

## RAPE AND CHILD SEXUAL ABUSE: AN ANALYSIS OF LAWS IN INDIA AND RELEVANCE OF MEDICAL AND FORENSIC EVIDENCES

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### **ABSTRACT**

“RAPE IS THE ONLY CRIME WHERE THE VICTIM IS ACCUSED”

—FREDA ADLER,  
Criminologist

This paper scrutinizes the justice delivery system in India with respect to rape and child sexual abuse. Initially, it dissects the definitions and type of rape and child sexual abuse, with the purpose to clarify that what all elements constitute such crimes. The author further endeavors to analyse the Indian legislation inked regarding such heinous crimes. While contemplating the crimes and laws made to curb them, it is significant to comprehend to the aftermaths of these evils on the victims so that the severity of the offences can be understood. It focuses on the provisions made for the collection and analysis of medical and forensic evidence. It, in detail, discusses the Section-164A of Code of Criminal Procedure, Guidelines by Ministry of Health and Family Welfare, Section- 53A of Code of Criminal Procedure, and Section 54 of Code of Criminal Procedure. Rape is the crime beyond borders. Sometimes, lack of shreds of evidence leads to the acquittal of accused, which intensifies the pain of the victim. Crime like Rape leaves long lasting scars on the memory victims , if not dealt with precaution it could lead to greivous consequences. While victim, still suffering from the inhumane happening that occurred her, the complex justice delivery system of India adds to the suffering of victim

**Keywords:** Justice Delivery System, Rape, Child Sexual Abuse, Medical and Forensic Evidence, Obstacles, Reforms.

**INTRODUCTION**

In India there had been many pre-independence practices that resulted in the exploitation of women and children. Usually, these were religious and customary practices such as Sati Pratha, Dowry, Child Marriage, Triple Talaq, Devadasi Pratha, etc. Many reform movements took place to abolish such practices and to give equal status to women in society while some are still being carried out in our nation. Some kinds of exploitation were outside the scope of these customary practices such as domestic violence, sexual abuse, rape, trafficking of women and children, etc. which was later made punishable by law. Protection of Women from Domestic Violence Act, 2005; Dowry Prohibition Act, 1961, etc. were enacted to keep a check upon such crimes. Rape is the most atrocious of all these crimes as the mind of the victims is also raped along with her body. Similar are the denouements of cases of child sexual abuse. Such an occurrence leaves scars on the soul of the victim. These scars are scraped from time to time by certain other situations for his/her entire life. Section 375 and 376 of Indian Penal Code deal with the rape, but unfortunately they are still gender-specific even in 21<sup>st</sup> century. These sections are not strong enough to protect male victims and transgender people from rape. The lengthy trials and complex justice delivery procedures increase the suffering of the victim. “Rape...is an accusation easily made and hard to be proved and harder to be defended by the party accused, though never so innocent”<sup>1</sup>. Lord Hale observed that “In a rape case, it is the victim, not the defendant, who is on trial”. Medical and forensic evidence is the only means to investigate crimes like rape and child sexual abuse as these crimes take within four walls of a room or at a place which is not witnessed by anybody. No one other than the accused and the victim knows about the occurrence of such crimes and anyone of them can be wrong. False allegations against men have also increased nowadays as it is very easy to accuse someone of rape. These false allegations destroy the reputation of any innocent person for which he pays his entire life. Rape by Pukhtoos (who entered Kashmir in 1947), Dogra troops, Hindu and Sikh mobs during Kashmir conflict; mass rape during Anti-Sikh riots in 1984 are some incidents which are horrifying to remember and such incidents must not take place in new era.

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<sup>1</sup> Rape-Overview; Act and Mental State, Wayne R. LaFave, Professor Of Law, University of Illinois, “Substantive law” 752-756 (3<sup>rd</sup> ed.2000).

