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Short Communication

Role of Forensic Medicine in Jordan's Criminal Justice System (Rape Crimes)

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Abstract

This study aims to understand better the function of forensic medicine within the criminal justice system in Jordan (Rape crimes). Forensic medicine plays an important part in identifying criminal activity and, therefore, in the assessment of criminal conduct and its repercussions. According to the study, what is meant by forensic medicine during an investigation, and how it is related to Jordanian law and judicial procedures in addition to the judge's discretionary authority to require the rhetorical report in the case of sexual crimes, the field of forensic medicine has a practical and technical role in identifying the rhetorical evidence that leads to the discovery led to an appropriate conclusion for the study.

1. Introduction

As a result, forensic medicine plays an important part in identifying criminal activity and, therefore, in the assessment of criminal conduct and its repercussions. As a result, it impacts the path of analysis and, therefore, on the legal learning of facts. In the case of death, in wounds of many types and causes, as well as sex crimes and sex abuse, this is often visible. In addition, the field of forensic medicine has a practical and technical role in identifying the rhetorical evidence that leads to the discovery¹ of clues in unexplained crimes when the inquiry fails to identify the reasons and, therefore, identify the offenders. The searches and investigations carried out in these axes are intended to find the evidence on which the axes' success or failure is predicated. Either the subject is found guilty or not guilty of the charges leveled against him¹.

Among the general public tasks that the forensic medicine doctor does throughout the investigation, phase is that he conducts activity medical evaluations on the victim's impact part and documents the kind and outline of the damage and the reason and date of its occurrence². It may also reveal the nature of the attacked sexual biological components, as well as the likelihood of the presence of a permanent disability, the evaluation of its stability, and the link between the committed assault and the victim.

It is the duty of the forensic medicine doctor, upon being deputized to assist him at the scene of a crime, to perform these exams credibly and honestly in order to give a study verifying the examination. As well as performing an autopsy on the deceased in criminal cases and investigating possible causes of death, regardless of how or when they occurred, as well as investigating

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the connection between death and any injuries the body has sustained; as well as obtaining precise technical opinions in connection with accidents and errors, examining blood and the types of blood, spermatozoon material, scrutiny hair, and examining samples taken from bodies to understand The sexually violated portions of the body.³

Article 292 of Law No. 16 of 1960 (the Penal Code of 1960) and its amendments stipulate Rape and sexual intercourse with a minor.

1. Whoever has sexual relations with a female (other than his wife) without her consent, whether by force, threat, deception, or deception, shall be punished with temporary labour for no less than fifteen years.
2. Every person who rapes a girl under fifteen shall be punished with death.

The penalty shall be twenty years' imprisonment if the victim has completed fifteen years and has not completed eighteen years of age.

Article 293 of Law No. 16 of 1960 (the Penal Code of 1960) and its amendments states: A female (other than his wife) who cannot resist due to physical, psychological, or mental weakness or incapacity is considered to have committed the offense stipulated in Article (292) of this law and shall be punished with the penalty stipulated therein.

2. Rape Crime

Rape, according to what is established in jurisprudence and jurisprudence, is considered unlawful intercourse with a female without her consent. Consensual intercourse ends, and the crime of Rape ends, and if the act remains criminalized and subject to another legal text. The places of chastity that it is keen to preserve and cover, and since the actions that the accused committed were with the victim's consent and acceptance, then what he did does not constitute the crime of Rape referred to in Article 292 of the Penal Code but constitutes the crime of indecent assault, contrary to the provisions of Article 298/1 of the Penal Code.

Rape an attack that involves penetration into the vagina.⁴ Frequently, general traumatic manifestations are seen in sexual crimes, whether on the victim's body or the accused's body, as a consequence of resistance (the phrase "generic injuries" refers to damage to any region of the victim's body save the genital area). However, the absence of injuries does not rule out Rape, as there are numerous possible explanations, including

Subjugating the victim through emotional interaction or the threat of violence or murder, the perpetrator's violence or the victim's resistance is insufficient to cause the injuries, the bruises may not appear until 48 hours after the assault, or they may not appear at all, the victim's delay in reporting the assault.⁵ Consent does not exist, for example, if sexual contact happens under fear or compulsion. Threatening a lady with a weapon capable of murdering her, her kid, or herself, and threatening her with photographs of her or messages she had previously written.⁶

Article 296 of Law No. 16 of 1960 (Penal Code of 1960) and its amendments states the following: (1) Whoever assaults a person with violence or threats shall be punished with labour for a period not less than four years; (2) The minimum penalty shall be five years if the victim is the victim. He has completed fifteen and has not completed eighteen years of age; (3) the minimum penalty shall be seven years if the victim has completed twelve years and has not completed fifteen years of age.⁷ When dealing with rape crimes, the forensic physician must keep the following in mind:- (1) The purpose of the forensic medical examination is to document injuries and evidence in order to aid in the prosecution of the perpetrator or the acquittal of the accused in the case of a false rape allegation; (2) Respecting the plaintiff's modesty and not impinging on it by stripping her completely naked during the examination; (3) Because the plaintiff may be unaware of some of the injuries sustained during the assault, the forensic doctor must examine the plaintiff's entire body using a strong light source and a magnifying lens (if necessary). Additionally, natural body openings such as the inside of the lips and the scalp are included.⁸

