



# Medico-Legal Procedural Guide

## **Trigger Warning:**

The following content contains information on [physical violence, sexual violence, abuse] which some readers may find disturbing.



## How can the guide **help you?**

The **Nyaaya Guide on Medico Legal Examination for Sexual Assault** helps survivors by providing a summary of the process along with some things to be kept in mind if a person is sexually assaulted.

The guide helps in understanding the **procedure of the forensic medical exams** that survivors go through to preserve possible evidence, including DNA, and to get important medical attention. It gives an **overview of the survivor's rights** and dispels various myths. While dealing with sexual assault, **health workers play a dual role** – one, providing medical treatment and psychological support and two, collecting evidence and ensuring good quality documentation of evidence. In 2014, the Ministry of Health and Family Welfare put out guidelines and protocols for medico-legal care for survivors of sexual violence.

## What are **the laws** discussed in the guide?

The guide discusses the **legal aspects of the medico legal guidelines by the Ministry of Health and Family Welfare in 2014**. The guidelines are based on various requirements outlined in the Criminal Law Amendment Act, 2013, the Indian Penal Code, 1860 the Protection of Children from Sexual Offences (POCSO), 2012 and the Code of Criminal Procedure, 1973.

# Guide



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# First Steps

## MEDICAL AID & EXAMINATION

Medical examinations play an important role in corroborating the survivor's statement, which is why it is important to get yourself examined by a registered medical practitioner as soon as possible.

If possible **avoid brushing, bathing, urinating, defecating, changing clothes, combing hair, rinsing mouth or cleaning the genital area** prior to the medical examination. It may assist in collection of evidence.

Anyone can accompany the survivor during the exam.



A relative, friend or person of their choosing can accompany the survivor during the medical exam. The facility may even provide them with a **trained professional** for support.



# Medical Exam

## OVERVIEW

What are the **objectives** of a medical exam?



The medical exam has **two objectives**.

1. The first is to **give medical care**, which can mean anything from looking after any sexual health needs by testing for pregnancy or STIs, to providing prescriptions.
2. The second is **forensic**, which means the medical practitioner will use their medical skills to help the police investigation, taking DNA swabs, identifying, and photographing injuries, describing the subject's emotional state, finding foreign material and running toxicology tests.



The medical exam can take **2-4 hours**.



## Under what **circumstances** does a survivor undergo a medical exam?

There are **three circumstances** under which a survivor can undergo a medical exam:

1. When the survivor approaches the hospital/clinic for treatment for the effects of assault.
2. When there is a police requisition after police complaint; or
3. After a court directive or on the order of the Court.

## Is an **FIR** mandatory for a medical exam?

An FIR is **not mandatory** for the medical exam. Further, the survivor can choose not to file a complaint. It is advisable to undergo a medical examination as soon as possible. The medical professionals will also inform the survivor of their right to file a complaint against the assault. In case the survivor does not want to file a complaint, the medical personnel should document the survivor's informed refusal. However, they are duty bound to report the incident to the police.

## Who conducts the medical exam?

A [registered medical practitioner](#) with the Medical Council of India can conduct the exam. The **consent of the survivor must be taken** for each stage of the exam. The medical practitioner has to skip a particular step, if the survivor does not consent to it. It is advised that a female doctor conducts the exam. If a female doctor is not available, a male doctor can conduct the exam, with the survivor's consent. The survivor can choose to have a male doctor conduct the exam.

## Is the medical exam **free of cost**?

Doctors are **required to give first aid or medical treatment, free of cost**, to survivors who approach them and disclose sexual assault at both [private and government hospitals](#).

### Remember...

The survivor can choose to stop, pause, or skip a step at any time during the exam.



# Medical Exam

## PROCEDURE

### What is the **procedure** of a medical exam?

1. An exam begins with **treating any injuries** that need immediate care.
2. Then, a survivor's **medical history** is taken down by the medical practitioner.
3. **Details of what happened**, including identifying places on their body or clothes that may show evidence is collected.
4. Next, the medical professional may give a **head-to-toe examination**, which may include internal examinations of the mouth, vagina, and anus.
5. **Blood, urine, body, and hair samples** are collected for evidence from the survivor.
6. The healthcare provider may also take photos of the survivor's body to **document injuries**.
7. **STI prevention treatment** or an **emergency contraceptive** is provided to the survivor if necessary.
8. Additionally, in cases where the survivor was drugged, the healthcare provider may **conduct a drug-facilitated kit**, which involves taking blood and urine samples for testing.
9. The survivor will also undergo **testing for pregnancy** as well as for **sexually transmitted infections (STI)**, HIV, Hepatitis B.