**RAPE****Definition**

The term 'RAPE' is derived from the Latin word '*rapere*' which means to snatch, to grab, to carry off or Sir William Blackstone in his book "*Commentaries on the Laws of England*" defined "rape" as "carnal knowledge of a woman forcibly and against her will". The Federal Bureau of Investigation (FBI) conducted a program in 2013 and formulated a Uniform Crime Report (UCR) in which it gave the same definition of rape as that of Sir William Blackstone. But this FBI's Uniform Crime Report (UCR) was based on the data collected for 'forcible rape'. In 2013, the term 'forcible' was removed and the new definition read as: "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."<sup>2</sup> Earlier many jurisdictions had a crippled way of defining rape, which hindered the justice delivery system of countries around the globe. Hence, there have been many significant amendments to rape laws around the globe in the past few decades<sup>3</sup> India also amended its rape law in 2013 through the Criminal Law (Amendment) Act, 2013 also known as the Nirbhaya Act, which brought noteworthy change to the S.375 of INDIAN PENAL CODE as it admitted, penetration of any object or any other body part not being the penis, amounts to rape. Such penetrations are also known as non-penile penetration. Even the manipulation of any part of a woman's body to cause penetration and applying mouth to her vagina, anus or the urethra have been added as grounds of rape. In all these grounds 'consent' plays the most important role. But these laws are still gender-specific<sup>4</sup>.

**Types**

Some different types of rape are as follows:

- i) **Custodial Rape:** In custodial rape, the victim is within the custody of the perpetrator. Such custodial authority is given by the State. Section 376 of INDIAN PENAL CODE defines the custodial rape and includes police officers; public servants; armed force officials; management or staff of jail, remand home, woman's or children's institution, hospitals, etc. who shall be penalized for

<sup>2</sup> The United States Department of Justice-An updated definition of Rape blog.([www.justice.gov](http://www.justice.gov))

<sup>3</sup> Overview of the worldwide best practices of rape prevention and for assisting women victims of rape(July 22,2021, 11.00 A.M.) , [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493025/IPOL-FEMM\\_ET\(2013\)493025\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493025/IPOL-FEMM_ET(2013)493025_EN.pdf)

<sup>4</sup>Soumya Singh Chauhan,Section 375: Analysis of provisions relating to rape, (July 22,2009,10:04 A.M.) <https://www.lawctopus.com/academike/section-375-analysis-of-provisions-relating-to-rape/>

misusing their authority. This increased responsibility on the accused is the reason for aggravated punishment for the custodial rape. However, this Section also includes abusers who are at the position of trust and authority of the victim such as relative, guardian, or teacher of the woman<sup>5</sup>.

- ii) **Gang Rape:**Section 376-D of CODE OF CRIMINAL PROCEDURE was substituted by the Criminal Law (Amendment) Act, 2013 which was formulated by the Parliament after Nirbhaya Case in Delhi. This section defines ‘Gang Rape’. Where a woman is raped by one or more persons constituting a group or acting in furtherance of common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life imprisonment.<sup>6</sup>

### **SECTION 375 OF INDIAN PENAL CODE**

Rape is a sexual offence defined under Section 375 of INDIAN PENAL CODE and is punishable under Section 376 of the Indian Penal Code. Section 375 uses the expression “a man is said to commit rape” meaning thereby that to attract the provision of section 375 age of male must be above 12 years. But if he is below 12 and above 7 years of age he enjoys a qualified immunity against the charges of rape. There are four different grounds that amount to rape. They are as follows:

- a) If a man penetrates his penis into the vagina, mouth, urethra or anus of the woman, then his conduct amounts to rape. The extent of penetration does not matter.
- b) The insertion of the object or any other part of his body to the vagina, the urethra or anus of woman amounts to rape.
- c) Manipulation of any body part of the woman to cause penetration into the vagina, urethra, anus or any other body part of the woman amounts to rape.
- d) Applying mouth to a woman’s vagina, anus and urethra also amounts to rape.

Forcing a woman to do any of the above mentioned acts with oneself or any other person also amounts to rape. The act must be done under the circumstances falling under any of the seven descriptions mentioned below.

