



KARNATAKA STATE OBSTETRICS AND GYNECOLOGY ASSOCIATION ETHICS AND MEDICOLEGAL COMMITTEE

MEDICOLEGAL BULLETIN

Week:27;Sexual Assault Examination – What Every Gynecologist Must and Must Not Do Medicolegally

1. REAL LIFE CASE SCENARIO

A 22-year-old woman presented to the emergency department alleging sexual assault approximately 12 hours earlier. She was anxious and accompanied by relatives and police. The duty doctor immediately started examination and evidence collection but did not adequately document separate informed consent for the examination and forensic evidence collection. The report also contained comments regarding the condition of the hymen and whether she appeared “habituated to sexual intercourse.” During subsequent legal proceedings, these aspects of the examination were questioned.

The central medicolegal lesson was simple: The doctor's role is to treat, document objective findings, and appropriately collect evidence—not to decide whether sexual assault occurred. The Ministry of Health and Family Welfare specifically states that consent should cover the examination and forensic evidence collection, and refusal of examination/evidence collection cannot be used to deny treatment.

2. MEDICOLEGAL RISKS IN SUCH CASES

Sexual-assault examination carries major clinical, forensic, ethical, and legal responsibilities.

Common medicolegal pitfalls include:

- Examination without proper informed consent
 - Delay in necessary medical treatment while waiting for police
 - Inadequate documentation of injuries
 - Poor collection or preservation of forensic evidence
 - Break in chain of custody
 - Judgmental language in the medical report
 - Giving an opinion on whether “rape occurred”
 - Commenting on previous sexual experience
 - Performing the prohibited “two-finger test”
 - Breaching confidentiality
 - Failure to recognize additional POCSSO requirements when the survivor is below 18 years
- The examination must remain trauma-informed, objective, clinically appropriate, and legally sound.

3. WHAT THE LAW EXPECTS

The survivor should be informed about the nature and purpose of the examination and forensic evidence collection. The doctor should:

- Obtain informed consent appropriately
- Provide necessary treatment irrespective of willingness to participate in investigation
- Document history sensitively.
- Examine and treat injuries
- Assess pregnancy risk where relevant.
- Address STI/HIV-related needs as clinically indicated
- Collect appropriate forensic samples based on history, nature of assault, elapsed time, and circumstances.
- Maintain confidentiality
- Follow appropriate evidence-handling procedures

Importantly, forensic evidence collection is individualized. The nature of evidence collected depends on factors including the nature of sexual violence, elapsed time, and whether washing or bathing occurred.

4. THE TWO FINGER TEST-DO NOT DO IT

This deserves special emphasis.

The so-called two-finger test must not be performed to establish whether sexual violence occurred. The doctor should also not comment on:

- Vaginal laxity.
- Size or elasticity of the vaginal opening
- “Habituation to sexual intercourse”.
- Previous sexual experience based on examination

Such observations do not establish whether consent was present during the alleged incident.

Government of India guidance prohibits using per-vaginal examination in this manner and states that comments about past sexual experience have no bearing on a case of sexual violence.



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5. DOCUMENTATION – THE DOCTOR'S STRONGEST DEFENSE

Document:

- Date and exact time of examination.
- Time since alleged incident.
- General physical examination.
- Genital/other examination only as clinically and forensically indicated
- Samples collected.
- Persons to whom evidence was handed over.
- Counseling and follow-up advice
- Relevant history in the survivor's own words as far as practical
- Consent obtained/refused
- Injuries — site, size, shape and characteristics
- Packaging/sealing/labeling details as applicable
- Treatment provided

Avoid conclusions such as:

“Rape confirmed.”. or. “No rape occurred.”

Record medical findings objectively.

6. IF THE SURVIVOR IS BELOW 18 YEARS

Now POCSO becomes relevant.

Additional child-sensitive safeguards apply.

For a girl child, the statutory framework includes examination by a woman doctor and child-sensitive requirements regarding the presence of a parent, guardian, trusted person, or other woman as provided under the applicable law when necessary. Do not treat an adolescent sexual-assault examination exactly like a routine adult gynecological examination.

7. COMMON MISTAKES TO AVOID

- Waiting for police before providing necessary treatment
- Forcing examination or evidence collection
- Performing the two-finger test
- Commenting on virginity or previous sexual activity
- Asking unnecessary or humiliating questions
- Poor labeling of forensic samples
- Incomplete chain-of-custody documentation
- Writing subjective opinions about credibility
- Allowing unnecessary persons during examination
- Disclosing the survivor's identity casually

The medical report should describe findings, not pass judgment on the survivor.

8. CLINICAL–LEGAL PEARL

Absence of injuries does not prove absence of sexual assault.

Similarly: Presence or absence of hymenal findings does not determine consent.

The doctor's responsibility is not to become investigator or judge.

It is to: Treat → Obtain consent → Examine sensitively → Document objectively → Preserve appropriate evidence → Maintain confidentiality.

9. TAKE-HOME MESSAGE

Sexual-assault examination is not merely a forensic exercise.

The survivor is first and foremost a patient requiring healthcare, dignity, privacy, and informed decision-making.

The safest medicolegal practice is:

Consent before examination → Treatment without unnecessary delay → No two-finger test → Objective documentation → Proper evidence handling → Confidentiality → Appropriate legal compliance.

The quality of your medical report may influence proceedings years later.

Write only what you observed—and write it carefully.

Next Week's Topic: Menopausal Hormone Therapy – Cancer, Thrombosis, Informed Consent, and Medicolegal Responsibility



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