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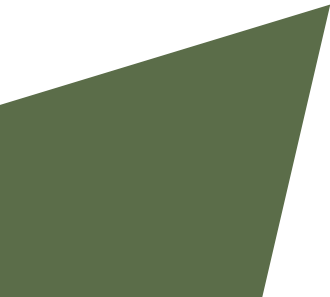
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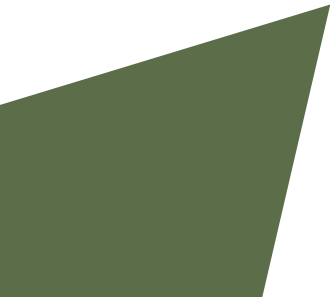
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A Virginity Test in India: Stigma on Society

Madhuri Tulshiram Gangurde

ABSTRACT

In India women having a very respectful status like goddesses but this is the sad reality that on the other side women have been subjected to cruelty, violence, and discrimination by our society. One of the most humiliating forms of violence is the virginity test. A virginity test is a physical examination for finding ruptures in a woman's hymen and then determining whether the woman is still 'a virgin' or not. Virginity is used as a parameter for assessing her character. The paper focuses on the social and legal aspects regarding the virginity test practice in India conducted by different communities and medical experts. The paper highlights the steps taken by various social actions, constitutional remedies, and judicial pronouncements to uphold the dignity of women against the virginity test practices.

INTRODUCTION

Today's highly developed and progressive era equality among all is the foundation of every civilized society. But till the date presence of customs like virginity test and two-finger test is the stigma on society. A virginity test is an old custom in India. A virginity test is a process of determining the virginity of a girl. A virginity test is for the confirmation that she has never engaged in a sexual relationship or never been subjected to sexual intercourse before her Marriage. The virginity test is considered as the purity of a girl and relates to her character as well. The test typically involves a check for the presence of, hymen in female gentiles and bleeding during her first sexual intercourse. Amongst some tribes in India virginity test is one of the essential rituals of the marriage.

Virginity test implications for the tested girl's virginity is volatile of fundamental rights and also unethical. In cases of suspected rape or, child sexual abuse a detailed examination of the hymen may be performed, but the condition of the hymen alone is often inconclusive.¹ Virginity test of a girl as a symbol of purity must be ended as it is a painful, humiliating, and traumatic practice, constituting violence against women.²

HOW THE VIRGINITY TEST IS CONDUCTED IN INDIA.

A virginity test is a practice and process of determining whether a girl or woman is a virgin i.e., to determine that she has never engaged in, or been subjected to, sexual intercourse. A virginity test is common among the Kanjarbhat community in India. The Kanjarbhats community is also known as 'Sansi' or 'Kanjar' in North India. This community is a one-time nomadic community from Rajasthan. Under The Criminal Tribes Act, 1871, the British branded the Kanjarbhats as 'criminals' and the tribe itself was identified post-Independence. In the years since the Kanjarbhats have settled mostly in the urban and semi-urban areas of Maharashtra. However, the community still holds on to many of its old practices including the 'virginity test'. Community elders defend the practice; they say it's a 400-year-old tradition. They do not believe it's demeaning to women; nor do they think the 'test' itself is unscientific and flawed.³

The way of practicing this test is of a newly married bride from Kanjarbhat community has to go through a test called virginity test. An elder from the community gives a white bed sheet to a newly

¹ Perlman, Sally E.; Nakajyma, Steven T.; Hertweck, S. Paige (2004). Clinical protocols in pediatric and adolescent gynecology. Parthenon. p. 13

² October 2018, the UN Human Rights, UN Women and the World Health Organization (WHO) stated that

³ [www. firstpost.com/india](http://www.firstpost.com/india)

married couple on their wedding first night. Before going for test elders confirm that newly married bride is not carrying with her pointed instrument or knife-like instrument so that she can do injury to herself for showing bloodstains. The next morning groom has to show a white bed sheet in front of all elders and Panchas. Then Panchas ask to groom in very derogatory terms that 'is your good is true'? If there is a bloodstain on the bedsheet groom says 'True' and if there is no bloodstain the good is declared as 'false'. If there is no bloodstain on the bedsheet it presumed that the girl has engaged in premarital sexual relationships.⁴Not to pass this test will result in serious consequences like boycott from society, heavy fines, physical punishment, and torture, and many more.

