

## CRITICAL ANALYSIS OF THE RELEVANCY OF THE MEDICAL AND FORENSIC EVIDENCES IN THE RAPE CASES

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### Introduction

India being the developing country, where the women are the equally participant in the development of the country as men do. From the very beginning till the present time women make themselves alive in each and every part of the development, may it be the sports or politics or of science.<sup>1</sup> Still there are some elements which lead to the disrespect of the women. And one of the said elements is Rape. Rape is one of the heinous crimes specified in our penal provisions. Rape is not the crime against the women only but it is the crime against the whole society, as such kind of act shows the mindset of the people living in the society and the societal value. In India rape is one of the most serious offences. The victims sometimes cannot bear the sense of shame and commit suicide. Law also prescribes severe punishment- imprisonment and fine. In simple non-legal words rape means sexual intercourse with a female (other than a wife) by a person when:-

1. The female is not willing, even when the female is prostitute.
2. The consent is obtained by threat.
3. The consent is obtained by deceit or misrepresentation (posing as her husband or misrepresenting the act as medical treatment).
4. When the victim is mentally deficient: imbecile, idiot.
5. When the victim is under the influence of drugs and liquor.
6. When the person is unconscious.
7. When the victim is young – below the age specified in law-(18 years).

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<sup>1</sup> Sneha Singh, Relevancy of Medical and Forensic science evidences in rape cases. Available at: <http://docslide.us/documents/relevancy-of-medical-and-forensic-science-evidence-in-rape-cases.html>.

1. Penetration of male organ into the female parts incurs the offence. Complete penetration or emission of semen is not necessary to prove the charge.<sup>2</sup>

But the exception to the said section is that the sexual intercourse by a man with his wife even without her will is not rape if she is above 15 years of age.<sup>3</sup>

Which means if the husband having sexual intercourse with his wife would not amount to rape even if the said intercourse is against her will and without her consent. The said exception is the one of the main drawback of the said provision of the rape. Although recently the discussion relating to the criminalization of the Marital Rape is going on in the parliament.

### **Consent**

No where in our criminal law the law maker has defined the term consent, but in the Indian Penal Code, it has been defined what is not amounting to the consent. According to section 375(6) when the sexual intercourse has been done with or without consent when the female is under the age of eighteen years, the said act will amount to rape.<sup>4</sup> That means an act with the consent of the woman would not amount to rape if she is above eighteen years of age. But the said consent is not valid if, it is obtained by fraud as, by impersonation of the husband, or it was obtained by putting her or any other person in the fear of death, or when obtained from woman when she is of unsound mind or in influence of liquor, or when she has not attained the age of eighteen years.<sup>5</sup>

In certain prosecutions for rape under sec. 376(2) (a)-(g) of the IPC, where sexual intercourse is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the court shall presume that she did not consent.<sup>6</sup>

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<sup>2</sup> Dr. K.S.Narayana Reddy's, *Medicolegal Manual*, ALT publication, pg. 174.

<sup>3</sup> Section 375 of Indian Penal Code, 1860.

<sup>4</sup> Section 375(6) of Indian Penal Code, 1860 Which was amended by the Criminal Law Amendment Act, 2013.

<sup>5</sup> *Supra Note: 2*.

<sup>6</sup> Sec. 114A of the Indian Evidence Act, 1872.

## **Constitution of Rape**

With the amended criminal law, the slightest penetration within the vulva, such as the minimal passage of glans between the labia with or without emission of semen or rupture of hymen constitute a rape.<sup>7</sup> That means even when there is not an intercourse and the man has just inserted his penis in that case also the said act will be consider as the rape under section 375 of the Indian Penal Code, 1860.<sup>8</sup>

## **Age of the Accused**

There are no such limits in our laws relating to the age of the accused which shows that the person is physically incapable of committing rape. Although no person under the age of 7 years commit any crime<sup>9</sup>, therefore the child under age of 7 years can not commit the offence of rape.

