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## Review Article

# Medicolegal Aspects of Examination of Accused of Sexual Offences

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## Abstract

With the implementation of Protection of Children from Sexual Offences (POCSO) Act in 2012 the scope of legal definitions and requirements related to sexual offences has been widened. The legal framework necessitates that medical examinations follow to stringent procedures to confirm that evidence is collected in such a way that of chain of custody is properly maintained along with proper documentation. The timing of medical examinations is vital for collecting evidence that can establish the connection between an accused with the alleged crime. Deferrals in conducting these examinations can adversely affect the value of evidence collected. In India, the examination of accused individuals in sexual offenses is governed by a complex framework involving statutes, procedural rules, and judicial guidelines. This framework ensures that the process is fair, thorough, and respects the rights of all parties involved. These legal provisions ensure that the examination of accused individuals in sexual offenses is conducted in a manner that respects their rights while also gathering necessary evidence for the investigation and trial. The integration of statutory law, procedural rules, and judicial precedents helps balance the need for evidence with the protection of individual rights.

## 1. Introduction

With the implementation of Protection of Children from Sexual Offences (POCSO) Act in 2012 the scope of legal definitions and requirements related to sexual offences has been widened. Under the POCSO Act, the term "person" is considered as gender-neutral which indicates that accused can be either male or female. Therefore, it is of utmost importance to be prepared for medical examination of male as well as female accused. Sensitivity and secrecy should be key components of medical examination of the accused. The legal framework

necessitates that medical examinations follow to stringent procedures to confirm that evidence is collected in such a way that of chain of custody is properly maintained along with proper documentation.

The timing of medical examinations is vital for collecting evidence that can establish the connection between an accused with the alleged crime. Deferrals in conducting these examinations can adversely affect the value of evidence collected. Various biological evidence such as semen, blood,

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or other bodily fluids can get spoil over period of time. Deferrals in examination can lead to the damage or variation of this evidence, causing it tougher to associate the accused to the crime. In India, the accused need be officially arrested by the police prior to subjecting the accused for examination. This usually results in delay if arrest is not done earlier. Doctors play a pivotal role in the cases of sexual violence by providing medical care, gathering evidence, and recording findings. Their work ropes the legal process by providing indispensable medical comprehensions which can be used by investigating authority and the judiciary.<sup>1,2,3</sup>

Corroboration in cases sexual offences is not the mandatory legal requirement but rather a matter of judicial discretion. In the context of criminal law, corroboration denotes to additional evidence that backs the testimony of the prosecutrix (victim) in a case of sexual violence. It is preordained to reinforce the integrity of the prosecutrix's account.<sup>4</sup>

In India, the examination of accused individuals in sexual offenses is governed by a complex framework involving statutes, procedural rules, and judicial guidelines. This framework ensures that the process is fair, thorough, and respects the rights of all parties involved.

## 2. Medical Examination Protocols

**2.1 Consent:** The collection of evidence from the accused should be done with their informed consent. This ensures that the process respects the legal rights of the accused while allowing for the collection of necessary forensic evidence. The examination has to be performed with the extreme respect for the accused's dignity and confidentiality. Medical professionals should be trained to handle such cases sensitively and professionally. There are legal provisions which state that the examination of accused can be done with reasonable force.

In cases of sexual offenses, Section 53 of the Criminal Procedure Code allows for the medical examination of the accused, including the use of reasonable force if necessary. This provision ensures that forensic evidence can be collected even if the accused resists the examination.<sup>5</sup>

**2.2 Section 53 A:** It deals specifically with medical examination of accused of sexual offences. This section mentions the particulars the doctor to note down in the report.

- S 53 A 2(i) CrPC- Name of the accused, address of accused & person who brought.
- S 53 A 2(ii)- Age of accused.

