GENDER BASED VIOLENCE IN INDIA: CRITICAL INSIGHTS INTO THE GROUND REALITIES BASED ON EMPIRICAL AND SECONDARY RESEARCH

Prof Lakshmi Lingam, Dr Sunita Sheel and Dr Amita Pitre

Presentation at the joint 7th National Bioethics Conference and 14th World Congress of Bioethics of the International Association of Bioethics, Bangalore, 5th December 2018

Structure of the Session

- Introduction and overview: Prof Lakshmi Lingam
- Key amendments to legislations post Nirbhaya and Critical insights and contradictions in recent cases of sexual assault and relevant judgments - -Dr Amita Pitre
- Dealing with Sexual Assault by health care systems & the observations from the field study – Dr Sunita Bhandewar
- Open the floor for discussion to understand national and global experiences pertaining to GBV and health systems response

PART 1:GENDER BASED VIOLENCE: AN OVERVIEW

Prof Lakshmi Lingam,
TISS, Mumbai

Violence against Women & Gender Based Violence

- **Violence against women (VAW)** is any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. (UN General Assembly, 1993)
- **Gender-based violence (GBV)** is violence that is directed against a person on the basis of gender. GBV, includes violence against men, boys, and sexual minorities or those with gender-nonconforming identities.
- VAW heightens vulnerability of females from childhood throughout their lifecycle and there are profound, long-term impacts of sexual and physical violence on women and girls throughout their lives. VAW also leads to women's loss of identity, dignity and attempts to exercise rights and gender based equality

VAW & Challenges women face

- **Recorded crimes:** Domestic Violence, Sexual Violence , Sexual Harassment in Public Places, Burns & Acid Attacks &Honour Killings
- According to the World Report on Violence and Health (WHO, 2013), sexual violence has severe repercussions for women's health and social well-being.
- Physically, these include external and internal injuries, risk of unwanted pregnancy and unsafe abortions, risk of sexually transmitted infections as also death by brutalization.
- Psychological consequences include Post Traumatic Stress Disorder (PTSD), depression, anxiety, suicidal tendencies and phobias.

Sexual Crimes against children and by children

- Increasing number of media reports of child sex abuse or actual reporting to the police
- Family members, relatives, school staff and trusted persons involved
- Issues also linked to domestic violence faced by mother
- Linked to age at consent fixed at 18 years, cases of consensual sex among young men and women are coming under the ambit of law
- Due to lack of sexuality education for children in schools severe complications arise around sexual activity

