Role of Health Systems in Responding to Sexual Assault – Frequently Asked Questions

1. What is the role of Health Professionals in responding to survivors of sexual assault?

Health professionals have a dual role to play in responding to survivors of sexual assault. Firstly, they are required to provide medical treatment and psychological care to survivors as sexual assault has short and long-term physical and psychological effects. Secondly, the health professional is required to perform a 'medico-legal examination'. This entails accurate documentation, examination, collection of forensic evidence and provision of a medical opinion related to the assault, which can serve as evidence in the court of law.

2. Why is health care important for survivors of sexual assault?

Sexual Assault has consequences on both physical and psychological health of the survivor. Physical health consequences include unwanted pregnancy, gynaecological morbidity such as pelvic inflammatory disease, genital bleeding, injuries, irritation, pain and in extreme cases even perforation of internal genital organs. With regard to mental health consequences, studies from the West have reported that women who have been sexually abused are more likely to experience psychological distress than non-abused women. Suicide too has been linked to a history of sexual abuse; women who are sexually abused being more likely to attempt suicide than others. (WHO, "Rape: How women, community and the health sector respond", 2007)

It is therefore crucial that immediate and appropriate medical and psychosocial support is provided to the survivor and this is the responsibility of the health facility.

What is Sexual Assault?

Sexual assault, a form of sexual violence, is a term often used synonymously with rape. However, sexual assault could include anything from touching another person's body in a sexual way without the person's consent to forced sexual intercourse (rape), sodomy (oral and anal sexual acts), child molestation, incest, fondling and attempted rape.

Indian law however, is not as comprehensive. Rape, as defined by Section 375 of the Indian Penal Code (IPC) is "Sexual intercourse by a man with any woman who is not his wife above the age of 16 years, against her will or without her consent." The inadequacy of the rape law lies in the fact that it does not include other forms of sexual assault like oral penetration, anal penetration, fingering and use of objects for penetration. Currently other forms of sexual assault are charged under sections having less severe punishments like Section 354 "criminal assault on a woman with intent to outrage her modesty" and Section 377 IPC, covering "carnal intercourse against the order of nature". Moreover, it does not recognize non-consensual sexual intercourse between a man and his wife as rape.

3. Who can conduct a medical examination for sexual assault?

As per Section 164(A) of the Criminal Procedure Code, any Registered Medical Practitioner can conduct a medico-legal examination for sexual assault.

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4. Does a sexual assault examination require special medico-legal centres?

No. Every health facility, public as well as private, can provide survivors with medical treatment as well as counselling and the staff must be trained to fulfil this role. Survivors may access the health facility nearest to them, therefore it is of utmost importance that such treatment and care be provided at all health facilities ranging from PHCs to tertiary care hospitals. No survivor should be turned away claiming "lack of infrastructure." The paraphernalia required for conducting a sexual assault examination include gloves, sterile swabs, sterile slides, scissors, syringes, needles, nail cutter, bulbs and vaccutainers for collecting blood – all of which are easily available in any basic medical set up.

5. Is a police requisition necessary for conducting a medical examination of a sexual assault survivor?

No. Survivors may access a hospital before going to the police. The Supreme Court of India has clarified in a judgment in 2000 that a police requisition is not required in order to conduct a medical examination.

6. What is a comprehensive health care response to sexual assault?

A comprehensive health care response to sexual assault must consist of the following:

- Obtaining informed consent for examination, evidence collection and disclosing information to law enforcement agencies
- Detailed documentation of history of assault, gender sensitive examination, collection of relevant forensic evidence and provision of a reasoned medical opinion.
- Providing appropriate medical support free of cost
  Providing first contact psychological support and validation after the traumatic experience
- Maintaining a clear and fool-proof chain of custody, which eliminates chances of tampering
- Referral to appropriate agencies for further help like legal support services, shelter services etc.

