

## MEDICAL EVIDENCE IN PROVING PROSECUTION'S CASE FOR SEXUAL ASSAULT

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### ABSTRACT

*Through this paper, the author aims to discuss how medical evidence impacts the outcome of a sexual assault case when the victim is an adult. This paper will discuss the statutory provisions that require medical evidence to be used when arguing and deciding sexual assault cases. The author aims to analyse different case laws and government guidelines that have contributed to the legislative course of medical evidence in sexual assault cases. The research question that this paper will delve into is 'how medical evidence helps in arguing and deciding cases of sexual assault when the victim is an adult.' The methodology adopted in this paper is to analyse the case laws, legislations, and government guidelines to answer the research question.*

**Keywords:** Medical Evidence, Sexual Assault, Adult Victim, Decision Making, and Arguing.

### INTRODUCTION

In 2022, the National Crime Records Bureau (NCRB) recorded 7.1% of total cases recorded under the head of crime against women to be the cases of rape whilst the totality of crime against women increased by 4.0% since the previous year.<sup>1</sup> These statistical values are an indication of the growth in the crime pertaining to women within India. The growth in sexual assault cases indirectly means the need to prove these crimes within the courts when the charges are brought forward. During these cases, the legal counsel for the victim uses medical evidence to support their claim that the alleged crime did happen. The Union Ministry of Health and Family Welfare laid down guidelines for Medico-legal care for survivors/victims of Sexual Violence in 2014<sup>2</sup>. These guidelines are a kind of rulebook that the police and legal counsel have to follow when they are proving their case. One of the guidelines stated that Sexual Assault Forensic Evidence kits (SAFE Kits) are required to be used as a uniform method to collect medical evidence. It is evident that since the sexual offense cases have been rising, the

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<sup>1</sup> <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

<sup>2</sup> <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>

rules regarding the medical evidence have also become more stringent. The prosecution as corroborative evidence to support the claims against the accused uses this evidence.

### **SEXUAL OFFENCES UNDER THE INDIAN PENAL CODE**

All sexual offenses have been defined in the Indian Penal Code (IPC) from section 375 to section 377. Section 375 of the IPC defines the offense of rape as an act that amounts to penetration by the penis, insertion of an object in any part of the body, manipulation of any part of women's body to produce penetration, applying tongue. Two factors required to be fulfilled under this section are that the sexual intercourse shall be *against the victim's will and without her consent*. The punishment for this offense is given under section 376 of IPC. As per this section, the accused convicted under this section shall be punished by rigorous imprisonment that should not be less than ten years and may extend to life imprisonment, and the person will be liable for a fine as well.

### **MEDICAL EXAMINATION COMPULSION UNDER THE CRIMINAL PROCEDURE CODE**

The procedure to carry out a medical examination of a rape victim and the accused are mentioned in the Criminal Procedure Code (CrPC). Section 53A of CrPC states the compulsion to have a proper medical examination of a person accused of committing rape. This section clearly mentions that *an accused has to be medically examined within twenty-four hours by a registered medical practitioner*. The urgency of getting the medical examination of the accused done within twenty-four hours of the alleged crime not only depicts the importance of medical examination for sexual offenses but also shows the compulsion imposed on the authorities to gather pieces of evidence that may help in proving whether the crime took place or not.

Section 164 of CrPC mentions the requirement to have a proper medical examination of a rape victim. The section mentions that *a rape victim has to be medically examined within twenty-four hours of receiving the information about the offense by a registered medical practitioner*. This section, in line with section 53A, brings in the urgency to get the victim examined by a medical practitioner within twenty-four hours.

Both these have imposed urgency on the police to make sure that the victim and a medical practitioner examine the accused within twenty-four hours of the alleged crime. This evidence, once collected, becomes admissible in the court under the Indian Evidence Act. These medical pieces of evidence are used by the prosecution as corroborative evidence to prove the alleged

crime and to prove the fact that the accused did, in fact, commit the offense of rape on the victim.

### **ADMISSIBILITY UNDER THE INDIAN EVIDENCE ACT**

Section 45 of the Evidence Act allows the court to form an opinion about a technical field based on the opinion of an expert or a person skilled in that field. When considering the offense of rape, the opinion of the medical practitioner becomes relevant as the court uses this opinion or form of evidence to decide whether the offense took place or not. This section is based on the Latin maxim 'cullibet in sua arte est credendum.' This maxim states that the opinion of a person skilled in a particular subject shall be believed and relied upon by the court when necessary. Both the section and the maxim give the admissibility power to the medical report conducted by a professional. The courts rely on this report to further form their judgment as to if the offense took place. The prosecution can rely on the report to emphasize their claim that the offense did actually happen, and the accused was the person who committed the crime.

