

**LETTER TO EDITOR****Medico-Legal System in Sexual Assault Cases in India***Yuvraj Dilip Patil\***\*Symbiosis Law School, Senapati Bapat Road Pune - 411 004, (Maharashtra), India***Abstract:**

Sexual assault is a heinous crime. Man commits the act to fulfill his sexual urge, to show his masculinity, to get control of the victim, to take revenge and various other reasons, out of abnormal mind, out of ignorance of the law of the land or out of opportunity. The mental trauma suffered by the victim may linger till end of her life [1].

Women who wish to pursue a justice against their assailant are usually examined by a doctor or in most cases a state-employed district surgeon, and obtain a report of their injuries. Expert medical evidence is widely used in sexual assault cases, but its contribution to the progress of legal cases is unclear.

The objectives of the paper are -

1. To study the legislative provisions relating to medical examination in Sexual Assault cases.
2. To assess the impact of medico legal evidence in sexual assault cases.
3. To make suggestions.

**Key words-** Medico-Legal, sexual, assault, crime

**Introduction:**

It is no secret that survivors of rape in India are humiliated and discriminated. They could face it in their own homes, police stations and then in the hospital where they undergo invasive medical tests that often end up doing little beyond harming their case later in the legal pro-

cess [2].

Females are raped and sexually assaulted more often than males. Male rape is committed by another man, often in prison. Males who are raped are more likely than females to be physically injured, to be unwilling to report the crime, and to have multiple assailants [3].

**Symptoms and Signs:**

Rape may result in the following:

1. Extra genital injury
2. Genital injury
3. Psychologic symptoms
4. Sexually Transmitted Diseases (STDs - e.g. hepatitis, syphilis, gonorrhea, chlamydial infection, trichomoniasis, HIV infection [rarely] )
5. Pregnancy (uncommonly)

Most physical injuries are relatively minor, but some lacerations of the upper vagina are severe. Additional injuries may result from being struck, pushed, stabbed, or shot.

Psychologic symptoms of rape are potentially the most prominent. In the short term, most patients experience fear, nightmares, sleep problems, anger, embarrassment, shame, guilt, or a combination. Immediately after an assault, patient behaviour can range from talkativeness, tenseness, crying, and trembling to shock and disbelief with dispassion, quiescence, and smiling [4].

Goals of rape evaluation are -

1. Medical assessment and treatment of injuries and assessment, treatment, and preven-

tion of pregnancy and STDs

2. Collection of forensic evidence
3. Psychological evaluation
4. Psychological support

### **The legislative provisions relating to medical examination in Sexual Assault cases**

The word 'rape' is legally defined u/s 375 of Indian Penal Code, 1860. It defines the rape and also prescribes its punishment. Whenever a man penetrates or does sexual intercourse with a woman without her consent or will it amounts to rape. There are exceptions to it also i.e. when a man does sexual intercourse with his wife who is above 15 years of age. The rape law under Indian Penal Code had gone through a lot of amendments. In 1983, amendment was made and S. 376(2) i.e. Custodial rape, S. 376(A) i.e. marital rape and S. 376(B to D) i.e. Sexual Intercourse not amounting to rape were added.

**U/s 228A** of Indian Penal Code, No person can disclose the name of the rape victim and if anybody discloses the name, he shall be punished with either description for a term which may extend to two years and shall also be liable for fine.

**U/s 114-A** of Indian Evidence Act, presumption can be made as to the absence of consent in certain prosecutions for rape.

Whenever the person of a female victim is to be examined under section 53 [5] of Criminal Procedure Code (Cr. P. C), the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

**Section 53A** seeks to provide for a detailed medical examination of a person accused of an offence of rape or an attempt to commit rape

by the registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner by any other registered medical practitioner.

**Sec 53A (2)** The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

- (i) The name and address of the accused and of the person by whom he was brought,
  - (ii) The age of the accused,
  - (iii) Marks of injury, if any, on the person of the accused,
  - (iv) The description of material taken from the person of the accused for DNA profiling, and.
  - (v) Other material particulars in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The exact time of commencement and completion of the examination shall also be noted in the report.
- (5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 of Cr. P. C. as part of the documents referred to in clause (a) of sub-section (5) of that section.

**Section 164 A of Cr. P. C.** has been added by amendment in 2005, to provide for a medical examination (during the stage when an offence of committing rape or attempt to commit rape is under investigation) of the victim of a rape by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practi-

tioner by any other registered medical practitioner [6].

U/s 327(2) of Code of Criminal Procedure, there should be in camera trial for all rape victims.

### **The Impact of medico legal evidence in sexual assault cases**

The absence of uniform guidelines in gathering medical evidence for rape cases is one of the main reasons why conviction rate is so low. Only 26.4% of the 24,206 cases of rape that were registered in 2011 had convictions, according to National Crime Records Bureau [7].

The principal features of the examination are:-

1. Primary data
2. Physical Examination and mental condition
3. Signs of struggle on clothes and body
4. Local examination of the genitals

Medical practitioners often focus on aspects that are not relevant to the investigation. Doctors document the sexual history of the victim, which may not always be relevant to the case. The Himachal Pradesh High Court ruled in 2008 that sexual history of the survivor was not at all relevant to the rape case. "Doctors use the archaic 'two-finger test' to determine how 'habituated' the survivor is to sexual intercourse. This information may disrespect the character of the victim.

A Sessions Court in New Delhi ruled in 2010 that the two-finger test violated the privacy of the victim and needed to be stopped. There is also a lack of co-ordination between the hospital where the medical examination is carried out and the forensic laboratory where the evidence is sent. As a result, hospitals often do

not get a copy of the chemical analysis report, although the doctor who conducted the medical examination is supposed to give his /her opinion based on the report [8].

### **Suggestions:**

1. It is duty of the doctor or hospital who examines the rape victim to care and protect the rape victim and for that purpose to give medical examination and care without police requisition. So far, the rape survivor examination can only be done after receiving police requisition. The doctor should examine such cases if the survivor reports to the hospital first without the FIR.
2. The victim must not be refused treatment and examination for want of police papers.
3. In case the survivor doesn't want to disclose the incident to the police, it should not be done. However, the refusal for not informing the police should be documented.
4. The medical examination should be undertaken only if the victim, parents or guardians wish for it. Neither court nor police can force the survivor to undergo medical treatment.
5. Consent of the patient should be taken for medical examination and treatment, forensic medical examination and collection of evidence, informing the police for purpose of investigation and treatment.
6. In case a female patient is to be examined by a male doctor then such examination shall be made in presence of a female nurse/ attendant/ etc. In such circumstances the name and signature of the female in whose presence the examination is conducted shall also be obtained.

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