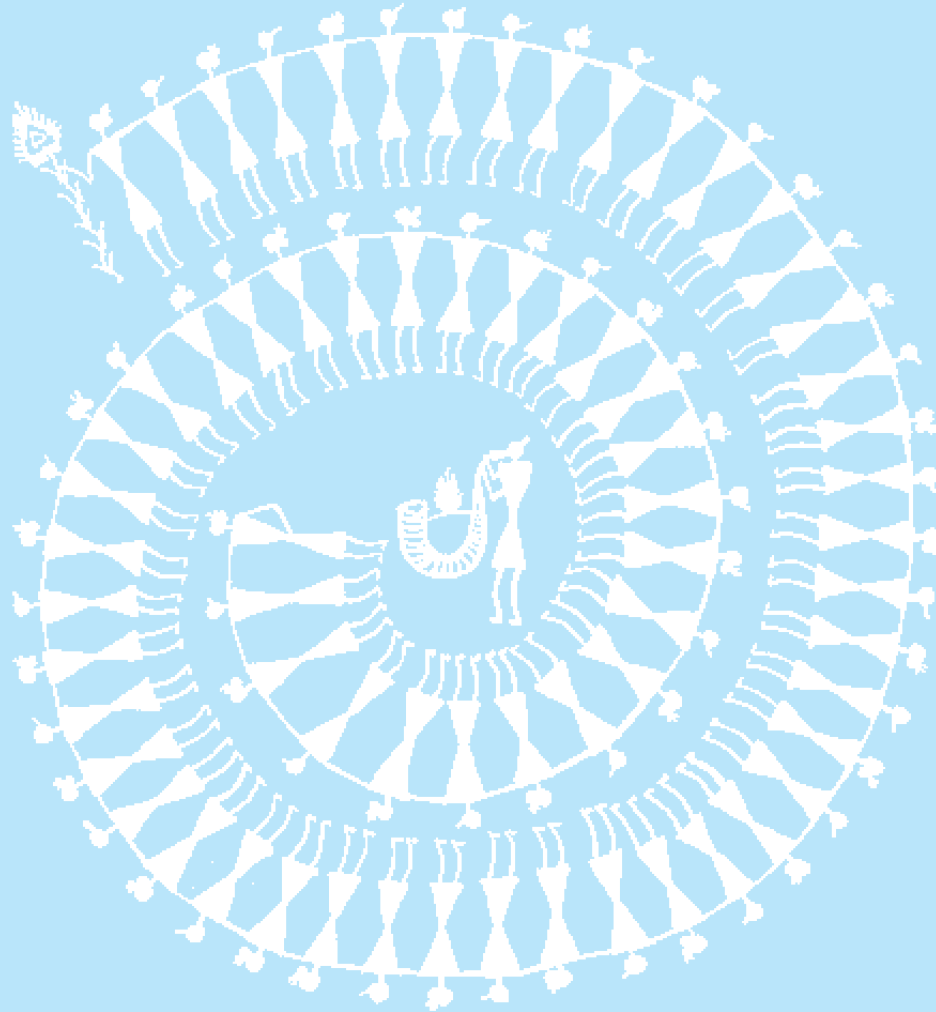


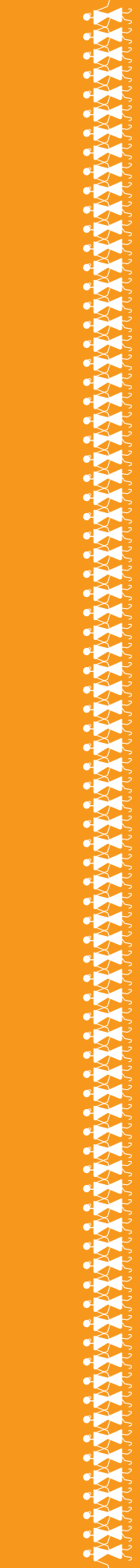
Case Law regarding medical evidence in relation to sexual violence



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This compilation is a training tool to inform health care providers regarding the relevance of medical evidence in relation to sexual violence. It is an outcome of the series of capacity building programs organized for medical professionals on provision of medico-legal care of survivors of sexual violence. Through precedent setting cases, the booklet aims to inform health care providers understand the relevance of medical examination and collection of evidence

About the Author

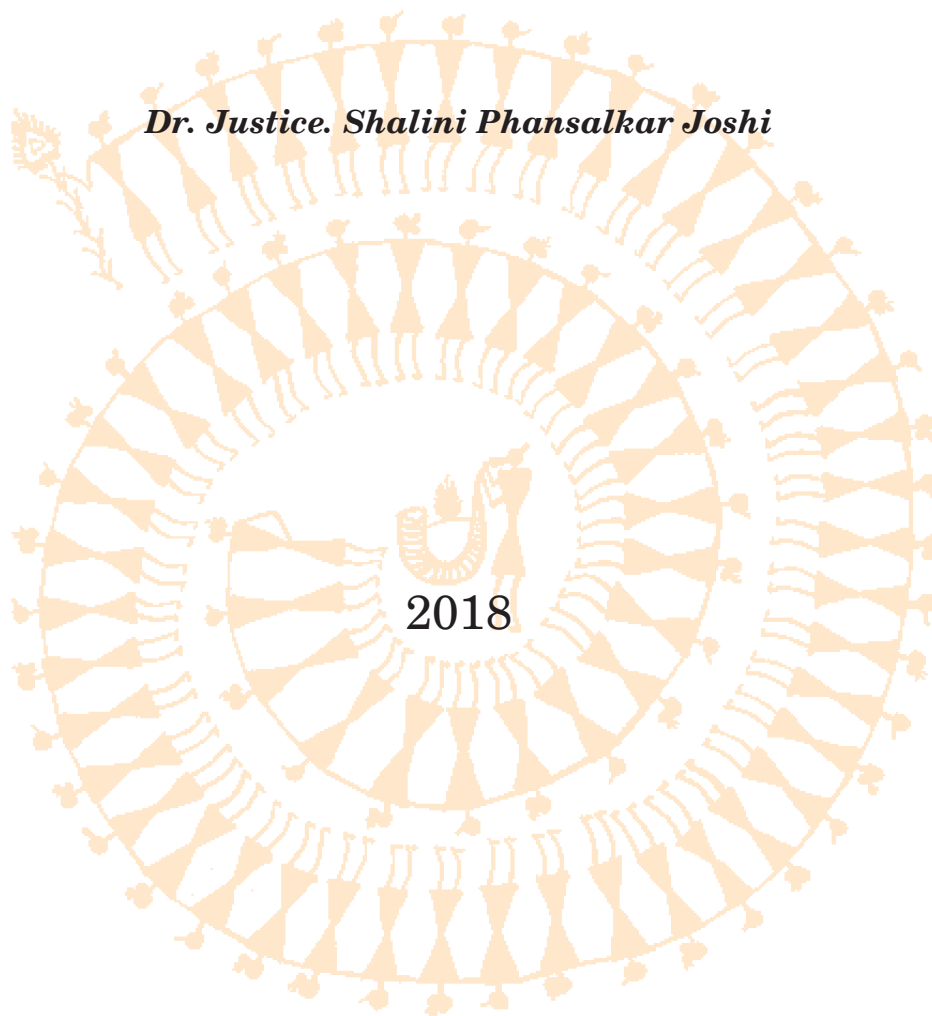
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Dr. Justice. Shalini Phansalkar Joshi



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I would like to thank the survivors of sexual violence whose cases I have quoted in the book, these cases helped me to look at the intricacies of dealing with the issue of sexual violence.

I sincerely hope that this book will be a valuable source of reference to medical practitioners who deal with women survivors of violence and pave the way to ensure they get justice.

