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Introspection of Law on Collection of Evidences During the Process of Investigation in Rape Cases in India: A Multidimensional Analysis

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ABSTRACT

Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A rapist not only violates the victim's privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process. A murderer destroys the physical body of the victim; a rapist degrades the very soul of the helpless female. Rape is not only a crime against the person of a woman. It is crime against the entire society. Rape destroys the entire psychology of a woman and pushes her into deep emotional crises. The victim is looked down on in derision and contempt. The statistical studies reveal the stark reality of the women in Indian society. Women are assigned an inferior status made to live in ultra misery, subjugation and subservience. The existential -crises clubbed with cultural factors like immersing women in obscurantist and superstitious beliefs, rotten and worn-out traditions and religious practices are the main reasons responsible for the plague of rape in India. Respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if courts deal strictly with those who violate the social norms.

I. NATURE OF OFFENCE OF RAPE

Biology and Psychology are the two branches of applied sciences majorly dealing with the problem of the rising impetus of rape cases in society and more particularly concerning Indian society. The issue is no longer nature or nurture but nature and nurture. It is not a question of whether human behaviour is the result of biology or environment, but what effect each has on the other.² Violence against women in any form is the negation of the Fundamental Right to Life and Liberty contained in Article 21 of the Indian Constitution. Rape is violative of victim's fundamental rights under Article 21 of the constitution. It is the most morally and physically

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² R.P. Kathurla's, Law of Crimes and Criminology Exhaustive & Critical Commentary on Indian Penal Code 3247.

reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim.³ A murderer destroys the physical frame of the victim; a rapist degrades and defiles the soul of a helpless female.⁴ Rape is such a heinous crime in nature that it carries the potential of reducing a woman to an animal, as it shakes the very core of her life, by no means a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim and therefore a rape victim is placed on a higher pedestal than an injured witness.⁵ A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of women i.e. her dignity, chastity, honour and reputation. Deprivation of humanity among offenders is reaching the rock bottom of morality when they sexually assault children, minors and a woman in the advanced stage of pregnancy.⁶ Rape is a crime against the entire society and violates the human rights of a victim.⁷ Being the most hated crime, rape is tantamount to a serious blow to the supreme honour of a woman and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.⁸ The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not a merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole; the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery.⁹ Rape must be dealt with as the gravest crime against the human dignity. The physical and mental suffering which the victim endures as a result of rape should form a vital ingredient. Victim's life style is completely disrupted by the rape crimes. Rape is an experience which shakes the foundations of life of victim.¹⁰

II. MEANING AND DEFINITION OF RAPE

In 'Encyclopedia of Crimes and Justice'¹¹ rape is defined as "even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales¹² it is stated that slightest degree of penetration is sufficient to prove sexual intercourse. It is violence of the private person of woman an outrage by all means, by the very nature of the offence it is

³ Nipun Saxena vs Union Of India Ministry Of Home 11 December, 2018

⁴ Deepak Gulati v. State of Haryana, (2013) 7 SCC 675, L. Umamaheswari v. Superintendent of Police.

⁵ Sandeep Yadav and Another v. State Of U.P. Criminal Misc App No: 22902 of 2020.

⁶ State of Karnataka v Puttarja, 2003(4) Crimes 548 (SC)

⁷ Kalil v State of Bihar, 2007 (1) Crimes 591(Jhar)

⁸ Bahadur Singh v State of Uttaranchal, 2005 Cr LJ 2865 (HC)

⁹ Buddha v State of Rajasthan, 2006(1) Crimes 247 SC; Bhupinder Sharma v State of H.P., 2003 (4) Crimes 327 (331) SC: AIR 2003 SC 4684: 2004 Cr LJ 1 (SC).

¹⁰ Ibid

¹¹ Volume 4, 1356.

