

Medical examination of sexual assault cases and related law

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Abstract

The criminal law amendment act 2012 has expanded the definition of sexual assault and recognised right to the treatment for all survivor/victims of sexual assault by the public and private health care facilities. The ministry of health and family welfare released uniform guideline for medico-legal care of victims of sexual violence. This paper highlights some of important provision of law and recent changes in examination of victim of sexual violence, which is applicable to all registered medical practitioner practicing either in public or private sector.

Keywords: Sexual assault victim/survivor, ministry of health and family welfare, medico-legal care.

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Introduction

More than half of the world population comprises of women. Nowadays women are not safe in the world as well as in India. Survey of WHO estimates that 10 to 69 per cent of women are physically harmed by male partner. In India large range of sex related crimes take place which are sexual assault, rape, sexual abuse of children and trafficking of women for the purpose of sexual exploitation (1). Sexual assault includes all form of non-consensual contact with a sexual purpose ranging from eve teasing, molestation to rape (2). Out of all these crime, rape is considered to be the most heinous and gravest form of human right violation. Rape is not only a crime against the women but it is a crime against the humanity as well (1). Medical examination of the victim and accused, always play a very important role in case of sexual assault. As the offence of rape is committed in privacy and no eye-witness of act may be available, corroboration of the testimony of complainant is sought from medical evidence (3). Recent changes have occurred in examination of sexual assault related cases after Nirbhaya incidence, which arises many questions in the minds of health care providers. This article may be helpful for the health care providers while dealing with the victim or accused of sexual assault.

Examination of victim

Medical examination of victim had always been a mandatory requirement. The victim bears important medical evidence, which, with passage of time, is lost so medical examination of victim should be done immediately. No hospital or doctor should delay examination as well as treatment for want of police requisition. S. 357 C CrPC states that all hospitals, public or private should immediately, provide medical treatment, free of cost, to the victims of sexual assault and immediately inform to the police. Non-treatment of victim by any hospital, public or private should be punishable under S. 166B IPC. S. 164 A CrPC states that examination of victims of sexual assault should be conducted by any registered medical practitioner of a government hospital or private/local authority without delay (4) (5). S. 228 A IPC states that disclosure of identity of the victim of sexual assault should be punishable. S.53 A IEA states that where the question of consent is in issue in sexual assault cases, evidence of the character of the victim's previous sexual experience with any person should not be relevant on the issue of such consent or the equality of consent. The ministry of health and family welfare released guideline to examine the victim of sexual assault with treatment of physical injuries, emergency contraceptive, psychological support and follow-up (6).

Consent: if the victim is of and over 12 years of age, a written consent in presence of witness, should be obtained before medical examination. If she is a child under 12 years of age or of unsound mind, the written consent of her parent or guardian should be obtained. If the age of victim is 18 years or more, the examination should be done by any female doctor. In case a female doctor is not available, a male doctor should conduct the examination in presence of female attendant with her consent (6). In case the victim is girl child, age less than 18 years, the medical examination must be conducted by a female doctor as S. 27 of POCSO Act. 2012 (7).

The registered medical practitioner should prepare a medico legal report of his/her examination giving the following particulars:

Name, father/husband name, age, and address of woman.

Name of person/police person with police station by whom she was brought.

Two identification marks or mention particulars of identity card.

The victim should undress on a clean white sheet of paper to collect any foreign matter that may be fall to the floor from her or her clothing. Carefully examination of cloths for presence of blood, seminal stains and any other stains, if the cloths are same as those worn at the time of occurrence of incidence.

If any mark of injuries or violence such as abrasion, bruises and teeth marks present on body, they should be properly identified, recorded and carefully described as regards their shape, size, location and duration.

If any injuries present on genitals such as bruise, laceration and redness should be examined and noted properly.

Following Samples should be preserved during examination of victim of sexual assault.

Any foreign hair sample present on body surface should be collected and packed for FSL examination. Combing the pubic hair with gloved fingers may also assisted in obtaining sample of loose hair. Any matted pubic hair should be collected using sterile scissor and packed separately for detection of semen and blood.

A vaginal wash should be collected firstly, than a plain sterile cotton swab should always be taken

from the posterior fornix and two slide smear prepared by material obtained on the swab. These samples should be forwarded to forensic science lab for detection of seminal fluid, spermatozoa, estimation of level of acid phosphates and DNA profiling.

If any stain present on body should be carefully scraped by mean of a clean blunt knife and preserved or moistened with normal saline, and slides prepared for FSL examination. If any teeth mark is present on body, swab should be taken for presence of saliva of the accused.

In the case of struggle debris under the nails should be removed carefully by toothpick for examination of epidermal cell, blood and fibers.

Blood sample should be collected on blood sample card (FTA card) for control and DNA profiling of victim. About 3 to 5 ml blood should be collected for detection of drugs and alcohol separately. Urine pregnancy test and ultrasound should be done in suspected pregnancy. If the victim of sexual assault is having pregnancy, sample for DNA should be collected after MTP or delivery of foetus (8).

A thorough general physical examination, including temperature, pulse and blood pressure should be done and recorded.

