

Significance of Forensic Evidence in Sexual Offences

Amit Singh*

Abstract

Sexual offences are dangerous attack only human body because the offenders are generally molesting and sexually torturing the victims without their consent. She is directly injured and undermines the dignity, modesty and steam of the victim who suffered such attacks. In Indian criminal law, rape is regarded as a heinous crime. But Indian society stigmatizes and brings shame to the victims who suffered the most. Thus, at this stage, medical and forensic evidence plays an important role and plays a vital role in the work and uncovering the onset of rape. However, these are mere detection tools and might be used only the crime is reportable at intervals the right length, that does not happen during a majority of cases concerning sexual offences. Moreover, repeatedly the medical evidences do not seem to be properly recorded and documented thereby resulting in a poor rate of conviction, particularly in cases of rape.

Keyword: Forensic Evidence, CRPC, 1973 Section 53A, 357C, MTP ACT 1971, DNA Evidence, Indian Medical Council Act, 1956

INTRODUCTION

The fast-paced world with great knowledge and advanced technology influences people to commit crimes. From aggregation life science of people to making a body speak through numerous tests and opinion, we have come back a protracted means. Still, this sort of facilitate involves numerous alternative factors like; trained workers, forensic specialists, trained police facilitate who will handle documents with correct care and caution and most significantly furnishing acceptable finances and inventories to grease similar processes. Currently, the rapid growth of sexual offences, the importance of advanced medical facilities and the bakery are becoming crucial. During this composition, we glance at the assorted aspects of why medical backing is crucial once a sexual offence is committed. The last 25 years, forensic science carries out magical work in the scientific world such as (DNA, writing, physical evidence database and new scientific instrumentation). However, studies of these measures must evaluate the contribution of such a forward-looking role as the impact of scientific evidence in criminal cases. Scientific studies have assessed the importance of DNA evidence in investigations, but we are not thoroughly examined throughout the crime scene with this current technology.

(In 2006, the #NationalInstituteofJustice [1]) funded this project to cope with the subsequent four goals:

- Objective 1—Estimate the proportion of crime scenes from that one or extra sorts of forensic proof is collected;
- Objective 2—Describe in details that what kinds of Forensic evidences are collected at crime scene;
- Objective 3—How can we track down the usefulness and debilitation of evidences inside the criminal justice system from crime scenes through laboratory analysis, then through ulterior criminal justice processes; and

*Author for Correspondence

Amit Singh
E-mail: officialamitsingh26@gmail.com

Student, Manav Rachna University, Faridabad, Haryana, India

Received Date: March 12, 2022

Accepted Date: April 04, 2022

Published Date: April 20, 2022

Citation: Amit Singh. Significance of Forensic Evidence in Sexual Offences. Indian Journal of Health and Medical Law. 2022; 5(1): 1–5p.

- Objective 4—Identify those styles of forensic proof contribute most frequently (relative to their accessibility at against the law scene) to thriving case outcomes.

WHAT IS FORENSIC EVIDENCE

Forensic proof is that the use of medical skills in aggregation proof with relevancy against the law that has taken place. Now, there are two extensively used terms after we state forensic evidence.

1. Forensic
2. Medico-legal.

Forensic as ‘scientific tests or ways in which employed in reference to the invention of crime’. It collects the evidences, analyze it, and preserve the scientific confirmation throughout the way of a dissertation. On the opposite hand, among varied delineations of croaker-legal, with relevancy offences, it is outlined as a legal case taking medical skills once brought by the police for examination. In these tests, it involves opinions on documents and on humans, like DNA analysis, writing etc.

Importance of Forensic Evidence in Sexual Offences

Provisions related to sexual offences are generally divided into two;

1. Adults i.e., females over the age of eighteen years,
2. Children (hereinafter known as adolescents) i.e., females below the age of eighteen years.

In most criminal cases, forensic science plays a major role. It answers various questions about what caused death, when and what kind of weapon is used in the commission of a crime. The law is different for adults in cases of sexual offences. Concurrence is an important side once we have a tendency to encounter tests like these. Adults for illustration have the capability to understand the importance of those examinations then their concurrence are often fluently gained. Also, in law it is clearly mentioned that if an adult voluntarily gives her assent to refuse for such an examination than before or anytime throughout the test the medical examiner stops conjointly.

