

Review Research Paper

Crimes against Women in Matrilineal Meghalaya A Forensic Medical Perspective

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Abstract

The northeastern state of Meghalaya, located at the foothills of the Himalayas, was once a haven of peace and tranquility. It is home to the Khasi, Jaintia and Garo tribes who follow the matrilineal system, where women have a special position and role in society. However, through the years, progressive degeneration of moral values has resulted in an escalation of illegal activities, crimes against women and gender-based violence. In the present context, the average doctor faces various medico-legal challenges in routine practice. The changing trends in society emphasize the need for forensically trained doctors, who have the expertise to handle cases of medico legal nature. It is imperative to re-orient practitioners on forensic procedures while dealing with victims of sexual assault to ensure that justice is served in such situations. Doctors must also be familiar with laws related to medical practice in order to avoid pitfalls while performing their duties in good faith.

Key Words: Meghalaya, Matrilineal, Medico-legal, Crime against Women, Forensic Medical

Introduction:

Meghalaya, the 'abode of clouds', a hill state nestled at the foot of the Himalayas, was once a quiet and serene place. The indigenous tribes of the state are unique in their matrilineal societal system. [1] It is, therefore, a paradox that in a society where the fairer sex is believed to be emancipated, empowered and accorded respect, crimes against their lot are on the rise.

In the year 2013, a hundred and eighty-three cases of rape were registered in police stations across the state. A progressive degeneration of moral values and large floating population comprising illegal immigrants, through the years, has resulted in numerous illicit activities which include sexual offences, kidnapping and human trafficking.

The sad part is that while some women are 'soft targets' of these kind of crimes because of their vulnerability, others get embroiled in the dirty and shady world of sex, lies, deceit and violence owing to lustful desires of the flesh, which drive them to do what is unimaginable or even criminal.

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There are still some who are lured into clandestine deals because of the attraction to quick and easy money, especially if they are poor and economically hard-up.

It has been said that the psychology of rape is subjugating the woman to establish the man's dominance over her. Gone are the days when chivalrous men treated their ladies politely, kindly and honourably. Respect and regard for the opposite sex seem to be virtues of a bygone era. Thus, there has been a spurt in crimes against women owing to the changing trends and attitudes in society as a whole.

It also appears that the fair gender has had to pay a heavy price for so-called 'freedom' and 'fierce independence'. A school of thought states that women have 'brought it on themselves' because of their liberal lifestyles, modern dress sense and hanging out in places where 'good girls' have no business to be.

One wonders if this is strictly true because women suffer silently even within the "safe" confines of their homes, when their husbands or partners turn aggressive and violent. Hence, crimes against the weaker gender are not committed in the dark and dangerous streets alone, but also in the secure world of their own households.

Crime against Women Reported in Meghalaya:

A glance at the crime statistics of Meghalaya indicate a steady rise in gender-based violence over the past decade, with incidents of rape, molestation, kidnapping and

domestic violence of women showing an increasing trend (Fig. 1 and 2). [2]

Hospital data of alleged victims brought for medical examination during this period also support this fact. Unfortunately, a good number of victims happen to be female children targeted because of their vulnerability and innocence.

One can only imagine how perverted and lustful the perpetrators must be to commit such despicable acts of animalism. In the summer of 2013, a distraught seven year old girl was brought to hospital with a history of alleged sexual assault in a jungle after school hours by men who committed the act and took off. [3]

Till date, the criminals remain untraced by local police. A couple of months ago, there was an incident where a 12 year old girl was molested by policemen, believed to be upholders of the law. [4] Then there are reports of cruelty to women by their husbands or partners within their very own homes.

Although most cases of domestic violence are neither reported nor recorded, a study conducted at our hospital from July 2009 to December 2010 reveals that it does occur from time to time predominantly in rural areas among both tribal and non-tribal communities. [5] During the study period, there were thirteen victims in the age group of 20 to 30 years who presented to the emergency department after sustaining physical injuries.

