

Medical Examination of Survivors / Victims of Sexual Violence: A Handbook for Medical Officers



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This compilation is an outcome of a series of capacity building programs on Health sector response to violence against women and medico-legal care of survivors of sexual violence, organized for Civil Surgeons, Medical Superintendents and Gynaecologists from District and Sub- District hospitals of Maharashtra conducted by UNFPA in collaboration with Public Health Department and National Health Mission, Government of Maharashtra. The handbook provides a step by step detail on how a woman survivor/victim of sexual violence should be examined and evidence collected. The compilation will be useful to medical professionals for examining survivors/victims of sexual violence. It will also prove useful for hospital administrators. It is to be used together with the MOHFW Guidelines and Protocols for medico- legal care for survivors/victims of sexual violence, 2014.

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Medical Examination of Survivors / Victims of Sexual Violence: A Handbook for Medical Officers

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सत्यमेव जयते

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महाराष्ट्र शासन

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सार्वजनिक आरोग्य विभाग
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Dear doctors,

I am sure you will all agree that violence, especially sexual violence is a major trauma with long lasting psychological impact on the affected women and children. You will also agree that health institutions are generally the first and an important entry point for women who have faced sexual violence. Hence health care providers have a very critical role to play in addressing violence against women.

In the recent past, efforts have been made in collaboration with UNFPA to train our doctors and equip them with perspectives and skills for medico legal care of survivors of sexual violence.

As care givers, we need to be sensitive when a woman/child survivor/victim of violence reports to a health institution. While providing care we need to ensure that we:


- Focus on the survivors needs
- Respect the autonomy of the survivor and her right to make decisions for herself
- Avoid re-victimizing the survivor by maintaining complete confidentiality and examining her in privacy and not being judgmental
- As far as possible provide the survivor comprehensive care in one place (so that she does not have to move around in the hospital).

Before proceeding to examine a survivor/victim, you should inform her/him in a language that s/he understands regarding the entire procedure for examination and evidence collection. History taking is another key task that the doctor should undertake. Collection of forensic evidence and documentation is amongst the most important responsibility of yours as a doctor, as this can help the survivor get justice. Evidence should be collected in an unbiased manner without any delay. The collected evidence should be carefully stored and protected till it is sent for analysis by the forensic lab or hospital lab. If foolproof chain of evidence is not maintained, the evidence could be rendered inadmissible in the Court of law.

Finally, you should provide comprehensive medical care including psychological support. The doctor should also support the survivor by linking her to legal and social support systems.

This pocket book is a step by step guide on what you can do when a woman survivor reports to a health care facility.

I hope you will find the pocket book handy and make use of it to provide comprehensive care to women survivors/victims of violence.


(Dr. Pradeep Vyas)
Principal Secretary



सुनगी बाबया
save the girl child



जन्म व मृत्यूची नोंदणी करा.
REGISTER ALL BIRTHS AND DEATHS



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Abbreviations

CrPC	–	Criminal Procedure Code
IPC	–	Indian Penal Code
IEA	–	Indian Evidence Act
POCSO	–	Protection of Children from Sexual Offences Act
SV	–	Sexual Violence
STIs	–	Sexually Transmitted Infections
PEP	–	Post Exposure Prophylaxis
HIV	–	Human Immunodeficiency Virus
APP	–	Assistant Public Prosecutor
PP	–	Public Prosecutor
MTP	–	Medical Termination of Pregnancy







Introduction

A survivor/ victim of sexual violence may report to a doctor/hospital in any of the following three ways:

- Through a police requisition after the survivor / victim has lodged a police complaint;
- When the survivor / victim finds the hospital as a trusted place and visits the doctor/hospital either for therapeutic care and /or evidence collection; or
- When the survivor / victim directly goes to the Court and lodges a Court complaint and visits the doctor/hospital through a Court order.

Irrespective of which ever way the survivor / victim reaches a hospital, the opportunity should be used for providing comprehensive health care. This would include:

- Obtaining informed consent,
- History taking
- Medical examination
- Collection and documentation of evidence and maintaining chain of evidence
- Providing therapeutic care including immediate treatment of physical injuries, mental trauma, provision of emergency contraception, pregnancy advice, STI care, etc.
- Providing psycho-social support including counseling, rehabilitation and follow up care.