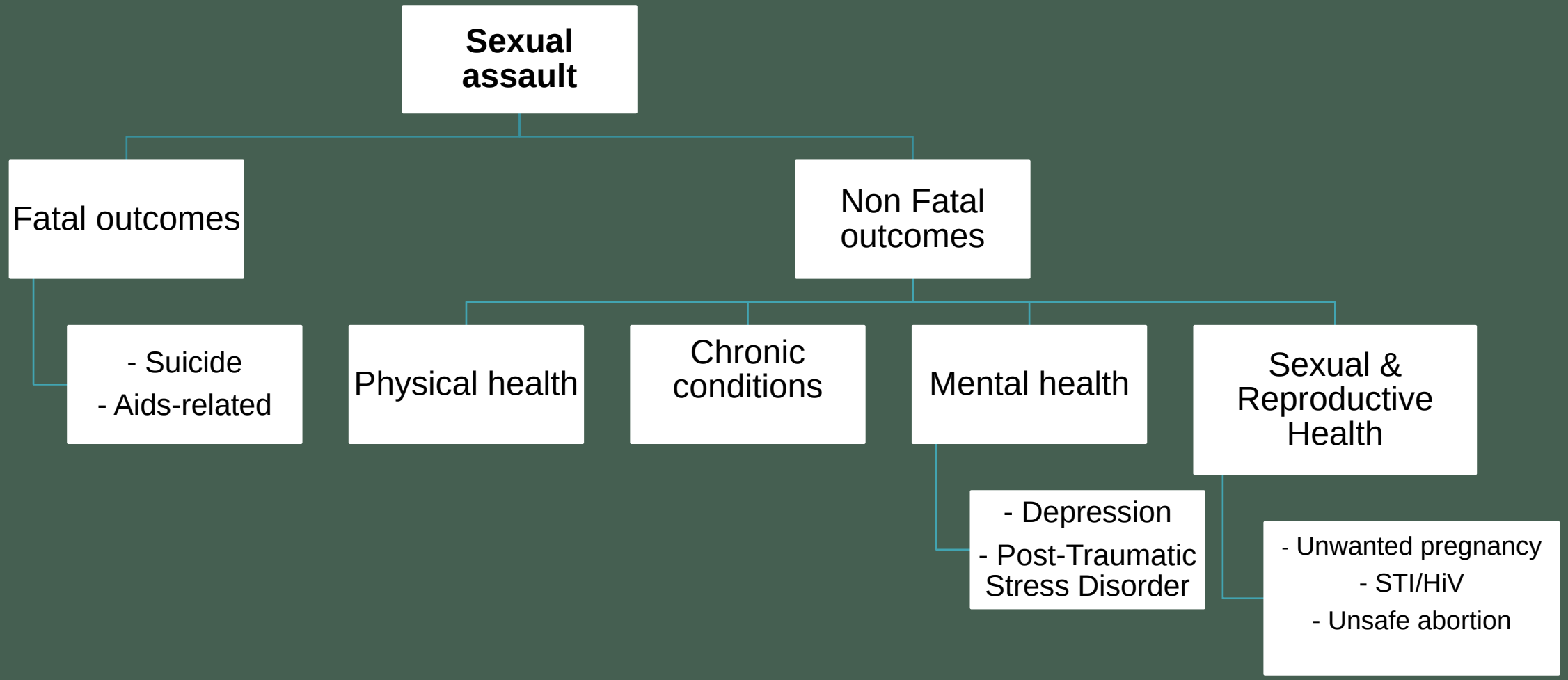
Sexual Violence: Concept

- "…sexual violence as, '*any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women's sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work*'.

- Thus understanding of sexual violence covers a spectrum of sexual abuses. It also emphasizes that while the form that such violence takes and the degree of violation might differ, a violation of a woman's sexual integrity is common across all such acts.

Source: The World Report on Violence and Health (Jewkes, 2002)

Sexual violence against women: Health impact



Source: SVRI, 2007, WHO, 201

Sexual Violence: the Scale

- Sexual violence is a widespread issue, present in all societies, across cultures, class and race
- 35% of women worldwide have experienced either sexual intimate partner violence or non-partner sexual violence in their lifetime (*World Health Organization, 2013*)
- 7.2% of women worldwide have experienced non-partner sexual violence (*Abrahams et al, 2014*)
- 35,000 incidents of rape in the last three years - figures on crimes against women released by the National Crime Records Bureau, 2015
- Countrywide 93 rapes committed each day (NCRB, 2014).

Sexual violence a human rights concern

These rights and freedoms include:

- the right to life;
- the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment;
- the right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- the right to liberty and security of person;
- the right to equal protection under the law;
- the right to equality in the family;
- the right to the highest standard attainable of physical and mental health; and
- the right to just and favourable conditions of work.

