Sexual Assault Care and Forensic Evidence Kit
Strengthening the case for use of the kit

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Control of crime lies in making punishment more certain rather than severe. Neither brutality nor severity, but it is the certainty that makes punishment an effective deterrent.

National Human Rights Core Group on Forensic Science for better Criminal Justice

Sexual Assault is a crime which attracts the sharpest criticism, and a call for heavy penalty. Recently there has been a rhetoric of capital punishment for 'Rape', something difficult to justify and even more difficult to implement. Scant attention is paid though to see that the offender is caught and a full proof case is made out against him. Between 1980 and 1990, there was an increase of nearly 74% in crimes against women[1] (UN, 2001). A significant proportion of this could be sexual violence, but the official reported data does not corroborate this, because Sexual Violence is also one of the most under-reported crimes. For every reported incident, it has been observed that about 68 incidents go unreported (Rainuka Dagar, Punjab). The conviction rate on the other hand is very low, at less than 30% of cases ever tried in court rooms. Conviction rate for ever-reported crimes of sexual assault is less than 4% (Laxmi Murthy, Saheli) (To find original reference).

Lack of Medical Evidence, a cause of concern- Although a minimum of seven years imprisonment is prescribed for rape, it is commonplace to find punishments of 2 years or less. The obstacles in the way of justice are not only the narrow definition of rape, which makes rape very difficult to prove but a whole range of factors from perspectives which refuse to give women autonomy over their body to denial of several essential services which can go towards boosting her morale and making out a clear case. A very important part of these are the services from the health system. The opinion of a medical expert is of crucial importance in deciding a case of sexual assault[2] (Bakshi, 1994). Unfortunately, as the Karnataka High Court has observed, medical evidence in almost every case of sexual assault on women is tampered with (State vs Rangaswamy, 2003, CriLJ 607)[3]. It is worthwhile to take a look at what the court had to say.

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[1] *Women in India: How Free, How Equal?, UN Report 2001*
[2] *The Offence Of Rape and Certain Medico-legal Aspects, A Study by P.M. Bakshi, National Commission for Women, New Delhi, 1994*
[3] *M. J. Anthony, Annual digest of human rights judgements, 2003, Indian Social Institute, New Delhi*

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> *"The doctors come out with evidence that can only be termed as 'pro-accused'. It does not require much intelligence to see through these malpractises which clearly indicate that there is a very serious integrity problem at this level. We have come across instances where the doctors have brazenly given evidence that has virtually sabotaged the prosecution case as happened in this case and we wish to appeal to the conscience of each of these doctors, assuming they possess one, that it is because of what is happening in the hospitals that 94% of rape cases in this state are ending in acquittals. We do not propose to close our eyes to this state of affairs and direct the government to immediately formulate adequate safeguards to ensure that there is a full stop to these illegalities."*

Role of health care providers in sexual violence- Adequate management of sexual assault and securing justice is a complex process necessitating a good coordination between the medical establishment, law enforcement and prosecution. Unfortunately in India we see problems in each of these systems, as well as lack of effective coordination between the three systems. It is the survivor who bears the brunt of this. Adequate measures need to be taken to ensure that all loopholes are sealed and examination and investigation takes place without delay, to avoid tampering of evidence as far as possible.

The role of health care providers in management of 'Sexual Assault Cases' is still an inadequately dealt with problem in India. The medical professional in India today is totally at a disadvantage in giving effective care and medico-legal services to cases of sexual assault, even when we leave aside charges of tampering with evidence. One of the primary problem is the unwarranted bias against the victims themselves again arising out of long held, prejudiced beliefs of gender roles, various myths and no contact with facts about prevalence of violence in society. Most medical professionals we interacted with and also their text books[4] are preoccupied with the notion of false charges of rape often made by women. *'....it is not possible for single man to hold sexual intercourse with a healthy adult female in full possession of her senses against her will'- t*his is a statement from a very widely used textbook of Forensic Medicine in India[5]. Such statements keep this myth of false reporting alive. In a personal interaction, one professional went to the extent of persuading us that even when children are brought by parents it is often their way to get even with neighbours, using child abuse as the ruse.

Inadequacy of training and motivation: Inadequacy of training and motivation is an important cause of lack of care and ineffective documentation of evidence in India as well as other developing countries.

Most basic graduate doctors have no idea of how to examine cases of sexual assault and the range of services required. '*….I had an excellent medical education, but formal education never taught me to handle cases of raped women and to look for signs of violence and abuse against women and children in the emergency rooms….*' Says

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[4] Agnes, Flavia, Gender Review of Medical Textbooks,
[5] Modi's Medical Jurisprudence & Toxicology, 21st Edition, 1988, pg. 510

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Dr. Sylvia Estrada-Claudio, a medical doctor who works with NGOs struggling for social justice in the Philippines[6].

