



Forensic issues **in** Survivors examination **of Sexual Violence**

By

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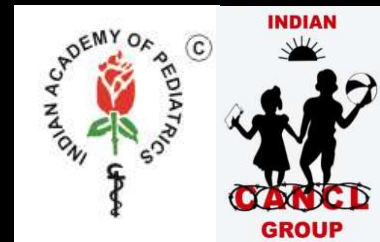
Bangalore, Karnataka

*****Hon. Consultant, CEHAT, Mumbai***

****** Hon. Consultant, ENFOLD, Bangalore***

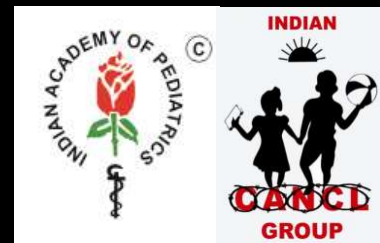
Recent Advances

- **POCSO 2012** – Protection of Children from Sexual offences Act, 2012 & **Rules 2020**
- **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**



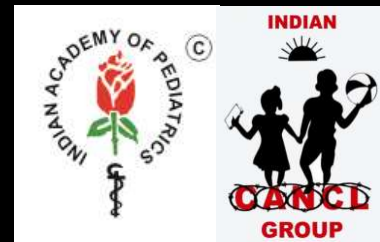
Can you examine without a police requisition a victim of Sexual Violence?

- Yes
- SC in State of Karnataka V Manjanna
(2000 SC (CrI) 1031/CriLJ3471/2006(6)SCC188)
- **Medicolegal Emergency**
 - Voluntary reporting to the Hospital
- **POCSO Act 2012**
 - Sec 27 POCSO Act 2012 &
 - Rule 6 POCSO Rules 2020
- **Section 357 C CrPC**



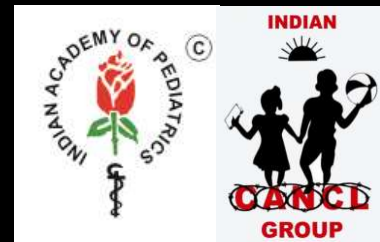
Purpose of Medical examination

- **Evidence based model** -----→ **TREATMENT model**
- **Rule 6 POCSO**.... Injuries, STIs – HIV, pregnancy, Emergency Contraception, psychological counseling, Drug deaddiction, Disability care
- **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



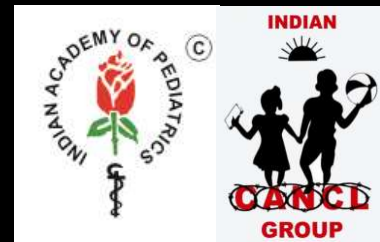
Is it mandatory to inform police?

- Mandatory reporting under POCSO Act 2012
 Sec 19 ... less than 18 yrs (Child cannot report/complain so responsibility on surrounding Adult)
- Sec 357C CrPC



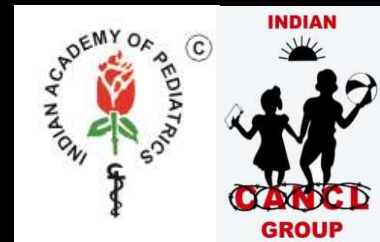
Problems of Mandatory reporting

- Care & Treatment affected
- MTP services under MTP Act ?
- Confidentiality , Privacy, Trust !??
- International scenario – **Support agencies!!!!**



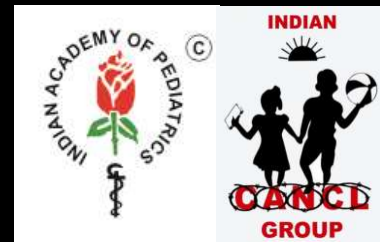
Is it mandatory to go to Government hospital for Sexual Violence examination?