It was held in the case *Solanki Chimabhai Ukabhai v. State of Gujarat*<sup>3</sup> that *medical evidence is corroborative. It merely proves that the injuries inflicted upon the victim have been inflicted in the manner alleged by the council. The medical evidence can be used to support the eyewitness statement to prove that till the time the evidence completely rules out the method alleged to be injured, the eyewitness statement will be credible.* The applicability of the case in the practice of evidence law is that medical evidence becomes a tool used to prove that the injuries inflicted on the victim are in the manner that the prosecution claims. This evidence can also be used to prove the credibility of the eyewitness statement until the time it is completely ruled out. This case also laid down the fact that *the defence can use medical evidence to prove that the method of inflicting the injuries is not in accordance with what is claimed by the prosecution.* It shows that the medical evidence can be used to also disprove the prosecution's claim relating to the injuries inflicted on the victim.

The provision and the case law are the confirmation that the medical evidence is admissible in the court as corroborative evidence to put further emphasis on the prosecution's claim. The defence council to disprove the theories and claims presented by the prosecution can further use these pieces of evidence. In practicality, when considering the offense of rape, medical evidence comes in place when the prosecution uses this evidence to show that the accused has

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<sup>3</sup> Solanki Chimabhai Ukabhai v. State of Gujarat AIR 1983 SC 484

committed rape on the victim leaving behind evidence on the clothes or body or both of the victim. The existence of this evidence further strengthens their claim that the accused was the person committing the crime.

In the case of *Om Prakash v. State*<sup>4</sup>, the medical evidence present for examination was the blood marks on the victim's clothes and vulva and a tear on the perineum that bled in touch. Due to the presence of this evidence, the court convicted the accused on the basis that the evidence was enough to prove that the accused had committed the offense to convict him. This case shows that the court may rely on medical evidence in determining whether the offense took place or not. In this case, the fact that there was a tear on the perineum was enough proof of forced entry of the accused, and the blood marks on the victim's clothes and vulva were further proving the offense. This evidence is corroborative, proving the prosecution's case in showing the offense took place.

### **TYPE OF MEDICAL EVIDENCE TAKEN IN SEXUAL ASSAULT CASES**

In 2018, the Ministry of Home Affairs, Govt. of India<sup>5</sup>, laid down guidelines for forensic medical examination in sexual assault cases. These guidelines, read with Section 53A of CrPC, list down the different samples that are to be collected from the victim and the accused's body to make the report determining whether the offense happened or not.

Under the provisions of CrPC, a report shall be made by a medical examiner consisting of the names of the victim and accused, the name of the person bringing the accused for examination, age of both parties, injury marks on the accused, description of material taken from DNA profiling of accused and the victim, mental condition of the victim, their consent and any other material information that comes up while examination.

The forensic medical examination in sexual assault cases guidelines require the medical practitioner to collect samples of i) clothing, ii) sanitary pads/tampons, iii) condoms, iv) evidence on the body, v) head hair, vi) pubic hair, vii) vulval swab, viii) vaginal swab, ix) cervical swab, x) anal/rectal swab, xi) oral swab, xii) penile and urethral swab, xiii) smear slides, xiv) nail clipping/scarping, xv) urine sample, xvi) vaginal wash, xvii) aborted fetus, and xviii) blood.

<sup>4</sup> *Om Prakash v. State* AIR 1956 All 241

<sup>5</sup> [https://www.mha.gov.in/sites/default/files/womensafetyDivMedicalOfficers\\_06082018\\_0\\_0.pdf](https://www.mha.gov.in/sites/default/files/womensafetyDivMedicalOfficers_06082018_0_0.pdf)

All these evidentiary samples were collected by the medical practitioner to prove a DNA sample, blood sample, semen sample, saliva sample, and corroboration of urogenital contact of the accused in the victim's body. The main requirement of these evidentiary samples is to somehow show that traces of the accused are present in the victim's body or clothes strengthening the claim of the prosecution. The defense can use this evidence to prove that the DNA or semen or saliva sample present on the victim's body is not of the accused, and the accused has no traces of the victim's body on their body.

## **CONCLUSION**

Medical evidence in sexual assault cases has become increasingly important for both councils to prove their claim. The prosecution uses this evidence to prove that the offense was committed by the accused as there is DNA of the accused on the victim's body or clothes. Whereas the defense uses this evidence to prove that the DNA found on the victim was not of the accused and that the prosecution's claim is false. The requirement of medical evidence is given in the CrPC and Evidence Act. This medical evidence is corroborative evidence that the parties use to prove their claim or put emphasis on the truth of their claims. The government guidelines have also further given the way medical pieces of evidence are required to be taken when the victim is of a sexual offense.

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