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Chapter 1

Violence: A critical health issue

Women continue to face violence because of the deep-rooted social and cultural norms and values that endorse male supremacy and authority in society. Violence against women is a manifestation of historically unequal power relations between men and women which have led to domination over and discrimination against women by men. Violence denies women the right to survival, well-being and development, yet the fact is that most violence occurs within the four walls of the home and within the most intimate and trusted relationships, because of which women often hide it and continue to suffer in silence. Because of this, violence is generally viewed as a private, personal or family matter. However, in recent years there is a greater recognition of the issue and violence is being increasingly viewed as a social and public health problem and a violation of human rights.

Violence against women is a critical health issue. It is a major cause of disability including death amongst women, adversely impacting physical, mental, sexual and reproductive health of women. (Figure 1).

Figure1: Health Consequences of violence

Non Fatal Consequences			Fatal Health Consequences
Physical	Psychological and Emotional	Sexual and Reproductive	
<ul style="list-style-type: none"> • Bruises • Fractures • Cuts • Burns • Stab wounds • Gastrointestinal disorders • Chronic pain 	<ul style="list-style-type: none"> • Poor self esteem • Depression • Anxiety • Post Traumatic disorder • Phobia • Suicidal behavior • Alcohol and drug abuse 	<ul style="list-style-type: none"> • Gynecological disorder • Infertility • Pregnancy related complications • Miscarriage • Unwanted pregnancy • Increased risk of RTI/STD including HIV AIDS 	<ul style="list-style-type: none"> • Maternal mortality • Homicide • Suicide • AIDS related mortality



Violence, especially marital violence is known to increase the risk of pregnancy-related complications and compromise care seeking behaviour of women. It increases the risk of unwanted pregnancy and induced abortion. It is also known to significantly increase the chances of foetal, infant and early childhood mortality. It is positively associated with Reproductive Tract Infections (RTI) and Sexually Transmitted Infections (STI) and other gynaecological morbidity and positively correlated with poor mental health.

A study by WHO in 2013* revealed that women exposed to intimate partner violence are:

- Twice as likely to experience depression
- 16% more likely to have a low birth weight baby
- 1.5 times more likely to acquire HIV or contract a STI
- 42% of women who have experienced physical and or sexual violence have experienced injuries as a result of that violence.

Studies have shown that while all women are vulnerable to violence, risk of violence is known to increase in certain cases, like, during pregnancy; in long term illnesses such as tuberculosis; in women who have been infected with HIV infections; women with infertility or women who have borne only daughters; women having mental illness and amongst women who have undergone tubectomies/ hysterectomies, when it is perceived that reproductive values have diminished

This further emphasizes the critical role of the health sector and health care providers in dealing with women survivors of violence.

In addition, health institutions are an important and a non-stigmatizing entry point for women facing violence and health care providers are likely to be the first professional contact for such women. Health care providers are hence, strategically placed to identify and help women facing violence. Further, the health sector has a leading role to play in giving care to survivors/ victims of violence. This includes: treatment, clinical interventions, mental health services and emotional support. Health providers can also play a critical role in referring women who have faced violence to other services (legal; social services; those related to physical protection, such as short stay homes, etc.)

The Preamble of the Constitution of India also emphasizes the concepts of equality of status and of opportunity along with social, economic and political justice to all its citizens. It guarantees women fundamental rights that protect them from discrimination and provide protection. Some of the fundamental rights having a bearing on health care. Article 21 of the Constitution states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Right to live means something more than mere animal existence and includes the right to live consistently with human dignity and decency.

* Global and regional estimates of violence against women: prevalence and health effects of Intimate Partner violence and non partner sexual abuse, WHO 2013.



The Hon. Supreme Court has on various occasions held that right to health and medical care which is a fundamental right covered by Article 21 is essential for making the life of any human being meaningful, purposeful and compatible with personal dignity. It therefore casts an obligation on the state to secure health to its citizens as its primary duty. Failure on the part of the government hospitals to provide timely medical treatment to a person in need of such treatment, results in violation of their right to life as guaranteed under Article 21.

The role of health systems and health care providers in addressing violence was discussed at the 67th World Health Assembly. The resolution called upon member States ‘to strengthen the role of health system in addressing violence, in particular against women and girls, and against children, to ensure that all people at risk and or affected by violence have timely, effective and affordable access to health services including health promotion, curative, rehabilitation and support services that are free of abuse, disrespect and discrimination.’ The resolution also called upon States “to promote, establish, support and strengthen standard operating procedures targeted to identify violence against women and girls and against children taking into account the important role of the health system in providing care and making referral to support services.

Sexual violence is also a grave Public Health concern which has both short and long term impact on the physical and mental health of individuals. Sexual violence cuts across caste, class, religion, age and although women and girls are disproportionately affected by sexual violence, it can also occur amongst men and boys. Sexual violence also occurs because of unequal power relations. The lack of power and low status makes women more vulnerable to sexual violence. Sexual violence goes largely unreported because of the fear of survivors being ridiculed and further stigmatized. There is also a general assumption that women who have faced sexual violence are of loose character and hence responsible for the violence. There are hence few systems that offer support to such women. In order to enable women voice their silence and to bridge the gap between what is considered a private problem to what is a social problem that impacts individuals, families and communities, it is important to enable institutional and community mechanism to respond to women survivors of sexual violence. The Health Department is one such institutional mechanism.

The Health department has a very significant role to play in responding to women survivors of sexual violence. They are required to provide immediate treatment including psycho-social support, examine a survivor and collect medico-legal evidence, preserve chain of evidence and provide reasoned opinion to the Court.

This booklet is a tool, to enable health care providers understand the relevance of medical evidence in cases of sexual violence through precedent setting case law.





Chapter 2

Definition of rape and sexual assault

The general law of India, the Indian Penal Code 1860 contains the basic provisions relating to Sexual Offences against women and Children. As per this, rape was defined as peno- vaginal penetration by a man on a woman. These provisions have been modified and amended from time to time.

Major Amendments in the law relating to Sexual Offences took place in the year 1983, after the verdict in the land mark case of ***Tukaram Vs. State of Maharashtra AIR 1979 SC 185*** commonly called the “Mathura trial”. Following this case, IPC was amended to include even slightest touch of the penis to the vagina as being sufficient to prove rape and further it was also stated that ejaculation and erection of the penis are not important factors to constitute rape. The object of these amendments was also to make rape provisions more stringent by prescribing higher punishment for custodial rape, for gang rape and also for rape of children below the age of 12 years. The Amendment Act of 1983 also made corresponding changes in the Indian Evidence Act raising a presumption of absence of victim’s consent in custodial rape case and casting burden on accused to prove that she was the consenting party. The Code of Criminal Procedure was also amended to make the trial of these offences In-Camera and prohibiting disclosure of identity of the victim by Media.

In the late nineties based on a Writ Petition filed by an organization named Sakshi, The Hon Supreme Court in the ***Sakshi v. Union of India [2004 SUPP(2) SCR 723]*** case exclusively looked at child sexual offences and in the absence of any domestic legislation issued guidelines on how to record evidence of child victims of sexual offences in a sensitive manner.

The Protection of Children from Sexual Offences (POSCO) Act was enacted in 2012 and it takes into account all forms of sexual abuse to which a child can be subjected to, from touching, fondling, showing pornography to rape and prescribed stricter punishment up to life imprisonment. The Act also provides for establishment of Special Courts and for providing child friendly atmosphere in the Court.

Legal Provisions with regard to sexual offences against children under POCSO Act are enclosed as Annexure 1

After the incident of gang rape in Delhi in 2012, amendments were again introduced in all three Statutes by way of the Criminal Law Amendment Act 2013 which recognized various forms of sexual abuse, including intercourse by other objects, body parts, etc as constituting of rape. It also introduced sexual harassment, stalking, voyeurism and disrobing as sexual offences. This Act has also for the first time defined the offence of ‘Trafficking’. It also enhanced punishment.



Legal Provisions with regard to sexual offences against women and children under Indian Penal Code, Criminal Procedure Code and Indian Evidence Act are enclosed as Annexure 2.

What constitutes rape?

