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THE SECOND ASSAULT: FAIR MEANS OR FOUL PLAY IN THE CROSS-EXAMINATION OF SEXUAL ASSAULT SURVIVORS UNDER THE ADVOCATES ACT, 1961 AND BAR COUNCIL OF INDIA RULES

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ABSTRACT

A courtroom is a place where justice is sought, but sometimes when survivors of sexual assault are in court, the experience of having to cross-examine their perpetrators can heighten their trauma. *Cross-examination is a necessary component of a fair trial but there is an important ethical issue to be asked here, when is it okay to cross the line into secondary victimisation?* This study will focus on the extent of cross-examination of sexual assault complainants allowed by the Advocates Act, 1961¹, and the Bar Council of India Rules². It considers how an advocate is expected to be fearless while also being a professional, and keeping survivors in mind while maintaining dignity, fairness and respect. The paper finds that while the current ethical frameworks offer a starting point to responsible advocacy, there is a lack of specific guidance, which leads to ambiguity. The study emphasizes that there is a need to establish more clearly defined professional standards that will guarantee that the process of justice will be consistent with human dignity.

Keywords: Professional Ethics, Advocates Act, 1961, Bar Council of India Rules, Cross-Examination, Sexual Assault Survivors.

¹ The Advocates Act, No. 25 of 1961

² Bar Council of India Rules, pt. VI, ch. II (India), framed under § 49(1)(c) of the Advocates Act, No. 25 of 1961



INTRODUCTION

A courtroom can be a location of finding the truth, but it can also be a location of re-experiencing trauma.

Surviving a sexual assault can be a long road to justice, crossing the threshold from victim to witness to meet witness and cross-examiner. The courtroom's goal is to serve justice and uphold the rights of the accused, but the way in which questions are posed also presents a major ethical quandary: *how can an advocate stand up for their client without demeaning the dignity of the survivor?*

Cross-examination is a vital part to the adversarial justice system that allows advocates to question evidence and provide a fair trial. Advocacy is more than just about getting things done. Questions that are based on a feeling of humiliation, stereotyping and/or irrelevant personal attacks are grounds for concern in regards to professional misconduct and ethical responsibility. The duties of dignity, fairness and responsible advocacy are prescribed in the Advocates Act, 1961³ and the Rules on Professional Conduct and Etiquette of the Bar Council of India. They do not offer any specific guidance, however, on cross-examination of vulnerable witnesses, but offer some general moral rules. This research investigates whether the current professional ethics regime is able to strike an appropriate balance between the advocate's obligation to fearless advocacy and the survivor's right to dignity and fairness; and whether the law needs more explicit ethical rules.

RESEARCH QUESTIONS

1. *How far Advocates Act, 1961 and the Bar Council of India Rules cover the conduct of advocates in cross-examination of the witnesses of sexual assault?*

³ The Advocates Act, No. 25 of 1961

2. *Is the current professional ethics framework sufficient to strike an adequate balance between an advocate's First Amendment obligation to zealously advocate for the client and the respect and fairness required for sexual assault victim cross-examination?*
3. *How do law students and legal practitioners define the ethical boundaries of cross-examination in sexual assault cases, and how do they think that the current rules of cross-examination need to be improved?*

HYPOTHESIS

Although cross-examination is a vital part of a fair trial, some of the methods used by advocates during sexual assault trials go beyond the ethical guidelines outlined in the Advocates Act, 1961 and Bar Council of India Rules to the detriment of the dignity of the survivors and the expected standards of the legal profession.

CHAPTER I

When the Defender Becomes the Interrogator: Ethical Boundaries of Cross-Examination under the Advocates Act, 1961 and the Bar Council of India Rules

An Illustration

A young woman is in the witness box for a sexual assault trial. She has been working up to telling one of her most traumatic experiences for months. The defence counsel starts off questioning the inconsistencies in her testimony, not by asking about her relationship with her clothing or past relationships or her personal choices, but by asking about her past relationship with her clothing, and all her past relationships, and etc. Many of these questions have little connection to the facts in issue, but they are worded in a way that makes the person feel embarrassed, self-doubtful and humiliated. The silence only deepens in the courtroom, but the witness feels like she's re-experiencing the assault. ***Rigid cross-examination is allowed by the law, but should it be acceptable to professionals to question the witness to the extent that the court becomes a place of secondary victimisation?***

This illustration depicts the moral predicament of this paper. Cross-examination is essential to the administration of justice but it is not wholly without limitations of good behaviour. The profession of the lawyer requires that he or she stand up for the client's rights with valor; he or she is also expected to maintain the dignity of the judicial process and of those who take part in it.

