

Medico-legal Provisions in Sexual Assault Cases

Dr. S.K.Verma

Director Professor, Dept. of Forensic Medicine,
University College of Medical Sciences, Dilshad
Garden, Delhi-110095

Pictures of Delhi Rape Case



Statistics on Crime against Women and Children in India

- **A. The crimes under the Indian Penal Code (IPC)**
- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & abduction for specified purposes (Sec. 363 - 373 IPC)
- (iii) Homicide for dowry, dowry deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture - both mental and physical (Sec. 498-A IPC)
- (v) Assault on women with intent to outrage her modesty (Sec. 354 IPC)
- (vi) Insult to the modesty of women (Sec. 509 IPC)
- (vii) Importation of girl from foreign country (upto 21 years of age) (Sec. 366-B IPC)
- **B. The crimes under the special & local laws (SLL)**
- (i) Immoral Traffic (Prevention) Act, 1956
- (ii) Dowry Prohibition Act, 1961
- (iii) Indecent Representation of Women (Prohibition) Act, 1986
- (iv) Commission of Sati Prevention Act, 1987

Figures on Rape in India

Year	No. of cases
2008	21,467
2009	21,397
2010	22,174
2011	24,206
2012	24,923
2016	39,068

Medico-legal Provisions-Changes in Laws related to Sexual Assault

- Changes in Indian Penal Code (IPC), 1860
- Changes in CrPC, 1898
- Changes in Indian Evidence Act, 1872.
- Court Judgments

Changes in Law

- The Criminal Law (Amendment) Act, 2018
- The Criminal Law (Amendment) Act, 2013
- The Protection of Children from Sexual Offences Act, 2012. (Notified on 29th June, 2012)
- Supreme Court of India Judgment (Dated 09/04/2013)
- Delhi High Court Judgment (Dated 23/04/2009) W.P. (CRL) 696/2008
- Delhi High Court Judgment(Dated 29/09/2009) Criminal Appeal No. 121 of 2009.

The Criminal Law (Amendment) Act, 2018

- Notified on 21/04/2018
- Made changes in Section 166A, 228A and 376 of IPC
- Made changes in Section 53A of Indian Evidence Act
- Made changes in Section 154, 161, 164, 173, 197, 309 etc. of CrPC.

Changes in Section 376 IPC

- (a) in sub-section (1), for the words "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine", the words "shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine" shall be substituted; (b) in sub-section (2), clause (i) shall be omitted; (c) after sub-section (2), the following sub-section shall be inserted, namely:— "(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim."

Section 376 IPC

- "376DA. Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim

Section 376 IPC

- 376DB. Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

Section 376AB- Punishment for Rape with woman under 12 yrs

- After section 376A of the Penal Code, the following section shall be inserted, namely:— "376AB. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty 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 or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim."

The Criminal Law (Amendment) Act, 2013 (IPC Section 375) (Notified on 2nd April, 2013)

- Came in Force Retrospectively from 3rd February, 2013

Indian Penal Code

Current Definition of Rape-

Section 375 IPC

- 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

Penetration

- **Meaning:** The action or process of making a way through or into something.
- By PENIS in-to VAMU (Vagina, Anus, Mouth or Urethra)
- Mere touching amount to penetration
- Ejaculation or no ejaculation has no consequences

Current Definition of Rape

- (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

Insert

- **Meaning:**1. To put or set into, between, or among: inserted the key in the lock.
- **2.** To put or introduce into the body of something; interpolate:

What can be inserted?

- a. Any object; or (e.g. stick, rod, chillies?, carrot etc.)
- b. Any part of body (e.g. finger, toes, tongue etc.)

Current Definition of Rape

- (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 so with him or any other person; or

Manipulate

- **Meaning:** To move, arrange, operate, or control by the hands or by mechanical means, especially in a skillful manner: She manipulated the lights to get just the effect she wanted.
- Manipulate in order to penetrate (e.g. movement of thighs, hips, knee elbow position etc.)

Current Definition of Rape

- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions;-

Apply

- **Meaning:** To bring into nearness or contact with something; put on, upon, or to: applied glue sparingly to the paper.
- Only application of mouth is covered under this sub-clause.

Current Definition of Rape-Cont.

- First- against her will.
- Secondly- without her consent.
- Thirdly.—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.
- Fourthly.—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.
- Fifthly.—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.
- Sixthly.—With or without her consent, when she is under **eighteen** years of age.
- Seventhly:- When she is unable to communicate consent.

Current Definition of Rape- Cont.

- Explanation 1- For the purpose of this section, “vagina” shall also include labia majora.
- Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any other form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;
- Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
- Exception 1. **A medical procedure or intervention shall not constitute rape.**
- Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under **fifteen** years of age, is not a rape.

