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# **MANDATORY REPORTING AND PATIENT CONFIDENTIALITY: THE MTP AND POCSO ACT CONTRADICTORY OBLIGATION PARADOX**

AUTHORED BY - ROSHAN RAJESH & ADITYA KEVIN

## **ABSTRACT**

The MTP Act and the POCSO Act create a paradox in the treatment given to underage abortion cases by Indian health professionals. While MTP demands that the patient's confidentiality be maintained so that their private issues regarding reproductive healthcare are not disclosed, POCSO makes it compulsory to file a report if even the slightest suspicion of sexual offenses against a minor arises. In a highly competitive and challenging situation, health professionals are supposed to respect their patient's confidential nature but have a legal obligation to report suspected sexual abuse. This paper discusses how healthcare professionals should strike a balance that respects patient trust and does not violate legal obligations. It also examines the potential implications of this war on the ability of adolescents to access safe reproductive health care and how such a situation would discourage adolescents from seeking medical treatment. This paper provides whether the current legal structures achieve a just balance between mandatory reporting and confidentiality and should, therefore, be reformed for better protection of patients and providers.

**Keywords:** Confidentiality, Ethical Dilemma, Mandatory Reporting, MTP Act, POCSO Act

## **INTRODUCTION**

Registered medical practitioners are generally entrusted with the mandate of treating the patient and keeping the information they gain from their patients as secretive as possible. Confidentiality remains a fundamental ethical principle in medicine; it encourages patients to share information that would be pivotal in the treatment process without fear. However, some legal systems require healthcare providers to report certain offenses or conditions to the relevant agencies, thereby infringing on this trust. This phenomenon is most vividly seen in the Indian context, with a lot of overlapping cases of MTP and POCSO Acts.

MTP Act was enacted in 1971 but amended in 2021 by intending to provide access to abortion within assured safety measures to women by not undermining their right to privacy. This is very vital in a society where stigma relates to discussing reproductive health, and women, especially young girls, face severe social and familial implications for seeking to undergo an abortion. The confidentiality provisions in the MTP Act safeguard women against such risks by assuring them that medical information regarding their treatment will not be divulged without their consent. On the other hand, the POCSO Act passed in the year 2012 mandatorily provides for the reporting of sexual offenses committed against minors, children being any individual below the age of 18 years, even if the act has resulted in pregnancy. The act aimed at protecting the child from sexual abuse and exploitation but realized that children were very vulnerable to these atrocities. Reporting requirements under the POCSO Act are strict and oblige medical providers to report even a mere suspicion of a sexual offense to law enforcement without any question. The Act renders failure to report as a criminal offense with severe penalties for non-adherence.

The above creates a legal and ethical paradox for the medical providers concerning these two Acts. Any such abortion-related medical procedure that comes within the framework of the MTP Act on a minor girl would also be covered to maintain her confidentiality. However, if the suspicion arises that the pregnancy has resulted from sexual abuse or even if the minor in question has been sexually violated, then, based on the POCSO Act, this raises a requirement for reporting an offense. As far as the healthcare provider is concerned, he is put between a rock and a hard place, scrounging to preserve the confidentiality of the patient who demands confidentiality as mandated by the MTP Act but, on the other hand, reporting the case to the authorities as required by POCSO. This paper explores this paradox, examining legal frameworks, ethical considerations, and practical dilemmas that healthcare providers face while meeting these conflicting obligations.

## **LEGAL FRAMEWORK**

The interface between the MTP Act and the POCSO Act is quite complicated and can be best viewed as a web of jurisdiction that needs to be unraveled with caution. Considering the above, this chapter deals with the two legislative provisions and their self-contradicting implications.

### **MTP Act's Privacy-Centric Approach**

The MTP Act is an example of progressive legislation concerning reproductive healthcare in

India. The two central pillars on which the structure of the Act rests are safe access to abortion services and confidentiality of utmost repute for patients.

*Section 5A(1)*<sup>1</sup> of the amended Act postulates a confidentiality mandate. Still, no registered medical practitioner shall disclose the name and particulars of a woman whose pregnancy has been terminated except to a person authorized by any law for the time being in force. The provision thus creates an explicit statutory duty of confidentiality. It is further reinforced by *section 5A(2)*<sup>2</sup>, which prescribes penalties including imprisonment of up to one year and monetary fines for breaches of this confidence.

This is achieved by further strengthening privacy protection under the 2021 amendments through *subsection 5A(3)*<sup>3</sup>, whereby confidentiality obligations are stretched to all facilities where pregnancy is terminated. Once more, this falls within legislative recognition of the developments within the healthcare environment and the demand for extended protection on matters of privacy. The special categories of women, namely survivors of sexual assault and minors, have been stretched to 24 weeks over their gestational limit.