TWO FINGERS TEST

Virginity testing is also known as the two-finger test mostly conducted by medical practitioners refers to an intrusive physical examination of a woman's vagina to figure out the laxity of vaginal muscles and whether the hymen is distensible or not. In this, the doctor puts two fingers inside the woman's vagina and the ease with which the fingers penetrate her are assumed to be in direct proportion to her sexual experience. Thus, if the fingers slide in easily the woman is presumed to be sexually active and if the fingers fail to penetrate or find difficulty in penetrating, then it is presumed that she has her hymen intact, which is proof of her being a virgin.⁵ Furthermore, the practice is a violation of the victim's human rights and is associated with both immediate and long-term consequences that are detrimental to her physical, psychological, and social well-being. The harmful and henneries practice of virginity testing is a social, cultural, and political issue, and its elimination will require a comprehensive societal response supported by the public health community and health professionals.⁶

The Maharashtra University of Health Sciences (MUHS) has approved the removal of the topic 'signs of virginity' from Forensic Medicine and Toxicology subject for second-year medical students from their academic year syllabus. This means that the controversial 'virginity test', or 'two-finger test' would no longer be a part of the medical syllabus for students in the future.⁷A curriculum panel of MUHS unanimously approved the decision following a petition that 'signs of virginity' had no scientific basis, and did not aid in a sexual assault investigation as well.

⁴ www.asiatimes.com/2019/03

⁵ <https://timesofindia.indiatimes.com>

⁶ Eliminating virginity testing: an interagency statement. Geneva: World Health Organization; 2018. BYNC-SA 3.0 IGO. WHO reference number: WHO/RHR/18.15

⁷ news/india/2019/05/08/maharashtra

STOP V RITUAL MOVEMENT.

The fight against v ritual begun with a new generation of young, educated Kanjarbhats who dare to speak out against the virginity test and rigid caste panchayats. Many People as a social activist also oppose the virginity test ritual as a character test of the bride. This humiliating virginity test ritual is very unscientific and unethical because women do not necessarily bleed when they have sex for the first time. Activists who support Stop the V-Ritual have faced social boycott situation. This is a harsh reality that no young woman or couple from the Kanjarbhat community has filed a police complaint against the virginity test ritual so far. According to Stop the V-Ritual activists, this is partly why it has been so difficult to take legal action against the virginity tests and the caste panchayats⁸. Now days so many young newly married couples from the Kanjarbhat community oppose the virginity test ritual. A group of youths hailing from the Kanjarbhat community have decided to join forces and protest against unethical and unlawful practices employed by the caste panchayat – such as taking large sums of money for giving their approval to a couple looking to get married and carrying out a ‘virginity test’ on the bride on the first night of her marriage⁹ The move to challenge these ‘traditional’ practices with the help of technology using the social connection, Stop V- ritual activist siblings Vivek Tamaichekar and Priyanka Tamaichikar have created a group and added people in the group through social media. This young activist group is working on various footings for social awareness and abolishing the practice of V- ritual.

VIRGINITY TEST AND RELATED SOCIAL NORM.