Sexual violence may take on a variety of forms and manifest itself in various contexts. The violation may occur prior to the arrest of one or more persons (for example, gang rape); this occurrence may or may not be spontaneous and unplanned. Although sexual violence is often committed in the victim's home (or the perpetrator's home), it also happens in various other locations, including workplaces, schools, jails, automobiles, and public places (such as parks or farms). The offender may be on a date with the victim, a close acquaintance with her, a friend, or a victim's family member. The perpetrator may be an unknown stranger to the victim of an intimate partner or ex intimate partner. There is no one-size-fits-all perpetrator. Sexual

assault offenders come from all walks of life, whether they are wealthy or impoverished, educated or uneducated, religious or non-religious. Sexual assault is unlikely to have been perpetrated by someone in privileged positions or positions of respect and trust (such as police officers, physicians, teachers, tour guides, and pastors).⁹ When it comes to sexual violence against an adult female victim, the time between sexual activities and medical examination is critical because evidence disappears over time or if the victim changes her clothes or bathes. It also depends on the experience, knowledge, and skill of professionals from the medical, psychological, social service, and law enforcement sectors who interview the victim and learn about the type of sexual activity she was exposed to and the potential consequences of that exposure.¹⁰

Article 298 of Law No. 16 of 1960 (Penal Code of 1960) and its amendments stipulates the following: (1) whomever assaults, without violence or threats, a child - male or female - who has completed fifteen and has not completed eighteen years of age, or induces him to commit a crime An act of indecent assault shall be punished with temporary labour for a period not exceeding ten years; (2) The minimum penalty shall be five years if the victim has completed twelve years and has not completed fifteen years of age. Even though the forensic medical examination is vital and significant, it cannot serve as the only source of evidence of sexual assault against the girl. In addition, the test results are incomplete unless they are combined with a police investigation and a psychological assessment.¹⁰ They can occur in either the labia majora or labia minora, and the severity of the injury is determined by the amount of violence that occurs during sexual activity. The injury usually manifests as bruises or tears in the posterior spinal cord (the region connecting the labia majora). However, in very rare cases, the injury can be quite severe, extending a tear from the external genitalia to the perineum (the area between the anus and the vulva). It is not believed that external sexual behaviours, such as interviewing the genitals and sucking the penis, would inevitably affect the outcome. There is no purpose in managing these regions once the swabs have been checked for animals, sperm, and genetic fingerprints.¹¹

3. Role of Forensic Medicine

As soon as a criminal offense is committed, members of the judicial police, the public prosecutor, and also

other experts rush to the scene of the crime in order to determine the nature of the crime, its causes, and also the circumstances surrounding it, and also to determine who committed the crime. However, individuals working in law enforcement or judicial administration and public prosecutors and judges may encounter scientific or technological issues that are not covered by their data of specific judicial and legal competencies that are outside the scope of their authority and specializations. As a result, the Jordanian legislator who approved the Jordanian Code of Criminal Procedure No. 9 of 1961 and its revisions and the Jordanian Code of Civil Procedure No. Nonetheless, the court and also the prosecuting attorney may seek the assistance of forensic medicine to clarify what is ambiguous and difficult for the court or the general public prosecution to comprehend, as provided for in Article twenty of an equivalent law, which states that if someone dies by murder or unknown causes that raise suspicion, the general public prosecuting officer may seek the assistance of one or more doctors to arrange a report of the causes of sexual abuse.¹²

Criminal cases, particularly regulatory offenses, are particularly important in forensic medicine, whether or not at the preliminary investigation stage or the trial stage, and the accused's conviction or a final judgment is generally dependent on the forensic medical evidence presented during the investigation or trial. In order to determine the legal nature of the competence, several viewpoints were expressed. This means that forensic medicine reports include evidence and supporting factors such as proof of the crime's occurrence and evidence of the crime's attribution to its offender. Another side has said up to this point that it is how to examine the evidence that the judge uses to determine whether or not he is telling the truth, and that he cannot use it if he is not pleased with him, and we agree with this point of view as well.¹³ Later, the forensic doctor prepares a forensic doctor's expertise report. This report is the essence of the professional method because it contains the results of the forensic doctor's analysis that represent the necessary technical and scientific components that assist the choose or investigator in instructing them about reality and providing them with the opportunity to form their judgments in the light-weight of that reality. After the evidence has been released and its aspects have been described in-

depth, a suggestion from a medical and scientific perspective on the value of the proof is made, and the principle of judicial conviction¹⁴ is applied, the professional opinion is completed. The court may or may not be convinced by the forensic doctor's report, depending on whether or not it is applicable, consistent with the conscience principle stipulated in Article 174, Jordanian Criminal Procedure Law, as long as, i.e., there is no evidence of a conspiracy.¹⁵