The Rules formulated under the MTP Act also provide further protection. As per Rule 4 of the MTP Rules, 2003, all hospitals and clinics must maintain a confidential register of termination of pregnancy, and such registers shall be kept secret. They shall be accessible only to the persons authorized on this behalf. This bureaucratic requirement sheds light upon the commitment of the Act to patient confidentiality at the grassroots healthcare delivery level.

### **POCSO Act's Mandatory Reporting Regime**

The POCSO Act provides the full frame to protect minors against sexual offenses. Its mandatory reporting provisions pose enormous obligations on healthcare providers, especially where adolescent reproductive health is concerned.

Section 19(1)<sup>4</sup> of POCSO imposes an absolute duty to report: "Notwithstanding anything contained in any other law for the time being in force, any person (including the child), who has reason to believe that an offence under this Act is likely to be committed or has knowledge

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<sup>1</sup> The Medical Termination of Pregnancy (Amendment) Act, § 5A(1) No. 8, Acts of Parliament, 2021 (India)

<sup>2</sup> The Medical Termination of Pregnancy (Amendment) Act, § 5A(2) No. 8, Acts of Parliament, 2021 (India)

<sup>3</sup> The Medical Termination of Pregnancy (Amendment) Act, § 5A(3) No. 8, Acts of Parliament, 2021 (India)

<sup>4</sup> The Protection of Children from Sexual Offences Act, § 19(1), 2012 (India)



that such an offence has been committed, shall give such information to the Special Juvenile Police Unit or local police." The use of "notwithstanding" in this provision triggers a legal override which might thereby override confidentiality obligations imposed by other laws.

Section 21(1)<sup>5</sup> of the Act reaffirms the same mandate through punishment measures which state, "any person, who fails to report or record the commission of an offence under sub-section (1) of section 19. shall be punished with imprisonment of either description, which may extend to six months, fine, or both." This places direct legal exposure on the healthcare provider, who may choose patient confidentiality over-reporting obligations.

### **Statutory Conflict**

The resultant conflated norms give rise to several specific points of legal friction arising at the intersection.

The point of temporal contradiction arises from the fact that MTP prescribes absolute confidentiality that cannot be compromised, while POCSO prescribes immediate reporting. Thus, a healthcare provider is simultaneously placed under an impossible concurrent obligation to maintain absolute secrecy of pregnancy under MTP and report as soon as there is a complaint under POCSO regarding a minor.

The legal framework gets very complicated when it comes to consent. While the MTP Act recognizes graduated capacity for consent to medical procedures, POCSO creates an absolute prohibition on sexual activity with minors, regardless of consent. This complicates situations of consensual sexual activity between minors or situations with married minors where personal laws may be antagonistic to POCSO provisions.

Indian courts have grappled with this legislative conflict and produced varied interpretations. In *N v. The Principal Secretary Health and Family Welfare Department*<sup>6</sup>, the apex court ruled that the right to privacy needed to be balanced against the need to report, although a compassionate balancing act that depended on the facts of each case. *X v. Principal Secretary, Health and Family Welfare Dept.*<sup>7</sup>, on the other hand, explained how to balance the privacy

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<sup>5</sup> The Protection of Children from Sexual Offences Act, § 21(1), 2012 (India)

<sup>6</sup> *N v. The Principal Secretary Health and Family Welfare Department & Ors.*, (2023) 1 HCC (Del) 476

<sup>7</sup> *X v. Principal Secretary, Health and Family Welfare Dept.*, GNCTD 2022 SCC Online SC 1321.

rights of minor patients with the public interest in an offense preventing sexual offenses. The Ministry of Health and Family Welfare has attempted to address these inconsistencies through administrative guidelines outlining a protocol-based framework for the health care providers. However, such guidelines are not enacted into law and provide little solution to the underlying legislative inconsistency. Similarly, ethical guidelines released by the Indian Medical Council accept the inconsistency but have few practical solutions.

International jurisdictions differ in their approaches toward allowing resolutions of comparable conflicts. In the UK, the Sexual Offences Act 2003 explicitly addresses the exemptions from a reporting requirement if disclosure would compromise the care given to a patient. Similarly, in Australia's states, steps have been made with nuance to focus on the proportion of mandatory reporting and access to health care.