As per section 375 of IPC:A man is said to have committed rape, if he :

- penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do with him or any other person in the following circumstances:
 - against her will.
 - without her consent.
 - with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
 - with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 - with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
 - with or without her consent, when she is under eighteen years of age.

What constitutes sexual assault?

POCSO divided sexual abuse of children into two categories, namely penetrative and non-penetrative. Penetrative sexual assault is defined in the same manner as rape in IPC and non- penetrative is any act with sexual intent like touching the vagina, penis, anus or breast of the child or making the child to do so or doing any other act with sexual intent which involves physical contact without penetration.





Chapter 3

Legal mandate of health care providers in responding to survivors of violence

Health care providers have a legal mandate to respond to women and children survivors of violence, including sexual violence.

Until the enactment of POCSO Act, 2012 and The Criminal Law Amendment, 2013, it was observed that health care providers laid emphasis only on collection of medico-legal evidence and largely ignored treatment both physical treatment and psycho-social support of the survivor/victim.

Section 27 of POCSO Act states that medical examination of a child is to be conducted even before FIR or complaint is registered. In case of girl child such examination is to be conducted by female doctor. The parents or the person in whom the child reposes trust or confidence is entitled to remain present at the time of medical examination. If they are unable to remain present then such examination is to be conducted in the presence of a woman nominated by the head of the medical institution.

Section 357C CrPC states that all hospitals, whether public or private shall immediately provide first aid or medical treatment to survivors/victims of sexual violence free of cost and shall immediately inform the police of such incident.

Section 166B, IPC states that whoever, being in charge of a hospital, public or private, whether run by the central government, the state government, local bodies or any other person, contravenes the provisions of Section 357C of the CrPC, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Some case law pertaining to important role of health department and need for immediate medical examinations is presented below:

State of Karnataka vs. Manjanna (2000) 6 Supreme Court Cases 188

In this case, the Hon Supreme Court observed the following:

“Before parting with the case, we wish to put on record our disapproval of the refusal of some Government hospital doctors, particularly in rural areas, where hospitals are few and far between, to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. Such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim, by which time the evidence of the rape may have been washed away by the complainant herself or be otherwise lost. It is expected that the State/appellant will ensure that such situation does not recur in future.”



The Court ruled that police requisition is not required for conducting forensic examination and providing treatment to survivors of sexual violence and health facilities should not turn away survivor for not having filed an FIR.

Dilip vs. State of Madhya Pradesh (2013) 14 SCC 331

In this case the Hon Supreme Court observed that: “It is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with such cases and what kind of treatment is to be given to the prosecutrix, as a victim of sexual assault requires a totally different kind of treatment not only from the society but also from the State authorities. Certain care has to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor. Simultaneously, she should be provided the help of some psychiatrist. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angles. The investigating officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer.”

The Court ruled that the State should issue guidelines for examination of cases of sexual violence including guidelines for medical examination, which should include physical and psychological treatment. It also emphasized the need for preparing the examination report without delay.

Thus, health care providers have an important role to play in responding to survivors of violence, especially sexual violence. They are required to provide medical treatment and psychological support. This covers all medical care including immediate treatment of injuries, testing and treating for STIs, preventing HIV, preventing pregnancy, providing wound care, preventing tetanus and hepatitis and providing requisite emotional and psychological support. Another critical role of the health staff is to collect and maintain chain of evidence, as this can help the survivor get justice. Evidence should be collected without any delay in a scientific manner. Further, all evidence collected must be carefully stored and protected till it is handed over to the police for analysis by the hospital lab and forensic science lab.





Chapter 4

Relevance of medical evidence in cases of sexual violence

Although it is well established that health providers have a critical role to play in responding to survivors of sexual violence and this has also been mandated by the law, the reality is different.

Several hospitals do not have standard guidelines and protocol for medico-legal care of survivors/victims of sexual violence which include provision of treatment and medico legal examination. Although not required as per the new Criminal Amendment Act, mandatory police requisition is sought for examination, treatment and collection of evidence. Many insensitive and unscientific practices like conducting two finger test, comments on tear or rupture of hymen and comments on past sexual conduct of the victim are made. In many cases history of assault is either not recorded or recorded incompletely. Similarly, in many cases reasoned medical opinion is not provided.

Evidence from hospital based research undertaken by CEHAT in three hospitals where they operationalized One Stop Crisis Centers revealed that doctors paid undue importance to presence of physical and genital injuries and absence of these was interpreted as rape not having occurred.

In the above context, it is important to ascertain what is the relevance of medical evidence in cases of sexual offences; whether medical evidence is of such importance that it may prove to be a determinative factor or whether it can form the sole basis for conviction and whether its absence will result in acquittal of accused. The law in this respect is fairly well settled and crystallized. As held by the Apex Court in umpteen numbers of authorities, in rape cases crucial piece of evidence is the testimony of the victim / survivor as conviction of the accused can be based on her sole testimony.

In this document an attempt has been made to establish through precedent setting case laws the relevance of medical evidence, the need to corroborate medical evidence with history or testimony of the victim. The document also presents cases where the Apex Court has ruled that past sexual history of the victim is irrelevant and inadmissible in the Court. Judgments where the Hon. Supreme Court has held that the absence of physical injuries on the body of the victim does not negate the commission of rape are also presented.



Importance of history taking in cases of sexual violence

It is very important to record history of the victim of sexual abuse. This would include demographic history like name, age, sex, identification mark of the victim. It would also include relevant medical history. Specifically history and description of the current case of sexual abuse is relevant. This should include:

- History of the incident, documented specifically in the survivor's own words
- Details of the place of the assault, time, nature of force used, areas of contact.
- Nature of assault.
- Information on whether victim was intoxicated or given rape drugs.
- Information on injuries, if any
- Information on weapons, objects or physical force used by assailant
- Information on activities like bathing, urinating, washing genitals (in all cases) rinsing mouth, drinking, eating (in oral sexual assault) etc.
- Information on whether ejaculation occurred, whether a condom was used, etc.

It is important that this history is corroborated with medical evidence.

In several cases of rape, the Apex Court has held that, medical evidence, if available, is of great importance and can prove to be of a clinching nature, however, it has to be remember that its absence does not become fatal to the prosecution case. It is so, because, at times, due to lapse of time or on account of various other factors like bathing, washing genitals, urinating, etc, crucial evidence is lost. Sometimes even if such medical evidence is available at the time of examination, because of faulty methods of collection, preservation and analysis of such medical evidence, at the time of trial of the cases, its results are inconclusive. It also happens that, in case of a married woman or a child bearing lady, medical evidence in the form of rupture or tear of hymen or injuries to the genital is not available and in such situation, disbelieving the rape-survivor for want of such corroborating evidence is likely to cause injustice to her. In some cases, it may also happen that the doctor, who has examined her, is not available for giving evidence in the Court at the time of trial; hence, the medical certificate is not proved.

In all such cases, taking a realistic view of the matter, the Apex Court has held that, rape survivors should not suffer and justice should not be denied to them for want of medical evidence. The Apex Court has, therefore held that, the crucial piece of evidence is her testimony. However, that does not mean that the importance of medical evidence is minimized in any way. Conversely, if medical evidence is available, collected and analyzed properly, then, it clinches the issue, as it gives strong support to the testimony of the prosecutrix. In the absence of any other direct evidence or eye-witnesses on record, as offence of rape take place in secrecy, the only piece of corroborating evidence in case of doubt, is medical evidence. It is, therefore, very essential for Medical Officers to conduct the medical examination of the victim properly and to collect and preserve such evidence carefully.



In case of child-victims of sexual abuse, medical evidence acts like direct evidence, as it gives the proof of the incident in the nature of tear or rupture of hymen or injuries to genitals and other parts of the body. Medically it is recognized that sexual assault / rape on the child-victim is bound to result into injuries to genitals. In such cases, therefore, at times, even if the evidence of child-victim is not available or not of perfect nature on account of his/her tender-age, medical evidence alone can also clinch the guilt of the accused.