Cross-Examination: A Sword for Truth, Not a Weapon of Humiliation

The adversarial system has made cross-examination an important aspect of its functioning. By employing cross-examination, the witness's credibility can be examined, inconsistencies revealed, and the truth brought to the court. This right of the defendant to properly contradict the prosecution is one of the components of a fair trial that is tied to the idea of natural justice. However, the success of cross-examination cannot only be judged by the aggression level. The practice of advocacy does not allow the lawyer to intimidate a witness. In sexual offense cases, this practice is especially important as usually the victim shares genuine trauma, so the ethical side of the practice cannot be neglected.

Professional Ethics Beyond Winning the Case

By enacting the Advocates Act in 1961, a legal framework has been established for the profession in India that acknowledges and recognizes the role of lawyers as professionals having the duty to the court which goes beyond just serving their clients and the act places the responsibility of formulating the rules governing the conduct of the lawyers at the feet of the Bar Council of India⁴. The Bar Council of India has passed its code of conduct rule in which it has highlighted the need for the lawyers to maintain dignity, respect, and fairness towards the court, fellow lawyers, clients, and all persons involved in matters of legal importance⁵.

Although there are no specific provisions regarding the way the lawyer can cross-examine the victims of sexual offences, there are provisions that prohibit the conduct of the person which violates the ethics or goes against the process of justice.

The above obligations highlight the fact that advocacy is not all about winning but also about the process involved in doing so.

Where Does Ethical Advocacy End and Misconduct Begin?

Identifying the exact moment when ethical cross-examination turns into a breach of ethics poses a major challenge. It is recognized that while questioning aimed at evaluating credibility is acceptable, inquiries that use stereotyping, insult the character of a survivor, or is irrelevant have very little probative value, but a powerful negative impact on the psyche⁶.

Lawyers are required by ethical standards to differentiate between challenging evidence and degrading the witness. The former is considered as having an important function in achieving

⁴ Reconciling Advocate's Dual Duties to Client and Court in Indian Legal Ethics, LIVE LAW (May 1, 2026)

⁵ Professional Misconduct of Lawyers in India, LEGAL SERVICES INDIA

⁶ Mariano, The "Double Bind" of Gender-Based Violence: Secondary Victimization in Courtroom Cross-Examinations, [vol.] BEHAV. SCI. & L.

the truth during the trial and the latter puts the advocacy at risk of becoming a form of harassment. This distinction is of great importance because witnesses often describe hostile cross-examinations as a "second assault"⁷ thus showing emotional significance of being questioned in an intrusive and humiliating manner in the courtroom.

Judicial Recognition of Ethical Restraint

The Indian judiciary has on several occasions recognised that while the accused has a right to a strong defence, it should not be executed in a manner that disrespects the witnesses or undermines a fair trial. Legislative measures have also helped reinforce the view that fair treatment in a criminal trial includes the rights of the witnesses in addition to those of the accused. Consequently, the judiciary has started accepting the idea that legal ethics is in fact an integral part of having a fair trial and that the advocates have to find a way to defend their clients within the law

Setting the Ethical Stage

The rules governing advocates show a finely balanced trade-off between two conflicting requirements: ensuring a strong defence and protecting the dignity of the victims of the crime. Even with the presence of the Advocates Act, 1961 and the Bar Council of India Rules, which provide guidelines for ethical behaviour, the problem of cross-examining sexually assaulted victims specifically remains unresolved. This brings us to the question of whether the ethical regulations in our present times are adequate enough to avoid the situation when the cross-examination amounts to re-victimisation or whether the need for ethical clarifications is still there.