¹² Fourth Ed. Vol. 12.

an obnoxious act of the highest order.¹³ The essential words in an indictment for rape are rapist and carnalities cognovits, but carnalities cognovits, nor any other circumlocution without the word rapist aren't sufficient in a legal sense to express rape.¹⁴ In the crime of rape, 'Carnal Knowledge' means the penetration to any slightest degree of the organ alleged to have been carnally known by the male organ of generation.¹⁵ The offence of rape in its simplest term is the 'the ravishment of a woman without her consent, by force, fear or fraud or as the carnal knowledge of a woman by force against her will. "Rape or Raptus" is when a man hath carnal knowledge or a woman by force and such cases need to be dealt with sternly and severely. A social sensitized judge is better statutory amour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.¹⁶ In the Indian Criminal Jurisprudence the offence of rape has been placed in Chapter XVI of Indian Penal Code. Rape is defined in section 375 IPC and five clauses appended to this section which are merely explanatory of 'non-consent' or force which is the essence of the crime. The two essential requirements of Section 375 IPC are:

- (I) Sexual intercourse by a man with a woman;
- (II) Such Sexual intercourse must be under any of the six clauses mentioned in the Section 375 Indian Penal Code.

In case of rape onus is always on prosecution to prove each ingredient of offence and it is no part of duty of defense to explain as to how and why victim has falsely implicated accused.¹⁷ The Law of rape defines men as the only possible offender and women as the only possible victim. This raises question as to whether a man can be raped by a woman. Author *Neil C. Chamelin & Kenneth R. Evans* has suggested that a female can't actually rape a male.¹⁸ It is very unlikely that any man raped by a woman would bring the crime to the attention of the authorities for fear of ridicule; ***this doesn't mean it can't happen***. Numerous cases have been documented, and studies by sex therapists Philip M. Sarrel and William H. Masters have indicated that made victim of sexual assault by women suffer aftereffects similar to those see in women who have been raped.¹⁹

¹³State of M.P. v Badlubar Kala, 2005 (2) Crimes 245 (SC): 2005 Cr. LJ 3117 (SC); Bhupinder Sharma v State of HP, 2003 (4) Crimes 327 (330) SC.

¹⁴ Hon. 6 1a, 9 Edw. 4, 26 (Hale PC 628).

¹⁵ Stephen's Criminal Law 9th Ed. 262.

¹⁶ Buddha v State of Rajasthan, 2006 (1) Crimes 247 SC.

¹⁷ Syed Pasha V State of Karnataka, 2005(1) Crimes 333 (HC 350).

¹⁸Neil C. Chamelin & Kenneth R. Evans, Criminal Law for Policemen (Englewood Cliffs, N.J. Prentice- Hall, 1976) 1888 22 QBD at 20, 30.

¹⁹ Miami Herald, Sept. 17, 1982, p 1B; Psychology Today, Sept. 1983, 74-75

Demonstration of Rape Scene in Indian Cinema: The rape scene exhibited in Indian cinema show rape is crude and its crudity is what the rapist's bouncing bare posterior is meant to illustrate. Rape and sex are not being glorified in the films, quite contrary it shows what a terrible and terrifying, effect rape an lust can have upon the victim. It focuses on the trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist.²⁰

III. SCIENTIFIC ASPECTS OF INVESTIGATION OF RAPE

Lord Chief Justice Hale wrote one of the most often-quoted lines in our jurisprudence, that rape “is an accusation easily to be made and hard to be proved, and harder to be defended by the party, the never so innocent.”

Statement of the victim of rape is extremely difficult to prove, and little or no evidence has been adduced to support it. The most common basis advanced for the requirement is that false charges of rape are more prevalent than false charges of other crimes. A prosecutrix of a sex-offence can't be put on par with an accomplice. She is in fact a victim of crime. The Indian Evidence Act, 1872 no- where says that her evidence can't be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act²¹ and her evidence must receive the same weight as is attached to an injured in cases of physical violence.²² The same degree of care and caution must attach in the evaluation of evidence of Prosecutrix as in the case of an injured complainant or witness and no more.²³ It is indispensable that the courts must be alive to and conscious of the fact that is dealing with the evidence of a person who is interested in the outcome of the charges leveled by her.²⁴ On the satisfaction of court that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act which requires looking for corroboration. If for some reasons the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice.²⁵ The Nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case, in case prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix

²⁰ Bobby Art international v Om Pal Singh Hoon, AIR 1996 SC 1846; JT (1996) 4C 533.

²¹ Section 118, The Indian Evidence Act, 1872 Act 01 of 1872.

