

Exploring Barriers and Challenges in Drug Facilitated Sexual Assault (DFSA) Cases: A Short Review

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Abstract

Drug Facilitated Crimes is an emerging discipline in the field of forensic toxicology. The most widespread DFCs are Drug Facilitated Sexual Assaults (DFSA); sexual crimes which occurred with involvement and administration of drugs. Drugs such as flunitrazepam, lorazepam, GHB, nitrazepam, midazolam, temazepam, ketamine are added to the food/drink of the victim during any party, or at the bus stands or railway stations without the knowledge of the victim and inhibits person's ability to resist and prevent her from remembering the assault. These drugs being depressants in nature cause symptoms of drowsiness, impaired perception, nausea, vomiting, unconsciousness, anterograde amnesia and mislead the police to form an assumption that the person has only drunk and not drugged. The metabolism of these drugs is too rapid and the drugs get excreted from the body before the incident is reported to the Police Officer. These fast-acting drugs therefore leads to various problems in the detection and analysis of drug facilitated crimes. The paper focuses on such problems and challenges associated with these drug facilitated sexual assault cases.

Keywords: Drug facilitated sexual assaults; Metabolism; Detection; Challenges; Crime.

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Introduction

Recent advancements in the field of forensic toxicology in present crime scenario has lead to the emergence of new discipline of forensic toxicology called as Drug Facilitated Crimes (DFC). The most widespread DFCs are Drug Facilitated Sexual Assaults (DFSA) a term used to define sexual crimes occurred with involvement and administration of drugs. In these cases victim is made incapable of fighting or consenting legally against the acts of sexual crimes due to the pharmacological effects of drugs. It is a complex and a highly prevalent problem presented to Law Enforcement Agency, Police Department in the country nowadays. Drug-facilitated sexual assault occurs when alcohol or

drugs are used to compromise an individual's ability to consent to sexual activity. These substances make it easier for a perpetrator to commit sexual assault because they not only inhibit a person's ability to resist but prevent her from remembering the assault.^[1,15]

Any person stranger, friend or colleague can be a victim of these crimes as these DFSA crimes can happen with anyone by any friend, stranger, colleague, neighbour, relative, or any other person for that matter. The cases suspected of DFSA are reported at any place, be it a workplace or any hotel room or at the time of a date, or such acts can take place at assailant's house or victim's own house or room or at any club or pub or during a party or gathering depending onto the perpetrator.^[1,6,12]

Drugs such as flunitrazepam, lorazepam, GHB, nitrazepam, midazolam, temazepam, ketamine are added to the food/drink of the victim during any party, or at the bus stands, railway stations without the knowledge of the victim. The drug is secretly administered to a person usually through a food or drink. The main objective of the perpetrator is to make the victim helpless to respond against such acts. These drugs start their action within 30 minutes of ingestion and make the person prone to assault. These drugs being depressants in nature cause symptoms namely drowsiness, impaired perception, nausea, vomiting, unconsciousness, complete loss of motor functions, and anterograde amnesia etc. similar to other depressants specifically alcohol. These symptoms mislead the police to form an assumption that the person has only drunk and not drugged. These drug assisted crimes can also occur by the voluntarily administration of drug by the victim, of which the perpetrator take advantage and commits such assaults.^[1,6,4]

Current Scenario in India v/s Global Scenario of the Problem

In India drug facilitated sexual assaults are committed using a large number of benzodiazepines namely flunitrazepam (rohypnol), nitrazepam, alprazolam, temazepam, diclazepam. There are reported a few incidents of such assaults revealing the use of these sedatives for spiking the drinks of the girls in cases of revenge and love affairs. The prevalence of involuntary administration of these drugs in such cases increased from 25% to 33% over the past 2-years. These drugs get readily absorbed in the gastro-intestinal tract and their effects can be synergistic if taken in combination with alcohol in smaller doses. Oxazepam, diazepam, lorazepam, and clonazepam, temazepam are some of the drugs detected in majority of cases. These drugs are always found in combination with other substances.^[6,11,19,20]

Flunitrazepam known as Rohypnol by trade name is used most frequently in cases of drug facilitated sexual assaults and classified as Schedule IV drug of benzodiazepine. It is a central nervous system depressant drug produces sedation to severe coma. The drug is reported to be ten times more potent than the commonly occurring benzodiazepine diazepam. The drug becomes active within 15-20 min of administration and lasts for 4-6 hours. The drug is abused prevalently in India among teenagers and the students as it gets easily dissolved and mixed in drinks/food because of its tasteless and odorless properties. These properties make its detection difficult in routine

drug screening procedures. A main problem in such cases is the challenge for detection of flunitrazepam in different body fluids even if present in fairly large concentration.^[1,6,7,8]