## **Age of the Victim**

No age is safe from rape, as children of one year or less and the woman of 85 years or more have been raped.<sup>10</sup>

## **Effect on the victim**

Victims of rape can be severely traumatized by the assault and may have difficulty functioning as well as they had been used to prior to the assault, with disruption of concentration, sleeping patterns and eating habits. After being raped it is common for the victim to experience Acute Stress Disorder, including symptoms similar to those of posttraumatic stress disorder, such as intense, sometimes unpredictable, emotions, and they may find it hard to deal with their memories of the event. The shock and shame may prevent the victim.<sup>11</sup>

Thus, the offence of rape is having high impact on the victim as well as to the society at large. For proving the offence of rape there is need of the medical and forensic evidences. Medical examination is a crucial piece of information which is required for collection of

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<sup>7</sup> *Supra Note: 2.*

<sup>8</sup> Section 375 of Indian Penal Code, 1860 which was amended by the Criminal Law Amendment Ac, 2013.

<sup>9</sup> Section 82 of the Indian Penal Code, 1860.

<sup>10</sup> *Supra Note: 2.*

<sup>11</sup> *Supra Note: 1.*

medical evidences, their documentation and interpretation in court. It becomes more valuable where there is no other witness to the incident.<sup>12</sup>

With the advancement of technologies the medical science and the forensic sciences has developed at the large scale, and which would be helpful in providing justice. In the present time medical and forensic examination plays the vital role in the trial process especially at the time of the consideration of the evidences.

## **Sources of Evidence**

### **Role of the Investigator**

The charges of the rape are easy to level against the person but difficult to prove.<sup>13</sup> But now after the change in the time, and the change in the laws, the burden of proof in the rape cases is there on the accused person that he has not committed rape.<sup>14</sup> Once the victim gave the statement that the accused has raped her, than there is no duty levied on the prosecution to prove the case. Then it is on the defense to prove his client innocent. The number of rape cases is increasing day by day and which will further increase as well as the social values has been changed.<sup>15</sup>

In such a heinous crime like rape, it is the duty of the investigating officer to be more vigilant, and collect proper evidence systematically and he has to provide proper proof which established the fact beyond reasonable doubt that the victim has been raped by the accused.<sup>16</sup> Two problems worry the investigator. Firstly, the culprit often claims consent of the victim. Secondly, there are sometimes false complaints. He has to be vigilant against both aspects. As there is normally no eye-witness of rape cases the investigating officer is duty bound to take as much care as possible in collection of the evidence for securing the ends of justice.

### **The Victim**

The victim is the most important source of evidence in rape cases. The evidence is of three types:-

1. Knowledge of the occurrence

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<sup>12</sup> Lakew Z. Alleged Cases of Sexual Assault reported to two Addis Ababa Hospital. East African Medical Journal, February 2001;78(2), 80-83.

<sup>13</sup> *Supra Note: 1.*

<sup>14</sup> K.D.Gaur, Text book on Indian Penal Code 1860, Universal Law Publication.

<sup>15</sup> Idib.

<sup>16</sup> *Supra Note: 1.*

2. Medical evidence
3. Evidentiary clues

### **Knowledge of the occurrence**

The occurrence is best known either to the victim or to the culprit. As the culprit is interested in not conveying the information the only source left is the victim. This knowledge has to be extracted through careful interrogation so that the chaff can be separated from the grains. The following points must be kept in view:-

1. Interrogate the female in the presence of another female
2. Ascertain the movements of the victim before and after the occurrence
3. Ascertain the familiarity of the accused with the victim
4. Collect even minute details of the occurrence
  - Place of occurrence
  - Time of occurrence
  - How enticed?
  - How attacked? Weapon if any?
  - Resistance offered if any? How long? How overcome?
  - Dialogue at the time. Screams? Threats? Inducements? Endearments?
  - Any witness who may have seen the pair together before or after the act?
5. How soon after the occurrence was the complaint made? To whom?
6. Who persuaded the victim to go to the police?
7. Ascertain the character of the victim. Previous sexual contacts with the accused may indicate motive.

