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In Cases of Rape: Evidentiary Value of Medical and Forensic Evidence

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Abstract

In India, reforms related to sexual harassment cases have focused on medical examination. However, digital evidence and crime scene analysis have received little to no attention. The use of digital evidence, such as audio recordings and emails, can be crucial in corroborating sexual violence cases. DNA testing has become an important tool in rape cases, but there is a lack of specific legislation to guide its use. Several court cases have highlighted the importance and reliability of DNA evidence in establishing guilt or innocence. Some legal provisions and amendments have been made to the Indian Evidence Act to address issues related to consent in sexual assault cases and to accommodate witnesses who cannot speak verbally. To ensure justice for the victims and consistency in investigations, the method for addressing rape complaints needs to be improved overall.

Keywords: Digital-forensic evidence, rape, code of criminal procedure, evidentiary-value of medical and forensic evidence

INTRODUCTION

There have been a plethora of cases of harassment of sexual nature in India against the female population. However, in 2012, there was gangrape against Jyoti Singh, in which she was stabbed and brutally raped by six men on a moving bus. This incident, along with various acts of other sexual harassment against women in India formed, the "2013 Report of the Committee on Amendments to Criminal Law," also called the Verma Report [1]. The Criminal Law Act of 2013 eventually evolved into a provision. This received substantial criticism as it had failed to criminalize cases like marital rape, among other issues. However, this had a major contribution in the attempt to reduce the trauma of the rape survivor or victim [2].

This article primarily examines the development of forensic evidence under the Indian Evidence Act and the Code of Criminal Procedure. This article further focuses on the judicial trends in regard to the admissibility of medical-forensic evidence in the Indian context. Another point of discussion is the admissibility of the DNA-based evidence before the court of law. The specific guidelines under the Indian Evidence Act and the Code of Criminal Procedure are explored in this paper. Last, the article laid down a detailed timeline and analyzed each bit of it with regards to the changes in the laws of admissibility of *medical* and *forensic* evidence, especially in cases pertaining to violence of sexual nature and cases against women in the country.

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Evolution of Forensic Evidence in India- Evidence and Judicial Trends

Concerning improper reporting and inadequate statistics regarding the gathering, possession, and use of evidence of forensic nature in cases of sexual-offenses, evaluation of role of evidence in the rate of conviction have become quite a challenging issue. This article particularly focuses on "physical

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evidence" and "digital evidence." The physical evidence consists of both nonbiological and biological components, including fibers, glass, soil, and biological components including skin and epithelial tissue, semen, saliva, and blood. The majority of the digital evidence is any kind of data that may be gathered from digital devices and utilized to support or refute facts of a case [3].

METHODOLOGY

The method of study used for this article is qualitative, case study method, and use statistical procedure for the analysis of data.

RESULTS

Techniques are ineffective, and India is missing a clear, broadly accepted plan. Utilization of forensic-evidence in sexual offences investigations and prosecutions in India, more development is required. A more objective, scientific record of the events, which can help in the accurate reconstruction of sexual violence crimes against women and help strengthen a case against a perpetrator is provided by the existence of physical and digital evidence offers, despite the fact that the victim's account about incident is important in proceedings.

DISCUSSION

Physical Evidence

Medico-legal investigations in the cases of harassment in India, throughout the history, has exhibited a pattern of distrust towards the victim, making verification an important element of decision for the courts usually in all the cases of rapes. The identified 4 categories of corroborating-evidences especially to higher court case's disposition from the year 1860 to 1947 were "class and caste status, sexual past, the time in which the complaint was made relative to the incident and signs of resistance on the victim's body" [4]. Regarding the latter, the victim's physical characteristics were examined to ostensibly assess whether the victim is capable of defending herself or overpowering the assailant. The verbal testimony by the victim was always overshadowed by the display of physical evidence such as the force of the perpetrator and the force of resistance of the victim including injuries and very obvious signs of violence [3]. Usually, signs of resistance resulting in rape in medical reports were always a prerequisite to carry out an investigation and subsequently trial. Apart from the external physical symbols of force, a distrust towards the victim brought focus on examinations of the fact that subjectively evaluates if a victim was a virgin or not [4].

In *State of Karnataka v. Manjanna* [5], the Magistrate stated that, at first found, no apparent reason to not trust the victim's version of the crime as the latter was backed by medical evidence & witnesses. On appeal, several discrepancies were discovered by the High Court which included lack of injuries to both the victim and the perpetrator; there was a lack of victim's credibility.

The Supreme Court overruled the High Court's judgement and upheld the perpetrator's conviction. In *State of Punjab vs. Singh* [6] The Higher Court's ruling that the victim's sexual activity's history and the absolute absence of signs of abuse could not be used as justifications to disregard a rape claim and exonerate the alleged perpetrator was incorrectly deemed by the Apex Court.

