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FORENSIC SCIENCE	PAPER NO.14: Forensic Medicine
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1. Learning Outcomes

After studying this module, you shall be able to know about-

- The meaning and categories of Sexual Offences
- Definition of Rape after Criminal Amendment Act 2013
- Procedure of examination of Sexual Offence Victims
- Procedure of examination of Sexual Offence Accused
- Adultery & Incest

2. Introduction

“Your perspective on life comes from the cage you were held captive in”...Shannon L. Alder

Sexual offences are probably one of the most heinous crimes prevailing in the world and sex offenders are persons with one of the most degenerative mental status. Sexual offences can be described as acts of sexual intercourse or sexual interference with a person or animal against the provisions of law. They are classified as follows:

A) Natural Sexual offences:

- 1) Rape.
- 2) Adultery.
- 3) Incest.

B) Unnatural sexual offences:

- 1) Sodomy.
- 2) Buccal coitus.
- 3) Tribadism.

C) Sexual perversion: Pedophilia, exhibitionism, Voyeurism, sadism, masochism, necrophilia, necrophagia, etc.

However, in this chapter, the natural sexual offences will be discussed. The unnatural sexual offence and perversions will be discussed in details in the consecutive chapter.

3. Rape

The word “rape” originally denoted violent seizure of property, later used as “carrying off a woman by force” which has been derived from Latin word “rapere” which means “seize”.

Under the Criminal Law (Amendment) Act, 2013, which came into force on the 3rd day of June, 2013, under section 375 IPC; Rape has been defined as follows:

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, mouth, 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, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- d) Applies his mouth to the vagina, urethra or anus 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:

First- Against her will.

Secondly- Without her consent.

Thirdly- 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.

Fourthly- With her consent, when the man knows that he is not her husband and that her consent has been given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- 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.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- When she is unable to communicate consent.

Exception 1- A medical procedure or intervention shall not constitute rape.

Exception 2- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

The punishment for rape is defined under section 376 IPC as follows:

376 (1) whoever, except in the cases provided for in subsection (2) commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) whoever,-

(a) being a police officer, commits rape-

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during a communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

- (i) commits rape on a woman when she is under sixteen years of age; or
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman.

Shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Section 376 IPC has 5 subsections which defines punishment for offence of rape falling under different circumstances.

➤ **Medico legal examination of alleged victim of rape:**

- A doctor can directly examine a survivor who reports to the hospital for seeking medical examination first, without lodging the FIR i.e. a police requisition is not mandatory. He can then inform the police accordingly as per the request of the patient. A survivor may come to the hospital for only treatment purpose for the assault and section 39 CrPC, the doctor is not bound to inform the police, if the survivor is not willing to. However, informed refusal shall be documented by the doctor. Neither the court, nor the police can force a rape survivor to undergo medical examination without her or her lawful guardian's consent (depending on age). For a victim who is over the age of 12 years, a written informed consent is taken for examination as well as collection of material evidence. If the age of the person is less than 12 years or the person is mentally unsound, the consent of the legal guardian is taken. In case of any invasive procedures like per vaginal, per speculum, per rectal examinations, the age of the consent has to be 18 years and above.
- It is very much mandatory for a **Support person**, either in the form of a family member, rape counselor or female nurse, to be present at the time of examination, not only to assist the physician (preferably female) but also to prevent allegations of sexual assault against the physician (in case of a male physician) and also to provide mental support to the victim.

- The medico legal examination should include complete history, physical examination and collection of the material evidence for laboratory examination, all of which are discussed below:

❖ **The history**

The purpose of the history including the detailed history of the incident and other medical history, is to gather information which will help in management of the case legally.

- General medical history: Any past history of any major injury or any illness e.g. any bleeding disorders etc or whether the victim is on an medication or not?
- Sexual history: Whether the victim attained menarche. If yes, then a detailed history of the menstrual cycle has to be taken regarding the frequency, regularity and volume of the menstrual bleed. Whether the victim had been sterilized or does she use any contraceptives has to be asked. The marital and obstetric history has to be taken regarding number of pregnancies, the most recent consensual sexual intercourse, any history of existing pregnancy, any past history of termination of pregnancy, past history of venereal disease, whether treated or not etc.
- History of the incident: Following points are included while taking history regarding the incident:
 - The time and location of the incident
 - The specific nature of the alleged assault
 - Whether the penetration was vaginal, oral or anal
 - Whether the penetration was accomplished or attempted with penis, finger or any other object.
 - Whether she experienced pain at the time of the incident or subsequently.
 - Whether any body fluids were left on the victim.
 - Whether any instruments or restraints were used or not.
 - Number of assailants present and their physical description, if she is able to recall such information.
 - Whether any resistance given by her and in which manner.
 - Was there any use of condom and/or foam or jelly or lubricant?
 - Whether or not there were any activities which could be possibly interfere with the collection of the material evidence like changing of clothes, taking bath, urinating, defecating etc.