Most doctors do not pay heed to the minimum training that is received in this regard in the second year of medical training on the premise that they would not need to use it in future. On the contrary many doctors end up in government service and have to undertake this duty. Even when they are in private practice the state holds the authority to invite doctors for examination if a public servant cannot be accessible. It was the doctor on call at the Umerkhadi Observation Home who was called to examine the case of Billa No. 31, a case of sexual assault by an employee on the premises. He recorded his findings in 4 lines and did not collect any samples for evidence. No attempt was made to get the suspect examined, although he was on the premises all the time[7].

Col P.R. Pathak, Professor and Head, Department of Forensic Medicine, A.F.M.C, Pune, writes – '*As per the MCI Regulations on Graduate Medical Education, 1997, only 100 hrs have been alloted for teaching forensic medicine and toxicology during the second year of the course……..It is evident that 100 hrs of teaching will be inadequate…….Health Care Delivery system prevalent in our country expects that the subject be practised efficiently at the PHC level.*[8]' He goes on to note that '*The discipline of forensic medicine is still a back seater as it used to be in the past*'.

Especially as these cases of sexual assault are medico-legal in nature, the medical professional is often called to the court to testify as an expert. Examination and documentation of such cases thus becomes the most avoidable of all tasks. Often the doctor is asked to testify many years after she has examined and would be lucky to receive her documentation at least half an hour prior to her testimony. Sometimes doctors have been transferred in the interim and are made to travel back to the place of examination which makes them feel as though it is a punitive work. High motivation regarding the work, and keeping the doctor posted about its outcome will give her a sense of how important her travel or extra work has meant to the survivor- literally a matter of getting justice.

In South India, only women doctors are allowed to handle these cases[9]. Often trainee doctors do not even attend these classes as they would never need to examine a case of sexual assault. Besides even where training is given and taken seriously, the component of mental health care and counseling are totally absent. The medical textbooks used to educate doctors themselves exhibit considerable bias against women[10].

Problems in the current system of handling cases of sexual assault: Coupled with good quality training it is also necessary to have uniform protocols and guidelines regarding care and examination of such cases. There is high turnover of resident

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[6] *Arrows for change, December 1995, Violence Against Women: A Silent Pandemic, Women's and Gender Perspectives in Health Policies and Programmes, ISSN 1394-4444*

[7] *D'Souza, Lalita,* Sexual assault : The role of the examining doctor, *October to December 2000 , Issues in Medical Ethics*

[8] *Paper written for the Xth Annual Conference of Medicolegal Association of Maharashtra, 2000*

[9] *Narrated by Dr. Jagadeesh Reddy, at the Medical Consultation on 18th December 2004, at KEM hospital, Mumbai to update and finalise the SAFE Kit. Based on Supreme Court Judgement to the effect that only women doctors may examine female survivors of sexual assault.*

[10] *To whom do the experts testify, Adv Flavia Agnes*

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doctors in city and town hospitals, and the rural doctors see very few cases with a huge time gap in between. These are the doctors who most often need to manage cases of sexual assault. Without uniform guidelines they are left to fend for themselves. The Survey Committee Report on Medico-legal Practices in India, has noted way back in1964 that '*Committee notes with regret the lack of uniformity in the practice and procedures followed in different parts of the country. There are no adequate arrangements for the investigation of the majority of medico-legal cases.'* This unfortunately holds true to date.

Care for ailments is another area where often the woman suffers. It is seen that she seldom gets both good care and good collection of evidence. Berit Schei, in his paper notes *In the past, victims of sexual assault reporting directly to the police may not have received total medical care. Victims often face a no win situation. On one hand, those reporting directly to the police presumably have forensic documentation and evidence collection performed, but they might not receive appropriate medical treatment and psychological follow-up. On the other hand, victims who do not contact the police in the acute phase and seek direct medical care might not receive appropriate evidentiary documentation.*[11]

We also find gross insensitivity towards survivors, such as multiple referrals, where the survivor needs to tell her story to multiple care providers. Sometimes more than one doctor is involved in the examination but only one of them completes the 'Opinion based on examination' section and testifies in the court. A gynaecologist from Sangli district of Maharashtra shared this experience with us. He was called to examine a woman who had complained of sexual assault. On P/V examination he wrote one of his findings as 'Fornices are free' meaning no abnormal mass of tissue found in the recesses of the vagina. The casualty medical officer who was writing his opinion inferred that this meant that no sexual intercourse had taken place.