<sup>5</sup> Sentencing in rape cases: A critical appraisal of Judicial decision in India by Ved Kumari and Ravinder Barn (Journal Of Indian Law Institute-Volume-59, (January-March,2017))

<sup>6</sup>Prof. S.N. Misra, Indian Penal Code , pg.783,(22nd ed, 2021)

1. **Against Her Will-** Clause (1) of Section 375 is attracted where the woman was in her senses and possessed the ability to consent for the act. In *State of Uttar Pradesh V. Chhotey Lal* <sup>7</sup> the SC observed that expression “against her will” connotes that the offending act was done despite the resistance of the woman.
2. **Without her consent-** The expression “without her consent” refers to the situation where the woman is not in the possession of her senses because of intoxication or any drug or any other thing or is imbecile and hence cannot give valid consent.
3. **Consent obtained by putting the woman in fear of death or hurt-**If the consent of the woman is obtained by threatening her life or putting her under fear of death or hurt or the life of any other person in whom she is interested, then such consent will not be considered as valid consent. Offence committed by obtaining consent in such a way will amount to “rape”.<sup>8</sup>
4. **Consent obtained by putting the woman under the misconception that the person is her husband-**If a man has complete knowledge that woman is married and he is not her husband but obtains her consent under a misconception of being her husband then he is liable under this section. He must also have complete knowledge that the woman gave her consent because she believed that he is the man to whom she is married.<sup>9</sup>
5. **Consent obtained by a woman when she is of unsound mind or intoxicated-**When consent is obtained at the time during which she was, either of unsound mind or was intoxicated or when she was unable to give rational consent because of administration of any stupefying material by man or somebody else and was unable to understand the nature and consequence of that act then the consent is not valid.<sup>10</sup>
6. **Consent is given by a girl below 18 years of age-** Sexual intercourse with a girl of less than 18 years amounts to rape either it takes place with or without her consent.
7. **When she is unable to communicate the consent**

<sup>7</sup>(2011) 2 SCC 550

<sup>8</sup>Soibam Rocky Singh, Explained: The Laws on Rape and Sexual Crimes ,(July 21,2021, 01.00 P.M.)  
<https://www.thehindu.com/news/national/what-are-the-laws-on-rape-and-sexual-crimes/article30233033.ece>

<sup>9</sup> Section 375: Analysis of Provisions Relating to Rape (JULY 20, 2021, 10.45 A.M.),  
<https://www.lawctopus.com/academike/section-375-analysis-of-provisions-relating-to-rape/>

<sup>10</sup> Akash vs State of U.P. 2016 (5) ALJ 397.

**Exceptions to Section 375**

1. Any medical procedure or intervention shall not be punishable under this section
2. The second exception states that any sexual act by a man with his own wife does not amount to rape. Provided that the wife must not be below fifteen years of age. But after the judgment of the SC in *Independent Thought V. UOI*,<sup>11</sup> the age of the wife for any sexual act must not be below eighteen years.

**CHILD SEXUAL ABUSE****Definition**

The act of intentionally harming a minor physically, emotionally, sexually, or by an act of neglect by an adult or an older adolescent or another child is known as Child Abuse<sup>12</sup>.

“Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development, or dignity in the context of a relationship of responsibility, trust or power.”<sup>13</sup> UN Convention on the Rights of the Child (UN-CRC) has an incorporated article in it (Article 19) which protects all citizens from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”<sup>14</sup>

Child Sexual abuse is a type of child abuse in which a child is molested. In other words, child sexual abuse means carrying out sexual activity with minors. Such activities are usually conducted by a person who is known to the child and who can win upon the trust of the child or a person who exercises some kind of authority over the child<sup>15</sup>. As the child is unable to determine the difference between right and wrong, the perpetrator takes undue advantage of the child’s analyzing capacity of right and wrong and exploits the child in every possible way.

A study published in 2011 shows that 18% of girls and 8% of boys worldwide have experienced sexual abuse.<sup>16</sup> Similarly, a study conducted in India by the Ministry of Women

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<sup>11</sup> AIR 2017 SC 4904

<sup>12</sup> Child Sexual Abuse (<https://www.rainn.org> )

<sup>13</sup> Report of The Consultation On Child Abuse Prevention WHO, Geneva, 29-31 March 1999

<sup>14</sup> Supra, note 13.