Independent Thought vs Union Of India on 11 October, 2017

- On a complete assessment of the law and the documentary material, it appears that there are really five options before us: (i) To let the incongruity remain as it is – this does not seem a viable option to us, given that the lives of thousands of young girls are at stake; (ii) To strike down as unconstitutional **Exception 2** to [Section 375](#) of the IPC – in the present case W.P. (C) No. 382 of 2013 Page 68 this is also not a viable option since this relief was given up and no such issue was raised; (iii) To reduce the age of consent from 18 years to 15 years – this too is not a viable option and would ultimately be for Parliament to decide; (iv) To bring the POCSO Act in consonance with **Exception 2** to [Section 375](#) of the IPC – this is also not a viable option since it would require not only a retrograde amendment to the POCSO Act but also to several other pro-child statutes; (v) To read **Exception 2** to [Section 375](#) of the IPC in a purposive manner to make it in consonance with the POCSO Act, the spirit of other pro-child legislations and the human rights of a married girl child. Being purposive and harmonious constructionists, we are of opinion that this is the only pragmatic option available.

Independent Thought vs Union Of India on 11 October, 2017

- Therefore, we are left with absolutely no other option but to harmonize the system of laws relating to children and require **Exception 2** to **Section 375** of the IPC to now be meaningfully read as: “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.” It is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.

The Protection of Children from Sexual Offences Act, 2012. (Notified on 29th June, 2012)

- Section 3 of this act, describes, “Penetrative sexual act”, if-
 - (a) 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
 - (b) he 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
 - (c) he 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 so with him or any other person; or
 - (d) he applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

POCSO, 2012

- Section 27

- (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a FIR or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164 A of the Cr. P.C.
- (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- (4) Where, in case the parent of the child or other person referred in subsection (3) cannot be present for any reason during the medical examination of the child, the medical examination shall be conducted in presence of a woman nominated by the head of the medical institution.

Section 228 A, IPC- Disclosure of Identity of the victims of certain offences etc.

- Disclosure of identity of the victim of certain offences etc.—[\(1\)](#) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Code of Criminal Procedure

Section 26 CrPC-Courts by which offences are triable

- Subject to the other provisions of this Code,-
- any offence under the Indian Penal Code (45 of 1860) may be tried by-
 - the High Court, or
 - the Court of Session, or
 - any other Court by which such offence is shown in the First Schedule to be triable;

Provided that any offence under section [376](#), section [376A](#), section¹ [376AB](#), section [376B](#), section [376C](#), section [376D](#), section [376DA](#), section [376DB](#) or section [376E](#) of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman.

- any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by.-
 - the High Court, or
 - any other Court by which such offence is shown in the First Schedule to be triable.
- ¹ Criminal Law (Amendment) Act, 2013

Section 53 CrPC- Examination of accused by medical practitioner at the request of police officer.

- (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting, at the request of a police officer not below the rank of sub-inspector, and for- any person acting in good faith in his aid and -under his direction, to make such all examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.
- (2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Section 53-CrPC Cont....

- **1[Explanation.** – In this section and in sections 53A and 54,-
- (a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;
- (b) “registered medical practitioner” means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register.]

Section 53A, CrPC- Examination of Person Accused of Rape by Medical Practitioner

1. When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

Section 53A, CrPC- Cont.....

2. The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely-
 - i. the name and address of the accused and of the person by whom he was brought,
 - ii. the age of the accused,
 - iii. marks of injury, if any, on the person of the accused,
 - iv. the description of material taken from the person of the accused for DNA profiling, and”.
 - v. other material particulars in reasonable detail.

Section 53A, CrPC- Cont.....

3. The report shall state precisely the reasons for each conclusion arrived at.
4. The exact time of commencement and completion of the examination shall also be noted in the report.
5. The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of Sub-Section (5) of that section.

Section 54 CrPC- Examination of arrested person by medical practitioner at the request of the arrested person.

- When a person who is arrested, whether on a charge or otherwise alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

Section 164 A, CrPC-Medical Examination of Victims of Rape

1. Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

Section 164 A CrPC Cont.....

2. The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely—
 - the name and address of the woman and of the person by whom she was brought;
 - the age of the woman;
 - the description of material taken from the person of the woman for DNA profiling;
 - marks of injury, if any, on the person of the woman;
 - general mental condition of the woman; and
 - other material particulars in reasonable detail,
3. The report shall state precisely the reasons for each conclusion arrived at.

Section 164 A CrPC Cont.....

4. The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such examination had been obtained.
5. The exact time of commencement and completion of the examination shall also be noted in the report.
6. The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section [173](#) as part of the documents referred to in clause (a) of Sub-Section (5) of that section.
7. Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Section 357 C, CrPC-Treatment of Victims

- All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section [326A](#), [376](#), [376A](#), [376AB](#), [376B](#), [376C](#), [376D](#), [376DA](#), [376DB](#) or section [376E](#) of the Indian Penal Code, and shall immediately inform the police of such incident.

Indian Evidence Act

Section 45, IEA-Opinions of Experts

- When the Court has to form an opinion upon a point of foreign law or of science or art, or as identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Court Judgments

SC on Status of Two Finger Test

- **Recently in case of Lillu @Rajesh & anr v State of Haryana [24], apex court of the country in a judgment dated April 9, 2013 said,**
- “ In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence.

SC on Status of Two Finger Test cont.

- The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy.
- Thus, in view of the above, undoubtedly, the two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.”