The tension between the duty to disclose and the interest in maintaining confidentiality over patients is certainly not unique to India, and an examination of how other jurisdictions work with this problem can be quite instructive. Many countries have similar legislation mandating that healthcare providers report cases of child sexual abuse and upholding patient confidentiality over reproductive health matters. However, ways in which the respective legal frameworks balance out these competing obligations vary significantly.

In the *United States*, with the existence of mandatory reporting laws compelling healthcare providers to report cases of child abuse, exceptions exist in some states where health providers would be relieved of confidentiality, for instance, over cases of abortions or reproductive health services among minors. These exemptions ensure children access safe medical care without fear of legal consequences and privacy violations. The logic behind the exemptions held is that mandatory reporting in such cases may scare children away from health care services as they may have unsafe outcomes.<sup>8</sup>

In the *United Kingdom*, a report is mandatory on child abuse; however, their law allows for a more subtle balancing of confidentiality and reporting. To accommodate this, the UK's General Medical Council has issued guidelines meant to help healthcare providers navigate such issues

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<sup>8</sup> Liu, Beverly Chia Chi, and Michael S. Vaughn, "Legal and policy issues from the United States and internationally about mandatory reporting of child abuse." *International journal of law and psychiatry* 64, 219-229, (2019).

and strives to balance the patient's right to consent and confidentiality against what they can report with lawfulness. This is because the GMC guidelines are more flexible concerning weighing up the potential risks that may arise once their existence has been reported, compared to the strict reporting by medical providers in India under POCSO.<sup>9</sup>

In *Canada and Australia*, there are also reporting requirements for healthcare providers as regards child sexual abuse, but have better protocols and exceptions, such as when the minors desire reproductive health services. These are based upon the presumption that children might not look for medical attention when they fear their privacy will be violated, leading to worse health situations. By providing these exceptions, these jurisdictions seek to balance the imperative of mandatory reporting with equally important patient autonomy and confidentiality in sensitive medical cases.<sup>10</sup>

A comparison of these international frameworks would provide other alternatives for the Indian context to resolve the tension between mandatory reporting and patient confidentiality. Greater flexibility might be anticipated in the guidelines or exceptions for healthcare providers in clearer rules or case forms, such as where abortions for minors are performed, to soften the ethical and legal tensions pressed by healthcare professionals upon their services.

## ETHICAL CONSIDERATIONS

The ethical aspects of the conflict are very deep, with patient confidentiality being at the core of medical ethics. Confidentiality is the cornerstone of the doctor-patient relationship; patients can entrust healthcare providers with sensitive and private information. Without such an assurance, many patients, especially young girls who seek abortions, might hide critical information from the doctors or completely forego such treatment, thereby upping risks for unsafe abortions and associated complications.

In order to help adolescents deal with the emotional, legal, and social difficulties related to abortion, coping strategies and support networks are essential. Emotion processing and lowering long-term mental health concerns can be facilitated by psychological treatment both

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<sup>9</sup> Davies, Emma, Ben Matthews, and John Read, "Mandatory reporting? Issues to consider when developing legislation and policy to improve discovery of child abuse." *ISLRev* 2 9, (2014).

<sup>10</sup> Ben Mathews, "Mandatory reporting laws and identification of child abuse and neglect: Consideration of differential maltreatment types, and a cross-jurisdictional analysis of child sexual abuse reports." *Social Sciences* 3.3 460-482, (2014).

before and after the procedure. Parental mediation can promote good communication and conflict resolution within families, support groups offer a sense of community with individuals who have experienced similar things, and effective techniques like Cognitive-Behavioral Therapy (CBT) can address feelings of guilt and worry. Access to private, nonjudgmental medical care is also crucial because different nations have different legislative systems that either make it easier or harder for minors to get an abortion. Legal aid helps those who face legal difficulties to accessing abortions, educational initiatives help avoid unwanted pregnancies through comprehensive sex education, and supportive measures like confidentiality protections guarantee that minors can access services without required parental notification. In addition to providing institutional support, community organizations are essential in promoting reproductive rights, providing safe forums for candid conversations and emotional recovery, helping young people navigate the legal and medical systems, and educating the public about their rights regarding reproductive health through outreach initiatives. When combined, these systems provide a framework that protects and ensures the safety of minors while empowering them to make educated decisions.

