**Critical Analysis of the S41 YJCEA 1999, Evaluation and Criticism of the Use of S41 YJCEA 1999**

The application of s41 YJCEA 1999 offers significant protection of complainants in sexual offences from possible stigmatization and trauma that may arise from the defendant using the complainant's sexual history to discredit his or her evidence and water down the accusations. According to a 2017 report, "Limiting the use of complainants' sexual history in sexual offence cases," about 92% of all cases in which application had been made to introduce the sexual history, the judge did not permit the application, citing of s41 YJCEA 1999[[1]](#footnote-1). The applications made under section 41 were only made in 13% of cases involving sexual offense, underscoring the effectiveness of the law in spirit and letter. The provisions of s41 YJCEA 1999 are quite clear on when the application can be rejected and under which specific conditions it can be accepted.

However, despite its strengths, s41 YJCEA has some weaknesses that have attracted criticism. Subsection 4 provides that the defendant can adduce evidence if the court does not think that the main purpose for which it would be presented is for challenging the credibility of the petitioner as a witness[[2]](#footnote-2). As seen in *REGINA v RT | [2002]*, proper interpretation of s41YJCEA raises concerns that border to its credibility[[3]](#footnote-3). In the aforementioned case study, the broad interpretation of subsection 4 can result in the court excluding virtually all evidence and questioning, regardless of how persuasive it is. In essence, s41 YJCEA can result in the complainant getting away with fabrications.

1. 'Limiting The Use Of Complainants’ Sexual History In Sexual Offence Cases' (GOV.UK, 2021) <https://www.gov.uk/government/publications/limiting-the-use-of-complainants-sexual-history-in-sexual-offence-cases> accessed 15 March 2021. [↑](#footnote-ref-1)
2. S41 YJCEA 1999 [↑](#footnote-ref-2)
3. REGINA v RT | [2002] 1 Cr App R 22. [↑](#footnote-ref-3)