Among them were two female children who suffered sexual abuse at the hands of their stepfathers. Little wonder that women no longer feel safe anywhere at all, taken into account the dangers and threats that loom large against them round every corner.

Challenges Faced By Government Doctors:

In the present context, the average government doctor not only has to manage sick patients but also face medico-legal challenges in routine practice. According to section 164A of the CrPC, in the course of investigating an allegation of rape, the victim has to be medically examined within twenty-four hours from the time of receiving the information relating to the commission of such offence. [6]

Medical evidence is crucial to confirm, corroborate or disprove the charges. A physician has a dual responsibility, the first being a duty of care towards the patient and secondly, a duty to serve the interest of justice. These two roles have to be effectively combined for a satisfying outcome. Treatment must be given on the basis of fully informed consent.

If this is absent, as in the case of incapacity due to alcohol, drugs or illness, then the doctor proceeds on the basis of the patient's best interests or implied consent. [7] The changing trends in society emphasize the need for forensically trained doctors, who have the expertise to handle cases of medico-legal nature. They must be well-versed on how to treat victims, document important findings and preserve relevant evidence in a scientific manner to render it acceptable and admissible in a court of law. The neglected area of 'forensic examination' of the living has assumed new meaning. Hence, the need of the hour is to re-orient and refresh practitioners on Forensic procedures, especially while dealing with victims of sexual offences and collecting evidence in a clinical setting.

A respect for ethical principles of autonomy and self-determination should form the basis of good medical practice, rather than outdated ideas of 'medical paternalism'. In the past, the doctor was revered and held in high esteem by patients. In every treatment situation, it was believed that the "doctor knows best".

However, times have changed and today, the principles of medical ethics state that any decision regarding treatment is best left to the patient after he is told about the benefits and risks as well as the outcome of not complying with the therapy.

According to Indian law, any person over the age of 12 years who is not suffering from a mental incapacity is capable of giving consent for, or refusing, routine medical treatment, unless there is evidence to the contrary. In the case of invasive procedures, the age of consent is 18 years.

It is only in emergency and life threatening situations that the doctor can go ahead without the patient's consent. [8, 9]

Another relevant ethical principle is that of confidentiality or 'professional secrecy', which is an implied term of contract between the doctor and patient, wherein the former is obliged to keep secret whatever he comes to know about the latter during the course of his professional work. Any information related to the patient must not be disclosed to a third party without his/her consent. Of course, there are exceptions to the rule, such as in cases where the Court of Law requires specific information for the cause of justice, or where the police have to be intimated in suspected crimes as per the law.

According to the Central Information Commission (CIC), the relationship between a doctor and his patient is a 'fiduciary' one that is based on trust. [10]

Hence, the former has a duty to maintain confidentiality in matters pertaining to the latter. The Delhi High Court recently ruled that medical records and tax returns may be exempted from disclosure under Section 8(1) of the Right to Information Act (RTI), unless it is in the larger public interest. [11]

Efforts by Local Organizations:

The Meghalaya State Commission for Women (MSCW) was constituted on 15th October, 2004, extending its jurisdiction to the whole state of Meghalaya, with an objective to improve the status of women and investigate violation of safeguards for women.

It can examine all matters related to violation of the provisions of the Constitution of India and other laws enacted to protect women, such as distinction and exclusion made on the basis of sex, infringement of any right or benefit conferred on women, deprivation of constitutional or human rights, and physical torture or sexual excesses on women including adolescent girls and female children.

Further, it seeks to achieve the objective of equality and evaluate the progress of advancement of women in the state. [12] In a gesture of concern for the problem of crimes against women, the commission has organized programmes for medical officers and police personnel in different districts of the state.

In a recent one-day orientation programme on gender sensitization, professionals from relevant departments, such as police, lawyers, government doctors and social workers deliberated on this important topic. However, the issue is a rather complex one which cannot be solved overnight, but requires a concerted effort by every conscious and concerned citizen over a period of time.