Both ethically and legally, a doctor cannot examine any survivor / victim without seeking their informed consent. Informed consent should be sought in a language that the survivor / victim understands. The entire procedure of examination, collection of evidence from body and genitals and treatment modalities available should be explained to the survivor / victim. Proper documentation of written informed consent should be taken after explaining the above procedures. Where ever barriers exist in terms of age, mental maturity, language, physical and mental disabilities, consent should be sought from legally authorized individuals such as parent/guardian or with the help of an interpreter, special educator, support person (whoever is applicable).

If the survivor has any questions or queries, the doctor should make an attempt to answer them all. The survivor should also be asked if she would like a specific person to be present with her during examination and evidence collection for support, if she so desires, the person should be allowed to be with her.

Doctor's first priority should be to provide first aid and treat bleeding injuries and address anxiety of the survivor/victim.



Detailed history should be sought sensitively, not missing any information. The survivor may omit or avoid describing details of the assault that are traumatic, the doctor should try to understand exactly what happened without re-victimizing the survivor/victim, in order to assess risk of pregnancy, STI, HIV, etc. The doctor may again need to re-assure the survivor/victim of confidentiality.

Medical examination should be conducted ensuring complete privacy, preferably in a separate room, respecting the individual's autonomy and after explaining the procedures involved. Age estimation should be carried out in all those cases wherein there is no reliable documentary proof of age. Body and genital evidence for both clinical and forensic purposes should be collected simultaneously after explaining the purpose and process to the survivor/victim. Maintaining the chain of custody of evidence collected is the responsibility of the doctor/ hospital. All collected evidence should be packed, labelled and sealed properly ensuring that there is prevention of loss, decay or deterioration of evidence by taking precautions such as adding suitable preservatives or air drying in shade, where ever appropriate. Every hospital should identify and designate key persons who will maintain the chain of custody till it is handed over to the police, hospital laboratory or the forensic laboratory.

All treating doctors should provide medical care and psychological first aid to survivors / victims of sexual violence. Medical care would include treating injuries, STI prophylaxis, provision of emergency contraception to prevent pregnancy, prevention of tetanus and Hepatitis B, provision of PEP in high risk cases and advice on follow up.

Emotional trauma from sexual violence can be tremendous. Doctors should deal with survivor's feelings of self blame and anger and provide requisite emotional and psychological support. Survivors should be referred to professional counselors for this purpose.

All health concerns and other needs of survivor/ victim of sexual violence should be addressed at one place. Referral for any service outside the hospital should be only for those services or situations in the best interest of the survivor / victim, which are not available in that hospital, for example, rehabilitative needs, legal help, financial aid, compensation, etc. Efforts could be made to bring the redressal of these concerns also under one roof (to qualify a hospital as an ideal one stop crisis center). A copy of the complete documentation is a right of every survivor / victim and should be provided by all doctors/ hospitals free of cost and in all situations.

The Government of Maharashtra in collaboration with UNFPA has undertaken the capacity building of Medical Officers at District and Sub-district hospitals to equip them with skills and perspectives to address the health concerns of survivors / victims of sexual violence by addressing them sensitively, scientifically, ethically and within a legal framework. This handbook is an outcome of the recommendations of the training programs conducted. It is to be used together with the MOHFW Guidelines and Protocols for medico-legal care for survivors/victims of sexual violence, 2014.





Medical examination of survivor/ victim of sexual violence:

Violence, especially sexual violence results in several physical and psychological consequences that warrant immediate medical examination and treatment. The Criminal Law Amendment Act, 2013, lays emphasis on examination, treatment both physical and psychological in addition to mere evidence collection that was the case earlier. These changes warrant a change in procedures for medical examination of survivors/victims. Given below are a few guiding points with relation to medical examination.

