

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

MEDICAL EXAMINATION OF THE ACCUSED PERSON IN A RAPE CASE

AUTHORED BY - ANKITA KHAMARI¹

When handling a rape² case, it's important to note that medical evidence doesn't play a conclusive role, contrary to common belief. In situations where there's a lack of other corroborating evidence, the victim's testimony alone can be the basis for convicting the accused. However, medical evidence from both the victim and the alleged perpetrator is crucial, especially for confirming the act of penetration and linking it to the accused.³ Sec. 164A and 53A of the Code of Criminal Procedure, 1973, authorize medical examinations for both parties involved. Unfortunately, these sections don't specify the examination procedures. Textbooks on medical jurisprudence provide guidance on how to conduct these examinations, gather evidence, form expert opinions, and how the Court should interpret these findings.⁴

Need for a medical examination of the accused

The need for a medical examination of the accused arises from the fact that judges overseeing criminal trials may lack specialized knowledge to fully comprehend technical aspects. They rely on expert witnesses who provide opinions based on their investigations, which in turn bolster the judge's assertions and form the basis of judgment. However, the court can choose to accept or reject such expert opinions, as it deems fit, according to Section 45 of the Indian Evidence Act, 1872. In rape cases where there are no direct witnesses and both the accused and victim have self-interest at stake, medical evidence becomes crucial in uncovering the truth. While the victim was always required to undergo a medical examination⁵, recent amendments to the law now mandate a medical examination of the accused as well.⁶

¹ Ankita Khamari, LL.M., 1st semester, Madhusudan Law university, Cuttack.

² Unless otherwise stated, the terms "rape" and "penetrative sexual assault" used in this paper relate to offences under Sections 375 and 376 of the Indian Penal Code, 1860 ("IPC"), respectively. Protecting Children from Sexual Offences Act of 2012, Section 4 (the "POCSO Act"). The words 'victim' and accordingly, the term "accused" should be construed. Additionally, "accused" excludes non-male accused parties. per the POCSO Act.

³ Mrinal Satish, The Law and Practice of Rape Adjudication in India in DISCRETION, DISCRIMINATION AND RULE OF LAW 34, 45 (2016).

⁴ Durba Mitra and Mrinal Satish, Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India, ECONOMIC AND POLITICAL WEEKLY 51, 52 (2014)

⁵ The Code of Criminal Procedure, 1973, Section 53.

⁶ The Code of Criminal Procedure, 1973, Section 53A.

Reasonable ground' for medical examination

The police officers' approach to requesting medical examinations for suspects varied in three distinct ways:

1. Some officers never requested medical exams in any cases.
2. Others consistently requested medical exams in all rape cases.
3. Some officers only requested exams in what they considered "fresh" cases.

At one station, officers had a practice of not requesting medical exams in rape cases, believing that the seriousness of the charge made it unnecessary for the accused's defense. However, some law enforcement officials emphasized the importance of such exams, stating that any rape suspect should undergo an examination. They acknowledged that even minor physical contact could be interpreted as rape.⁷

The decision to conduct a medical examination of the accused depended on factors like the nature of the alleged crime and the time elapsed since the incident⁸. In cases where immediate arrest did not occur (non-"fresh" cases), some officers deemed medical examinations futile. They justified this decision based on the incident date and arrest date recorded in the case diary. Additionally, officers mentioned that they had never encountered cases involving sexual acts other than penile-vaginal penetration. However, some believed that swabs from the hands could be relevant if there was immediate arrest following penetration by body parts such as fingers (two finger test).

Determining the 'necessary' examination

A "police requisition" is a written request to a hospital for a medical examination of the accused. Typically, it includes the accused person's personal details, date of birth, date of the alleged crime, and a request for a medical examination and/or sample collection. The examining physician conducts an examination and any necessary tests based on their professional judgment in each case. In most cases, police requisitions provided only the relevant section number under the Indian Penal Code (IPC) to describe the alleged offense. In a few instances, a brief description of the allegation was included along with the section number. Sometimes, a copy of the First Information Report (FIR) was attached to the requisition. The requisitions often included a general request for

