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Silent Injuries and Legal Proof: Reassessing the Evidentiary Value of Medical Examination under the POCSO Act

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) provides a comprehensive legal framework for addressing child sexual abuse in India. In POCSO cases, medical examination plays a significant role in the collection and evaluation of evidence, particularly where direct evidence is unavailable. However, the evidentiary value of medical findings often raises legal and forensic concerns, especially where physical injuries are absent.

This paper examines the role of medical examination in POCSO prosecutions and analyses its importance in corroborating the testimony of child victims. It further explores the contribution of expert witnesses and the judicial approach toward medical evidence. The study concludes that medical evidence is an important corroborative tool but should not be regarded as the sole basis for determining guilt or innocence.

Keywords: *POCSO Act, Child Sexual Abuse, Medical Evidence, Expert Witness, Forensic Examination, Child Rights.*

I. INTRODUCTION

Child sexual abuse is a distressing and widespread societal concern that necessitates robust legal and investigative measures to safeguard vulnerable victims. Rape is a serious criminal offence that extends beyond the victimisation of individual women and men; it reflects societal values and attitudes and thereby affects the broader community. According to the 2021 Crime in India report of the National Crime Records Bureau, POCSO Act cases in 2021 made up 36.05% of reported crimes against children, totalling 53,874 cases.[1] Studies indicate that, over their lifetimes, 1 in 33 men have experienced an attempted or completed rape, with 75% of these

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[1] Esha Roy, *NCRB Data: Crime Against Kids, a Third Still Under POCSO*, THE INDIAN EXPRESS (Aug. 30, 2022), https://indianexpress.com/article/india/crime-against-kids-a-third-still-under-pocso-8119689/.

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incidents occurring before the age of 18 and 48% before the age of 12.[2] Within the complex landscape of cases under the Protection of Children from Sexual Offences (POCSO) Act, the medical examination of victims holds a pivotal role. Evidentiary procedures are central to prosecuting offenders under the Act, and medical examinations assume a key part in them. In cases lacking eyewitnesses, medical examinations become vital in establishing guilt beyond reasonable doubt. Forensic experts and professionals conduct these examinations, providing crucial insights into the physical and psychological repercussions of sexual abuse. Medical examinations significantly influence trial outcomes, helping to ensure that justice prevails and that offenders are held accountable. They assist in establishing critical elements of the crime, such as the identification of injuries, signs of sexual assault, or the victim's age, which are vital for comprehensive investigation and adjudication. The synergy between the legal and medical domains offers valuable insight into the commission of an offence and often corroborates the identity of the perpetrator. It is essential to acknowledge, however, that expert testimony primarily serves as corroborative evidence, reinforcing pre-existing findings.[3]

II. LEGAL FRAMEWORK GOVERNING MEDICAL EXAMINATION UNDER THE POCSO ACT

Section 27(2) of the POCSO Act mandates the medical examination of a child against whom any offence has been committed. Even if a formal First Information Report or complaint has not been filed regarding an offence under the Act, the medical examination of a child who is a victim of such an offence should still take place. The procedure for conducting this examination is outlined in Section 164A of the Code of Criminal Procedure, 1973, which also mandates female doctors for the examination of female child victims in order to protect privacy.[4] In *State of Karnataka v. Manjanna*, the Court underscored that the medical examination of rape victims is a "medico-legal emergency": it is both the right of every victim and the responsibility of every hospital to conduct this examination before legal action, emphasising holistic care and sensitivity.[5] It is the right of every victim because Article 21 of the Constitution of India, 1950 safeguards the right to life for all individuals, which encompasses the right to access emergency medical care, and which requires all state governments to bear responsibility for preserving the

[2] Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey*, U.S. DEP'T OF JUSTICE (2000), https://www.ojp.gov/pdffiles1/nij/183781.pdf.
[3] Madan Gopal Kakkad v. Naval Dubey, (1992) 3 S.C.C. 204 (India).
[4] The Protection of Children from Sexual Offences Act, 2012, § 27(2), No. 32, Acts of Parliament, 2012 (India).
[5] State of Karnataka v. Manjanna, (2000) 3 S.C.R. 1007 (India).

