

THE DISMAL STATE OF MEDICO-LEGAL SERVICES FOR RAPE VICTIMS IN INDIA

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ABSTRACT

Forensic investigation and medical examinations of rape victims in India are often riddled with loopholes and lacunae. A wide gap exists between the statutory text providing provisions for curbing rape, and their actual implementation. In this gap mushrooms a lot of medical malpractices which often interfere with the justice mechanism of the nation. In this paper, the author recognizes two such ignorant medical practices which have plagued the medical examination of rape victims for a long time. The author aims to investigate the invasive and unethical practices of the two-finger/virginity test. Further, the paper will also illuminate how maladministration of contraceptives can negatively affect the life of a rape victim.

I. INTRODUCTION

In India, victims of sexual violence have, for time immemorial, tolerated criminal justice and health care systems that pay negligible attention to their needs and rights. Because of the many deficiencies and loopholes in the system, the victims often face humiliation, shame and discrimination. These humiliations are witnessed in their own homes, police stations and also in the hospitals where they undergo inadequate and incomplete medico-legal examinations that often end up doing little beyond harming their cases in the legal processes that follow.¹

Sexual violence is, disturbingly, a growing trend in India. According to the data compiled by National Crimes Records Bureau (NCRB), “4,15,786 rape cases were reported across India between 2001 and 2017. On average, 67 women were raped every day across the country during these 17 years, or, in other words, about three women had been raped every hour.”² A small rise in the number was noticed yet again, when in 2018 a 0.9% increase in reported

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¹ *Invisible Victims of Sexual Violence*, Human Rights Watch (03/04/2018), <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>, last seen on 20/04/2020.

² D. Rai, *Sexual violence pandemic in India: Rape cases doubled in last 17 years*, India Today (13/12/2019), available at <https://www.indiatoday.in/diu/story/sexual-violence-pandemic-india-rape-cases-doubled-seventeen-years-1628143-2019-12-13>, last seen on 29/03/2020.

rape cases was recorded.³ Past academic work in this area provides that these figures likely underestimate the problem.⁴ While the numbers are determined by the cases reported to the police, it is highly likely that a large number of rape cases go unreported.⁵ Many survivors of sexual violence do not report attacks because they fear ridicule or retribution, as well as labels like “bad,” “loose,” or otherwise “responsible” for the attack.⁶ The prevalent, and unfortunately crippling mindset of a family’s honour being a woman’s sole and exclusive responsibility, has prevented countless rape victims from even the hope of justice.⁷ Victims and their families may also be reluctant to subject themselves to the criminal justice system. With the unfortunately low conviction rate of 27.2%, it is not uncommon for victims and their families to feel that the system does not protect them.⁸

In this paper, the terms ‘victims’ and ‘survivors’ are used interchangeably. Some women who have been raped prefer to be called victims, because the term survivor seems to them as a shallow compensation which paints a wrong picture of the power dynamics of rape; in their view, the victim is overcome by the rapist, and hence, calling them a survivor would denote an unreal amount of power which they do not have at the time of the commission of the offence.⁹ On the other hand, some prefer to be called

³ *Crime Against Women (2016-2018)*, National Crimes Record Bureau, available at https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203A.1_0.pdf, last seen on 20/04/2020;

V. Mishra, *A rape in India every 15 minutes: government data*, Asia Times (15/01/2020), available at <https://asiatimes.com/2020/01/a-rape-in-india-every-15-minutes-government-data/>, last seen on 24/04/2020.

⁴ A. Pitre & M. Pandey, *Response of Health System to Sexual Violence*, Centre for Enquiry into Health and Allied Themes, 4 (2009), available at https://www.academia.edu/21088081/Response_of_Health_System_to_Sexual_Violence_An_exploratory_study_of_six_health_facilities_in_two_districts_of_Maharashtra, last seen on 23/04/2020;

P. Baxi, *The Medicalisation of Consent and Falsity: The Figure of the Habitué in Indian Rape Law*, 275 in *The Violence of Normal Times: Essays on Women’s Lived Realities* (K. Kannabiran, 1st ed., 2005), available at https://www.academia.edu/1766137/The_Medicalisation_of_Consent_and_Falsity_The_Figure_of_the_Habitu%C3%A9_in_Indian_Rape_Law, last seen on 29/03/2020.