The chapter is aimed at investigating whether the existing ethical framework provides the solution advocating for an effective defence at the same time keeping in mind the principles of dignity, justice and humanity regarding sexually abused individuals.

CHAPTER II

The Case for Fearless and Ethical Advocacy: Has This Goal Been Reached?

The adversarial system operates on the premise that truth is brought forth through successful advocacy, which means that advocates should zealously advocate for their clients and subject the evidence against them to a rigorous cross-examination. In the case of sexual assault,

⁷ Jennifer Temkin, Jacqueline M. Gray & Jastine Barrett, Different Functions of Rape Myth Use in Court: Findings from a Trial Observation Study, 13 FEMINIST CRIMINOLOGY 205, 205–26 (2018).

however, this obligation often intersects with another equally important principle, the dignity and mental health of the victim. The ethical question is not whether cross-examining would take place, but whether the means employed to obtain an acquittal justify harassing, intimidating or stereotypical questions asked of a victim. It is this dilemma that constitutes the dilemma of professional ethics under the Advocates Act, 1961 and the rules framed by the Bar Council of India.

The Advocate: A Representative of the Client and an Officer of the Court

The Advocates Act of 1961 states advocacy to be a profession that is governed not just by technical competence but also ethical responsibility. One of the main functions of the Bar Council of India as per Section 7(1)(b)⁸ is "to lay down the standards of conduct and etiquette for advocates". The above-mentioned provision indicates that court advocacy is not purely based on the discretion of advocates; rather it needs to be contained within accepted ethical limitations and principles.

In addition to that, as per Section 35⁹, State Bar Council has been given the power to initiate department proceedings for misconduct of advocates. The Act, though does not define "professional misconduct", judicial interpretation gives the meaning of "conduct contrary to the dignity, honour and duties of the legal profession"¹⁰. Hence, while an advocate needs to represent his client effectively, such desire is not unlimited. Any scenario that violates the integrity of the judicial system can lead to strict disciplinary action against the advocates.

The Bar Council of India Rules: Drawing the Ethical Line

The ethical principles that apply to advocates have been explained in Part VI, Chapter II of Bar Council of India Rules¹¹, which is named Standards of Professional Conduct and Etiquette. This particular set of Rules establishes the norms for the conduct pertaining to cross-examination.

According to Rule 1¹², all advocates should act in a dignified manner in front of the Court. Dignity applies to more than just the advocate's behavior; it also concerns the way witnesses are questioned. If the advocate conducts a cross-examination that is consciously humiliating or offensive to an individual who has experienced sexual assault, then he/she has not met his/her

⁸ The Advocates Act, No. 25 of 1961, § 7(1)(b)

⁹ The Advocates Act, No. 25 of 1961, § 35

¹⁰ State of Punjab v. Ram Singh Ex-Constable, (1992) 4 SCC 54 (India).

¹¹ Bar Council of India Rules, pt. VI, ch. II (India).

¹² Bar Council of India Rules, pt. VI, ch. II, r. 1 (India).

duty of profession. Likewise, Rule 2¹³ establishes a requirement on lawyers to keep respect for the Court. This responsibility means that lawyers should respect the courts' directives constraining irrelevant or harsh questioning. Continuing with insulting questioning even after being stopped by the judiciary would diminish both the power of the judiciary and the ethical norms of the profession.

Moreover, Rule 15¹⁴ prohibits lawyers from behaving in a manner unworthy of a lawyer. The goal of this rule is to make sure that the court strategy does not become a personal attack, intimidation, or exploitation of a witness' vulnerability. Good practices should be in deciding with the evidence rather than in humiliating the person, providing it.

Judicial Recognition of Ethical Advocacy

In a series of landmark judgments, the judiciary has reiterated the imperative of following ethical practices by all stakeholders involved in the legal process. In the case of *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384¹⁵, the Supreme Court expressed its disapproval of treating victims of rape as if they had committed an offence. The Court highlighted that repeated cross-examination, which bears no relevance to the case, imposes unnecessary suffering on the victim and does not serve any useful purpose in establishing the truth. The Court firmly stated that trial courts must take adequate precautions against the kind of questions that violate the victim's dignity, thus underscoring the importance of fairness in criminal trials.