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lives of patients in need of medical attention.[6] Moreover, every medical professional, whether in a private or a government hospital, bears a responsibility and an obligation toward the well-being of the community.[7]

In accordance with Rule 6 of the Protection of Children from Sexual Offences Rules, 2020, if law enforcement is satisfied that a child has been subjected to an offence and urgently requires medical attention and safeguarding, the responsible police officer must, within 24 hours of receiving such information, transport the child to the nearest hospital or medical-care facility. Where the offence falls under Section 3, 5, 7, or 9 of the POCSO Act, the victim must be directed to emergency medical-care services.[8] The goal is to obtain crucial physical evidence, including DNA samples and records of injuries, and to create a comprehensive legal report. The initiation and conclusion times of the examination, together with documentation of the consent of the survivor or of a legally authorised representative consenting on her behalf, must be duly recorded in the report.

A. Medical Examination of the Accused

Before the current Criminal Procedure Code, the accused could not undergo a medical or physical examination without consent, as was the position under the Code of Criminal Procedure, 1882. In 1967, the Law Commission of India deliberated on the necessity of a provision enabling such examinations, the preferred format for them, and the protection against self-incrimination provided by Article 20(3) of the Constitution. Although the 84th Law Commission report, which preceded the amendment, discussed the procedural stages and methods for conducting such examinations, the provisions ultimately introduced did not adopt all of its recommendations. Following the amendment of the Code of Criminal Procedure, the medical examination of the accused under Section 53A is now mandatory where it is expected to yield relevant evidence. If a person suspected of committing a crime is arrested, and there is justified reason to believe that a medical examination could provide evidence relating to the offence, such examination is typically directed by a sub-inspector or higher-ranking police officer and conducted by a registered medical practitioner, usually from a government or local-authority hospital in the area. Reasonable force may be employed, if needed, to collect physical evidence such as swabs or to assess the accused.[9]

[6] India Const. sch. VII, List II.
[7] Paramanand Katara v. Union of India, (1989) 3 S.C.R. 997 (India).
[8] The Protection of Children from Sexual Offences Rules, 2020, r. 6 (India).
[9] The Code of Criminal Procedure, 1973, § 53A, No. 2, Acts of Parliament, 1974 (India).

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Obtaining informed consent is mandatory for various procedures, including examinations, the collection of samples for forensic analysis, treatment, and notification of the police. The consent process should be thorough and transparent, ensuring that the person granting consent is fully informed of the purpose, potential risks, benefits, adverse effects, and expected duration of the examination; this information should be communicated before the examination is conducted. Section 164A(7) of the Criminal Procedure Code explicitly states that any action performed during a medical examination that exceeds the scope of the consent provided by the survivor would be unlawful.[10] The accused, by contrast, does not possess the right, under Sections 53[11] and 53A[12] of the Criminal Procedure Code, to object to a medical examination.

III. KEY COMPONENTS OF MEDICAL EXAMINATION IN POCSO CASES

A. Age Determination and Verification

In *Ashwani Kumar Saxena v. State of M.P.*, the Supreme Court emphasised that age verification should rely on documents or certificates. The court, Juvenile Justice Board, or Child Welfare Committee should resort to medical age determination only where the documents or certificates are non-existent, questionably fabricated, or subject to manipulation, since there may be instances in which the information recorded in matriculation or equivalent certificates, in the date-of-birth certificate from the first school attended, or even in birth certificates issued by a corporation, municipal authority, or panchayat is inaccurate.[13]

B. Collection and Preservation of Forensic Samples

As per the 2018 guidelines,[14] various samples are crucial for DNA profiling and the detection of semen, including clothing, sanitary pads or tampons, condoms, hair, nails, urine, and swabs (vulval, vaginal, cervical, anal, and oral). Collecting and documenting evidence such as vaginal fluid, blood, semen stains (on the genitals and clothing), and smears from the genitalia and adjacent skin is vital. Foreign hairs, fibres from the victim's clothing, cosmetic stains, and fingernail scrapings should be preserved, and in outdoor cases, dust, dirt, and biological elements should be analysed for investigative insights.

Timely collection, within 24 hours of the crime, is essential for effective evidence preservation. Certain evidence, such as oral swabs, degrades beyond this window, as highlighted in *S.P. Kohli*

[10] *Id.* § 164A(7).
[11] *Id.* § 53.
[12] *Id.* § 53A.
[13] Ashwani Kumar Saxena v. State of Madhya Pradesh, AIR 2013 SC 553 (India).
[14] MINISTRY OF HEALTH & FAMILY WELFARE, *Guidelines and Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence* (Gov't of India), https://main.mohfw.gov.in/sites/default/files/953522324.pdf.