Ethically, the right of patients is entitled to the right to make decisions regarding their reproductive health. This sense of autonomy is echoed in the doctrine of confidentiality concerning the MTP Act, which allows female patients to have control over disclosing their medical information and focuses on the 'battered child syndrome.'<sup>11</sup> Confidentiality is even more crucial for minors seeking abortions because patients may experience extreme social, familial, and psychological ramifications if their situation becomes known. Here lies the healthcare provider's dilemma challenge: to treat the minors with the medical attention they deserve without, in the same process, putting them at a higher risk of damage, persecution, or ridicule. The mandatory reporting requirement under POCSO is based on the ethical principle of beneficence, requiring healthcare service providers to act in their patient's best interest, especially when they are minors. Suspected child sexual abuse reporting would be considered a necessary intervention to protect vulnerable individuals from further harm. It is from this perspective that mandatory reporting becomes a matter of moral imperative, protecting minors from abuse and bringing perpetrators of abuse to justice.<sup>12</sup>

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<sup>11</sup> Nanditta Batra, "Navigating the conundrum of mandatory reporting under the POCSO Act: Implications for medical professionals." (2024).

<sup>12</sup> Pitre AM and Bandewar SS. Law Commission of India report on the age of consent: Denying justice and autonomy to adolescents. Indian J Med Ethics Jan 1;9:3-6. (2024).

Beyond this, minors who undergo life changing events such as abortions experience a wide range of emotions, such as anxiety, guilt, sadness, and even relief to some extent. This influx can lead to a grave psychological impact and such. An example is how adolescents raised in religious or conservative environments end up feeling greater guilt due to perceived moral as well as ethical violations. Further, in cases where the pregnancy resulted from trauma (eg. sexual assault), the abortion will most definitely be accompanied by PTSD-like symptoms. A lack of emotional support during such trying times can contribute to the onset of anxiety disorders and depressive symptoms.

The ethical dilemma for healthcare providers is the tension between the two principles of autonomy and beneficence. In the case of a minor requesting an abortion, healthcare providers must weigh the right to respect patients' rights of independence and confidentiality against their duty to protect the patient against potential harm to themselves or others and their obligation to uphold the law. This tension becomes sharper when the minor does not want to report the case to law enforcement or when the healthcare provider fears that reporting may likely lead to more harm than good for the patient, such as exposing them again to potential traumata or legal problems.<sup>13</sup>

The legal risks for medical practitioners lie in the fact that in various issues, for one, issues pertaining to consent and confidentiality. In jurisdictions where parental consent is mandatory, doctors must ensure compliance in order to avoid legal consequences, disclosing a minor's abortion to parents without legal necessity can result in lawsuits and professional penalties. Further, if complications arise due to negligence, doctors can face civil lawsuits and medical board investigations. Performing abortions beyond the legally permitted gestation limit can also have grave consequences such as criminal charges, if these legal or ethical standards are violated, it can lead to the revocation and suspension of medical licenses. There can also be situations where hospitals with religious affiliations may prohibit abortions, further limiting a practitioners ability to perform the procedure in a legal manner.

This, coupled with the fact that under the POCSO regime of laws, all acts of penetrative and non-penetrative sexual activity involving a minor are without consent unless there is evidence given to the contrary. Mandatory reporting may create an instance where criminal prosecutions

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<sup>13</sup> Mr Ashok Prem and Mr Ashok Karnani. "Medical-Legal Quandary Arising from a Legislative Gap." *NVEO-NATURAL VOLATILES & ESSENTIAL OILS Journal*/ NVEO 16920-16922, (2021).



must be initiated against minors or young adults, leading to questions about whether legal action can be held against a minor or a young adult in such a relationship. Healthcare providers have frequently had to make tough choices, navigating little or no direction on the ethical landscapes. This still leaves them vulnerable to a legal sentence and moral dilemmas as they try to weigh between the need to uphold the law and protect the interests of their patients.

## **REFORM PROPOSALS**

Adolescent reproductive rights are a pivotal aspect of public health and human rights, yet to this day discussions around it remain a taboo topic or just stigmatized in general. This is where open discussions come into play, as they help provide adolescents with accurate information about reproductive health will help them make informed decisions regarding sexually transmitted infections (STI's), contraception and pregnancy. Lack of awareness can lead to unintended pregnancies, health risks and even unsafe abortions. Comprehensive sex education encourages responsible behaviour and enhances decision-making abilities.

Minors can better comprehend their access to reproductive healthcare services when they are aware of their legal rights. Teenage reproductive rights are stigmatized in society, which frequently leads to fear and false information. Open dialogue can be beneficial as it can dispel misconceptions with regards to pregnancy, abortion and contraception, normalize discussions about reproductive health to encourage teenagers to get care when they need it and dismantle social and cultural taboos that impede constructive discussion of reproductive concerns.