People should be made to realize that it is basically a change in social attitudes, and not just punishment of the perpetrator, which would ultimately lead to the reduction of these crimes. It is essential to inculcate a sense of values and respect for human beings in general and women in particular. The police have a role to play in registering and taking up reported cases of rape, which should be done without any delay.

An insensitive and judgemental approach based on the victim's character and lifestyle must not be entertained. Social workers, lawyers and doctors, on the other hand, have a duty to sensitize the public on these burning issues of today. It is essential for women to be aware of their right to legal services available in order to seek redressal for problems such as domestic violence and child abuse, [13]

In this regard, the Meghalaya State Legal Services Authority (MSLSA) has taken a positive step by organizing various legal awareness cum literacy programmes in different localities and districts of the state, with a view to empowering women to fight for justice when crimes are committed against them.

Recommendations Based on Public Interest Litigation:

In relation to doctors, Dr. I. L. Khandekar, Associate Professor of Forensic Medicine has suggested improvements for the examination of rape victims in a public interest litigation (PIL) filed by him after observing the 'pitiable' and 'horrendous' conditions in which medical procedure is often conducted.

Apart from a lack of privacy, the woman is subjected to further mental anguish by the casual attitude of doctors and undue delay in examination. The Maharashtra Government has issued guidelines for Forensic Medical examination of rape victims after the direction from the Nagpur bench of Bombay High Court on a PIL based on the study report of Dr. Khandekar. The PIL seeks directions to the Central and State governments to frame protocols and guidelines for proper forensic medical examination and collection of medical evidence by specially trained doctors. [14]

A compassionate and humane approach towards the aggrieved party must be adopted by all means, as she has already gone through the physical, mental and psychological trauma of being sexually violated. In a recent judgement, the Supreme Court has held that the two finger test on a rape victim, which is done to inspect the female hymen, violates her right to privacy, physical and mental dignity, and integrity.

The judges stated that rape survivors are entitled to legal recourse that does not re-traumatize them. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman and degrading treatment, and health should be of paramount consideration while dealing with gender-based violence. [15]

Legal Aspects:

"If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore contently be on the move adapting itself to the fast changing society and not behind". - **Justice Bhagwati.**

According to Section 357C CrPC, all hospitals, public or private, shall immediately provide first aid or medical treatment, free of

cost, to the victims of any offence covered under Sections 326A (acid attack) , 376 , 376A, 376B, 376C, 376D or 376E (punishment for rape) of the Indian Penal Code, and shall immediately inform the police of such incident.

The penalty for contravening the provisions of Section 357C CrPC is imprisonment for one year or fine or both (Section 166B of the IPC). [16] Further, if a doctor learns of a serious crime, such as murder, assault or rape in the course of treating the victim or assailant, he is legally bound to give information to the nearest Magistrate or police officer (Section 39 CrPC, Section 176 IPC). [17] The intentional omission to inform is punishable under Section 202 IPC.

A Supreme Court Ruling of 1989 states that all government hospitals and medical institutes should provide immediate medical aid to all cases irrespective of whether they are medico-legal or otherwise. [18]

The practice of certain institutions to refuse even primary medical aid and refer them to other hospitals simply because they are medico-legal cases is not desirable.

Whenever a medico-legal case attends the hospital, the medical officer on duty should inform the duty constable regarding name, age and sex of the patient, place of occurrence of the incident and start the necessary treatment.

The constable on duty will then inform the concerned police station or higher police authority for further action. Treatment of the patient would not wait for arrival of police or completing legal formalities.

The Protection of Women from Domestic Violence Act, 2005 was enacted with a view to providing more effective protection of the rights of women who are victims of violence of any kind within the family. [19] Domestic violence is defined as any act or conduct of the perpetrator that harms, injures or endangers the health, safety and well-being of the aggrieved person, in this case, the woman or child.

It may occur in the form of physical assault, sexual violation, verbal insults, emotional abuse or economic deprivation. The legislation authorizes the State Government to appoint Protection Officers who will assist victims in reporting the incident and getting medically examined if bodily injury has been sustained.