The point, therefore, stressed is that, in cases of sexual offences, medical evidence, if available, is of vital importance, though, in the situations discussed above, the Apex Court has held that, if such evidence is not available or cannot be made available for factors beyond control, the Court should not discard the case and can rely upon the testimony of the victim/survivor alone. According to the Apex Court, moreover, 'rape' is a legal term and, therefore, whether rape has occurred or not will be decided legally by the Court, but, for deciding it, the medical evidence proving sexual assault is of relevance and importance. The following decisions of the Apex Court are required to be appreciated from this perspective and not to hold that medical evidence is of no consequence.

State of Punjab vs. Gurmeet Singh (1996) 2 SCC 384

In this landmark decision the apex court has categorically observed the following:

“The Court must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.

Seeking corroboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding.



Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insists upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crimes strikes the judicial mind as probable”

By their very nature, sexual offences take place in privacy and are hence surrounded by secrecy. Therefore except for the evidence of prosecutrix, there can normally be no other corroborating evidence of eye witness. Hence medical evidence can be of importance in such offences. However, its absence does not become fatal to the prosecution case. The probative value of medical evidence is merely that of corroborating nature, if at all any such corroboration is necessary.

State of Tamil Nadu vs. Raju @ Nehru (2006) 10 SCC 534

In this case, the Court ruled that “Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether rape has occurred or not is a legal conclusion, not a medical one.” That is the reason why, even the opinion of the doctor that there was no evidence of sexual intercourse or rape is at times held to be not sufficient to disbelieve the accusation of the rape by victim.

State of Madhya Pradesh vs. Dayal Sahu AIR 2005 SC 3570.

This is another landmark case in relation to the sole testimony of the survivor. The accused in this case was a relative of the husband of the prosecutrix, who came to her house as a guest. In the night he entered into the room of prosecutrix in the guise of her husband and committed rape upon her by removing her clothes. On query by her as to who he was, he pressed her mouth. It was only then that she came to know that the man who had sexual intercourse with her was not her husband. She immediately awakened her husband and other family members. They found the accused in her room. Accused confessed to the guilt and was then taken to the police station. Prosecutrix was medically examined by lady doctor. However at the time of trial, prosecution did not take care to examine the lady doctor.

Trial court relied upon the consistent and reliable evidence of prosecutrix, her husband and other family members and convicted the accused for the offence of rape punishable u/s 376 of IPC. In appeal, High Court however set aside the finding of guilt recorded by the trial court, mainly on the ground that non examination of doctor and not providing of an opportunity to accused to cross examine the doctor was a fatal and great lacuna in prosecution case. It was further held that the medical report which was on record also mentioned that no definite opinion can be given regarding commission of rape.



The Supreme Court, in appeal preferred by the State, held that “the view taken by High Court was perverse, erred in law as well as in fact and contrary to the established law laid down by it in catena of decisions”.

Apex Court then referred with approval to its earlier decisions in the cases of *State of Punjab vs. Gurmeet Singh and Shaikh Zakir vs. State of Bihar (1983)*⁴ SCC 10d held that when testimony of prosecutrix was that she had been ravished by the accused has remained unimpeached, the High Court has totally erred in law in recording the acquittal of accused by giving him benefit of doubt for non-examination of doctor and thereby committed grave miscarriage of justice. In the words of the Apex Court “Non examination of doctor and non-production of doctor’s report would not be fatal to the prosecution case, if the statement of the prosecutrix and other prosecution witnesses inspire confidence.”

Comments on past sexual history not relevant to present case of sexual violence

The law relating to rape has undergone drastic changes, It has shifted the burden of proof from victim to the accused (Sec 114A of Indian Evidence Act) It has also made it impermissible to comment on past sexual relations of the woman (Sec 146 of Indian Evidence Act) and prohibits questions pertaining to the character of the rape survivor (Sec 154(a) of Indian Evidence Act).

The procedure for medical examination of rape survivor however has not kept pace with these legal reforms. Commenting on elasticity and/or conducting the two finger test would mean commenting on past sexual conduct, which has serious implications on character of the victim as it exposes the victim to allegations of loose moral character and a woman of easy virtue.

A study conducted in 2010^{*} revealed that despite the changes in the law rendering past sexual conduct irrelevant in cases of sexual assault, the results of the two finger test were recorded routinely in medico legal documents and used against the survivor in the court of law. According to the new definition of “Rape”, as per Section 376 of IPC, offence of rape can take place by penetration or insertion of any object, may be even to a slight extent into the vagina, mouth, urethra or anus of a woman and it need not necessarily be penetration to the extent of rupture of hymen. Even if a person applies his mouth to any of these body parts of a woman, offence of rape is said to have taken place. Hence, evidence relating to rupture of hymen or its tear is not crucial so as, to constitute an offence of rape.

In view of this, examination of the status of the hymen by its type, edges and position of tears is unscientific, as it does not add any value. Hence, the present method of medical examination of prosecutrix about rupture of hymen and inserting two fingers in the vagina to ascertain whether she was subjected to rape, which is inhuman, degrading and a crude method of medical examination, is not warranted at all. Justice Verma Commission report has recommended that hymenal findings be recorded only when relevant such as in case of a fresh tear.

* Dignity on trial: India’s need for sound standard for conducting and interpreting forensic examination of rape survivors, Human Rights Watch, 2010.



The Court has on many occasions made an attempt to address myths related to rape, like status of hymen as being critical to determine sexual assault, elasticity of vagina/anus as being an important determinant in sexual assault. Some of these cases are presented below:

Madan Gopal Kakkad vs. Naval Dubey and Anr, (1992) 3 SCC 204

This case clearly brings out the fact that Court does not consider tear to hymen as an important medical evidence. A synopsis of the case is given below:

The factual matrix of this case, in the words of Supreme Court itself, gives an account of a sordid and obnoxious incident, wherein the accused, a medical practitioner was gratifying sexual pleasure by sexually assaulting and molesting young girls.

The Prosecutrix in this case was a young girl studying in 3rd standard with her classmate Richa. Accused was the uncle of Richa. On the date of the incident when prosecutrix had gone to the house of Richa, accused sexually molested her. When she disclosed it to her family members, accused confessed in English, by stating that, “I have raped her but not ruptured her hymen”. The medical officer who examined the prosecutrix opined that there was an attempt of rape. Trial court disbelieved the evidence of prosecutrix and other witnesses and acquitted the accused. High Court reversed the finding of trial court in appeal and held the accused guilty for the offence of violating the modesty of prosecutrix punishable u/s 354 of IPC.

In second appeal, Supreme Court however, after going through the evidence unhesitatingly held that the offence committed by the accused was nothing short of rape punishable u/s 376 of IPC. While arriving at this finding, Apex Court extensively referred to medical evidence which was held to be of an advisory character. It was further held that it is the opinion of an expert and it cannot become opinion of the court. Hence the medical officer’s conclusion in the case that it was an attempt of rape, given probably on the ground that there was no sign of complete penetration, was held to be not acceptable as to the nature of the offence.

As per the law even slight penetration is sufficient to prove rape. In this case evidence of prosecutrix proved that accused had inserted his penis in her vagina and as medical officer found an abrasion on the medial side of labia majora and redness present around labia minora, coupled with evidence of extra judicial confession of the accused that he has raped her but not ruptured her hymen, conviction of the accused was converted into offence u/s 376 IPC, even in the absence of the rupture of hymen.

Ranjit Hazarika vs. State of Assam (1998) 8 SCC 635,

In this case, the prosecutrix was a young girl 14 years of age who was subject to rape by the accused while she was on her way home along with him. In her evidence before the court she clearly narrated the manner in which the accused forcibly performed sexual inter course with her without her consent on the road side. Her statement has remained virtually unchallenged in the cross examination and was amply supported by her mother and two witnesses to whom she made immediate disclosure.