⁵ D. Pujara, G. Bhatia, K. Singh & R. Gopalakrishnan, *Statistics on rape in India and some well-known cases*, Reuters (06/12/2019), available at <https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV>, last seen on 23/04/2020.

⁶ Ibid.

⁷ S. Denyer, *In rural India, rapes are common, but justice for victims is not*, The Washington Post (08/01/2013), available at https://www.washingtonpost.com/world/asia_pacific/in-rural-india-rapes-are-common-but-justice-for-victims-is-not/2013/01/08/c13546b4-58d6-11e2-88d0-c4cf65c3ad15_story.html, last seen on 01/04/2020.

⁸ PTI, *Conviction rate for rape only 27.2% even as country celebrates justice in Nirbhaya case*, The Economics Times (06/01/2020), available at <https://economictimes.indiatimes.com/news/politics-and-nation/conviction-rate-for-rape-only-27-2-even-as-country-celebrates-justice-in-nirbhaya-case/articleshow/73169787.cms?from=mdr>, last seen on 20/04/2020.

⁹ D. Campoamor, *I’m Not a Sexual Assault “Survivor”—I’m a Victim*, Harper’s Bazaar (21/05.2018), available at

survivors, because of the stigma attached to the 'victim culture' and because it resonates the qualities of strengths and endurance.¹⁰ This interchangeable usage is not intended to be disrespectful towards any woman who has faced the horrors of rape, but instead because the victim versus survivor debate remains unresolved.

This paper draws inputs from a 2010 study by the author, but also reflects the present scenario on the forensic dimension of rape. In the 2010 study,¹¹ which was on the state of medico-legal services provided to rape victims in the Wardha District of Maharashtra, he found that the doctors involved in attending rape cases in hospitals treated the survivor as a police case and not as a patient in need of treatment. Their focus was on submitting a medico-legal report to the police. Due to a lack of set protocols, they even subjected survivors to the degrading two-fingers test, a test that is not based on evidence and is inhumane, which has now been declared unmeritorious.¹²

This paper seeks to explore the medico-legal help for rape victims that has been statutorily recommended, and the many shortcomings in the reception of this help in reality. One of these shortcomings is the prevalence of the two-fingers test, commonly known as the virginity test. The two-fingers test emanates from societal norms of preserving the chastity of women, which has found its way in forensic examinations, too. The paper addresses the medical, psychological and legal problems posed by the test. Another issue that shall be given attention to is the maladministration of medical help to victims, which could possibly result in unwanted pregnancies. Further, the effect of this maladministration on the children born out of rapes shall also be investigated.

II. THE FORENSICS OF RAPE

The Delhi Gang Rape Case¹³ exposed the extent to which rapists can be brutal. The nationwide outrage against it was aimed towards seeking the harshest possible punishments for the culprits. The country's outrage brought to light how the demand for justice is generally focused on the punishment the rapists receive, and little on the condition in which the survivor is left.

<https://www.harpersbazaar.com/culture/features/a20138398/stop-using-survivor-to-describe-sexual-assault-victims/>, last seen on 22/03/2020.

¹⁰ K. Harding, *I've Been Told I'm a Survivor, Not a Victim. But What's Wrong With Being a Victim?*, Time (27/02/2020), available at <https://time.com/5789032/victim-survivor-sexual-assault/>, last seen on 22/03/2020.

¹¹ Indrajit Khandekar, *Pitiable and Horrendous Quality of Medical Examination of Rape Victims in Wardha District (MH)*, 12(4) International Journal of Medical Toxicology & Legal Medicine (2010).

¹² Lillu v. State of Haryana, (2013) 14 SCC 643.

¹³ Mukeshv. State (NCT of Delhi), (2017) 6 SCC 1.

The medical examination of a rape victim has been described as a “medico-legal emergency”¹⁴ and is conducted within the limits of Section 164A of the Code of Criminal Procedure, 1973 (“CrPC”).¹⁵ Because rape is primarily a crime against a woman’s bodily autonomy, her body becomes the most important evidence for the legal processes that follow. Signs of struggle, bruises and most importantly, traces of DNA allow the police to carry investigations, which ultimately helps in identifying the rapist and delivering justice.

