Forensic Medicine and Toxicology - Topic 8 - Clinical forensic medicine - sexual offences

Consent, Dignity and the Current Legal Framework

Meaning of Sexual Consent

Specific and Continuing Consent

- **Consent** is a freely given, informed and specific agreement by a person who has the capacity to decide.
- Consent to one act does not imply consent to another act or to a later occasion.
- A person may withdraw consent at any time, including after sexual activity has begun.

Invalid Assumptions and Incapacity

- Silence, lack of physical resistance, previous sexual activity and an existing relationship do not by themselves establish consent.
- Coercion, threats, deception relevant to the legal provision, unconsciousness and incapacity may invalidate apparent agreement.

Children and POCSO

- Under the **POCSO Act**, a child is a person below 18 years, and the child's apparent agreement does not remove the offence.

Rape and Related Provisions

Definition and Scope of the Offence

Acts and Consent Circumstances

- **BNS section 63** defines rape through specified penetrative acts and the circumstances that make them an offence.
- The definition includes penile penetration, specified insertion of objects or other body parts, manipulation causing penetration and specified oral contact.
- The provision includes acts against the woman's will, without her consent and specified situations in which consent is legally ineffective.
- The provision applies irrespective of apparent consent when the woman is below 18 years.

Statutory Exceptions and Clinical Duties

- The statutory text excludes a medical procedure or intervention from the definition of rape.
- The enacted marital exception concerns a wife who is not below 18 years, while **section 67** separately addresses intercourse without consent during separation.

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- This statutory exception does not make coercion clinically acceptable or remove duties to treat injuries and respond to domestic violence.

Medical Examination Provisions

A. Examination of the Survivor

- **BNSS section 184** governs medical examination of a woman in a rape investigation and requires her consent or that of a person competent to consent on her behalf.
- The section requires the examination report to record consent, examination times, findings, reasons for conclusions and relevant samples.
- The doctor forwards the report to the investigating officer within seven days under the provision.

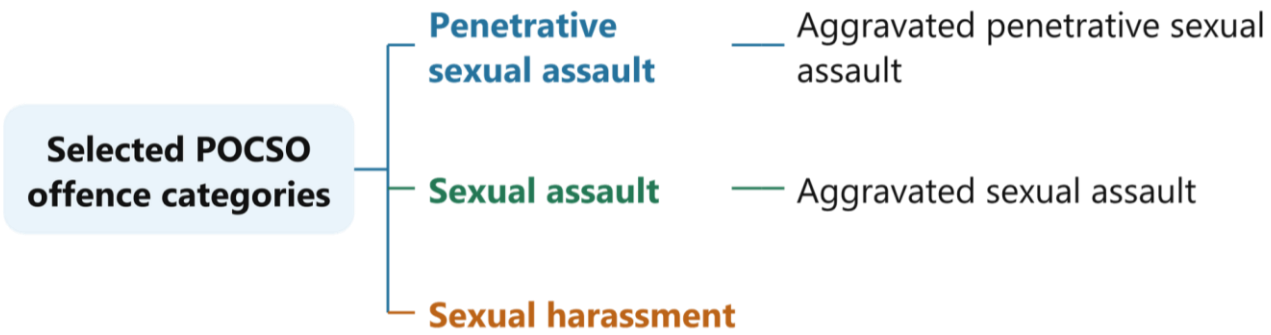
B. Examination of the Accused Person

- **BNSS section 52** provides for medical examination of a person accused of rape when the statutory conditions are met.
- The clinician must establish the lawful authority for the examination and record its scope rather than assuming that every police request permits every procedure.

Immediate Treatment Duties

- **BNSS section 397** requires public and private hospitals to provide immediate free first aid or treatment for the specified sexual and acid-attack offences and to inform police.
- **BNS section 200** makes failure by the person in charge of a hospital to provide the required treatment punishable.
- A police requisition, an FIR, payment or completion of evidence collection must not become a condition for urgent treatment.

POCSO Categories and Child-friendly Examination



Offence Categories and Mandatory Reporting

A. Penetrative Sexual Assault

- Sections **3 and 4** deal with penetrative sexual assault and its punishment, while sections **5 and 6** deal with aggravated penetrative sexual assault.

B. Sexual Assault

- Sections **7 and 8** deal with sexual assault involving sexual touching without penetration, while sections **9 and 10** deal with its aggravated form.

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C. Sexual Harassment

- Sections **11 and 12** deal with sexual harassment of a child and its punishment.

Mandatory Reporting

- **Section 19** requires reporting of knowledge or apprehension of a POCSO offence to the Special Juvenile Police Unit or local police.

Child-friendly Medical Examination and Consent

- **Section 27** allows the child's medical examination even when an FIR or complaint has not yet been registered.
  - A girl must be examined by a woman doctor under this provision.
  - A parent or another person trusted by the child should be present, with the statutory alternative arranged when such a person is unavailable.
- **Section 41** excludes a medical examination or treatment undertaken with the required consent from the specified offence provisions.
  - This safeguard for legitimate care does not authorize unnecessary intimate examination or override consent requirements.