Other than benzodiazepines there are also drugs reported to be abused for this purpose for example non- benzodiazepines, sedatives (zolpidem, zopiclone), ketamine, GHB, barbiturates, opioids, antihistamines, chloral hydrate, antipsychotics, anticholinergics, and various centrally acting muscle relaxants agents in facilitating the sexual assault. Various substances will get added up in this list depending on the discovery and availability of the new drugs.^[2-5]

Ketamine, a Schedule III controlled substance in United States and a short acting anaesthetic for use in humans and animals, is another predatory drug used by perpetrators for committing sexual assault. A large number of cases showing abuse of ketamine suspected of DFSA that have been reported in various countries (Canada, United states, United Kingdom etc.) The drug is usually given to the victim by mixing in the drink or in combination with alcohol prior to the commission of acts involving sexual assault, robberies etc. Ketamine being fast acting in nature i.e. the onset starts within about 0.5-2h intramuscularly and 4-6 hrs orally, only lasts up to about 30-45 minutes. Ketamine administration in the person leads to visual disturbance, hallucinations and the victim undergoes a dream like state showing confusion, anterograde amnesia and delirium effects. Some memories of the assault may sometimes be experienced by the victim after ingestion of the drug few days or weeks after. Due to the short time span of ketamine, it is not detected in routine toxicology screening and may give a false positive result for Phencyclidine.^[1,3,6]

A study conducted in Paris reported that out of 119 cases analyzed, 8% suspected of drug facilitated sexual assault showed positive results for GHB. Another study conducted in Netherland and Ireland reported about 73% and 56% cases of drug facilitated sexual assault which shows the abuse of alcohol and other drugs respectively. Their study also reported that benzodiazepines mainly diclazepam and its metabolite lorazepam is detected in the biological samples in a high frequency due to its higher window of detection. Another study conducted in France from June 2003 to May 2004 reported 128 cases of drug facilitated crimes and about 18% of those cases showed the abuse of zolpidem, clonazepam followed by bromazepam, nordazepam and midazolam.^[12]

These drugs can be used either directly in combination with alcohol or can be introduced secretly into alcoholic or non-alcoholic beverages without noticeably changing the taste or colour because of their readily dissolving nature. The metabolism of these drugs is too rapid and the drugs get excreted from the body before the incident is reported to the Police Officer. Thus the fast acting drug leads to various problems in the detection and analysis of the drug facilitated crimes.^[7]

Reasons for delay in collection of sample

One of the major impediment is the delay in examination of DFSA victims present for medical attention and the victim's unwillingness about reporting of the incident due to a sense of discomfort, feeling of humiliation and embarrassment. This unnecessary delay in reporting limits the chance of detecting the drugs which has been ingested by the victim either due to the intentional consumption or by covert action of the perpetrator. The delay also arises due to the onset of effects (amnesia) of the drugs under the influence of which the victim remains uncertain about the facts that accounts for rape and sexual assault. This delay in such cases is a significant contributing factor.^[4,6,10,11]

Detection window for the drugs used in sexual assault cases

Easy availability of wide variety of drugs to the perpetrators and the information available on internet has increased the rate of occurrence of these crimes. Any inadequacy in sample collection makes the detection of these drugs difficult. In these cases, by the time biological samples are collected more than half of the drug is passed out from the victim's body and only a small residue is left. For example delay in the collection of blood sample for more than one or two hours or urine sample beyond four or more days after drug administration may give negative results. Storage conditions of such biological samples suspected of containing drugs of interest also affects their stability due to the potential interaction of the drug in the matrix. The detection of the drug in traces is quite difficult and sometimes, impossible with the usual standard analysis toxicology protocol. The matrix chosen for the detection also affects the timeline of analysis of these drugs. Therefore, oral fluid can be chosen over other conventional matrix to avoid impeachment of privacy, specific storage conditions and invasiveness. Using oral fluid as a sample matrix eliminates the requirement of large sample volume

and tedious extraction procedures. The drug taken even in small amount can easily be detected using oral fluid as a sample not only in DFSA cases but also in cases of drug driving.^[4,6,9,11]