MINT GRAPHITI

Chart 1

99% of violence faced by women go unreported

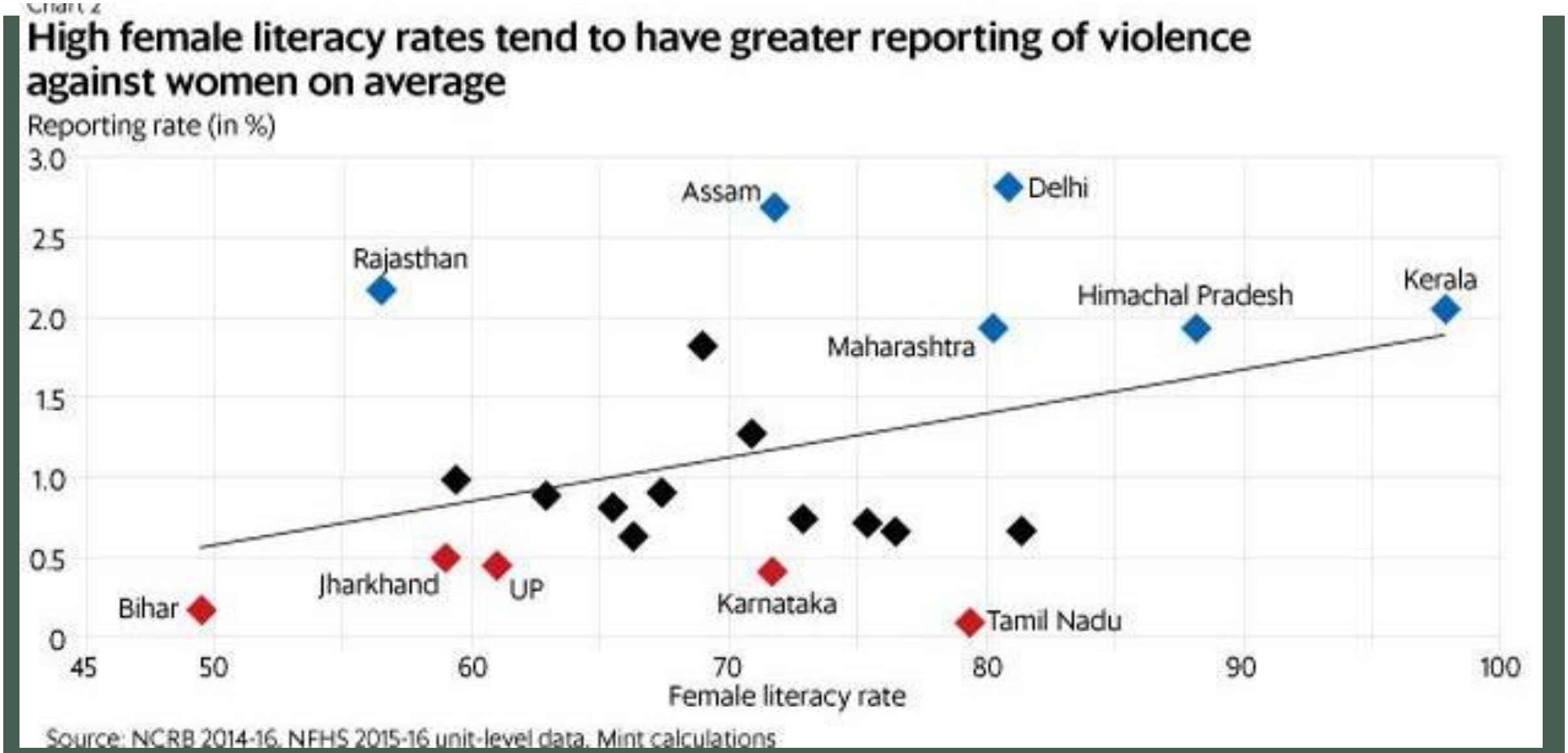
Incidence of violence (NFHS survey data)	Proportion*
Women facing sexual violence in the past year (from anybody other than their husbands)	**1,432**
Women facing sexual violence in the past year (from anybody, including husbands)	**24,772**
Women facing any violence in the past year (sexual/physical)	**48,748**
Reporting of violence (NCRB crime data)	Proportion*
Women reporting sexual violence	**212.6**
Women reporting violence (overall, including physical and sexual)	**397**
Under-reporting rates (NFHS & NCRB data)	(in %)
Under-reporting in sexual violence (excluding marital rape/assault)	**85.2**
Under-reporting in sexual violence (including marital rape/assault)	**99.1**
Under-reporting in overall violence faced by women	**99.2**

*per million female population

Note: To compute reporting rates based on NCRB data, the average crime rates of 2014-16 have been considered to make them comparable with the period of the NFHS 2015-16 survey. The recorded instances of crimes have been divided by the total female population, based on projections from 2011 census data. Data on reporting of sexual violence includes data on recorded instances of rape, attempt to rape, assault to outrage modesty, insult to modesty. Data on reporting of any violence also includes data on cruelty by husband/family apart from the categories listed above.

Source: NFHS 2015-16 unit-level data, NCRB 2014-16, Census 2011, Mint calculations

- Live Mint: 99% cases of sexual assaults go unreported, govt data shows; April 24, 2018.



- Live Mint: 99% cases of sexual assaults go unreported, govt data shows; April 24, 2018

The public health approach to understanding sexual violence through a gender sensitive perspective

- From the public health perspective, sexual violence is viewed as a preventable problem. The public health approach to prevention makes use of **the gender perspective** to primarily understand the underlying causes of sexual violence, rather than just focusing on «more visible» symptoms in order to have a better impact on the issue. (WHO,)

- The gender perspective emphasizes on patriarchy, unequal power relations between women and men, and hierarchical constructions of masculinity and femininity as main and most common **«drivers»** of sexual violence.

- These drivers contribute to establish control on women and lead to structural gender inequalities as well as sexual violence.

