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Enforcing the Ban on the 'Two-Finger Test'

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Virginity tests in judicial trials are premised on gendered and casteist ideas about women. The Supreme Court's ban on such tests should be followed up with changes in medical education and social norms.

The Indian Supreme Court's ban against the 'two-finger' test (also known as the 'virginity test' or 'per vaginal' test) in October last year is a welcome move towards realising women's rights. This gynaecological examination to determine whether a woman or girl has had vaginal intercourse is medically unnecessary, invasive, and painful and humiliating to the person.

In the last decade, multiple stakeholders have called for an end to the two-finger test in India. Despite the lack of a scientific basis for this test, the continued practice of virginity tests by medical professionals and lawyers since colonial times indicates that a survivor's gender identity is more salient than her experience of rape and inherent human rights violations.

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However, questions arise about whether the Supreme Court's judgement will be taken seriously by practitioners and will translate into practice.

The burden of an erroneous proof

The two-finger test is an unscientific test of virginity. It involves examining the intactness of the hymen and laxity of the vagina to – erroneously – ascertain a woman's sexual activity. The two-finger test has a 'nearly universal' presence in India such that the defence counsel of those accused of rape invoke the test findings from medical professionals to judge if a woman survivor was 'sexually active' and, thus, judge her character as a complainant. If the practitioner finds 'evidence' of sexual activity, they can claim that the woman consented to sex and refute rape charges.

The premise that women may lie about rape is a primary motivation for court-ordered two-finger tests. This premise creates a hostile environment for survivors and places the mental and physical burden of proof on women. It further compounds other possible repercussions of reporting rape, such as the fear of violence from partners and ridicule and retribution from women's families and communities.

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The Supreme Court's first directive against the two-finger test followed the 2012 gang rape and murder of a student in Delhi. The focus on rape and sexual violence in this period catalysed legal change and exacerbated nationwide campaigns for gender justice. Moreover, a series of studies on gender bias in medical education revealed that doctors learn and practice content that stigmatises rape survivors rather than supporting them. Subsequently, the health ministry issued guidelines in 2014 to standardise healthcare professionalisation and treatment of sexual assault survivors. These guidelines reiterated the unscientific and biased nature of the two-finger test, but their implementation was not uniform across the country.

The roots of 'virginity testing'

Virginity tests are not exclusive to rape survivors in a medical setting or to India. As historian Hanne Blank notes in her book *Virgin: The Untouched History*, evidence of women subjected to various virginity tests is spatially and temporally widespread. Despite the diverse reasons for their employment worldwide, these tests rest on an obsession with women's virginity and the patriarchal belief that women's bodies and actions must be controlled in social, political, and economic spheres of life.

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In the 1970s, the British immigration system performed virginity tests on Indian women when they suspected an applicant who might be already married was entering the country without a visa under the guise of marrying their fiancé. In the 21st century, reasons for virginity tests across the world include deterring pre-marital sex among school-aged girls, being a part of women's application processes, and forcing tests on women protesters (Olson and García-Moreno 2017, Behrens 2015).

In India, women regularly must prove their virginity during marriage, an inherently casteist institution. The tradition in which women must bleed after consummation to prove their chastity ensures within-caste sexual relations and, thereby, procreation to maintain caste hierarchies. A few years ago, this practice among the Kanjarbhat community received media coverage because youth from the community protested the 400-year-old tradition. But what might seem like a practice limited to a few communities in India represents the entrenched nature of caste and patriarchy. Even young girls and boys in Mumbai share perceptions about the importance of a 'wife's virginity' and acknowledgement of the test of chastity (Abraham 2001).

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Not surprisingly, this high premium on women's virginity through the life course manifests in the medical setting because people in health systems operate within prevalent social norms. Virginity testing thus not only builds on gender and caste hierarchies but also reinforces them.

Intersections of gender and caste

While the realities of rape (under)reporting symbolise a social responsibility to remove the two-finger test from medical settings, we caution against using narratives of protection for 'pure and god-like Indian' women from the damages of the test. Such narratives impede rather than aid social change because they build on the same gender power hierarchy that contributes to sexual assault in the first place – that women are subordinate to men.

> A puritanical approach to rape survivors leaves no room for the experiences of Dalit women whom the caste system oppresses as intrinsically 'impure'.

Moreover, a puritanical approach to rape survivors leaves no room for the experiences of Dalit women whom the caste system oppresses as intrinsically 'impure'. Dalit women survivors bear the intersectional burden of caste, class, and gender because men from higher castes declare sexual violence against them as caste impunity and may force them to perform unpaid labour if women raise their voices (Kumar 2021). Despite such caste atrocities, Dalit women do not have adequate access to redressal mechanisms and are often excluded from mainstream feminist support spaces in India (Bansode 2020).

From structural to cultural change

How can social norms around the archaic, discriminatory, and persistent two-finger test change?

Laws and social policy are often the only tool for justice available to multiply marginalised persons. Thus, a clear directive from the Supreme Court provides a course of redressal for rape survivors who suffer invasion and re-traumatisation because of the test. The directive enables civil society organisations and social workers aiding survivors to dispute the actions of doctors and hospitals that perform the test. It enforces the right to autonomy, which flows from the right to privacy (Mani, Simha, and Gursahani 2018) . It also codifies medical negligence (a term not defined or referred to in Indian laws) towards the survivor because the two-finger test can result in further injury or damage.

> The ban against virginity testing is qualitatively different from sex selection because […] the law and medicine are already in direct communication.

The opportunity for change at the legal level can be leveraged through courts' refusal to require the two-finger test in rape cases. This form of legal endorsement of women's rights must be accompanied by improving access to support systems for marginalised women

who face unique barriers to rape reporting, sometimes including oppression from the state itself.

An argument against the utility of banning the two-finger test can be that it will lead to underreporting of tests while practitioners will continue to perform it. Such underreporting is seen with the prenatal sex-selection ban by the Supreme Court wherein either people seek sex selection in clandestine ways (Das Gupta 2019). But implementation of the ban against virginity testing is qualitatively different from sex selection because the former occurs in the context of rape, where the law and medicine are already in direct communicaton.At the level of medical education and hospital-based practice, curriculum changes require teaching students that the two-finger test is unscientific and discriminatory. This change arms students and doctors with guidelines that they can use to resist court orders to perform the test.

> It is unlikely that all women will experience the positive outcomes of these changes because of the pervasiveness of social biases.

Yet, it is unlikely that all women will experience the positive outcomes of these changes because of the pervasiveness of social biases and dominant caste hierarchies in the medical system. As such, medical curricula and education must also engage with the complexities of social inequalities and the origins of the two-finger test in gendered and casteist ideas about women.

Alongside this, the state and civil society must sensitise medical practitioners to the gender-biases in medical practice. Medical practitioners can act as peer educators to stress the ethical violations constituted in the two-finger test (Behrens 2015). Practitioners also could leverage their social capital and scientific expertise to speak at community events and social gatherings about the problems of practising virginity testing.

Conclusions

The two-finger test violates women rape survivors' autonomy and human rights. Prior sexual activity is not a criterion for dismissing rape accusations. The assumption that women survivors of rape should prove their charge is patriarchal and oppressive.

Structural changes in addressing the social inequalities manifested in practices like the two-finger test, accompanied by consistent measures to address the intersections of gender and caste in rape survivors' experiences, can enact social change. These efforts to institutionalise gender-just norms and practices must occur at multiple levels of society.

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