In the 2021 decision *Aparna Bhat v State of Madhya Pradesh* (2021) 3 SCC 247¹⁶, similar considerations were upheld by the Supreme Court in regard of reliance on gender stereotypes in court. The court mandated Bar Council of India to introduce gender sensitization as part of legal education and All India Bar Examination, admitting that ethical lawyers should be acquainted with the social context of sexual crimes. The ruling reestablishes the principle that a victim's personality and appearance, as well as their past relationships, cannot replace sound arguments in the court.

In the same vein, the rulings demonstrate that the judicial system increasingly sees ethics as a vital aspect of procedural fairness. The attorneys still have the right to question the testimonies; however, the manner of inquiry should not violate the rights and dignity of the victim or imply discrimination.

¹³ Bar Council of India Rules, pt. VI, ch. II, r. 2 (India).

¹⁴ Bar Council of India Rules, pt. VI, ch. II, r. 15 (India).

¹⁵ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

¹⁶ *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230 (India).

A Framework that Guides, Yet Leaves Gaps

It is clear that the current legal framework does provide an ethical basis for the practice of advocacy. The Advocates Act, 1961 provides powers to the Bar Council in terms of regulation of professional conduct, and the Bar Council of India Rules require advocates to maintain dignity, integrity and regard for all aspects of advocate practice.¹⁷ Court judgments have defined the scope of the obligations properly in cases of sexual assault victims. However, the existing framework is primarily principle-based instead of rule-based. There is no specific or defined ethical standard in the existing Act or the BCI Rules which govern cross-examination of vulnerable witnesses. Therefore, the burden of avoiding the occurrence of secondary victimisation usually rests with the various judges.

Hence, it follows that the ethical framework appreciates that courageous advocacy and ethical advocacy can coexist. However, the lack of clear professional direction creates a lot of uncertainty in practice. A more comprehensive ethical code regarding sensitive cross-examination of survivors would not infringe upon the defendant's right to fair trial but would rather complement the legal community's adherence to justice, dignity and responsible advocacy, which are the fundamental principles of the Advocates Act 1961 and Bar Council of India Rules.

CHAPTER III

Beyond Legal Principles: An Empirical Examination of Ethical Perceptions on Cross-Examination of Sexual Assault Survivors

The previous chapters of the thesis focused on the legal and judicial aspects of advocacy. However, knowing how members of the legal profession see legal ethics is also important. Legal ethics are not only reflected in the written precepts of law, but also in the values and beliefs of lawyers about legal ethics. Thus, a small survey was done to find out the perception of law students, lawyers, and academics about the existing ethical rules and how they apply to cross-examination during the trials for sexual assault and rape.

The survey involved 40 participants including law students, lawyers, and academics and responses were included through google forms, telephonic calls, and in person interactions. The aim of the research study is to find out people's opinions on the balance between the responsibility of a lawyer to represent a client and the responsibility to respect the dignity of victims of sexual assault and rape.

¹⁷ Reconciling Advocate's Dual Duties to Client and Court in Indian Legal Ethics, LIVE LAW (May 1, 2026),

Awareness of Professional Ethical Standards

The initial query assessed whether the participants in this study could recognize the standards governing professional conduct, designed by Bar Council of India, as provided in the BCI Regulations. Among the 40 respondents, 32 respondents (80%) claimed that they were familiar with BCI Regulations, whereas 8 respondents (20%) professed their ignorance on the subject.

