

## The Validity of Two Finger Test in India: Is It a Violation of Women's Human Rights?

Review Article

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### Abstract

A two finger test or virginity test is the procedure of determining laxity of vaginal wall i.e. whether she had engaged in sexual intercourse. The concept of virginity testing is not new; it has been practiced for thousands of years by cultures all over the world. In many countries like South Africa, Zimbabwe it is performed as a ritual. There is various legislation relating to two-finger test worldwide. The test is performed by a doctor usually on sexual assault victims. In fact, this test is absolutely not necessary, since forensic evidence can be collected without performing the two-finger test. The word "Two finger test" should be abandon because of its negative connotation and we should instead use the more accurate term "per vaginal examination" as it is more scientific.

**Keywords:** Two Finger Test; Per Vaginal; Sexual Assault; Virginity Test; Rape; Hymen.

### Introduction

A two finger test or virginity test is the practice and process of determining whether a girl or woman is a virgin; i.e., whether she has never engaged in sexual intercourse. The test involves an inspection of the hymen, on the assumption that it can only be torn as a result of sexual intercourse.

The hymen is defined as "the thin membrane of skin that may stretch across part of the vagina opening" [1]. An opening in the hymen allows the menstrual flow to pass out of the body. Most girls are born with a hymen, although some are born without it. However there are "many doctors who say that the hymen is not a good indicator of sexual virginity" for several reasons: a girl may have been born without a hymen, the hymen can easily be ruptured during normal physical activities or sport and the hymen can be stretched open by the use of tampons.

### Two Finger Test

In virginity tests, the presence of a hymen is often used to determine if a woman is a virgin. Another form of virginity tests involves testing for laxity of vaginal muscles with fingers (the "two-

finger test"). A doctor performs the test by inserting a finger into the female's vagina to check the level of vaginal laxity. However, the usefulness of these criteria has been questioned by medical authorities and opponents of virginity testing because vaginal laxity and the absence of a hymen can both be caused by other factors, and the "two finger test" is based on subjective observation [2].

Human civilization has spent a lot of time obsessing about the hymen and the tight vagina. The myth of the tight vagina assumes that virgins have really up-tight vaginas, married women and women who have a lot of sex have loose, flapping vaginas. As any good gynecologist can tell, all of this is subjective. Young women who have had children in their 20s and teens may not display much loosening of the vaginal muscles. Women who have active sexual lives may not display loosening of the vaginal muscles. Anxiety or fear can tighten the muscles and sexual arousal can loosen it temporarily.

### The Believes

Women have been put into positions where they have expectations to meet up to but those that put up those expectations are

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**Received:** February 25, 2019

**Accepted:** December 16, 2019

**Published:** December 24, 2019

**Citation:** Ateriya N, NK Aggarwal. The Validity of Two Finger Test in India: Is It a Violation of Women's Human Rights?. *Int J Forensic Sci Patol.* 2019;6(4):417-419.

**doi:** <http://dx.doi.org/10.19070/2332-287X-1900087>

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not gratified. Living in patriarchal societies have not made anything easy for women. Women's voices need to be heard as well and practices like virginity testing, female circumcision, and body modification will have to go under scrutiny because all these practices are to keep men pleased and in control of women. It is common for many cultures around the world to hold a ceremony after the wedding night to determine if the woman was a virgin by observing whether the wedding sheet had been bloodied or not. The concept of virginity testing is not new; it has been practiced for thousands of years by cultures all over the world. However, there is little scientific evidence about the accuracy of these tests. Also, it is not universally common for women to bleed the first time she has intercourse. Therefore, this is basically a culture practice and has a little, if any, scientific basis. Today this practice is viewed by many to be a violation of human rights, causing conflicts between those who want to continue the tradition. The assumptions and attitudes that are connected to virginity testing are designed to control women as well as based on the unequal gender power relations.

### Global Scenario of Two Finger Test

Preventing the spread of HIV and teenage pregnancy are examples of reasons given by proponents of virginity testing. In 2004, a Zimbabwean village chief, Naboth Makoni, stated that he would adopt a plan to enforce virginity tests as a way of protecting his people against HIV. He explained that he focuses on girls because he believes they are easier to control than boys [3]. In South Africa, where virginity testing is banned, the Zulu tribe believes that the practice prevents the spread of HIV and teenage pregnancy [4].

In Zulu culture, there is a tradition in which girls of a certain age can perform a dance for the king. However, only virgins are allowed to participate [4]. If a girl is tested and declared a virgin, she brings honor to her family. If a girl is found not to be a virgin, her father may have to pay a fine for 'tainting' the community and the girl may be shunned from the 'certified' virgins [1]. Because of the ramifications that being considered impure have for the girls and their families, virginity testing has the potential to be a life-changing event.

The United Kingdom had the policy to use virginity testing on women who said they were immigrating to marry their fiancées who were already living in the country [5]. The British government believed that if the women were virgins, they were more likely to be telling the truth about their reason for immigrating to the country. The policy ended in 1979 [5].

In 2014 the Human Rights Watch reported that a physical virginity test is routinely performed on female candidates to the Indonesian Police force as part of the job application process [6].