Series

Violence against women and girls 2

The health-systems response to violence against women

Claudia García-Moreno, Kelsey Hegarty, Ana Flavia Lucas d'Oliveira, Jane Koziol-McLain, Manuela Colombini, Gene Feder

Health systems have a crucial role in a multisector response to violence against women. Some countries have guidelines or protocols articulating this role and health-care workers are trained in some settings, but generally system development and implementation have been slow to progress. Substantial system and behavioural barriers exist, especially in low-income and middle-income countries. Violence against women was identified as a health priority in 2013 guidelines published by WHO and the 67th World Health Assembly resolution on strengthening the role of the health system in addressing violence, particularly against women and girls. In this Series paper, we review the evidence for clinical interventions and discuss components of a comprehensive health-system approach that helps health-care providers to identify and support women subjected to intimate partner or sexual violence. Five country case studies show the diversity of contexts and pathways for development of a health system response to violence against women. Although additional research is needed, strengthening of health systems can enable providers to address violence against women, including protocols, capacity building, effective coordination between agencies, and referral networks.

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This is the second in a Series of five papers about violence against women and girls

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Introduction

Violence against women is a global public health and clinical problem of epidemic proportions.[1] It is also a gross violation of women's human rights. Violence affects the health and wellbeing of women and their children, with vast social and economic costs.[2-4] Its adverse physical, mental, and sexual and reproductive health outcomes[5,6] lead women who are abused to make extensive use of health-care resources.[6,7] Health-care providers frequently, and often unknowingly, encounter women affected by violence.

The health-care system can provide women with a safe environment where they can confidentially disclose experiences of violence and receive a supportive

in many ways.[5,6] Women with a history of intimate partner violence are more likely to seek health care than are non-abused women.[4,10,11] For example, Bonomi and colleagues[4] showed that women who were physically abused used more mental health, emergency department, hospital outpatient, primary care, pharmacy, and specialty services.

Key messages

- The health-care system has a key part to play in a multisectoral response to violence against women; that role, however, remains unfulfilled in many settings.
- Violence against women needs to have higher priority in health policies, budget