7. What are the problems in the health system's response to sexual assault in India?

a) There is no standard protocol for provision of treatment and medico-legal examination in cases of sexual assault, in the country. It is often said that since health is a 'state subject', this matter should be looked into by the state. But since the medical examination of survivors of sexual assault is mandated by the Criminal Procedure Code, it is the responsibility of the Centre to ensure that medical examination and treatment protocols for sexual assault be made uniform across the country.

b) Several insensitive practices and observations which focus on past sexual conduct of the survivor, form a part of the medical examination that is conducted in sexual assault cases. These include the two-finger test, irrelevant comments on the status of the hymen, comments on build. Such findings shift the focus away from the assault and instead question the veracity of the survivor's claims. In this way, they end up traumatizing her further.

c) There is an overemphasis on presence or absence of injuries in medical examination and when injuries are absent, it is assumed that sexual assault did not take place. The evidence, however, is completely contrary. Research shows that injuries are rarely seen in survivors of sexual assault. This may be because of the circumstances of the assault (the person may be threatened, intoxicated, restrained or otherwise unable to resist), or it may also be due to lapse of time due to which injuries (if sustained) may heal. Evidence from CEHAT's study shows that less than half of the survivors (38%) showed genital injuries and less than one fifth (19%) showed physical injuries.

8. Why are these practices prevalent in the medical system?

The abovementioned practices are rooted in inadequate training, and gender-biased medical textbooks. Myths such as "a person who has been sexually assaulted must have injuries", "a woman who is habituated to sexual intercourse cannot be raped", "well-built women cannot be raped against their will" are perpetuated through medical textbooks which are archaic. That is why, even though the law has declared past sexual history irrelevant, it continues to be recorded.

9. How can this be changed?

These practices need to be discontinued, and proformas that are implemented need to be sensitive and respectful to the survivor, and not make any mention of the past sexual history of the survivor. This means that:

i) Proformas should categorically NOT include any of the following:

- Size of the Vaginal Introitus/Hymenal Opening/Number of fingers admitted by the opening
- comments on old tears of the hymen
- Comment on habituation to sexual intercourse
- Irrelevant Obstetric History (such as history of past abortions)

It is important to keep in mind that all of the above essentially allude to past sexual history, which has been pronounced irrelevant in cases of sexual assault by Section 146 of the Indian Evidence Act. Further, they are biased and unscientific, as per the World Health Organization.[1]

ii) Comments on 'built' or 'nutrition' of the survivor too should not be recorded as they are irrelevant to sexual assault.

[1] Technical Opinion (dated 4th August 2011) provided by the Department of Reproductive Health and Research, World Health Organization, Geneva on the proforma and manual issued by a committee set up by the DHS, Maharashtra in connection with a 2009 Public Interest Litigation (PIL) filed with the Nagpur Bench of High Court. (http://www.cehat.org/go/uploads/SexualViolence/WHOExpertOpinion.pdf)

iii) While recording injuries sustained during the assault, proformas should also be able to provide reasons for the absence of injuries, such as lapse of time, type of assault, inability to resist due to use of threats, restraint or intoxication.

iv) Emphasis should be on seeking a detailed history so that only relevant forensic evidence is collected. The nature of forensic evidence to be collected is informed by the type of assault. For instance, no anal swab needs to be taken if the assault did not involve anal penetration. Further, a detailed history is important so that findings can be correlated with nature of sexual assault, delay in reporting, activities such as bathing, douching, urinating and so on.

v) The proforma must include a component of medical treatment and psychological support to be provided to all survivors

10. What does psycho social support entail?

Sexual assault results in certain psychological health consequences; these could be short term or long term. Several survivors of sexual assault may come to the health facility soon after the incident and it is the responsibility of the health system to provide immediate psychological support. If this is not done, it could lead to more severe long term psychological consequences. The components of psychosocial support include:

1) **Conveying messages of validation and addressing feelings of self- blame:** The most important message that needs to reach the survivor is that rape or sexual assault is an act of violence. This drives home the point that the survivor is not responsible for precipitating the act of rape by any of her actions or inactions. It must be emphasized that coming to the hospital is an act of courage, given the stigma attached to the crime of sexual assault. Appreciating the survivors' strength in this regard can serve to build a bond of trust.

2) **Addressing suicidal thoughts:** Feelings of shame and guilt often lead to thoughts of wanting to end one's life. It should be conveyed to the survivor that such thoughts are common and that there are ways to overcome them. He/She must be encouraged to engage in activities that help to deal with negative feelings.

3) **Facilitating and demystifying procedures**: All the procedures and reasons/rationale for each needs to be explained to the survivor in a language that s/he understands. This includes explaining need for genital examination, various investigations etc. This is important in order to restore a sense of control for the survivor.