The value of a woman’s virginity is deep-rooted in some societies. Virginity testing” has no scientific or clinical basis. No examination can prove a girl or woman has had sex – and the appearance of girl’s or woman’s hymen cannot prove whether they have had sexual intercourse, or are sexually active or not. ¹⁰There is no such particular examination to determine that woman is a “virgin,” or not but still “virginity testing” occurs. Virginity testing is a practice that amounts to a huge violation of human rights by major groups. Most grooms in India accepting a virgin brides only. Virginity remains a big fascination in India where virginity is directly connected to purity, good reputation, character, and the correct upbringing of girls. But this virginity mandate isn’t applicable for boys. Sex before marriage among boys is maybe a casual thing, but for a girl, it is something that can cost so much of harm to her honor and dignity because it is considered as a girl is born with a “sealed”

⁸ <https://scroll.in/article/866982>

⁹ Indian express hequint.com/news/india

¹⁰ <https://www.who.int/reproductivehealth>

uterus at birth. If the bride failed in VirginitY tests by caste traditions the consequences can be so worst. A bride deemed to be impure can be beaten, her family can be fined, or the marriage can be annulled. A woman who "fails" the test is seen as bringing shame to her family, and there are cases of brides being locked up in their parents' house as punishment.¹¹ These examinations are not only a violation of women's and girls' human rights, but in cases of rape can cause additional pain and mimic the original act of sexual violence, leading to re-experience, re-traumatization and re-victimization. Many women suffer from adverse short- and long-term physical, psychological, and social consequences of this practice. This includes anxiety, depression, and post-traumatic stress. In extreme cases, women or girls may attempt suicide or be killed in the name of "Honour".The concept of "virginitY" is a social, cultural, and religious construct – one that reflects gender discrimination against women and girls.¹² This painful, traumatic, and unethical practice should be ended and banned by all social communities.

VIRGINITY TEST VIOLATES RIGHT TO PRIVACY UNDER ARTICLE 21 OF INDIAN CONSTITUTION.

Article 21 of the Constitution of India says that "No person shall be deprived of his life or personal liberty except according to the procedure established by law"

Before Maneka Gandhi's Case Article 21 guaranteed the right to life and Personal ability to Citizens only against the arbitrary action of the executive, and not form legislative action the state could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi's decision Article 21 now protects the right to life and personal liberty of citizen not only from the executive action but from the legislative action also.¹³

A person can be the proof of his life and personal deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just fair and reasonable.

In various cases, courts have opined that the word life does not simply mean sustenance but it also encompasses dignity, freedom, privacy, etc. Privacy is an essential requisite for a meaningful life. The

¹¹ <https://www.abc.net.au/news/2018-04-06>

¹² <https://www.who.int/news-room/detail/17-10-2018>

¹³ Meneka Gandhi v union of india 1978 AIR 579 SCR (2) 261

term privacy is nowhere defined in the Constitution and is subject to judicial interpretation, which has made it a fundamental right within Article 21. Privacy includes physical noninterference, bodily integrity, psychological freedom, and confidentiality.¹⁴

Virginity test leads to a violation of Art 14 and Art 15 of the Indian Constitution. Art 14 stated Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth¹⁵ and Art 15 stated as Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth¹⁶ this Golden Triangle of Fundamental Rights gives assurance to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living.

JUDICIAL PRONOUNCEMENT RELATED TO VIRGINITY TESTS.

The courts in the case of R. Rajagopal v. State of Tamil Nadu and People's Union for Civil Liberties v. Union of India¹⁷ interpreted privacy as essential to life and is a part of fundamental rights guaranteed under Article 21, hence privacy is a right to be alone or a state of non-interfere without any justification by anyone. However, the question stands as to what if this individual right comes in conflict with the rights of an institution like marriage. The lawmakers and interpreters have tried to balance both sides.

Earlier only a penile-vaginal penetration against the woman's consent constituted rape. After the 2013 amendments in criminal law, the definition of rape has been broadened considerably to include all sorts of penetrative violations of a female's anatomy. Thus two-finger test would also amount to rape, unless it is covered under exception 1 to Section 375 IPC, which declares that, "A medical procedure or intervention shall not constitute rape."

