

Medical and forensic evidence procedures

Section 8 presents good practice in relation to medical and forensic evidence procedures. In cases of sexual assault, forensic evidence is frequently critical in securing a conviction and it is always relevant to physical assault cases. Complainants of sexual assaults in particular can find the experience they are forced to undergo in order to provide this essential evidence can be as harrowing as the original assault. The aim of good practice procedures is to avoid this outcome.*

Medical evidence

A number of countries in the Commonwealth have attempted to ameliorate this problem, seeking to render the medical examination required for the gathering of the vital evidence as comfortable as practically possible. It is preferable that medical evidence be obtained in a health or other non-police setting in order to provide a more pleasant atmosphere in which to examine the woman or child. The aim is to provide the woman or child with a trained expert so that her examination produces the best possible evidence. When acting for the police and legal system, the doctor has a responsibility to the state, however, the role of carer remains. The doctor-patient relationship is paramount.

Many of the same procedures need to be followed, whether the assault is physical only or both physical and sexual or sexual only and whether the survivor is a woman or a child. Photographic evidence of bruising, for example, can be obtained three days or so after a severe beating, while other injuries can be recorded in detail by the doctor at the time of the initial examination. Even when sexual assault does not involve physical violence, the medical examination should look for all signs of contact, such as, soreness, bruising, lacerations and bleeding of the external and internal genitalia, bites and scratches on any part of the body, tears and lacerations of the anus and rectal bleeding. There are psycho-social effects of sexual and physical assault on women and girls, such as shock, feelings of numbness, withdrawal from communication with others, denial that anything took place, unnatural calm, detachment and fear. Effects on the psycho-social well-being include physical symptoms such as tension headaches, disturbed eating and sleeping habits, gastro-intestinal irritability.

Psycho-social effects are as important as the physical effects. Many women may not struggle, due to extreme fear. Further, attempting to fight back may not be successful and may result in greater injury and even death.

The tasks of the police surgeon or physician are:

- to offer treatment, primary level counselling and referral for the physical and psychological consequences of the assault, such as services for sexually transmitted diseases, pregnancy testing, and counselling
- to provide important evidence of the crime and help judges and juries understand the physical and mental condition of the woman
- to corroborate the woman's testimony in court, thus enhancing her credibility as a witness.

The purpose of the medical examination is to establish whether or not a sexual act has been attempted or completed and whether or not the woman has given her consent or if consent is valid, for example, if she was under the influence of alcohol or drugs administered to her, or she is mentally unsound or a minor, or any other legal bar to consent.

Requests for a medical examination can be made by the survivor of an attack, her relatives, a women's rights organisation, or the police. Examinations can only proceed with the consent of the woman or that of the adult with parental responsibility, if a child. Kits are available, or should be available, for doctors that contain relevant forms and materials for the collection of evidence for forensic examination. For example, the kit may contain the following forms:

- authority to conduct the medical examination, to be signed by the survivor of the assault or the adult responsible for the child
- details of the survivor's medical history, such as name, address, next of kin, relevant medical and surgical history, date and time of examination
- the sexual assault history, such as when, where and how assault took place, details of penetration, emission of semen, condom use, oral and anal sex, last date of previous sexual intercourse, and whether between the assault and the examination the survivor bathed or changed clothes or undertook any other action that could have destroyed or altered the evidence.
- the forensic examination, to include written details of individual items of clothing and body evidence such as oral swabs, seminal deposits and slide for motility check, vulval, vaginal and anal swabs, blood for alcohol and drug testing, nail clippings, and foreign material on the body of the survivor, for example, pubic hair, seminal stains on the skin, blood
- general examination, including estimation of age where this is not available from public records and the documenting of injuries to the body and sexual organs to be noted on diagrams
- a discharge slip when the survivor is admitted to hospital which includes tests undertaken for sexually transmitted diseases, pregnancy, treatment for injuries and counselling undertaken and required
- examination of the suspect includes forensic samples such as clothing, pubic hair of survivor on his body, and samples of scalp, pubic, beard, moustache hair, blood samples for grouping, alcohol or drugs, DNA typing, fingernail clippings, the examination of the genitals and evidence of injuries, sexually transmitted disease.

All forms are to be signed by the examining doctor. All forensic evidence is to be placed in correctly labelled bags that are provided with the kit and signed for by the police officer who receives them.

Forensic evidence

The forensic evidence is then sent to the laboratory where it will be examined. Evidence is sought of the suspect's body fluids or other traces on the survivor or her clothing and hers on him. DNA testing is becoming progressively more important in locating suspects and in obtaining corroborative evidence. Forensic evidence of all types corroborates the survivor's account and may assist the police in obtaining an admission of guilt from the suspect(s) or in locating the suspect(s).

Training issues

Qualified physicians and forensic scientists require specialist training to be able to carry out tasks required to gather adequate evidence for court. This begins with the definition of physical assaults, rape and other sexual offences. While definitions of rape, for example, vary between jurisdictions, it is usual that full penile penetration and ejaculation is not required for the offence of rape. Virginity or the lack of it should not be relevant to medical evidence of sexual assault, nor should previous sexual experience. The so-called finger test should not be part of the medical examination, that is the distensibility of the vagina as this test is often misunderstood and used to discredit the victim witness.

Countries with few police surgeons should consider introducing these issues into the curricula of medical and nursing schools. This will ensure that all doctors and health centre workers on their first contact with a victim of sexual assault will know what to look for and do.

Specialist courses for scientific support staff and police officers are available in some jurisdictions. These can be organised on a national basis and offer training on photography, fingerprinting, facial identification, crime scene examination, scientific support and its management, preparation and presentation of evidence in court. Medical and forensic consultants require training in giving evidence as cases can be lost because of inexperience. Delays in court cases, which can be more than two years in some jurisdictions, make it even more necessary that detailed records be compiled at the time of the examination.

GUIDELINES

- Medical and forensic evidence is often crucial in prosecutions for sexual offences and even for physical assaults.
- The circumstances in which such evidence is gleaned may affect the integrity of the evidence.
- Forensic and medical evidence may be easily lost. Police training must emphasise the importance of care in the collection of such evidence and the importance of continuity in the control of such evidence.
- The training of police, police doctors and of forensic scientists must be coordinated so that each profession is aware of the issues that confront the others.
- Medical personnel should be trained so they are a support network for the police.
- Police surgeons and other doctors who collect evidence for the police have a duty of care towards the survivor.

* See the excellent manual on the collection of medical and forensic evidence produced by: Lalitha D'Souza (1998) *Sexual Assault*, (Centre for Enquiry into Health and Allied Themes, 519 Prabhu Darshan, S. Sainik Nagar, Amboli, Andheri West, Mumbai 400 058, India. Fax: 91 22 620 9203; Tel: 91 22 625 0363; e-mail: lds@cehat.ilbom.ernet.in).