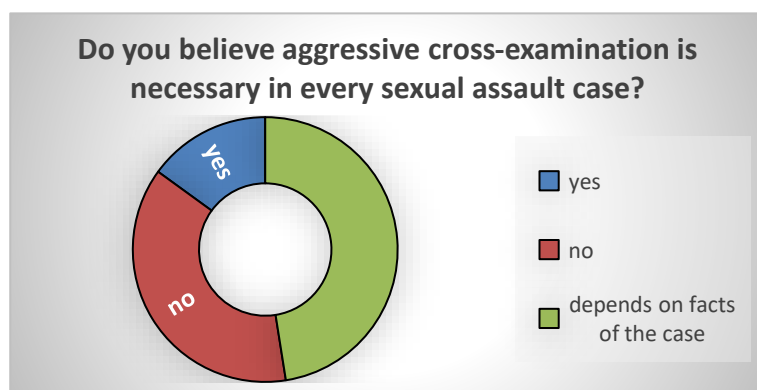


The results indicate that most respondents are aware of ethical standards applicable to members of Bar. On the other hand, the fact that some people remained unaware of the existence of ethical rules emphasizes the

need for continuous ethical education. As the functioning of court proceedings is rooted in the understanding of advocates of their professional obligation, the knowledge of ethical norms provides the basis for responsible behavior of advocates.

The Need for Aggressive Cross-Examination: Advocacy or Excess?

In the study, 6 out of 40 respondents (15%) stated that aggressive cross-examination is always necessary, while 15 out of 40 respondents (37.5%) disagreed. The majority of respondents, which is 19 out of 40 (47.5%), responded that the requirement of aggressive questioning depends on the particular facts and situations of a case.



This study's results show that the respondents acknowledge the importance of cross-examination to test evidence; however, they do not deem aggressive approach as an essential part of effective advocacy. The findings underscore the ethics principle

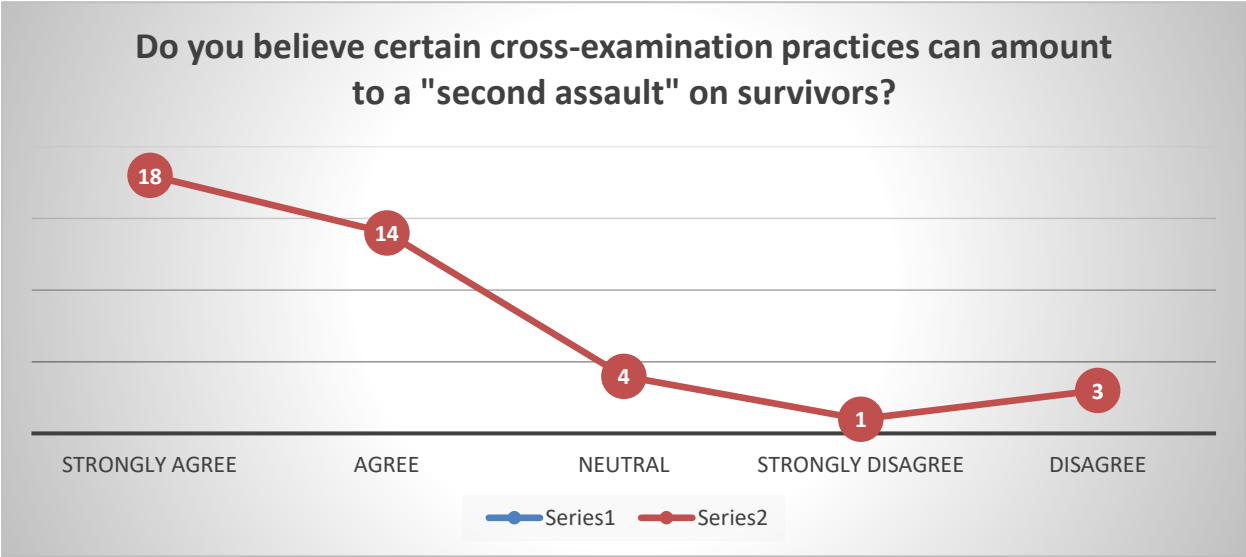
enshrined in the Bar Council of India Rules about attorneys' duty towards their clients; lawyers must be guided by dignity, fairness, and professional responsibility in their endeavors.