The argument of the Learned Counsel for the accused was that medical evidence belies the testimony of prosecutrix as no injury was found on her private parts and her hymen was found to be intact. The Apex court however held that neither the non-rupture of hymen nor absence of injury to the private parts belies the testimony of prosecutrix. It was held that the opinion of the doctor that no rape appeared to have been committed which was based only on the absence of rupture of the hymen and absence of injuries on the private parts of the prosecutrix cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix.

In a number of cases like:

State of Maharashtra vs. Madhukar Naryan Mardikar AIR 1991, SC 207
State of Punjab vs. Gurmeet Singh, AIR 1996 SC 1393 and
Tameezuddin @Tammu vs. State NCT of Delhi (2009) 15 SCC 566

The Apex Court has held that, “even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of easy virtues or a woman of loose moral character can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that purpose. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated”

State of Uttar Pradesh vs. Munshi, AIR 2009, SC 370,

In this case, it was held by the Apex Court that “even if the victim of rape was previously accustomed to sexual intercourse, it cannot be the determinative question. On the contrary, the question still remains as to whether the accused committed rape on the victim on the occasion complained of. Even if the victim had lost her virginity earlier, it cannot certainly give a license to any person to rape her. So whether the victim is of promiscuous character is totally an irrelevant issue altogether in a case of rape”.

It is ultimately her evidence which is the acid test and it is held to be standing on a high pedestal than an injured witness for the reason that the injured witness gets injury in the physical form while the prosecutrix suffers psychologically and emotionally. The incident of rape in itself causes great distress and humiliation to the victim. Therefore she will never indulge into making a false allegation of rape as it will cause equal distress, humiliation and damage to her.

Lillu @ Rajesh and Anr vs. State of Haryana MANU/SC/0369/2013.

The prosecutrix in this case was a minor girl of age of 13 years and nine months and a student of 6th standard. Her testimony in the court was found to be consistent and reliable. The medical evidence of the doctor, who conducted two finger per vagina test, showed that hymen was completely torn. In evidence before the court, the doctor stated that the possibility of prosecutrix being habitual to sexual intercourse cannot be ruled out. As prosecutrix was



held to be a minor, the question as to whether she was habituated to sexual activities or not, was held to be immaterial to determine the issue of consent. Even then, as much argument was advanced by learned counsel for appellant on the findings of two finger test and the admission of the doctor that prosecutrix was habitual to sexual intercourse, Apex court felt it necessary to discuss the medical evidence relating to two finger test by holding that it requires a serious consideration by the court as there is a demand for sound standard of conducting and interpreting forensic examination of rape survivors.

After relying on its own earlier pronouncements, Apex Court held that sole testimony of prosecutrix itself is enough to record a conviction, when her evidence is read in its totality and found to be worth of reliance. It was further held that even if the victim of rape was previously accustomed to sexual intercourse, it cannot be the determinative question. According to apex court, even if the victim had lost her virginity earlier, it can certainly not give a licence to any other person to rape her. Moreover, it is the accused who is on trial and not the victim. It was further held that even in cases where there is some evidence to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of easy virtues or a woman of loose moral character can be drawn.

In the end, after referring to International Covenant on Economic, Social and Cultural Rights 1966 and United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, which requires that medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment to the victim and which have the effect of causing unlawful interference with victim's privacy, in the most authoritative and categorical words the apex court held that "Undoubtedly the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus in this case, even if the report is affirmative it cannot ipso facto give rise to presumption of consent."

This case thus in most unequivocal words condemns the practice of two finger test on the ground that it is not only inhuman and degrading but also violates the victim's right to privacy, integrity and dignity.

In light of the discussion above, it is also pertinent to note that the Criminal Amendment Act 2013 has given a new and wider definition of sexual assault which includes not only penetrative sex but other forms of sexual interference such as fondling, masturbation etc. which leave behind no physical trace to be noticed in medical examination of the victim, negating the value of the two finger test or rupture to hymen.

Correlation of injuries with commission of sexual violence

Another common myth is that rape always leaves injuries. Rape does not always leave signs of injury. Lack of injuries should be understood in relation to circumstances of the assault. The victim may have been threatened, restrained or numbed. It may have been because of the inability of victim to offer resistance to the assailant because of intoxication or it may be due to delay in reporting for examination and lapse of time due to which injuries if sustained may have healed. The court has held the view that absence of injuries should not be taken to mean that rape did not occur.



State of UP vs. Chhotey Lal (2011) 2 SCC 550.

In this case, the victim was abducted by three persons while she was on her way to relieve herself and they unlawfully kept her in a house for some days. One of the accused forcibly had sexual intercourse with her. He gagged and threatened her whenever she would ask him to release her. The victim was recovered by the police after almost 24 days. The conviction was reversed by the High Court of Allahabad on the grounds that the victim was accustomed to sexual intercourse and that there were no physical injuries on the body of the victim. The Supreme Court set aside the judgment of the High Court and held that “It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim”

State of Rajasthan vs. Noore Khan (2000 (3) Supreme 70)

In this case the Apex Court noted that “Absence of injuries on the person of the prosecutrix has weighed with the High Court for inferring consent on the part of the prosecutrix. We are not at all convinced. We have already noticed that the delay in medical examination of the prosecutrix was occasioned by the factum of the lodging of the FIR having been delayed. The prosecutrix was in her teens. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfill his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none around to help the prosecutrix in her defense. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime.

Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.”

B.C. Deva vs. State of Karnataka (2007) 12 SCC 122

In this case it was held that, “The plea that no marks or injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though, the report of the Gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”



Karnel Singh vs. State of Madha Pradesh (1995) SCC (5) 18

In this case, the Court held that absence of marks of external injuries on the person of the prosecutrix cannot be adopted as a formula for inferring consent on the part of the prosecutrix and holding that she was a willing party to the act of sexual intercourse. It will all depend on the facts and circumstances of each case. In this case, evidence showed that the victim was laid on minute sand, which was lying on the floor, it was held that there were no marks of injuries because of this and because she may have been incapable of offering resistance.

Radhu vs. State of Madhya Pradesh, 2007 CRI.L.J 4704

This case is of significance because in this case, the Apex Court has not only reiterated the well settled legal position that a finding of guilt in a case of rape can be based on uncorroborated evidence of the prosecutrix, but has gone a step ahead and held that the opinion of a doctor that, “there was no evidence of any sexual intercourse or rape”, may not be sufficient to disbelieve the accusation of rape by the victim.

The facts of the case are to the effect that prosecutrix was a minor girl of 13 to 14 years. Accused, a boy of 19 years age, dragged her inside the room, confined her during the entire night and sexually assaulted her by inserting his penis in her vagina twice. When she cried, he gagged her mouth with a piece of cloth. He freed her only in the morning on the next day. Medical evidence showed that there was no injury on her private parts and that rupture of hymen was old. The doctor who was examined as prosecution witness also stated that she could not express any opinion as to whether a rape had been committed or not.

It was argued by defense counsel before the Supreme Court in second appeal that there were discrepancies in her evidence and there was no corroboration from any source, much less, the important medical evidence. Hence, the conviction recorded by the trial court and confirmed by the High Court was liable to be set aside.

The Apex Court however negated this contention and held that the testimony of prosecutrix is of paramount importance, opinion of the doctor that there was no evidence of any sexual intercourse or rape may not be sufficient to disbelieve her. As in this case her evidence, when read as a whole, was found to be full of discrepancies and did not inspire confidence and other circumstances made it highly improbable that such an incident has ever taken place, Supreme Court set aside the conviction. Thus the point to be stressed is that victim’s testimony is of importance and not the presence or absence of medical evidence of sexual intercourse or rape.





Chapter 5

Summing up

The detailed analysis of Judicial Pronouncements presents an understanding of the relevance of medical evidence in cases of sexual violence.