⁷ Jagadeesh N., Appreciation of Medical Evidence by Special Courts in POCSO Cases in IMPLEMENTATION OF THE POCSO ACT, 2012 BY SPECIAL COURTS: CHALLENGES AND ISSUES 97 (CCL, NLSIU) (2018)

⁸ *Supra* note 6.

both internal and external examinations, specific sample requests (such as semen and blood samples), examination of injuries, or an assessment of 'potency.' Some translated requisitions also sought evidence of "recent intercourse" and the accused's "capability to perform sexual intercourse." To ensure consistency, medical examinations of the accused were often conducted using the same standardized form used for examining victims, particularly in two hospitals.⁹ Doctors typically conducted all required tests and sealed samples for forensic examination, regardless of the alleged offense's severity. In one unusual case, samples of the accused's sperm were collected.

However, some police officers did not record the receipt of negative forensic reports or the sealing of irrelevant samples in the case diary, as they believed it would weaken the prosecution's case. Medical staff noted that cases involving acts other than penile-vaginal or penile-anal penetration were extremely rare. Some individuals suggested that 'offense-specific' testing was more relevant for victim examinations, and there were changes in procedures for victim examinations in cases not involving penile-vaginal penetration.

Grounding the 'Routine' in History

For a medical examination of the accused under Section 53A of the Criminal Procedure Code to be carried out, there should be "reasonable grounds." Unfortunately, the police often neglect to consider factors such as the nature of the alleged act, the potential evidence on the accused's body, or time-related factors that might affect the availability of evidence before requesting the examination. This oversight could result in the loss of crucial corroborating evidence or the accumulation of unnecessary material, impacting the investigation. The "blind adherence to routine" in requesting or conducting a medical examination disregards both the statutory requirement of reasonable grounds and the constitutional rights of the accused. Section 53 of the Cr. P.C., which pertains to medical examinations in general offenses, allows the doctor to conduct an examination that is "reasonably necessary" to establish the facts related to the offense. In contrast, Section 53A lacks a similar phrase. However, a strict interpretation of this phrase could violate the accused's right to privacy, bodily integrity, and a fair trial, as the purpose of the examination is to gather "evidence of the commission of rape."

⁹ Ministry of Health and Family Welfare, Guidelines and Protocols - Medico-Legal Care for Survivors / Victims of Sexual Violence (2014) available at <https://mohfw.gov.in/sites/default/files/953522324.pdf> (Last visited on 21 May 2023)("2014 Guidelines").

Medical Examination Laws for Accused

Before the current Criminal Procedure Code (Cr.P.C.), accused individuals could not undergo a medical or physical examination without their consent, similar to the rules in the Code of Criminal Procedure, 1892.¹⁰ In 1967, the Law Commission of India deliberated on the necessity of introducing a provision authorizing such examinations, the preferred methods, and the protection against self-incrimination provided by Article 20(3)¹¹ of the Constitution.¹² Despite the 84th Law Commission report discussing the chronological stages and methods of conducting such examinations before the amendment, it did not outline a systematic framework for examining both victims and rape suspects.¹³ Under Sections 53 and 53A of the Criminal Procedure Code, accused individuals do not possess the right to object to a medical examination. However, these sections require the existence of "reasonable grounds" to believe that such an examination would provide evidence of the offense's commission.

The Right to Medical Examination

The Criminal Procedure Code of 1973 contains two contrasting sections, namely Sections 54 and 53. Section 54 bestows upon the accused the right to undergo a medical examination, empowering them to defend and protect themselves. Conversely, Section 53 primarily pertains to the medical examination of the arrested person, primarily aimed at aiding the police officer's investigation. The accused is provided with the opportunity to have a medical examination conducted by a designated physician to determine whether the alleged crime was committed by someone else or if they suffered any physical harm while in custody or during their appearance before the judge. It is crucial to inform the accused of these rights.

In the case of *Sheela Barse v. State of Maharashtra*, the Supreme Court ruled that magistrates hold the responsibility to inquire if suspects have any complaints of mistreatment or torture during police custody. They must also inform those who have been arrested of their right to a medical examination under Section 54 of the code.