<sup>15</sup> Supra, note 12

<sup>16</sup> [www.who.int](http://www.who.int)

and Child Development (MoWCD) in 2007, shows that among 12447 children 53% reported being a victim of child sexual abuse.

Report of The Consultation on Child Abuse Prevention, WHO, Geneva, 1999 defines sexual abuse as:

“ Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of the society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship or responsibility, trust, or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

- The inducement or coercion of a child to engage in any unlawful sexual activity.
- The exploitative use of a child in prostitution or other unlawful sexual practices.
- The exploitative use of children in pornographic performance and materials.”

### **POCSO Act, 2012**

#### **What is POCSO??**

POCSO or Protection of Children against Sexual Offences Act was devised by Indian lawmakers in 2012 to the criminal justice system of India. Being gender-neutral legislation, it is primarily concerned with the protection of minors from sexual offences and punishing the offenders. Before the year 2012, there were only four provisions in IPC for the prosecution of CSA. These were follows:

- S. 354- Outraging the modesty of women.
- S.375-Rape
- S.377- Unnatural offences
- S. 509 - Insulting the modesty of a woman.

A need was felt for enacting a new legislature as there were various loopholes in these sections of IPC for protecting children from CSA and hence, the POCSO Act, 2012 was enacted.

Under POCSO the offences against children include:

1. **Penetrative Sexual Assault-** Section 3 of POCSO defines penetrative sexual assault. When a person penetrates his penis or any object or any bodypart or applies his mouth to any extent into to vagina, mouth, urethra or anus of the child or makes the child do so with him or any other person he commits penetrative sexual assault. It also involves the manipulation of any body part of the child to cause penetration into the vagina or mouth or urethra or anus of the child. Section 4 of POCSO prescribes the punishment for the Penetrative Sexual Assault to be not less than 10 years and may attend to the imprisonment of life and also fine.
2. **Aggravated Penetrative Sexual Assault-** Section 5 of the POCSO Act defines the term ‘Aggravated Penetrative Sexual Assault’. If a police officer or member of an armed force or security forces or public servant or management or staff of jail or management or staff of hospital or management or staff of any educational institution or religious institution commit penetrative sexual assault, then it is known ‘Aggravated Penetrative Sexual Assault’ as they hold authority and feeling of trust in the eyes of the child. This section also makes liable to the person who commits gang penetrative sexual assault on the child. According to Section 6 of the POCSO Act, 2012, the convict of Aggravated Penetrative Sexual Assault shall be punished with rigorous imprisonment for not less than 20 years and it may extend to life imprisonment along with fine, or with the death penalty.
3. **Sexual Assault-** When a person, intentionally, touches the child or makes the child touch the person’s or someone else’s vagina, penis, anus, or breast then he/she is liable under Section 7 of POCSO Act, 2012. Person liable for sexual assault shall be punished with imprisonment of not less than 3 years, it may extend to 5 years and fine. [S.8, POCSO]
4. **Aggravated Sexual Assault-** When the sexual assault is committed by an authority or by a person of trusts like a police officer or member of an armed force or other security forces or public servant or management or staff of jail or remand home or hospitals or educational or religious institutions then it is known as “aggravated sexual assault” [S. 9]. The person liable for aggravated sexual assault shall be punished with a minimum of 5 years of imprisonment, it may extend to 7 years and also fine [S. 10].
5. **Sexual Harassment-** Section 11 defines sexual harassment as when a person with sexual intent passes awful remarks or makes any sexual gesture or asks for sexual



favor or exhibits child's body part or makes the child see his/ her (the person's) or someone else's body parts or shows child any object in any form or media for pornographic purposes or repeatedly watches the child either directly or through any electronic means or threatens the child to use any body part of the child or attracts a child for pornographic purposes then he shall be liable under this section. The person guilty of sexual harassment is liable for imprisonment of either description for a term which may extend to 3 years and also for fine [S. 12].

6. **Use of Child for Pornographic Purposes-** Using a child for the purpose of making and/or circulation and/or storage of pornography via any medium is a punishable offence under POCSO Act, 2012. Section 13, 14 and 15 of POCSO deal with the same.

