

Does the medical provider have a legal obligation to preserve the products of conception for abortion services for minor girls?

Section 201 of the Indian Penal Code prohibits causing “any evidence of the commission” of an offence to disappear with the intention of screening the offender from legal punishment. Crucially, Section 201 includes an important intent component. It would be considered a violation under section 201 only if a provider destroys evidence with the intent to protect the accused from legal action. Therefore, providers who dispose of the products of conception (PoC) for a good faith reason (inadequate preservation facilities, or following standard operating procedures, for example), should be shielded from prosecution under Section 201. Although we do not have a clear answer, since a minor girl who is pregnant is considered a rape victim under the law, the products of conception might be evidence of an offence that the medical provider must preserve under Section 201 if possible.

Conclusion

Section 8 of the MTP Act guarantees protection for providers who act in good faith. This clause recognizes that above all else, it is imperative that girls and women receive the highest standard of medical care available. Accordingly, all providers should fulfill their reporting requirements and legal obligations under the MTP Act and the POCSO Act after ensuring essential services.



THE POCSO ACT AND THE MTP ACT

Key Information for Medical Providers

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Introduction

The Medical Termination of Pregnancy (MTP) Act, 1971 governs induced abortion service delivery in India. It very clearly defines by who, where, and when abortion services may be provided. The Government of India enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012 to prevent and address child sexual abuse. These Acts overlap where the POCSO Act requires medical providers to report sexual abuse among minors and the MTP Act allows registered providers to terminate pregnancies resulting from rape. The intersection between the MTP Act and the POCSO Act creates confusion, delays, and sometimes denial of abortion services for young girls. This policy brief provides clarity about provisions of the two Acts and the role of medical practitioners.

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Does a provider have a legal duty to inform the authorities if a minor girl is pregnant?



Yes. Section 19(1) of the POCSO Act requires anyone who knows that a sexual offence has been committed to report the case to the appropriate authorities (the local police or special juvenile police unit or child protection committee) or to the relevant person in the organization who could report the pregnancy to the appropriate authorities (the Chief Medical Officer, for example). Under the POCSO Act, a minor girl (under the age of 18) is unable to consent to sexual intercourse. Therefore, **a pregnant minor girl married/unmarried is considered a victim of sexual assault, and a medical provider is required to report the pregnancy to the appropriate authorities, even if the girl has not expressed a desire to take legal action.** Marital status makes no difference to the reporting requirement under the POCSO Act. Anyone who knowingly fails to

make this report can be punished with up to six months in prison and a fine. The Code of Criminal Procedure has the same reporting requirement.

If the girl's age is uncertain, it is advised to report the pregnancy as per the legal requirement under the POCSO Act and to allow the authorities to decide what actions to take. Not knowing the girl's exact age may bring up the question of reporting requirement under the POCSO Act, but these details should not impact the legality of the termination under the MTP Act. The provider does not need to wait for the authorities to take action and may proceed with the termination of pregnancy in line with the provisions of the MTP Act after maintaining complete and detailed records of the case.

What conduct is sufficient to satisfy a provider's duty to report under the POCSO Act while offering MTP services to a minor?

The National Commission for the Protection of Child Rights (NCPCR) has stated that providing a medico-legal certificate to the authorities is sufficient to comply with the reporting requirements of the POCSO Act⁴.

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

Under the MTP Act, a minor girl needs written permission from her guardian to get an abortion. Who counts as a "guardian"?

The MTP Act defines guardian as a person "having the care" of the minor person. This is a fairly broad definition and includes anyone who has the care of a minor girl. Thus, an adult, i.e. someone over 18 years of age who accompanies a minor girl to a clinic could be a *de facto* guardian and could consent to an abortion on the girl's behalf.

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⁴NCPCR, MONITORING GUIDELINES FOR NCPCR/SCPCR FOR ROLES AND FUNCTIONS OF VARIOUS STAKEHOLDERS: CHILD WELFARE COMMITTEES/SUPPORT PERSONS AND HEALTH PROFESSIONALS, at 54, available at: <http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=406&lid=843>

⁵MINISTRY OF HEALTH AND FAMILY WELFARE, GUIDELINES & PROTOCOLS: MEDICO-LEGAL CARE FOR SURVIVORS/VICTIMS OF SEXUAL VIOLENCE 20 (2013), available at: <http://mhfw.nic.in/reports/guidelines-and-protocols-medico-legal-care-survivors-victims-sexual-violence>

Does a medical provider have to wait for any medico-legal procedure before performing the abortion?

No. Rule 5(3) of the POCSO Rules states that "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 pre-requisite to rendering such care." Similarly, the 2013 Ministry of Health and Family Welfare Guidelines and Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence state, "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."⁵ This means that providers can inform the authorities about the pregnant minor *after* performing the abortion.

Rape is a legal ground for terminating a pregnancy under Section 3 of the MTP Act up to 20-weeks of gestation. After 20 weeks, abortion is permissible under Section 5 of the MTP Act, if the provider is of the opinion that it is necessary to terminate the pregnancy to save the life of the woman. Therefore, it is important to provide medical care at the earliest while legal proceeding can continue simultaneously. It is unnecessary to approach the authorities for permission to terminate an adult or minor rape survivor's pregnancy within the permissible first 20 weeks as defined under the MTP Act, or thereafter if such termination is required to save her life.