²² Karnel Singh v. State Of M.P 1995 AIR 2472 1995 SCC (5) 518 JT 1995 (6) 437 1995 SC.

²³ Sri Narayan Saha And Another v. State Of Tripura WP (C) No. 111 of 2014.

²⁴ [State Of H.P v. Lekh Raj And Another](#) 1999 Supp(4) SCR 286.

²⁵ Karnel Singh v. State Of M.P Cr. App No. 877 of 1995.

doesn't have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.²⁶

A) Scene:

The scenes generally have tell-tale evidences. Crime scene has to be scientifically dealt with without any error. In criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the Investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime. Investigating Officer may be guarded against potential contamination of physical evidence which can grow at the crime scene during collection, packing and forwarding. Proper precaution has to be taken to preserve evidence and also against any attempt to tamper with the material or causing any contamination or damage.²⁷ Criminal Judicial System in India is at cross-roads, many times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. Investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence.²⁸ In this age of science, we have to build legal foundations that are sound in science as well as in law.²⁹ Practices and principles that served in the past must be given way to innovative and creative methods, if we want to save our criminal justice system. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc., whereas forensic evidence is free from those infirmities. Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence. We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasizing the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.

In proximity of rape cases importance of scene can't be ignored or immersed with less importance. Instances and Articles of high evidentiary value can be collected from the place of

²⁶ State of Maharashtra v Chandraprakash Kewalchand Jain, AIR 1990 SC 658; 1990 Cr LJ 889 (1990) 1 JT 61.

²⁷ Dharam Deo Yadav v. State Of Uttar Pradesh Criminal App. No. 369 of 2006, SC 11 Apr, 2014.

²⁸ State Of Gujarat v. Sureshkumar Criminal Misc. App No. 8036 of 2014, Criminal App. No.729 of 2014.

²⁹ Shreemad Jagadguru Shankaracharya Shree Shree Raghaveshwara Bharati Swamiji v. State Of Karnataka Writ Petition No. 49254/2014 Karnataka HC Dec, 3 2014.

occurrence as illustrated below.

- i) If the woman was wearing glass bangles, broken pieces may be found at the scene, indoor or outdoor, owing to the resistance offered by her.³⁰
- ii) If the scene is indoor, articles near about may be found disturbed and some of them possibly broken.³¹
- iii) The scene, whether indoor or outdoor, must be carefully searched for blood, semen, hair etc.³²
- iv) Anything accidentally left by the accused at the scene, such as handkerchief especially with his initials or dhobi marks, will be a valuable piece of evidence in establishing his complicity.³³
- v) Presence of foot-prints of the accused and the victim. Obtain a sample of the soil for comparison later on with those found on the person or clothing of the accused.³⁴

B) Victim:

Scientific evidence encompasses the so-called hard science, such as physics, chemistry, mathematics, biology and soft science, such as economics, psychology and sociology. Opinions are gathered from persons with scientific, technical or other specialized knowledge, whose skill, experience, training or education may assist the Court to understand the evidence or determine the fact in issue. Many a times, the Court has to deal with circumstantial evidence and scientific and technical evidence often plays a pivotal role. Arrange for immediate medical examination and request the medical officer to collect.

- i) Garments of the victim that might contain blood, semen, foreign public hair, etc., and the blouse on the case of woman which may be torn due to the force used.³⁵
- ii) Look for scratches on the body of the victim particularly on the region of the breast and thighs and teeth bite on breasts, cheeks and lips as also tear in vagina especially in the case of unmaturred girls.³⁶

³⁰ Satrugana Nag v. State Of Odisha CRA No. 128 of 1990, Orissa HC Dec 11, 2020. Shri Ramdhani Ram Nath v. The State CRA No. 016 of 2016 Calcutta HC Nov 6, 2017. Bikram Rabi Das v. State Of Tripura CrI. A (J) 36 of 2013, CrI A(J) 07 of 2015 Tripura HC Sep 15, 2016.

³¹ Santosh Kumar Singh v. State through CBI Criminal App. No. 87 of 2007, SC Oct 6. 2010.

³² Ibid, Dhananjoy Chatterjee Alias Dhana v. State Of W.B Criminal App. No. 584 of 1992 SC Jan 11, 1994.