- Sec 357 C CrPC & WCD guidelines
.....Public or **Private**
Central Govt, State Govt, Local body, **Any person**
- Rule 6 POCSO Nearest Hospital
- Sec 27 POCSO As per Sec 164 A CrPC
- Sec 164 A CrPC Absence of Govt..... **Any RMP**



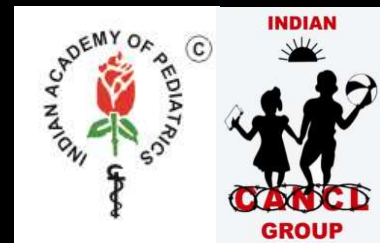
Is it necessary for a female doctor **ONLY** to examine sexual Violence victims?

- 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



Is presence of injuries a must??

- **WHO evidence** – 30%
Bowyer L, Dalton ME. Female Genital Injuries Res. *ObstetGynaecol.*1997;104:6
- **CEHAT evidence** (<http://www.cehat.org>)
19% body injuries, 38% genital injuries
- **23% cases only had injuries**
:Female Genital Injuries Res
Vaginal Intercourse, *Forensic*
- **Unconscious** – drug/tr
- Explanation 2 to Section 375
no physical
- **WCD guidelines** - in CSA – c

Guidelines for
medico-legal care
for victims of
sexual violence



Are past sexual practices still documented in Sexual Violence examination?

- Sec 146 IEA .. Amended in 2005 & 2013, Sec 53A IEA
- Two finger test
- Old hymenal injuries
- Past Pregnancies / Abortions / Contraceptive practices / Last consensual sexual intercourse
- Built / Height / Weight

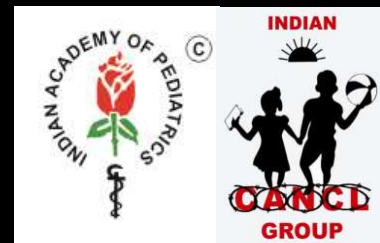
When relevant

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



Is it necessary to do age estimation?

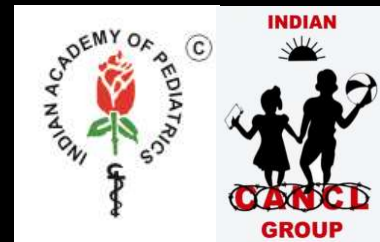
- Borderline cases
- Sec 15 (5A) ITPA (Immoral Traffic Prevention Act) 1956
Sec 164A CrPC..... Sec 27 POCSO
- SC judgment in 2012.....Ashwani Kumar Saxena **V** State of M.P. 2013(I) OLR(SC)-214
Documentary proof of age **V** Medical age



Is it necessary to do age estimation?

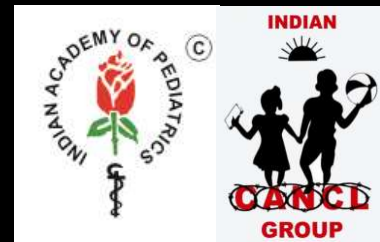
- Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the J.J. Board or the Committee need to go for medical report for age determination.

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



Is it necessary to do age estimation?

- Sec 94 of JJ Act 2015
 - **Presumption and determination of Age**
- Committee, Board to decide on child's age – decision final
- Reasonable doubt....
- **School records** to prove birth – marks cards
- **birth certificate** given by a corporation / municipal authority / panchayat
- only in absence of above, age shall be determined by an **ossification test** or any other **latest medical age determination test** ... on orders of Committee / Board



Age estimation*

Times of India, 2/12/2016

Bone test not enough to fix age: SC

AIIMS Report & Accused's Claim Of Being Minors At Time Of Crime Rejected

AmitAnand.Choudhary
@timesgroup.com

New Delhi: Holding that a medical test does not give an accurate finding regarding the age of a person, the Supreme Court has held that an accused cannot be declared a juvenile solely on the basis of ossification test result and allowed to evade a jail term.

A bench of Justices AK Sikri and R Banumathi said that a blind and mechanical view regarding the age of a person could not be adopted solely on the basis of medical opinion, and it refused to give credence to a report of AIIMS medical board according to which two murder convicts were minors at the time of committing a crime in 1994.

