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Viewpoint

Essential to update medical training after amendments to Anti-Rape Law

The Section 375 of the Indian Penal Code (IPC s375) on rape was comprehensively revised following recommendations from the 'Justice Verma Committee' in January 2013[1]. The Committee has broadened the definition of rape by amending the Criminal Law (Amendment) Act 2013, in which other crimes outraging the modesty and dignity of women are included[2]. Furthermore, the new legislation includes offences such as voyeurism, stalking, disrobing and trafficking of women[2]. The Committee's move is in tune with United Nations constitutional values that every woman was entitled to her bodily integrity and to sexual autonomy[3]. Sexual autonomy implies that a woman has a choice to decide with her body as a whole[3]. Against the background of a broader definition of rape, this article focuses on the roles and responsibilities of the medical fraternity in treating survivors of sexual violence.

Revised definition of 'Rape'

Rape results in violation of sexual autonomy and the bodily integrity of a woman and is punishable under the law[1]. To ensure the safety of women against these broader types of crimes, the law is amended. The revised definition of rape is, penetration of a woman's vagina, urethra, anus or mouth by a penis and also penetration of the vagina, urethra or anus by finger(s), object(s) or body part(s), including oral sex against her consent[2]. Thus, a man who has committed this offence, shall be charged of rape under the newly amended law[2].

Role of medical fraternity under amended Anti-Rape Law

Women experiencing acts of violence are likely to visit Health Care Centres more frequently than any other institution for seeking treatment, solace, protection and healing[4]. Interventions by healthcare providers can potentially mitigate both the short- and long-term effects of sexual violence against women, children and their families. The victims have faith and respect for the medical practitioners, who should respond humanely and empathetically without ignoring the technical procedures related to legal provisions of the case[5,6].

To safeguard survivors' health, and to ensure that they get adequate care, Criminal Law (Amendment) Act, 2013[2] also made much required changes in Section 357C of the Code of Criminal Procedure (CrPC) Act states that, all hospitals, public or private, whether run by the Central Government, State Government, local bodies or any other person, shall immediately, provide first-aid and medical treatment free of cost to the victims of any offence covered under sections 326A, 376, 376A, 376B, 376C, 376D or section 376E of the IPC, and shall immediately inform the police about such incidents[2]. Hence, the amendment inserted into Section166B of IPC on punishment for non-treatment of the victim clearly states that, whoever being in-charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any person, contravenes the provision of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both[2]. Again, the Criminal Law (Amendment) Act, 2018, was passed by the Union Cabinet to curb the menace of rape against young children[7]. Those found guilty of raping girls under age 12 will be sentenced for punishment between 20 years and life imprisonment, along with a fine, or death sentence[7]. The law seems to have taken a proactive role in order to protect the health of women and children by casting obligation of care on the healthcare system.

The law is amended with a sole agenda of safeguarding women and to ensure justice delivery with emphasis on physical and mental health care during judicial proceedings. This requires appropriate

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training to all the stakeholders such as doctors, nurses, police, advocates and judiciary. There is an urgent need to create awareness among medical fraternity regarding the rights of the survivor and at the same time, reminding doctors regarding their role in such circumstances, where the amended law is very vast.

The Protection of Children from Sexual Offences Act, 2012[8]

The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was formed to protect children from offences of sexual abuse, sexual harassment and pornography and to provide a child-friendly system for the trial of these offences[8]. This Act moves away from certain narrow concepts to holistically include the following: (*i*) from rape to include penetrative and non-penetrative assault; (*ii*) being only female-focussed to being gender neutral (including all children); and (*iii*) irrespective of consent of the child, it is a punishable offence.

Furthermore, the Supreme Court of India in October 2017, in a landmark judgement stated that sexual intercourse with a minor wife would also be a crime, amounting to rape[9].

Role of medical fraternity under the POCSO Act, 2012

The following sections under the POCSO Act, 2012 highlight the role of medical fraternity in providing care and justice to the victims:

(*i*) Reporting of offences – Section 19 (1) of the Act states that notwithstanding anything contained in the CrPC, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Special Juvenile Police Unit, or the local police[8,10].

(*ii*) Punishment for failure to report or record a case – Section 21 of the Act states that 'failure to report shall be punished with imprisonment which may extend to 6-12 months and/or fine or both[8]. The law does not say not reporting is a cognizable offence.

(*iii*) Medical examination of a child – Section 27(1) of the Act states that the medical examination of a child in respect of whom any offence has been committed under this Act, shall be conducted in accordance with Section 164A of the Code of Criminal Procedure, 1973[8,11]. Further, the POCSO Act mandates free first-aid and/or treatment under this law and also requires that a female doctor shall examine a girl child[11]. Availability of the lady medical officer in all health establishments, especially in rural areas is a challenge that needs to be answered[12]. Therefore, male doctors will need to be sensitized and trained about this issue and as per the law, they need to refer to female doctor.