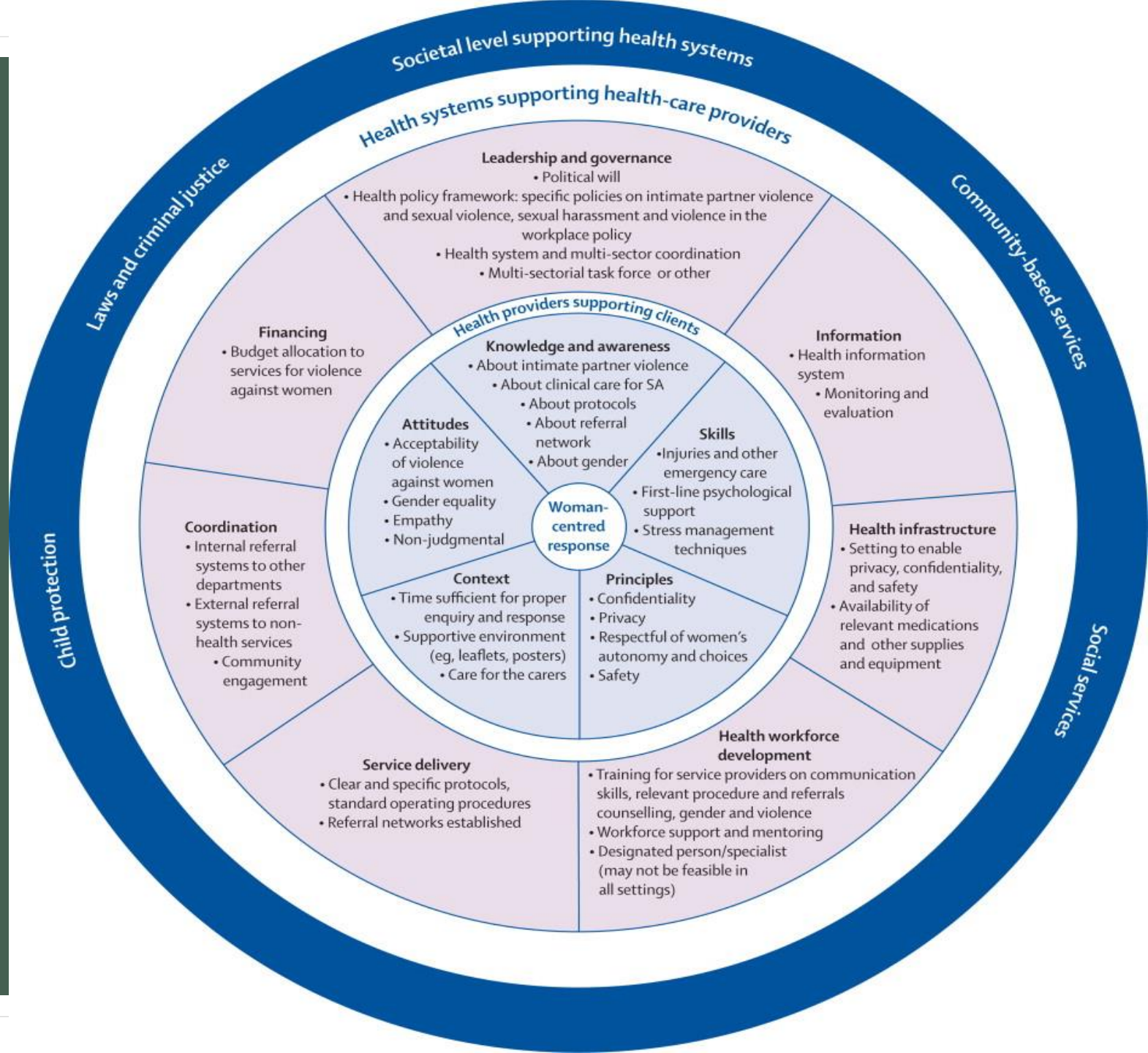


Figure: Elements of the health system and health-care response necessary to address violence against women (Garcìa-Moreno et al, 2014)

PART 2: STATUS OF POST NIRBHAYA REFORMS

Dr Amita Pitre
Research Scholar, TISS
Consultant, Public Health and Gender Justice

