness / washing / healing of injuries
- Time of examination

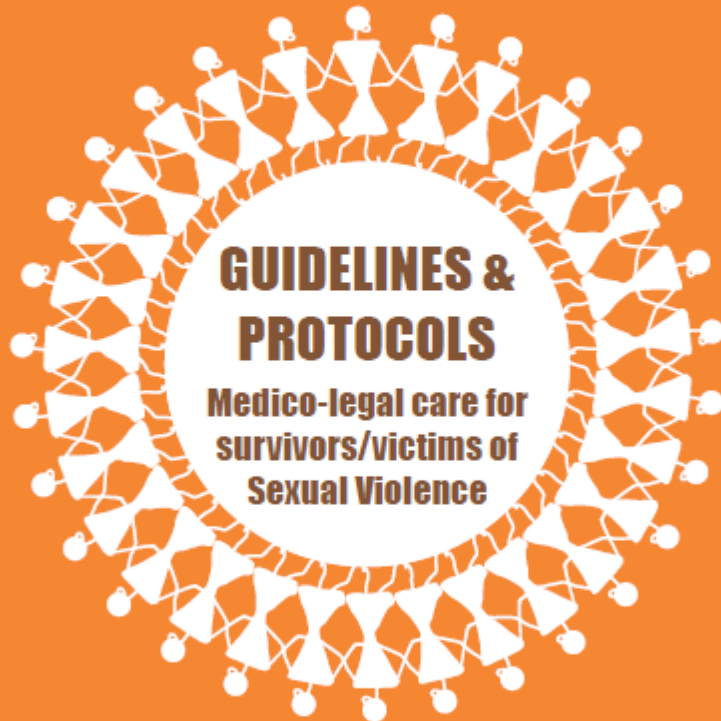
Medical Opinion & Law

Section 375 IPC

- Earlier Penetrative Penovaginal intercourse only
- Penetrative Peno – vaginal / anal /oral / urethral
- Penetrative – Objects / parts of body – fingering
- Non Penetrative

POCSO

- Sec 3. Penetrative sexual assault / Sec 5. Aggravated
- Sec 7. Sexual assault / Sec 9. Aggravated
- **Even if Medical opinion negative**
- **still Rape / Sexual assault**



- **12 years** – Consent
- Abuser may accompany, **be aware & screen**
- **Do not assume** that child cannot give history
- **Believe** what is being reported by child
- **Doses** of treatment
- **Psychological** support
- Assurance of **confidentiality**
- Provision of **Privacy**
- **No insensitive practices**

Protocol & guidelines aim to achieve

- Operationalise **informed consent**
 - examination, treatment and police intimidation.
- Specific guidance on dealing with persons
 - **disabilities, sex workers, LGBT persons, children, persons facing caste, class or religion based discrimination.**
- Ensure **gender sensitivity** in the entire procedure by disallowing any mention of **past sexual practices** through comments on size of vaginal introitus, elasticity of vagina or anus.
- Further, it **bars** comments of **built/height-weight/nutrition** or **gait that perpetuate stereotypes about 'victims'**.

Protocol & guidelines aim to achieve

- Focus on **history** by recognising various forms and **dynamics of sexual violence** including activities that lead to loss of evidence
- Evidence collection based on **science and history**, with specific guidance for taking relevant samples and preservation of evidence.
- Lay down **Standard Treatment protocols** for managing health consequences of sexual violence.
- Lay down Guidelines for provision **of first line psychological support.**

POCSO Act & Rules of 2012

- 18 yrs of age – Child
- Gender neutral language – Victim / Accused
- Penetrative / Non-Penetrative offences
- Aggravated offences
- Minimum punishments
- Directions to Police / Courts
- Use of Interpreters, Support persons, Special educators
- Female doctor – girl victim
- Trusted person – Parent / Guardian – if none?!?!?

To Conclude.....

- The **legal issues** in medical examination of a child with sexual abuse
- The **evidence** to be collected depending on the nature of assault
- What constitutes **medical opinion** & why?
- **Solutions for FAQs** (frequently asked questions) during medical examination of CSA.

THANK

YOU