Recognition of the “Second Assault” During Cross-Examination

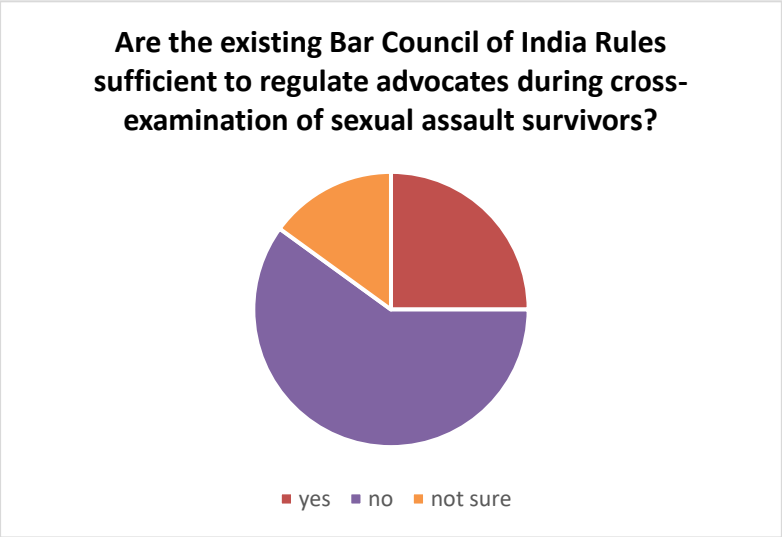
There was a very significant finding regarding whether some cross-examination techniques could be seen as a form of “double victimization” when it comes to victims of crime. The data shows that 18 or 45% of the surveyed agreed completely with this statement, and 14 or 35% agreed with the claim as well. Only 4 respondents remained neutral, and 4 disagreed with the statement.

This means that around 80% of respondents accepted the possibility of the secondary victimization that comes from unethical questioning.

These findings show that the issue of the courtroom being a cause of psychological harm is gaining the recognition that it deserves because the questioning can easily turn from checking credibility into attacking the human dignity of the victim. The given information is consistent with the conclusion of the Supreme Court in the **State of Punjab v. Gurmit Singh case**.



Adequacy of Existing Professional Ethics Framework

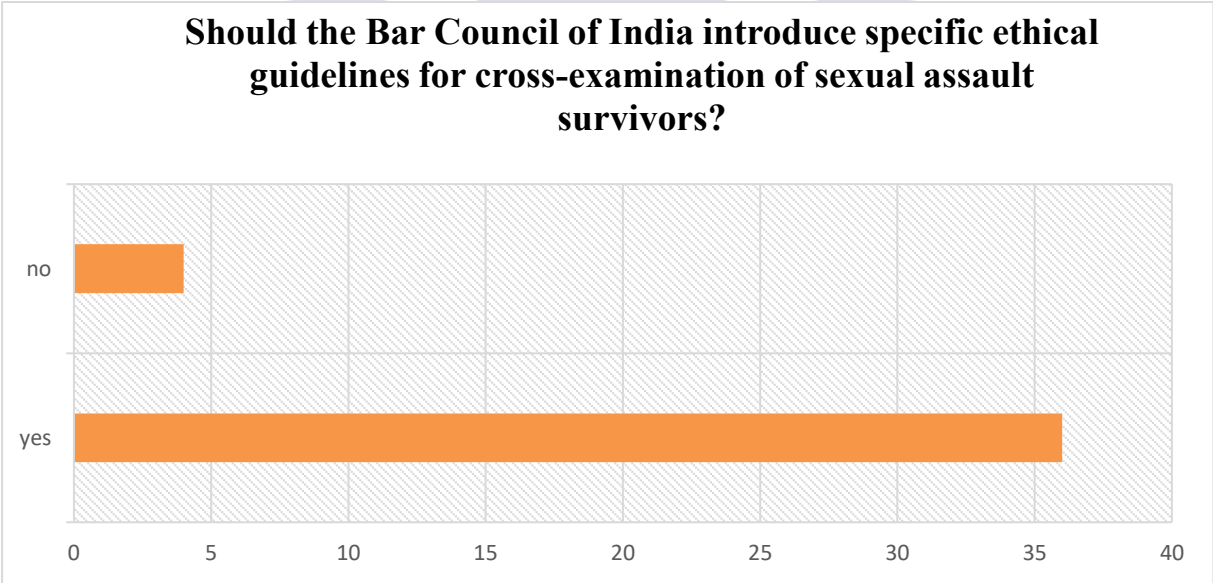


Next, respondents were required to indicate their opinion regarding the adequacy of the current Rules of Bar Council of India to control advocates involved in cross-examination of sexual assault victims. Only ten respondents (25%) considered the present arrangement to be

