

## Review article

# Medicolegal Examination of an Alleged Rape Victim

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## Abstract

Rape is a serious sexual offence having social, psychological, physical and legal aspects of the problem. Medicolegal aspects of examination of rape victims holds significant role in documentation and collection of available medicolegal evidence in order to corroborate accounts of sexual assault for courts of law and provide better care and justice to victims. This study outlines the significance of medicolegal aspects of examination of rape victims, broadly describing the protocols and procedures involved in the collection and processing of medicolegal evidence such as provision of medical examination, having a standard form issued by government for recording medical evidence in rape cases and form is to be used by all government and government designated health facilities for recording evidence for sexual assaults. In addition, some evidences should be recorded specifically for rape victims which are distinct from any other victims and according to the rule of High Court, only female forensic experts can perform rape victim examination as the test done by male forensic expert can be considered as the violation of privacy of the victim. A meticulous medical examination proper is an integral part of medicolegal examination of a rape victim. History-taking and recording with the signature of victim enable precise documentation and guides the examiner during the physical examination and the collection of trace evidence. Other investigations include microbiological examination, radiological examination, DNA analysis etc.

**Key words:** Rape, medicolegal evidence, medicolegal examination.

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## Introduction

Rape is a devastating crime committed by men against women which have a lasting impact on victims, their families and the community at large. It happens in all countries and communities among population of across all background and socio-economic strata.<sup>1</sup>

The word 'rape' is derived from Latin term 'rapio' which means to seize. Thus, rape literally implies forcible seizure.<sup>2</sup>

Rape is defined as the unlawful sexual intercourse by a man with a woman without her consent, against her will or with her consent obtained by force, fear or fraud, or with any woman with or without her consent, below the age of sixteen years.<sup>3,4</sup>

Being a criminal offence, rape is a serious problem in many parts of the world. As in majority the offense is usually committed in the absence of any eye witness, proof beyond reasonable doubt is necessary before establishing guilt. In that case a forensic expert plays an important role of providing the necessary corroborative,

scientific evidence to prove the case of a rape by an independent and expert opinion.<sup>5</sup>

The medical examination of the victim forms an important part of the investigation. The doctor gives opinion about sign of sexual intercourse, sign of injuries present or not which helps the court in arriving at a judgement.<sup>6</sup>

The absence of injuries does not necessarily mean that the woman was a willing partner. For many reasons the victim may not resist the rapist such as applying fear of any weapon, if the victim is intoxicated during rape, if the rapist is an immediate family member or a relative or a friend. In case of absence of injury the examining doctor should ask what prevent the victim from struggling. The doctor should elicit a good history by obtaining detail information as per victim's statement.<sup>7</sup>

A man is said to commit "rape" if he-(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina,

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the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions: (1) Against her will. (2) Without her consent. (3) With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. (4) With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. (5) With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. (6) With or without her consent, when she is under eighteen years of age. (7) When she is unable to communicate consent.<sup>8</sup>

Medico legal examination of the alleged rape victim is very difficult task in forensic medicine. Danger of true offence to go unpunished, injustice of wrong conviction, infliction of heavy penalties to the convicted person for such offences, personal, familial and social consequences of such vile offence heavily depend on the report of examining doctor.<sup>9</sup>

Penalties for the offence of rape is provided for in Section 9 of the Suppression of Violence against Women and Children Act, 2000 or the Nari O Shishu Nirjatan Daman Ain, 2000 (NSA). This law uses the definition of rape provided in Section 375 of the Bangladesh Penal Code -- under this gender specific provision, a man is said to have committed rape if he has 'sexual intercourse' with a woman (1) against her will, (2) without her consent, (3) with her consent when her consent has been obtained by putting her in fear of death or hurt, (4) with her consent, when the man knows that he is not her husband or whom she is or believes herself to be lawfully married, (5) with or without consent, when she is under 16 years of age.<sup>10</sup>

### Prerequisites of rape victim examination

1. Requisition from the recognized authority, Escorting police constable, Three copies passport size photographs, attested by at least a second class gazetted officer at the investigating police station for identification purpose. One copy of photo is send to radiology department, one copy to the examining doctor and another copy attached to the report and send to the police station, One 3<sup>rd</sup> female attendant must be present at the time of examination to avoid any allegation of indecent assault against the

examining doctor. Name of the 3<sup>rd</sup> female attendant should be mentioned with initial in the government authorized form for rape victim examination.

2. Informed written consent: The victim should be thoroughly informed about the entire procedure regarding history taking, physical examination and any other important information if required. If the victim is illiterate then she will give her fingerprint. If the victim is minor, lunatic or mentally handicapped to understand the situation, then her accompanying guardian will have to be informed about the total procedure and the guardian will have to sign in the informed written consent paper.<sup>11</sup>

**Criteria of the subject:** Capacity to give valid consent, should be mentally fit and voluntariness.

In case of rape victim examination, consent is taken from attendant in special conditions like if the victim is minor, insane, mentally handicapped.

