

Two finger tests: Violation of right to privacy, physical and mental integrity and dignity

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World Journal of Biology Pharmacy and Health Sciences, 2022, 12(02), 040–043

Publication history: Received on 02 October 2022; revised on 08 November 2022; accepted on 11 November 2022

Article DOI: <https://doi.org/10.30574/wjbphs.2022.12.2.0193>

Abstract

On Monday, October 31, 2022, the Supreme Court of India outlawed the two-finger test, which is used to medically confirm rape. Doctors do this test by putting two fingers inside the victim's vagina to check for virginity. Girls and women who have never had physical contact are referred to as virgins. The virginity test is used to determine whether or not sexual activity has taken place. It is assumed that if two fingers can easily enter the vagina, the girl or woman is sexually active, which results in the virginity of the girl or woman. The Supreme Court (SC) noted that this makes it clear that it is never acceptable to rape a sexually active girl or woman. Additionally, SC claims that there is no scientific support for the idea of virginity and that it is rejected by science. This exam makes the girl or lady feel uncomfortable mentally and intensifies the trauma of the incident. SC urges the federal government to create and distribute guidelines to all states so they can discontinue the aforementioned test as soon as feasible through the Ministry of Health and Family Welfare. The SC directs medical colleges to take this material off their required reading lists. This article investigates the two finger test, how it's done, and how it infringes on a girl or woman's right to privacy, as well as their physical and mental integrity and dignity. Making a legislation will undoubtedly alter the current situation since everyone will be aware that doing tests like the two finger test is prohibited and that the government will take strict action to stop it.

Keywords: Two finger test; Virginity; Virginity testing; Virgin; Rape victims; Violation of Women's Human Rights

1. Introduction

The Supreme Court (SC) ordered the Union and state governments to take action to remove the humiliating test from medical curricula on Monday, 31st October 2022 and warned that physicians would be in violation of the law if they continued to administer the illegal invasive two finger test to determine a rape survivor's prior sexual behavior. The false presumption that a sexually active woman cannot be raped underlies the two finger test. The SC had stated in 2013 that "rape survivors' rights to privacy, physical and mental integrity and dignity are violated by the two finger test." The two finger test was disgusting, rude and misogynistic. The court banned this method from being taught in medical colleges.

This verdict was given in the process of reversing a decision made by the Jharkhand high court to acquit a man of rape-cum-murder charges. A guy who had raped a girl who was 16 years old and then set her on fire to kill her was given a sentence of life in prison by the Supreme Court after it maintained the conviction verdict handed down by the lower court [1].

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2. Examining a Woman's Virginit

Women's "virginit" is emphasized, which is a kind of discrimination against women. The word "virgin" is not used in medicine or science. Instead, the idea of "virginit" is made up by society, culture, and religion. The idea that girls and women should stay "virgins" and should be limited once they get married. This idea hurts women and girls all over the world. The practice of performing a gynecological examination with the intention of determining whether a woman or girl has engaged in sexual activity must stop, says United Nations Human Rights, United Nations Women and the World Health Organization.

It is standard practice for medical experts to administer virginit tests to victims of alleged rape. The purpose of these tests is ostensibly to determine whether or not the rape actually took place. This practice, which is not only medically unnecessary but also often times painful, humiliating, and distressing, needs to come to an end as part of a global push to eliminate violence against women and girls everywhere [2].

2.1. Two finger test

The Two Finger test is performed by inserting two fingers into the victim's vagina to determine its laxity and sexual activity such as whether she is sexually active or not.

According to the Oxford Dictionary, the definition of laxity is "(of the limbs or muscles) relaxed" and the definition of hymen is "A membrane that partially seals the vaginal membrane and whose existence is historically seen as a sign of virginit" [3].

The hymen is checked for tears and the vagina is felt with two fingers (the "two finger test") to determine if the subject is a virgin. Both methods are grounded in the assumption that a woman's or girl's genitalia's outward appearance might reveal information about her sexual experience. According to the World Health Organization (WHO), neither approach is reliable enough to definitively determine whether or not a woman or girl has engaged in sexual activity.

3. Effects of Virginit Testing on Health

In situations of rape, these examinations not only violate the human rights of women and girls, but they can also cause further agony and replicate the initial act of sexual assault, resulting in re-experience, re-traumatization and re-victimization. This practice has negative short and long term health, psychological, and social implications for many women. Among these include anxiety, depression and post-traumatic stress disorder. In extreme circumstances, women and girls may commit suicide or be murdered in the cause of "honour." This medically unnecessary and hazardous test violates a number of human rights and ethical standards, including the 'do no harm' tenet of medicine [2].

In its Guidelines And Protocols Medico-Legal Care For Survivors/Victims Of Sexual Violence, the Ministry of Health and Family Welfare of India states that "Per-Vaginum examination commonly referred to by laypersons as the "two-finger test" must not be conducted for establishing rape/sexual violence and the size of the vaginal introitus has no bearing on cases of sexual violence. Per vaginal examination can only be performed on adult females when medically necessary. The state of the hymen is immaterial because it can be torn for a variety of causes, including cycling, riding, masturbating etc [3].