Following opinion to be formulated on the basis of available facts obtained from examination of victim of sexual assault.

The exact time of commencement and completion of examination should also be noted in examination report. The registered medical practitioner should, without delay forward the report to the investigating officer who shall forward it to the magistrate in S.173 Crpc as a part of documents.

After examination of victim of sexual assault doctor should give treatment of physical injuries, emergency contraceptive, psychological support and follow-up if required (6).

Psychological counseling of victim of sexual assault:

The victim of sexual assault may suffer from post-traumatic stress disorder so she needs psychological counseling help. The doctor should be counsel or advised to her or her parents to counsel from a professional counselor.

Table 1: Provisional and final opinion based upon injuries and FSL report

S.N	Genital injuries	Physical injuries	Provisional opinion	FSL report	Final opinion	FSL report	Final opinion
1	present	present	There are signs suggestive of recent use of force on body and genital.	Positive for semen and detection of accused DNA	There are signs suggestive of forceful vaginal intercourse.	FSL report negative	There are no signs suggestive of vaginal intercourse but evidence of physical and genital assault.
2	Present	Absent	There are signs suggestive of recent use of force on genital.	Positive for semen and detection of accused DNA	There are signs suggestive of forceful vaginal intercourse.	FSL report negative	There are no signs suggestive of vaginal intercourse but evidence of genital assault.
3	Absent	Present	There are signs suggestive of recent use of force on body, however vaginal penetration cannot be ruled out.	Positive for semen and detection of accused DNA	There are signs suggestive of forceful vaginal intercourse.	FSL report negative	There are no signs suggestive of vaginal intercourse but evidence of physical assault.
4	Absent	Absent	There are no signs of use of force, however sexual violence cannot be ruled out.	Positive for semen and detection of accused DNA	There are signs suggestive of vaginal intercourse.	FSL report negative	There are no signs suggestive of vaginal intercourse, however sexual violence cannot be ruled out.
5	Absent	Absent	There are no signs of use of force, however sexual violence cannot be ruled out.	Positive for semen and detection of accused DNA with alcohol/drug	There are signs suggestive of vaginal intercourse under the influence of alcohol/drug	FSL report positive for alcohol/drug.	There are no signs suggestive of vaginal intercourse, however sexual violence cannot be ruled out under influence of alcohol/drug.
6	Absent	Absent	There are no signs of use of force, however sexual violence cannot be ruled out.	Positive for presence of lubricant.	There is possibility of vaginal penetration by lubricant object.		

Examination of accused of sexual assault:**S. 53A Cr.PC.**

When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such

offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed by any other registered medical practitioner, acting at the

request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

The registered medical practitioner should conduct examination of accused without delay and prepare a report of his examination incorporates the following particulars:

Name, father name age and address of the accused.

Name of person/police person with police station by whom he was brought.

Two identification marks or mentions particulars of identity card.

The presence of mud, blood and any other stain on clothes or body should be preserved for FSL examination for blood grouping and DNA profiling. In the case of struggle debris under the nails should be removed carefully by toothpick for examination of epidermal cell, blood and fibers.

Any foreign hair sample present on body surface should be collected and packed for FSL examination. Combing the pubic hair with gloved fingers may also assisted in obtaining sample of loose hair. Any matted pubic hair should be collected using sterile scissor and packed separately for detection of blood.

The presence of mark of struggle, such as scratch abrasion, bruise, teeth bite and any other injuries over body and genital should be mentioned.

One cotton swab moist in normal saline and penile wash should be collected from glans penis/ penis for detection of vaginal epithelium/ victim cell for DNA.

Blood sample should be collected on blood sample card (FTA card) for control and DNA profiling of accused.

Potency examination: In routine practice the police brought the accused to the medical practitioner for potency test. The need of potency test arises when accused claims impotence as a defense. Masturbation test must not be done because this repulsive practice is a violation of human dignity. Test for potency involve a physical

examination, through clinical examination and relevant investigation. Clinical examination for potency of a male should involve psychiatric assessment also (3).

The exact time of commencement and completion of the examination shall also be noted in the report. The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 CrPC. as part of the documents.

Following opinion to be formulated on the basis of available facts obtained from examination of victim of sexual assault.

1. When the subject is potent and penile wash/ swab do not show any vaginal epithelium: No definite opinion can be given as to whether the alleged accused had perform any sexual intercourse in ordinary way and there is nothing to suspect about his potency.
2. When the subject is potent and penile wash/ swab shows any vaginal epithelium: The possibility of performing of sexual intercourse by the male sex organ of alleged accused cannot be excluded and there is nothing to suspect about his potency.
3. When the subject is impotent: The alleged accused is impotent as found out on clinical examination and investigation.

Conclusion

The medical examination report is corroborative evidence so all related facts should be mentioned clearly with proper sample preservation. The opinion should be mentioned on the basis of medical examination facts, report of FSL examination and as per guideline of ministry of health and family welfare of India. The issue of whether an incidence of rape/sexual assault occurred is a legal issue and not a medical diagnosis. Consequently doctor should not on the basis of the facts of medical examination conclude whether rape/ sexual assault have occurred or not.

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