- S 53 A 2(iii)- Injuries present over the body.
- S 53 A 2(iv): Samples to be collected for DNA profiling.
- S 53 A 2 (v) – Other information in detail.
- S 53 A (3) – Specific reasons to be mentioned for conclusion.
- S 53 A (4)- Exact time of commencement & end of examination to be mentioned.
- S 53 A (5)- Handing report immediately.<sup>6</sup>

**2.3 Section 54 Cr PC:** It provides the accused with the right to have a medical examination conducted at their request, especially if they believe it will help their defence. Medical examinations should be conducted with respect for the accused's privacy and confidentiality. Records and findings must be protected and only disclosed as required by law.<sup>7</sup>

## 3. POCSO Act

Although primarily focused on offenses against children, the POCSO Act has provisions relevant to the examination of accused persons. It emphasizes child protection and mandates specific procedures for handling cases involving minors. It also requires careful handling of medical examinations to avoid further trauma to victims.<sup>8,9</sup>

## 4. Supreme Court and High Court Rulings

Indian courts have issued various rulings on the rights of the accused and the procedures for conducting medical examinations. These rulings often provide guidance on ensuring fair treatment and proper procedure. For instance, the Supreme Court has emphasized the need for respect for the accused's dignity and the importance of adhering to proper medical and legal standards.

### 4.1 State of Bombay vs Kathi Kalu Oghad (1961):

Landmark Judgment on Right of an Accused Person against Self-Incrimination as Imbided in Article-20(3) of the Constitution of India. Foremost question was that whether collecting of evidences like finger prints, handwriting samples, DNA samples and other evidences establish lawful modes of collecting the evidences in regard of protection guaranteed under 'Article- 20(3)' under the Constitution of India. The Oghad's case did not render protection to material evidence like thumb prints, foot prints, finger prints, handwriting samples, signatures, showing body parts etc. and considered keeping it outside the ambit of 'Art. 20(3)'. Hence, these evidences do not violate the "right against self-incrimination" and the accused needs to be subjected to obligation on the basis of these evidences following due process of law.<sup>10,11</sup>

#### 4.2 Selvi v. State of Karnataka (2010):

The Supreme Court in this case considered the constitutionality of various evidence gathering techniques including narcoanalysis, BEAP (Brain Electrical Activation Profile) or 'brain mapping', and polygraph tests. The court found that neuroscientific investigative techniques could potentially violate fundamental constitutional rights, particularly the right not to be forced to incriminate oneself under Article 20(3) and the right to personal liberty under Article 21 of the Constitution. This decision underscores the importance of ensuring that investigative methods respect constitutional protections and individual rights.<sup>12,13</sup>

The Court, after tracing the jurisprudence of the right to privacy in India discussed the importance of mental privacy and the choice to speak or stay silent, as well as their intersection with personal autonomy as aspects of the right to privacy. The Court observed that the right to privacy under Article 21 should account for interaction with Article 20(3), the right against self-incrimination. The Court further held that drug induced revelations and measurement of physiological responses would amount to an intrusion into the mental privacy of the subject and that forcible extraction of testimonial responses was not provided for under any statute and could not be a reasonable exercise of policing functions. The Court therefore ordered that these tests could not be administered without the valid consent of the accused.<sup>12,13,14</sup>

#### 4.3 Prakash v. State of Karnataka (2014) and Shreemad Jagadguru Shankaracharya v State of Karnataka, 2014 SCC Online Kar 5639, dated 03.12.2014:

**Section 53-A CrPC** allows for the medical examination of an accused person in cases of rape. It was challenged on the grounds that it might be misused by the police, particularly with regard to informing the accused about the nature of the medical examination.<sup>6</sup>

The court ruled that while the possibility of misuse by police officers exists, it does not necessarily invalidate the section itself. The mere potential for abuse does not reflect on the constitutional validity (*vires*) of the provision. This means that the section can still be considered constitutionally valid even if there are concerns about how it might be used. The court upheld the constitutionality of the provision, noting that not informing the accused about the specific nature of the medical examination was

important. This approach helps prevent the accused from being alerted and potentially obstructing or tampering with the evidence. In other words, the court found that maintaining the confidentiality of the examination process was necessary to ensure that evidence could be collected effectively and that the investigation was not compromised.<sup>15,16</sup>