adequate, while 24 out of 40 respondents (60%) thought that it was not adequate enough. The remaining six respondents (15%) expressed their lack of understanding regarding the issue. The findings show that the present arrangement offers some broad ethical principles in the form of dignity, and fairness, but still lacks specific instructions for dealing with sensitive situations in the court. This is consistent with the conclusion of the previous chapter, which mentioned that even though the Advocates Act, 1961 and BCI Rules implement some professional standards, they do not contain any detailed rules related to questioning methods in sexual assault proceedings.

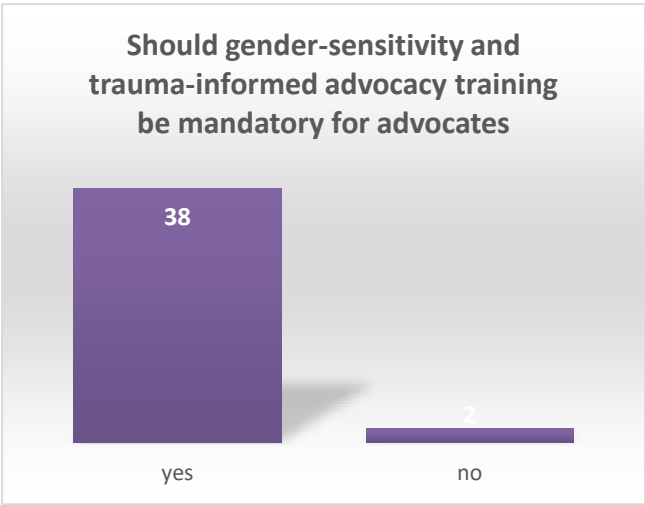
Demand for Specialised Ethical Guidelines

The survey result clearly indicates the requirement of clearer regulations. To the question, “Should the Bar Council of India develop specific ethical guidelines for cross-examination of sexual assault victims?” out of the total 40 respondents, 36 (90%) answered in favour of the need to develop the suggested guidelines. Only 4 (10%) opposed.



The overwhelming response indicates that the respondents do not think that ethical regulation restricts the right of the advocates to defend the accused. According to the respondents, the special guidelines are to help differentiate between legitimate defence strategies and those which include irrelevant, discriminatory or unnecessarily humiliating questions. Such guidelines would ensure that professional ethics are served more adequately by providing advocates with clearer standards.