❖ **The Examination:**

Examination is strictly conducted in the presence of another female nurse, after ensuring total privacy, and should be done gently, by explaining each and every step. It should be thoroughly done without missing out in any finding.

General Examination:

- Written informed consent is taken from the victim or from the legal guardian of the victim (depending on the situation).
- The general appearance of the victim is recorded. Any disarrangement or damage to or any stains on clothing, any signs of emotional instability, gait, whether conscious cooperative or well oriented to time, place and person or not.
- The vital parameters (blood pressure, pulse, temperature, respiration) are recorded.
- At least two marks of identification are recorded.
- One large clean white sheet of paper is spread over the floor and the victim is asked to stand over the sheet of paper and to undress herself and collect any material that falls onto the paper during the process.
- The fingernails are examined for any damage and any material which may have accumulated under the finger nails. They are scrapped off into a cellophane packet which is then sealed, labeled and forwarded to forensic science laboratory for the needful.
- Any presences of fresh/dried stains of blood, semen, dirt, mud etc on the body are recorded. They are swabbed/ scrapped off into appropriate containers, sealed, labeled and forwarded to forensic science laboratory for the needful.
- Careful and meticulous examination has to be done for presence of any external injuries (any signs of restraint, bite marks etc).
- Follow up examination of the injuries: A follow up examination of the victim is very much necessary as some injuries like deep bruise or bite marks may be visible after 48 hours.

Local Examination:

The victim is made to lie in lithotomy position and examination is carried out:

- **External examination:** The external genitalia and its surroundings are examined. Whether pubic hair matted or not are seen. They are combed for specimen collection eg., any foreign hair. Clippings are also taken for comparison. Whether any bruising present over inner aspects of thigh and labia.
- **Internal examination:** A disposable vaginal speculum is used. If a child gives no history of penetration, then a per vaginal or per speculum examination may not be necessary at all.
- In case the injuries are not visible, but suspected, then a 1% toluidine blue dye test can be done (vide infra). If there is any vaginal discharge present, then comment upon the texture, color, odor etc.

The introitus is inspected and following points to be seen:

- Is the hymen ruptured or not.
- If ruptured, what is the site, nature and extent of damage.
- What is the age of the injury?
- Presence of intact hymen should be documented but does not rule out vaginal penetration.
- Collection of material evidence: Washing from the posterior fornix, vaginal swabs.
- Bimanual examination of the uterus to assess the size and consistency of the uterus, signs of any pre existing pregnancy and tenderness resulting from trauma sustained during the assault.
- Anoscopic examination to be done only in cases of anal bleeding or severe anal pain or suspected presence of any foreign body in the rectum.
- Colposcopic examination is required to be done when injuries are not appreciated by naked eye and when collection of photographic evidence is required.
- Toluidine blue dye test: This test is used to assist in the identification of any recent genital and perianal injuries. 1% aqueous solution of toluidine blue dye is applied over the posterior fourchette and fossa navicularis after the initial examination and swab collection is done. After allowing a minute to the dye to uptake, the excess is removed by using any lubricant like KY jelly or 10% acetic acid. Dye uptake is considered positive and confirms injury when there is residual blue coloration of the laceration or its border. Abrasions from forced cunnilingus can result in a diffuse patten of dye uptake.

- The previously recommended “two finger test” is not performed in a case of sexual assault and is considered to be of no significance.

Laboratory examinations:

All the materials collected during the general and local examinations are sealed, labeled and forwarded to forensic science laboratory by maintaining a proper chain of evidence for further evaluation. A list of material evidence, which are commonly sent are listed below.