#### 4.4 Dharam Deo Yadav v. State of Uttar Pradesh (2014):

Supreme court in the judgement emphasized need of medico legal examination and sample collection. Proper protocol to be followed during the procedure.<sup>17</sup>

#### 4.5 State of Karnataka v. Manjanna (2000):

The Supreme Court of India highlighted the critical importance of conducting medical examinations promptly in cases involving allegations of sexual offenses. The Supreme Court emphasized that conducting medical examinations without delay is crucial. The rationale is that prompt medical examinations help preserve vital evidence that might otherwise be lost or degraded over time.<sup>18</sup>

#### 4.6 Krishan Kumar Malik v. State of Haryana (2011) & Rajendra Prahladrao Wasnik v. State of Maharashtra (2018)

In these cases, the Supreme Court of India addressed the role of DNA evidence in sexual offense cases and its relationship with certain procedural provisions. In *Krishan Kumar Malik v. State of Haryana* (2011), the Supreme Court held that, following the insertion of Section 53A of the CrPC, it is necessary for the prosecution to conduct a DNA test to substantiate its case against the accused. This reflects the court's view that DNA evidence is a crucial component of proving allegations of rape.<sup>19</sup>

Reference in *Rajendra Prahladrao Wasnik v. State of Maharashtra* (2018): The Supreme Court reiterated the importance of DNA evidence in cases of sexual offenses, especially considering Sections 53A and 164A of the CrPC. These sections pertain to medical examinations and evidence collection in rape cases. Absence of DNA Evidence: The Court observed that while the duty is on investigators to conduct DNA profiling, the absence of DNA evidence alone does not automatically negate the prosecution's case.

The Court noted that the definition of rape under Section 375 of the Indian Penal Code (IPC) has been broadened to include acts beyond penile-vaginal intercourse. As a result, the absence of male DNA in vaginal samples (such as semen or sperm) is not sufficient by itself to conclude that rape did not

occur. The definition now covers a range of non-consensual sexual acts, making the presence of DNA evidence less determinative in isolation. While the court emphasized the importance of DNA evidence, it also acknowledged that the lack of DNA evidence would result in adverse consequences for the prosecution, highlighting that the prosecution must still prove its case beyond reasonable doubt using all available evidence.<sup>20</sup>

#### 4.7 Ram Singh v. Sonia (2012):

Supreme court stated that there is need for proper documentation and chain of custody to ensure its admissibility.<sup>21</sup>

#### 4.8 State of Karnataka vs Raju (2007):

The Karnataka High Court has ruled that even in the absence of medical evidence, an accused can be convicted if the other evidence is sufficient to establish the guilt of the accused beyond a reasonable doubt. This means that while medical evidence is important, it is not always essential for securing a conviction in a rape case.

The court has emphasized that corroboration with medical reports is not a mandatory requirement in every case. The testimony of the victim, if credible and consistent, can be sufficient to support a conviction, even if medical evidence is lacking or incomplete.<sup>22</sup>

#### 4.9. Neeraj Sharma vs state of UP (1993):

Sample collection or any investigation needs to be done even though some discomfort occurs. Section 53 of the CrPC allows for the use of reasonable force to collect evidence from an accused, and this provision has been interpreted to be consistent with constitutional rights, provided that the force used is proportionate and the procedure respects the accused's dignity and rights.<sup>23</sup>

#### 4.10 Sheela Barshe vs State of Maharashtra:

In Sheela Barse vs. state of Maharashtra AIR 1983 SC 378, the Supreme Court observed: Section 54 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person.<sup>7,24</sup>

Often, individuals in police custody may not be fully aware of their legal rights, including the right against self-incrimination and protection from torture or maltreatment. This lack of awareness can result in individuals not asserting their rights or seeking redress if they are subjected to ill-treatment.<sup>24</sup>

### 5. Legal Safeguards through Constitution of India:

The Indian Constitution and legal framework provide several safeguards to protect individuals in custody:

- **Article 22:** This article guarantees protection against arbitrary arrest and detention and mandates that a person must be informed of the grounds of arrest and be allowed to consult a lawyer.<sup>25</sup>
- **Section 50 Cr PC:** This section requires that a person arrested must be informed of the grounds of their arrest and the right to bail.<sup>26</sup>
- **Section 54 Cr PC:** This section provides that an arrested person can request a medical examination to document any injuries or maltreatment.<sup>7</sup>
- **Protection Against Torture:** Torture and ill-treatment of individuals in custody are explicitly prohibited by law. The Constitution of India, under **Article 21**, guarantees the right to life and personal liberty, which includes protection against torture and cruel, inhuman, or degrading treatment. There is obligation on the magistrate to inform the arrested person about right to get examined by the doctor referring to section 54 CrPC to ascertain whether he was subjected to torture or not.<sup>24</sup>

### 6. Other Legal aspects

#### 6.1 Medical age estimation on the Accused of a Sexual violence

Though section 53(A) CrPC insists for a medical age estimation in all cases of accused of Rape; the section 94 of Juvenile Justice Act, 2015 states that only if documentary proof (school records or birth certificates issued by revenue authorities) are not there then only medical age estimation should be done that too using latest methods. The model rules under the JJ Act, 2015 insists that the medical age estimation be done by a board consisting of Radiologist, Dentist and a Physician – who should submit their report within 15 days of referral. Even the Supreme Court judgment reiterates the same in Ashwani Kumar Saxena case 2 that only in cases where those age documents or age certificates are found to be fabricated or manipulated, the special court, the Juvenile Justice Board or the Child welfare Committee need to go for medical report for age determination. But the latest judgement by Supreme Court rules the contrary that –Bone test is not enough to fix the age.<sup>27,28,29</sup>

#### 6.2 Relevancy to document the Potency of the Accused

Definition of rape and sexual violence has evolved significantly to include a broader range of acts beyond traditional penile-vaginal penetration. This expansion reflects a more comprehensive understanding of sexual violence and aims to provide greater protection for survivors. Section 53 A CrPC which specifically deals with medical examination of accused of rape does not mention anything about potency examination. Section 375 IPC defines rape as the penetration of the penis to any extent into a woman's genitals without her consent. The definition does not require that the penis be erect or that penetration be complete. This broader definition ensures that various forms of sexual violence are covered, even if the penetration is minimal.<sup>30</sup>

### 6.3 Implications for Medical Examination

Given the legal definition, the focus is on the presence of penetration rather than the physical state of the penis or the extent of penetration. Assessment of Potency: Medically, assessing whether a person is potent (i.e., capable of achieving an erection) involves examining physical and psychological factors.<sup>31</sup> However, a physical examination alone cannot definitively rule out psychological impotence. On physical examination there can be multiple causes of impotency including webbed penis.<sup>32</sup> Even if a person is physically capable of erection, psychological factors might affect their performance, and vice versa. This makes it difficult to conclusively determine potency based solely on a physical examination.

### 6.4 Relevance in Legal Context

**Irrelevance of Potency for Rape:** Given that the legal definition of rape does not require full penetration or an erect penis, the medical examination of potency is not directly relevant to proving or disproving the occurrence of rape. **Focus on Evidence of Penetration:** The primary concern in legal proceedings is whether there was any degree of penetration, not whether the accused was capable of achieving an erection. Hence, potency examinations are not typically relevant in determining whether rape has occurred under the legal definition.

### 6.5 Legal and Medical Practice:

**Purpose of Medical Examination:** In cases of alleged rape, medical examinations are generally conducted to gather evidence of physical injuries, signs of trauma, or the presence of seminal fluid, rather than to assess the accused's potency.

**Limitations:** Courts generally recognize the limitations of medical examinations in determining

psychological aspects of potency, and thus, such examinations are not given undue weight in determining guilt or innocence in rape cases.<sup>1</sup>

### 7. Conclusion

These legal provisions ensure that the examination of accused individuals in sexual offenses is conducted in a manner that respects their rights while also gathering necessary evidence for the investigation and trial. The integration of statutory law, procedural rules, and judicial precedents helps balance the need for evidence with the protection of individual rights.

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