¹⁰ Indian Law Institute, *SELF-INCRIMINATION: PHYSICAL AND MEDICAL EXAMINATION OF THE ACCUSED*, 1-3, 31 (1963); see *Bhondar v. Emperor*, AIR 1931 Cal 601 (Calcutta High Court) (The court held that in the absence of statutory authority, medical examination of the accused without his consent would amount to assault.); *Deoman v. State of Maharashtra*, AIR 1959 Bom 284 (Bombay High Court).

¹¹ Constitution of India, 1950, Art. 20 (3).

¹² 37th Report of the Law Commission of India, *The Code of Criminal Procedure 1889*, 205 (1967)

¹³ David M. Paul, *The Medical Examination in Sexual Offences*, 15 (3) *MEDICINE, SCIENCE AND THE LAW* 154 (1975) as cited in 84th Report of the Law Commission of India.

The Right to Privacy

The Puttaswamy case affirmed the constitutionality of the right to privacy under Article 21 and other freedoms guaranteed in Part III of the Constitution. The right to privacy encompasses various aspects, including safeguarding one's physical well-being, maintaining the confidentiality of communications, and the freedom to make personal choices.¹⁴ This right is considered fundamental to an individual's sense of dignity and freedom. As a result of the Puttaswamy case, decisions like Selvi, which recognized the right to privacy as an integral component of human dignity and liberty, are now firmly embedded in the constitution. This right not only prevents government intrusion into individuals' privacy but also imposes an affirmative obligation on the government to actively protect that privacy.

In the Selvi case, the Supreme Court differentiated between psychological and physical privacy. It ruled that intrusions into the mind, such as those involving involuntary interference with mental processes, violated Article 20(3) and personal liberty under Article 21.¹⁵ However, physical privacy violations, such as forced medical examinations or bodily substance extraction, were deemed justifiable exercises of police powers.

While recognizing the need for certain limits on the right to privacy, Puttaswamy's case emphasized that any such restrictions must align with the maximum extent to which the fundamental freedoms protected by Part III of the Constitution can be curtailed. Additionally, the minority opinion authored by Justice Chandrachud explained that any violation of this right must adhere to the principles of legality, necessity as a means to achieve a legitimate state objective, and proportionality, which signifies a logical connection between the objectives and the methods employed.

While the Selvi case acknowledged the role of legislators in striking a balance between individual privacy and public safety, it made it clear that "compelling public interest" could not be used to override core constitutional protections like the privilege against self-incrimination. However, after the Puttaswamy case, the state's compelling interest, subject to the principle of proportionality, could justify limitations on privacy.

¹⁴ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

¹⁵ Selvi, v. State of Maharashtra, (2010) 3 SCC (Cri) 1.

The Right to Dignity

In the Selvi case, the Court established that Article 21 of the Constitution serves as a sufficient basis for the right not to be subjected to cruel, inhuman, or degrading treatment while in custody, even though the Constitution lacks explicit protection against such treatment. This protection extends to any person who is arrested or detained,¹⁶ regardless of the presence or absence of an "overbearing police presence." These safeguards are rooted in the constitutional provisions of Articles 20(3) and 21. These safeguards are not limited to physical mistreatment but also encompass psychological forms of torture. Thus, any form of "forced intrusions" into an individual's thoughts is considered an assault on their inherent value and freedom. The Supreme Court's decision in Puttaswamy further recognized that privacy plays a central role in upholding human dignity. It affirmed that an individual's dignity and freedom are the foundational principles from which all other fundamental freedoms emanate.

Scientific Validity of Tests and the Right to a Fair Trial

In Selvi court commended the scientific validity of the tests, linking it to the accused's right to a fair trial, which is a fundamental aspect of the freedom to pursue one's own interests as guaranteed by Article 21 of the Constitution.¹⁷ In the context of a fair trial, both the accused and the victim have a significant stake in this aspect of the investigation. For the accused, whose guilt must be proven beyond a reasonable doubt, reliable and scientifically valid tests are crucial. Similarly, for the victim, whose credibility may be questioned, the court's reliance on solid medical examination results instead of hearsay is essential.

Legal Responsibilities of Health Workers in Cases of Sexual Offenses

In our approach to providing medico-legal care for the accused, we emphasize the importance of scientific and forensic rigor in the investigation process to ensure transparency in evidence collection, ultimately striving for justice rather than injustice. This approach is guided by the principle known as the Blackstone Ratio, which asserts that "it is better for ten guilty individuals to escape punishment than for one innocent person to be wrongfully convicted." We firmly uphold

¹⁶ Sunil Batra v. Delhi Administration, AIR 1989 SC 1579.