The forensic examination of a rape victim starts with immediate first aid. Once she files a First Information Report, it then proceeds to seek informed consent of her to initiate medical examinations.¹⁶ A physical examination of the victim, in which injuries sustained by her and a local examination of her genitals are conducted. It is followed by documentation and sealing of any evidence which is indicative of sexual assault. The evidence is then handed to the police for investigation into the sexual assault. Additional medical help is then provided, by treating injuries, testing for sexually transmitted infections (“STI”) and pregnancy. The status of the victim’s mental health is checked to identify signs of trauma. In addition to that, mental and emotional counselling is provided to help the victim get through this difficult time.¹⁷

The process of undergoing a forensic examination can be extremely scarring for a victim, because it can often make her revisit the crime. Therefore, it is very necessary to make her feel comfortable throughout the process. Section 53 of the CrPC calls for the medical examination of a rape victim, in the presence of a female medical practitioner.¹⁸ Further, mental health professionals should also be present to assist the victim and make them feel safe.¹⁹ While the medical examination is supposed to be largely procedural, it can often be tampered with because of poor evidence collection facilities.²⁰ Too often, survivors are shifted from one hospital or ward to another, and receive multiple examinations at each stop. Further, the lack of communication and co-ordination between the

¹⁴ Gujua Manjhi v. State of Jharkhand, (2015) 3 AIR Jhar R 710;

N. Jagadeesh, *Legal changes towards justice for sexual assault victims*, 7(2) Indian Journal of Medical Ethics, (2016), available at <https://ijme.in/articles/legal-changes-towards-justice-for-sexual-assault-victims/?galley=html>, last seen on 27/04/2020.

¹⁵ S.164 A, The Code of Criminal Procedure, 1973.

¹⁶ S.164(7) A, The Code of Criminal Procedure, 1973.

¹⁷ Central Forensic Science Laboratory, Ministry of Home Affairs, Government of India, *Guidelines for Forensic Medical Examination in Sexual Assault Cases (2018)*.

¹⁸ S. 53, The Code of Criminal Procedure, 1973.

¹⁹ *Guidelines for medico-legal care of victims of sexual violence*, World Health Organization (2003), available at https://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/.

²⁰ H. Pandey & P. Dhar, *Collection of rape evidence in India – an analysis*, 6(6) Forensic Research & Criminology International Journal, 460 (2018), <https://medcraveonline.com/FRCIJ/FRCIJ-06-00245.pdf>, last seen on 01/04/2020

hospital(s) where the examinations had taken place and the forensic labs can lead to loss of a major evidence.²¹ Adding to the woes of the survivors, it may be lost or subject to processing delays, render the evidence unusable. In the important case of *State of Karnataka v. Rangaswami*,²² the Karnataka High Court has observed that evidence of sexual assault cases is mostly tampered with, and that “doctors have brazenly given evidence that has virtually sabotaged the prosecution”. In the same case, the court has also observed that majority of the cases of rape end up in acquittals owing to the poor facilities in hospitals and the uninterested and unprofessional attitude of the doctors.

Our medico-legal process requires conducting of a forensic medical examination as per a 'proforma', which has to be completed by a doctor. A proforma in the question of rape, is included in the rape kit, and is like a set of instructions that a doctor has to follow in order to conduct the requisite medical check-ups. For a long time, proformas were not standardized, and hence it was at the mercy of a doctor to decide what indications fulfilled the criteria of rape.

In 2011, the State of Maharashtra released a standardized proforma and manual for medical examinations of rape victims, which streamlined the process for evidence collection and examination.²³ In 2014, national guidelines (“2014 Guidelines”) and a standardized proforma was compiled by the Ministry of Health and Family Welfare, to minimize the differences that can be brought by personalized and non-standardized medical examinations.²⁴

It is critical for the victim that they receive psychological support and counselling after they report the crime, because it is this counselling that

²¹ Ibid.

²² State by Alur Police v. Rangaswamy alias Narayanagowda & Ors., 2003 Cri LJ 607.