The case law, clearly bring out the importance of documentation of history of assault as narrated by the survivor. They also bring out the relevance of corroborating history with medical evidence. The pronouncements state that non availability of medical evidence should not be construed as sexual violence not having taken place. Medical evidence could be lost due to post sexual assault activities undertaken by the survivor. If however medical evidence is available the doctor should immediately provide reasoned opinion as this would assist in adjudicating the matter. The case law further reveal that doctors should be sensitive and scientific while conducting medical examination and collection of medical evidence. They should not re-victimize the survivor by conducting the two-finger test or commenting on elasticity of orifices. The pronouncements further categorically state that doctors should not comment on past sexual history of the survivor and that comments on the status of hymen are irrelevant, unless they are to do with the present case. The judgments also bring out that in rape cases crucial piece of evidence is the testimony of the victim / survivor as conviction of the accused can be based on her sole testimony. This is sufficient to prove the crime and the absence of injuries, both physical and/or genital should not be construed as sexual violence not having taken place. Injuries could be absent because the victim was threatened with harm to her or her family; intoxicated or drugged or because of the time lapse between the incident and her reporting to a health facility.

Further, with the change in rape laws to include non- penetrative acts and insertion of objects and body parts like fingering in addition to penetrative acts, trace evidence in the form of spermatozoa, semen, blood, lubricant etc. may not be found.

Health care providers should hence be trained for medical examination of a survivor of sexual violence in a totally new and different perspective. The Ministry of Health and Family Welfare, Government of India has introduced scientific guidelines and protocols for medico-legal care of survivors of sexual violence in 2014, that would enable doctors undertake medical examination, treatment and evidence collection in a sensitive and scientific manner.

In addition to health care providers, there is a need to also build capacities of various other stake holders like Police Officers, Public Prosecutors and Judicial Officers so that they also understand the relevance of medical evidence.

“The Court must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.”





Annexure 1

Summary of sexual offences against children recognized under Protection of Children from Sexual Offences Act (POCSO Act)

Section	Offences	Punishment
3 and 4	Penetrative sexual assault – (a) to any extent by penis, into the vagina, mouth, urethra or anus of the child or making the child to do so; or (b) by inserting any object or a part of the body into the vagina, mouth, urethra or anus of the child or making the child to do so; or (c) manipulating any part of the body of the child so as to cause penetration or making the child to do so; or (d) applying mouth to penis, vagina, or anus or urethra of the child or making the child to do so,	Imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life and with fine.
5 and 6	Aggravated penetrative sexual assault takes place when it is committed by the following persons at the or following places – (a) By a Police Officer in the premises of police station or in the course of his duties or otherwise; or (b) By a Member of Armed Forces or security forces within the areas where he is deployed or in the areas under the command of the armed forces or in the course of his duties or otherwise or where said person is known or identified as a member of security or Armed Forces; or (c) By a Public Servant; or (d) By a person on the management or the staff of jail, remand home, protection home, observation home or other place of custody or care and protection established by and under any law, on the child being inmate of such premises; or	Rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and fine



	<p>(e) By a person on the management or staff of a hospital on a child in that hospital.; or</p> <p>(f) By a person on management or staff of an educational or religious institution on a child in that institution; or</p> <p>(o) By a person in the ownership or management or staff of any institution providing services to the child; or</p> <p>(p) By a person in position of trust or authority of a child on the child in the institution of home of the child or anywhere else; or</p> <p>(n) By a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child ; or</p> <p>(g) By one or more persons of a group in furtherance of their common intention; or</p> <p>(t) By a person who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force.</p>	
7 and 8	Sexual Assault - Touching with sexual intent the vagina, penis, anus or breast of the child or making the child to do some or doing any other act with sexual intent which involves physical contact without penetration.	Imprisonment of either description which shall not be less than 3 years but which may extend to 5 years and with fine
9 and 10	Aggravated sexual assault - sexual assault of a child by a person or persons under the circumstances or on the child as mentioned in S.5 of the Act	Imprisonment of either description for a term which shall not be less than 5 years but which may extend to 7 years and with fine.
11 and 12	Sexual harassment- with sexual intent; <p>(i) Uttering any word or making any sound or any gesture or exhibiting any object or part of body with the intention that such word or sound shall be heard or such gesture or object or part of the body shall be seen by the child or</p> <p>(ii) Making a child exhibit his body or any part of his body so as to be seen by such person or any other person or</p> <p>(iii) Showing any object to a child in any form or media for pornographic purposes or</p>	



	<p>(iv) Repeatedly or constantly following or watching or contacting a child either directly or through electronic, digital or by any other means or</p> <p>(v) Threatening to use in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act or</p> <p>(vi) Enticing a child for pornographic purposes or giving gratification therefor.</p>	<p>Imprisonment of either description for a term which may extend to 3 years and with fine</p>
13 and 14	<p>Use of child for pornographic purposes - Using a child in any form of media including program or advertisement telecast by television channels or internet or any other electronic form or printed form whether or not such program or advertisement is intended for personal use or for distribution, for the purposes of sexual gratification including representation of the sexual organs of a child, usage of a child engaged in real or simulated sexual acts, the indecent or obscene representation of a child.</p> <p>(i) In the event of second or subsequent conviction</p> <p>(ii) directly participating in pornographic act</p> <p>(iii) aggravated penetrative sexual assault while using the child for pornographic purposes</p> <p>(iv) sexual assault while using the child for pornographic purposes</p> <p>(v) aggravated sexual assault while using the child for pornographic purpose</p>	<p>i) Imprisonment of either description which may extend to 5 years and shall also be liable to fine.</p> <p>Imprisonment upto 7 years and with fine.</p> <p>Imprisonment for a period not less than 10 years but which may extent to imprisonment for life and with fine.</p> <p>Rigorous imprisonment for life and with fine.</p> <p>Imprisonment of not less than 6 years but which may extend to 8 years and with fine.</p> <p>Imprisonment for a term which shall not be less than 8 years but which may extend to 10 years and with fine.</p>
15	<p>Storage of pornographic material involving child for commercial purposes - storing for commercial purposes any pornographic material in any form involving a child</p>	<p>Imprisonment of either description which may extend to 3 years or with fine or with both</p>
16 and 17	<p>Abetment of an offence - instigating, engaging or intentionally aiding any person or persons to commit any of the offences defined under this Act liable for punishment</p>	<p>Punishment provided for that offence if the act abetted is committed in consequences of the abetment.</p>
18	<p>Attempt of the offence - attempt to commit any offence punishable under this Act or causes such an offence to be committed and in such attempt does any act towards the commission of the offence.</p>	<p>Imprisonment of any description provided for the said offence or for a term which may extend to one half of the imprisonment for life or as the case may be one half of the longest term of imprisonment provided for that offence or with fine or with both.</p>



All the offences under this Act are cognizable, non-bailable and triable by the Special Court of Session established under the Act.

POSCO Act also lays down special procedure for investigation and trial of cases for offences punishable under the Act.

Section 19: Makes it mandatory that for every person including the child who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, to provide information to Special Juvenile Police Unit or the local police and it is binding on the police to record it in writing and entry thereof to be made in the book. It also makes it necessary that if information is given by the child, it should be recorded in a simple language so that the child understands the contents thereof and if necessary those contents to be explained to the child with the assistance of qualified translator or an interpreter.

The Act also casts a duty on the police to make immediate arrangement for providing care and protection to the child, if child is found in need of it and such protection may include admitting the child into shelter home or to the nearest hospital, within 24 hours of the report after recording the reasons in writing.

The police are also duty bound to report the matter to the Child Welfare Committee and Special Court without unnecessary delay.

Section 20: Casts an obligation on the media, hotel, lodge, hospital club or studio where ever such an offence is committed for providing information to the police on coming across any material or object which is sexually exploitative of the child.

Section 21: makes the person, excluding the child, liable for punishment on his failure to report such incident as stated above and the police for not recording of such information. The punishment therefor shall be imprisonment of either description which may extend to 6 months or fine or both.

Section 22: provides punishment of imprisonment extending upto 6 months or with fine or with both to a person who makes a false complaint or provides false information in respect of the offence. However, this provision will not be applicable to the child giving information.