¹⁷ *Supra* note 15.

the presumption of innocence for the accused until proven guilty.¹⁸

Healthcare providers, whether in the public or private sector, are obligated to offer medical treatment as per Section 357C of the Criminal Procedure Code, which was introduced through the Criminal Law Amendment Act of 2013.¹⁹ Failure to provide treatment carries penalties, including imprisonment for up to a year, a fine of up to 10,000 rupees, or both, under Section 166B of the Indian Penal Code. It is imperative for healthcare providers to address the needs of both victims and alleged offenders. This fundamental principle aligns with the rules and procedures of the court and was articulated by the English jurist William Blackstone. It emphasizes that trust in the justice system is strengthened when evidence is handled openly, ensuring that both victims and accused individuals receive fair trials. Forensic science operates on the basis of Lockard's Exchange Principle, which posits that any suspect leaves something at the crime scene and takes something from it—both of which can serve as evidence. The utilization of forensic science and technology in police investigations simplifies evidence collection, adhering to the belief that "the evidence will speak for itself." Furthermore, it is essential for the administration of justice to be conducted transparently and in full public view.²⁰

Elements of Medical Examination in Sexual Assault Cases

An Accused's Consent for Medical Examination: In cases of sexual assault, obtaining consent from the accused for a medical examination is not mandatory. Samples can be collected and provided for forensic analysis without the accused's consent. However, if the accused voluntarily consents to a medical examination, this can lead to additional evidence collection. If the accused declines consent after being informed of the potential consequences and inferences that may be drawn by the courts, their refusal should be documented.

Medical Evidence (in Rape Cases):

1. Sexually-Related Injuries: These injuries are typically absent.
2. Victim's Injuries: Injuries caused by the victim's resistance, such as cuts or bites, should be documented.

¹⁸ 'Forensic Medical Examination (FME): A Legal Perspective with Proper Management and Justice in Rape Incidents' (Legalserviceindia.com, 2022) (last visited on 14 July, 2023).

¹⁹ The Criminal Law Amendment Act, 2013, Section 357C.

²⁰ as established in *R v Sussex Justices, ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233) is a leading English case on the unbiasedness and recusal of judges.

3. SMEGMA: Its presence or absence can be significant in disproving false rape claims.
4. Offender's Sexual Activity: Determining whether the offender engaged in sexual activity is crucial.
5. Venereal Diseases: The offender's history of genital herpes should be investigated.

Physical Evidence:

1. Stains: Vaginal fluid, blood, and semen stains on various body parts and clothing should be collected.
2. Foreign Hairs: Foreign hairs mixed with pubic hairs should be collected.
3. Clothing Fibers: Fibers from the victim's clothing may be found on the accused's clothes.
4. Cosmetic Stains: Stains from cosmetics on clothing and skin.
5. Fingernail Scrapings: Evidence from the victim, such as vaginal fluid or skin, may be found in the accused's fingernail scrapings.
6. Scene Debris: Relevant in cases involving the scene of the crime.
7. Torn Clothing: Torn clothing should be preserved for expert examination.²¹

Potency Examination: Potency examinations should be discontinued due to changes in the definition of rape/sexual assault in the Criminal Law Amendment Act of 2013. Conducting potency examinations is largely unnecessary and irrelevant today.²² There is no scientific basis or ethical justification for compelling the accused to masturbate during the examination. If semen samples are required for DNA profiling, other methods, such as blood samples, can be used.²³

Age Verification of Accused: Medical age verification tests should only be conducted when documentary proof of age is unavailable, suspiciously fabricated, or manipulated. The Supreme Court has clarified that such tests should be reserved for cases where documents or certificates are found to be fraudulent.²⁴

Overall, medical examinations in sexual assault cases must adhere to ethical and legal standards, ensuring the rights and dignity of both victims and the accused.

²¹ Md. Shadaab Raheel et al, Potency Test of a Rape Accused in India – Rationale, Problems and Suggestions in the light of Criminal Law (Amendment) Act, 2013, 6 (4) EGYPTIAN JOURNAL OF FORENSIC SCIENCES 333 (2016).