³³ Barindra Kumar Ghose v. The Emperor Cr. Appls. No. 456, 474, 480, of 1909 Calcutta HC Feb 18, 1901.

³⁴ Selvi and Others v. State Of Karnataka Criminal Appls. No. 1276 of 2004 SC May 5, 2010.

³⁵ State (Nct of Delhi) v. Pankaj Chaudhary And Others Criminal Appls. No. 2299 of 2009 SC Oct 30, 2018.

³⁶ Mukesh And Another v. State (Nct Of Delhi) And Others Criminal Appls. No. 607-608 of 2017 SC May 5, 2017, State Through Reference Petitioner v. Ram Singh & Ors. S Death Sentence Reference No. 6/2013, CrI. App No. 1398/ 2013 Delhi HC Mar 13, 2014

- iii) Look for the exchange of the Pubic hair and also hair from the head of the accused clutched by the victim.³⁷
- iv) Presence of the soft grey materials under the fingers nails of the victim due to the scratching inflicted on the accused.³⁸
- v) The Medical officer should be requested to look for recent signs of intercourse, presence of Smegma, rupture of hymen in the case of virgins, injury to the anus in the case of unnatural offences and presence of any venereal disease similar to the one found in the accused. Medical Officer should be specifically questioned about the age of these injuries, and whether they could have been caused as alleged. Medical officer should be induced to take swab from the vagina or anus of the victim for blood grouping and comparison later on with that of the accused.³⁹

Definition by Jurists:

- a) **Sir Francis Bacon, Lord Chancellor of England⁴⁰** put forth the first theory of scientific method. Bacon's view was that a scientist should be disinterested observer of nature, collecting observations with a mind cleansed of harmful preconceptions that might cause error to creep into the scientific record.

US Supreme Court⁴¹ while distancing themselves from the theory of Bacon held as follow:

“Science is not an encyclopedic body of knowledge about the universe. Instead, it represents a process for proposing and refining theoretical explanations about the world that are subject to further testing and refinement.”

Daubert gives much emphasis on

- b) **Sir Karl Popper (an Austrian philosopher):** who unlike Bacon believed that all science begins with a prejudice, theory or hypothesis and formulating the theory is the creative part of science, which cannot be analyzed within the realm of philosophy.
- c) **Thomas Kunh, a Physicist, who popularized the word ‘paradigm’ expressed the view that scientific work comprises an agreed upon set of assumptions, methods, language, etc.**

Neither Bacon, Popper nor Kunh, it is generally believed, gave a perfect description of what

³⁷ Mahesha v. The State Of Karnataka By Its Spp Karnataka HC Mar 21, 2104.

³⁸ Popatlal Jethabhai Shah v. State of Maharashtra & Anr. CrI Appls. No. 433 of 2001, Bombay HC Sep 21, 2006.

³⁹ Lokesh Mishra v. State Of Nct of Delhi CrI Appls. No 768 Of 2010 Delhi HC Mar 21, 2014. Shatrughna Baban Meshram v. State of Maharashtra. CrI Appls. No. 763-764 of 2016 SC Nov 2, 2020.

⁴⁰ Magnum Opus

⁴¹ Daubert v. Merrell Dow Pharmaceuticals, Inc. 509 U.S. 579 (1993).

science is and how it works, but the US Supreme Court in Daubert identified four non-definitive factors that were thought to be illustrative of characteristics of *scientific knowledge, testability or falsifiability, peer review*, a known or potential error rate and general acceptance within the scientific community. Few additional factors were also subsequently noticed that *if the relationship of the technique to methods that have been established to be reliable, the qualifications of the expert witness testifying based on the methodology, the non-judicial uses of the method, logical or internal consistency of the hypothesis, consistency of the hypothesis with accepted authorities and presumption of the hypothesis or theory*. The longing and momentum backlog of undecided cases finds its roots in redundant means of adducing evidence investigations on the scientific basis are the need of the hour and must be carried out in scientific manner only.

