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## GENDER SENSITIZATION OF MEDICAL PROFESSIONALS IN THE EXAMINATION AND TREATMENT OF RAPE VICTIMS: A CRITICAL ANALYSIS

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**ABSTRACT:** Rape is the ultimate crime a man can commit against woman. Rape is the humiliation of a woman's body and soul. It is the subordination of women by men in a patriarchal society. It is the violation of a woman's right to live with dignity which is recognized as a human right under different Conventions. The number of rape cases per lakh population has risen continuously in India over the years. Under the Indian legal system, rape has been made a punishable offence under Sec. 376 of Indian Penal Code which imposes a minimum term of seven years imprisonment and a maximum of life imprisonment and even capital punishments (amended) for the offence of rape. Rape cases involve controversial medico-legal questions which are likely to arise in a court of law. The role of the medical professionals is crucial in corroborating evidence to support or rebut the allegations of rape along with attending to physical injuries, providing medical care, prophylaxis for pregnancy, supporting the patients by referrals and access to community resources. The paper aims to critically analyze the role of the medical professionals in the examination and treatment of the rape victims in the emergency department. The paper recommends gender sensitization among the medical professionals, health and policy makers, proper and timely examination and treatment of the rape victims.

**KEYWORDS:** Women, Rape, Medical Professionals, Treatment, Gender sensitization.

**INTRODUCTION:** Rape is the ultimate crime a man can commit against woman resulting in humiliation of a woman's body and soul. It is the subordination of women by men in a patriarchal society. Rape is also recognized as an element of the crime of genocide when committed with the intent to destroy, in whole or in part, a targeted ethnic group.<sup>1</sup> It is the violation of a woman's right to live with dignity which is recognized as a human right under different Conventions.

The World Health Organization (WHO) defines Sexual Violence as: any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances and acts to traffic, or otherwise directed against a person's sexuality, using coercion, threats of harm, or physical force, by any person regardless of relationship to the victim on any setting, including but not limited to home and work.<sup>2</sup>

Following the unprecedented public outcry due to incidence of gang rape of 'Nirbhaya' in December 2012 in New Delhi, an amendment was made in the definition of rape defined in section 375 IPC where in clause was included in section 375 IPC - which states that apart from peno-vaginal sexual intercourse includes other forms of sexual assault like oral penetration, fingering, use of objects (other than penis) for vaginal, urethral and anal penetration, It also includes manipulation of any part of the body of a women so as to cause penetration into the

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vagina, urethra, anus or any other part of body and application of mouth to the vagina, anus, urethra of women and regards it as a rape under the various circumstances explained in the law.<sup>3</sup>

In the recent years it has been observed that the crime of rape against women is increasing at an alarming rate. The number of rape cases against women per lakh population has risen continuously in India over the years. The incidence of rape has increased manifold - from 16373 in 2002 to 24, 200 in 2011.<sup>4</sup> In Assam, the incidence of rape crimes committed against women is steadily rising from 1419 in 2008 to 1700 in 2011<sup>5</sup> and the number of sexual assault cases examined at Forensic Medicine Department of Assam Medical College and Hospital, Dibrugarh during 2013 was 194. However, sexual offence and rape in particular is considered to be the most under-reported crime in India reason cited being lack of awareness, social stigma attached to sex crime and also in many cases accused being a family member. Moreover, victims are reluctant to lodge a complaint in order to avoid traumatizing experience during the investigations.

The rate of reporting, prosecution and convictions for rape raises many medico-legal issues, hence whenever complaint of sexual assault is lodged, the investigating team which mainly comprises of police, doctor and forensic scientist should meticulously carry out their work in order to help in delivering administration of justice. However role of health care providers in dealing with the victim or patient of sexual assault cases are more sensitive as they have to attend to their physical and psychological trauma apart from assisting the victims in their medico-legal proceedings by collecting evidence and performing good quality and thorough forensic medical examination and documentation and corroborating evidence to support or rebut the allegations of rape.<sup>6</sup>

**Methodology:** The study was conducted at Assam Medical College and Hospital, Dibrugarh. The method employed is analytical and observational. The primary source of data was collected from the Emergency and Forensic medicine department as well as from the annual reports of Assam Medical College 2013, and secondary source of data from the statistical hand book of Assam 2012. The paper aims to critically analyze the role of medical professionals and their approach in the examination and treatment of the rape victims in the emergency department. The paper recommends gender sensitization among the medical professionals, health and policy makers, proper and timely examination and treatment of the rape victims.