Gender, Sexuality and Equal Care

Identity, Orientation and Equal Rights

Distinct Personal Concepts

- Biological sex characteristics, gender identity and sexual orientation are different concepts.
- A person's identity or orientation does not indicate criminal behaviour, mental illness or capacity to consent.

Rights and Relevant Judgments

- The Supreme Court's **NALSA decision in 2014** recognised transgender persons' rights and self-identified gender.
- **Navtej Singh Johar in 2018** decriminalised consensual sexual acts between adults that had been criminalised under IPC section 377.
- **Joseph Shine in 2018** struck down the criminal offence of adultery, although adultery can remain relevant in matrimonial proceedings.

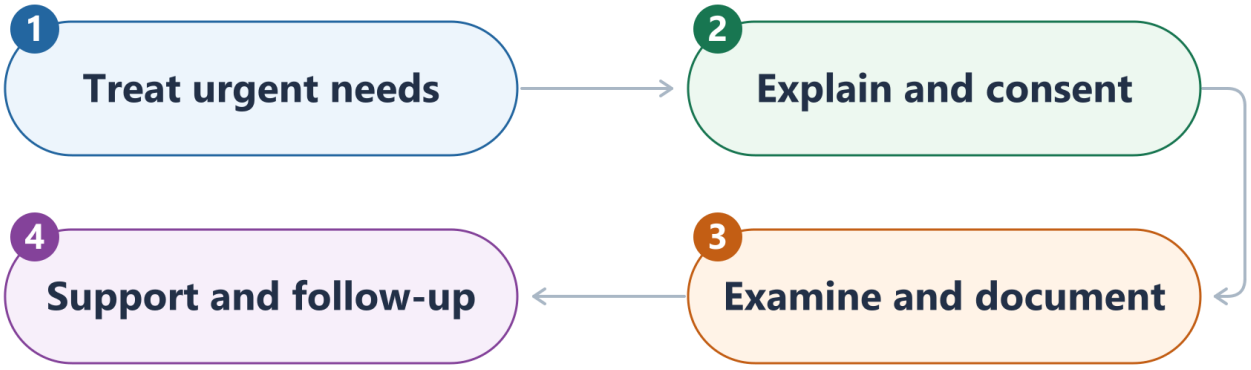
Non-consensual Acts and Applicable Law

- Forced anal or oral penetration, forced insertion of an object, unwanted touching and disrobing require respectful care, documentation and application of the relevant law.
- The BNS does not reproduce the former IPC section 377, so its old wording must not be presented as a current BNS offence.
  - The applicable charge depends on the act, the person's age and the relevant general or special law.

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- Sexual acts involving animals raise animal-welfare and other legal issues, and the clinician should describe evidence without inventing a statutory section.

Care and Examination of a Sexual-assault Survivor



Immediate Care and History

Urgent Care, Privacy and Component-specific Consent

- Assess safety, bleeding, pain, consciousness, intoxication and other urgent clinical needs before undertaking a detailed forensic examination.
- Provide a private setting, an interpreter when needed and a support person acceptable to the survivor.
- Explain the purpose of treatment, examination, photography, sample collection and reporting separately.
- Document consent for each component and respect refusal of a component while continuing appropriate treatment.

Relevant History

- Use open questions and record important statements in the survivor's own words without repeated or accusatory questioning.
- Record the reported acts, approximate times, symptoms and relevant events after the assault, such as washing or changing clothes.
- Ask about medication, allergies, menstrual and pregnancy history only to the extent relevant to care and evidence interpretation.

Preventive Treatment and Follow-up

- Offer indicated emergency contraception, pregnancy testing, STI care, hepatitis B prevention and HIV post-exposure prophylaxis according to the current clinical protocol.
    - HIV prophylaxis is time-sensitive and should be started as soon as indicated, ideally within hours and no later than 72 hours after exposure.
    - Arrange follow-up for repeat testing, wound care, mental health support and ongoing safety needs.

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Examination and the Limits of Findings

Indicated Examination and Objective Findings

- Record general and local findings with anatomical location, measurements, tenderness and any limitations of the examination.
- Conduct an intimate examination only when clinically or forensically indicated and after appropriate explanation and consent.
- A normal examination does not exclude sexual assault because many assaults produce no visible injury or are examined after healing.
- Injuries can support a reported mechanism, but a doctor cannot determine consent from an injury pattern alone.

Invalid Tests and Unsupported Opinions

- Neither the hymen nor vaginal laxity can establish whether a person has previously had sexual intercourse.
- A **two-finger test or other virginity test has no scientific validity** and must not be performed.
    - If an authority requests such a test, explain its lack of validity and offer a proper clinically indicated examination and objective report.
- Avoid opinions such as habitual to intercourse, character assessment or a definitive declaration that rape occurred solely from medical findings.

Separate Decisions during Survivor Care

1. Consent to Clinical Care

- The survivor should understand the proposed examination and treatment, including likely discomfort and alternatives.
- Refusing evidence collection does not remove the right to appropriate treatment.

2. Consent to Evidence Collection

- Explain the site, purpose, storage and intended use of each relevant sample.
- The sample set follows the history and laboratory requirements instead of an automatic invasive examination.

3. Consent to Photography

- Explain which images are necessary and how identity and intimate images will be protected.
- Retain original files securely and document the consent or other lawful basis.

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