

Sexual Assault through a Forensic Lens: Understanding Drug Facilitated Sexual Assault Issues in Nepal

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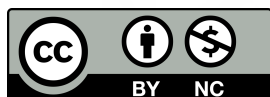
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ABSTRACT

Sexual assaults and drug facilitated sexual assaults (DFSA) are becoming a serious problem in Nepal. The increasing number of DFSA cases being reported in the country highlight the urgent need to focus our efforts on several areas, including: (i) capacity building on crime scene examination and forensic analysis of sexual assault cases, (ii) moral and sexual education, and public awareness programmes in schools, and (iii) revised policy and practice in handling of sexual assault cases. Therefore, our work is focused on understanding changing public perception and attitude in society as well as shifting behaviour among law enforcement agencies such as police and judiciary.

In relation to these issues, we have been working collaboratively for the past few years with different organisations and stakeholder groups. Some examples include: (i) running various events to increase awareness (e.g. TV programmes, newspaper articles and interviews, extra-curricular activities in schools); (ii) organising capacity building training to forensic scientists; and (iii) organising workshops to bring together a variety of stakeholders. Here, in this paper, we present our key insights, experience and lessons learnt from these activities. We highlight the need to expand the collaboration effectively among the key stakeholders due to the complex nature of DFSA cases. We also recommend increasing visibility and expansion of One Stop Crisis Management Centres throughout the country with focus on hard-to-reach areas.

Keywords: Capacity Building; Drug Facilitated Sexual Assault; Forensic Science; Sexual Assault; Public Awareness.

INTRODUCTION

Sexual assault is one of the public health problems affecting many people worldwide. More broadly, sexual assault is defined as an action through which a person intentionally touches another person in a sexual way without their consent. Sexual assaults can happen to anyone (regardless of gender they identify with) in the form of rape, sexual abuse or drug facilitated sexual assault, to only name a few. In 1993 the General Assembly of the United Nations urged to eliminate violence against women, recognising sexual abuse as one of the forms of violence against them.¹ In their declaration, the General Assembly urged to condemn any forms of violence against women. In line with this publication, in 1996 the World Health Assembly declared violence as a leading worldwide public health problem.² Due to obvious biological differences, female victims are more impacted

physically by sexual assaults (i.e. unwanted pregnancy, unsafe abortion, etc.). However, in terms of sexually transmitted infections, for example HIV, both female and male victims are at risk. Even though sexual assault is primarily associated with female victims, men can also fall victim to this crime.^{3,4}

Drug facilitated sexual assault (DFSA) is a non-consensual sexual act which occurs when the victim is under the influence of drugs and/or alcohol usually in a situation that the victim perceives as non-threatening (at a party, in a restaurant, on a date, at home, etc.).⁵ In general, there are two types of DFSA: (i) proactive (perpetrator spikes victim's food and/or drink); and (ii) opportunistic (victim consumes drugs and/or alcohol and the perpetrator takes advantage of the situation). However, there is also a third

category in which it is the offender who is under the influence of the drugs and feels empowered to commit the assault; and this types of cases have been documented in Nepal and other countries.^{3,6,7} A common strategy used by perpetrators of such assaults is to spike drinks with drugs (including alcohol and pharmaceutical compounds) which are used to render the victim defenceless and susceptible to DFSA. These drugs dissolve quickly without changing the colour or smell of the beverage. Once the drink is consumed, these drugs start acting on the victim, are rapidly metabolised and as a result disappear from the system within a short-time period.^{8,9} The victim is unable to fight back and/or forgets anything that has happened.

Since the 1990s, this topic has been widely covered in academic literature¹⁰, and Western media outlets and DFSA has been recognised as a distinct crime. However, it is still a fairly new concept in Nepal.^{3,8} and some cases are also linked to deep-rooted cultural and religious beliefs. For example, in some alleged cases, victims reported their abuse by religious Gurus.¹¹ Because of that, people fear to report these cases, contributing to the overall lack of reporting, which is already low in sexual assault cases.

