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**NYAYAVIMARSHA**

## **Abstract**

*Although the Supreme Court has ruled that Two finger test is inhumane and should be outlawed, it is still used to determine whether a victim of rape or sexual assault is habituated to such sexual activity, assess its laxity, and which indicate the victim's history of sexual activity. Even after the Delhi gang rape case from determine whether the hymen is broken, all of December 2013, the Justice Verma Committee made the same recommendation: the two-finger test should be discontinued since it's like another assault on the victim, two finger test is still in practice. The two-finger test projects on the women's history of sexual life which is of no use to the claims of the victim and additionally is starkly against Article 21 which is the Right to Privacy of the Indian Constitution. The paper articulates the loopholes and fault lines in the curriculum of medical education, which is indirectly strengthening the discriminatory practices upon women's bodies and emphasizes the respect for the survivor's health, dignity, and consent and the need to change the laws and forensic procedures related to sexual assault.*

**Keywords:** Two-finger test, virginity

### **I. What is Two Finger Test?**

The two-finger test, commonly known as the virginity test, measures how loose a woman's vaginal muscles are, the test is carried out by a doctor who inserts two fingers into the rape victim's vaginal canal to assess her muscles' flexibility to determine whether she is used to sexual activity. To "confirm" the claims of rape survivors, this test has been administered. Additionally, the integrity of the woman's hymen is examined during this examination.<sup>1</sup> The procedure is not scientific and offers no conclusive data. Furthermore, this "knowledge" is irrelevant to the rape claim. A woman who has experienced sexual assault is subjected to a general; medical checkup to determine her health and medical requirements, to gather proof, etc. Virginity (or "two-finger") testing has no place in the treatment of sexual assault victims, according to a guidebook published by the World Health Organization (WHO).<sup>2</sup>

### **II. Will Women Have to Get Re-raped To Give the Testimony of Being Raped?**

On October 31, the Supreme Court criticized the two-finger test, which is still used on victims of sexual assault "to establish whether they are habituated to sexual intercourse," and declared that physicians who would be found using it, would violate medical ethics. According to Hon'ble Justices DY Chandrachud and Hima Kohli, the test is "rooted in a patriarchal and sexist attitude." The judges referred to it as intrusive, unscientific, and "re-victimizing and re- traumatizing" the survivor.<sup>3</sup> It will exacerbate the condition of victim, who has already suffered brutality and viciousness at the hands of rapist, has to again undergo insensitivity and indifference to the so-called medical test, in which an unknown person inserts his two fingers into the vaginal tract of the rape victim,

even though this test does not have any role play in women testimony of getting raped.

### **III. Judicature & Two Finger Test**

A rush of law changes was made in the months following the gangrape and death of a 22-year-old woman in New Delhi in 2012 to create a comprehensive framework that would address sexual violence against women. The Criminal Law (Amendment) Act of 2013 amended Section 53A of the Indian Evidence Act to clarify that any material intended to assess the survivor's character or past sexual experiences is irrelevant. A Supreme Court panel made up of Hon'ble Justices BS Chauhan and Fakkir Mohamed Kalifulla ruled in April 2013 that the two-finger test infringes on rape survivors' rights to privacy, physical and mental integrity, and dignity.<sup>4</sup> The Union Ministry of Health and Family Welfare advises that tests should not be performed on survivors in its 2014 guidelines and procedure on medicolegal care for sexual assault survivors. The guidelines also state that comments on sexual experience or sexual intercourse habits are not to be made because they have no bearing on a case of sexual violence. On 31st October though Supreme Court criticized the application of the Two Finger Test by declaring that medical practitioners practicing the test will be violating medical ethics and would be liable for misconduct, the question arises that why Supreme Court has to wait from 2012 – 2022, to declare this practice as misconduct. Why till today, there is no stringent law made apart from mere guidelines, to prohibit this practice as a whole? The answer as studies and research suggest lies partially in the Education System of India.

### **IV. The Curriculum of Medical Education in India**

The National Medical Council changed the Bachelor of Medicine and Bachelor of Surgery undergraduate curricula in 2019. But despite the numerous legal and policy developments made for the treatment of sexual assault survivors, this was simply old wine in a new bottle. Medical systems have conventionally endeavoured to regulate women's bodies, which has led to the development of profoundly sexist medical knowledge.<sup>5</sup> An updated set of competencies expressly notes how "signs of virginity," such as the two-finger test, are unscientific and discriminatory. The continued use of the test after repeated court judgments affirming their illegality prompts concerns about whether these improvements are implemented in medical school.

### **V. Society is not yet in terms of Women's Agency**

In a society yet to come to terms with women's agency — economic, sexual, or social — sexual violence is often accompanied by victim shaming, -a shift of the culpability on the woman for the transgressions of the perpetrator. Repeatedly, women have been told that boys will be boys, that they were asking for it, and that women ought to have been more careful, more demure, less visible, and less out there.<sup>6</sup> Medical education in India places a

lot of emphasis on treating patients as merely a juxtaposition of pathologies even though the field of medicine is concerned with treating people. Understanding gender as a system of power that affects vulnerabilities, health-seeking behaviors, doctor-patient relationships, and ensuing health outcomes is crucial for clinicians. One of the many gender-biased practices still prevalent in Indian medical colleges is the two-finger test. For a very long time, social scientists and gender specialists have criticized medicine as being androcentric, or male-centered. Incorporating viewpoints from this extensive body of knowledge could be the solution to getting rid of many gender-blind medical practices in health systems.

### **Conclusion:**

Although the Supreme Court's decision directed medical schools to change their curricula, by doing away with the two-finger test, this might only be a temporary fix for the bigger issue of the absence of social perspectives in medical education. The Centre for Enquiry into Health and Allied Themes has conducted numerous training sessions for educators, and through those sessions, it has been discovered that medical education places an excessive amount of emphasis on the biomedical health paradigm without considering the social reality. The biological health paradigm put forth the idea that only medical causes can account for an illness, but the truth lies on the other side. Medical educators must be willing to unlearn and relearn from a wide range of stakeholders, including social scientists, attorneys, groups from civil society, and most crucially, the public.

### **Foot notes**

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2. No to two-finger test, (02-11-2022), {<https://indianexpress.com/article/opinion/editorials/no-to-two-finger-test-8243541/>}
3. Sohini Chowdhury, "Supreme Court Bans Two-Finger Test; Says It's Based On Patriarchal Mindset That Sexually Active Women Can't Be Raped", (31 Oct 2022), {<https://www.livelaw.in/top-stories/breaking-supreme-court-bans-two-finger-test-says-its-based-on-patriarchal-mindset-that-sexually-active-woman-cant-be-raped-212806>}
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5. Mukul Bhowmick, "How insensitive medical education allows the banned two-finger test for rape survivors to persist" (Nov 08, 2022), {<https://scroll.in/article/1036458/the-banned-two-finger-test-continues-because-medical-education-remains-blind-to-its-gender-biases>}
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