Further, the POCSO Act, 2012 rules clearly define the role and responsibilities of medical practitioners in the form of mandatory reporting, medical examination, treatment of injuries, prophylaxis for sexually transmitted diseases (STDs) and HIV, emergency contraception and referral to mental healthcare. Hence, the medical fraternity needs to be sensitive and follow the obligations casted under the rules[8,11]. The practitioner not abiding by the rules and regulations of the Act is liable under the civil and criminal law of the land[13]. The mandatory reporting under the POCSO Act, 2012 may pose a serious challenge in providing care to the children[12,14]. However, these issues have been discussed and addressed to some extent in the clinical practice guidelines of child sexual abuse[15].

Proposal for changes in medical curriculum

Following a significant change in the legislation including the Acts and Code clearly dictating roles and responsibilities of the doctors, it becomes essential to renew the Medical Graduation Curriculum which needs to be updated to keep pace with law and scientific temperament. The medical college students need to be trained in history taking, sensitized to the needs of the survivors and their family members, examination procedure, assisting in gathering evidence, offering suitable nursing care and treatment, follow up and rehabilitation of the survivors. At the same time, the existing medical practitioners across all systems need to undergo mandatory training to provide care and thereby implementation of the Law. There is an urgent need to implement Comprehensive Care for Women and Child Survivors under one roof[6]. The training curriculum may not only be sufficient at the undergraduate level but also at the postgraduate level in medical education, as well as in the nursing training and allied paramedic training curriculum. There could be an additional fellowship training or diploma training at the postgraduate level, so there are adequately trained medical professionals who are more focussed in the protection and safeguard the women and child after such unfortunate events to provide care and justice. Especially those working with children, the training needs to be more sensitive and rigorous. Any physician dealing with the medical care of children must be aware of the POCSO Act.

Controversies in POCSO Act, 2012

Although the POCSO Act, 2012 is exemplary in its focus, yet it is also surrounded by controversies such as:

(*i*) Consensual adolescent sex should not be penalized.

(*ii*) The POCSO Act, Section 27(2) mandates that in case of a female child/adolescent victim, the medical examination should be done by a female doctor. On the other hand, the Criminal Law Amendment Act, Section 166A of Indian Penal Code mandates the Government medical officer on duty to examine the rape victim without fail. This conflicting legal position arises when female doctor is not available[12]. The Law needs to be amended that, if a female doctor is not available a male doctor can examine the child in the presence of a female chaperone.

(*iii*) Consent – If the child/adolescent refuses to undergo medical examination, but the family member or investigating officer is insisting for the medical examination, the POCSO Act is silent and does not give clear direction. However, it would be prudent to take assent from parent when survivor is a child (below 12 yr) and assent from both parent and the victim, if the survivor is an adolescent (age group from 12-18 yr). However, emergency treatment needs to be initiated without getting into this consent issues or legality to protect the life of the child[11,13].

(*iv*) Mandatory reporting of sexual crime on children by doctors may hamper the help-seeking behaviour of survivors and doctors may not be able to provide care and might only focus on legal issues[14,15]. This issue needs to be amended by giving discretionary power to the practitioners to report or delay the report or not to report, if there is an apprehension that such reporting may result in abandonment or actions which may have negative impact on the physical or mental health or safety of the child. This is similar to a 'privileged professional communication', a protection awarded to a communication between the legal adviser and the client under the Indian Evidence Act, 1872 (Sec 126 to 129)[16]. If this privileged professional communication is not honoured, parents or children/adolescents would hesitate to seek much-needed help from the medical practitioners following sexual abuse[14,15]. The healing and well-being of the child should be the prime focus.

(*v*) There is an urgent need to sensitize and train the teachers, judiciary, advocates, practitioners and law enforcing agencies in the newly amended law. There is also an urgent need to create a post of Forensic Medicine in district hospitals and community centres. There is also an urgent need to sensitize National Commission for Protection of Child Rights[17] and Juvenile Justice Board[18].

(*vi*) One Stop Center - Comprehensive care for survivors (CCS): there is a need to work in liaison with judiciary, women and child welfare department, social welfare department, police department and Non-Governmental Organisations (NGOs) to provide comprehensive care for survivors under one roof. All the sensitive issues arising out of the sexual violence including crisis intervention, physical and mental healthcare, legal aid, socio-economic support, temporary shelter, re-integration into society, confidence building, counselling, psychosocial support, family therapy, sexual counselling, vocational rehabilitation and follow up care should be delivered under one roof, one-stop centre[6].

(*vii*) There is an important need to have at least one postgraduate Forensic Medicine professional at each police station or at district hospital so that proper investigation is done and the culprit is brought to justice.

In conclusion, there is a pressing need to modify the curriculum for the medical graduation to incorporate the obligations casted upon the medical fraternity such as mandatory reporting, examining, providing care, prophylaxis and rehabilitation of sexual violence survivors. Comprehensive care must be made accessible, and offered to the survivors. Multi-agency and multi-disciplinary team must be made available to deliver holistic care under one roof in a hospital setting, to begin with in all district hospitals. This complex issue needs to be tackled by providing comprehensive care proactively. A multi-dimensional and multi-agency team including access to psychosocial support is to be made available to deliver holistic care under one roof in a hospital setting[6].

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