Sexual assault reporting rate in the Western countries range from 17% in the UK⁷ to 25% in the USA¹² but similar data is not available for Nepal – one of the subjects of our exploration in this paper. In our previous survey of students in Nepal, 3.4% participants (n=418) revealed that they have experienced DFSA and further 14.9% knew someone who had experienced DFSA.³ Male students have also reported such experience while male victims of sexual assault are not even recognised in the country's legislation or in public perception. Therefore, more needs to be done by way of education and increased awareness about DFSA to ensure people have adequate knowledge. Even though DFSA cases have not featured in the official records in Nepal, the use of drugs and solvents to commit such crimes has been reported by the media.¹³⁻¹⁵ There is very limited academic literature available from Nepal both about sexual assault and DFSA, which is one of the main reasons for our focus in this paper.

METHODS

A range of methodological tools was used in this study in Nepal, including a thorough literature review, public awareness, and stakeholder engagement events on the topic of DFSA. More specifically, these involved: running workshops to increase awareness; organising capacity building training; media interviews and organising workshops to bring together a variety of stakeholders (e.g. relevant government representatives, education authorities, police forces, forensic scientists, medical practitioners, lawyers, judges and crime scene officers). These were delivered from 2018 to 2021. Results and feedback from these events were analysed and are presented here as six dominant themes.

RESULTS & DISCUSSION

Capacity building training of forensic scientists

A 10-days capacity building training was delivered to Nepal's two main state-owned forensic science laboratories staff, funded by the Royal Society of Chemistry in 2018. Through this training, chemistry and toxicology scientists at both national laboratories acquired the ability to analyse samples from suspected DFSA cases and quantify drugs from a range of evidence types, including blood, hair and drink samples. The feedback received from one trainee states: *"this training has certainly enhanced the competency of our staff in the area of qualitative and quantitative analysis of drugs and toxicological samples, which has been a big challenge for us since long"*.

In this training, method development and validation for screening and quantitative analysis following different international guidelines were covered. The training was delivered through lectures, tutorials (including case discussions) and practical sessions. As a result, laboratory protocols were developed and shared. This training helped not only in the toxicological analyses but also in the analysis of seized street drug. Those trained also acquired the ability to train new staff, adopt standard operating procedures and contribute in upgrading the lab facilities in the future as highlighted in the feedback from another trainee: *"after this training, I will be able to impart the knowledge and skills among the other unit staff, adopt Standard Operating Procedure, guidelines and can contribute in upgrading the and facilities"*. When trainees were asked whether they have changed anything in their workplace two years after the capacity building training, one participant highlighted that they have changes followings: *"changes in storage of samples received, changes in processing of samples received, updated standard operating process and updated training manuals"*.

Which compounds need to be tested in suspected DFSA case?

As highlighted during the training, we also looked into potential drugs that need to be tested in suspected DFSA cases. The substances associated with DFSA are summarised in the guidelines published by the United Nations' Office on Drugs and Crime. The guidelines, which were published in 2011, list a number of different drug groups and they are both pharmaceutical compounds (e.g. morphine, Rohypnol (flunitrazepam), and drugs of abuse (e.g. cocaine, ecstasy).⁵ Some of these substances are easily available in Nepal despite tougher rules about prescription medications, hence they could have easily been implicated in DFSA cases.⁸ Previously, we have published trend data from DFSA cohort studies (Figure 1) which shows drugs that are detected from biological samples (blood/urine) from different countries.¹⁶ Similar

data is not available from Nepal, therefore more research needs to be done on this topic. According to this data (Figure 1), the primary drug associated with DFSA cases is alcohol which is supported by existing literature.⁶ It is then followed by other depressants of the central nervous system, which is in line with the effects sought-after by the perpetrators of DFSA.

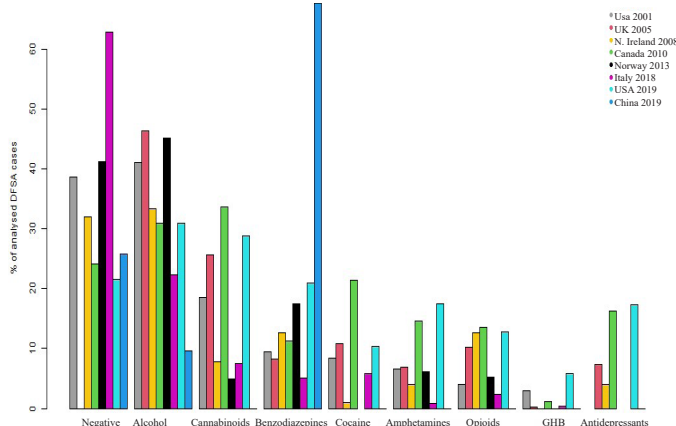


Figure 1: Drugs detected from biological samples (blood and/or urine) in suspected DFSA cases from different countries.¹⁶