Section 23: Act protects the identity of the child including his name, address, photograph, family details, school, neighborhood or any other particulars which may lead to disclosure of the identity of the child. Any person especially the publisher or the owner of the media or studio in case of breach of this condition is liable for punishment which shall not be less than 6 months but which may extend to 1 year with or without fine.

Procedure for Investigation and Trial:

Section 24: lays down special procedure for recording the statement of the child victim by specifically providing that it shall be recorded at the residence of the child or at the place of



his choice and as far as possible by a woman police officer not below the rank of Sub Inspector. It further provides that such Police Officer, while recording the statement of the child, shall not be in uniform and in no case child should be detained in the police station in the night for any reason. It is also the duty of the Police Officer to ensure that the identity of the child is protected from the media and at no point of time child comes in the contact in any way with the accused.

Section 25: lays down that the statement of the child should be recorded by the Magistrate u/s 164 of Cr.P..C. and the copy of such statement should be provided to the child or his parents at the time of filing the charge sheet.

Section 26: This Section expects that the statement of the child should be recorded in his words in the presence of his parents or any other person in whom the child has trust or confidence. For recording such statement whenever necessary the Magistrate or Police Officer can also take assistance of a translator or an interpreter having qualifications and experience. When the child is having any mental or physical disability, the statement of the child is to be recorded with the assistance of an expert. Wherever possible the statement is also to be audio and video graphed.

Section 27: Medical examination of the child is to be conducted even before FIR or complaint is registered. In case of a girl child, such medical examination is to be conducted by female doctor. The parents or the person in whom the child reposes trust or confidence is entitled to remain present at the time of medical examination. If they are unable to remain present then such examination is to be conducted in the presence of a woman nominated by the head of the medical institution.

Section 28: Constitutes the special Court of Session for speedy trial relating to all offences punishable under the Act, including abetment and attempt.

Section 30: lays down a statutory presumption about the existence of the culpable mental state of the accused. The presumption is rebuttable but the burden lies on the accused to rebut it.

Section 32: Provides for the appointment of Special Public Prosecutor for conducting cases under this Act before the Special Court. Such Public Prosecutor must have the experience of not less than 7 years as an Advocate.

Section 33: lays down procedure and powers of the special court. According to it, special court can take cognizance of the offence without accused being committed to it for trial. It further provides that while recording evidence of the child victim the special public prosecutor and the defence counsel shall communicate to the court the questions to be put to the child and the Special Court shall in turn put those questions to the child. This section casts a duty on the special court to create child friendly atmosphere by allowing a family member, a guardian or a friend or a relative to be present in the court. It also permits frequent breaks for the child during the trial. It lays down that child should not be called repeatedly in the court to testify. Further it lays down that aggressive question or character assassination of the child should not be permitted and it will be the duty of the special court to ensure that dignity of the child



is maintained at all times during the trial. It is the duty of the special court also to ensure that identity of the child is not disclosed at any time during the course of investigation or trial.

An important provision under this section is the discretion given to the special court that in addition to the punishment the court can direct the payment of compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

Section 35: Provides that evidence of the child shall be recorded within a period of 30 days of the special court taking cognizance of the offence and reasons for delay, if any, to be recorded by the special court. The trial has to be completed as far as possible within a period of one year from the date of taking cognizance of the offence.

Section 36: During the trial the special court has to ensure that the child is not exposed in any way to the accused while at the same time ensuring that accused is in a position to hear the statement of the child and communicate with his Advocate. For this purpose the special court may record the statement of the child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

Section 37: The special court has to try these cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence. The special court may appoint the commissioner to record the statement of the child at a place other than the court.

Section 38: The Special Court can also take assistance of a translator or interpreter by recording the evidence of the child and in case of a child suffering from physical or mental disability the court can take assistance of special educator or any person familiar with the manner of communication of the child or expert in the field.

Section 39: Duty is cast on the State Government to prepare guidelines for use of non-governmental organization, professional and experts in the field who are to be associated with the pre-trial and trial stage to assist the child.

Section 40: provides for the assistance of a legal counsel to the child or his family or guardian even from the legal services authority.

Section 43: casts a duty on the Central and State Government to take all measures for giving wide publicity to the provisions of this Act through media at regular intervals to make the general public, children as well as parents and guardians aware of this Act. The Act also makes provision for periodic training on the matters relating to implementing provisions of this Act for officers of the Central and State Government and other concerned person including Police Officers.





Annexure 2

Summary of the sexual offences against women and children recognized under Indian Penal Code (IPC)

Section	Offence	Punishment
354	Assault or use of criminal force on woman with an intent to outrage her modesty	Imprisonment of not less than one year which may extend to 5 years, with fine The offence is cognizable, non-bailable and triable by court of Magistrate
354A	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favors, showing pornography	Imprisonment which may extend to 3 years or with fine or with both. The offence is cognizable, bailable and triable by court of Magistrate
	Sexual harassment of the nature of making sexually colored remark	Imprisonment which may extend to 1 year or with fine or with both. The offence is cognizable, bailable and triable by court of Magistrate.
354B	Assault or use of criminal force on woman with intent to disrobe or compelling her to be naked	Imprisonment of not less than 3 years but which may extend to 7 years and with fine The offence is cognizable, non-bailable and triable by court of Magistrate
354C	Voyeurism- Watching or capturing the image and thereafter disseminating such image of a woman engaged in private act like where her genitals, posteriors or breasts are exposed or covered only in underwear, victim is using lavatory or is doing sexual act that is not of a kind ordinarily done in public.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction. The offence is cognizable, bailable and triable by court of Magistrate. Imprisonment of not less than 3 years but which may extend to 7 years and with fine for second or subsequent conviction. The offence is cognizable, non-bailable and triable by court of Magistrate.



354D	<p>Stalking-</p> <p>Following and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitor the use by a woman of the internet, email or any other form of electronic communication.</p>	<p>Imprisonment up to 3 years and with fine for first conviction.</p> <p>The offence is cognizable, bailable and triable by court of Magistrate.</p> <p>Imprisonment up to 5 years and with fine for second or subsequent conviction.</p> <p>The offence is cognizable, non-bailable and triable by court of Magistrate.</p>
363	Kidnapping of a person from India or from lawful guardianship.	<p>Imprisonment of either description which may extend to seven years and fine.</p> <p>The offence is cognizable, bailable and triable by court of Magistrate.</p>
366	Kidnapping or abducting a woman with intention or knowledge of compelling her for marriage against her will or in order that she may be forced or seduced to illicit intercourse.	<p>Imprisonment of either description which may extend to ten years with fine.</p> <p>The offence is cognizable, non-bailable and triable by court of Session</p>
366A	Procuration of a minor girl with intention or knowledge of compelling her for marriage against her will or in order that she will be forced or seduced to illicit intercourse with another person.	<p>Imprisonment which may extend to ten years with fine.</p> <p>The offence is cognizable, non-bailable and triable by court of Session</p>
366B	Importation of a girl from any country outside India with intention or knowledge of compelling her for marriage against her will or in order that she may be forced or seduced to illicit intercourse.	<p>Imprisonment which may extend to ten years with fine</p> <p>The offence is cognizable, non-bailable and triable by court of Session</p>
370	<p>The offence of trafficking of person means-</p> <p>Recruiting, transporting, harboring, transferring or receiving a person or persons by using threats or force or any other form of coercion or by abduction or by practicing fraud, or deception, or by abuse of power, or by inducement, for the purpose of exploitation-physical, sexual, slavery, servitude or the forced removal of organs</p>	<p>Imprisonment of not less than 7 years but which may extend to 10 years and with fine.</p> <p>The offence is cognizable, non-bailable and triable by court of Session</p>