Importance of Gender-Sensitive Advocacy Training

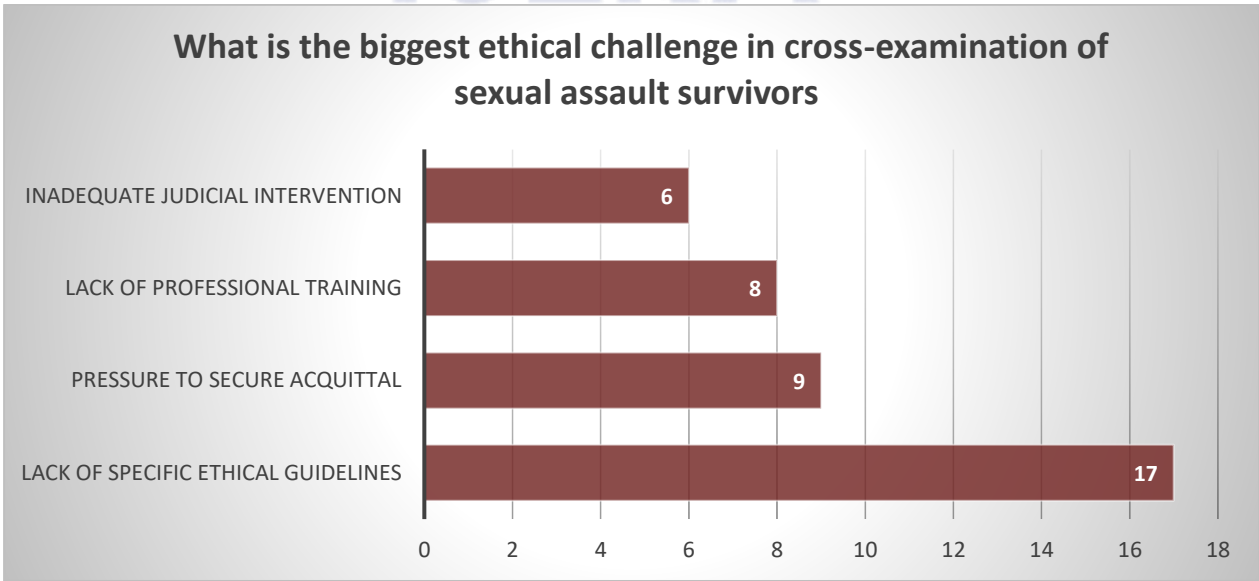


The responses to our question on whether professionals believe that training should be made obligatory were overwhelmingly positive. The vast majority of respondents (38 out of 40, i.e. 95%) agree that gender sensitivity and trauma-informed advocacy training should be compulsory for advocates, while a mere 2 respondents (5%) disagree with this statement.

This indicates that the understanding of gender sensitivity is in line with the position taken by the Supreme Court of India in the case of **Aparna Bhat and Anr. vs. State of Madhya Pradesh and Ors.** (2021), where the Court has acknowledged the importance of gender sensitivity in the judicial system. Ethical advocacy does not mean just understanding legal provisions, but also understanding the societal and psychological contexts of sexual crimes.

Major Ethical Challenges in Cross-Examination

The last question explored what is regarded as the primary ethical problem in cross-examination of sexual assault survivors. The replies were: Lack of specific guidelines concerning ethics was singled out as a principal cause of concern by many. This means that the issue may be viewed as lack of acceptance of professional ethics rather than simply the lack of guidelines stating how ethics should be applied.



Critical Evaluation of Survey Findings

The findings of the illustrative survey validate the position that while the prevailing ethics framework has a solid base, more precision is needed in its application in the matter of sexual assault trials. Respondents largely accepted the importance of cross-examination for the fair trial but rejected the notion that effective advocacy means humiliation and cruel questioning without boundaries. The findings reflect the preference for ethical regulation as opposed to the limitation of advocacy. The need for special instructions and obligatory gender-sensitive training reflects the understanding that the goal of protecting the dignity of the person harmed and the right of the accused for defence is not mutually exclusive. Both are necessary components of a proper justice system.

Thus, the study backs up the main thesis of the research, which is that the Advocates Act of 1961 and the Bar Council of India Rules create important ethical obligations, while at the same time the actual realities in court necessitate the need for more precise instructions in order for advocacy to be effective and humane.

CONCLUSION

The real effectiveness of the judicial system is reflected not only in the capacity of the justice system to punish the guilty or absolve innocent citizens, but also in the treatment of those seeking its services. The research demonstrates that the ethical obligations imposed by the Advocates Act, 1961 and the Bar Council of India Regulations are more than just input requirements; it implies that lawyers must maintain the respect, fairness, dignity, and integrity that should be inherent within the legal profession. While cross-examination plays a significant role in a fair trial, it should not be transformed into a means for reproach expressed in the form of advocacy. The doctrinal investigation paired with illustrative empirical research shows that notwithstanding the fact that the existing framework is successful in ensuring ethical standards, it does not remove the necessity to develop more precise guidelines to address the needs of sexual assault victims. In conclusion, the most important responsibility of an advocate is not just to succeed in court, but to make sure that the justice process is implemented with the dignity of the people in court. In the profession of law, it is important to assess advocacy based on how faithfully the law was followed and not how much a witness was traumatized in the process.

Justice Should Never Feel Like a Second Assault