## What **medical history** is collected?

Post assault, the medical practitioner collects information on the activities of the survivors like:

1. changing of clothes, cleaning of clothes
2. bathing/ showering
3. washing genitals, menstrual cycle, urinating, defecating
4. rinsing mouth, drinking, eating
5. vaccinations, recent sexual activity

This information would have a bearing on the evidence collected from the survivor.

**However, information on the number of sexual partners or past sexual experiences is not necessary unless it is relevant to the assault in any way.**

### Is the **Two-Finger test** legal?

The two-finger test, also known as PV (Per Vaginal) examination or 'virginity test', is a practice where the examining doctor notes the presence or absence of the hymen and so-called laxity of the vagina of the rape survivor by putting his or her two fingers inside the woman's vagina.

**Medical practitioners cannot carry out the two-finger test in India as per the Medico Legal [guidelines](#) issued by the Ministry of Health and Family Welfare.**

This is different from the internal examination of the survivor's vagina to test for injuries and infection, and is a part of medical treatment extended to them.

# Medical Exam

## FORENSIC EVIDENCE

### How is forensic evidence collected?

1. **Semen, saliva, hair, and fingernail scrapings** are studied for DNA. These can identify a suspect and link them to the survivor or crime scene.
2. An examination of **internal and external injuries** also takes place. Injuries can indicate use of force or violence from an attacker and resistance from the survivor.
3. **Blood and urine** can show whether a survivor was under the influence of alcohol or drugs and could not consent.
4. And **foreign material** like clothing fibres, foliage and soil can link a suspect to the offence. This is done to gather as much evidence as possible to support and corroborate a version of events.

The collected evidence is stored in a clean dry sanitized pack which is sealed with a sticker to ensure the evidence is not contaminated or tampered with.

### What happens if the survivor has cleaned away evidence?

Medical examinations are still possible even if the survivor has showered or cleaned themselves. However, if it is possible to avoid showering, combing hair, brushing teeth, rinsing mouth, urinating, defecating, changing clothes and cleaning up the genital area or other areas of assault as it may assist in collecting the evidence. The likelihood of finding evidence reduces after 72 hours (3 days). Usually evidence is collected up to 96 hours in case of unclear timelines.



## What happens in cases where there is **no forensic evidence**?

A medical examination **cannot ascertain the presence or absence of consent**. That's something only the survivor can really testify to. Consent is the most important aspect in determining whether an act was rape or not. If little to no evidence is found, this does not mean that the crime has not taken place. The police will still continue their investigation.

### Is semen the only form of forensic evidence?



While finding semen is still a primary focus of any exam, advances in DNA technology mean that **other genetic evidence is collected and used as well**.



Swabs from areas of the body the attacker may have touched, kissed, or bitten, fingernail clippings in case the survivor has any DNA under their nails, and the collection of scalp and pubic hair are all potential sources of evidence that may help identify and convict a rapist.

# Legal Process

## AT THE HEALTHCARE PROVIDER

### What are the **duties of health professionals** caring for the survivor?

The health professionals (Doctors, Nurses, and other Medical Personnel) have the following duties when a survivor come to hospitals/clinics for medical or other forms of support:

1. Explain to the survivor in **simple and understandable language** the rationale for various procedures and their respective steps
2. Follow special steps when dealing with **a survivor from marginalized groups** such as children, persons with disability, LGBTI persons, sex workers or persons from a minority community.
3. Ensure **confidentiality** and explain to the survivor that they must reveal the entire history to health professionals without fear. At this stage, survivors are encouraged not to hide any **existing medical history** or information.
4. Explain to the survivor that **genital examination may be uncomfortable but is necessary** for legal purposes.
5. Inform the survivor about the need to carry out **additional procedures** such as x-rays, etc which may require them to visit other departments in a medical facility.



## What are the **duties of hospitals?**

Every hospital must have a **Standard Operating Procedure (SOP)** for management of cases of sexual violence:

1. The absence of a female doctor should not deny or delay the examination. **If a male doctor is examining, it must be in the presence of a female attendant.** For minors/persons with disability his/her parent/guardian/any other person with whom the survivor is comfortable may be present.
2. In the case of **a transgender/intersex person**, the survivor has the choice whether they want to be examined by a female doctor, or a male doctor in the presence of a female attendant.
3. **Police personnel cannot be in the examination room during the consultation** with the survivor. If the survivor requests, her relative may be present during the examination.
4. There must be **no delay in conducting an examination** and collecting evidence.
5. Providing treatment and necessary medical investigations is the prime responsibility of the examining doctor. **Admission, evidence collection or filing a police complaint is not mandatory for providing treatment.**
6. The history taking & examination should be carried out in **complete privacy in a private room** set up in the hospital for examination of sexual violence survivor.
7. After the examination is complete the survivor should be permitted to wash up, using the toiletries and the clothing given by the hospital if her own clothing is taken as evidence. **The hospital is obliged to give such clothing at no charge.**
8. Admission is unnecessary unless the survivor requires indoor stay for observation or treatment.