### **Medical evidence**

Medical examination of the victim, always plays the very important role in case of the rape. As there is usually no eye-witness of the act, and the accused and victim used to say in their interest only, the medical evidence is one of the ways which help to find out the true fact. Medical Examination of the victim had always been a mandatory requirement.<sup>17</sup> And after the amendment in the Act, the medical examination of the accused has also become the mandatory provision.<sup>18</sup>

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<sup>17</sup> Section 53 of The Code of Criminal Procedure.

<sup>18</sup> Section 53 A, The Code of The Criminal Procedure.

The victim bears important medical evidence, which, with passage of time, is lost. The examination of the victim should, therefore, be carried at the earliest.<sup>19</sup> The medical examination of the victim cannot be done without the requisition from the court or from the police officer, but the court cannot force a woman for the medical examination.<sup>20</sup> The consent of the victim is required for the medical examination and in case of the victim is under age of eighteen or is of unsound mind the consent of the legal guardian is required.<sup>21</sup> The victim should be escorted by the police officer and his/her name and number should also be recorded. For knowing the mental condition of the victim that she is out of mental shock or not first the medical officer has to ask very basic question relating to the said occurrence and the same has to be noted by the medical officer. The examination of the victim has to be done in the presence of other woman, if possible in the presence of nurse of the particular hospital. The medical examination should be carried out without delay because the delay may lead to non appearance of some minor injuries like redness, and swelling. The victim should not be forced to remove her cloths, the officer can only request her once for the same and if she will not be ready in that case, the medical examination of the victim cannot be done.<sup>22</sup>

The medical examination should ascertain:-

1. Injuries consistent with forcible rape? Details? Previous experience? Torn hymen? Injured vulva? Bleeding?
2. Injuries because of resistance? Location? Extent?
3. Torn clothes, they should be taken into possession.
4. Any stains on clothes on body, especially on thighs and private parts.
5. Disorder of hairs, clothes, etc.
6. Any pregnancy how old?
7. Age and physical health.
8. Disease and any venereal disease.
9. Physical development of the victim should be examined.
10. Previous history regarding the sexual intercourse, pregnancy, etc has to be noted.
11. If the victim is in menstrual period, second examination has to be done after completion of the same.<sup>23</sup>

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<sup>19</sup> *Supra*Note: 1.

<sup>20</sup> *Supra* Note: 2.

<sup>21</sup> *Idib* .

<sup>22</sup> *Idib*.

<sup>23</sup> *Supra* Note: 2.

### **Evidentiary Clues:-**

- Vaginal Secretion and swabs for semen.
- Foreign hairs and fibres on the present of the victim.
- Specimen pubic hairs from the victim.
- Semen stains from the body.
- Fingernail scrapping which may carry fibres, hairs, skin, blood from the culprit. The evidence can link the culprit, with the victim and hence with the crime.
- Age of the victim often assumes great importance. Medical evidence for the age of the victim is important. It should be ascertained. However, birth certificate and school certificates also prove useful. If the victim is less than 18 years of age, consent of the victim does not have any sanctity.
- All the clothes of the victim worn at the time of occurrence. They carry semen, fibres, and hair, blood stains, saliva stain from the culprit. They also indicate the extent of bleeding. Sometimes they carry dust, dirt, plant material from the scene which helps to corroborate the victim's statement.

### **Positive signs of rape**

#### **A. In children and adult virgins:**

- (a) The demonstration of spermatozoa or semen in the vagina
- (b) Presence of injuries to the hymen, genitals, and elsewhere on the body.

#### **B. In married women and females used to sexual intercourse:**

- (a) Presence of injuries (often minor) to genitals. Presence of semen in the vagina has no value in such cases
- (b) Presence of marks of violence on other parts of the body.<sup>24</sup>

### **The Accused**

The examination of the accused is as important as the examination of the victim, hence the examination of the accused has to done as early as possible. After amendment in the provisions of Cr.P.C. the Accused has to medically examined by the medical practitioner made compulsory.<sup>25</sup> For the medical examination consent of the accused is required to obtained, and he has to be informed that such an examination may go against him, and then only medical examination should be done.

<sup>24</sup> Medico Legal opinion by Dr. P.K. Bhattacharji, second edition.