IV. MEDICAL EXAMINATION

The absence of uniform guidelines in gathering medical evidence for rape cases is one of the main reasons why conviction rate is so low. Only 26.4% of the 24,206 cases of rape that were registered in 2011 had convictions, according to National Crime Records Bureau.⁴² Medical practitioners often focus on aspects that are not relevant to the investigation. Doctors document the sexual history of the victim, which may not always be relevant to the case. The Himachal Pradesh High Court ruled in 2008 that sexual history of the survivor was not at all relevant to the rape case. Doctors use the archaic two-finger test to determine how habituated the survivor is to sexual intercourse. This information may disrespect the character of the victim. A Sessions Court in New Delhi ruled in 2010 that the two-finger test violated the privacy of the victim and needed to be stopped. There is also a lack of co-ordination between the hospital where the medical examination is carried out and the forensic laboratory where the evidence is sent. As a result, hospitals often do not get a copy of the chemical analysis report, although the doctor who conducted the medical examination is supposed to give his /her opinion based on the report. It is pertinent to mention that time has witnessed drastic improvising change in the ambit of Medico-legal opinion and in collection of Evidence more particularly. Process of the Medical Examination has been best described in the following pointers for the easy and better comprehension.

Prerequisites at the Health Facility:

i) The examination should be carried out in a non-threatening, quiet, and private place. Adequate waiting space should be made available for relatives accompanying the survivor.

⁴² 8 Sunil Sharma53/examination-of-rapeaccused- 2 (Accessed on 23rd March 2013).

Sufficient lighting and a comfortable examination table are necessary for a thorough examination. Sufficient space should be present on a table or platform for laying out all equipment required to conduct the examination and for taking notes.⁴³

ii) It is the prime responsibility of the medical facility to provide proper care, examination and psychosocial treatment to the survivor of sexual assault. Section 164(A) Criminal Procedure Code explains the legal requirements for medical examination of a victim of rape. The facility should lay down clear procedures and protocols to be followed in cases of sexual assault and these should be made available to all providers. This includes assembling all the contents required for a medical examination in one place.

- The facility should designate staff for examination of survivors and collection of evidence. They should be trained on the issue of sexual violence and its impact on physical and mental health. They should also have the necessary training and experience to carry out an examination appropriately.
- It is not mandatory that only a gynecologist must examine the survivor of sexual assault. As per 164 A Criminal Procedure Code (CrPC), any Registered Medical Practitioner can and should conduct the examination.⁴⁴
- In case a female doctor is not available for the examination of a female survivor, a male doctor should conduct the examination in the presence of a female attendant. In case of a minor/person with disability, his/her parent/guardian/any other person with whom the survivor is comfortable must be present.⁴⁵
- In a situation of mass violence (caste, communal or armed conflict) various forms of sexual assault are perpetrated against women and girls. Doctors working in such situations should therefore look for signs/evidence of sexual assault amongst all girls and women who come to the hospital, whether they are brought dead or alive. The State must provide security to its health professionals under such circumstances so that they may be allowed to carry out their duties without fear or external pressure.

iii) The doctor will be requested by the police to examine the alleged victim or the accused man.

⁴³ Neel Kumar Alias Anil Kumar v. State Of Haryana Criminal Appls No. 523 Of 2010 SC May 7, 2012.

⁴⁴ Ukha Kolhe v. State Of Maharashtra Appl by SPL No. 402 of 1962, SC Feb 11, 1963.

⁴⁵ Ms. Eera Through Dr. Manjula Krippendorf (S) v. State (Govt. Of Nct Of Delhi) & Anr. Criminal Appls. No. 1217 of 2017 SC Jul 21, 2017.

iv) Such a request is officially requested and a written requisition produced by the police which gives all the details of the alleged victim and the circumstances.

v) The documents should always be in order.

vi) Before any examination is commenced. The identity of the alleged victim must be proved to the doctor to his complete satisfaction and this is done by the escorting police officer.

vii) Evidence of the exact age is vital, as the age of consent in India is 16 years, In borderline cases, the doctor must take all the usual anthropological investigation to determine the age as exactly as possible.