Again Reiterated Recently by SC

(31st October, 2022 Justices DY Chandrachud & Hima Kohli)

- **Supreme Court bans two-finger test for sexual assault victims, says ‘re-traumatises victims, based on patriarchal mindset’.**

The Supreme Court bench also asked to conduct workshops for health providers to train them on the appropriate procedure for examining sexual assault survivors. The top court also asked to review the curriculums in medical schools so that the two-finger test is not prescribed as one of the procedures to be adopted examining sexual assault and rape survivors.

Again Reiterated Recently by SC

(31st October, 2022 Justices DY Chandrachud & Hima Kohli)

- The Bench also directed the Union Health Ministry to ensure that sexual assault and rape survivors are not subjected to two finger test and the Union and the State Governments to ensure the guidelines formulated by the Department of Health and Family Welfare, prohibiting the two-finger test, are circulated to all Government and private hospitals.

Delhi High Court Judgment (Dated 23/04/2009)

W.P. (CRL) 696/2008

- **Instructions for Doctors/ Hospitals/ Health Department**
- (a) Special rooms to be set up in all Government hospitals for victims to be examined and question in privacy;
- (b) A sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault should be available with all the Government Hospitals. A sexual assault evidence collection kit should contain commonly available examination tools such as;
 - * Detailed instructions for the examiner.
 - * Forms for documentation.
 - * Tube for blood sample.

Delhi High Court Judgment (Dated 23/04/2009)

W.P. (CRL) 696/2008 Cont.....

- * Urine Sample container
- * Paper bags for clothing collection
- * Large sheet of paper for patient to undress over.
- * Cotton swabs for biological evidence collection
- * Sterile water.
- * Glass slides
- * Unwaxed dental floss.
- * Wooden stick for fingernail scrapings.
- * Envelopes or boxes for individual evidence samples.
- * Labels.

Delhi High Court Judgment (Dated 23/04/2009)

W.P. (CRL) 696/2008 Cont.....

- Other items needed for a forensic / medical exam and treatment that may be included in the rape kit are :
 - * Woods lamp
 - * Toluidine blue dye.
 - * Drying rack for wet swabs and/or clothing.
 - * Patient gown, cover sheet, blanket, pillow.
 - * Needles/ Syringes for blood drawing.
 - * Speculums
 - * Post – It Notes used to collect trace evidence
 - * Camera (35 mm, digital, or Polaroid), film batteries.
 - * Med-scope and/or colcoscope.
 - * Microscope
 - * Surgilube
 - * Acetic acid diluted spray
 - * Medications
 - * Clean clothing and shower/ hygiene items for the victim's use after the exam.

Delhi High Court Judgment (Dated 23/04/2009)

W.P. (CRL) 696/2008 Cont.....

- (c) A detailed description of “Assault/ Abuse History” be mentioned by the attending doctors on
- the MLC of victim; The doctor must ensure that the complete narration of the history of the case detailed by the victim and her escort is recorded.
- (d) After the examination is complete the victim should be permitted to wash up using toiletries
- provided by the hospital. The hospital should also have clothing to put on if her own clothing is taken as evidence.
- (e) All hospitals should co-operate with the police and preserve the samples likely to putrefy in their pathological facility till such time the police are able to complete their paper work for dispatch to forensic lab test including DNA.

Delhi High Court Judgment (Dated 23/04/2009)

W.P. (CRL) 696/2008 Cont.....

- We are also of the opinion that the medical examination report must be prepared, preferably immediately after the examination, but most certainly on the same date as the examination and must be forwarded to the investigating agency forthwith without delay. The DNA and other samples should be sent to the concerned Forensic Science Labs or DNA Profiling Centres within two days of the incident. We are also of the opinion that any dereliction of duty on part of the examining doctor(s) to undertake the medical examination properly and forwarding the report to the IO without any delay, and any dereliction of duty on the part of the investigating agency in collecting the report or causing the victim to be taken to the nearest hospital for examination, would be punishable as offences (in respect of the investigating agency) and by way of disciplinary proceedings (in respect of the examining doctor).

Judgment of the Delhi High Court dated September 29, 2009 in Criminal Appeal No. 121 of 2009

Guidelines in relation to medical examination, given below, to be implemented immediately in Delhi are worth to be noted at this stage:

- (i) Orientation be given to the Doctors, who prepare MLCs or conduct post mortems to ensure that the MLCs as well as post mortem reports are up to the mark and stand judicial scrutiny in Courts.
- (ii). While conducting medical examination, child victim should be first made comfortable as it is difficult to make her understand as to why she is being subjected to a medical examination.
- (iii). In case of a girl child victim the medical examination shall be conducted preferably by a female doctor.
- (iv). In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.

Judgment of the Delhi High Court dated September 29, 2009 in Criminal Appeal No. 121 of 2009 Cont....

- (v). The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim.
- (vi). In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.
- (vii). The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination.
- (viii). Emergency medical treatment wherever necessary should be provided to the child victim.
- (ix). The child victim shall be afforded prophylactic medical treatment against STDs.
- (x). In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.

**THANKS FOR PATEINT
HEARING**