**Consent for sexual intercourse become invalid in the following circumstances:** When a woman is below 16 years of age, when consent is obtained by fear, threatening or hurting, when the girl is idiot, imbecile or insane when consent is obtained by intoxication, when consent is obtained by misconception of fact and when consent is taken by impersonification.<sup>12</sup>

The age of sexual consent is set at sixteen as per section 9(1) of the Nari O Shishu Nirjatan Daman Ain, 2000, raising it from fourteen, as provided for earlier under section 375 of the Bangladesh Penal Code 1860.<sup>13</sup>

A report commissioned by the National Human Rights Commission argues that 'the Act of 2000 does not seem to be applicable to a married girl under the age of 16 because the Penal Code provides that sexual intercourse by a man with his own wife who is of thirteen years of age or above will not constitute rape'.<sup>14</sup>

When a victim came with the complaint of unlawful sexual assault, the following information should be noted by examining medical officer in a government authorized form for rape victim examination: Date of examination, case number with the name of respective police station, name of hospital and address, particulars of the patient(name, age, sex, religion, profession, parent/husband's name, address), name and address of identifying police constable with constable number, name of the witnesses (identifying police constable and 3<sup>rd</sup> attendant of the hospital)with their initials and signature of the victim under informed written consent.<sup>15</sup>

Identification of the victim is important to establish the exact victim and to avoid false personification.<sup>16</sup>

Careful history regarding place of incident, date & time of incident and description of the incident has to be recorded. Considering physical examinations, radiological

examination and microbiological examination of the high vaginal swab, I am of the opinion that, the victim X, daughter of Y is about (16-17) years of age and she has sign of forceful sexual intercourse.<sup>17,18</sup>

Spermatozoa may be absent in the high vaginal swab and it does not mean that sexual intercourse has not taken place, it may be the result of non-emission, aspermia, previous vasectomy, very old age or poor technique by the examining doctor; ejaculation outside vagina, using barrier method can also be the factor of failure of detection of spermatozoa in high vaginal swab.<sup>19</sup>

High Court Bans the "Two-finger Test" on Rape Survivors  
On 12th of April 2018, the Hon'ble High Court Division comprising Mr. Justice Gobinda Chandra Tagore and Mr. Justice AKM Shahidul Huq, delivered a judgment in writ petition no. 10663 of 2013, clearly banning the "two-finger test" on rape survivors. The Court also pronounced following 8 (eight) directions. 1. The TFT is not scientific, reliable, valid and hereby prohibited in any examination of rape victim. 2. The respondents shall make available the health care protocol (Health Response To Gender Based Violence- Protocol For The Health Care Providers) to forensic experts, physicians who conduct medical examination on rape victims; police officers who conduct investigation of rape case; public prosecutors appointed in Nari O Shishu Nirjaton Tribunal and other interested private lawyers. 3. Physicians/forensic experts shall issue medical certificates about examination of rape, they shall not use the degrading word "habituated to sexual intercourse" and shall not ask any questions of her previous sexual experience. 4. In case of a deep-seated intra-vaginal examination the matter shall be referred to a Gynecologist for an expert opinion to identify an injury or for medical reasons. 5. Per speculum examination is not a must in the case of children/young girls when there is no history of penetration and no visible injuries. 6. The bimanual test is not related to TFT and being related to obstetrician gynecological examinations only, same shall not be practiced in rape victim. 7. The Government shall appoint trained doctors and nurses for medical examination of rape victim. Such examination shall be conducted in presence of preferably female police, female relative and preferably by female physicians. The concern physicians and forensic experts shall strictly maintain the privacy of the victim. 8. The Nari-oShishu Nirjaton Tribunal shall ensure that no lawyer shall ask any degrading question to rape victim which is not necessary to ascertain any information of rape.<sup>20</sup>

Sexual assault need not to have any other witnesses than the victim herself; police investigation relies on the documentation of the circumstantial evidence (interpretation of injuries -genital and non-genital) along with the statement of the victim. It is also important that absence of injuries does not nullify the allegation.

## Conclusion

The victims of rape are brought to the examining doctor very lately for medicolegal examination; as a result, signs of struggle, genital signs of sexual intercourse and other marks of forceful sexual acts are lost making it very difficult to conclude an illegal sexual intercourse took place the victim. History forceful sexual act as described by the victim as to the alleged sexual intercourse is extremely important. The consistency of the history of alleged sexual act and the medical findings should be convincing to the investigating legal officer to form a charge of rape against the accused.

Detection of spermatozoa from the vaginal swab of an unmarried woman confirm sexual intercourse, age of consent (16 years) is important as below this age, sexual intercourse with or without her consent is rape. Intercourse using force, fear, fraud is also important. Psychological trauma following sexual assault may be long lasting. DNA examination can confirm a sexual offense beyond doubt.

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