"Courts have always held



“Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other circumstances

SUPREME COURT BENCH

that the evidence afforded by radiological examination is no doubt a useful guiding factor for determining the age of a person, but the evidence is not of a conclusive and incontrovertible nature, and it is subject to a margin of error. Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other circumstances," it said.

"It is a well-accepted fact that age determination us-

ing ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years, which is true in the present case," the court said.

The court was hearing a plea of two convicts who, along with four others, were convicted and sentenced to life imprisonment in a murder case. The two convicts never raised the defence of their juvenility during the hearing in trial court and high court. When the matter reached the

Supreme Court in 2014, the two convicts told the court that they were minors at the time of committing the crime and could not be sent to jail.

Although the apex court agreed to examine the plea of the two convicts, it rejected the appeal of four other convicts and upheld their life imprisonment. As there was no documentary proof of their age, the court had asked AIIMS Delhi to conduct a medical test to ascertain their age.

The report said that their age was between 35-40 years in May 2016. As per the procedure to calculate the age at the time of incident, their age would have been around 15 years. But the bench refused to rely on the findings saying "Court should not take a hyper-technical approach while appre-

ciating evidence for determination of age of the accused."

The court pointed out that the accused were involved in about two dozen criminal cases before they committed the murder and that they were produced in lower courts in many cases. It said that had they been minors then the lower court would have treated them accordingly and not as majors.

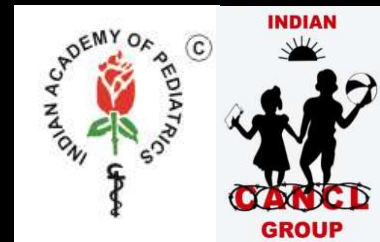
"Had it been so, the appellant would have been considered as children by their appearance. They would have been dealt with accordingly by juvenile court and the matters would not have been kept pending till this date. This in our view is yet another reason that opinion of medical board cannot be relied upon," the bench said.

* Mukarrab V State of UP, (2017)2 Supreme Court Cases 210: (2017) Supreme Court Cases (Cri) 710: 2016 SCC OnLine SC 1413



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



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

- Civil Law

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

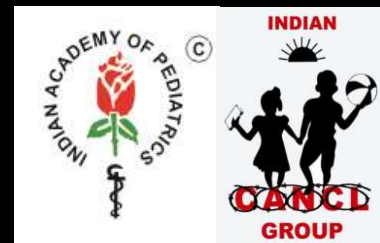
- Criminal Law

- X - **Sec 375 IPC**..... more than **15 years** ??????
 - 2017 - SC ruling in striking down this exception.**
 - Independent Thought v. Union of India (SC, 11.11.17)*

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

Minimum age for marriage

is **18 years** legally for female



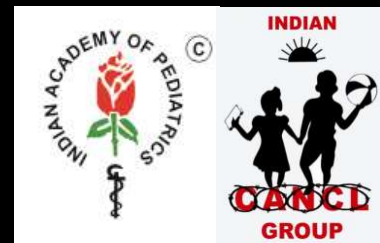
Domestic violence

- Protection of Women from Domestic Violence Act, 2005 & Rules, 2006
- Section 7 – Duties of Medical Facilities
Aggrieved person or PO / SP requests for medical aid – shall provide medical aid
- Rule 17 – as of Sec 7
 - if PO --- Domestic Incident Report (DIR)
 - **No refusal** of medical aid for NO prior DIR
 - Medical facility – DIR in Form I – forward PO
 - Copy of medical examination report - FREE



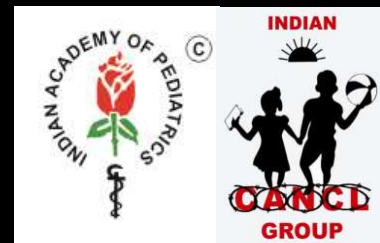
Is Child Physical abuse punishable?

