

CIRCULAR NO. 38/2010

C I R C U L A R.

The Hon'ble Court of Ms. Kamini Lau, ASJ-II/ NW, Rohini Courts in the Judgment in case a FIR No. 513/07 u/s 342/376 (2) (f) IPC, P.S. Shalimar Bagh, Delhi observed that the "P.V. Test / finger test is being conducted in routine by the Doctors on the victims of sexual abuse and rape be it a minor (as in the present case, victim is a minor girl aged about 5 years), unmarried girl or married woman, without having any regards to the fact that the opinion of the Doctors rendered after conducting such a test has no bearing with regard to the guilt or the accused". "The Hon'ble Court also observed that what has shocked her conscious is the fact that this PV Test/Finger Test is being carried out in routine on victims of sexual offences by the doctors (even on minors as has happened in the present case) thereby reflecting a rampant violation of the Constitutional Rights of such victims. It has therefore become necessary for this court to highlight this fact before the authorities concerned so that the necessary steps are taken in the direction to ensure the protection of the Right of Privacy of the victims of sexual offence".

In cases of sexual assault the doctor is only required to look into sign of violence or resistance 'if any' upon the body of the victim for which the Doctor would make a note of it by visible external examination. The Doctor is further required to report on the state of sexual organs of the victim to include information regarding puberty and attaining of sexual maturity of the victim. In case of assault or pregnancy the abdominal and vaginal examinations and thereafter the collection of samples from the clothes of the victim and the alleged attacker and from the vagina of the victim are required to establish the nature of assault and the identity of the attacker.

Further the Hon'ble Court observed that In case if the victim is unmarried, the Hymen Test is conducted to check if the hymen cord is intact and in case of use of force any signs of tearing or bruising, off or near the vagina are noted. After the aforesaid test no further examination is required. The P.V. Test which is normally called the

finger test is being carried out in routine on victim of sexual offence even children.

The Hon'ble Court also quoted the ruling of the Hon'ble Supreme Court in this matter and observed that The Hon'ble Supreme Court of India has Articulated and protected the privacy as one of the features of the fundamental rights i.e Article 21 of the Constitution of India which states that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The Hon'ble Apex Court has dealt with this aspect of Right of Privacy of a patient's medical record in the case of Mr. X Vs Hospital Y reported in (1998) 8 SCC 296 in case of an AIDS patient's right of life which included his right to privacy and confidentiality of his medical condition.

The basic requirement to establish the offence of rape is that the sexual relations are made forcibly without the concerned. In such cases the material aspect to be judged by way of medical examination is to judge the sign of violence and resistance, if any upon the body of the victim, which may be mentioned by the doctor by visible external examination. The P.V Test/Finger test is carried out only to ascertain whether the alleged victim of rape is habitual to sex or used to sex and only establishes whether vestibule is congested and whether one, two or three fingers can be inserted. The P.V. Test thus being carried out by the doctors in routine upon the rape victims without the consent violates the fundamental right of privacy.

In view of the above, it is reiterated that the observations made by the Hon'ble court as discussed above shall be complied with. If due to any reason it is felt essential or necessary by the investigating officer to get the P.V. test conducted in order to collect evidence against the accused then this test being be carried out exclusively by a lady Doctor with the consent of the prosecutrix/her guardians (prosecutrix if she is a major and guardians if she is a minor) and that too after taking due permission from the court and not otherwise.

This be strictly complied with.

Sd/-

(KEWAL SINGH)
JOINT COMMISSIONER OF POLICE,
POLICE HEADQUARTERS, DELHI.

No.3124-3223 /HAR/PHQ, dated Delhi, the 08/12/2010.

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