	Trafficking of more than one person.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine The offence is cognizable, non-bailable and triable by court of Session
	Trafficking of a minor.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine The offence is cognizable, non-bailable and triable by court of Session
	Trafficking of more than one minor.	Imprisonment of not less than 14 years but which may extend to imprisonment for life and with fine
	In case of conviction under this section on more than one occasion	Imprisonment for remainder of that person's natural life's and fine.
	In case of a public servant or police officer involved in trafficking	The offence is cognizable, non-bailable and triable by court of Session
370A	Sexual exploitation of a trafficked minor in any manner with knowledge or reason to believe that the said minor has been trafficked	Imprisonment of not less than 5 years but which may extend to 7 years and with fine The offence is cognizable, non-bailable and triable by court of Session
	Sexual Exploitation of a trafficked person. in any manner with knowledge or reason to believe that the said minor has been trafficked	Imprisonment of not less than 3 years but which may extend to 5 years and with fine The offence is cognizable, non-bailable and triable by court of Session
376	Rape- A man is said to commit rape, if he - (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine The offence is cognizable, non-bailable and triable by court of Session



	<p>(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do with him or any other person; or</p> <p>(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,</p> <p>Against her will or without her consent or when her consent is obtained by fraud or putting her or any person in whom she is interested in fear of death or in any manner with knowledge or reason to believe that the said minor has been trafficked with her consent when the man knows that he is not her husband and her consent is given under belief that she is lawfully married to him or if consent is obtained by reason of unsoundness of mind or intoxication or the administration of any stupefying or unwholesome substance.</p> <p>Rape by a Police Officer or a public servant or a member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped</p>	
376A	<p>Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state</p>	<p>Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death</p> <p>The offence is cognizable, non-bailable and triable by court of Session</p>
376B	<p>Sexual intercourse by husband upon his wife during separation without her consent.</p>	<p>Imprisonment of not less than 2 years but which may extend to 7 years and with fine.</p> <p>The offence is cognizable only on the complaint of the victim, bailable and triable by court of Session</p>



376C	Sexual intercourse by a person in authority or in a fiduciary relationship or a public servant or Superintendent or Manager of a jail, remand home or other place of custody or a women's or children's institution or on the management of a hospital or being on the staff of a hospital	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine The offence is cognizable, non-bailable and triable by court of Session
376D	Gang rape: rape by one or more persons constituting a group or acting in furtherance of common intention	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim The offence is cognizable, non-bailable and triable by court of Session
376E	Repeat offenders-previously convicted for the offence of rape	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death The offence is cognizable, non-bailable and triable by court of Session
377	Carnal intercourse which is against the order of nature with any man, woman or animal	Imprisonment which may extend to ten years with fine The offence is cognizable, non-bailable and triable by court of Magistrate
509	Intention to insult the modesty of a woman by uttering a word, gesture or act	Simple imprisonment for a term which may extend to three years and with fine. The offence is cognizable, bailable and triable by court of Magistrate





Summary of sexual offences against women and children recognized under Criminal Procedure Code (CrPC)

Section	Offence	Punishment
166A	Public servant (a) knowingly disobeying direction of law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter (b) knowingly disobeys any other direction of the law regulating the manner in which he has to conduct the investigation. (c) Fails to record any information given u/s 154 (1) of Cr.P.C. relating to sexual offences	Imprisonment for minimum 6 months which may extend to 2 years and fine. The offence is cognizable, bailable and triable by court of Magistrate
166B	Non-treatment of victim by a person in charge of a hospital public or private, whether run by central or state government, or by local bodies or any other person.	Imprisonment which may extend to one year or fine or both. The offence is cognizable, bailable and triable by court of Magistrate

Other relevant provisions under Criminal Procedure Code:

Section 2(wa): gives definition of 'victim' as a person who has suffered any loss or injury caused by reason of the act or omission for which accused person has been charged and this expression 'victim' also includes her guardian or legal heir.

Section 24(8): Proviso provides that the Court may permit the victim to engage an Advocate of her choice to assist the prosecution in the trial of the case.

Section 26: Proviso states that cases of sexual offences have to be tried as far as practicable by a Court presided over by a woman.

Section 53-A: makes it necessary that the person accused of sexual offences should be examined by medical practitioner if there are reasonable grounds for believing that examination of the person will afford evidence as to the commission of such offences. It also provides that such force as is reasonably necessary may be used for that purpose.

Section 54-A: provides that when a victim is mentally or physically disabled, identification of the accused has to take place under supervision of Judicial Magistrate and by using the methods such person is comfortable with. Such identification process is also required to be videographed.

Section 154 (1): lays down that when an information is given by the woman of any sexual offence, such information has to be recorded in writing by Woman Police Officer and if she is not available, by any other woman officer.



Proviso to section further lays down, if such victim of sexual offence is temporarily or permanently mentally or physically disabled, then the information of such offence shall be recorded at her residence or at a convenient place of her choice in the presence of a interpreter or a special educator. The recording of such information should be further videographed.

Proviso to Section 160(1): ensures that woman subjected to sexual offence should not be required to attend any place other than the place of her residence for making inquiry with her.

Proviso to Section 161: makes it mandatory that the statement of a witness-victim of sexual assault shall be recorded by woman police officer or any woman

Section 164(5A)(a): lays down that in cases of sexual offence, the statement of the victim shall be recorded by the Judicial Magistrate as soon as commission of the offence is brought to the notice of the police. If such victim is mentally or physically disabled either temporarily or permanently then for recording her statement, the Magistrate shall take assistance of an interpreter or a special educator and such statement shall be videographed and such statement can also be considered as her evidence in lieu of examination-in-chief and only her cross examination will be conducted in the Court.

Section 173(2)(h): At the time of filing of the charge-sheet, the Investigating Officer should ensure that the report of the medical examination of the victim of sexual offences is enclosed therewith.

Section 197(1) Explanation: No sanction is required for prosecution of a public servant accused of any offence of sexual assault.

Proviso to Section 273: provides that while recording the evidence of a victim of sexual assault below age of 18 years, the Court shall take appropriate measures to ensure that she is not confronted by the accused while at the same time safeguarding the right of cross examination of the accused.

Section 309 (1): Every inquiry or trial in cases of sexual offences shall be continued from day-to-day until all the witnesses in attendance have been examined and as far as possible, it should be completed within a period of two months from the date of filing of the charge-sheet.

Section 327(2): mandates that the inquiry and trial of sexual offences shall be conducted In Camera and as far as practicable by woman Judge and Magistrate. It further lays down when such In Camera proceedings are held, no person shall be allowed to print or publish any matter in relation to such proceedings except with the permission of the Court. Whenever the ban on printing or publication of trial proceedings in such offence is lifted, it should be done subject to maintaining confidentiality of the name and address of the victim.

Section 357(a): provides for victim compensation scheme according to which the victim of sexual assault is to be paid a compensation amount and rehabilitation if so required. This compensation payable by the State Government shall be in addition to the payment of fine to the victim as directed by the Court.

Section 357(c): makes it necessary that all hospitals, whether public or private, local bodies or any other person shall immediately provide medical or first-aid treatment, free of cost to the victim of sexual offences and shall immediately inform the police of such incident.

Section 372: gives right of appeal to the victim against any order passed by the Court acquitting the accused or convicting him for the lesser offence or imposing inadequate compensation.





Summary of sexual offences against women and children under Indian Evidence Act (IEA)

Section 53A : In prosecution of sexual offences, evidence of the character of the victim or of such person's previous sexual experience with any person is not at all relevant on the issue of consent or the quality of consent.

Section 54: The previous character of the victim of sexual offences is not relevant.

Section 114A: Where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent and the burden will be on the accused to prove consent on her part.

Section 119: If the victim or the witness of sexual assault is unable to speak, she may give evidence by writing or by signs or in any other manner in which it can be understood. The Court shall also take the assistance of an interpreter or a special educator in recording her evidence and such recording shall also be videographed.

Section 146: In cases of sexual offences, it shall not be permissible to adduce evidence or to put questions in the cross examination to the victim about general immoral character, or previous sexual intercourse with any person for proving such consent or the quality of consent.