<sup>25</sup> Section 53-A, of The Code of The Criminal Procedure.

### **Medical evidence is of the following types:-**

1. Injuries due to sexual act. Often it is absent.
2. Injuries (scratches bite marks etc) due to resistance offered by the victim. Location? Number? Extent? They are often found if the female is health and spirited.
3. Torn clothes. They should be taken into possession.
4. Any stains on clothes on body, especially on private parts.
5. SMEGMA? Presence of it is a useful clue. It can refute the charge of false rape. Absence of it does not prove rape.
6. Capability? Is the culprit if performing sexual act?
7. Venereal disease? Is the culprit suffering from any venereal disease?

All legal formalities must be observed.

### **Physical evidence**

1. Vaginal fluid stains, blood stains, semen stains on the penis, on pubic hair, on the area around the male organ and thighs and on clothes. Smears from male organ from pubic hair, from the surrounding skin should always be obtained
2. Foreign hairs- especially in the private parts and intermingled with pubic hairs. The doctor should collect them for further investigations.
3. Fibres from the clothes of the victim. They are mostly on his clothes.
4. Stains of cosmetics on the person and clothes
5. The fingernail scrapings may contain vaginal fluid, skin, fibres, cosmetics etc. from the victim
6. Dust, dirt, flora or fauna from the scene, especially in outdoor cases

### **The Scene**

1. Photograph
2. Collect evidence
  - Hairs, fibres, discarded papers, pieces of clothes, clothing, cigarettes, buttons.
  - Stains, smears.
  - Marks fingerprints and footwear marks, tyre marks, lipstick marks and mark of struggles.
  - Soil dust dirt as control sample for evidence picked up by the culprit.
  - Broken bangles and jewellery.

3. Ascertain the layout. Could anybody observe the scene and occurrence? Could anybody hear the screams or voices from the scene?
4. Ascertain if there was any chance witness to the occurrence.

### **Examination of Potency**

In India, a suspect/accused is routinely sent to the doctors by the Judicial Magistrates and the police for the examination of sexual potency when accused claims the defence of impotency.<sup>26</sup>Initial examination will reveal his incapacity if there is obvious anatomical abnormality, inherited genetic disorders or definite illness that may affect potency.<sup>27</sup>There is no place for 'masturbation test'.<sup>28</sup>

#### **1. Semen or Spermatozoa**

The presence of spermatozoa in the vagina after intercourse has been from 9 days in vagina and 12 days in the cervix.<sup>29</sup> In the case of *State of Maharashtra v. Chandraprakash Kewalchand Jain*,<sup>30</sup> it was stated that spermatozoa can be found if the woman is examined within 12 hours after intercourse, thereafter may be found between 18 to 72 hours but in dead form. In this case the Court after satisfying itself regarding the presence of semen on the clothes of the prosecutrix held that "the absence of semen or spermatozoa in the vaginal semen and slides, cannot cast doubt on the circumstances of the prosecutrix. In case of a married woman, presence of spermatozoa including semen, found on her genitals or on her sari would not be sufficient evidence of rape,<sup>31</sup> particularly when she admits of recent intercourse with her husband.<sup>32</sup>It is a strong piece of circumstantial evidence<sup>33</sup>but by no means, conclusive.<sup>34</sup>Examination of smegma loses all importance after 24 hours of sexual intercourse.<sup>35</sup>

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<sup>26</sup> Modi, Medical Jurisprudence and Toxicology.

<sup>27</sup> Modi, Medical Jurisprudence and Toxicology.

<sup>28</sup> Kasinathan Nadesan, Forensic Medicine and Science(2007, Lexis Nexis Publications).

<sup>29</sup> Modi, Medical Jurisprudence and Toxicology.

<sup>30</sup> 1990 (1)SCC 550.

<sup>31</sup> *Bhonriv. State*, AIR 1955 NUC 473.

<sup>32</sup> *Abdul Aziz v. Emperor* AIR 1934 Nag 9.

<sup>33</sup> *Bhagwat Prakash v. State*, AIR 1956 All22.