Humanity has obsessed over hymens and tight vaginas. Virgins have tight vaginas, married ladies and sexy women have loose, flapping vaginas, according to the tight vagina myth. Gynecologists know this is subjective. Vaginal muscles may not loosen considerably in 20 years and 30 years old mothers. Active sexual women may not release vaginal muscles. Anxiety and anxiety tense muscles, while sexual pleasure loosens them [4].

4. Governments, doctors and communities must work together to stop the practice

United Nations Human Rights, United Nations Women and WHO recommends first that, the health care providers and their organizations should spread the word that virginit tests are unreliable and unscientific since they cannot reveal history of genital piercing. Moreover, they should be aware of the negative effects of virginit testing on both health and human rights and refrain from ever engaging in or condoning the practice. Secondly, Governments should pass laws prohibiting virginit tests and ensure that they are strictly enforced [2].

5. India's current situation

When trying to figure out what sexuality is like in India, it's hard because our country is made up of many different cultures. This has an effect on the subject of sexuality because it's different from one culture to the next. In India, rape victims are often given exams to see if they have been sexual before. Activists and lawyers have long said that the test isn't scientific or necessary, adds to the victim's trauma and shame, and often lets the person who did the rape get away. Section 155 of the India Evidence Act said that a victim's sexual history could be used as a defense for a person who was accused of a crime. So, during the trial, medical reports were used to cast doubt on the victim. "When the defense says that there was consent to a sexual act, they usually use medical evidence to back up their claim. And if the medical report says anything about the two finger test, it will be brought up in court. They will say that she was "accustomed" to the test, so she agreed to it and that she is falsely accusing the accused.

In a report, Human Rights Watch talks about how this is done. The test is "unscientific, inhuman and degrading," and it's a second attack on traumatized women. It also made people worried about how Indian courts might judge rape victims based on their general moral character [4].

6. Conclusion

Internal examinations gather evidence to treat victims. With victim agreement, it should be done only when necessary for evidence collection and treatment. The name "two finger test" is pejorative, so we should prefer "per vaginal inspection," which is more scientific. Given the agony and suffering of rape survivors, international recommendations, and court orders, the "Two finger test" should not be used. Morality and sexual history should not affect internal examinations. "Scientific, relevant and correct information to be given in courts, rather than outdated material acquired from textbooks or old-fashioned medical practices" and uniform nationwide criteria for forensic examinations that respect survivors' rights to health, consent, and dignity are needed. Doctors, police, prosecutors, and judges should collaborate to halt the test and standardise evidence collecting to safeguard survivors.

Suggestions which can be apply instead of performing two finger test

- Hospitals are required to employ rape kits in order to conduct a sexual assault forensic examination. These kits contain a comb, bags and paper sheets for the gathering of evidence, documentation forms, envelopes and instructions as well as swabs and other materials for taking blood samples.
- Taking into view the rising number of sexual offences, every police station must install a sexual assault cell, and a specialised team, consisting of female police officers, doctors, and attendants, must be assembled.
- A forensic examination should only be performed by sexual assault nurse examiners, sexual assault forensic examiners, and sexual assault examiners; no other category of examiners should be allowed to perform this type of examination.
- Medical professionals are not permitted to speculate or report on whether or not the victim was accustomed to engaging in sexual activity, nor are they permitted to comment on the sexual history of a girl.
- No medical opinion as to whether or not the victim is sex-dependent may be accepted by the trial or appellate courts.
- A female gynaecologist must do the forensic tests, and if a male doctor must perform them, a female nurse should assist him.
- The victim, who has experienced so much as a result of such a violent event, needs to have the appropriate counselling, and her future behaviour and activities need to be recorded so that she can receive improved advice for the purpose of enhancing both her physical and mental condition.
- Rehabilitation is one of the main processes for mending the victim's condition in order to free her from the mental trauma she endured as a result of the incident she was a victim of.

The two-finger test is a privacy invasion that violates people's rights to their bodily and mental integrity as well as their dignity. The decision of the Supreme Court is historic, and it will likely become a law in the near future. Can the passage of legislation put an end to this behavior? Yes, passing a law will most certainly have the desired effect of changing the current state of affairs. After the law is passed, everyone will be aware that conducting tests such as two finger tests is illegal, on conduction law enforcement and administrative authorities will take stringent actions against those who engage in such behavior.

Compliance with ethical standards

Acknowledgments

We would like to extend our sincere gratitude to the writers of the articles included in the references, who made it possible for us to write this article.

Disclosure of conflict of interest

The authors declare that there is no conflict of interest.

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Author's short biography



Tapan Kumar Mahato, The author is M.Pharm. in Pharmaceutical analysis and having experience of 14 years (11 in teaching and 03 in research), pursuing Ph.D. 10 papers and 01 book chapter has been published in his credit till date of pharmaceutical and medical importance in various Journals/Book of national-international repute and presented 08 papers orally/poster in various seminars/conferences. Delivered many lectures as eminent speaker in refresher course for registered pharmacists and other related conferences/Seminars.