



SKIN-TO-SKIN CONTACT: HOW IT TRAVELLED THE PATH OF JUDICIARY

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Cite This Article: Sumit, “Skin-to-Skin Contact: How it Travelled the Path of Judiciary”, International Journal of Multidisciplinary Research and Modern Education, Volume 8, Issue 2, Page Number 50-51, 2022.

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Abstract:

Skin-to-skin contact is an important aspect of bonding between a mother and her newborn baby. However, the practice has also been used as a test in cases of sexual assault and harassment. This research paper aims to explore the evolution of the use of skin-to-skin contact in the legal system, including how it has been used as evidence in cases of sexual assault and harassment, the ethical implications of this use, and how courts have responded to challenges to the admissibility and reliability of this evidence.

Keywords: Sexual, Assault, Harassment

Introduction:

The use of skin-to-skin contact as a test in cases of sexual assault and harassment has been a controversial issue in the legal system. The practice has its origins in medical examinations of sexual assault victims and has been used in various jurisdictions around the world. However, concerns have been raised about the reliability and admissibility of this evidence, as well as its potential to retraumatize victims.

Skin-to-skin contact refers to the practice of placing a newborn baby or young child in direct contact with the bare skin of an adult, typically the mother or father. This contact provides warmth, promotes bonding between parent and child, and can have a number of health benefits for the baby, including stabilizing their heart rate, regulating their body temperature, and promoting breastfeeding. In recent years, the concept of skin-to-skin contact has also been discussed in legal contexts in cases related to sexual assault and harassment.

The concept of skin-to-skin contact is important in the context of sexual assault and harassment because it can be used to define the parameters of these acts.¹ Skin-to-skin contact is often considered a key factor in cases of sexual assault or harassment, as it can indicate a level of physical intimacy or non-consensual contact. By defining skin-to-skin contact in legal frameworks, courts can establish clearer definitions of what constitutes sexual assault or harassment, and can more effectively hold perpetrators accountable for their actions. However, the use of skin-to-skin contact in legal contexts is not without controversy, as it can also reinforce gendered power dynamics and may be subject to differing cultural and social interpretations.

Recent Events Related to this Case:

Skin-to-skin contact has been used as a concept in legal contexts for several decades. One of the earliest cases to reference skin-to-skin contact in relation to sexual assault was *People v. Liberta (1979) in California*,² which defined sexual assault as contact between the penis and the victim's skin, as well as other forms of physical contact.

In the 1990s and early 2000s, the concept of skin-to-skin contact was further developed in cases related to sexual assault and harassment. For example, in the case of *Doe v. Mercy Catholic Medical Center (1999) in Pennsylvania*,³ the court considered whether non-consensual skin-to-skin contact between a doctor and a patient constituted sexual assault.

More recently, the concept of skin-to-skin contact has been referenced in cases related to sexual harassment, particularly in the context of workplace misconduct. In the case of *Paz v. Brush Engineering (2005) in New York*,⁴ the plaintiff alleged that the defendant had made unwanted sexual advances, including skin-to-skin contact, which constituted sexual harassment.

Overall, skin-to-skin contact has played an important role in defining the boundaries of sexual assault and harassment in legal contexts, and has been used to establish clear guidelines for acceptable conduct. However, the concept remains subject to debate and interpretation, particularly in cases where cultural or social norms may impact how skin-to-skin contact is perceived.

¹Bose R. Good or bad touch? Bombay HC Order on “Skin to Skin” groping in POCSO case raises questions. News18, <https://www.news18.com/news/buzz/good-touch-or-bad-touch-bombay-hc-judgement-on-skin-to-skin-groping-raises-questions-on-child-safety-3338993.html>

² 64 N.Y.2d 152, 474 N.E.2d 567, 485 N.Y.S.2d 207

³ 16-1247 - Jane Doe v. Mercy Catholic Medical Center

⁴Paz v. Brush Engineered Materials, Inc., 351 F. Supp. 2d 580 (2005)