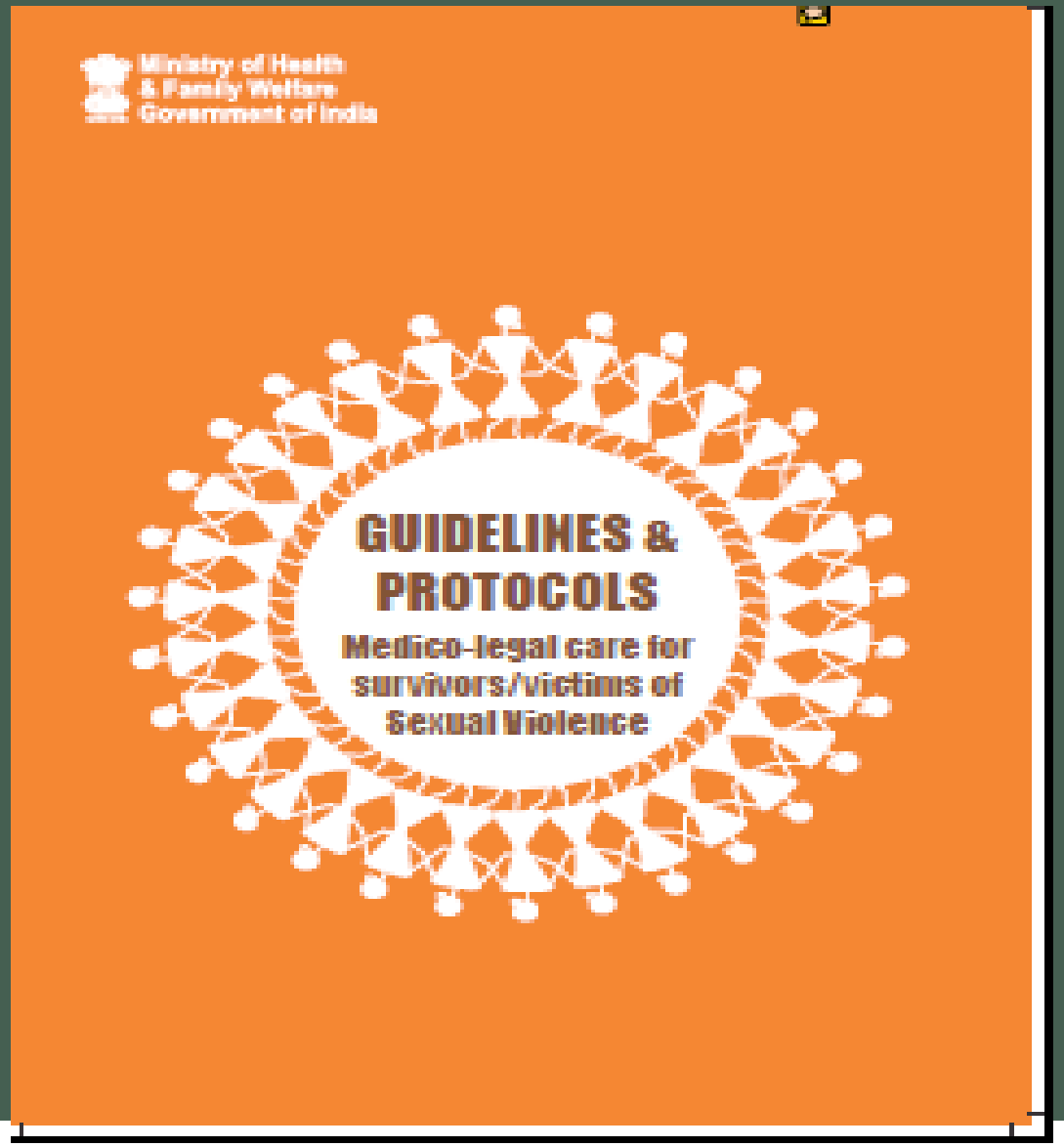
Legal Responses to Sexual Assault

- Protection of Women from Domestic Violence Act (**PWDVA) 2005**
- **POCSO** (Protection of children from Sexual Offences), 2012 and
- **'Criminal Law Amendment Law, 2013'.**
- Compensation schemes
- One Stop Crisis Centres

Nirbhaya rape case in 2012 - watershed moment in India

- Prominent developments post Nirbhaya:
  - Justice Verma Committee Report and
  - Usha Mehra Committee Report
- Led to
  - the Ministry Guidelines for health care system in March 2014; and
  - Criminal Law Amendment (CLA) 2013

Govt of India on health care system's response to survivors of GBV



CONTENTS

Ministry's Guidelines (2014): Establishing a comprehensive healthcare response to sexual assault

- Importance of informed consent for examination, collection of evidence and disclosure of information to the police
- Detailed documentation of history of assault , collection of relevant forensic evidence
- Provision of an evidence based medical opinion
- Medical support free of cost for survivors of sexual violence, first line psychosocial support and validation following traumatic experience
- Maintaining a clear and fool-proof chain of custody of medical evidence collected.
- Referral to appropriate agencies

Criminal Law Amendment 2013

- Section 357C of CLA 2013: right to first-aid or medical treatment at no cost for all survivors/victims sexual violence by the public and private health care facilities
- 166B of the Indian Penal Code: failure to treat and provide medico-legal care is now an offence under Section.
- Expanded definition of 'rape' to include a range of penetrative sexual offences,
- Amendment 'molestation' to 'sexual assault' to include a wide range of offences other than penetration,
- Introduction of offences of disrobing, voyeurism, stalking, gang rape and gang rape causing death or persistent vegetative state; and
- Amendment to provide for enhanced punishments under each of these.
- the age of consent for sexual activity at 18 years
- Requires survivors consent for: intimating police; examination and collection of evidence; and treatment

Filing FIR and Police Investigation

- What the law says?
- Mandatory for police to file FIR
- Punishment of two years (Sec 154 CrPC, amended in CLA 2013)
- Zero FIR to be filed
- Guidelines for gender sensitive Medico-Legal Care provision

Travesty of procedures

- Jisha, a dalit girl and Law student from Kerala
- Brutally raped and murdered in her home
- No FIR filed and accused not apprehended
- Accused arrested after 40 days
- The family complained of being severely discriminated and harassed in the village

Unnao Rape Case, Uttar Pradesh

- 16 year old girl accused Member of Parliament (MP), of gang rape
- Case not filed until court was moved some months later
- Father and Uncle thrashed after attempt to file FIR
- Cross-FIRs filed but only girl's father and uncle arrested
- **Death of the victim's father while in judicial custody**
- **Autopsy: Several brutal internal injuries**

Dharmapuri Rape Case

- 17-year-old *Adivasi* (indigenous tribe) girl was raped in Dharmapuri district, Tamil Nadu
  - No action taken until the girl died of her injuries
  - The villagers had to protest
  - FIR filed one week later
  - "Police told me not to tell anyone that my daughter was raped": Victim's father

Abuse of procedures common

- Most rape cases by known persons
- *'Everyone blames me' (*HRW, 2017) and study by Partners in Law and Development (2013)
- Delayed FIRs
- No '0' FIR
- Copy not given to survivor or family
- No witness protection policy and mechanism
- Accused has easy access to victim/survivor
- Lacunae in gender sensitive medico-legal care provision