<sup>34</sup> *Ali Khan v. State*, AIR 1962 Cal641.

<sup>35</sup> *S.P.Kohli v. High Court of Punjab & Haryana* AIR 1978 SC 1753.

However, the absence of spermatozoa on vaginal smear does not falsify the version of the prosecutrix inasmuch as its absence may be due to the various other factors such as faulty taking of smear, its preservation, quality of semen, etc.<sup>36</sup>

## **2. Examination of hymen**

Rupture of hymen is not necessary, in case of such elastic hymen and medical evidence as well as certificate of FSL conclusively proves the charge the conviction could sustain.<sup>37</sup> The statute merely requires medical evidence of penetration, this may occur and the hymen may remain intact.<sup>38</sup>

## **3. Capacity of accused to commit rape**

In India, a boy of less than seven years of age is immune from criminal liability; <sup>39</sup>and, a boy above seven years of age, but below 12 years of age, can have criminal liability fastened to him if his understanding is sufficiently mature to enable him to judge the nature and consequences of his act on that occasion.<sup>40</sup> A person physically incapable of penetrating his virile member into the genitals of a female is incapable of committing the offence of rape.<sup>41</sup> Impotency cannot be the found of the incapability of the commission of rape, as there is no need to penetration in commission of rape.

## **4. Indications of Communication of any Venereal Disease**

The fact that the victim was not infected with gonorrhoea from which the accused was found to be suffering, is by no means conclusiveness of the accused.<sup>42</sup>

## **5. Marks of Violence on the Body**

The body, especially the forearms, wrist, face, breast, chest, lower part of abdomen, inner aspects of thighs and back, should be

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<sup>36</sup> Narayanamma v. State (1994) 5 SCC 728.

<sup>37</sup> Ulahamian alia Kochappan v. State of Kerala (1989) 1 Crimes 22 at pp.23,24 (Ker).

<sup>38</sup> Jantan v. Emperor, AIR 1934 Lah 797; Azhar v. State,(1985)ALLJ 384; Bhudhan Lal v. State,(1961)1CrLJ689.

<sup>39</sup> Indian Penal Code, 1860, Sec. 82;

<sup>40</sup> Indian Penal Code, 1860, Sec 83;

<sup>41</sup> JAISINGH P. MODI, MEDICAL JURISPRUDENCE AND TOXICOLOGY 677(24<sup>th</sup> ed. Lexis Nexis 2011).

<sup>42</sup> State v. Surendra Prasad Dave, 1970 MP LJ 242.

examined for marks of violence, such as scratches, abrasions, and bruises caused as a result of struggle.<sup>43</sup> However, absence of marks of resistance is not a conclusive factor to disbelieve a case of rape.<sup>44</sup> It may sometimes afford proof of consent<sup>45</sup> but not necessarily.<sup>46</sup> The absence of injury marks on the victim does not always lead to the conclusion that the sexual intercourse was committed with her consent.<sup>47</sup>

## **6. Indication of Penetration**

There is no law specifying that the penetration as to be there, even the slightest entering of the penis in to the private part of the woman can be considered as rape.

## **7. Age of the victim**

The age for consent in Sec. 375 of IPC is 18 years. The exact age cannot be determined on developed secondary characters of sex. The radiology report cannot be the conclusive proof for deciding the age of victim when the birth certificate is not available.<sup>48</sup>

## **8. Examination of clothes**

If the clothes are the same as those worn at the time of the occurrence of rape, they should be carefully examined for the presence of blood and seminal stains and whether these are on the front or on the back of the garments usually, seminal stains are on the front of the clothes and those of the blood are on the back, but no arbitrary rule can be laid down.<sup>49</sup>

## **9. Injuries on private parts**

Absence of injuries cannot be always the *sine qua non* of the consent, the passive submission may be due to several factors.<sup>50</sup> False charges of rape are very common in the society. Medical evidence on record does not rule out the possibility that injuries found on the private parts of victim particularly her forchet

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<sup>43</sup> Modi.

<sup>44</sup> Gurdip v. State, 1975 Cut LR 20.