A) General Information:

1. Start by recording the name, age, sex (male/female/transgender), address and contact number of the survivor.
2. Information about the police case registered, such as Medico Legal Case (MLC) number, Crime Register (CR) number; U/S should also be recorded.
3. Who the survivor was brought by and relationship to accompanying persons must be recorded.
4. Date, time and place of examination should be specifically written.
5. Marks of identification (two in number), in the form of moles, scars, tattoos, preferably from the exposed parts of the body to be documented. While describing identification mark emphasis should be on size, site, surface, shape, color, fixity to underlying structures.⁴⁶

B) Medical History: Conventionally talking of history is to arrive at an opinion about the character of the woman, her probable truthfulness, her mental state and her general awareness of sexual matters, history of pregnancy, abortions was ought to be recorded. However, this may be considered an invasion of privacy as it forces survivors to reveal past sexual history/practice, which is irrelevant to the case of sexual assault. Hence such history should not be routinely sought. It must only be sought for the purpose of treatment. It is the clear mandate of the Section 146 of the Indian Evidence Act.⁴⁷ Relevant medical history in relation to sexually transmitted infections (gonorrhoea, HIV, HBV etc). This has a bearing on what gets transferred between survivor and accused of sexual assault. Such a history can be elicited by asking about discharge per-urethra/per-anus, warts, ulcers, burning maturation, lower abdominal pain etc. Based on

⁴⁶ Manual for Medical Examination of Sexual Assaults 25, 2019.

⁴⁷ Section 146, The Indian Evidence Act 1872.

this information reexamination including investigations can be done after incubation period of that disease.⁴⁸ Relevant surgical history in relation to treatment of fissures/injuries/scars of anogenital area should be noted.⁴⁹

C) Body Evidence: Collection of oral swab for detection of semen and spermatozoa: is of important significance in establishing the case against the accused. Oral swabs should be taken from the posterior parts of the buccal cavity, behind the last molars where the chances of finding any evidence are highest. Swabs are used to collect bloodstains on the body, foreign material on the body surfaces seminal stains on the skin surfaces and other stains.

The presence of spermatozoa, dead or alive, would differ from person to person and its positive presence depends upon various circumstances. Otherwise also the presence or absence of spermatozoa is ascertained for the purpose of corroboration of the statement of the prosecutrix. If the prosecutrix is believed to be truthful witness, in her deposition, no further corroboration may be insisted. To hold that the prosecution had not proved the case against the respondent, beyond the reasonable doubts, The High Court mainly relied upon the medical evidence and finding that “No dead or alive Spermatozoa were seen. Absence of such dead or mobile spermatozoa either in the vagina or in the cervix of the persecution rules out the possibility of prosecutrix having been subjected to sexual intercourse on the date and time alleged by the prosecution”⁵⁰

Detection of scalp hair and pubic hair of the accused on the survivor's body (and vice-versa) has evidentiary value: The Victim's pubic hair should be combed with a clean comb to collect any loose hairs that may have been transferred from the male.⁵¹ Twenty-Four or more intact pubic hair from various areas of the pubic region from both the victim and suspect are to be obtained. It is preferred that these hairs include the roots and must be collected in the catchment paper which is then folded and sealed.⁵² The whole body surface should be examined for injuries, mud, blood or seminal stains, particular attention should be paid to the back of the upper arms, the shoulders blades and buttocks as well as the more obvious places such as thighs, neck, face and breasts. Teeth marks or suction petechiae, from the assailant mouth may be found on the neck breasts or abdomen and there may be laceration of the nipples from teeth. Brushing of the lips and even tearing of the inner aspects of the lips may be found, due to the

⁴⁸ Sudheer v. State Of Kerala CrI Appl No. 1251 of 2012 Kerala HC Jan 16, 2018.

⁴⁹ The State Of Maharashtra v. Ramchandra Sambhaji Karanjule CrI Appl. No. 426 of 2013, Bom HC Mar 11, 2016.

⁵⁰ State of H.P. v Lekh Raj, 1999 Supreme Cr 508: AIR 1999 SC 3916: 1999 ALL Cri. C986: 2000 Cr. LJ 44 (SC): 1999 (4) Crimes 337 (SC).

⁵¹ State of Punjab v Gurmit Singh and Others CrI Appl No. 616 of 1985 SC Jan 16, 1996.