Section 164-A, added to "Code of Criminal Procedure" establishing test of the rape victim in 2005 to set examination guidelines for medical practitioners [7]. It included documentation of relevant details of survivor, all or any injuries the latter sustained, and every evidence gathered during examination. The usage of sexual-assault-kit was made mandatory by the High Court of New Delhi to collect and preserve the forensic evidence recovered during medical exams, provided guide lines for performing exams and also outlined the required infrastructural necessities for the care centers and hospitals to conduct exams and correctly store the evidence that is recovered.

The "Centre for Enquiry into Health and Allied Themes" (CEHAT) had published the "*Manual for Medical Examination of Sexual Assault*," which laid down the guidebook to conduct medical-

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examinations for sexual assault survivors [8]. These recommendations stressed the significance of conducting investigations and acquiring evidence to prevent any loss by preventing delay [9].

In the year 2013, the Maharashtra Government released the "*Forensic Medical Examination of Sexual Assault Cases Instruction Manual*," alongside additional directives from the Central Government. These included the "*Forensic Medical Care of Victims of Sexual Assault Guidelines*" and the 2014 publication "*Guidelines & Protocols: Medicolegal Care for Survivors/Victims of Sexual Violence*." While a degree of coherence existed among these guidelines, they lacked an exhaustive and comprehensive framework [10].

In terms of corroboration, the "Committee on Amendments to Criminal Law" (Verma Report) articulated that there is no absolute necessity to substantiate the victim or survivor's testimony in cases of rape [11]. In instances of sexual harassment, corroborative evidence encompasses the witness's statement, suspect's confession, physical evidence, and digital evidence [12].

In 2015, the Government of Delhi issued a memorandum to hospitals, stipulating that the examination could be conducted under the supervision of medical professionals following the consent of the survivor of rape. However, this memorandum encountered considerable public scrutiny.

DIGITAL EVIDENCE

Multiple reforms with respect to the cases of sexual harassment in India have had particular emphasis on medical examination. There also have been discussions on nonbiological transfer-physical evidence, and no to little attention is given to crime scene investigation and digital evidence. As inquiries and various types of evidence fall under the jurisdiction of the forensic laboratory and the police department, the guidelines provided by these organizations underwent a thorough examination. These include documents like the "Advanced Course on Scientific Investigation Study Material," the "Model Police Manual," and the "Final Report of the Perspective Plan for Indian Forensics." General information and procedures including crime scene investigation, evidence collection, and forensic science is reported in Volume II of the *Model Police Manual* [13].

The 2nd volume of the "*Model Police Manual*" [14] talks about the information about digital devices, like as electronics and valuable evidence that could be retrieved via them. "Digital evidence is often overlooked in sexual violence investigations, even though it can be used as corroborative evidence in these cases. The usage of digital evidence as corroborative evidence is often overlooked in cases of sexual violence. It includes audio recordings, emails and location data among others, can provide a wealth of data with probative value such as evidence of a crime or the identity of the perpetrators."

The digital devices and the internet can be a good source for obtaining the "evidence of sexual violence against women. The evidence of rape or any other kind of sexual crime, in devices like cell phones and tablets can help track the perpetrator at a crime scene due to the location data that can be retrieved from the device and the service provider" [15].

The overall approach needs to be improved while dealing with sexual harassment cases faced by the women of India. The credibility of evidences and their investigation can be enhanced so that there is justice to the victim, and it is administered with uniformity.

TRACING THE JUDICIAL TRENDS OF EVIDENTIARY VALUE OF MEDICAL AND FORENSIC EVIDENCE

In the landmark case of "*Bidhi Chand v. State of Himachal Pradesh*" [16], upon examination, it was determined that the victim exhibited crimson-colored marks and abrasions on the breast, while the external genitalia appeared normal. However, there was an internal genitalia rupture. Semen was discovered on the undergarment, and medical professionals indicated that the physical injuries were

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sustained within a timeframe of 6 to 24 hours. Additionally, medical examination indicated that the victim was not accustomed to sexual intercourse [17].

In the landmark case of "Om Prakash v. State*"* [18] the medical practitioner responsible for the examination noted the presence of blood stains on the victim's vulva and garments, along with a tear mark on the perineum. Subsequently, the conviction was upheld based on these findings.

In the case of "*Mahesh Kumar Bheru Lal Chawada v. State of MP*" [19], the dress of the victim was observed along with the undergarment known as "shamiz" and was sent to the individual responsible for the examination. Stains of semen were found. Just because of the stains and no other evidence of the non-consensual intercourse, the conviction was not sustained.