<sup>45</sup> Jurnail Singh v. State, 1972 Cr LJ 824 (Raj.).

<sup>46</sup> Arjan Ram v. State, AIR 1960 Punj. 30.

<sup>47</sup> Rafiq v. State of Uttar Pradesh, AIR 1981 SC 96.

<sup>48</sup> Laxman Dan v. State of Rajasthan, AIR 2003 SC 698.

<sup>49</sup> Modi.

<sup>50</sup> Parekh & Singh, Law Relating to Crime Investigation and Medical Science, Dwivedi & Co., 2007 p.736.

and left labia majora only, could have been caused to her otherwise than by male organ, the medical evidence, therefore, fails to furnish the required corroboration to the version of rape alleged to have been committed on prosecutrix.<sup>51</sup>

### **Medical Evidence: - Corroborative Evidence**

The evidence of the girl and her father supported by medical evidence may be found to be sufficient to establish the offence.<sup>52</sup> However, in absence of corroborative medical evidence, which would have been considerable help, an accused charged with the offence of rape by a married girl, below 16 years, and living away from her husband, was not convicted.<sup>53</sup> The corroboration which can be drawn inference by the medical evidence from the internal and external injuries present on the body of the victim and the accused, seminal stains on the clothes, private parts of the victim coupled with the opinion of medical expert that there is a penetration of penis or any object can establish the testimony of the victim.<sup>54</sup> When there is discrepancy of some hours between the opinion of the doctor and the version of the prosecution about the time of the commission of the rape, the opinion of the medical officer should not be discarded on this ground alone.<sup>55</sup>

The non-production of a medical report is not fatal, if the other evidence in the case is believable.<sup>56</sup> In *State of MP v. Dayal Sahu*<sup>57</sup> the Supreme Court ruled that an appellate court shall not reserve the findings of guilt on the basis of irrelevant circumstances. Where the evidence of the victim and other witness was found reliable, accused shall not get the benefit of doubt for non examination of doctor of prosecution.

For constituting offence of rape there should not be necessarily be complete penetration of penis into private part of victim. Even partial or slightest penetration of male organ with labia majora or vulva would be quite enough for mischief of Sec. 375 punishable under Sec. 376.<sup>58</sup>

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<sup>51</sup> Mahesh Chand v. State of Rajasthan, 1998 Cri. LR 102 at p. 168 (Raj).

<sup>52</sup> Hari Ram v. State, AIR 1960 MP 59.

<sup>53</sup> Manjali v. Emperor, AIR 1941 Sind 121.

<sup>54</sup> Shyarna v. State of Rajasthan, 1977 Raj LW 146.

<sup>55</sup> Pratap Mishra v. State of Orissa, AIR 1977 SC 1307.

<sup>56</sup> Sheikh Zahir v. State of Bihar, AIR 1983 SC 911.

<sup>57</sup> (2005) 8 SCC 122.

<sup>58</sup> Mohd. Basharat v. State, 2009 Cri LJ 3626 (J&K).

Reliability of expert evidence in rape cases:-Where prosecutrix had alleged that she had received injuries on her back during the incident. There was opinion of doctor examining her that she said injuries were 4to 5 days old. Held, opinion of doctor about the age of injuries could not be considered as conclusive evidence. As the said opinion could never be exact, hence concession of sometime upward and downward should have been allowed. As such prosecution evidence could not be disbelieved merely on basis of opinion of doctor.<sup>59</sup>

Where victim was unmarried girl and accused had allegedly committed rape on her taking advantage of her helpless position. Evidence of victim was corroborated by other prosecution witness. Accused persons were apprehended immediately after occurrence. It was stated by medical report that possibility of sexual intercourse could not be ruled out. Held that sec. 114-A of evidence act could be drawn against accused persons. Conviction of accused persons was proper, but sentence was reduced to R.I. from 10 years R.I.<sup>60</sup>

Thus, the medical and forensic evidence can not be the sole evidence on the bases of which conviction can be made, as it may be possible that the victim has been raped which is proved by the medical and forensic evidence, but at the same point of time victim has been raped by the accused only has to be proved with the help of other corroborative evidences.

