

The Protection of Children from Sexual Offences Act and Provision of Abortion Services to Young People

A Brief Note for Service Providers



■ Background

Lack of awareness, confusion and misconceptions about individual obligations and adolescents' rights in the context of the Protection of Children from Sexual Offences (POCSO) and MTP Acts adversely affect health services to adolescents. CommonHealth's baseline study in Bihar and Tamil Nadu to understand the availability and access to safe abortion services, the factors that impact these; and to understand the perspectives of different stakeholders on abortion as a women's rights issue highlighted these issues as a major factor in service denial to adolescents. Adolescent girls (18-19 years) as well as service providers mentioned that the legal requirement of mandatory reporting under the POCSO Act affects the provision of abortion services to young women visiting a government facility. The health service providers appeared to have inadequate information about the Act and their obligations under it and in view of their apprehensions of legal repercussions often denied services to adolescents. This brief provides critical information about the Act and health service provider's obligations under it.

■ POCSO Act

The POCSO Act was formulated to address sexual abuse and sexual exploitation of children and came into existence on 22nd May 2012.

The Act defines a child as any person below 18 years of age, and gives importance to the best interests and well-being of the child. It defines different forms of sexual abuse¹, sexual harassment and pornography; talks about provisions related to encouragement or support of the offence; and prescribes punishment as per the gravity of the offence. Under the Act, intent, attempt or encouragement or support to commit or actual commitment of an offence of child sexual abuse, is liable for punishment and those who are in the know of the offence have to mandatorily report it.

■ Provider Obligations

As per Section 19(1) of the Act a person who has information of any abuse has to mandatorily report the case to the immediate superior authorities and the police or the Child Protection Committee.

1 As per the Act, even consensual sexual activity if one of the partners is minor is "abuse" as the partner is not legitimately "capable" of providing consent.

CommonHealth, constituted in 2006, is a multi-state coalition of organizations and individuals advocating for better sexual and reproductive health, with a specific focus on maternal health and safe abortion.



The provisions under the Act in case of any inconsistency override provisions of any other Law. The Act makes it clear that mandatory reporting exists even if the information is acquired in the course of professional duties such as health service provision or within a confidential relationship. As per the Act, a girl under the age of 18 cannot give consent for sexual intercourse. The Act views all below 18 years of age sexual activity as an offence and the minor as a survivor of sexual assault. Therefore, any minor girl coming for services for pregnancy, contraception, abortion or treatment for Sexually Transmitted Infections which suggest sexual activity, is considered a victim of sexual assault. It is mandatory for the service provider to report the case, irrespective of the marital status or consent of the minor girl. The health service provider who has information of any abuse and fails to report, may face imprisonment up to six months or may be fined, or both.

■ Implications for Services

The over-riding powers of the Act compromise health service availability. In girls 15 to 19 years the fertility rate is 23 per 1000 and as many as 8% of them were found to be pregnant or mothers at the time of NFHS 4 survey. This group of young mothers is already vulnerable and the Act has the potential to increase their vulnerability by reducing access to services. The MTP Act guarantees privacy and prohibits disclosure. However, the POCSO Act mandates reporting by health service providers in case of minors seeking abortion services or even contraception. The Act also makes the non-provision of a service to a minor an offence. Inadequate awareness and apprehensions about legal repercussions are known to have led to denial of reproductive and sexual health services mandated even in national programme for adolescents (Rashtriya Kishore Swasthya Karyakram or RKSK).

■ Provider's Legal Obligations

As per the Act the health service provider has to inform the authorities. She / he is not expected to file a First Information Report with the police or conduct an investigation nor does she / he have to wait for legal permission for providing services. She / he can inform the authorities after provision of services.

■ References

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- <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>
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