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Conflict between the law and ethics while researching

Anonymous ¹

During data collection for research on informed consent processes in hospitals, a researcher found an old woman crying at the bedside of a 14-year-old girl. The girl was staying with her father, who had abandoned her mother and re-married; the old woman was the girl's paternal grandmother. The girl had undergone a medical termination of pregnancy (MTP) and the hospital staff was scolding the grandmother for not taking care of her.

Although the girl's case was a part of the sample selected by the researcher, she decided not to interview her under such conditions. The next day, when the researcher went to the ward, she found that a Copper-T (Cu-T) was being inserted into the girl. On enquiring, she found that the girl did not know that a Cu-T was being inserted. The staff's explanation was, "It's a rape case. What if this happens again?" Standing outside the room where the Cu-T insertion was taking place, the researcher heard the girl crying out loudly in pain. She also heard the nurse shouting at the sobbing girl, saying, "Get out. Everyone knows why you have come here. Don't overdo it." The researcher was shocked to see the girl walking out in tears. Her body was bent and one hand was pressed on her genital region. Everyone in the ward was looking at the girl. The girl was wearing a nightgown, had a ponytail and was short and thin. No one was accompanying her at that point. The nurse told her to go and lie down on her bed. The researcher, standing in a corner of the ward, heard the nursing staff telling each other that the girl's hymen was ruptured. They were wondering whether she had frequent intercourse or was repeatedly raped because she was giving conflicting information about her consent to sex.

On returning to the office, the researcher gave this information to the team. The research team felt disturbed and angry and also concerned about the girl. They felt that they must help the girl. At the same time the team felt confused about its responsibility and wondered if intervention was advisable. After a long discussion, they decided to inform some members of the ethics committee of the project to get guidance from them on the course of action. They also decided to meet the girl to find out what she had to say about the matter. Three ethics committee members were informed and the next day two researchers went to see the girl in the hospital.

The researchers interacted with the girl. She told them that she had fallen in love with a man in the neighbourhood, but her father had disapproved. She had gone out with her lover on many occasions and they had sexual intercourse. She became pregnant and needed an abortion. The grandmother was helping the girl to get the MTP but her father, who knew about it, was not helping her. When they asked her about the Cu-T, the researchers found that the girl knew that something long and thin had been inserted. But the explanation given to her was that it was kept in to enable "the blood to come out". The researchers talked with the nurses who confirmed that the girl's grandmother did not know that a Cu-T had been inserted. The nurses also said that it was wrong to insert a Cu-T in the girl without her consent, but they expressed helplessness and said, "The doctors have told us to do, what to do?"

Meanwhile the members of the ethics committee had started sending their suggestions. One advised the team to give counselling to the girl. Another asked the team to take a gynaecologist known to them and arrange for the removal of the Cu-T. The research team became worried about the implications of such interventions on the rest of its research and about the legal complication such intervention could cause. They contacted the third member -- a lawyer -- of the ethics committee. She was astonished to learn that the hospital had done the MTP without informing the police and advised the researcher to make a complaint to the police. According to her it was a rape case, irrespective of whether the girl had consented to sexual intercourse, because she was only 14 years old. The researcher expressed her inability to go to the police because any such action would jeopardise her research and also the confidentiality of the girl and the hospital. The lawyer, who was connected to a human rights organisation and was also a member of a women's organisation, decided to take up the case without revealing the identity of the girl and the researchers. The human rights organisation made a complaint to the police and soon the issue was out in a newspaper with

the headline 'Abortion performed on minor rape victim'. The media report named the hospital, claimed that sexual intercourse by a 14 year old girl was rape under Section 376 of the Indian Penal Code, and that it was mandatory for the doctor/nurse and the hospital to report such cases to the police. The paper demanded that action should be taken against the hospital and the police should arrest the person who had intercourse with the girl.

The researcher went through some very anxious moments when she got a call from the hospital to give evidence in an inquiry. Fortunately for her the inquiry did not take place. The researcher continued with her research but found that hospitals had become cautious about talking to her team. The providers were reluctant to be interviewed and were hesitant to admit unmarried girls for a MTP. The lawyer was unable to give the researcher an update on the case and they still do not know if the Cu-T was removed.

(Prepared by Amar Jesani with inputs from the research team. The names of the members of the research team have been withheld to maintain anonymity)