### **Legal Provisions**

Under Sec.45 of the Evidence Act, the opinion of persons especially skilled in some science, art, foreign law, identity of handwriting and finger impressions are relevant. In order to bring the evidence of expert, it has to be shown that he is skilled and has adequate knowledge of the subject.<sup>61</sup> Opinion of an expert cannot be the substantive evidence as it is an opinion of the third person and can be used for the purpose of the corroboration.<sup>62</sup> It is not conclusive.<sup>63</sup> Expert opinion is not necessarily binding on the court.<sup>64</sup> Duty of an expert witness was to furnish the judge with

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<sup>59</sup> Shanabhai Madhurbhai Koli Patel v. State of Gujarat, 2004 Cri LJ 268 (Guj.).

<sup>60</sup> Burla Venugopalakrishna v. State of A.P. 2005Cri LJ 1164 (AP).

<sup>61</sup> State of Himachal Pradesh v. Jai Lal, AIR 1999 SC 3318.

<sup>62</sup> Khyall v. State, 1980 ALJ 230.

<sup>63</sup> Chandreshwar Singh v. Ram Chandra Singh, AIR 1973 Pat. 215.

<sup>64</sup> Las Society of India v. Fertilisers and Chemicals Travancore Ltd. AIR 1994 Ker. 308.

the necessary scientific criteria for testing.<sup>65</sup> Where prosecutrix had alleged that she had received injuries on her back during the incident there was opinion of doctor examining her that she said injuries were 4 to 5 days old. Held, opinion of doctor about the age of injuries could not be considered as conclusive evidence. As the said opinion could never be exact, hence concession of sometime upward and downward should have been allowed. As such prosecution evidence could not be disbelieved merely on basis of opinion of doctor.<sup>66</sup>

Under Sec. 114-A of the Evidence Act, the Court presumes that the woman who was the victim of the rape had not consented and that offence was committed against her will. In certain prosecutions for rape under sec. 376(2) (a)-(g) of the IPC, where sexual intercourse is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the court shall presume that she did not consent.<sup>67</sup>

Under Sec. 53-A of the Code of Criminal Procedure during the investigation the medical examination of a person accused of rape would be non-productive if there are no reasonable grounds for believing that such medical examination would afford evidence as to commission of such offence.<sup>68</sup> This is introduced in 2005 to overcome the difficulty in conducting the examination i.e. 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 are necessary in a particular case.<sup>69</sup> Drawing of blood sample for detection the offence of rape wherein the investigation agency has to establish its case beyond reasonable doubt, cannot be termed as violative of Art. 20(3) of the Constitution.<sup>70</sup>

Under Sec. 164-A of the Code of Criminal Procedure, the victim of rape is medically examined by the 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

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<sup>65</sup> State of H.P. v. Jai Lal, AIR 1999 SC 3318.

<sup>66</sup> Shanabhai Madhurbhai Koli Patel v. State of Gujarat, 2004 Cri LJ 268 (Guj.).

<sup>67</sup> Gopal S. Chaturvedi, Field's Commentary on Law of evidence 4209 (12th ed. Delhi Law House 2008).

<sup>68</sup> Sarkar, The Code of Criminal Procedure, 10th ed., 2012, Lexis Nexiis Butterworths.

<sup>69</sup> *Ibid.*

<sup>70</sup> Halappa v. State of Karnataka, 2010, CrLJJ 4341 (Kant).

medical practitioner.<sup>71</sup> The time limit of 24 hours has been prescribed under this Sec, for sending the victim for medical examination. This is important because any delay in sending the rape victim may frustrate the purpose for which the medical examination of the victim of rape or attempted rape is required to be done for the purpose of proper decision of the Court of the accused charged with rape or attempted rape.<sup>72</sup>