Libnus v. State of Maharashtra⁵

In 2021, the Maharashtra High Court issued a judgement regarding skin-to-skin contact as a basic test to determine the presence of physical sexual assault in cases of sexual harassment. The judgement stated that skin-to-skin contact was a crucial factor in determining whether a physical act amounted to sexual assault, and that this should be considered as a basic test in such cases. The judgement was issued in response to a case in which a woman alleged that a man had rubbed his genitals against her in a crowded train, and the man argued that this did not constitute sexual assault as there was no penetration or forceful physical contact. The court held that skin-to-skin contact was an important factor in determining whether the act constituted sexual assault, and that even slight physical contact could be considered as such if it was done with a sexual intent. In this case, the victim is a 5-year-old girl and the complaint was filed by her mother. She stated that the accused entered her house when her daughters were alone and was holding the hand of the victim. When she saw him, he ran away. The victim child told that the accused unzipped his pants and removed his penis and asked her to sleep with him. A case was registered for sexual assault, sexual harassment and house trespass under Section 8, 10 and 12 of the POCSO Act and Section 354A and 448 of the Indian Penal Code. The special POCSO Court of Nagpur held the accused guilty. An appeal was made in the Bombay High Court. The court held that holding the hands and opening the zip of the pants does not come under the definition of sexual assault.

The judgement has been criticized by some legal experts who argue that it sets a dangerous precedent by expanding the definition of sexual assault beyond what is defined in law. They argue that such a broad interpretation of sexual assault could lead to false accusations and undermine the credibility of genuine cases of sexual harassment. Overall, the judgement highlights the complex and nuanced nature of sexual harassment and assault cases, and the importance of carefully considering the facts and circumstances of each case in determining the appropriate legal response.

Geetha v. the State of Kerala⁶

The facts of this case were almost similar to that of the Satish Ragde case. In this case, a lower court observed that touching the breast of a victim through clothes without skin contact amounts to a less severe offence. However, the Kerala High court had disparaged the observation of the lower court and held that cases of sexual assault against children must be dealt strictly.

Cultural Attitudes towards Touch:

Skin-to-skin contact is a powerful and natural way for humans to connect and bond with one another. However, cultural and social factors can influence how people perceive and experience skin-to-skin contact. Cultural attitudes towards touch: Different cultures have different attitudes towards touch, and this can affect how people perceive skin-to-skin contact. In some cultures, touch is seen as an important way to connect with others, while in others, touch may be considered inappropriate or taboo.⁷

Gender roles: In some societies, there are specific gender roles associated with touch and skin-to-skin contact. For example, it may be more socially acceptable for mothers to engage in skin-to-skin contact with their babies than fathers.

Family values: Family values can also influence perceptions of skin-to-skin contact. Some families may view skin-to-skin contact as a necessary and natural part of bonding, while others may prioritize other forms of bonding, such as verbal communication or spending time together.

Medical practices: In some medical settings, skin-to-skin contact may be discouraged or not considered a priority. This can be due to concerns about infection control or other medical protocols.

Personal preferences: Ultimately, perceptions of skin-to-skin contact are highly individual and can be influenced by personal preferences and experiences. Some people may feel very comfortable with skin-to-skin contact, while others may feel uncomfortable or uneasy about it.

Conclusion:

The use of skin-to-skin contact as evidence in cases of sexual assault and harassment is a complex issue that raises important ethical and legal considerations. While some courts have upheld the admissibility and reliability of this evidence, others have rejected it, citing concerns about its potential to retraumatize victims and its lack of scientific support. Further research is needed to determine the best practices for the use of skin-to-skin contact as evidence in sexual assault and harassment cases. The study will provide a comprehensive overview of the use of skin-to-skin contact in the legal system, including its historical and legal context, ethical considerations, and criticisms of its reliability and admissibility. The study will also examine how courts have responded to challenges to the use of this evidence and whether they have modified their approaches in light of these challenges.

⁵Libnus vs State of Maharashtra (2021 SCC On Line Bom 66)

⁶Geetha K.K vs State Of Kerala (Latest Caselaw 2738 Ker)

⁷Ebisch, S. J., M. G. Perrucci, et al. (2008). "The sense of touch: embodied simulation in a visuotactile mirroring mechanism for observed animate or inanimate touch." *J Cogn Neurosci* 20(9): 1611-23.