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v. High Court of Punjab & Haryana, where the examination of smegma loses relevance after 24 hours from sexual intercourse.[15] Where a survivor reports an assault within 96 hours (four days) of the incident, it is imperative to collect all pertinent evidence, including swabs, taking into account the specific nature of the assault. Although the probability of recovering viable evidence diminishes significantly after 72 hours (three days), the recommended practice is to extend evidence collection up to 96 hours; this accommodates situations in which the survivor is uncertain about the precise time elapsed since the assault, ensuring a thorough and comprehensive approach to evidence preservation.[16]

In POCSO cases, where the victims are children, this emphasis on timely and thorough medical examination becomes even more critical, serving not only to gather forensic evidence but also to safeguard the overall well-being of the child survivor. The detailed and time-sensitive approach to evidence collection underscores a commitment to a robust legal framework that prioritises the preservation of evidence in cases involving sexual offences against children, and it acknowledges the significance of medical examination as a cornerstone in the pursuit of justice in POCSO cases.

C. Potency Examination of the Accused

Potency tests are medical examinations used in legal cases, particularly in sexual-assault or rape cases, to determine an accused individual's physical capability for the alleged act. Three common male potency tests may be noted. Semen analysis assesses male fertility and is used in infertility investigations, vasectomy confirmation, and sperm-donor screening. Penile Doppler ultrasound examines blood flow for the diagnosis of severe erectile dysfunction. Visual erection examination evaluates penile function and detects dysfunction or damage.[17] In *Daya Shankar Shaw v. State of West Bengal*, the potency test played a pivotal role: the accused was arrested under POCSO charges because his potency test confirmed his capacity for sexual intercourse, a finding further supported by the victim's testimony and other medical evidence.[18] The potency test reinforced the prosecution's case by aligning with the victim's testimony and the other medical evidence, and confirming the accused's physical capability added weight to the case against him. While potency is relevant to establishing the accused's ability to commit the alleged

[15] S.P. Kohli v. High Court of Punjab & Haryana, (1979) 1 S.C.R. 772 (India).
[16] *Supra* note 14.
[17] Andre Borges, *What Is a Potency Test?*, DNA INDIA (Nov. 21, 2013), https://www.dnaindia.com/health/report-what-is-a-potency-test-1883917.
[18] Daya Shankar Shaw v. State of West Bengal, MANU/WB/0421/2020 (India).

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act, it does not directly address issues of consent or the legality of the sexual act. Potency tests are particularly pertinent in cases where penetration is a crucial element of the offence.

D. Examination of the Hymen and Contemporary Judicial Approach

The requirement of hymenal rupture as a definitive criterion in sexual-assault cases is no longer valid. In cases involving an elastic hymen, the absence of hymenal rupture should not preclude conviction where there is strong medical evidence confirming penetration. In *Sri Narayan Debnath v. State of Tripura*, the accused was convicted because the victim's testimony was corroborated by medical evidence indicating that the hymen was not intact and that she had been subjected to penetrative sexual assault.[19] The legal focus centres on credible medical evidence of penetration, prioritising the rights and well-being of survivors and acknowledging that hymenal integrity may not always indicate a lack of penetration.

IV. CHALLENGES AND JUDICIAL TRENDS IN INDIA

Section 27 of the POCSO Act, 2012 sets out guidelines for the medical examination of minors in cases of alleged sexual abuse. It mandates that, where the victim is a female child, a female medical practitioner must conduct the examination in the presence of a parent or a trusted individual chosen by the child.[20] In *Sakshi v. Union of India*, the Supreme Court held that victims of child abuse and rape are entitled to legal recourse that does not cause further trauma by forcing them to recount the incident multiple times; this precedent formed the basis for Section 27 of the POCSO Act, ensuring a child-friendly judicial process.[21]

Medical examination is vital in sexual-abuse cases: it documents injuries and trauma, substantiates the victim's account, and gathers crucial forensic evidence such as DNA samples. Healthcare professionals also assess age and signs of coercion or force, which aids in the determination of consent. Even where examination is delayed, preserving the victim's clothing is crucial. In *Dilip Sahoo v. State of West Bengal*, the court stressed the importance of promptly examining victims to gather evidence of injury from forcible sexual offences and to determine whether rape or penetrative assault occurred; such examinations aim to collect evidence of violence, particularly sexual violence, with its physical and psychological consequences.[22]

[19] Sri Narayan Debnath v. State of Tripura, Crl. A(J) No. 47 of 2019 (Tripura H.C. 2020) (India).
[20] The Protection of Children from Sexual Offences Act, 2012, *supra* note 4, § 27.
[21] Sakshi v. Union of India, (2004) 5 S.C.C. 518 (India).
[22] Dilip Sahoo v. State of West Bengal, (2021) 12 CAL CK 0038 (India).