- There is no need to have a police requisition or a Court order to do the medical examination.
- All hospitals whether they are public or private are mandated to carry out medical examination of survivors/victims of sexual violence.
- As per MOHFW guidelines, efforts should be made to find a lady medical officer to conduct examination of a women survivor. However, if a lady medical officer is not available, examination can be conducted by a male doctor in presence of a female attendant.
- As per POCSO Act, a child is one who is aged below 18 years. As per section 27 of POCSO Act, a lady medical officer should examine a girl child (one who is below 18 years of age).
- As per section 27 of POCSO Act, whenever examination of a child is done, a parent or any person whom the child trusts should be present throughout the examination. If such persons are not available, then it is the duty of the hospital to provide a person who is trustworthy.
- As per section 357 C of CrPC and Rule 5 of POCSO, it is compulsory for doctor / hospital to provide treatment to all survivors/victims of sexual violence.
- As per the Supreme Court judgment in Ashwani Kumar Saxena v.s. State of M.P, it is not necessary to do medical age estimation of the survivor in all cases. Age estimate should be done when in doubt and when reliable documentary proof of age is not available.
- Whenever a sexually assaulted child requires immediate care and protection, the doctor should inform the local police station to seek assistance of the Child welfare committee (CWC).
- Anesthesia can be administered only in those cases to enable medical examination which are done in the best interest of the survivor and are not possible otherwise.



- It is not necessary to document past sexual practices/history during medico legal examination of survivors/ victims of sexual violence.
- It is mandatory for a doctor to inform jurisdictional police (local police station) regarding the case of sexual violence. If however the survivor does not wish to participate in a police investigation, it should not result in denial of treatment.
- As per Rule 5 of POCSO Act and Section 357 C of CrPC, first aid and treatment should be provided to survivors/victims of sexual violence without any delay. Treatment should be provided for injuries, STIs including HIV, pregnancy, emergency contraception and psychological counseling.
- HIV prophylaxis should be administered only if survivor/victim reports within 72 hours of assault and after assessing for HIV risk.
- For treatment guidelines please refer to MOHFW Guidelines and Protocols for Medico-legal care for survivors/victims of sexual violence, 2014. (Page 33)





Seeking informed consent:

Every woman has a right to bodily integrity hence a medical examination of a survivor/ victim of sexual violence cannot be conducted against their consent. Neither the police nor the Court can force such examination. Section 164 A sub clause (7) of CrPC clearly points out that it would be illegal for anything done during medical examination which is outside the scope of consent of the survivor/ victim. Consent can either be sought from the survivor/victim herself or from legally established agencies/persons acting in the best interest of the survivor/ victim where the survivor/ victim is unable to give consent either due to age , trauma , mental condition or disabilities. The following pointers highlight key issues to be kept in mind while seeking consent.

- No Court or person can force a medical examination on a survivor, when the survivor does not consent for the same.
- Minimum age of survivor for giving valid consent for medical examination is 12 years as per provisions of sections 89 and 90 of IPC.
- In case of a child below 12 years of age, whenever parents and/or guardians are not available for giving consent for examination, then informed consent can be obtained from a panel of senior doctors in administrative positions in the hospital who will act in the best interest of the child.
- Whenever parents and guardians are acting against the best interest of the child, (especially in cases of incest) then the Child Welfare Committee should be informed, who have the legal responsibility of providing care and protection to children as per the Juvenile Justice Act, 2015.
- As per provisions of section 92 of IPC, a doctor can conduct any emergency lifesaving procedure without any person's consent. This is also applicable to child survivors/victims of sexual violence.
- For conducting a medical examination of a mentally challenged survivor, informed consent can be obtained from any of the following persons, who will act in the best interest of the survivor:
 - o parents or local guardian
 - o panel of doctors from the hospital
 - o Child Welfare Committee in cases of a child
 - o Jurisdictional Court



- For conducting a medical examination of a hearing and/or speech impaired survivor, the informed consent should be obtained using an interpreter. Consent in cases of hearing and/or speech impaired children can be obtained from any of the following persons who will act in the best interest of the survivor:
 - o parents or local guardian
 - o panel of doctors from the hospital
 - o Child Welfare Committee
 - o Jurisdictional Court
- For conducting a Medical examination of an intoxicated or drugged survivor, informed consent can be obtained from any of the following persons who will act in the best interest of the survivor:
 - o parents or local guardian
 - o panel of doctors from the hospital
 - o Child Welfare Committee in cases of a child
- The survivor or guardian may refuse to give consent for all or any part of the examination or evidence collection. In such a case, the importance of examination and evidence collection should be explained to the survivor by the doctor. If survivor or guardian still refuses, informed refusal should be documented.
- The consent form should be signed by the survivor, a witness and examining doctor. (Witness is any disinterested person)
- In case a survivor has to undergo a medical termination of pregnancy, the minimum age of a survivor for giving valid consent for such a procedure is 18 years as per section 87 of IPC.