⁵² Vijay Alias Chinev v. State Of Madhya Pradesh Criminal Appl No. 660 of 2008, SC Jul 27, 2010.

rough kissing or even blows. In case girl alleges that she fought with accused during the sexual assault, survivor managed to scratch accused, and then epithelial cells of one may be present under the nails of the other. Examine nail scrapings and nail clippings for epithelial cells (this can also be used for DNA detection). Clippings and scrapings must be taken for both hands and packed separately. Ensure that there is no underlying tissue contamination while clipping nails. Blood is collected for grouping and also helps in comparing and matching blood stains at the scene of crime.⁵³

Collect blood and urine for detection of drugs/alcohol as the influence of drugs/ alcohol has a bearing on the outcome of the entire investigation. If such substances are found in the blood, the validity of consent is called into question. In a given case, for instance, there may not be any physical or genital injuries. In such a situation, ascertaining the presence of drug/alcohol in the blood or urine is important since this may have affected the survivor's ability to offer resistance.⁵⁴

Evidence as to prove the Age in scientific Manner:

Evidence of exact age is vital, as the age of consent in India is 16 years. In borderline cases, the doctor must make all the usual anthropological investigations to determine the age as exactly as possible. It is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.⁵⁵ The examination for determination of the age is subjected to the condition of obtaining valid consent so that this vital procedure can be carried out. In case of a woman over the age of 16 years, they must consent to the medical examination, after an explanation of what it entails otherwise the doctor may himself be open to a charge of assault.⁵⁶ The consent is usually witnessed by two persons and in most cases the requisition from the police will be accompanied by written consent for medical examination. In the case of girl below the age of 16 years, the written consent of her parents or guardian is necessary,⁵⁷ similarly witnessed.

Birth Certificate: In calculating a person's age, the day of his birth must be counted as whole day and he attains the specified age on the day preceding, the anniversary of his birth day.⁵⁸

⁵³ Shivu And Another v. Registrar General, High Court Of Karnataka And Another Criminal Case No. 202 of 2007, SC Feb 13, 2007. State Of U.P v. Desh Raj Crl Appl. No. 84 of 2000, SC Mar 9, 2006. Siddaraju v. State Crl Appl. No 111 of 2006 SC Dec 5, 2011.

⁵⁴ Sri Halappa Harthal Halappa v. The State Of Karnataka, Deputy Superintendent Of Police, Bangalore Criminal Petition No.2458 of 2010 Karnataka HC May 27, 2010.

⁵⁵ Jaya Mala v Home Secretary, Govt. of J&K, AIR 1982 SC 1297; 1982SCC (Cr). 502: 1982. Kishori Lal v State of Punjab AIR 1957

⁵⁶ Law of Crimes & Criminology, Exhaustive Commentary on Indian penal Code R.P. Kathuria's 3261.

⁵⁷ Rosy Jacob v. Jacob A. Chakramakkal Crl Appl No. 1295 of 1972 SC Apr 5, 1973.

⁵⁸ Prabhu Dayal Sesma v State of Rajasthan, AIR 1986 SC 1948.

Age of the prosecutrix must positively be established.⁵⁹ Conclusive evidence of the girl's age may be the birth certificate, if it is not available then in conjunction with such oral testimony as may be available.⁶⁰ In case birth certificate is not available, and father of the girl is dead and mother isn't traceable, conclusions have to be based on all the facts and circumstances, including the result of examination of all physical features of the raped girl.⁶¹

School: - Certified copies from school register coupled with the affidavit of the father stating the date of birth and the statement of the girl herself about her own age, amounts to evidence under the Indian Evidence Act.⁶² Unproved and exhibited school certificate cannot be treated as evidence of age in the case.⁶³

Medical: - The age should be more closely clarified when according to medical evidence the prosecutrix was found to have been used to sexual intercourse and the rupture of the hymen was old.⁶⁴ The question of age of the prosecutrix is under section 366 and 376 I.P.C is always of important significance. In *Ram Maruti v State of Haryana* it was particularly held in the case that according to the medical evidence the prosecutrix was found to have been used to sexual intercourse and the rupture of the hymen was old. Too much reliance cannot be placed upon medical evidence as it indicates an average, so too much reliance cannot be placed on the tables of age given in the Modi's Medical Jurisprudence. Ossification test isn't just test.⁶⁵

Ossification Test concerning the determination of Age:

The "Ossification Test" is relevant though solely by itself not conclusive the value to be given to such test depends on the facts of each case. The ossification test refers to the radiographic examination of the bones of children and young people up to about the age of twenty, to assess their age by the appearance of ossification centers in the very young and the time of fusion of the epiphyses (Separate centers of ossification at the end of long bones and in part of others) with the main body of the bones. There is a general progression of such appearances and fusion, so that an approximate timetable can be constructed up to about the age of 20 years. The ossification test is comparatively a surer test, but certainly isn't conclusive and a slight variation in that opinion is always possible.⁶⁶ The only conclusive piece of evidence, as to the age of the girl, may be the birth certificate, but unfortunately, in this country such a document isn't

⁵⁹ 1962 MPLJ (Notes) 330; 1962 Jab LJ 840; 1963 (2) Cr. LJ 354.

⁶⁰ Sidheswar Ganguly v State of West Bengal, AIR 1958 SC 143; 1958 Cr. LJ 273; 1958 SCR 749.

⁶¹ Ibid

⁶² Mohammed Ikram Husain v State of U.P. AIR 1964 SC 1625 (1964) 2 Cr. LJ 590 1964 5 SCR 86.

⁶³ Ram Murti v State of Haryana, AIR 1970 SC 1029; 1970 SCC Cr 371.

⁶⁴ Ibid.

⁶⁵ Deba Prosad Bose v The King, 1950 Cr. LJ 1486 (Cal).

⁶⁶ Mohammad said Khan v State of M.P. 1958 (1) Crimes 157.

ordinarily available. The court has to base its conclusions upon all the facts and circumstances disclosed on examination of all the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available.⁶⁷

A School certificate isn't a conclusive evidence of the age of the prosecutrix and that the ossification test also isn't sure test as to the age of the prosecutrix and it gives only an approximate age, which may vary by two years on either side. It was held that sometimes medical evidences can even be ignored if there is any other reliable evidence contrary to that.⁶⁸ The test of ossification cannot be reasonably expected to formulate an uniform standard for the determination of the age of union of epiphyses for the whole of India, owing to the variation in climate, dialectic, hereditary and other factors. The ossification test provides much room for speculation, although it is the best available test but isn't a sure test. Ossification test isn't an indispensable test for determining age of the girl given its practical difficulties.⁶⁹ It is duty of the prosecution to elicit from the doctor the reasons for the conclusion as to age. It is a serious lacuna if the prosecution doesn't do so. The court has also the same duty.⁷⁰ The medical evidence has to be considered along with other evidence. If other evidence is reliable, but inconsistent with the medical opinion, the medical evidence would be rejected. It is generally accepted.

Medical Opinion concerning Determination of Age: -

A doctors' opinion as to age is never very certain. For determination of age by physical signs a wide margin of error must be admitted. It cannot be of mathematical precision.⁷¹ Medical evidence is based on average and cannot be correct to the day where the opinion of the doctor is that the girl is between 16 and 18 years. The evidence of a doctor as to age as an expert is valuable but by itself isn't sufficient to fix the exact age.⁷²

V. CONCLUSION

Rape is not merely a physical assault it is often destructive of the whole personality of the victim. In the above process we have realized that the process of collection of evidences both from the bodies of Victim and accused along at the place of occurrence is at premature stage in India. There is no uniformity and absence of strict rule as to the accessing and acceptability has is demeaning the process of evidence collection. Survivors reporting sexual assault,

⁶⁷ Sidheswar Ganguly v State AIR 1958 SC 143.

⁶⁸ Chiddama v State 1992 Cri LJ 4073.

⁶⁹ Samarender v Emperor AIR 1937 pat. 263.

⁷⁰ Laimayum Tonjou v Manipur Administration AIR 1962.

⁷¹ Nathu v Emperor AIR 1964 Cur LJ (Punj)

⁷² Khanna v State 1961 Jab LJ 76; Bishnath Prasad v Emperor, AIR 1948 Oudh 1: 48 Cr. LJ 542.

demonstrated feeling of anxiety, sadness, fears and self blame. Special care takers are the need of hours to prevent the permanent psychological damage on the victim and there is subtle need for the revising and amending the relevant laws concerning Evidence Collection. Relevant Laws and Land mark judgments has been appended with paper for the best level of comprehension.⁷³

⁷³ Criminal Manual for evidence Collection 2019.