### Features of POCSO

1. **Gender neutral legislation-**This legislation protects all children from sexual abuse be it a male or female because Section 2(d) defines child as any person below the age of eighteen years.
2. **Different provision for "aggravated" offence-** POCSO provides for a stricter punishment when CSA is aggravated or when the crime is committed by a person in a position of trust or authority in relation to the child such as police officer, public servants, etc. It also has provision of death penalty.
3. **Includes all types of sexual assaults against children-** POCSO punishes penetrative as well as non- penetrative sexual assault against children. It even has provision for punishing a person who traffics children for sexual purposes
4. **Child-friendly procedure-** POCSO tries to make the entire procedure of investigation and justice delivery very easy. Section 24 of the act states that:
  - Statement of the child or victim shall be recorded at his residence or any other place of his choice and by woman police officer (as far as practicable).
  - While recording the statement of the victim the police officer shall not be in uniform.
  - Child should not be detained in the police station at night.
  - It is the duty of police officer to protect the identity of the victim.

Further Section 26 of this Act states that:

- The statement of the child shall be recorded in the presence of a child's parents or in presence of any person in whom the child has trust or confidence.

Section 27 of the Act provides for the medical examination of the child, it says:

- The medical examination shall be conducted in the presence of a child's parents or any other person whom the child trusts.
- If the victim is a girl child then the medical examination should be conducted by a female doctor.

**5. Special Courts-** The legislation provides for the creation of special courts to provide speedy trials. It also directs every state government, through a notification in the official gazette, should appoint "Special Public Prosecutor" in every "Special Court" for conducting cases being filed under the head of POCSO Act,2012.

### CONSEQUENCES OF SEXUAL CRIMES

The upshots of sexual crimes such as rape and child sexual abuse have been discussed many times by scholars but it must be said that there are many outcomes of such crimes that can only be understood by victims of sexual crimes. Victims often report of mental and emotional breakdown, which in certain cases do not have a language to be expressed by. These crimes just leave behind a smudge of a grimy and stern feeling on the victims for their entire life.

Some possible attempts may categorize these consequences as follows:

**1. Physical Complications-** Physical complications may occur as the consent is absent in rape and the victim may resist. But these injuries are not *sine qua non* (an essential condition) to decide the commission of sexual crimes as the accused might have obtained the consent by coercion or in case of CSA the accused might have manipulated the trust of the child.

The well-known example of physical trauma, to which any rape victim is subjected to in a heinous possible way, is the sufferings which were inflicted upon the Nirbhaya Case victim. In this case, after committing gang rape the culprits subjected the victim to brutality by inserting an iron rod in the abdominal cavity of the victim. In the investigation, it was found and was later acknowledged by the court that the victim sustained 18 injuries to internal organs due to the act committed by offenders. At last after battling for 13-days with death, the victim, "Nirbhaya" died while treatment in a hospital in Singapore.

Bower and Dalton in the study of female rape victims between age of 16-48 years, found a tear in the perineal, hymeneal and posterior vaginal walls. In a study conducted by Stanford University, it was found that out of 83 victims only 15 victims report no serious injury but remaining 68 victims (81.9%) report serious injury. They report combination of injuries to their:

- Upper Arm (50.6%).
- Thigh/upper leg (43.4%)
- Neck (26.5%)
- Breast/Chest (19.3%)
- Lower leg (19.3%)
- Face/Head (18.1%)
- Shoulder (16.9%)

Victims often report that after assault they contracted HPV infection, which leads to cervical cancer.

2. **Mental Health-** Offences like rape and child sexual abuse affect the victims' mental health for a very long period and it is very difficult for them to overcome the mental trauma. Children who have been sexually assaulted may have poor performance in academics; eating disorders; regression in behavior; poor self-esteem; inappropriate sexualized behaviors (example: a 6 years old boy playing with his penis or a 7 years old girl masturbating etc.)