Negligence of mental health concerns- An important aspect of the trauma associated with sexual assault is the deep sense of shame and guilt that it often invokes. If this is coupled with a sense of disbelief in her story, not only is the possibility of reporting the crime to law enforcement reduced, but her long term healing from the trauma may be considerably affected. In fact, belief in her story, reassurance and a non-judgmental attitude from the doctor, coupled with counselling can boost her morale and increase the chances of reporting the crime. Lack of training in counseling and mental health concerns is another lacunae of the health care providers which affects the survivors.

Need for the SAFE kit- One effective way in countering at least some of the above problems is to use a 'Sexual Assault Evidence Kit, Uniform Protocol and Manual', along with good quality training and motivation building. The kit can be useful in itself as well as an advocacy tool to build linkages between the law enforcement and prosecution. Such kits have long been used by the developed countries, but we are still struggling to make a strong case for its use in our countries. The World Report on Violence and Health has acknowledged that use of uniform protocols could enhance quality of care as well as evidence documentation, at the same time citing that most under-developed and developing countries do not use standard procedures and are

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[11] Berit Schei, 2003, Rigshospitalet, Copenhagen, Denmark

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unable to provide comprehensive services to survivors. We would also like to cite here the experiences in developed countries regarding the linkages between meticulous evidence collection and legal outcome, to answer any skepticism.

Linkages between good quality evidence and legal outcome- '*In all cases of medico-legal importance, the report of the medical experts is of primary importance'* [12] (1994, P.M. Bakshi). A study done by McGregor, Du Mont et al in Canada shows that the very presence of a record on the case-file (70%) by the police officer that forensic samples were received and sent for examination, was significantly associated with charges being filed (OR 3.45, 95% CI)[13]. It also shows that effective documentation of moderate to severe injuries increases the possibility of a legal outcome. That doctors need to be trained and have basic equipments for examination is also brought out by Rambow, Adkinson et al. Genital injuries in 9% women were documented after thorough examination by specially trained personnel. This finding is significant in view of the fact that only 29% of these had complaints of genital pain or bleeding. The genital injuries could have been missed if a systematic examination were not carried out[14]. In the Cleveland study (Riggs et al 2000), sperm was found in the Emergency Department wet mount only in 13% of cases, but putting together with crime laboratory findings, it was noted in 48% of cases. Special efforts need to be made in this direction as many survivors in developed as well as less developed countries report not having received essential services. In one study, only 1 in 10 adult sexual assault victims was found to address themselves to post-rape services[15]. In another study, 1 in 5 adult female victims received post-rape treatment[16]. Only 1/10th of the most serious violent incidents in an intimate partner relationship came to the attention of the police according to a Finnish study[17]. In a population-based study women assaulted by a stranger were more likely to report having received medical care compared to those assaulted by an intimate partner[18]. Other studies too find that less than one third of incidents are reported to law enforcement[19]. There is a significant delay in getting care for many and this seriously damages forensic evidence collection. Examination of survivor within 24 to 36 hrs and documentation of evidence, especially injuries is positively associated with legal outcome, i.e. chargesheeting or conviction.

Suffice to say that delay in getting medico legal care for survivors of sexual assault is common and all efforts must be made to reach comprehensive services to

[12] *The Offence Of Rape and Certain Medico-legal Aspects, A Study by P.M. Bakshi, National Commission for Women, New Delhi, 1994*

[13] *Margaret J. McGregor, Janice Du Mont, Terri Myhr, January 2002University of British Columbia, Canada*

[14] *Female sexual assault: Medical and legal implications, Ann Emer Med, 1992, 21, 737-1*

[15] *Schei B, Sidenius K, Lundvall L, Ottesen GL, Adult victims of sexual assault: acute medical response and police reporting among women consulting a center for victims of sexual assault, Center for Victims of Sexual Assault, Rigshospitalet, Copenhagen, Denmark..*

[16] *Ibid*

[17] *Diane Beebe, Sexual Assault*

[18] Schei B, Sidenius K, Lundvall L, Ottesen GL, Adult victims of sexual assault: acute medical response and police reporting among women consulting a center for victims of sexual assault, Center for Victims of Sexual Assault, Rigshospitalet, Copenhagen, Denmark

[19] *Diana Beebe, Sexual Assault*

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them. There is sufficient evidence to show that early and good quality documentation of evidence is associated with positive legal outcome and hence this area of reform in medico-legal services needs to be actively pursued. Needless to add, good quality training and motivation building will be the mainstay of success and sustainability for any such efforts. Involving the medical professional in this fashion and trying to work at the interface of law enforcement, medical profession and prosecution could be one strategy to address barriers faced by survivors of sexual assault.

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