In "*Sakaldeo Shah v. State of Bihar*" [20], the survivor was 16 years old and was 3 months pregnant. In accordance to Modi's jurisprudence, 2 years has to be left on any kind of error of examination on doctor's evidence when the girl was aged 16 years and was having a valid consent while she had an illegal intercourse with the accused. Hence, it was held that there could not be any conviction as per Section 376 of the Indian Penal Code.

In the case of "*Om Prakash v. Dil Bahar*" [21], it was held by the court that the statement and the contention of the rape victim has to be considered valid even if the medical examination of the survivor/victim is not done for whatever reason.

As a result, it is evident that the first defendant's defense is neither detailed nor full. It is not open to the first defendant to argue that the plaintiff has not discharged his responsibility of establishing the title and that the plaintiff is leaning in favor of the first defendant for the support of the plaintiff's case when the first defendant is shirking his responsibility of not disclosing his defense clearly and completely. There is no solid spot for the plaintiff to lean on the first defendant because the first defendant's case is essentially weak. As a result, the plaintiff's second appeal must be granted, and it is granted accordingly.

DNA Testing Scenario in Rape Cases in India

Among the array of inventive resources bestowed by neuroscience for the analysis of forensic proof, a noteworthy inclusion is the contentious exploration of DNA—the substance that constitutes the genetic blueprint for a vast number of species. DNA profiling, occasionally denoted as DNA typing, entails scrutinizing DNA discovered in tangible evidence like blood, hair, and sperm to ascertain its potential correlation with DNA derived from specific individuals. DNA testing is increasingly used as evidence in criminal prosecutions. DNA evidence must always be completely and accurately extracted, stored, and recorded to convince the court, the evidence being presented is reliable. In India, there is no formalized legislation that could give precise instructions to courts and investigating authorities with regard to how to proceed when using DNA as evidence. Furthermore, there are no explicit guidelines for handling matters related to science, technology, and forensics in either the Indian Evidence Act of 1872 or the Code of Criminal Procedure of 1973. Due to the lack of such a provision, an investigating officer finds it challenging to acquire data that uses current procedures to prove the accused's guilt.

Law enforcement officers have the prerogative to engage the assistance of a qualified medical expert in a sincere effort to facilitate an investigation. Nevertheless, it explicitly prohibits a complainant from procuring blood, sperm, or any other form of evidence with the intent of initiating legal action against the alleged perpetrator. An amendment to the Cr. P. C. (Amendment) Act in 2005 introduced two additional provisions, empowering the designated investigator to collect DNA samples from both the deceased victim and the accused in collaboration with a medical practitioner. These laws permit both the medical examination of the rape victim and the examination of a person suspected of rape by a medical practitioner. However, the reliability of this evidence has remained in doubt as a result of

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conflicting judgments from the Supreme Court and several High Courts. Although judges agree that DNA testing is a reliable and definitive scientific method, they infrequently dismiss this evidence because of legal or constitutional restrictions or public policy reasons. The Indian Evidence Act of 1872 and the Code of Criminal Procedure of 1973 do not contain any provisions for addressing concerns related to science and technology, hence, it is urgent to review these clauses and regulations. Many developed nations were compelled to change their laws as a result of DNA testing being used in the legal system.

In *Kamalanantha v. State of Tamil Nadu* [22], Premanand, the famed swami, held many, both female as well as male devotees. "Swamiji" had raped one of his female disciples, and she was impregnated as a result. She fled the Ashram and filed a police report. When the question of parentage of the children emerged, the court ordered a DNA test to determine paternity. Blood samples from the infant, Swamiji, and his followers were taken and then analyzed, confirming, Swamiji was indeed the father of the child. The Swamiji was found guilty based on this DNA test. An Army Major was accused of raping a mother and daughter [23]. Throughout, the major vehemently refuted the allegations. Blood samples from the claimed suspects and victims were transferred to Chandigarh's Central-Forensic-Laboratory. He was not engaged in the suspected crime, according to the results of a DNA test. As a result, the DNA test saved the day for major. On the charge of murder, a woman and her husband were detained in separate jail wards. The female inmate accused a jail official of raping her [24]. She was discovered pregnant during a routine medical check-up. Because they were living in separate houses, there was no chance of cohabitation by the husband and wife. A DNA test has been demanded for 12 people, which includes five police officers and a couple inmates. This demonstrates how DNA testing can assist in proving a person's innocence or guilt.