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V. ASSESSMENT OF MEDICAL EVIDENCE BY COURTS

In POCSO cases, medical professionals play a vital role in providing evidence of sexual abuse. Cross-examination serves two main purposes: first, to confirm the accuracy of the medical evidence, and second, to evaluate the expert's credibility against medical standards. In *Mukesh v. State (NCT of Delhi)*, the Court stressed the importance of subjecting a medical expert's testimony to cross-examination in order to assess its accuracy and reliability, underscoring the need to verify its credibility.[23]

Within a POCSO case, the testimony of an expert may hold substantial relevance in establishing culpability. In *Dr. Suresh Gupta v. Government of NCT of Delhi*, the Supreme Court ruled that cross-examining a medical expert is indispensable in a criminal trial in order to assess the truthfulness and reliability of the testimony, and emphasised that a failure to cross-examine a medical expert would render that evidence inadmissible.[24] The evaluation of a doctor's credibility, and the alignment of the medical evidence with established medical standards, are focal points of cross-examination, which aims to reveal any inconsistencies in the testimony and to clarify ambiguities in the conclusions.

In a POCSO trial, the outcomes of such cross-examination may either corroborate or challenge the assertions put forward by the prosecution.[25] The view of an expert is not regarded as primary evidence, since it represents the opinion of a third party; instead, it holds value for corroborative purposes. Such an opinion does not carry conclusive weight and is not binding on the court.[26] The court is not bound by expert opinions, and the expert's duty is primarily to furnish the judge with the essential scientific criteria for examination rather than to deliver binding conclusions.[27]

VI. EVIDENTIARY VALUE OF MEDICAL EXAMINATION

From the judgments discussed above, it is evident that medical examination is pivotal in investigating sexual-abuse cases, providing crucial physical evidence such as injuries and DNA samples that corroborate the victim's account. These examinations establish the extent of harm, aid in linking the accused to the crime, and help to determine the timeline of abuse for legal

[23] Mukesh v. State (NCT of Delhi), (2017) 6 S.C.C. 1 (India).
[24] Dr. Suresh Gupta v. Government of NCT of Delhi, (2004) 6 S.C.C. 422 (India).
[25] Gajendra Kumar Goswami, *Role of Forensics in Strengthening Child Rights Under the POCSO Act, 2012*, NATIONAL FORENSIC SCIENCES UNIV. (Oct. 2020), https://www.researchgate.net/profile/G-K-Goswami/publication/348588618.
[26] Chandreshwar Singh v. Ram Chandra Singh, AIR 1973 Pat. 215 (India).
[27] State of H.P. v. Jai Lal, AIR 1999 SC 3318 (India).

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prosecution. In the absence of direct evidence or eyewitnesses, medical evidence becomes a primary corroborative source.

For the accused, medical examination can help to establish the absence of physical evidence, supporting the defence and potentially confirming an alibi. Transparent legal processes are ensured because medical reports are shared with the accused, fostering fairness in trials.

In the judicial system, medical examinations offer objective scientific evidence, reducing reliance on testimony and promoting equitable trials. Conducted with sensitivity, they protect child witnesses from trauma and expedite proceedings by providing early, vital evidence. Professionally executed examinations enhance the credibility of the justice system and reinforce public trust.

VII. Conclusion

Medical and forensic evidence play a paramount role in investigating rape cases and confirming their occurrence. They bridge the gap in cases lacking eyewitnesses, offering a scientific foundation for prosecution or defence strategies, and they serve as a cornerstone in establishing critical elements of the offence, corroborating the victim's account, and providing crucial physical evidence that can link the accused to the crime. Outdated, cruel, and time-consuming investigative methods have no place in contemporary society; the path forward lies in embracing advancing science, in which the medical and forensic sciences hold a crucial place. It must be noted, however, that these tools of detection can be effective only if crimes are reported promptly and within the appropriate timeframe.

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