Toxicology sample types in suspected DFSA cases

Our capacity building training also explored a range of toxicology samples that can be analysed depending on the nature of the case. In this regard, UNODC guidelines on DFSA investigation state that blood, urine, hair, food and drinks, drink residue, containers and vomit should be collected and analysed.⁵ Due to the victim's loss of memory, by the time the victim reports the assault, too much time may have passed, and testing of the victim's blood and urine (traditional forensic toxicology samples) are of little use because the drug will have been metabolised and cleared from the body.¹⁰ Blood should be collected if the case is reported within 48 hours of the alleged incident and urine sample should be collected if the case is reported within 5 days of alleged incident. If there is a delay in reporting (more than 5 days), hair sample should be collected (a month after the incident) for forensic examination.^{5,17} Drugs in spiked drinks (only possible if the case is reported on time) and hair (late reported cases) could persist for longer and hence provide an alternative evidence type.^{18,19} Therefore, collection of these evidence types in addition to the traditional forensic toxicology sample types is recommended for toxicology analysis. Furthermore, examination in relation to rape investigation (e.g. body examination, other sample collection including DNA analysis) must be conducted.

In Nepal, toxicology analysis is conducted from viscera samples which is only used in post-mortem toxicology (i.e. after death). In suspected DFSA cases, biological samples (e.g. blood, urine and hair) need to be analysed based on time of incident and sample collection (Figure 2).

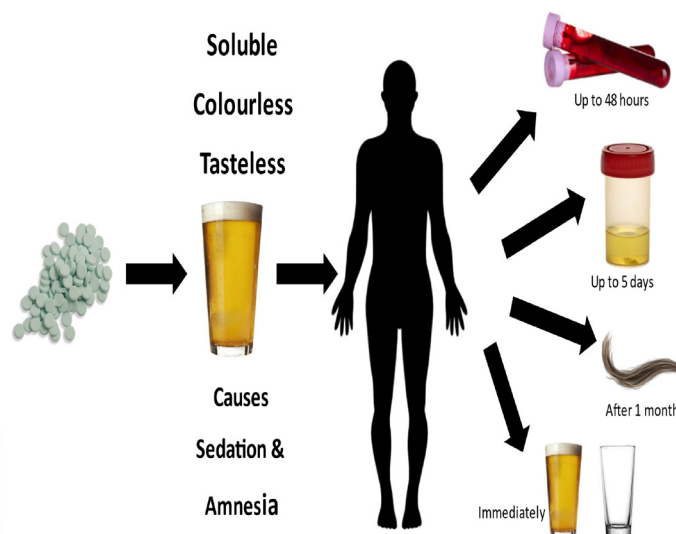


Figure 2: Sample collection strategy^{5,17} (Photo credit: Mr Christopher Davies, PhD researcher, Anglia Ruskin University, UK).

Currently, DFSA cases are not treated differently from rape cases, highlighting the need to raise awareness of such crimes and their distinct nature among forensic scientists, crime scene investigators and medical examiners (focusing on the effects of drugs on the victim and toxicological analysis of samples).

Stakeholder engagement and public awareness

To raise awareness among teachers and students, a series of outreach activities was offered to different schools and colleges across the country. During these events, students highlighted the need for teachers to discuss sex education: *"the teachers themselves feel awkward while talking about the subject matter. In my personal experience as well, I was not able to understand much about sex education during my school days"*. Another participant emphasised that *"the topic is insufficiently covered"*. This indicates the need for effective implementation of sex and relationship education as well as drug-related issues in schools and colleges, with ideas such as offering extra-curricular education on sex and relationships and on drugs, receiving a positive response from teachers. Our workshops and survey also highlighted that student used social media and news outlets to educate themselves in this subject which can pose reliability issues given that news can be modified to fit the audience and may lack rigour.^{4, 20,21} From outreach activities, we have reached more than 2,000 students and over 160 teachers/academics to successfully influence their attitudes, awareness and understanding of DFSA. Some schools have since then addressed this issue by various means such as hiring female healthcare staff, inviting guest speakers, as well as implementing creative arts to convey the message. When school teachers were asked whether they have made any changes after our

workshop in terms of the delivery of sexual education, one teacher stated this: “we performed drama about sexual violence, essay competition on sexual harassment and invited speakers for motivational programme and knowledge on sexual assault and DFSA”. Effective implementation of revised curriculum and regular monitoring is thus required to ensure sensitive topics such as sex education and DFSA is covered well in Nepal.

