

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 1

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Two Finger Test

---

SABA KHAN<sup>1</sup>

## ABSTRACT

*The two finger test involves the examining of the rape survivors to know whether the victim is 'virgin' or 'habituated to sexual intercourse', the inspection is done by the doctors by inserting two fingers inside the vagina of the victim. The two most usual practices are examination of hymen for size or tears, and the second is this insertion of two fingers to measure the laxity of the vaginal wall. The Supreme Court on 31st October, recapitulate the ban on the "two-finger test" in sexual assault cases.*

*A bench comprising Hon'ble Justice DY Chandrachud and hon'ble Justice Hima Kohli deplored while hearing the appeal of the State of the government of Jharkhand against the acquittal of a man who was sentenced to life imprisonment for raping a minor girl of 16 years and lightning on fire which eventually led to her death. The bench prohibited the two-finger test and cautioned that the person conducting such test will be held guilty of misconduct. However, this is not the first effort to prohibit the two-finger test.*

## I. INTRODUCTION

The virginity test which is generally known as "two finger test" (TFT) is the practice prevalent since decades. Virgin is a person who has no precursory sexual experience. This is most unethical practice to examine whether the rape victim is involve in sexual intercourse and it is examine by the doctors by inserting two fingers into the vagina of the rape victim to ascertain the laxity. This test involves an examination to ascertain the laxity and to figure out whether the hymen is broken?

According to oxford dictionary laxity means "relaxed" and hymen means "a membrane which partially closes the opening of the vagina and whose presence is traditionally taken to be a mark of virginity".

This virginity test in India is prevalent since decades and is widely used to determine the sexual history of a rape victim. This test does not have any scientific base and it has been clearly discarded in the guidelines Ministry of Health and family welfare Government of India.

The two finger test does not have any scientific prove and it is the most orthodox implementation on the rape survivors to check virginity of the rape victim. The woman goes

---

<sup>1</sup> Author is a student at Shambhunath Institute of Law, Prayagraj, India.

through a traumatic experience and the test has no forensic value.

## **II. WHAT IS A TWO FINGER TEST?**

The two finger test is the insertion of two fingers inside the vagina of the women to determine the laxity of the vaginal muscle and inspect the hymen. The test is done by the medical practitioner. This test is conducted to check if the woman was habituated to sexual intercourse and to determine whether the hymen is broken or not. This practice is often used to discredit the rape survivor on the basis that they are habituated to sex and therefore could not have been raped. The ease in which the fingers penetrate a woman is assumed to be indirect proportion to her sexual experience.

When the test is established as evidence in the rape trial, the belief of the medical practitioner on the outcome of the test is used to the disservice of the rape victim, regardless of the fact that victim's sexual history is immaterial what matters is the consent of the victim. There are numerous case laws in support of the fact that sexual history of rape survivor is irrelevant<sup>2</sup>

## **III. EFFECTS OF TWO FINGER TEST**

Two finger tests have Psychological harm, social harm and physical harm to the rape victim.

1. Psychological harm: the rape survivors who are subjected to this virginity test have serious psychological effects such as long term depression, re-victimization, loss of self esteem and a sense of violation of one's privacy.
2. Physical harm: virginity test may cause physical injuries to the rape survivor for example worsening already existing injuries in the vagina. The family of the victim may harm the lady in name of 'honour'<sup>3</sup> due to the failed test.
3. Social harm: virginity test is the unethical practice and it is often connected with mutilating traditional and cultural traditions that concerns women with taint, dishonour, embarrassment in front of their family, friends and communities. Furthermore, in certain cases females commit suicide due to the humiliation faced by them in the society.

The doctors and scientist says that there is no such test through which virginity of female can be tested. The test is performed in two ways. Firstly by inspecting hymen for tears and looking its shape and size and secondly through "two finger test" which involves examining the vagina

---

<sup>2</sup> State of Punjab v. Ramdev Singh AIR 2004 SC 1290, State of Uttar Pradesh Vs. Pappu Alias Yunus and AIR 2005 SC 1248, Narendra Kumar V. State AIR 2012 SC 2281.