²² Dr. Jagadeesh Narayanareddy, 'Medical Examination of Survivors / Victims of Sexual Violence: A Handbook for Medical Officers' (India.unfpa.org, 2022) Last visited 14 July, 2023.

²³ Ministry of Law and Justice, Government of India. The Constitution of India. Nov 9, 2015. Available from; <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>

²⁴ Ashwani Kumar Saxena vs State Of M.P., (2012) 9 SCC 750 (Supreme Court).

Corroborative evidence

In rape cases, corroborating evidence is not always a legal requirement for the judge to find the victim's testimony credible. While it's not mandatory, it is advisable that the prosecutrix's testimony be supported by other witnesses for the court to rely on it. Under Section 114-A of the Evidence Act, the court presumes that the rape victim did not consent and the offence was committed against her will.²⁵ In cases where sexual intercourse is proven under specific sections of the IPC, and the woman claims non-consent in her testimony, the court will presume lack of consent.²⁶ In such cases, the victim's testimony is crucial, and unless there are compelling reasons to seek additional evidence, courts can convict based solely on the victim's testimony if it's considered reliable.²⁷

The Karnataka High Court held in the case of *State of Karnataka v. S. Raju*²⁸ that a rape accuser can be found guilty even in the absence of medical evidence. Therefore, medical reports are not always necessary as evidence. Similarly, in the case of *State of MP v. Dayal Sahu*²⁹, the Supreme Court emphasized that appellate courts should not base their decisions on irrelevant circumstances when determining guilt. The accused may not benefit from doubts if the victim's and other witnesses' testimony is considered reliable.

Some participants noted that due to separate examinations by different medical teams, there is limited opportunity for cross-validation of findings. Often, the victim and the accused are examined by different teams or in different hospitals, making it challenging for focused examination or cross-validation. The police play a role in providing necessary coordination in these situations. Medical jurisprudence textbooks typically recommend that the victim be examined by a doctor first and then the accused by the same physician. However, in practice, examinations may be conducted by separate teams or in different hospitals, depending on the circumstances³⁰.

²⁵ Section 114-A, the Indian Evidence Act, 1872

²⁶ Section 376(2) (a)-(g), Indian Penal Code, 1860.

²⁷ am Pal v. State Of U.P., Criminal Appeal No. 1105 of 2000, Allahabad High Court, Lucknow Bench, (MANU/UP/3000/2017)

²⁸ (2007) 11 SCC 490 (Karnataka High court).

²⁹ (2005) 8 SCC 122 (Supreme Court).

³⁰ Gautam Biswas, REVIEW OF FORENSIC MEDICINE AND TOXICOLOGY, 384 (3rd edn.,2015); Anil Aggarwal, ESSENTIALS OF FORENSIC MEDICINE AND TOXICOLOGY 356 (2016)

Expert Opinion of evidence corroboration.

Section 45 of the Evidence Act³¹ states that opinions of experts in certain fields, such as science, art, or foreign law, are considered relevant in legal proceedings. To present their testimony, it must be established that an expert is qualified and possesses the necessary knowledge.³²

However, it's important to note that an expert's opinion cannot serve as primary evidence but can be used for corroboration purposes. It is not considered conclusive by the court,³³ and the court is not obligated to give equal weight to every expert opinion presented.³⁴ The role of an expert witness is to provide the judge with scientific standards for assessment.³⁵ Therefore, forensic and medical evidence alone cannot be the sole basis for a conviction. While forensic and medical evidence may prove that a sexual assault occurred, the accused's involvement in the crime must be substantiated by other corroborating evidence

Characteristic elements of medical examination

During the medical examination of the accused, several standard elements are typically included. These elements encompass a general examination of the accused's body parts, a systemic assessment of their health, a local examination of their genitalia, and a potency test.³⁶

In the context of anatomical evaluations of genital development, even during general medical examinations upon the arrest of an individual for potential criminal charges, these assessments are considered standard procedure. It's important to note that Section 54 of the Criminal Procedure Code mandates the "examination" of arrested persons without requiring "reasonable grounds" as a prerequisite. This examination aims to document any marks or injuries of violence on the arrested person, along with their approximate timing.³⁷ However, it's debatable whether Section 54 allows for various tests, including those specific to sexual offenses, as suggested in Section 53 of the

³¹ The Indian Evidence Act, 1872, Section 45.