Collection of medical evidence during examination of survivor/victim:

Until recently, there has been an overemphasis / insistence on presence and collection of medical evidence in all cases of sexual violence. With better understanding of the limitations of several scientific tests and events post sexual violence and also because of the changed definition of rape and sexual assault following the amendment to the Criminal Law in 2013 and POCSO 2012, there can be several situations wherein there is no demonstrable medical evidence but they still could be cases of rape / sexual assault. Hence, absence of medical evidence does not rule out the possibility of rape / sexual assault having occurred. It should further be noted that skin and mucosal injuries are present only in one-third cases (33%) amongst all the cases of forced sexual violence (rape/sexual assault) as per medical literature. Further, explanation 2 to section 375 of IPC states that if someone does not resist sexual violence, that alone cannot be construed as offering consent to the sexual act. This clearly indicates that presence of resistance injuries is not required to prove a case of sexual violence. The following points provide simple guidance on collection of evidence

- Examination should be conducted and medical evidence collected with the prime purpose of providing treatment.
- Evidence should be collected based on history of assault (penetrative or non penetrative; penile or non penile; orifice penetrated – vagina, anus, mouth, urethra; ejaculation occurred or not) and on post assault activities that the survivor/victim may have undertaken (bathing, douching, washing, urination, defecation).
- The type/s of evidence to be collected will depend on the actual time of medical examination post sexual violence (keeping in mind that there could be delays in reaching the health care facility for medical examination due to various social issues / barriers).
- Medical evidence should not be collected if a survivor reports after 96 hours of the assault.
- It is always wise to collect whatever evidence is available at the time of medical examination even if the woman is menstruating. There are always chances of losing trace evidences in cases of heavy menstrual blood flow occurring at the time of assault, as well as at the time of medical examination. Hence, the fact that a woman was menstruating at the time of evidence collection should be documented.
- If a woman is menstruating at the time of collection of medical evidence then a repeat medical examination is warranted.



- Clothes which were worn at the time of assault are to be collected even in delayed medical examinations.
- At the time of medical examination, the following evidences should be collected:
 - o Swabs/Slides for evidence of motile spermatozoa till 12 to 24 hours post assault;
 - o Swabs/Slides for evidence of spermatozoa till 24 to 48 hours post assault;
 - o Swabs for evidence of semen / blood stain / lubricant till 4 to 5 days post assault;
 - o Loose hair and any other trace evidence (buttons, paint, etc) whenever present along with nail clippings.
- The doctor should always dry the sample, pack, seal and label all the evidentiary materials / packets and dispatch them along with the report to the police for onward transfer to laboratories (FSL and/or hospital laboratory) for testing and opinion/s.
- DNA is crucial comparable evidence in cases sexual violence if collected and profiled properly.
- As per section 164 A of CrPC it is necessary to collect DNA evidence in all cases of sexual violence.
- Products of conception are collected for doing the DNA profiling and to ascertain whether they match with that of the accused. These have to be sent to the DNA laboratory immediately. If this is not possible, then the products of conception should be stored in a container maintaining the cold chain/ cold storage (at 4°C) and should be sent to the DNA laboratory as early as possible.
- Refer to the MOHFW Guidelines for medico legal care of survivors/victims of sexual violence, 2014 (Page 59) to better understand what swabs should be collected and for what purpose.





Framing of medical opinion:

All the stakeholders dealing with a case of sexual violence expect a doctor to positively conclude the medical opinion immediately after a medical examination, forgetting that medical evidence and findings observed during a medical examination varies depending on the delay in medical examination, post assault activities, type of assault, etc. Doctors should base their opinions with proper scientific reasoning explaining both positive and negative findings during medical examination. Even as per Indian law, doctors should always provide reasoned opinion in every case.