Institutional reforms

- The One Stop Crisis Centres: Too few or on paper
- Rape Compensation Scheme often underfunded and functions erratically
- Medico-legal care guidelines not adopted by many states
- Where adopted not implemented in letter and spirit

Consent

- What the law says (CLA 2013)
- Sexual intercourse
  - Against her will
  - Without her consent
  - If consent is given due to misconception, fear or fraud

- Explanation:
  - Consent is '**an unequivocal agreement to engage in a particular sexual act**'
  - '**absence of resistance will not imply consent**'

Jindal Global Law School Case (2015)

- The Punjab and Haryana High Court suspended the sentence awarded by the Additional District and Sessions Court in March 2017
- Granted bail to all three accused.
- The High Court argued, "The testimony of the victim does offer an alternate story of casual relationship with her friends, acquaintances, adventurism and experimentation in sexual encounters and these factors would, therefore, offer compelling reasons to consider the prayer for suspension of sentence favourably particularly when the accused themselves are young and the narrative does not throw up gut-wrenching violence, that normally precede or accompany such incidents."
- Violation of Indian Evidence Act: Past sexual history, conduct and character

Mahmood Farooqui Case

- US student on fellowship in India raped by the accused
- Well argued district court judgment convicted him
- Seven years in jail and fine
- However
  - The High Court Acquitted him
  - "Instances of woman behaviour are not unknown that a feeble 'no' may mean a 'yes'. If the parties are strangers, the same theory may not be applied... But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher whether little or no resistance and a feeble 'no', was actually a denial of consent."

Communialisation and Politicization of Rape

- Rape and Murder of a little girl in Kathua Kashmir
- Belonged to a nomadic Muslim community, the Bakherwals
- Hindu right wing groups, including 2 ministers protested against filing of charge-sheet
- Refused the family permission to bury the girl in the village

- "Everyone is complicit - we the people, media, politicians. There's no concept of human rights anymore. There are Hindu rights and Muslim rights. Our loyalties are now to religion, caste, groups and clubs," says Dr Visvanathan.

PART 3: ISSUES OF IMPLEMENTATION & FIELD REALITIES

Dr. Sunita Sheel, Forum for Medical Ethics Society and *Indian Journal of Medical Ethics*

Study objectives

1. To assess quality of health care and medico-legal care for survivors of gender based violence with special focus on domestic and sexual violence Health care provided
   - Medico legal response
   - Women friendly services
   - Understanding intersections
   - Understanding health care providers perspectives and knowledge about recent legal reforms

- To identify gaps in infrastructure and human resources towards evidence based advocacy to enhance quality of care for survivors of GBV.

Our approach to the research & advocacy initiative

- Appreciation of entirely changed context including the Guidelines, 2014 and CLA 2013
- Critical review of the Guidelines and CLA 2013
- Review of the methodological approaches, and existing protocols, especially tools used

- Manuscript based on critical review
- Overall approach quality of care assessment
- Benchmark for assessment: Ministry guidelines
- Health care facilities: R and U; state run and Municipal Corporation run
- Key constituencies: Health care providers, HCF Checklist
- Different tools for doctors, nurses and outreach workers
- Study information sheet
- Informed consent form
- Pilot testing of the tools, revisions

Main domains of enquiry

- **Health Care provided:** The study had examined the practices followed and services provided with regard to psycho-social support and health care issues emergent on rape and sexual assault.

- **Medico-legal response**: The study had examined the practices to undertake medico-legal examinations and the forensic laboratory services to document adherence to recent legal reforms and Ministry Guidelines, quality of protocols/reports and suggest ways to address emerging concerns.

- **Understanding Intersections:** Given that gender, caste, class, and rural biases, age and 'special group' identities such as persons with alternate sexual orientation, transgender and intersex persons, sex workers, and persons with disabilities influence handling of cases, the study would capture sensitivity to these aspects.

- **Understanding negative attitudes and knowledge of recent legal reforms and guidance:** Given that sexual assault survivors face considerable negative response based on stereotypes, the study had captured the existing attitudes of healthcare providers. It had also explored the extent of knowledge amongst health care providers about the recent legal reforms and the guidance issues for them by the MOH&FW/GoI and orders issued by the state government in Aug 2015 seeking compliance with.

- **Women friendly services**: The study had examined the woman friendliness of the facilities - availability of women doctors and staff, privacy of settings, consent procedures etc. This had helped to identify gaps in infrastructure and human resources and indicate capacity building needs.