To target different stakeholders (forensic scientists, lawyers, school education and curriculum officials, police officers, medical professionals, public health experts, media personal, representatives from different government departments and non-government organisations), a series of events were organised. Through various activities, by March 2021, we reached 1,471 people. Two years after the first stakeholder engagement and subsequent events, changes were observed in medical and legal practice, e.g. an enhanced understanding of different factors related to DFSA case investigations, including why there is memory loss and why victim’s story is incomplete and could change. One example feedback received from hospital setting states: *“I and our hospital staffs have considered these new dimensions and issues in the assessment of the cases handled since then. Though we have not set-up One Stop Crisis Management Centre, but we have received frequently such patients in our psychosocial counselling section and this seminar has provided a positive impact on handling such cases”*. Another example feedback received from a judge states: *“I and my legal cohort have considered these new dimensions and issues in the assessment of the cases handled since then”*. The judge further adds *“the information disseminated from the DFSA workshop were helpful in making decision which comprised 40% out of 800 criminal cases settled in my bench.”*

To increase awareness of the public, local and national media were utilised. National level stakeholder engagements were covered by print and online media which further led to panel discussion programmes.^{22–24} Several of these interviews and articles^{3,4,8} were viewed and shared on YouTube and Facebook, totalling 19,838 engagements (as of March 2021). Collectively, these media engagements reached an online audience of more than 5 million people in Nepal. Community and local engagement activities were also offered to increase awareness through a police–public partnership project. This included several mother groups and local parents representing six different grassroots organisations. In addition, forensic science and DFSA topics were introduced in the science conference organised by the Biotechnology Society of Nepal (BSN) at a national level in 2019 and 2020. During the Covid-lockdown, awareness programme continued through online engagement to

provide further support in different provinces.

Integrated support system for victims/survivors

The impact of DFSA can be not only physical but also psychological, which cannot heal easily. In the Western world, there are expert-services available that are confidential, free and available to anyone who has been a survivor of a sexual assault, irrespective of whether they have or want to report the crime to the police or not. These institutions are prepared to give medical and emotional or practical support 24 hours a day. Throughout the UK, there are several such centres, known as Sexual Assault Referral Centres (SARCs), and many other voluntary organisations.²⁵ They work in partnership with various authorities such as the police and other organisations, e.g. the National Health Service. They also provide support through the criminal justice if the survivor chooses to report the crime to the police and coordinate health and support services. Besides moral support and advice, these services can offer emergency contraception, a forensic medical examination, if the survivor agrees, medical aftercare and counselling sessions. It is important that the survivor seeks help immediately because the impact of sexual assault crimes can last a lifetime if not treated and could also lead to further mental illness. The necessity of similar initiatives in Nepal has been mentioned in the meetings with stakeholders, including in the survey collected from students from various colleges in the Kathmandu Valley. This indicates lack of knowledge about currently existing One Stop Crisis Management Centres in 55 districts of Nepal.³ Therefore, more awareness programmes are needed to ensure that public is aware of the already available support, which should be further expanded to hard-to-reach areas of Nepal.

Legislative interpretation

Feedback received during the stakeholder meetings and our review of existing legislations in Nepal revealed a number of gaps. In the context of Nepal, the Nepalese Criminal Code Act, i.e. the updated Muluki Ain 2017, includes definition and penalties for sexual assault and rape. Sexual assault is defined as: (a) touching private parts or attempting to do so; (b) remove inner garments or attempting to do so; (c) obstruction to put on or remove inner garments; (d) taking anyone to an isolated area in an unusual manner; (e) asking them to touch/ hold their sex organs; (f) saying, writing, or indicating sexual photographs, arts, displaying it using electronic media; and (g) teasing with sexual intention, sexual harassment, etc.²⁶ Unwanted touching of the female sex organ by the male sex organ (penis) without penetration is considered as sexual assault and can lead to a sentence of a maximum

