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## Flaws in India's Medico-legal Examination

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*India is widely regarded as one of the most dangerous and unsafe countries for women. Every year, the number of rapes increases by 25-35 percent, and the rate of conviction remains dismal. The problem is how the system handles key evidence in sexual assault cases, as well as the barriers to justice for all of these victims/survivors. It consists of local authorities from the beginning of the crime until the end of the crime to the authorities in court. The administration has tried but has failed to improve the situation by introducing numerous amendments and improvised protocols. To order to eliminate the discrepancies that arise between the afflicted system and the authorities, I propose the establishment of a central government-subordinated agency to conduct medical examinations, forensic analyses, and reports on rape victims across the country, eliminating all interference from local authorities, from the victim to the court, in order to increase the rate of conviction.*

**Keywords:** *rape, medico-legal examination, discrepancies, bias, injustice.*

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### INTRODUCTION

According to the National Crime Records Bureau (NCRB), 32,033 rape cases were registered in the year 2019 with an extremely poor, 27.8%, rate of conviction. India, having witnessed some of the most atrocious rapes, ranked 133rd out of 167 countries in the Women, Peace and

Security Index, 2019<sup>1</sup>. This poor rate of conviction, to some extent, can be attributed to the process of medical examination of the victim and accused in the country. Apart from the testimonies and statements, the body of the victim and the accused is the prime evidence in determining if the act was perpetrated or not. The discrepancies in the medico-legal examination and the ill-handling of the same can lead to the weakening of cases, which, in turn, leads to the acquittal of the accused and injustice to the victims and their families. To avoid all possible inconsistencies in the examination and forensic testing, I am proposing the formation of an agency subordinate to the central government for expedited and unbiased medical examinations of sexual assault victims. In this essay, I will be addressing the causes and effects of evidence tampering, the structure and dynamics of the agency, and shedding light upon its institutional limitations.

## FLAWS IN THE CURRENT SYSTEM

According to Section 164A<sup>2</sup> i.e., medical examination of the victim of rape, of the Code of Criminal Procedure, 1973:

*(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.*

In rare cases, a medical examination is the most important component of the investigation. As the bodies of the victim and the accused are involved in direct physical contact during the crime, it results in the transfer of DNA containing materials like hair, blood, skin cells,

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<sup>1</sup> 'India Sees 88 rape case a day; conviction rate below 30%' (*The Times of India*, 7 October 2020) <<https://timesofindia.indiatimes.com/india/india-sees-88-rape-cases-a-day-but-conviction-rate-below-30/articleshow/78526440.cms>> accessed 20 May 2022

<sup>2</sup> Code of Criminal Procedure, 1973, s 164A

fingernail, semen, saliva, etc. Hence, the body of the victim is key evidence in itself, which determines the perpetrator. In rape cases, there is hardly any substantial evidence that can be used in court trials to procure justice. The forensic report from the medical examination is the sole evidence that decides the fate of the case. Therefore, it is deemed consequential. Courts, nowadays, have become more inclined towards convicting when the evidence is corroborated by medical evidence and acquitting when medical evidence is not so clear<sup>3</sup>. This was the case in Mathura and this is the case today. A specific period of ‘twenty-four hours’ and terms like ‘without delay’ are mentioned frequently in the law because of their fragile nature. With passing time, the evidence starts losing reliability. It results in inconclusive forensic reports, leaving very little hope of getting justice for the victims and their families. It is safe to say that the country is aware of the importance of medico-legal examination in the victims of sexual assaults and its sensitive time frame. The laws are clear about it and hence, the protocol for the same is well-drafted and is expected to be implemented. Although rape knows no boundaries of caste, class, and culture, the authorities do.

## CASTE PREJUDICE

In rural areas of the country, individuals making up the authorities often belong to the upper castes. The local police are short-staffed and are considered the main authorities due to a lack of supervision and follow up from the upper authorities. As a result, they often pay no heed to the laws and protocols and make up their own according to their will and convenience. This generally means that they act on the basis of their internal bias as to caste and class combined with their deep-rooted patriarchy. This bias that plagues our system was seen evidently in the landmark rape case of Mathura back in 1972. A 14-16 years old Adivasi girl, who went to the police station to clear a misunderstanding with her brother and future in-laws, ended up getting raped by highly intoxicated officers on duty<sup>4</sup>. The audacity of the police officers to rape the girl with her family waiting outside can only stem from their deep-rooted feeling of superiority and authority, which turns out to be the difference between justice and injustice.

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<sup>3</sup> Monica Sakhrani, ‘Reading Rape Post Mathura’ (2016) 23 (2) Indian Journal of Gender Studies  
<<https://doi.org/10.1177/0971521516635347>> accessed 20 May 2022

<sup>4</sup> *Tulshiram v State of Maharashtra* (1979) 4 SCC (Jour) 17

The bias exists in places that promise to deliver justice without any prejudice in mind. Baxi says that 'Indian rape trials medicalize consent and falsity' especially with 'the characterization of the woman as a habitué or habituated'<sup>5</sup>.