4) **Involving the family/friends**: Dealing with the aftermath of sexual assault requires a great deal of support from the family and society. It is important to involve the family so as to create an enabling environment for the survivor once she goes back home. It must be explained to them that rape is an act

of violence and not an act that the survivor has precipitated; that she is not to be blamed for what has happened. In case of children, often it is the mother who invariably faces the brunt for not taking adequate care of the child. It is pertinent to talk to the mother and deal with her feelings too. At the same time you must also educate the mother about ways to deal with the child and explain the meaning of good and bad touch. It should also be stressed that the child should be allowed to go about his/her daily activities and should not be subject to restraint (such as preventing him/her from going to school, to play etc) as a result of the assault.

11. Why is psychosocial support so important? Is there any evidence that it helps survivors?

Evidence internationally demonstrates that psycho-social support enables healing from the abuse. It has also been noted that the causes for poor mental health outcomes amongst survivors of sexual violence are: Societies that blame the survivor for the episode, where survivors are not listened to or where people do not want to talk about what happened. If survivors are encouraged to suppress their feelings after assault, it has negative effect on their healing.

There have been some positive outcomes as witnessed through the CEHAT and BMC partnership. Families have been counselled against restricting the mobility of the girls after an assault and the focus instead has been to make safety plan and talk to children about good and bad touch. Many young girls have reintegrated into their communities, school and are now doing well. Many survivors have been supported through the court trials, dialogue has been initiated with the public prosecutor which has also resulted in convictions.

12. What is a SAFE kit or RAPE kit?

The Sexual Assault Forensic Evidence Kit (SAFE kit) can aid in conducting a medico-legal examination for survivors of sexual assault. The kit consists of all the necessary equipment required to conduct an examination. This includes gloves, sterile swabs, slides, catchment papers, scissors, nail cutter, vaccutainers, envelopes, labels and sealing material. It can be assembled by any health facility and is inexpensive.

13. Does a SAFE kit ensure a comprehensive and sensitive response?

No, the SAFE kit alone cannot ensure a comprehensive and sensitive response. The kit merely brings together all the paraphernalia required to conduct an examination, together in one place, to aid the doctor. It does not ensure comprehensive and sensitive treatment of survivors.

What is required is a gender sensitive proforma for obtaining consent, providing treatment, recording history, conducting an examination, collecting evidence and giving a medical opinion. In addition to this, there must be guidelines issued at the hospital, which lay down the essential components of the response, how they are to be fulfilled, and the role of each player.

There is also a need to ensure that health professionals receive sufficient training in both perspective and skills, so that they are able to fulfil both their medico-legal as well as their therapeutic roles. Health professionals too come from the same social milieu and it is important that their perspectives on the issue of sexual assault be addressed and commonly held myths dispelled.

14. Is it possible for government hospitals and doctors to provide such holistic care?

Yes, it is. CEHAT and the Brihanmumbai Municipal Corporation have set up a comprehensive model for responding to sexual assault at three public hospitals in Mumbai - Rajawadi Hospital, Oshiwara Maternity Home and Bandra Bhabha Hospital. The model is based on the guidelines laid down by the World Health Organization (WHO) and is the first of its kind to be established in the country. It has been operational since 2008 and 120 survivors of sexual assault have been responded to in this period.

- A gender sensitive proforma for medical examination has been implemented, that lays emphasis on a detailed documentation of history and recording of only relevant examination findings. The proforma is gender sensitive in that it does NOT record any findings related to built of the survivor, past sexual history (such as size of the vaginal introitus or the two-finger test) or irrelevant findings related to the hymen.
- A manual too has been developed which provides step by step instructions to the examining doctor so that he/she may be able to conduct the examination in a scientific and sensitive manner.
- An important feature of this model is that it lays emphasis on provision of treatment and psychosocial care to survivors of sexual assault, at the level of the hospital itself. Every survivor who reports to the hospitals is provided comprehensive medical care including testing and prophylaxis for sexually transmitted diseases (including HIV), treatment for injuries, pregnancy prophylaxis.
- Psychosocial support too is provided to every survivor, including any help that she/he may require in lodging police complaints, legal help etc.

Routine sensitization and capacity building of health professionals to build a perspective on sexual assault as well as skills to conduct medico legal examination and provide treatment to sexual assault survivors is being carried out. Standard Operating Procedures have been developed to ensure that all the procedures are performed appropriately in all cases. Monitoring committees have been appointed in each of the hospitals, who are responsible for ensuring that these SOPs are followed.

15. Have there been any attempts to make changes at a policy level?

Yes, in both Maharashtra and Delhi, efforts to make change at the policy level are underway.