The Supreme Court in the case of *Samira Kohliv v Dr Prabha Manchanda and Another* [2] held that the doctor should inform the person giving the concurrence of the nature of the treatment, procedures, edges of comparable examination and every one the risks concerned if any which similar concurrence is voluntary in nature.

In the case of *Mafabhai Nagarbhai Raval v State of Gujarat* [3], Court declared that if the forensic study is not perfectly studied than court cannot substitute their own opinion.

Likewise, the importance of forensic proof was stressed within the case of *Pawan v State of Uttaranchal* [4] (Currently Uttarakhand) wherever the forensic substantiation proved on the far side cheap mistrustfulness that the victim failing of a murderous death which she was raped before being dead. A below 16-year-old girl raped by accused and the victim shows as major by their body, later in medical test it is proved that the girl is minor.

Governing Provisions in Sexual Offences

The adults are lined below the IPC, 1860 and within the CRPC, 1973 and the IEA, 1872. The similarity between both the acts is that it protects the female and the name of victim is confidential, this is often to hide the victim’s dignity and identity from getting blemished within the public sphere. Under the Indian Medical Council Act, 1956 certain medical provisions are governed as follows:

1. Indian legal code, 1860 penalization for offences of rape under Sections 375 to 376E.
2. Criminal Procedure Code, 1973-U/S 53A (1) The examination of accused of rape shall be done by the health care providers and U/S 164A medical exam of a rape victim conducted. Consent for similar examination below this Section is primarily important.
3. A medical practitioner is who defines under Section 2(h) of the Indian Medical Council Act, 1956.

4. Amongst the opposite necessary provisions concerning rape obvious Act, 1872 none is Section 45 that is that the opinion of the specialists and Section 53A that states that former sexual experience is not applicable in rape cases.
5. Below under the Protection of Children from Sexual Offences (POCSO) Act, 2012 Section 27(4) states that an examination of child shall be conducted in the presence of her parents or guardians or the examination conducted by a lady doctor.

Role of a Medical Practitioner

When we talk about the forensic evidence or forensic science then the role of medical practitioner comes in first place and they play a primary and important role. It is of alike position that one small mistake will send an innocent person to jail or will so leave the victim empty justice. They perform a binary part in such a scenario. U/S 357C of the Code of Criminal Procedure, 1973 [5]. All the hospitals have a responsibility to inform about the rape incident that needs for medical attention to the police and all the victims are treated free of cost. The subsequent are the manner that they should follow once someone knocks on the door;

- Furnishing first-aid to the victim,
- Furnishing them data concerning examination and assortment of samples,
- Data associated with however the incident materialized,
- Medical exam,
- Age estimation take a look at once requested by the inquiring agency,
- Assortment of proof,
- Establishing those proof, Sealing, packing, and labelling them,
- Treating any reasonably injuries,
- Tests for establish any physiological state or STD,
- Mental comforting.

Forensic Evidences Plant in Cases of Sexual Offences

For examining the rape victim and rape indicted there are different types of forensic evidences are planted. It more differs once a rape victim is a teen associate degreed once she is an adult.

Factually, sex organ injury or non-genital injury happens in concerning solely fifty of rapes of females.

- Medical tests and the severe condition of mother injuries are creating a hindrance in pregnancy and STDs.
- Furnishing ends up in case pregnancy is critical. 20 Weeks of pregnancy can be terminated, which is permitted by this act. In one in all the leading cases, the Mumbai tribunal allowed revocation of a 24-week recent vertebrate because the pregnancy affected the inner health of the mother.
- Array of forensic Evidences on the person of the female as well as her clothes and any other thing she was wear at the time of offence was committed.
- Recommendation for comforting sessions for extremity operation and cerebral support should also be created.

As seen within the forenamed points, there ought to be a technical crew of doctors at work. Every hospital ought to have a scientist WHO will perceive and calm the victim once she is brought for her examination beside a forensic professional and a medical practitioner beneath *Section 2h of the Indian Medical Council Act, 1956*. These points return a lot of material in cases wherever the victim may be a minor.

Guidelines Associated with Forensic Medic Examination in Assault and Sexual Assault Cases

The (Central forensic Science Laboratory) that operates beneath the aegis of the Ministry of Home Affairs, Government of Bharat free a contemporary set of pointers associated with statutory offence in forensic medical exam.