True Vs False statements

- Medical examination of the survivor of sexual violence doesn't require police requisition.
- It is mandatory for health care facility both private and public to provide treatment to survivors free of cost
- Not providing comprehensive free care to survivors and non-compliance can attract imprisonment of one year and/or fine
- Medical examination can be done without survivor's consent
- It is mandatory for doctors /hospitals to inform police about a woman examined for sexual violence
- It is essential to arrange for a female gynecologist for examination of the survivor
- For child survivors less than 18 years it is mandatory to arrange for a female doctor to examine
- Presence of injuries to the survivor is necessary to arrive at an opinion that a woman has been sexually violated/raped.
- Documentation of sexual activities prior to sexual violence are required as part of medico-legal evidence
- It is mandatory for the examining doctors to conduct the Medical age estimation test .
- It is important to document the details of WHEN examination is done

Challenges and our approach

- ERB approval
- Categories of research participants (additional constituencies)
- Tool for health care provider
  - Major revisions
  - Eliminated sections – consent seeking, monitoring and evaluation, sections that dealt with SA and Child abuse for general understanding (not case specific)
  - Added a section of DV, training requirement
  - Vignettes

Insights from qualitative data:

- **Data piece no 1 (Municipal Corporation run HCF)**
- **A sr gynaecologist with 20 years service** in a 700 bedded Municipal run hospital who also chairs the Committee for responding to sexual harassment at workplaces.
- **Q:** It is a good hospital and must be very useful for the people in this neighborhood. Have you cared for survivors of violence in your 20 years of service here? And how many cases you might have attended during this year?
- **Res:** *"Yes, we are a big hospital as you can see. We cater to a large number of patients. Patients travel even from outside of this city to benefit from services here. However, we don't attend to survivors of sexual violence. We do attend to the cases of domestic violence. We used to serve survivors of sexual violence until 2012. We stopped doing so. We now refer all such cases to the tertiary hospital (state run and medical teaching hospital). This policy decision was taken by (almost ordered) by the then Commissioner. There was some major problem with the case we were dealing with. It was a big mess! Now, along with the appointment (contract letter) to newly appointed doctors, the CEO attaches a letter stating that they are not supposed to attend to the cases of sexual violence except refereeing them to the tertiary HCFs in the city (about 25 KMs away)."*.
- **Q:** We noticed that the hospital does have super-specialty like neuro-surgery. It is also heartwarming to know the de-addiction centre in the hospital. We had an opportunity to talk to the social worker and a senior psychiatric heading the centre. What according you are the constraints in considering attending to survivors?
- **Res:** *"That's true. … neuro-surgery department was fairly expensive affair to set up. It requires separate OT and high-end equipment. It was set up by then CEO (chief of the hospital) who was a neuro-surgeon. … however, currently it is closed since he has moved to another place. …". It is simply shut down. We don't know what is happening to it.*

A sr pediatrician deeply involved with peoples' health movement

- **Q:** Have you cared/attended to survivors of sexual violence in this hospital?
- **Res:** *We don't attend to survivors of SV. It needs to be done. We are a big hospital and the only one in this neighbourhood. It is a good set up. But there are many problems here. I am a sr specialist. But I don't have cabin to sit. But others including a social worker has a cabin for himself. Many of us attend to a large number of cases. I can't do all that I would like when I attend to a patient. Large case load allows us to spend just a couple of minutes with each patient. How can we then attend to survivors? It requires time to attend to those cases. I am also not trained to do so. You must conduct training of the staff here in handling sexual harassment cases, (domestic and sexual violence training will be only later). Every staff member should undergo training about sexual harassment and redressal. …. Recently a young intern (female) approached the Sex Harassment redressal committee at the hospital against a wardboy. It was heard and the committee decided to suspend the ward boy). However, the wardboy stayed on as a corporator (patron of the ward boy). Wardboy was reinstated and just the next day the same intern and the wardboy were posted together in the same ward on a night shift!!*

- **Q:** Have you approached the Medical Officer at the Municipal Corporation or any other concerned office with the kind of problems you are facing on ground?
- **Res:** No use, *Ma'am. I and some others wrote to them many times. They don't respond. We don't know what happens to our letters (complaints). We also wrote to them about short staff. For this 750 bedded hospital, there are just seven staff members are on pay roll the rest all are on contractual basis. They may not have enough motivation and incentive to continue in the system.*

- **Q:** How are the mandates – type of health service provision - decided for the hospital? Who determines the quantum of budget? Are you and other staff are consulted by the Municipal Corporation on various matters related to the policy level decision about your hospital?
- **Res:** *No, we are not involved at all in these processes.*

Thanks!