Maharashtra:

A Public Interest Litigation has been filed by Ranjana Pardhi and Others in the year 2009 at the Nagpur Bench of the Bombay High Court, demanding uniform protocols for medical examination in cases of sexual assault. CEHAT has intervened in the case, expanding the scope of the PIL by specifically demanding: 1) gender sensitive protocols and 2) provision of treatment to survivors of sexual assault. CEHAT is being represented in the High Court by Lawyers Collective.

In response to the PIL, the Government of Maharashtra has appointed a committee to develop a proforma for medical examination, however the proforma developed by them is not gender sensitive. The WHO's technical opinion that explains in detail problems with the proforma and recommendations is available here (link). CEHAT is currently engaging with the GoM in this regard to ensure that appropriate proformas are formulated and circulated to all health facilities in Maharashtra. (Link to PIL Page)

Delhi:

A PIL was filed by the Delhi Commission for Women against the Delhi Police, in the Delhi High Court. An order passed by the Delhi High Court in April 2009 lays down guidelines for different agencies in responding to sexual assault. With respect to the health system the order mandates use of a 'safe kit' at all Delhi Hospitals. However, this is highly inadequate as merely having a kit in the hospital does not ensure a comprehensive and sensitive examination. What is required is a transformation in the entire practice of the hospital with a focus on care and training of health care providers. The office of the Director General of Health Services, New Delhi, has issued a proforma for medical examination of sexual assault. This proforma is gender insensitive and completely ignores treatment requirements. (A detailed critique of the proforma is available here - link) CEHAT has been engaging with the DGHS for changing this proforma, but no significant changes have been made till date.

Some useful facts

Sexual assault is usually a planned act. Evidence shows that perpetrators do not act spontaneously, but often plan the assault. A study by CEHAT in India found that assailants were most commonly known to the survivor. They promised children a toy, or a chocolate, money or simply time to play. Among adults, motives such as dispute, robbery, property matters or vulnerability caused due to mental illness were apparent.

Rape, does not necessarily leave signs of injury. Absence of injuries on the body of a survivor is often erroneously equated with 'no rape', when in fact, literature shows that injuries are rarely seen in survivors of sexual assault. This may be because of the circumstances of the assault (the person may be threatened, intoxicated, restrained or otherwise unable to resist), or it may also be due to lapse of time due to which injuries (if sustained) may heal. Evidence from CEHAT's study shows that less than half of the survivors (38%) showed genital injuries and less than one fifth (19%) showed physical injuries. This is consistent with studies from other parts of the world as well. The WHO quotes a retrospective study of case records of women who reported rape, which showed that less than 30% of them had genital injuries (Bowyer L, Dalton ME. Female victims of rape and their genital injuries.Br J ObstetGynaecol. 1997;104:617-620)

Absence of semen and spermatozoa in medical evidence does not mean that rape did not occur. Whether or not evidence is found is dependent on several factors related to the nature of assault such as whether ejaculation occurred, whether a condom was used. It is also dependent on time lapsed since the assault and whether the survivor has washed/bathed/urinated after the assault as these activities lead to loss of evidence. Therefore finding medical evidence in a case of sexual assault is not likely at all.

The status of the hymen cannot determine whether a woman is sexually active or not, nor whether she was raped or not. It is possible that the hymen may not be torn even if the woman has had sexual intercourse. Conversely, hymen may also tear due to rigorous physical activity or falls. In a study that attempted to diagnose, on the basis of physical examination whether a woman had previously engaged in sexual activity, the researchers found that they had mis-diagnosed 'virgins' in 50% of the cases, suggesting that integrity of the hymen does not necessarily provide information about sexual history. (Underhill RA, Dewhurst J. "The doctor cannot always tell. Medical examination of the "intact" hymen. "Lancet. 1978 Feb 18;1(8060):375-376.)

Survivors of sexual assault do not necessarily show uncontrollable emotions. Emotional reactions of each survivor are varied and need not necessarily fit the mould of 'appearing distressed'. McGregor in her study found even distribution of victims who presented as emotive (44.4%) versus controlled (47.6%). Moreover, when survivors access the police or hospital systems, they have obviously pulled themselves together and may not be crying uncontrollably.

Survivors of sexual assault may not always access to police first. Several reach the hospital first in need of treatment. In a study conducted by CEHAT it was seen that almost half reported to the hospital directly to seek treatment for health consequences arising out of the assault. This underscores the need for recognition of voluntary reporting at hospitals so that survivors are able to access treatment without a police requisition.

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