³² State of Himachal Pradesh v. Jai Lal, AIR 1999 SC 3318

³³ Chandreshwar Singh v. Ram Chandra Singh, AIR 1973 Pat. 215

³⁴ Khyall v. State, 1980 ALJ 230.

³⁵ Las Society of India v. Fertilisers and Chemicals Travancore Ltd. AIR 1994 Ker. 308.

³⁶ Md. Shadaab Raheel et al, Potency Test of a Rape Accused in India – Rationale, Problems and Suggestions in the light of Criminal Law (Amendment) Act, 2013, 6 (4) EGYPTIAN JOURNAL OF FORENSIC SCIENCES 333 (2016).

³⁷ Code of Criminal Procedure (Amendment) Act, 2008; See Secs, 41, 41-A, 41-B, 41-C, 41-D, 55A, Code of Criminal Procedure, 1973; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (Supreme Court) (One of guidelines insisted on medical examination of an arrested person detained in custody at every 48 hours).

Criminal Procedure Code. The purpose of this examination is to "record all findings" that may "exonerate or convict" the accused. Still, this assertion conflicts with the legislative intent, which aims to prevent arbitrary arrests and torture in detention facilities. One distinctive aspect of the medical examination is the assessment of the accused's ability to engage in sexual activity, commonly known as a "potency test." This test is often associated with erectile dysfunction, which refers to the inability to achieve a strong enough penile erection for sexual activity, primarily vaginal penetration.

According to Section 53A(3) of the Criminal Procedure Code, the report of the examining physician must provide precise justifications for each conclusion. Some doctors limited their judgments to observed wounds and collected samples, while the majority also offered opinions on the accused's "ability to engage in sexual activity."

In the case files reviewed in Delhi, the medico-legal certificates were titled "Medical Examination and Potency Test Report." The police requisitions explicitly required an opinion on potency, which is why this language was included in the certificates. These certificates also contained consistent language and findings regarding the development of external genitalia. They concluded that there was no evidence to suggest that the person "is unable to engage in sexual activity under normal circumstances." This phrasing, using a "double negative" approach, was explained as a convention to avoid making definitive statements about the accused's guilt, as it is impossible to provide a conclusive opinion in such cases where the accused may attribute their condition to external factors or specific situations.

Conclusion

The aim of this study was to assess the competing public goals in the context of accused individuals' medical examinations while gaining a deeper understanding of the processes involved. Specifically, it aimed to balance the efficiency of rape investigations with the protection of the accused's rights. Despite a legal framework that emphasizes "reasonability," existing practices are often rooted in unjustified "routine" that remains unchanged despite legal revisions. The fear of legal consequences drives strict adherence to these routines, potentially jeopardizing both the investigative process and the rights of the accused. As a result, determining the appropriate balance between these goals remains a complex challenge.

The study's findings underscore the importance of standardizing medical examinations, evidence collection procedures, and the formulation of medical opinions. Additionally, effective communication between the police and examining doctors is crucial to prevent unnecessary examinations or sample collections. Similar to the guidelines established for victim examinations in 2014, revisions should be made to refocus on the nature of the alleged crime, the accused's criminal history, and scientific evidence collection methods. This would help avoid the loss of valuable corroborative evidence and protect the constitutional rights of the accused in the context of involuntary medical examinations.

In alignment with legal precedents such as Selvi, Puttaswamy, and Oghad, any invasion of an individual's physical privacy must be justified by the principles of "need" and "proportionality." Invasion of mental privacy requires the subject's consent. The accused is entitled to a humane and respectful medical examination, free from cruel, inhuman, or degrading treatment. Furthermore, the credibility of scientifically produced evidence impacts both the accused's and the victim's right to a fair trial.

In summary, it is essential to revise medical jurisprudence textbooks so that a defendant's medical evaluation can focus solely on determining their "capacity to perform sexual intercourse." This revision should be based on a recognition that the existing "convention," often treated as law, is primarily driven by concerns about fabricated rape allegations, given that the accused has not made any such claim.

IJLRA