

VIRGINITY TESTING

SUB THEME: ILL EFFECTS OF PATRIACHAL SOCIETY

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ABSTRACT

“If a man is chauvinist enough to think that a woman’s character is tied to her hymen and a woman is foolish enough to marry him, then they both deserve products like I-Virgin”

- Meghna Pant¹

The word virgin comes from old French **Virgine** from the root form of Latin **Virgo, Genitive Virgine** it literally means **Maiden or Virgin** (Sexually unexperienced women).

Virginity test also referred to a Hymn, Two-Finger or Per Vaginal examination it is a scrutiny of the female genital part meant to find out that whether a girl or women has had Vaginal Intercourse / Sexual Intercourse. Virginity Test is a long-lasting practice. In various regions of the world. The way in which the test conducted forcibly without taking the consent of the girl or by the women or in situation where women or girl are incapable of giving free consent.

It may be assumed to be the case when inspection is conducted on women or girl in confinement, sometimes subsequent to allegations of rape by victims. Virginity Examination constituted the violation of women’s fundamental right also including **Right to Equality, Right to Privacy, Right to Life with Dignity, Freedom from Discrimination, Protection from Cruelty enshrined under Article 14, 19 & 21 of the Constitution of India as-well-as it violates Human Rights standards.** However, in many countries examination of virginity is totally forbidden or criminalise by National Laws against Sexual Assault & Rape.

Author in the research found they lack the Fundamental Rights as enshrined in **Article 14, 19&21 of Constitution of India** & also they lack **Human Rights** as in accordance with **Article 1, 3, 5,7,22 of UDHR.**

This Paper is based on Doctrinal Research Methodology tries to understand the conditions & mental trauma regarding the Two-Finger Test or Virginity Test upon the women & the violation of their Fundamental Rights.

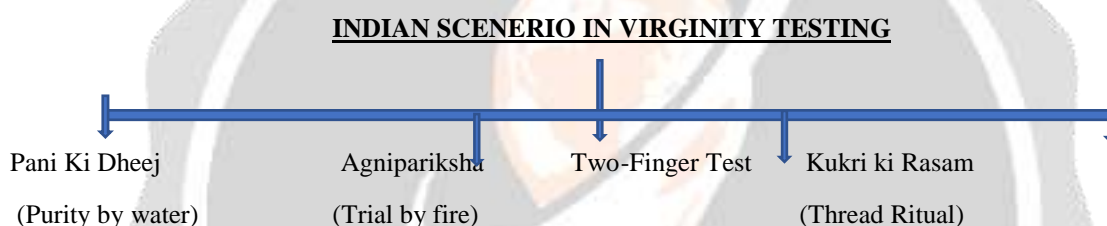
KEY WORDS- Fundamental Right, UDHR, Two- Finger Test, Constitution of India.

¹ <https://www.outlookindia.com/website/story/society-news-faking-virginity-do-women-nee-to-bleed-to-show-they-are-pure/342602>

INTRODUCTION

Virginity Testing referred as **Hymn, Two-Finger or Per Vaginal examination**. It refers to the practice of evaluating-through physical scrutiny of the hymn-to find out that whether a girl or women has had Vaginal Intercourse. Some of the Medical Practitioners conduct virginity testing as upon the female rape victims as a part of sexual assault assessment. The exam is conducted by visual scrutiny of the Hymenal Area²& is often merge with a two-finger test which involves the insertion of one or more than one finger into the vagina to check out the size of the vaginal opening & to examine the gradation of vaginal penetrability/palpability.

In some traditions, virginity is observed on dominant social standard that links sexual purity with the honour of an individual women or girl, her community, family & state. Virginity is celebrated as a dignity & women are expected to be virgin before the marriage. Whereas after the marriage wedding first night test for the virginity of the bride is well practiced ritual among Kanjarbhat ethnic group³ & other communities as well. White bedsheets⁴ is used to examine whether the bride is pure till the marriage night. According to this ritual groom has to enter in the bedroom with a white bed sheet & came out from the room with red stained on it. If the red blot is not there on the white sheet then the bride is deemed to be as impure. Virginity test mostly conducted forcibly without taking the consent of the girl or by women or in situation where women or girl are incapable of giving free consent. It may be assumed to be the case where inspection is conducted on women or girl in confinement sometimes subsequent to allegations of rape by victims & doctors examined the rape survivor only after the receiving a report from the police officer.⁵