**Legal procedure for Medical Examination:** Under Section 164 A of the Criminal Procedure Code, 1973 when the medical examination of an alleged victim of rape or attempt to commit rape who is under investigations proposed then such examination shall be conducted by a registered medical practitioner employed in a government hospital or a local authority and in the absence of such practitioner, by any other registered medical practitioner, with the consent of such women or of a person competent to give such consent on her behalf and such women shall be sent to such registered medical practitioner within 24 hours from the time of receiving the information relating to the commission of such offence.

Clause-B of Sec 53 of the Criminal Procedure Code provides that whenever the person of a female is to be examined under this section the examination shall be made only by, or under

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the supervision of a female registered medical practitioner. In this regard a Public Interest Litigation has been filed before the Gauhati High Court in the year 2009 wherein the Court had issued directions to the Director General of Police (DGP), Assam and the Health Department of the Government of Assam and all other concerned in the strict implementation of Sec 53-A.<sup>7</sup>

The directions ensured that a female victim of sexual offence is examined only by lady Government Doctor, and if there is no lady doctor available, a private female practitioner at the state expense can be employed or vaginal smear be collected by a trained female nurse and examined subsequently by a lady doctor. Explanation to Sec 53, Sec 53-A and Sec 54 provides that "Examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, by the use of modern and scientific techniques including DNA profiling and such other tests, which the registered medical practitioner thinks necessary in a particular case.

Section 53-A, Criminal Procedure Code provides that in the absence of a medical practitioner referred to in Section 53 within the radius of 16 kms from the place where the offence has been committed the examination shall be conducted by any other registered medical practitioner acting at the request of a police officer not below the rank of a Sub-Inspector. In hospitals, where services of specialists from Forensic Medicine and Gynaecology are available like medical colleges or teaching institute, this examination shall be jointly conducted by them. The doctor from the forensic department must take the responsibility of all medico-legal part and the doctor from the gynaecology department must take the responsibility of treatment or medical management part. The doctors from the forensic department should remain on call 24x7 hours for this purpose. The registered medical practitioner conducting such examination shall without delay examine such person and give the following particulars on the basis of his examinations namely:

1. The name and address of the accused and of the persons by whom he was brought;
2. The age of the accused;
3. The marks of the injury, if any, on the persons of the accused;
4. The description of the material taken from the person of the accused for DNA profiling; and
5. Other material particulars in reasonable detail.

The report shall state precisely the reason for each conclusion arrived at. The exact time of commencement of the examination and completion of the examination shall also be noted in the report. The registered medical practitioner shall, without delay, forward their report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of subsection (5) of section 53A.<sup>8</sup>

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## **Issues and Challenges before Medical Professionals in the Examination of Rape**

**Victims:** First and foremost medical professional treating the victim should remember that rape is a crime and whether rape has occurred or not is a legal conclusion and not a medical diagnosis. However only statement medical officer can make is whether there is evidence of recent sexual activity.<sup>9</sup>It is to be noted that not all individuals who are sexually assaulted sustain an injury, however, it is equally important to remember that lack of an injury does not mean that an assault did not occur. More than half of all those who are sexually assaulted sustain an injury. Injuries which are predominantly bruises are often located on limbs (32%) face (23%) and torso (7%). A head to toe inspection should be performed focusing on defensive injury areas such as the oral cavity, breasts, thighs and buttocks. Bruises lacerations or other signs of trauma should be described in details. A careful speculum examination should note any vaginal discharge, vaginal abrasions, cervical abrasions and cervical lacerations. Injuries are more often found in female victim who are less than 20 years of age and those who are above 49 years of age and those who present within 24 hours of sexual assault.<sup>10</sup>

In addition to violation of human rights, sexual assault may lead to several direct and indirect health consequences which may manifest in the form of abdominal pain, burning micturition, sexual dysfunction, dyspareunia, urinary tract infection, unwanted pregnancy, miscarriage of existing fetus, sexually transmitted diseases, pelvic inflammatory disease and unsafe abortion.

The other purpose of medical examination of a rape victim is to collect and preserve all the trace evidences and treat the victim for injuries, venereal disease, pregnancy and psychological damages, etc.<sup>(1)</sup>

Normally examination of the rape victim is taken up for forensic evidence on requisition of authorized police officer or magistrate. However, following the judgment pertaining to a case of State of Karnataka v, Manjanna<sup>11</sup>, the Supreme Court recognized that the rape victim's need for a medical examination constituted medico-legal emergency, hence, victim has a right to approach medical services first before legally registering a complaint in a police station. The government as well as private doctor or hospital is now required to examine a victim of rape, if she reports to the hospital directly and voluntarily without a police requisition and subsequently initiate a police complaint on the request of the victim. The provision of the parents' consent is not applicable when the health professional reasonably believes the parent or guardian committed the sexual assault on the patient even if the patient would ordinarily be considered competent to give consent. In such cases, consent of Superintendent or Resident Medical Officer of the concerned hospital may be taken.<sup>(6)</sup>