²³ *Manual for Forensic Medical Examination of Cases of Sexual Assault*, High Court Committee, Maharashtra (2011);

Proforma: Forensic Medical Examination Report of Alleged Victim of Sexual Assault, High Court Committee Maharashtra (2011); V. Ganjapure, *In a relief to rape victims, Maharashtra government has amended the proforma for forensic medical examination for sexually assaulted victims as suggested by Dr. Indrajit Khandekar on whose report a PIL was filed. The government has prepared instruction manual, age estimation proforma, requisition letter for chemical analysis, and format for final opinion as advised by Dr. Khandekar's for proper forensic medical examination. If implemented, Maharashtra would become first state to have such proforma*, *The Times of India* (28/04/2011), <https://timesofindia.indiatimes.com/In-a-relief-to-rape-victims-Maharashtra-government-has-amended-the-proforma-for-forensic-medical-examination-for-sexually-assaulted-victims-as-suggested-by-Dr-Indrajit-Khandekar-on-whose-report-a-PIL-was-filed-The-government-has-prepared-instruction-manual-age-estimation-proforma-requisition-letter-for-chemical-analysis-and-format-for-final-opinion-as-advised-by-Dr-Khandekar-for-proper-forensic-medical-examination-If-implemented-Maharashtra-would-become-first-state-to-have-such-proforma-/articleshow/8110558.cms>, last seen on 28/04/2020.

²⁴ Ministry of Health and Family Welfare, Government of India, *Guidelines & Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence*, available at <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>.

helps them in reassuring that the attack was never their fault. A victim generally faces an overlap of Rape Trauma Syndrome (“RTS”) and Post Traumatic Stress Disorder (“PTSD”).²⁵ It is unjust and insensitive to expect them to think rationally about the long-term impacts of rape, like probability of pregnancy and battling Sexually Transmitting Infections. It should be understood that these victims, who are at such a vulnerable stage of their lives should be given professional medical and psychological counselling at healthcare facilities by trained professionals instead of being relegated as volunteer services.

While the physical examination is standardized throughout the country, the psychological health of a victim has to be gauged without any standardized and strict rules. However, what we witness in turn is the creation of a stereotypical image of victims, which often leads to miscarriage of justice.²⁶ It has been noticed that if a victim gets emotional or breaks down while giving a testimony, judges find confidence in her testimony.²⁷ This is because of the generalization of a rape victim being emotionally battered, and hence her emotional state is accepted as a buttress to her testimony. However, on the other hand, if the victim does not portray such an emotional behaviour, but is rather calm and is able to provide a lucid testimony, her testimony could be at the risk of being deemed unreliable. For example, in the case *Raja v. State of Karnataka*, the prosecutrix went back to place where she had been raped in order to collect evidence against the accused.²⁸ These “confident movements” of the prosecutrix’s were regarded as “out of the ordinary”, hinting to a diversion what the Court would have expected a violated person to behave. The two disparate examples show that both the justice and healthcare systems seem to be less than sympathetic of women’s trauma if the latter deviate from the expected behaviours of a victim. It also shows that both systems seem to rely on stereotypes and at the same time, reinforce these stereotypes of how a virtuous person should behave when they are violated. This reinforcement has emerged as a gulf in our understanding of the mental turmoil of a rape victim.

²⁵ A.W. Burgess & L.L. Holmström, *Rape Trauma Syndrome*, 131(9) *American Journal of Psychiatry* 981, (1974);

B. Kolk, S. Roth, D. Pelcovitz, S. Sunday & J. Spinazzola, *Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma*, 18(5) *Journal of Traumatic Stress* 389, (2005), available at

http://www.traumacenter.org/products/pdf_files/SpecialIssueComplexTraumaOct2006JTS3.pdf, last seen on 29/03/2020.

²⁶ G.S. Bajpai & R. Mendiratta, *Gender Notions in Judgments of Rape Cases: Facing the Disturbing Reality*, 60 *Journal of Indian Law Institute*, 298 (2018), available at http://14.139.60.114:8080/jspui/bitstream/123456789/47598/1/019_Gender%20Notions%20In%20Judgments%20of%20Rape%20Cases%20Facing%20The%20Disturbing%20Reality%20%28298-311%29.pdf, last seen on 20/04/2020.

²⁷ *Kamalanatha v. State of Tamil Nadu*, (2005) 5 SCC 194.

²⁸ *Raja v. State of Karnataka*, (2016) 10 SCC 506.

While examining rape victims, it is often observed that the medical examination and forensic investigation is not limited to scientific and standardized principles. Rather, certain sociological issues taint objective procedures; one of the most harrowing of such issues is judging the character of a victim. The taboo of labelling a woman as immoral or of loose character if she is habituated to sexual activities is deep rooted in the society. This taboo was strengthened by the statutory provision of discrediting a victim's testimony, as laid in Section 154(4)²⁹ of the Evidence Act. Because this section was an obstruction in justice, the Act was amended in 2002,³⁰ with the addition of a new provision of Section 146,³¹ which now disallows questioning a rape victim's character during the cross-examination. Judging a victim's character does not hold merit in law, because of the amendment in relevant statute and observation by the Supreme Court,³² but the sociological dimension of this taboo cannot be altered simply by law.