The most common mental complications faced by victims are:

- a) **Depression:** The survivors feel associated with sadness and hopelessness after the scary event for a long time. The memory of rape or sexual abuse and the procedure followed in obtaining justice has a very gloomy effect on the victim. A prolonged feeling of sadness and hopelessness may indicate depression. Such survivors must take help from professionals.
- b) **Fear:** Victims are challenged with a lot of fear in their life. Some trepidation may exist for a short time but others may exist for a longer period. The survivors might fear of telling the incident to their family members and friends apprehending that it might hurt them. Some of them also fear to go to the police and to demand justice from the court. Such offences also plant a seed of terror in the mind of the sufferers and the

victims avoid going to public places. They are afraid of trusting even their near relatives.

- c) **Feeling of Shame:** Adults and even the minors find it difficult and shameful to discuss such intimate things to others.
- d) **Recurrent nightmares:** Sufferers experience sleep disturbance in their daily routines. The mind tries to recover from the tragedy and this process results in nightmares which give goose bumps. These nightmares are related to that unpleasant event or something other in its relation.

Talking about it and putting one's thoughts in front of others will help them to reduce these nightmares.

- e) **Guilt Feeling:** Survivors of rape crimes report that they feel guilty of provoking the accused as the mentality of the society about dressing and talking frankly to boys push them to think so.
- f) **Post- Traumatic Stress Disorder:** Anxiety, fear, and stress are common to the victims of sexual offences but these feelings when get intensified and exist for a long time then they are known as Post Traumatic Stress Disorder. The main features of symptoms of PTSD are:

- *Flashback-* Some thoughts lead the victim to experience the flashback of the event. Victims must try to 'return to their present'. They should try to recognize their surroundings by using their five sense organs and relax themselves by taking a deep breath.
- *Avoidance-* Avoiding things that remind of the events.
- *Hyper-Arousal-* Being prone to sudden outbursts, being more sensitive, clingy behavior, or irritable.

- g) **Problem with intimacy:** In Indian society virginity of a woman is very important. The victims of rape rarely get a loving partner in life. Intimidating moments in their life may remind the victim of the obscene act to which she was subjected. This may affect their married life adversely and can increase the suffering in life.

Spending time with their partners can create a comfortable zone for them.

3. **Pregnancy-** Rape can result in unwanted pregnancy in women as well as adolescent victims of CSA. Such pregnancies can be avoided by taking immediate treatment after

the commission of the act. Victims are inflicted to risks of abortion else they have to decide to give birth to the child. Such a child proves traumatic for the victim as it is in a blood relation to the rapist of the victim.

In India “the national rape-related pregnancy rate is 5.0% per rape among victims of reproductive age (aged to 12 to 45); among adult women, an estimated 32,101 pregnancies result from rape each year.”<sup>17</sup>

- 4. Suicidal Behavior-** Survivors of rape and CSA find suicide as the only way to escape from the trauma. The victims may feel that their character is judged by the people of society and try to escape from such feelings and often tend to commit suicide.

In the sample of 158 females’ suicide attempters aged 20 years or older, 50% of the subjects reported having been sexual abused at some time.<sup>18</sup>

## MEDICAL & FORENSIC EVIDENCES

Medical and forensic evidence is of utmost importance in case of rape crimes as there is no-eyewitness to these crimes in the majority of cases.

### Meaning of Medical&Forensic Evidence

Medical and Forensic evidence is basically, the evidence that is gathered from the body of the victim and the accused and then are analyzed by scientific methodologies. This evidence includes blood tests; DNA samples on the body of the victim and accused and also on the crime scene; fingerprints, etc..

### Sources of Evidence

**Victim-** Section 164A of Code of Criminal Procedure provides for the medical examination of the rape victim. Section 27 of the POCSO Act, 2012 also states that medical examination of any victim of CSA should be carried out in accordance with section 164A of Code of Criminal Procedure. This section was inserted in Code of Criminal Procedure in 2005.

### Procedure of medical examination

<sup>17</sup>(July 19, 2021, 12.00 A.M.)[www.pubmed.ncbi.nlm.nih.gov](http://www.pubmed.ncbi.nlm.nih.gov)

<sup>18</sup>Supra.