The trial court has a discretionary authority to weigh the evidence, take it and put it forward, and the Court of Cassation has no control over it in that as long as the conclusion is rationally and legally plausible and has a firm origin in the case papers under the provisions of Article 147 of the Code of Criminal Procedure. 2- Having sexual intercourse with a female (other than the wife) without her consent by threat is an act that constitutes a crime of Rape, based on the text of Article (292) of the Penal Code. 3- To implement the aggravating circumstance stipulated in Article (1/301/a) of the Penal Code, two or more persons have committed the crime of indecent assault and successively committed indecency with it. 4- The decision of the trial court shall be considered legal and correct if it includes a summary of the facts mentioned in the indictment, the trial, a summary of the demands of the personal claimant, the public prosecutor, the defense of the accused, the evidence and the reasons for incriminating or not under the text of Article (237) of the law Principles of criminal trials.

To this end, the Jordanian Supreme Court ruled in its call No. 96/2000 that, while the trial court's conviction of proof is not subject to the Court of Cassation's management, this court has the authority to review it in terms of whether or not the proof is legal proof, as this issue is based on legal applications and not on factual matters, and to determine that his conviction is within the proof contained within the case.

4. Conclusion

The criminal investigation is a conflict between the investigator and the criminal, with the one attempting to establish reality and the second attempting to obfuscate it to avoid prosecution. In its broadest meaning, the inquiry should include the use of all authorized procedures and means necessary to ascertain the truth. The route leads a path for walking and searching for evidence. Forensic medication is a word that encompasses both medicine and law.

Regarding medication, it is the science that deals with everything related to the material body, whether living or dead, and Shariah law implies that it is the law that resolves conflicts between individuals⁶. Forensic medicine is not limited to producing medical reports or examining victims; it is, in fact, a living science, which is critical for staying current with recent and rapid advances and advanced ideas in analysis and identification.

Because the forensic doctors' opinion does not bind the court, and because the choice is completely free to take evidence if he is satisfied with his conscience, and evidence is excluded if they are not, it has become necessary to design a special criminal sciences program for law students in Jordanian universities in an exceedingly legal manner.

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References

1. Al-Khawaldah, M, Al-Khasilat A. Evidentiary Value of Forensic Report in Criminal Liability in Jordanian Law: *Indian Journal of Forensic Medicine & Toxicology* 2021; 15 (2): 2890-2897.
2. Al Tahrawah, A, Abu Issa H. Forensic Examination of Tourte and other Forms of ill-Treatment: *Indian Journal of Forensic Medicine & Toxicology* 2021; 15 (2): 1890-1894.
3. Batrawy AL. *Forensic Medicine and Toxicology*. 1st Edition. Amman: Tariq Bookshop; 2004.
4. Shahrer HA. *Forensic Medicine Principles and Facts*. 1st Edition. Beirut: Alhalabi Legal Publisher; 2000.
5. Al-Jundi I. *Forensic Medicine in Criminal Investigations*. 1st Edition. Riyadh: Naif Arab Academy for Security Sciences; 2000.
6. Eckert WD. *Introduction to the Forensic Sciences*. 2nd Edition. London: CRC Press; 1997.
7. Abuissa, HA. *Law of Criminal Procedures*. 1st Edition. Amman: Wael Publishing House; 2013.
8. Leena K, Kumar K, Ahmad N. Role of Forensic Botany in Crime Scene Investigation -A literature review. *J For Med Sci Law* 2021; 30(2): 52-56.
9. Mashali AH. *Al Wajeez in Forensic Medicine*. 1st Edition. Alexandria: Dar alwafaa; 2009.
10. Alma'aytah MO. *Forensic Evidence and Criminal Investigation*. 1st Edition. Amman: Dar althaqafa; 2000.

11. Abuissa H, Juwaihian M. The Extent of the Need for Teaching Forensic Science for Law Students in Jordanian Universities. *Indian Journal of Forensic Medicine & Toxicology* 2021; 15(1): 1097-1100.
12. Berman M, Kim A. Bridging the Gap between Science and Law: The Example of Tobacco Regulatory Science. *The Journal of Law, Medicine & Ethics* 2015; 43(1): 95–98.
13. Elrefaie A, Alsharqawi A. The Criminal Liability of the Forensic Doctor as a Judicial Expert According to Jordanian law. *Indian Journal of Forensic Medicine & Toxicology* 2021; 15(4): 254–258.
14. Al-Hendi NI. Distortion of Meaning in Forensic Medicine Reports. *J For Med Sci Law* 2021; 30(2): 67-70.
15. Tawfeq, M. The role of the forensic doctor in the criminal investigation. 1st Edition. Amman: Dar al thaqafa; 2019.