While standardized protocols have been useful in ensuring that physical examinations and collection of evidence of the sexual assault are performed accurately and timely, this has not precluded the degrading examination procedures that are rooted in social and cultural biases which, further traumatizes the victims. One such examination procedure is the two-finger test.

III. HORRORS OF THE TWO-FINGER TEST

For centuries, sexual politics have given birth to many societal norms. At the losing end of these norms and politics were mostly women. One of the most pervasive norm is that a woman ought to be a virgin or "sexually pure" in order to be a suitable partner for marriage. A woman's virtue and her family's honour has, for centuries, been linked to her sexual history.³³ To perpetuate such norms, practices are developed around preserving women's chastity. One such practice was of the virginity/two-finger test ("the test"), in which practitioners would insert two of their fingers in inside a woman's vagina to check the laxity and presence of a hymen to determine whether she was a virgin or not. As scientifically flawed as this practice might be, it found its way to be woven in many societies over centuries, and finding resonance in forensics too.

²⁹ S. 154(4), The Indian Evidence Act, 1872.

³⁰ The Indian Evidence (Amendment) Act, 2002.

³¹ S. 146, The Indian Evidence Act, 1872.

³² State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575.

³³ *Collectanea Medica: Consisting of Anecdotes, Facts, Extracts, Illustrations, &c.: Relating to the History or the Art of Medicine, and the Collateral Sciences*, 51(301) The London Medical and Physical Journal 206, 211 (1824).

One of the most controversial parts of the forensic medical examination is this much debated test. Officially called Per-Vaginum Test, it is conducted to ostensibly check if penile penetration has taken place. Depending upon the laxity of the vagina, the practitioner ascertains whether the victim is 'habituated to sex'.³⁴ Because of the taboo of a woman who is 'habituated to sex' gives her consent to all invitations of sexual intercourse, practitioners have come to use the test as an indication of a victim's consent. Such flawed opinions raise questions like whether the forensic examination, which ought to be scientific and ethical, is for a trial of the victim's character or of non-consensual sexual intercourse.

The most important element of what draws the line between sex and rape is informed consent. The least relevant fact is victim's sexual history, as it does not stand as a yardstick to her consenting to future sexual experiences. The legal question is whether one faced a forced sexual encounter, for which the complaint has been filed. The test only seeks to establish what the doctor considers prior sexual activity, which has nothing to do with establishing the victim's consent, and hence does not help in proving rape.³⁵ It also does not aid forensic investigation like sophisticated methods such as DNA profiling do, but remains a sociological anomaly which has paved its way to forensic examinations.

The test is both invasive and disrespectful to a woman's body and violates her rights as a person. This test can result in a lot of mental duress and trauma because it dilutes the claims of the victim. A victim's consent is judged by the rupture of her hymen or laxity of her vagina, both of which cannot indicate either virginity or the constitution of rape.³⁶ This ill measure of determining her consent through her sexual history using an ethically and scientifically fraudulent technique can often make a victim feel that she is being implicated in the crime committed against her. This very system that is supposed to seek justice for victims continue to marginalise them and mark them guilty even before the perpetrator is brought to trial.

In a ground-breaking judgment of *Lillu v. State of Haryana*,³⁷ the Supreme Court held that "*the two-finger test and its interpretation violates the right of rape*

³⁴ Yogesh Kumar v. PIO, Family & Welfare Dept., 2015 SCC OnLine CIC 7912; Justice Verma Committee, *Report of the Committee on Amendments to Criminal Law*, 2013, available at <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>, last seen on 20/05/2020.

³⁵ J. Bajoria, *Doctors in India Continue to Traumatise Rape Survivors with the Two-Finger Test*, Human Rights Watch, (09/11/2017), available at <https://www.hrw.org/news/2017/11/09/doctors-india-continue-traumatise-rape-survivors-two-finger-test>, last seen on 23/04/2020.

³⁶ J.P. Modi, *A Text-Book of Medical Jurisprudence and Toxicology*, 303 (K. Kannan, 21st ed., 1979).