### Current Status in India

This is very likely to happen where young girls engage in sexual relations to get money in return. Lastly, the way in which our societies pass on some of the values, beliefs such as males "biologically programmed to need sexual relations with more than one women and often concurrently". It is thoughts like this that make question if women are really free to use their mental capacity,

when will women set their standards high enough not to fall for such sayings that men are naturally born to have side relationships. When trying to understand the nature of sexuality in India, it becomes hard because of the complex in that there are diverse cultures with our country and this has an impact when one wants to take the subject of sexuality into account because it varies from one culture to the next.

Examinations to test for previous sexual activity are commonly performed in India on rape victims. Activists and lawyers have long criticized the test as unscientific and unnecessary and one that subjects the complainant to further trauma and humiliation and often allows a rapist to get away.

There was a provision in the India Evidence Act (Section 155) that allowed for the sexual history of a victim to be used as a defense for the accused. As a result, medical reports were used to discredit the victim during the trial. "Where the defense takes the line that there was consent [to sexual intercourse], usually they also look to medical evidence for support. And if the medical report says anything about the two-finger test, then they draw it out in court-saying she was "habituated" so consented and is falsely implicating the accused." Another prosecutor says, "The finger test is relevant for the defense...if the medical report says that two fingers have passed, the defense can show that she is habituated. This shakes the testimony of the prosecutrix [the girl or woman]." But in 2002, this offending section was deleted. Now, a judge cannot allow a lawyer to use this while cross-examining a victim since sexual history is no longer relevant. It is up to trial court judges and prosecutors to stop this practice even if defense lawyers resort to such tactics.

Later, as per the medical protocols brought out by the Health Ministry, doctors were barred from making such comments in reports. The test can be conducted if it's necessary for the treatment of the victim, but only after obtaining her consent. There may be many reasons for a hymen tear or for the elasticity of the vagina.

Experts opined that the two finger test or PV test is absolutely not necessary since forensic evidences can be collected without doing finger test. Maharashtra Government has done away with finger test on rape victims saying such test is nonscientific most of the time, often resulting in hurdles in investigations and miscarriage of justice. The Usha Mehra commission was constituted by the union government on 26 December 2012 to inquire into the different aspects of the brutal rape and assault incident of the girl on 16 December 2012 on the streets of Delhi [7].

Planning Commission's working group headed by secretary, women and child development ministry, in its report in January, 2012 recommended abolition of this test in order to protect victims of sexual abuse from further mental trauma. Hon'ble Supreme Court of India had held that the two finger test on a rape victim violates her right to privacy, and asked the government to provide better medical procedures to confirm sexual assault [8]. In January 2013, the Justice Verma committee - set up to frame stricter anti-rape laws after the brutal gang-rape and murder of a medical student on a moving bus in Delhi - had criticized the two-finger vaginal examination. In March 2014, the Department of Health Research (DHR) along with Indian Council of Medical Research (ICMR) with the help of experts formulated a set of national guidelines

for dealing with criminal assault cases, to put an end to the "horrendous" medical process [10, 11].

Delhi government had issued an advisory to its hospitals stating that Per Vaginal (PV) examination, also referred to as 'two-finger test', for rape survivors can be conducted with their consent. The advisory, based on a 14-page document made by an expert panel, claims doctors cannot be made to function under the constraint of a complete ban of this examination. "(Banning) may not only prove detrimental to her health but may also result in injustice," it adds. After issuing circular to hospitals to conduct two-finger test on rape victims and facing criticism, the Delhi government decided to revoke it by banning two finger test is completely for sexual assault victims in Delhi [12].

A report by Human Rights Watch highlights the use of this practice. The test is "unscientific, inhuman and degrading" and a second assault on traumatized women, and raised concerns about Indian courts bringing views of rape victims' general moral character into their rulings. The report was released in Mumbai on September 6, 2010 [13]. The Criminal Law (Amendment) Act 2013 introduced a more comprehensive definition of "sexual assault" and rules for procedures and evidence for trials in cases of sexual assault [13].

The prospect of a forensic examination, the HRW reports states, is in fact one of the disincentives for reporting sexual abuse. Evidence collection techniques are not standardized, and often rape survivors have to go from one hospital or ward to another, for multiple examinations. "Since doctors tend to seek blanket consent for the forensic examination as a whole [and may not mention the test specifically]," the report says, "...many survivors have little understanding of what the test entails; what information is collected for what ends; and the implications of refusing to undergo a forensic examination or any part of it..." [12].

## Conclusion

The purpose of the internal examination is to collect evidence to treat the victim. It should not be conducted routinely, but whenever necessary for the purpose of evidence collection and treatment with the consent of victim. We should abandon the word 'two-finger test' because it has a negative connotation and that we should instead use the more accurate term Per Vaginal examination as it is more scientific. 'Two Finger Test' should not be allowed to be practiced in view of pain and suffering of rape survivors, international guidelines and court directions in this re-

gard [13]. Moral character and sexual history should be delinked from the need to conduct internal examinations. There is a need for uniform nationwide guidelines for forensic examinations that respect survivors' rights to health, consent and dignity, and for "scientific, relevant and accurate information to be presented in courts, rather than outdated material gleaned from textbooks or old-fashioned medical practices." Doctors, the police, prosecutors, and judges should all work together to stop the test from being administered and to standardize evidence collection to protect the rights of survivors.

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