A Delhi High Court Division Bench instructed that a DNA test be performed on a rape victim's unborn [25]. The court mandated a medical termination of pregnancy and a DNA test for the fetus in a rape case. As per the victim's accord, she was assaulted by various people on multiple occasions, without her consent. Aside from the charge of rape, which is documented in both parties' records, the petitioner's mental pain and agony, as well as grave injury to her mental being, has been clearly stated in her affidavit owing to the continuation of the unwanted pregnancy in her womb. The court felt compelled to reach the judgment that unless the petitioner's pregnancy is aborted, she will go through mental agony, distress and also irreversible loss that can't be compensated. The court ordered a medical abortion of the plaintiff's pregnancy to be carried out by the chairman and superintendent of the Government Kasturba Hospital, and retain the fetus so that the investigating authority could request a DNA test to help prove the petitioner's allegations of rape against the persons [26]. A student of the Delhi University of Law was brutally raped and killed in the year 1996 in a South Delhi apartment. Given that the clothing sent for DNA testing was in a packet with a broken seal, the trial court declined to approve the Forensic Laboratory's findings, implying that forensic evidence had been tampered with [27].

On November 15, 2002, three men raped a medical student in her fourth year of study at Maulana Azad Medical College when she was at the ancient site *khooni darwaza*. DNA testing was done in the rape case of a medical student at Maulana Azad Medical College in New Delhi. law enforcement managed to capture suspects. On blood samples taken from one of the defendants, DNA testing was run. To the DNA Fingerprinting and Diagnostic Laboratory in Hyderabad, the samples were shipped. The test's outcomes showed that the samples matched the semen discovered in the victim's vagina and the DNA sample discovered on her sanitary pad. As a result, DNA might be used to identify the main suspect [28].

LEGAL PROVISIONS AND INDIAN EVIDENCE ACT'S AMENDMENTS

Section 25. After Section 53 of the Indian Evidence Act of 1872 (hereinafter, in this Chapter as the Evidence Act), the following Section is inserted, namely: "53A. In a prosecution for a crime under

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Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376-C, Section 376-D, or Section 376E of the Act.

Indian criminal to attempt to commit such a crime when the issue of consent is controversial, evidence of the victim's character or that person's previous sexual experience with another person is not relevant to obtaining such consent, or the quality of consent.

Section 26 The general idea of the substitution is as follows in Section 114-A of the Evidence Act: 114A. Where sexual-intercourse between the accused and victim has been proved and the issue of consent arises, and the alleged victim states in her testimony, that she never consented, the court shall presume in her favor. This is true for rape cases involving any of the clauses from clauses (a) to clause (n) of sub-section (2) of section 376 of the IPC.

Section 119 of the Evidence Act shall be changed to the below mentioned:

"Section 119. A witness who is unable to speak may give his evidence in any other manner that he can make it intelligible, such as by writing or by signs; nevertheless, such writing and signs must be done in open court, and such evidence shall be deemed to be oral evidence: If the witness is unable to communicate verbally, the court shall record the statement with the assistance of an interpreter or a special educator, and such testimony shall be video graphed.

CONCLUSION

Sexual assault survivors' resort to the legal system to ensure that wrongdoers are held accountable for their actions. In order for a case against the perpetrator to proceed, concrete evidence of sexual abuse must be presented in a court of law. Currently, a significant portion of this evidence is acquired through eyewitness testimonies. However, approaches lacking scientific rigor, employed from the crime scene to the forensics laboratory, no longer suffice in providing a credible basis for establishing facts and bringing perpetrators of sexual violence to justice. The absence of a well-defined, universally accepted strategy in India, coupled with the inadequacy of other methods, underscores the need for substantial progress in utilizing forensic evidence within the context of sexual violence investigations and prosecutions in the country.

The incorporation of both physical and digital evidence offers a more impartial, scientifically verifiable account of events. This can greatly aid in precisely reconstructing instances of sexual crimes against women and bolstering complaints against offenders. While the victim's narrative remains pivotal in legal proceedings, the presence of such evidence adds another layer of substantiation. The 2013 Act endeavors to safeguard victims, but it falls short in fostering a forensic culture that would fortify the investigation of sexual abuse and, consequently, deliver justice to survivors.

Although the judicial responses to the 2012 gang rape of Jyoti Singh represented a positive stride, they did not establish a definitive framework for addressing sexual assault against women. Essential best practices must encompass consistent and thorough protocols for documenting, gathering, analyzing, and preserving both physical and digital evidence collected from victims, perpetrators, witnesses, and the crime scene. Effective coordination in cases of sexual violence necessitates the collaboration of these professionals within an interdisciplinary framework. Enhancing domestic forensic capabilities to accommodate tangible and digital evidence of sexual assault stands as a crucial prerequisite for these professionals' efficacy. Ultimately, these adaptations ensure the sustainability of mechanisms designed for addressing instances of sexual violence.

The objective of these recommendations is to attain unanimous endorsement from India's legal, judicial, law enforcement, medical, and forensic communities.

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