## Remember...

**Survivors of sexual violence should receive all services completely free of cost.**

The survivor can get a copy of all documentation (including that pertaining to medico-legal examination and treatment), free of cost.

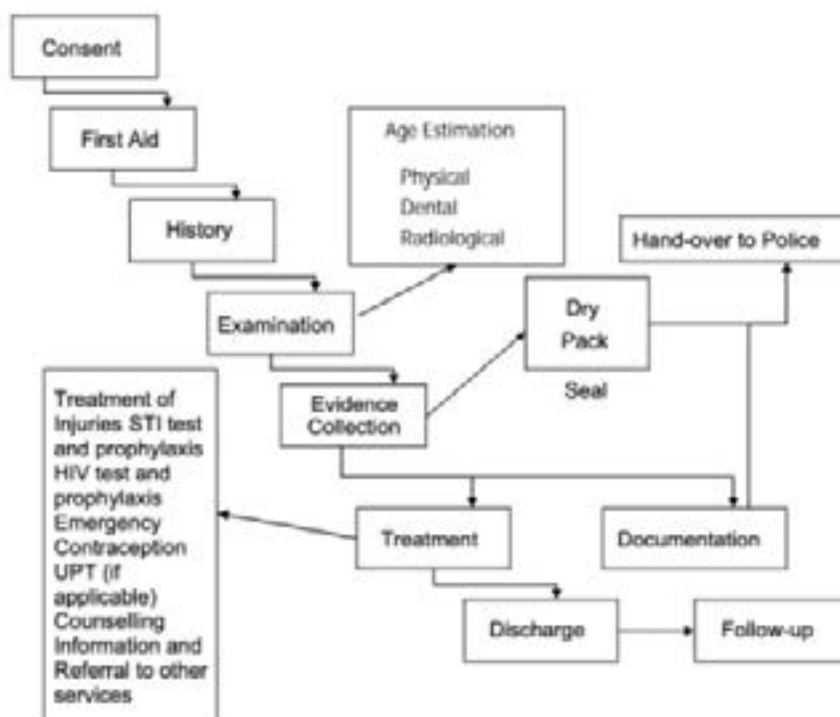
## Guidelines for when a survivor reports to the hospital without first going to the police.

Given below are some guidelines the health professionals need to keep in mind in such situations:

1. If the survivor has come to the hospital without the police, **the hospital is bound to give treatment** and conduct a medical examination with consent of the survivor/parent/guardian (depending on age).
2. The hospital must treat the patient immediately **without delay**, irrespective of whether the police has arrived or not. Collection of medical evidence must take place as early as possible.
3. If a person has come on their own without FIR, they may or may not want to lodge a complaint but require a medical examination and treatment. Even in such cases **the doctor is bound to inform the police as per law.**
4. **Neither court nor police can force the survivor** to undergo a medical examination. Only in situations, where it is life threatening the doctor may **initiate treatment without consent** as per section 92 of IPC.

5. In case the survivor does not want to pursue a police case, a **medico-legal case (MLC) is registered**. The police or the medical professional should inform the survivor about **the survivor's right to refuse to file FIR**. An informed refusal must be documented in such cases.
6. The police should record the medico-legal case and provide its case number to the survivor along with the details of the police station where the complaint can be registered. This **Medico-legal case number is useful** in case the survivor has a police requisition or wishes to lodge a complaint later.
7. In all three circumstances, it is **mandatory to seek an informed consent/refusal** for examination and evidence collection. Consent should be taken for the following purposes: examination, sample collection for clinical and forensic examination, treatment, and police intimation. **The consent form must be signed by the survivor, a witness, and the examining doctor**.

## Overview of Medico-Legal Process:





# Rights of a Survivor

## AND DUTIES OF CAREGIVERS

Given below are the rights of a survivor and duties of caregivers **during investigation and trial of sexual offences** committed against the survivor:

### 01 Right to Privacy of the Victim

No person can **disclose the name of the rape survivor**. If anybody discloses the name, the punishment is a term which may extend to two years and along with a fine. Further, there should be an in-camera trial for all rape survivors. For instance, the media cannot release the name of the survivor.

**(Section 228 A IPC & Section 327(2) CrPC)**

### 02 Right to Free Medical Treatment /Duty of Medical Institutions

This law fixes **liability on medical institutions**, both public or private to give medical treatment free of cost to survivors of sexual assault, together with a duty to inform the police of such incident. Failure to comply with the above provision is a punishable offence.