## MEDICAL PROFESSIONALS & LACK OF FACILITIES

Section 164A mentions the use of a registered medical practitioner employed in a hospital run by the Government or a local authority, in the absence of whom, any other registered medical practitioner can be employed. We will now address the concern regarding the attitude of medical professionals towards sexual assault cases and the lack of facilities and medical personnel in rural hospitals. In the case of *State of Karnataka v Rangaswamy*<sup>6</sup>, the court held the doctors under scrutiny for lack of professionalism and evidence-tampering, rendering the case "pro-accused". It said that the members of the medical profession and particularly doctors who are working in the public hospitals are expected to grasp the seriousness and the horrifying consequences of the offence of rape and other sexual assaults and that they see right through these malpractices which clearly indicate that there is a very-very serious integrity problem at this level. The very last hope of the grieving families and the victims to get the justice that they deserve is also taken away by the doctors who took an oath to consecrate their lives to the service of humanity<sup>7</sup> (2003 Cri LJ 607). Government hospitals across the country lack the facilities and the personnel needed for the medico-legal examination. In Hathra's case, the victim was sent to JNMC Hospital from the local clinic due to the lack of facilities needed for the treatment<sup>8</sup>. This compromises the medical examination and forensic reports taken by the hospitals. It is statutory to conduct the examination of the victim in the presence of a female medical practitioner. Myriad local hospitals and clinics, despite having inadequate facilities and personnel, continue conducting examinations. Numerous hospitals do not provide the necessary after-care to the victims, like the Plan B (Morning-After Pill) to avoid the

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<sup>5</sup> Monica Sakhrani (n 4)

<sup>6</sup> *State of Karnataka v Rangaswamy* (2022) Criminal Petition No. 9984/2021

<sup>7</sup> *State by Alur Police v Rangaswamy alias Narayanagowda & Ors.*, (2003) CriLJ 607

<sup>8</sup> Ismat Ara, 'Hathras Gang-Rape and Murder Case: A Timeline' (*The Wire*, 28 October 2020)

<<https://thewire.in/women/hathras-gang-rape-and-murder-case-a-timeline>> accessed 20 May 2022

possibility of pregnancy or a check-up for sexually transmitted diseases<sup>9</sup>. The frivolousness shown by the doctors in this country towards the key evidence of the thus heinous crime is appalling.

## **FORMATION OF AN AGENCY**

After comprehending the seriousness of the crime and its handling in the country, numerous provisions, improvised protocols, and amendments were introduced by the government. To this date, the country is struggling to perform unbiased, prompt, and sincere medico-legal examinations of victims. Understanding the grave nature of the crime, the only way to seek justice for victims and their families is to see the courts convict and punish the perpetrators. To make them suffer the consequences of their deed. The only way to achieve this is through proper holding and handling of the key evidence of cases. We are at the conclusion that no more provisions, amendments, or protocols are going to provide enough help, especially considering the flaws that plague the current system. Therefore, I am proposing the formation of an agency, subordinate to the central government, to administer medical examinations of the victims of sexual assault across the country. Based on my understanding of the subject, we will now delve into its peculiarities. The agency would be subordinate to the central government, under the Ministry of Women and Child Development. Being under the direct supervision of the government would increase its efficiency. The agency will be responsible for two tasks, first, proper medico-legal examination of the victims, and second, the forensic analysis and report formulation. The appointed advisory committee of the agency will consist of 60% women from different fields like law, medicine, psychology, and so on. The other 40% will be reserved for the other sexes. The intention behind having 60% positions set aside for women was to assure the best interests of the victims in case of any conflict. The agency will be carefully planned and set up around every state to ensure easy and within 24 hours accessibility to victims from any remote areas. The center will provide a 24 hours service to reach victims if they cannot come to them. The staff, nurses, and the medical practitioners on the site will be meticulously trained before joining the team and a majority will be female to

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<sup>9</sup> Rebecca Campbell & Bybee Deborah, 'Emergency Medical Services for Rape Victims: Detecting the Cracks in Service Delivery' (1997) 3 (2) Women's Health: Research on Gender, Behaviour and Policy, 75-101

ensure a sense of comfort and the best interest of the victims and their families. The handling of the evidence will be monitored closely and will be recorded without any lapses. The samples would be sent to the forensic analysis team of the agency and will be checked for the closed seal before starting. The forensic team will consult with the doctor on-site and send the report straight to the court where the case will be handled. This is to avoid tampering with the report of the examination. Another important aspect of the trial in rape cases is the statement of the victim. The statement of the victim should be taken by the police only in the presence of a member of the agency involved in the case. The same should be recorded in the camera, only if the victim consents to it. It is to be used in the courts to acquire each and every detail and the exact words of the victim and to ensure no malpractice or coercion takes place. The recording of the same should be played in a closed court and be handled with utmost care after the trial. The recording should not be released or shared with the press or media in order to protect the safety of the victims. It might appear perfect on paper but, like every other institution, this agency is based on the presumption of honesty and sincerity from the members. The primary reason to employ more female members was that they understand the severity of the crime personally and are capable to make sure nothing gets in the way of securing justice for the victims and their families. Hence, a certain level of honesty and sincerity is expected of all the members of the agency.

## CONCLUSION

*"You go to sleep; I will also sleep"*

These were the last words spoken by Nirbhaya before she left us. In reality, these words were addressed to her father, however, metaphorically, they were addressed to the entire country, to its legislators, its leaders, its law enforcement agencies, its judiciary, and most importantly, to its people. These words were addressed to all of those who stand up in solidarity as soon as a mishap occurs but fail to incorporate any sort of individual or institutional changes. We don't want to name women Nirbhaya, fearless, just for the authorities are careless. Women won't have to be fearless if the perpetrators are fearful. It's the administrative failure of this country that the perpetrators of such disgusting acts have no fear of the authorities. We are in

desperate need of administrative reforms which would get rid of all its corrupt practices, which would instill an effective apparatus of medical examination for the most crucial bit of evidence in rape cases. We need an organisation that is free of all the prejudices that plague our society. Without the existence of this centrally-administered agency, carelessness will persist.

*“In order to escape accountability for his crimes, the perpetrator does everything in his power to promote forgetting. If secrecy fails, the perpetrator attacks the credibility of his victim. If he cannot silence her absolutely, he tries to make sure no one listens.”*

- Judith Lewis Herman