- **Sec 75 JJ Act 2015** – Cruelty to child – 3yrs + 1 lakh ; CCI – 5yrs + 5lakhs; incapacitated – 10 yr
- **Sec 82 JJ Act 2015** – Corporal Punishment – first 10K / 3 M + fine / 3 yrs + 1 lakh for management
- **Section 17 RTE Act 2009** – bans mental harassment & Physical punishment
- Section **321 to 328 IPC, 326A & 326** IPC



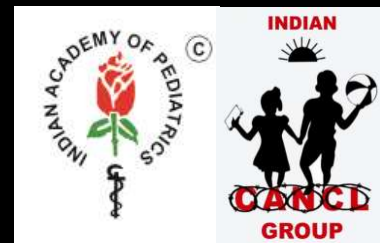
Case -Sexual assault victim approached a doctor for getting an MTP done post assault. Doctor had mandatorily informed police and then proceeded in conducting MTP. **Police have issued a notice to doctor alleging that the doctor should have waited till the police arrived before conducting MTP. Is the doctor/ Police wrong?**

- Sec 357 C CrPC and / or Sec 19 POCSO
- Sec 357 C CrPC and / or Rule 6 POCSO
- Sec 201 IPC



Case – Police forwards a request to the doctor to conduct a **complete medical examination** on a case of 6 year old victim who was **molested**. The police also wants **samples to be collected from genitals** and **victim's pubic hair**. What should the doctor do?

- Police manual
- Doctor to answer on scientific basis in writing
- **Penetrative V Non penetrative sexual assault**



- Case – Doctor refused to terminate pregnancy of a rape victim aged 17 years who was 23 weeks of gestation age citing that a Court order is needed for MTP. Is the Doctor wrong? Or Correct ?



- Medical termination of Pregnancy Amendment Act 2021
- Medical termination of Pregnancy Amendment Rules 2021
- 20 weeks – one doctor
- Above 20 to below 24 weeks – two doctors
- Special categories – Rule 3B –



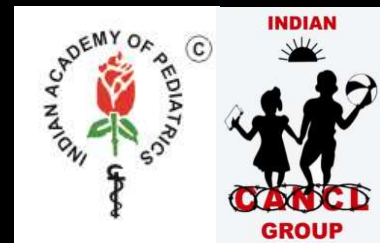
Special categories – Rule 3B –

- **Survivors of sexual assault OR rape OR incest**
- **Minors**
- **Change of marital status during the ongoing pregnancy (widowhood & divorce)**
- **Women with physical disabilities – major disability – RPDA 2016**
- **Mentally ill women including mental retardation**
- **Foetal malformation – substantial risk – incompatible with life OR if child born – physical or mental abnormalities – seriously handicapped**
- **Women with pregnancy in humanitarian settings OR disaster OR emergency situations as declared by Government**



Married woman – till 20 wks or 24 wks??

- 24 weeks
- X v/s Principal secretary, HFW dept, Govt of NCT of Delhi & Anr, **SC**, Civil Appeal No 5802 of 2022, delivered on September 29, 2022
- Woman / **decision to MTP** / unmarried / **marital rape** / extra legal conditions / **confidentiality** / No FIR / **Identity of minor – MTP & POCSO Acts**



Two finger test Banned

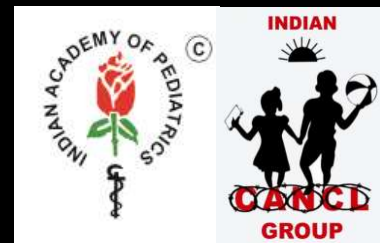
- Past sexual practices of the woman
- Sec 53 A IEA

Lillu @Rajesh & Anr V State of Haryana, SC on 11 April, 2013

- “violates the right of rape survivors to privacy, physical and mental integrity and dignity.”

State of Jharkhand V Shailendra Kumar Rai@ Pandav Rai 2022 Live law (SC) 890

- *“This court has time and again deprecated the use of two finger test in cases alleging rape and sexual assault. The so-called test has no scientific basis. It instead re-victimizes and re-traumatizes women.”*
- Will be held guilty of misconduct



To Conclude

- Forensic issues **in** Survivors examination **of**
Sexual Violence



THANK YOU