**(Section 357C CrPC & Section 166B IPC)**



## 03 Right to Examination by a Female Doctor

Only a **registered female medical practitioner** can conduct the examination of a female survivor. Unless, there is no female practitioner available and the **survivor consents otherwise** to an examination by a male registered practitioner.

**(Section 53A[5] CrPC)**

## 04 Right to a Detailed Examination of the Perpetrator

Legally, the perpetrator can be ordered to undergo a detailed medical examination by any registered medical practitioner, preferably employed in a hospital run by the Government or a local authority. This examination is done to gather other **physical evidence that can corroborate the story of the survivor**.

**(Section 53A CrPc)**

## 05 Right to a Speedy Trial

Investigation should **start and end within two months** from the date on which the police officer recorded the information in charge of the Police Station. Special fast track courts have been set up for this purpose.

**(Section 173A CrPC)**

## 06 Duty of a **Public Servant**

This law ensures failure of a public servant to record any information of such offences as a punishable offence, prescribing both rigorous imprisonment and fine for the guilty.

**(Section 166A IPC, Section 154 [1] CrPC)**

## 07 Duty of Court to **Presume Absence of Consent**

The court during any trial for rape will presume the absence of consent by the survivor.

**(Section 114-A, Indian Evidence Act)**

# Resources

## Guidelines

- [Towards victim friendly responses and procedures](#) - Partners for Law and Development, Department of Justice (Ministry of Law and Justice) and United Nations Development Program.
- [National Commission of Women - Rape](#)
- [Guidelines and Protocols, Medico-Legal Care for survivors/victims of Sexual Violence](#), Ministry of Health and Family Welfare (2014).

## Legislation

The Criminal Law Amendment Act, 2013

Section 357C of the Code of Criminal Procedure, 1973

Section 166B of the Indian Penal Code, 1860

Protection of Children from Sexual Offences (POCSO), 2012

### Helplines



#### Women's Helpline - 1091

Women's helpline gives 24/7 immediate and emergency response to women affected by the violence, both in private and public spaces. They give assistance to file complaints. They can guide the survivor towards a hospital for a medical examination etc.



#### Police - 100

Police will arrive in case of an emergency.



## Checklist

1. Collect copy of **entire medical report free of cost**
2. Collect copy of **FIR for free.**
3. Carry a **change of clothes** when you go for the medical examination.
4. If possible **avoid brushing, bathing, urinating, defecating, changing clothes, combing hair, rinsing mouth or cleaning the genital area** prior to the examination.
5. Registering an **FIR is not mandatory** for the examination.
6. The examination **is conducted free of cost and as soon as possible** to preserve forensic evidence.
7. The survivor can skip any part of the process if desired, all aspects of the procedure must take place with **the consent of the survivor.**
8. The survivor **can take a person along with them** for the medical examination for emotional support.
9. A **female doctor should carry out the examination** unless the survivor consents otherwise.
10. Request for **medical tests for pregnancy and sexually transmitted illnesses.**

## Sample Forms

[Form to be filled](#) by medical personnel conducting an examination.

# Glossary

**Forensic Evidence** - Forensic evidence is evidence obtained by scientific methods such as ballistics, blood test, and DNA test and used in court. Forensic evidence often helps to establish the guilt or innocence of possible suspects.

**Genital Examination** - Visual and Manual examination of genital area by a doctor. A speculum may be used to check for DNA on the vaginal wall and cervix. The doctor does a “bimanual” examination, meaning that he or she uses his or her hands to examine the internal reproductive organs. The examiner’s hands will be gloved for the bimanual exam, and may have lubricating jelly on them causing them to feel cold.

**DNA** - Hereditary material in humans and almost all other organisms. Nearly every cell in a person’s body has the same DNA. It is used to identify individuals and link them to crimes.

**STI**- An infection transmitted through sexual contact, caused by bacteria, viruses or parasites. These infections are usually passed from person to person through vaginal intercourse. They can also be passed through anal sex, oral sex, or skin-to-skin contact. STIs caused by viruses include hepatitis B, herpes, HIV, and the human papilloma virus (HPV).

**Medico - Legal Case** - Medico-legal case (MLC) refers to a case of injury or illness that indicates investigation by law enforcement agencies to establish and fix the criminal responsibility for the case according to the law of the country.

**FIR** - Stands for first information report. It is a complaint lodged with the police by the victim of a cognizable offence or by someone on his/her behalf. Its is a written document prepared by the police when they receive information about the commission of a cognizable offence

**Consent** - Consent occurs when one person voluntarily agrees to the proposal or desires of another.

**Two - Finger test** - A doctor performs the test by inserting a finger into the female’s vagina to check the level of vaginal laxity and recent sexual intercourse. This test is illegal.