³⁷ *Lillu v. State of Haryana*, (2013) 14 SCC 643.

survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent”, hence invalidating the flawed medical practice determining whether the rape victim was indeed raped. Following this case, the 2014 Guidelines declared this test to be invalid on the ground that *“the vaginal introitus has no bearing on a case of sexual violence.”*³⁸ The local examination of genitals has to be in accordance with these guidelines, therefore Per-Vaginum tests have to be conducted only when necessary, and for medical reasons such as checking for abrasions or bruises. A strong case must be made for all aspects of the forensic exam and the main priority of the examination has to be to assess and document the injuries that the victim had sustained in the genital region during the attack. In doing so, it would ensure that healthcare professionals are able to provide appropriate care and support to the victims of the sexual assault.

With the rise in awareness about mental health among people and surge in activism for bodily autonomy and privacy, the test has started to lose ground in India. Like in 2019, this practice was erased from the post graduate syllabus of medical students.³⁹ A more recent feat is the Gujarat High Court’s observation of the test as ‘outdated and archaic’, and declaring it unconstitutional owing to the test violation of a victim’s privacy, and mental and physical integrity.⁴⁰ The move against the practice of the test shows that when people speak up and question practices that have no scientific basis or benefits for the victims, there is a greater chance for change to occur, both, within and of the system.

IV. ON THE ISSUE OF CONTRACEPTION AND PREGNANCY

Rape can be a very traumatic experience for a victim, which can scar her for life. Sometimes trauma that a victim feels can even be lifelong. There are, however, other irreversible changes, too, that a woman can face because of rape. One of these is getting pregnant with her abuser’s baby. The chance of this happening increases manifold when she cannot access contraceptives timely. Hence, providing contraceptives is a very important part of a survivor’s forensic examination to prevent unwanted pregnancies. If the woman ends getting pregnant after the incident, she

³⁸ Supra 35, at 177.

³⁹ S. Debroy, *‘2-finger virginity test’ to be erased from Maharashtra syllabus*, The Times of India (08/05/2019), available at <https://timesofindia.indiatimes.com/city/mumbai/2-finger-virginity-test-to-be-erased-from-maharashtra-syllabus/articleshow/69226324.cms>, last seen on 24/04/2020.

⁴⁰ State of Gujarat v. Rameshchandra Ramabhai Panchal, 2020 SCC OnLineGuj 114; M. Langa, *Rape cases: Gujarat HC holds ‘two-finger test’ unconstitutional, violative of victim’s right to privacy*, The Hindu (29/01/2020), available at <https://www.thehindu.com/news/national/rape-cases-gujarat-hc-holds-two-finger-test-unconstitutional-violative-of-victims-right-to-privacy/article30682866.ece>, last seen on 01/04/2020.

can be met with other major problems like no access to abortions, abandonment of children, stalling of adoption procedures, and more.

The 2014 Guidelines state that once a woman reports sexual assault, she must be given emergency contraceptive options and offered free pregnancy tests during her routine check-ups.⁴¹ If not done so, she may be forced to make difficult decisions if she gets pregnant, which could impact her mental and physical well-being.

Ideally, the examining doctor needs to provide the rape survivor, treatment for STIs along with emergency contraception, within 72 hours of rape. If the contraception is not provided, or it fails to work, it can lead to unwanted pregnancies. Because of the legal complications, social unawareness and fear of abortion, rape victims may end up bearing children born out of the crime (“children”).⁴²

The 2014 Guidelines also make it clear that if a woman becomes pregnant as a result of the sexual assault, she should have the freedom to medically terminate her pregnancy and must have access to legal abortion services.⁴³ All sexual assault victims must have access to health services for further follow-up at various times spanning in weeks and months post the assault, and referrals for counselling and other support services.⁴⁴ Timely access to health and legal services would ensure that women would not have to deal with unwanted pregnancies as a result of sexual assault and would not have to experience the trauma of abandoning their children if the situations provoke them to.

If the victim ends up bearing her abuser’s child, the latter can be at a grave risk of being abandoned by the former due to various reasons like poverty and paucity of resources. If the victim is unmarried, the stigma of mothering an illegitimate child can often compel her to abandon her child. Moreover, the emotional trauma of having to raise a child conceived out of the fateful criminal incident influences the victim in opting for this option. These children, if abandoned, get stuck in the loop of emotional, financial and physical emancipation. Abandoned children often find their way to welfare shelters, NGOs or orphanages, often losing out on the option of having normal lives and families.