The drugs used for this purpose possess the tendency to get metabolized rapidly in the body and the rate of metabolism of these drugs namely lorazepam, triazolam and alprazolam, zopiclone and zolpidem in the individuals is so quick that making an assessment of the dose and the exact time of their exposure is difficult. This rapid metabolism leads to the formation of respective metabolites and the detection of these drugs and their metabolites is usually hindered due to an extensive delay in collection of sample.^[4,9,10] Similarly the detection window for GHB is about 6-8 hours in blood and 10-18 hours in urine, the drug can be detected in its parent form within this time span only. Another problem involves in the analysis of biological samples of these cases is of ketamine due to the pharmacology of the drug and lack of rapid and sensitive screening methods. Similarly flunitrazepam get absorbed orally and reached to a peak concentration within 30- 90 minutes and gets metabolized to 7-aminoflunitrazepam. Other sedative hypnotics drugs namely zolpidem also gets rapidly metabolized in the body into its inactive metabolite and can be detected into bloodstream up to 7-8 hours.^[12,3] All these problems leads to an extensive delay in reporting of these cases therefore an appropriate strategy in terms of prevalence of these drugs used needs special focus for investigating such crimes.

Legal Provisions and Penalties in India and Other countries

The DFSA crimes committed using administration of such drugs are increasing at an alarming rate in different countries of the world including India therefore legal penalties need to be strictly imposed in these cases under consideration as a heinous crime.

In European countries the details of the drugs commonly abused, specifically for performing sexual acts is not mentioned in the criminal code but the legal system has the provision for punishments and penalties to control the crimes associated with administration of any poison or drug or any substance added to the drink covertly for commission of robbery or any homicide.^[12]

Drug Facilitated Sexual Assault (DFSA) cases is punishable in United States under Drug-Induced Rape Prevention and Punishment Act 1996 (Public

Law 104-305). The Act modified 21 U.S.C., stated that penalty of up to 20 years imprisonment and fine will be given to those who intend to commit a crime of violence (including rape) by distributing a controlled substance to another individual without that individual's knowledge.^[13]

Indian law does not recognise date rape as a specific crime and therefore in Indian Law, Section 375 of IPC, stated "A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent" is the only section that covers the nature of DFSA crimes.^[18,16]

In view of the said provision of the Code, consent given by an intoxicated/drugged women is of no avail whether she has drugged/intoxicated herself or by the accused or anybody else. Once it is proved that the women is drunken/intoxicated/drug facilitated, the consent even if given is no consent. There is no recent verdict on the said provision due to various reasons as an Indian women informs to her Kiths and Kins/ the police officer after lapse of time when, in fact, the effect of drug/intoxicant is undetectable.

To prove that the victim was under influence of drug/intoxicant, if the victim approaches the police promptly, it can be detected through forensic aid, the police officer while forwarding the victim should make specific request to the doctor for making such arrangement/taking such body fluid(s) by testing of which a forensic opinion may be furnished by the expert to prove the effect of drug/intoxication at the relevant time when the women was subjected to rape. If the forensic opinion corroborates the version of the prosecutrix, the prosecution case may be properly proved coupled with the victims statement.

Some special and separate provisions needs to be implemented in such cases as the national database of sexual offenders created by National Crime Records Bureau in October 2018 also does not provide any evidence of DFSA cases. Although the widespread increase of drugs facilitated sexual assault cases dealt with ketamine abuse, the Drug and Cosmetics Act, include it in the stringent schedule X in December 2011 to curb its easy availability.^[17]

Future Challenges and Predictive Problems

The current scenario of drug facilitated sexual assault cases poses a great challenge to the women safety. These cases remain unsolved by forensic science laboratories during examination of the victim's biological samples for the presence of drug because of lack of information about evidence of drug administration. This inadequacy attributes to decrease in reporting of the cases dealing with drug facilitated crimes.^[14]

The upcoming challenges associated with these drugs facilitated sexual crimes involve the introduction of new drugs in the market each year capable to impair the memory of the victim.^[4] Sometimes administration of a single dose and its rapid metabolism causes an extensive delay in collection of suitable sample and reporting because the drug gets dissociated and changed into some other metabolic form the detection limit of which is beyond the purview of toxicological analysis.^[16]

A thorough investigation of the circumstances of each case has to be carried out in such scenarios for a better probability of success.

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