- The victim has to be examined by the registered medical practitioner employed in a Government hospital or in a hospital run by the local authority and in the absence of all of them, by any registered medical practitioner.
- . Here the term ‘examination’ means the same as stated in the Explanation (a) of Section 53 of Code of Criminal Procedure It says that “ examination shall include the examination of blood, blood-stains, semen, swabs in case of sexual offences, septum and sweat, hair samples and fingernail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case.”<sup>19</sup>
- Medical examination should be conducted after taking consent of the victim or of any such person who is competent to give consent on behalf of the victim.
- The victim shall be sent for medical examination within 24 hours of receiving the complaint.
- In *State of Karnataka V. Manjanna*<sup>20</sup>, SC recognized the medical examination of a rape victim as a “medico-legal emergency” and assigned it to be the duty of the hospital to examine the victim even before filing the complaint. Before this judgment medical examination of rape victims was held only on the request of police.

In case of CSA, POCSO provides some additional provisions for the examination of minor victims such as:

- For the examination of a girl victim, the examiner should be a female medical practitioner.
- The examination of the victim should be done in presence of a parent or any other person whom the child trusts or in the presence of a woman nominated by the head of the medical institution.

### **Report of medical examination**

Particulars of the report shall include-

- “The name and address of the woman and of the person by whom she was brought;
- The age of the woman;
- The description of material taken from the person of the woman for DNA profiling<sup>21</sup>;

<sup>19</sup> Code of Criminal Procedure ;Section 53 – Explanation of sub-clause (a)

<sup>20</sup>2000(6) SCC 188

<sup>21</sup> Code of Criminal Procedure (Amendment) Act,2005;Section 17(iii)

- Marks of injury, if any, on the person of woman
- General mental condition of the woman; and
- Other material particulars in reasonable detail.”<sup>22</sup>
- The report must record the reason for each and every conclusion; the consent of the victim or any such person who is competent to give consent on the behalf of the victim and the exact time of commencement and completion of the medical examination.
- The report must be forwarded to Investigation Officer who shall forward the same to the Magistrate.

### Guidelines by the Ministry of Health and Family Welfare

In addition to Section 164A, the Ministry of Health and Family Welfare (MoHFW) has also given certain guidelines for medico-legal care for survivors of sexual violence. According to MoHFW the purpose of forensic medical examination is to form an opinion on the following:

- The sexual act which took place was an attempt or was it completed?
- How recent is the sexual act?
- Any harm is caused to the victim's body?
- What is the age of the victim? The age must be verified if the victim is an adolescent girl/ boy.
- Whether the victim was intoxicated or not?
- “Never say or do anything to suggest disbelief regarding the incident.
- Do not pass judgmental remarks or comments that might appear unsympathetic.
- Appreciate the survivor's strength in coming to the hospital as it can serve to build a bond of trust.<sup>23</sup>
- Convey important messages such as the survivor is not responsible for precipitating the act of rape by any of her actions or inactions<sup>24</sup>.

<sup>22</sup> Code of Criminal Procedure ;Section 164A (2) Code of Criminal Procedure

<sup>23</sup> MoHFW, GUIDELINES & PROTOCOLS Medico-legal care for survivors/victims of sexual violence, (JULY 22, 2021, 9.45 A.M.) <http://biharpolice.bih.nic.in/ORDER-2019/MoH&FW%20guidelines%20on%20medicolegal%20care%20for%20rape%20victims.pdf>

<sup>24</sup> Sexual Assault Care in India , (July 20, 2021, 10.45 A.M.) <https://www.acep.org/how-we-serve/sections/forensic-medicine/news/september-2015/sexual-assault-care-in-india/>

- Explain to the survivor that this is a crime/violence and not an act of lust or for sexual pleasure.<sup>25</sup> Emphasize that this is not a loss of honor, modesty or chastity but a violation of his/ her rights and it is the perpetrator who should be ashamed.
- Take the help of a counselor, if required.
- Explain to the survivor in simple and understandable language the rationale for various procedures and details of how they will be performed<sup>26</sup>.
- Ensure confidentiality and explain to the survivor that she/ he must reveal the entire history without any fear and without hiding anything.
- The fact that genital examination may be uncomfortable but is necessary for legal purposes should be explained to the survivor. She/ he should be informed about the need to carry out additional procedures such as x-rays, etc. which may require him/her to visit other departments.<sup>27</sup>

**Accused-** The medical examination of the accused is mandatory under section 53A of Code of Criminal Procedure. In *State of Bombay V. Kathi Kalu*<sup>28</sup>, it was held that there is no violation of Article 20(3) of the constitution in compelling an accused person to give his specimen handwriting or signature, or impressions of thumb, fingers, palm or foot to investigating officer or under orders of court for purposes of comparison.