While examining the patient, details of the history about any relevant past medical problems as well as specific injuries following the assault should be asked to guide the emergency department management. A professional caring attitude should be conveyed by the medical professionals throughout the evaluation and the history should be obtained in private and victim should be allowed to give her own account of the act without any question being put to her.<sup>(10)</sup>

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Other important points to be kept in mind are:

1. If the victim is of and over 12 years of age, a written consent in the presence of a witness, should be obtained before the commencement of the medical examination. If she is a child under 12 years of age or of unsound mind, the written consent of her parent or guardian should be obtained.
2. The police or the court has no power of compelling a woman to submit the private parts of her person to the examination of a medical practitioner, male or female.
3. The victim should be requested to undress herself.
4. Details like date, time, name of the person who brought her, identification marks and all the details of the incident should be mentioned.
5. Inquiries about change of clothing and a bath or wash should be made.
6. The traumatised victim shall be sent for psychological counselling.<sup>(9)</sup>

As per guidelines enshrined in the Department of Health Research (DHR) a checklist in separate format is provided to note down the medical management given to the victims consisting of following points:

- Name/Age/Sex of the patient/survivor/MLC no.
- Investigation advised
- Treatment given(if any)
- Emergency Contraception: Yes/No. If yes then details
- Prophylaxis/Treatment of Sexually transmitted disease. Yes/No. If yes details.
- Injection tetanus toxoid (TT): Yes/No
- Treatment for injuries: Yes/No
- Counselling: Yes/No
- Referral for further management: If Yes/No. If yes then details
- Pregnancy test: Yes/No If pregnancy is suspected advise USG for confirmation
- Follow up on (if any)
- Other(If any)

This form has to be filled up by the doctor who is entrusted with the responsibility of treating the patient.

**Medical Examination and Treatment of Rape Victims – A Critical Analysis and Suggestions:** Rape victims undergo tremendous amount of psychological trauma which is manifested as 'Rape Trauma Syndrome' in the form of disruptions to normal physical, emotional, cognitive behavioural and interpersonal characteristics, so the medical professionals and law enforcing agency should be extremely empathetic while dealing with the victims. For recovery from the trauma related to the sexual assault, emotional and social support should be offered to the victim along with referral to social organization's dealing with issue of violence against women. It is to be noted that whenever the victim/patient is brought to the health centre for treatment they should be secluded from the general patient and examined in privacy after taking necessary steps as per law. However dealing with a rape victim in crowded government hospitals

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is a very challenging task, however it is recommended that medical practitioners take a proactive role and should approach the victim humanely without ignoring the technical procedure related to legal provisions of the case. According to the Department of Health Research Guidelines (DHR) if the treatment provider is different from the doctor who is doing forensic examination then the treating doctor should come to the place where examination is being carried out in one place to avoid unnecessary referrals and shunting of patient from one place to another. This is easier said than done and for strict enforcement, role of health department and hospital administrator are of paramount importance.

Another sensitive issue which needed to be addressed and discussed with the victim is possibility of pregnancy. If the women are examined up to 5 days after the sexual assault had taken place emergency contraception should be offered, where as if seen more than 5 days after the assault, victim should be advised to return for pregnancy test if she misses her next period. The medical professionals working in a district or some remote areas are disadvantaged lots where they have to look after other patients along with medico-legal duties. In absence of clear guidelines or standard operating protocol or manual and lack of adequate exposure in forensic examination, doctor working in such a hostile environment are always at the receiving end. Moreover there are instances where doctor are put under undue pressure from interested persons, politicians, police personals and executives for a particular case which are sensitive in nature, putting hardship to honest and duty bound doctor in reporting of such cases.

Another cause for concern is the huge numbers of shortage of forensic medicine expert with even negligible female doctor having forensic medicine specialty in our country. However due to constant prodding by the honourable courts, steps are being taken by the health department to design training program for the doctors and paramedical/nursing staff to update knowledge pertaining to medico-legal cases related to sexual assault. Now the question is who should undergo the training course? The trainee should comprise of doctors manning the emergency/gynaecology department, doctors from district/ rural set up and even doctors from private health care where forensic medicine specialist are not available. Though nothing concrete shape has come out of it till now, it is presumed that the course so designed for the medical professionals will definitely be able to plug large number of loopholes involved in the process of Forensic Medical Examination of sexual assault cases, which will help the victims and thereby deliver justice to the deserving party.

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