Guidelines are:

1. Concurrence is primary once it involves the examination of a victim. A medical man must inform the victim of varied tests concerned in similar medical exam and the advantages of similar examination. Nonacceptance to relinquish concurrence will not mean denial to relinquish examination. The matter is should be handled fastidiously and with high caution once the victim is a teen.
2. Detailed data ought to incline to the victim just in case of associate degree adult and if she is unable of understanding the procedure conjointly to her guardians/folks or if the victim may be a minor conjointly to her family of the tests and colorful procedures concerned in an exceedingly medical exam.
3. A two-finger take a look at is not allowed.
4. The medical examiners are refrain from asking any question on past life of the victim.

Element Determining the Nature of Forensic Evidence

There are three important elements. These are as follows:

1. Acts elaborated in sexual violence.
2. The period between completion and review.
3. Whether the victim washed or changed his or her clothing after the action.

Guidelines for Sample Collection

There are certain guidelines for DNA profiling and the presence of semen or how to collect samples with almost care.

1. *Clothes*: Discovery of blood, saliva, semen, vaginal stashing etc. on apparel and identification of the victim or indicted by DNA profiling.
2. *Sanitary pad/tampons*: Identification of accused by DNA profiling to detect the presence of sperm or semen.
3. *Condom* showing up existence of semen and or presence in vaginal external face.
4. *Proof on the body*: Injuries on private part, scratches on body, bite marks, redness, Presence of body marks, etc.
5. Head hair.
6. Public hair.
7. Vulva swab
8. Vaginal swab.
9. Cervical swab.
10. Anal/rectal swab.
11. *Oral swab*: Oral genital sexual act
12. *Penile tar and urethral swab*: the penis and vaginal contact.
13. *Smear slides/vaginal, cervical, anal oral etc.*: To descry the presence of semen.
14. *Nail clippings*: Physical contact
15. *Urine sample*: Use for pregnancy test.
16. *Vaginal marshland and abandoned foetus (if any)*: Use to check the presence of semen and for DNA profiling
17. *Blood*: To check the presence and limit of alcohol and medicine for DNA profiling.

Collecting this type of evidences are very critical part because they are fragile in nature.

In *SP Kohli v High Court of Punjab & Haryana* [6], the Supreme Court said that these evidences (Smegma) are fragile in nature and easily loses all importance after 24 hours of sexual intercourse.

In *Rafiq v State of Uttar Pradesh* [7], the SC held that the absence of any kind of physical marks does not mean that the act is not committed with the victim. Also, in this scenario we need to collected more than samples, one or two samples are not sufficient.

Important Instructions for Medical Practitioners

1. It is important to securely collection of evidences and maintain integrity of samples collected. It should not be compromised.
2. Defensive gears such as gloves, masks, aprons, and headpieces should be worn to avoid impurity.
3. What we need to avoids at the time of examination:
 - Sneezing,
 - Coughing.
4. Sterile or disposable bias for collecting samples should be used.
5. Fragile nature evidences need to be stored in cool and dry places.
6. All the evidence should be packed duly and precisely. Labelling should be done carefully and there should be no ambiguity.
7. Polythene bags should not be used.
8. It is material to observe, maintain and validate the chain of command.
9. When the evidence is packed, it should have all the details easily written over it.
10. All necessary documents are signed.

The attested specimen seal and hand should also be transferred on with the evidence.

CONCLUSION

If our medical team is looking at the rape victim properly, it will help the victim and the state present strong arguments against the accused. The evidence collected by forensic investigators is very fragile and becomes irrelevant after a certain period of time. So, they must record. The consent of the victim is a top priority for the medical examination as well. It must also help and understand the importance of the medical examination. If she refuses to submit to a medical exam, this could have a serious impact on the cases. Secondly, forensic investigators investigate the crime scene to gather more evidence to strengthen the evidence against the accused. You must make sure that the evidences you have collected is spoken in the court and if the victim is refusing for examination, then the case will go down to the drain.

Also, the females are not only victims of rape male's and LGBTQ community also faces this evil of society. For which we need to strengthen our law's. Which protect not only female but also male's and LGBTQ community. Because rape is a rape whether it is done against male or female.

REFERENCES

1. Office of Justice Programs. (2022). Offices. National Institute of Justice (NIJ). Office of Justice Programs. [online] Available at: <https://www.ojp.gov/about/offices/national-institute-justice-nij>
2. (2008) CPJ 56 (SC)
3. (1992) 4 SCC 69
4. Criminal Appeal No. 1654 of 2013
5. Section 357C of CRPC 1973: Treatment of victims
6. 1979 SCC (1) 212
7. 1980 SCC (4) 262