In the landmark case of Lilu @ Rajesh and Anr v. State of Haryana (2013)¹⁸, the Supreme Court ruled that the two-finger test is unconstitutional. It violates the right of rape survivors to privacy,

¹⁴ <http://www.thehindu.com/news/national/the-lowdown-on-the-right-to-privacy/article19386366.ece/amp>.

¹⁵ Article 14 in The Constitution Of India

¹⁶ Article 15 in The Constitution Of India

¹⁷ R. Rajagopal v. State of Tamil Nadu and People's Union for Civil Liberties v. Union of India [2003] AIR SC 2363

¹⁸ Lillu v. State of Haryana, (2013) 14 SCC 643.

physical and mental integrity, and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, give rise to the presumption of consent. In the view of International Covenant on Economic, Social, and Cultural Rights 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not traumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment, and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with their privacy.

In the case of *Surjit Singh Thind v. Kanwaljit Kaur*¹⁹, the husband wanted to present the virginity test of his wife as she was demanding divorce on the ground of him being impotent. The court rejected the demand of the husband and opined that asking a woman to give her virginity test is volatile to right to life with dignity and also her privacy under Article 21 of the Indian Constitution.

In another landmark case of *Sr. Sephy v. Union of India* on 1 January 2009²⁰

On the facts of this case, in my view, a virginity test was unnecessary. It was unfortunate that the third accused was subjected to such ridicule, which does not serve any purpose, other than attempting to throw mud on a nun in public. It is even more unfortunate that the private parts of a nun are made to be discussed in public, without serving any purpose for the case. The virginity test has helped only to In addition to statutory protections, the Supreme Court has recognized an intrusion into the Right to Privacy in cases of sexual assault in judgments of the post – in the Kharak Singh era. In the case of *State of Karnataka versus Krishnappa*²¹, in which the Supreme Court held that "sexual violence apart from being a dehumanizing act is an unlawful intrusion of the Right to Privacy and sanctity of a female". In the *State of Maharashtra versus*

¹⁹ *Surjit Singh Thind v. Kanwaljit Kaur* AIR 2003 P H 353.

²⁰ *Sr. Sephy vs Union Of India* on 1January, 2009J(1) KLT 126, 2009 (1) ILR(Ker) 124

²¹*State of Karnataka versus Krishnappa* ILR 1994 KAR 89, 1993 (4) KarLJ 680.

Madhukar Narayan Mardikar²², the court also held that "even women of easy virtue are entitled to privacy and no one can invade their privacy.

SUGGESTIONS.

- Health professionals and their professional associations should be aware that virginity testing has no scientific merit and cannot determine past vaginal penetration. They should also know the health and human rights consequences of virginity testing, and never perform or support the practice.
- Governments should enact and enforce strict laws for the ban of virginity testing.
- Communities and all relevant stakeholders should implement awareness campaigns that challenge myths related to virginity and harmful gender norms that emphasize control of women's and girls' sexuality and bodies.²³
- Women's grievance cell, helpline number should be active in the various region to ban virginity test practice.
- In higher education in the subjects, value education and sex education topics like virginity tests and related ethical value-based lessons should be given.

CONCLUSION

The virginity test for girls is a huge violation of human rights. Virginity test practices in the name of custom and traditional practice is a direct attack on the self-esteem of an individual. Life with respect is protected under the Indian constitution through fundamental rights to every citizen by providing a 'right to life. This right literally means that the right to life is not only a mere animal existence but with the 'Dignity' for every human being. Virginity tests should not be linked with the sexual history and moral character of a girl. This is evidence that this test is often conducted by the so-called civilized people through medical practitioners. Virginity test practice should be done only for rape victim-survivors for providing justice. There is a great need for nation wise uniform laws, guidelines, and women's grievance cell for eradication and prevention of unethical virginity test practice from society.

²² State of Maharashtra v. Madhu-kar Narayan Mardikar, AIR 1991 SC 207

²³ <https://www.who.int>