### **Judicial trends: Journey From Past to Present:-**

In the case of *Bidhia alias Bidhi Chand v. State of Himachal Pradesh*,<sup>73</sup> on medical examination it was found that there were bruises on the breast, breast were fully developed, multiple abrasions over the left breast, red in colour, external genitalia were normal; hymen was ruptured with no bleeding and there was no discharge from vagina and no laceration of vagina; semen found on the slide of vaginal smear and according to doctor the duration of injuries was six to 24 hours; doctor opined that she was not used to sexual intercourse since vagina allowed two fingers with difficulty and that rupture of hymen was due to rape.<sup>74</sup>

In the case of *OmPrakash v. State*<sup>75</sup>, The doctor who examined the prosecutrix found blood mark on her cloths and vulva and a tear mark on the perineum which bled on touch. The Hymen was torn. Moreover there was blood stain over her clothes and a tear on the perineum. The conviction was therefore, upheld.

In the case of *Mahesh Kumar Bheru Lal Chawada v. State of MP*<sup>76</sup> Frock of the prosecutrix was seized along with inner garment known as “shamiz’ and sent to chemical examiner, over which stains of semen found. Merely because the semen stains were found, in absence of specific circumstances showing sexual intercourse, the conviction cannot be sustained.<sup>77</sup>

In the case of *Sakaldeo Shah v. State of Bihar*<sup>78</sup> Victim girl of 16-17 years was having pregnancy of three months. According to Modi’s Jurisprudence two years has to be left on either side arithmetical

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<sup>71</sup> *Supra Note: 68.*

<sup>72</sup> Durga Das Basu, Criminal Procedure Code, 1973, 5th ed., 2014, Lexis Nexis, p.914.

<sup>73</sup> 1985(1)Crimes 559.

<sup>74</sup> *Ibid.*

<sup>75</sup> 1987(1) Crimes 645 (Del).

<sup>76</sup> 1995 CrLJ 2001.

<sup>77</sup> *Ibid.*

<sup>78</sup> 1994(4) Crimes 22 (Patna).

or other error of examination on doctor's evidence when the girl was aged 16-17 years she was having valid consent in illegal intercourse with accused. There cannot be conviction under Section 376, IPC.<sup>79</sup>

In *Rameshwaram Kalyan Singh v. State of Rajasthan*,<sup>80</sup> the question of corroboration has been a subject matter of discussion. Supreme Court it was held: The first question is whether the law requires corroboration in these cases. The Evidence Act nowhere says so. A woman who has been raped is not an accomplice. If she was ravished she is the victim of the outrage. In the case of a girl below the age of consent, her consent will not matter. The learned High Court Judges were wrong in thinking that they could not, as a matter of law, convict without corroboration. The tender years of the child, coupled with other circumstances appearing in the case, such, for example, absence of motive to falsely implicate the accused, its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case.<sup>81</sup>

In the recent case of *Om prakash Vs. Dil Bahar*<sup>82</sup>, it was held that even if the medical examination of the victim is not done due to any of the reason, then also if the victim says that she has been raped, without medical examination as well her contention can be consider as a valid and believed that she has been raped.

### **Conclusion & Suggestions**

The Medical and Forensic Science Evidences find the utmost place in the investigation of the crime of rape and ascertaining its occurrence. The age old means of investigation i.e. Interrogation, development of sources and surveillance to detect the crime. The barbaric, torturous and slow-pace investigations have no place in today's society. The only way to turn is the developing science. It is in this context, Medical and Forensic Science have found their importance. After conducting research the researcher has found out the hypothesis to be partially true. These mechanisms are detection tools and they cannot be put to use until the crime is reported and that also within proper duration. Moreover these techniques have certain limitations to them and thus lack reasonable medical certainty. The suggestion researcher would like

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<sup>79</sup> *Ibid.*

<sup>80</sup> AIR 1952 SC 54.

<sup>81</sup> *Ibid.*

<sup>82</sup> AIR 2006 SC 743.

to provide is that this mechanism is not gaining progress only for the reason that the cases are not reported on time. And this is because of the defects in existing system to secure justice for rape victims, hostile procedures and police. Moreover the Forensic Science examination techniques, which are far more accurate, must be made available in as much extent as its counterpart.<sup>83</sup>

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<sup>83</sup> *Supra Note: 1.*

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