#### Procedure of medical examination

- The medical examination under Section 53A of Code of Criminal Procedure has to be of a person who is accused of rape or of an attempt to rape and if there are reasonable grounds to believe that such a person will afford evidence as to the commission of such offence.
- The medical examination defined under section 53A of Code of Criminal Procedure has to be done by the registered medical practitioner employed in a Government or local hospital and the absence of such practitioner, by any registered medical practitioner within the radius of 16 km from the place of offence.

<sup>25</sup> Supra.

<sup>26</sup> Supra, note 23.

<sup>27</sup> Harish, Dasari & Kumar, Ajay & Singh, A.. (2015). The ministry of health & family welfare guidelines regarding consent & examination of a female survivor of sexual offences – An overview. *Journal of Punjab Academy of Forensic Medicine and Toxicology*. 15. 50-54.

<sup>28</sup> AIR 1961 SC 1808: (1962) 3 SCR 10



- The medical practitioner must act at the request of the police officer, not below the rank of sub-inspector.
- A reasonable amount of force is also permissible for conducting the medical examination.
- Under Section 54 of Code of Criminal Procedure the accused can request for his/her medical examination.
- If the accused is a female (i.e. in the case of CSA) the examination of the body has to be done by or under the supervision of a female medical officer, by a female registered medical practitioner.

### Report of medical examination

Sections 53A of Code of Criminal Procedure also provides for the report of the medical examination of the accused.

- The registered medical practitioner has to examine the accused without any delay.
- Particulars of medical examination of accused shall contain:
  - i.) “the name and address of the accused and person by whom he was brought,
  - ii.) the age of the accused,
  - iii.) marks of injury, if any, on the person of accused,
  - iv.) the description of the material taken from the person of accused for DNA profiling, and
  - v.) other material particulars in reasonable detail.”<sup>29</sup>
- The report shall consist of reasoned conclusions.
- Both the starting and ending time of the medical examination of the accused shall be mentioned in the report.
- The report must be forwarded to the Investigating Officer without any delay, who shall further forward it to the magistrate.

**7.2.3. Crime Scene-** The police and forensics expert must be careful enough in collecting evidences from the crime scene for relating it to the samples and statements of the victim and the accused. Some possible evidence collected from the crime scene is as follows:

- Fingerprints and footprints

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<sup>29</sup>Code of Criminal Procedure; Section 53A (2).

- Photographs
- Pieces of clothes or broken buttons
- Hairs and fibers
- Bloodstains
- Police officers should also interrogate about whether anybody had seen the victim and accused before the occurrence and/or after the occurrence of the crime or not.
- Whether anyone had heard any screams or voices from the crime or not?

### **CONCLUSION**

Sexual offences like Rape and CSA are beyond any borders. No country in the world has zero rape crimes. In other words, one can say that rape crime is a global problem. Every country around the globe takes stringent measures to curb such crimes, but no country till this date can claim zero rape crimes on their land. Each country tries to formulate best in class legislation to flatten the curve of such crimes on their land. Lack of proper implementations of laws gives offenders a chance to outrage the modesty of women. Sexual offences sometimes have so devastating consequences that victims as well as their family members are compelled to commit suicide, as they find themselves helpless in overcoming the trauma. The investigation procedure and justice delivery system are so complex and time taking that the trials go on for years. Hence, there is a requirement for the creation of victim-friendly procedures so that proper justice could be provided to the victims. The state should also make policies for the welfare of victims so that they can forget the brutality to which they were subjected to, and can start a new life.