- Piece of clothing which is blood/semen/mud/dirt stained.
- Foreign debris: Hair/fibre or any fresh/dried secretion over the body.
- Finger nail scrapings.
- Combing from pubic hair and clippings from the victim for comparison.
- Posterior fornix and vaginal washings are sent for histochemical and histological examination for detection of seminal fluid.
- Vaginal swabs for detection of spermatozoa or any sexually transmitted diseases.

Inspection of wet mount of vaginal swab slides:

The vaginal swabs are made into a wet mount slide and are inspected under light microscope for the presence of at least one intact spermatozoon. The presence of motile sperm in the vaginal pool is the best indicator of recent ejaculation. The absence of the same, however does not rule out the possibility as sperm may become non-motile within hours of entering the vaginal cavity.

Apart from the above mentioned points, some other samples which have legal significance are:

- Blood for grouping and baseline serology tests for STDs and presence of ethanol or any other intoxicating agents.
- Urine for presence of ethanol or any other intoxicating agents.
- Presence of ethanol or any other intoxicating agents in blood and urine or vomitus may conclude to the fact that the assailant used these agents to subdue the victim before the act.

Medico legal examination of accused in a case of alleged rape:

Examination of rape accused should be preferably conducted by the same physician who examined the victim. Can be done without consent also.

The following points are looked for:

- Examination of the clothing and garments for recent seminal stains.
- Examination of the genitalia for presence of any disease or deformity, whether prepuce is retractable or not (in uncircumcised person)
- Absence of smegma under the prepuce: This is a thick cheesy secretion with disagreeable odor, consisting of desquamated epithelium and smegma bacilli. Smegma is generally wiped off during sexual intercourse. However, the absence of smegma is not a conclusive evidence of sexual intercourse and the actual presence can be taken as evidence that the person did not participate in the act.
- Examination of the shaft of the penis for the presence of vaginal epithelial cells. This is done by wiping off the shaft with a clean moist filter paper which is then exposed to vapors of Lugol's iodine. A brown color indicates a positive test.
- Suspect's penis is also washed with saline and the material stained with papanicolaou's stain for presence of vaginal epithelium.
- Presence of any tear of the frenulum sustained by the accused himself.
- Presence of any blood stain (fresh or dried).
- Potency of a man is the usual and normal state and it always be presumed to be so, unless the contrary is proved.
- Signs of any forcible sexual intercourse by the accused over the victim: Such as injuries over the face or bite marks over the upper limbs or anywhere else, tears on the frenulum or abrasion over shaft of penis etc.
- STDs to be examined for by serological examination of blood and bacteriological examination.

4. Adultery

Under section **497 IPC adultery** is “ whoever has sexual intercourse with a person whom he knows or has a reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to rape, is guilty of the offence of adultery.”

Section 498 IPC describes the offence of enticing or taking away or detaining a married woman with criminal intent. Adultery can be committed only by a man and is punishable by 5 years imprisonment with or without fine. A woman is not punishable for adultery. Fornication refers to consensual sexual intercourse between two people not married to each other.

5. Incest

Incest means sexual intercourse by a man with a woman who is closely related to him by blood (prohibited degrees of relationship). Eg. Sexual intercourse between a father and daughter, between brother and sister (most common). In India, incest is not a punishable offence.

INCEST occurs:

- A. In mental defectives who are unable to understand the prohibitions.
- B. where alcohol removes the natural inhibitions.
- C. where brother and sister separated during childhood and met after long time as strangers.
- D. where close relations has to live in intimacy.

6. Summary

1. The word “rape” originally denoted violent seizure of property, later used as “carrying off a woman by force” which has been derived from Latin word “rapere” which means “seize”.
2. It is very much mandatory for a **Support person**, either in the form of a family member, rape counselor or female nurse, to be present at the time of examination, not only to assist the physician (preferably female) but also to prevent allegations of sexual assault against the physician (in case of a male physician) and also to provide mental support to the victim.
3. The marital and obstetric history has to be taken regarding number of pregnancies, the most recent consensual sexual intercourse, any history of existing pregnancy, any past history of termination of pregnancy, past history of venereal disease, whether treated or not etc.
4. Examination is strictly conducted in the presence of another female nurse, after ensuring total privacy, and should be done gently, by explaining each and every step. It should be thoroughly done without missing out in any finding.
5. **Incest** means sexual intercourse by a man with a woman who is closely related to him by blood (prohibited degrees of relationship).