- Rape and Sexual assault are legal terms and because doctors only do medical examination they cannot provide opinion on whether rape or sexual assault occurred or not.
- Section 164 A CrPC states that doctors should provide a reasoned opinion.
- There could be several situations where no medical evidence was detected during medical examination of survivor/victim. In such cases, it is the responsibility of the doctor to correlate the history of assault with non availability of medical evidence and provide reasoned opinion.
- The doctors could refer to the templates given in the MOHFW guidelines and Protocols for medico-legal care for survivors / victims of sexual violence, 2014, before issuing reasoned medical opinion/s. (Pages 32, 35 and 36).
- As per section 146 IEA, it is illegal to ask questions related to past sexual history / acts (consensual) to the survivor / victim. The section however does not bar doctors in questioning the survivor / victim about history of past sexual abuse (forced or Non-consensual acts). Past consensual sexual acts are immaterial when the current act of sexual violence is being adjudicated.
- The doctor is not needed to opine to questions in the police requisition on whether the survivor / victim is 'habituated to sex'.
- The doctor should give provisional opinion immediately after the medical examination- whenever doctor has got positive examination findings (presence of injuries and/or STIs) and also when wet smear examination is positive for spermatozoa.



- Medical opinion consists of the following –
 - o Any evidence of sexual violence (penetrative by penis and/or body part and/or object or non-penetrative acts);
 - o Any evidence to ascertain mental incapacity to give consent due to the effect of disease / ethyl alcohol / narcotic drug / psychotropic substance;
 - o Any evidence for medical age determination which would be crucial in deciding incapacity to give consent and /or increase in the punishment;
 - o Any evidence to identify assailants through medical examination in the form of collection of DNA material through collection of hair, semen, blood, nail clippings etc.
- Limitations of medical evidence to be noted in medical opinion under the following circumstances:
 - o If evidence is lost due to post assault activities like bathing, douching, washing, urination, defecation;
 - o If evidence is lost due to delay in reporting for medical examination and healing of injuries and STIs;
 - o Use of condom which was not recovered.
- Final opinion should be given by the doctor on receipt of FSL reports or reports from hospital investigations.





Medical examination of accused:

During adjudication of sexual violence cases, equal emphasis needs to be laid for collection of evidence both from accused as well as victim / survivor. Following the amendments to the Criminal Law in 2013, which changed the definition of rape and with a better and scientific understanding of medical tests involved in the examination of accused, several changes have been suggested for medical examination of an accused of sexual violence. It is however unfortunate that such changes are not practiced uniformly across all hospitals. This also contributes to the poor conviction rate of sexual offence cases in the country. The pointers given below provide a ready guide for medical examination of accused.

- As per section 53A of CrPC, reasonable force can be used by doctors during medical examination of accused. (IPC or any other law in force in India does not define reasonable force).
- It is possible for treatment purposes (either injuries sustained during sexual violence, STI treatment or psychological counseling) that an accused might report to a doctor voluntarily. In such situations, the doctor should provide treatment and also compulsorily inform police.
- Seeking informed consent is a must for any medical examination including that of the accused.
- Before seeking informed consent, the doctor should explain to the accused that as per section 53, 53A and 54 of CrPC, medical examination would include collection of blood, semen, saliva, hair, body fluids, etc.
- If any accused refuses for medical examination, then the doctor should document informed refusal after explaining all the pros and cons of such an act, including the possibility of inference of adverse opinion by the Courts against the accused.
- Doctor cannot positively opine about the potency of the accused individual as during medical examination of an accused, the doctor only does physical examination of the accused and not psychological examination to rule out psychological impotency, which is the most common cause for male impotency.
- Moreover, Section 375 IPC describes penetration of penis to any extent into woman's genitals as constituting rape and does not insist on erected penis nor complete penetration or ejaculation. Thus, mere touching of the penis to the female genitals is enough to constitute the offence of rape.
- It is not necessary to document the size of the penis of the accused during examination.