of 3 years imprisonment and a fine.²⁶

On the other hand, rape (the most serious form of sexual assault) happens “*if a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of 18 years with or without her consent.*”²⁶ Consent is valid unless given in following situations: use of force, influence, fear, deceit, kidnapping or hostage. In addition, consent is invalid if it is obtained when the person is unconscious. For the purpose of rape, Nepalese law also includes full or minor penetration of penis in mouth or anus and vaginal insertion of any objects. Penalty is based on the condition at the time that the crime is committed and on the age of the victim (e.g. 16-20 years imprisonment if the victim is less than 10 years and 7-10 years imprisonment if the victim is more than 18 years of age and 5 years for a rape for a women within marriage). This model is in contrast to most western countries and depicts insufficiency in protecting sexual assault and rape victims. For example, in the UK, penalty depends on the type of sexual assault and the assessment of culpability.²⁸ In addition, with disparity in penalties based on relationship of the victim with the perpetrator (e.g. rape within marriage) shows Nepalese law is discriminatory against married women. Lesser penalties for a rape within marriage implies women are inferior to men and therefore there is an urgent need to update this.²⁹

In regard to DFSA, Nepal’s legislations do not directly refer to use of drugs in sexual assaults and rape cases; these issues are covered indirectly in article 14 of Muluki Ain (physical violence and dismemberment related crime). It states that one is not allowed to make anyone unconscious or ill by giving food or drinks to facilitate crime, indirectly referring to DFSA. Penalty in this case is 1 year imprisonment and NPR 10,000 fine in addition to the relevant penalties as per the type of crime committed. This is in contrast to legislation in other countries, e.g. USA, where administering psychoactive compounds which render the victim unable to consent or withdraw consent is specified.³⁰

In light of sexual assault and DFSA, we have noticed further issues with Nepalese legislation. For example, -men as well transgender and non-binary persons are left out as potential victims of sexual assault and rape cases in Nepal, as the Nepalese law specifically mentions ‘woman’ as the rape victim.²⁷ Another example is related to ‘statute of limitation’ which is extended to one year after the assault had happened, except in case of incest where there is not statute of limitation.²⁶ While this is a positive move, one year is still not enough as rape and sexual assaults are still considered a taboo and

therefore survivors might not feel comfortable reporting the assaults within that timeframe. As long as there is still stigma around falling victim to rapes, the legislation needs to be updated to reflect the psychological barrier which surrounds reporting these incidents and extend the reporting timeframe. Additionally, given the amnesic properties of compounds used in DFSA cases, an extended timeframe would also benefit the survivor and potentially increase the reporting rates.

CONCLUSION AND RECOMMENDATIONS

To increase awareness of the public about sexual assaults and DFSA, we have offered training, workshops, presentations, and other outreach activities, as highlighted above. We have also enhanced capacity of toxicology staff by delivering a training programme on forensic toxicology and drugs analyses. The direct benefactors of these events have been the police officers, forensic toxicology labs, and other law enforcement agencies in Nepal. We hope that the main benefactor will be the victims and survivors of sexual assault and DFSA cases in Nepal in that our activities and recommendations have assisted in the application of justice.

Based on our findings, we highlight the urgent need to modernise Nepal’s criminal justice system with the top-most priority of protecting victims of such assaults by (i) extending statute of limitation for reporting of such cases and (ii) removing differing penalty whether rape case has happened within marriage. Increasing concerns over the handling of sexual assault and DFSA cases also warrant an evidence-based scientific investigation of such cases. Therefore, capacity building in ‘crime scene to court’ and continual professional development training should be provided.

Furthermore, the society should lift the stigma associated with being a rape victim and place it on the shoulders of the perpetrator(s). This can be achieved by an effective implementation of sex education in school curriculum. It will ensure that children and later adults will know how to recognise and react when they suspect sexual assault is happening to them or someone close to them. This can eventually decrease number of such crimes happening. Finally, the one-stop approach where victims can report such cases and get emotional/psychological, medical and legal support is needed throughout the country specially in hard-to-reach areas. In that regard, we strongly recommend expanding One Stop Crisis Management Centres to different provinces and remote areas of Nepal.

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