<sup>3</sup> Shakti Vahini vs. Union of India on 27 march, 2018, WRIT PETITION(CIVIL) NO, 231 OF 2010

of the female by inserting two fingers into the same. And both the ways are unscientific, illogical and unethical.

#### **IV. VIRGINITY TEST AND INDIAN CONSTITUTION**

Prior to Maneka Gandhi's<sup>4</sup> Case Article 21 guaranteed the right to life and personal liberty only against the arbitrary action of the executive. But after the Maneka Gandhi's decision article 21 protects the right to life and liberty of the citizen of India not only from executive action but also from legislative action. Article 21 of the Indian Constitution states that "No person shall be deprived of his life and personal liberty except according to the procedure established by law"

In various cases, court is of the opinion that the word life does not simply means living but it also encircles dignity, freedom, privacy etc. Privacy means to be free from all kind of intrusion in one's life. Supreme Court has declared Right to privacy<sup>5</sup> as fundamental right, right to privacy is safeguarded under article 21 of Indian Constitution. By conducting this virginity test by any of the two ways is breach of article 21 of the Indian Constitution.

Virginity test not only violates article 21 but also article 14 and article 15 of Indian Constitution. Article 14 states "equality before law" and Article 15 prohibits discrimination based on religion, race, cast, sex or place of birth.

#### **V. VIEW OF SUPREME COURT**

In the case of R. Rajagopal v. State of Tamil Nadu and people's Union for civil liberties v. Union of India<sup>6</sup>, the courts were of the opinion that privacy is a fundamental right protected by Article 21 and is viewed as a right to one's right to one's company or a state of non-interference by anyone without cause. However, the issue of what would happen if this personal right clashed with the rights of an institution like marriage remains. Both views have been balanced as best as possible by the legislators and interpreters.

Rape used to only refer to a penile-vaginal penetration done without the woman's permission. The definition of rape has been significantly expanded to cover all types of penetrative violations of a female's anatomy following the 2013 amendment to the penal code. Therefore, unless it falls within exception 1 of section 375 IPC, which states that "A medical operation or intervention shall not constitute rape," The two finger test would likewise be considered rape.

---

<sup>4</sup> Maneka Gandhi v. Union of India 1978 AIR 579 SCR (2) 261

<sup>5</sup> K.S Puttuswamy v. Union of India ((2017) 10 SCC 1)

<sup>6</sup> R. Rajagopal v. State of Tamil Nadu and People's Union for Civil Liberties v. Union of India [2015] AIR SC 2363

The Supreme Court declared the two-finger test to be unconstitutional in the landmark case of *lilu @ Rajesh and Anr v. State of Haryana* (2013). The court held that the two finger test infringes on the right to privacy, bodily and mental integrity, and dignity of rape survivors. Therefore, even if the result is positive, the test cannot automatically lead to the inference of consent.

The “Two Finger Test” was outlawed in rape cases by the Supreme Court, and those conducted them risked being found guilty of misconduct. The comments were issued by the Supreme Court in a ruling on a petition by the Jharkhand government, which contested Shailendra kumar Rai’s<sup>7</sup> acquittal in a rape and murder case. A teenage girl from Deoghar was allegedly burned alive after being rape by the accused Shailendra.

The two-finger test has often been condemned by this court in situations involving allegations of rape and sexual assault. The ‘test’ is intrusive and has no scientific foundation for analysing and re-traumatizes women. When reading the operative part of a case ruling, justice Chandrachud stated, “The two finger test must not be performed.

A women’s sexual background has no bearing on how credible her evidence is. The judges states that it was patriarchal and unfair to imply that a women cannot be trusted when she Claims to have been raped just because she engages in sexual activity<sup>8</sup>.

Another widespread misconception is that rape always results in wounds. There are not usually visible wounds after rape. It is important to consider the assaults conditions when interpreting the lack of injuries.