- Use of Colour Doppler examination of the penis / papaverine injection to certify potency for therapeutic purposes in erectile dysfunction cases is done for the benefit of that person. In a medico-legal case, performing such examinations without the consent of the accused would be illegal.
- There is no scientific basis for a doctor to mandatorily collect semen sample (by getting the accused to masturbate) during accused examination.
- Even if the Investigating Officer (Police) requests for semen sample as part of police requisition, for comparing the semen samples at the scene of crime, the answer of the doctor should be that for DNA profiling any material from the body including blood can be used, which would be easier to obtain.
- According to Section 19 of the Juvenile Justice Act, 2015, there is increased punishment for accused between ages 16 to 18 years who have been involved in heinous crimes. They need to be tried as adults.
- Age verification tests are tests to determine medical age by calculating the mean of physical age, dental age and radiological age. These may need to be conducted to verify the age of the accused.
- There may be requests from the investigating officers for verifying the sex of the accused if they are intersex/transgender persons. But a single medical examination is not sufficient to accurately verify the sex of an individual. Tests to verify the biological sex of a person are known as sex verification tests, these include tests like nuclear sexing or microscopic tests or sex chromatin tests. In addition, detection of 'Y-linked SRY gene'; chromosomal studies and hormonal assays also constitute sex verification tests.





Deposition in Courts in cases of sexual violence:

According to section 45 of the IEA, a doctor is an expert witness whenever s/he is giving an opinion on matters of science (Medical Science). Doctor is an ordinary witness in all other matters. Medical evidence deposed by the doctor in the Courts of law finds an important place in the final adjudication of cases of sexual violence. Doctor should hence be well prepared and equipped with medical evidence to depose in cases of sexual violence. This will help in positive adjudication of all such cases. A doctor can uphold science through their depositions in Court by scientific reasoning and scientific practices. They should not be scared to speak out if there are any limitations to medical science as on date. The following points will equip doctors to depose in Courts.

- Be well versed with case details.
- Make short notes with regard to case history, medical examination, evidence collection and opinion drawn.
- Keep medical records of survivor/victim and accused handy. This includes case files, FSL report, related correspondence, etc.
- Before deposition in the Court, it is advisable for the doctor to meet the APP/PP and discuss the case.
- The doctor can have access to Court files and if recalled for the same case, they can have access to their previous depositions in relation to the same case through the APP/PP.
- After deposition the doctor should ask for the copy of their statement for signature.
- If it is a case of child sexual abuse, the doctor should not reveal the identity of the child, unless it is in the best interest of the child to do so.
- Usual practice of Courts is that they summon the witnesses first (including doctor) and if they fail to appear for summon/s, they then compel the witnesses' attendance to the Court by issuing warrants. In rare instances when the depositions of all other witnesses' are over and only one witness remains, the Courts may directly warrant the witness (including doctor) without summoning them earlier. This could be justified in the interest of delivering speedy justice.



- Usual practice is that the summons copy contains all details of the Court room, date and time of hearing, case details for which the witness (doctor) is summoned and also what all documents are required by the Court from the doctor / hospital. In rare instances, when any of this information is missing in the summons notice, then the doctor should insist on such details to be furnished before actual hearing.
- Role of a doctor is very important to assess the extent of trauma faced by a survivor/victim to ensure s/he gets adequate compensation to meet treatment and rehabilitation needs.

Some points to note for child sex abuse:

- *Special Courts are those Courts which are established to try POCSO cases separately under POCSO Act, 2012. In some places Children Courts have been designated as Special Courts to try POCSO cases and in some places Session Courts are assigned to handle POCSO cases.*
- *For trying POCSO cases, child friendly Courts have been set up. They provide facilities of having an interpreter or translator; special educator and presence of parent or guardian or any support person in whom the child reposes trust.*
- *As per POCSO Act, at any stage of investigation and trial the child will not be confronted with the accused.*
- *As per POCSO Act, evidence has to be completed within 30 days and trial within one year.*
- *Cases which are tried in Courts, wherein only the Judge / Magistrate, Prosecutor and Defense counsel along with victim and accused are present are known as in-camera trial. Such trials could be held in open Court or even in the chamber of the Judge / Magistrate.*