⁴¹ Supra 24, at 174.

⁴² P. Bhate-Deosthali & S. Rege. *Denial of Safe Abortion to Survivors of Rape in India*, 21(2) Health and Human Rights 189, (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6927364/>, last seen on 22/04/2020.

⁴³ Supra 35, at 177.

⁴⁴ *Guidelines for medico-legal care of victims of sexual violence*, World Health Organization (2003), available at https://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/.

Children also end up being given up for adoption. As compared to abandonment, giving up a child for adoption is a more sensitive solution. However, because of the legal complexities involved, this option may not be the most preferred one. Due to traditional notions of childbirth interfering with societal stigma revolving around rape, children are often considered and treated as '*muddemal*', which is the property involved in a criminal case.⁴⁵ Such children can be regarded as *muddemal* in a crime of rape because they are seen as articles or components pertinent to the crime. This could be because of various reasons like them being seen as products of the crime or being proof of the rapist's paternity.

Muddemal becomes an important component in a criminal investigation and criminal, and because of children being labeled as such, it could hinder the adoption proceedings that could run simultaneously.⁴⁶ This problem was addressed in an August 2013 landmark judgement, aimed at easing the adoption process of children born out of rape. The Aurangabad bench of the Bombay High Court ruled that the police and the Court hearing the rape case have no say in adoption matters, for which there are separate norms and procedures.⁴⁷ Adoption matters are dealt with by Central Adoption Resource Agency, which has laid elaborate rules on who is eligible to adopt and how the adoption process shall take place.⁴⁸ Therefore, the process for the adoption of the child need not be held up because of the rape trial.⁴⁹

The maladministration of forensic examinations can have debilitating effects on a lot of lives. A slight mistake or inefficiency in conducting the medical examinations and administering proper contraception, can have a cascading effect on the life of a child born out of an unwanted pregnancy. Every step involved in a rape kit has to be followed to ensure the victim remains in good health, and is not afflicted with any ordeal that could have been easily prevented.

V. CONCLUSION

⁴⁵ D. Suryanarayan, *Conceived in rape*, Femina (13/06/2014), available at <https://www.femina.in/campaigns/conceived-in-rape-2746.html>, last seen on 23/04/2020.

⁴⁶ TNN, *Child born out of rape can be given in adoption*, The Times of India (22/08/2013), available at <https://timesofindia.indiatimes.com/city/nagpur/Child-born-out-of-rape-can-be-given-in-adoption/articleshow/21969889.cms>, last seen on 23/04/2020.

⁴⁷ Snehalaya's Snehankur Adoption Centre v. Child Welfare Committee, Ahmednagar & another, (2014) 1 Mah LJ 217.

⁴⁸ Central Adoption Resource Agency, Ministry of Women and Child Development, Government of India, *Bench Book for Adoptions*, available at <http://cara.nic.in/PDF/Bench%20Book%20For%20Adoptions.pdf>, last seen on 01/04/2020.

⁴⁹ Ibid.

While the legal system is constantly introduced to changes and amendments in order to actualize justice for rape victims, the forensic sector should simultaneously do its best to aid these victims in such a difficult time. The physical and psychological impacts of rape are manifold and often lifelong. From the mental distortion and agony caused, to the societal pressure she has to bear, a sensitive approach has to be implemented while dealing with rape victims. While the medical problems are largely gynaecological, the universal principles of medical ethics should be implemented while conducting examinations. Moreover, if there is an unfortunate pregnancy as a result of the crime, not only is the victim's life, but also her child's is at stake. In order to nip such unwanted problems in the bud, the requirement of administration of contraceptive shall be fulfilled in the forensic examination.

There is an urgent need for a comprehensive policy and program that directs health authorities' attention to the needs of survivors after an assault. While guidelines exist, they are not strict, and hence a lot of margin is left for forensic tests to be compromised. The 2014 Guidelines and 2013 judgement declaring invalidity of the two-finger test should be harmoniously woven into statutes and legislations for greater enforcement. The government should work in tandem with the Medical Council of India to create holistic and strict guidelines to enable women to get justice for the sexual assault they have endured. The bodily autonomy and mental health of a rape victim should not become battle grounds for the society and medical practitioners to implement acerbic weapons of sexism.