Any recognized voluntary organisation working for the welfare of women can register with the State Government as a service provider for legal aid, medical and financial assistance, and to ensure that the aggrieved person is given shelter in a shelter home.

The Magistrate, after hearing both parties and on being satisfied that domestic violence has taken or is likely to take place, can pass a Protection Order in favour of the victim to prevent the perpetrator from committing, aiding or abetting any act of domestic violence and abuse. Monetary relief may also be granted to the victim for expenses incurred and losses suffered by her and her children as a result of domestic violence.

According to the Legal Services Authorities Act of 1987, weaker sections of society are entitled to free legal services to bear the expenses of lawsuits which they may file or defend in court. [13] It seeks to ensure that justice is not denied to a person just because of financial constraints or disabilities.

The criteria for eligibility under Section 12 of the act include women and children, victims of human trafficking and those whose annual income does not exceed nine thousand rupees. Therefore, even poor women hailing from a low socio-economic background would get an opportunity to present their case in court for legal recourse.

The Sexual Harassment of Women at the Workplace Act, 2013 provides protection against sexual harassment of women, which is a violation of the fundamental right to equality under articles 14 and 15 of the Constitution of India. [20] A woman has the right to live and work with dignity and to practice her profession in a safe environment, free from insecurity and fear. Sexual harassment includes any unwelcome physical contact, verbal or non-verbal conduct of a sexual nature, sexually coloured remarks or showing pornography. Such actions may cause mental trauma, physical pain and suffering, and emotional distress to the victim. She may also have to face economic losses due to medical expenses for physical and psychiatric treatment.

The act provides for the constitution of an Internal Complaints Committee in every organisation, establishment or office, be it in the private or public sector, for the redressal of complaints of affected employees. The committee conducts an inquiry into the allegations against the respondent, and if convinced that they are true, would recommend action against him in accordance with the provisions of service rules, or payment of compensation to the aggrieved woman.

Conclusion:

In conclusion, the past decade has witnessed a steep rise in crimes against women in the matrilineal state of Meghalaya, where

ladies have a special status in society and were once held in high esteem. Proactive groups and women’s organizations have stepped forward to create awareness and wage a war against gender-based violence targeted at women and female children in recent times.

Doctors and police officers have well-defined roles in such situations and need to be a little sensitive while dealing with victims. It would not be appropriate to question the character and morals of the woman after the crime has occurred because any assault, be it physical or sexual, brings with it intense emotional and psychological distress.

Therefore, the attitude and treatment of medical and police personnel dealing with her case makes a difference to how she feels and could determine how quickly she recovers from the episode. While a non-judgemental, professional and compassionate approach could heal and restore her, a negative and judgemental attitude could shatter her to pieces.

Good medical practice such as promptly attending to the patient, minimizing delay and proper communication, along with application of acceptable Forensic Medical techniques, would ensure timely delivery of justice in keeping with the law of the land. It would stand doctors in good stead to be aware of the various laws related to their day-to-day practice, which in turn would enable them to give patients their best, and to avoid pitfalls while performing their duties sincerely and in good faith.

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Fig. 1: Crimes against Women Reported in 2013 (Source: State Crime Records Bureau)

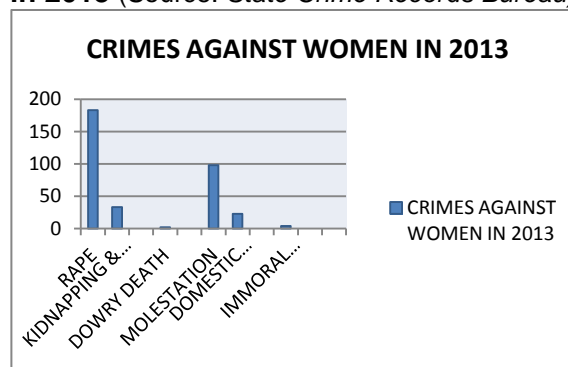


Fig. 2: Reported year-wise Incidents of Rape in Meghalaya (Source: State Crime Records Bureau)

