

Case Report

Fingering in Vaginal Introitus: A Case of Sexual Assault In the Perspective of POCSO Act, 2012

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Abstract

Childhood sexual assault is a very important topic to be discussed seriously, as the statistics regarding the cases are increasing day by day. The research literature and advocacy should focus upon improving the community responses to sexual assault cases and preventing it. The offenders must be prosecuted and treated vigorously. The newly introduced POCSO Act, 2012 (Prevention of Children against Sexual Offence Act) has made a provision for stringent and rapid dispensation of justice in such cases. In the present case, the alleged accused had inserted his right middle finger in the vaginal introitus of the victim aged Five years. Two crescentic abrasions were present on the medial aspect of thigh and one contusion on left vulva with intact hymen of the victim. There was no evidence of any injury or stains on the body of accused. The present case of 'fingering' in vaginal introitus is discussed in the perspective of new POCSO Act.

Key Words: Sexual abuse; POCSO Act 2012; Sexual assault in Children, Fingering

Introduction:

Sexual abuse or sexual assault is a widespread problem in our Indian society as well as worldwide. It causes long term effects on psychological and physical health and the effects extend far beyond of it, because family, friends, nearer and relatives are negatively affected by it.

Sexual abuse are of many types, initiating just from a seduction by beloved and nearer or strangers up to violent sexual acts. In variety of circumstances it can occur within and different relationship associated with the victim. [1] As popularly stated "Today's children are the futures of tomorrow," this powerful statement assumes special significance because today one third population is of the children in our country.

The child sexual abuse has gained much attention and significance in recent years. Ministry of statistics and program implementation had clearly mentioned the statistics of childhood abuse including sexual assaults and sexual abuse of children in India.

They states that the most of sexual abusers are not strangers or pedophiles but are nearer, neighbors or known persons to family or child. [2] An Asian center for human rights (ACHR) also mentioned the statistical values of childhood abuse cases in India. [3]

There are 48338 cases of rapes on children in 10 years from 2001 to 2011. Among these, 733 cases are reported in justice homes. With 33.6% increase in these 10 years (National Record Bureau of Statistics), Madhya Pradesh has highest incidence rate with 9465 cases in 2001-2011 followed by Maharashtra with incidence rate of 6868 cases in 10 years and minimum 38 cases had reported in Nagaland. [4]

But this is just a tip of iceberg as large numbers of cases were either not reported due to fear of stigma on the family or suppressed by the assailant. The present case of sexual assault is discussed in the light of new legislation, the "Prevention of Children against Sexual Offence Act", 2012.

Case Report:

A five year girl child was brought by police for medico-legal examination in an alleged case of sexual offence. The complaint in this regard was lodged by the mother of the victim against the alleged accused who was a neighbour and was well known to the family and child. The child used to call him uncle and play often with him.

On the day of incidence, the girl while playing around her home in afternoon, the alleged accused called her to give

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candy/chocolate. He took the child to his home. While searching the daughter, mother heard her child was crying in neighbors' house. She knocked the door, initially the accused resisted to open the door, but later on he opened the door and showed that nothing has happened and explained that the child was crying for demanding more candies. By the time many people gathered there and asked the child about the incidence.

The victim child told that the uncle has removed her jeans and shirt. Then he hurt me here (by pointing the finger towards private parts), with hand and fingers. He told me not to reveal the fact to mother so that I will get more candies. The victimized child has been taken to Government Medical College and hospital within six hours of the incidence. The alleged accused was arrested by the police u/s 376 and was also sent for medical examination on next day.

Examination of Victim:

Examination of victim was carried out by a team comprising of one female Gynecologist and one Forensic doctor. Clothes of the victim were intact without having any stains. There was oval shaped reddish-blue contusion over abdomen at right anterior superior iliac spine of size 1.5x1cm.