It’s possible that the victim was threatened, constrained, or numbed. Due to alcohol, the victim may not have been able to resist the attacker, or the victim may have delayed going in for an examination, giving the injuries they may have incurred time to heal. The court has maintained that the lack of injuries should not be interpreted as proof that a rape did not take place.

The victim in the case of *State of UP vs Chhotey Lal*<sup>9</sup> was unlawfully held in a house for few days after being kidnapped by three people while she was on her way to the bathroom. She was sexually assaulted by one of the defendants under duress. Anytime she pleaded with him to let her go, he gagged and yelled at her. After almost 24 days, authorities were able to find the victim. The woman was used to having sex and had no physical injuries on her body, according to the High Court of Allahabad, which overturned the conviction. The Supreme Court

---

<sup>7</sup> *The State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai* |CrI.A. No. 1441/2022

<sup>8</sup> *State of Maharashtra v. Madhukar Naryan Gardikar* AIR 1991, SCC 207 *States of Punjab vs. Gurmeet Singh*, AIR 1996 SC 1393 and *Tameezuddin @Tammu vs. State NCT of Delhi* (2009)15 SCC 566

<sup>9</sup> *State of UP v. Chotey Lal* (2011) 2 SCC 550.

overturned the High Court's decision and stated that it was incorrect to infer that every instance of having sex with a woman against her will or without consent would result in some sort of harm to the victim's internal or external organs. The prosecutrix has made it abundantly evident in her deposition that she was unable to resist being taken from her village by two adult males. The prosecutrix was a powerless victim, thus the fact that she had injuries does not invalidate her testimony

The Verma Committee, established under former CJI JS Verma, recommended the two-finger test be outlawed shortly after the Nirbhaya<sup>10</sup> case in 2012. It is important to stress that case of sexual assault is unrelated to the size of the vaginal introitus. As a result, a test to determine the laxity of the vaginal muscle, known as the two-finger test, should not be performed. It is unlawful to draw the conclusion that someone is "habituated to sexual intercourse" based solely on the results of this test, the committee said.

On October 31, the Supreme Court of India declared that is improper to subject survivors of sexual assault or rape to the "regressive and invasive" two finger test. The verdict raises the prospect that the legal system may eventually abandon its illogical methodology.

## **VI. GOVERNMENT GUIDELINES FOR THE TWO FINGER TEST**

Early in 2014, the Union Health Ministry released comprehensive recommendations for the medical evaluation of sexual assault victims in response to the 2013 Justice Verma Committee report on criminal law modification for a quicker trial and enhanced penalty in sexual assault cases.

The introduction of the document by the Union Health Ministry titled "GUIDELINES & PROTOCOLS Medico-legal care for the survivors/victims of sexual violence".

According to the guidelines, the size of the vaginal introitus has no influence on a case of sexual assault and the "Per-Vaginum examination, often known by laypeople as the "two-finger test," must not be undertaken to establish rape or sexual violence. Only adult woman can get a per vaginum examination when it is, medically necessary. Further the document says that the "two finger test" cannot be used to prove rape or other sexual assault.

The guidelines have not, however, been implemented or enforced uniformly across India, and any violations are not supported by legal repercussions.

## **VII. CONCLUSION**

---

<sup>10</sup> Mukesh & Anr V. State For NCT of Delhi & Ors. (2017) 6 SCC 1

The Indian Constitution guarantees every individual a 'right to life' as well as other essential rights. The precise of this right is that every human being has the right to life, which goes beyond a animal existence. The sexual history and moral character of a girl should not be associated with virginity testing. No rape victims should be forced to go through this inhumane and unscientific two finger test as an evidence of their rape allegation. It amounts to re-raping the victim, according to medical experts and social workers. It damages the victim's emotional, physical and ethical status standing in addition to violating her right to privacy. Health should be the top priority when dealing with gender-based abuse, and medical procedures shouldn't be performed in a way that amounts to harsh, inhuman, or demeaning treatment.

\*\*\*\*\*