Strong legal safeguards and support systems are also necessary for medical professionals to successfully negotiate this challenging environment. Healthcare practitioners can make well-informed decisions without worrying about legal ramifications by setting up medico-legal advisory groups or helplines that provide real-time legal guidance. In order to give physicians a better grasp of how to manage situations involving adolescents seeking abortions while striking a balance between legal requirements and ethical considerations, training programs must also be implemented.

In line with this concern, one way to solve this problem is to amend the MTP and POCSO Acts with clearer guidance on how healthcare providers should deal with cases involving minors. Examples of such amendments include reservations in the case of exceptions from mandatory reporting, for instance, where the minor is obtaining an abortion and does not want the case

reported. These exceptions would then be couched in a manner to protect minors from exploitation and abuse while also respecting their rights to confidential medical care.

This would then be yet another possible reform where the appropriate guidance on the balancing and differentiation between legal obligations and ethics would be provided to healthcare practitioners. At this stage, professional medical bodies like IMA and MCI would also be of great importance in providing moral guidance that enables the practitioner to understand the expectations while providing services in the conflict of interest that the MTP and POCSO Acts placed. These rules may also encompass detailed procedures for handling cases involving minors, establishing an appropriate balance between the right to patient confidentiality and a duty to report.<sup>14</sup>

Another vital proposal that could be considered is that legislation granting healthcare providers greater autonomy over whether to report consensual sexual activity with a minor should be enacted. Presently, under the POCSO Act, even if a sexual act takes place within a consensual relationship among parties below 18 years of age, it constitutes a crime. These verses do not consider the ambivalence of adolescence and can often lead to an injustice against the young. Reforming the law to make a distinction between exploitative and consensual relationships involving minors can help in overcoming some of these issues while continuing to ensure the protection of vulnerable individuals from exploitation and abuse.<sup>15</sup>

Apart from legal reforms, education programs on reproductive health and legal rights for young people could help combat some issues due to the inconsistencies within the MTP and POCSO Acts. Many minors are unaware of their rights or the outcomes of approaching a doctor for medical aid due to unwanted pregnancies. Proper knowledge and care provided to them by doctors enable doctors to serve their patients accordingly. This can assist them in making proper judgments regarding their health.

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<sup>14</sup> Nandawat Devkaran Singh. "Medico-Legal Dilemma due to Legislative Lacuna." Issue 5 Indian JL & Legal Rsch. 4:1 (2022).

<sup>15</sup> Dipika Jain and Anubha Rastogi. "Adolescent abortions in the Covid-19 landscape: Exposing the legal Achilles' heel." *Indian Journal of Medical Ethics* 9, no. 1: 48-57 (2024).

## CONCLUSION

One of the significant legal and ethical dilemmas faced by healthcare providers in India is the conflict between the MTP and POCSO Acts. MTP Act has given precedence to confidentiality for the patient because the area of reproductive health is susceptible, and female patients require utmost privacy in matters related to their reproductive health. The POCSO Act, on the other hand, strictly requires that cases of sexual offenses against minors be reported. This puts healthcare professionals in a dilemma where they are bound to either comply with the law or keep mum about it to honour their trust.

A multifaceted strategy involving institutional, social, and legislative reforms is necessary to resolve the moral and legal conundrum brought on by the clash between the MTP and POCSO Acts. Establishing precise procedural rules for healthcare practitioners is just as vital as modifying the current regulations to make them more explicit. The gap between legal compliance and moral medical practice can be closed with the support of standardized procedures that specify when and how required reporting should be put into place without sacrificing patient liberty.

In addition, policy instructions and judicial interpretation must be proactive in clearing up any misunderstandings in these statutes. The courts ought to offer precise instructions on how to balance the POCSO Act's reporting requirements with the MTP Act's duty of confidentiality. Together with medical experts, governmental and regulatory agencies should create regulations that guarantee adolescents get safe, stigma-free medical care free from undue parental pressure or fear of legal action.

The paradox has significant implications for the professional in healing and the patient they are there to care for. In the case of minors wishing to carry out abortions, this fear of mandatory reporting may thereby deter them from getting safe medical attention, which could have serious adverse effects. For healthcare providers, the legal and ethical uncertainty surrounding mandatory reporting creates major professional and emotional challenges in a complex and often contradictory legal framework.

To overcome this conundrum, comprehensive legal and policy reforms are necessary to balance mandatory reporting aspects and patient confidentiality. The MTP and POCSO Acts must be amended to remove the present obscurity over implementing such laws and introduce certain

exceptions to cases while developing ethical standards for practitioners is essential in such cases. Thus, underpinning the framework respecting patient autonomy and the need for protection would help health policymakers ensure that health providers are better provided with an enabling environment to practice care to the best of their abilities within their legal obligations to patients.