Two reddish crescentic abrasions placed one below other on medial aspect of right thigh in upper one third area of size 0.8x0.1cm each. There was also a reddish-blue oval contusion over left vulva of size 2x1cm placed vertically at middle one third area.

Hymen was intact with reddish colored serous secretion present in vaginal orifices. The samples of vaginal swab, vulval swab, blood, and nail scrapping were sent for chemical analysis.

Examination of Alleged Accused:

The accused person is 35 years male and was well known to the girl victim. When asked about the incidence, he told that he had inserted a tip of right middle finger into the vaginal introits of the victim and moved to and fro once, but the child started crying. He had washed his hands after the incidence.

He was well oriented in time, place and person. There was no evidence of any physical or mental abnormality. He was of thin built, 5.2 feet height and 52 kg weight. He was married and has normal development of body. There was no evidence of any systemic abnormality.

There was no evidence of any injury, mark of struggle, and stains over body.

Smegma was present and pubic hairs were not matted. The external genitalia and

secondary sexual characters were well developed. The samples of penile swab, blood and nail scrapping were sent for chemical analysis.

Discussion:

Constitution of India clause (3) of article 15 empowers the state to make special provisions for children. India is also acceded to the convention on the rights of the child of United Nations. In view of this "The protection of children from sexual offences Act", 2012 has been implemented in India on 19th June 2012. [6] Preamble of this act stated that sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

According to the **section 3 A clause (b)**, a person is said to commit "penetrative sexual assault" if he inserts, to any extent any object or part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person. The punishment for such an act as per section 4 is imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and also be liable to fine. [6]

As per **section 5 B clause (m)**, a person is said to commit "aggravated penetrative sexual assault" if commits penetrative sexual assault on a child below twelve years of age and as per section 6, punishment for aggravated penetrative sexual assault is rigorous imprisonment for a term which shall be not less than ten years but which may extend to imprisonment for life and shall also be liable to fine. [6]

Section 7 C defines sexual assault as whoever with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. [6]

Section 8 provides punishment for sexual assault as imprisonment of either description for a term which shall not be less than three years but which may extend to five years and also be liable to fine.

And as per section 9 D clause (m), if the age of child is below twelve years then as per section 10 punishment is imprisonment for a term shall not less than five years but which may extend to seven years and shall also be liable to fine. [6]

In the present case, the accused penetrates his finger in the vaginal introits of the child. The circumstantial evidence that child found crying inside the house of accused, delay in opening the door, history narrated by the child of removal of clothes and penetration of finger by pointing towards her genitals and the injuries over medial aspect of thighs and genitals are corroborated the facts narrated by the child. As there is no history of forceful full penetration of finger, due the resistance offered by child in the form of crying, hymen was found to be intact.

Taken into consideration of all the circumstances and corroborative evidence, the present case of fingering in vaginal introitus comes under the purview of Section 3A clause (b), of POCSO Act, 2012.

There are many cases of childhood sexual abuse and most of them based on mere suspicion of guardians. But in the present case, history of unclothing and penetration injuries to the innocent girl was noteworthy.

Prior to the new Act, 2012, mere fondling of the genitals was considered as 'indecent assault' under section 354 IPC and shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine or with both.

But after the enactment of new Act related with protection of children against sexual offence, there was provision of stringent punishment for such an act, which would deter the upcoming offenders.

Conclusion:

In child sexual abuse cases, the victim may face higher level of depression, guilt, shame, eating disorder, denial, sexual problems, relationship problems and behavior problems.

If these problems continue, they may leads to suicidal ideation, disturbed sleep pattern, and self-destructive behavior. [1] The study also revealed that the victims of sexual abuse experience more sexual problems than general population like erectile dysfunction in males, low sexual desire in both sexes and arousal disorders mostly in women. [1]

Hence, not only medical examination and treatment but also the counseling of the victim by social worker and psychologist is most important and it should be made mandatory in such cases. The child should be provided with such counseling up till she has been brought into the main social stream of her life with normal developmental contours.

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