- **PANI KI DHEEJ (PURITY BY WATER)** - To make sure that a woman is virgin, some certain groups or communities make women hold her breath under water while someone walks a hundred steps. **The International Rehabilitation Centre**⁶ describes that it is a gross violation of women's right & that may amount to torture under the International law.
- **AGNIPARIKSHA (TRIAL BY FIRE)** - In the test the bride has to hold a red-hot iron rod in her hand. Women who are incapable to do the task or left it in mid-way are considered to be impure. The women who fail in the virginity test are forced to reveal the name of their partners.
- **TWO-FINGER TEST-** This test is normally used to check rape survivors. A doctor performs the Two-Finger Test by inserting finger into the female vagina to examine the amount of vaginal laxity which is used to find out if she is habitual to vaginal sexual intercourse.
Honourable Supreme Court held that two-finger test on rape victims violates the women's right to privacy & dignity⁷. But still, it is prevalent in many regions of India
- **KUKRI KI RASAM (THREAD RITUAL)** - **Rajasthan women of Sansi Tribe** undergo virginity test also known as Kukri Ki Rasam⁸. To give the evidence of their purity on the first wedding night,

² <https://youngwomenshealth.org/2013/07/10/hymens/>

³ <https://www.abc.net.au/news/2018-04-05/virginity-testing-ritual-faces-growing-opposition-in-india/9619884>

⁴ <https://theprint.in/report/blood-on-the-bedsheet-must-indian-tribe-keeps-horrific-virginity-test-alive/33277/>

⁵ State of Karnataka v/s Manjanna (AIR 2000) (3) SCR1007

⁶ <https://www.theweek.co.uk/63956/virginity-testing-why-the-traumatising-practice-continue>

⁷ Lilu @ Rajesh v/s State of Haryana & anr. (AIR 2013)14 SCC643

while in this Rasam a white thread kept on the newly married couple's bed on their first wedding night & examine on the next day. The blood-stained thread is supposed to be the proof of the girl being a virgin before marriage & if thread is not red stained then she deemed to be impure.

LACK OF MEDICAL UTILITY OF VIRGINITY TESTING

- Some of the people opinion that you are not virgin if your hymn is stretched open. But having a hymn & being virgin both are not same thing. The test conducted by the doctors when the two fingers into the vagina of the victim. It helps in finding the i.e., whether the rape victim is sexually active or not. The reports of the tests were generally submitted by the Medical Practitioners to the Lawyers who used these reports as an evidence to defend their clients.
- All procedures also have no scientific background & also been scrapped by the **Ministry of Health & Family Welfare of the Government of India** in their guidelines for the rape victims.⁹
There are the reasons given by them for discarding this process as-
 - i) the introit of vagina has no relevancy in the sexual violence cases,
 - ii) The hymn can be torn due to many kinds of reasons like cycling, horse riding, falling down¹⁰ etc. The size of the hymn is of no authentication.
 - iii) An unbroken hymn does not rule out the possibility of sexual violence & torn hymn does not prove the vaginal intercourse.
 - iv) Per vaginal examination has a limitation as it examined only upon the adult women.

RELEVANCY OF VIRGINITY TESTING

In **2014 WHO handbook** concludes that the invasive & degrading virginity test or the two-finger test still used in some countries to "Prove" whether women or girl is a virgin – has "**no scientific validity & widely accepted medical view that virginity test are worthless**"¹¹ & it does not provide any evidence whether girl or women has had vaginal intercourse or has been raped. As a matter of fact that some girls are born without hymn & the hymn membrane also be torn by doing some activities like lifting weights, horse riding etc.

It is also important to know that the hymn has very few blood vessels which means that it is possible that a women or girl will not bleed after her first vaginal intercourse has confirmed by several studies.

On the other hand, because of stretching capability of the membrane & its ability to heal in many women & girls who already has sexual experience no signs of trauma to the hymn could be observed, hence providing the inaccuracy & unreliability of virginity testing.¹²

WHAT ARE THE CONSEQUENCES OF VIRGINITY TESTING?

PSYCHOLOGICAL EFFECT/HARM- The pain caused due to forcibly conducting virginity test that leads to women or girl emotional pain, fear as well; also feel humiliation, self-worthlessness. Long term psychological effects include depression, severe emotional distress, anxiety etc.

⁸ <https://feministaa.com/2016/05/13/revealing-the-harsh-truth-behind-virginity-testing-in-india>

⁹ <https://www.downtoearth.org.in/news/after-extensive-lobbying-twofinger-test-finally-removed-from-proforma-for-medical-examination-of-rape-victims-40600>

¹⁰ <https://timesofindia.indiatimes.com/life-style/relationships/ask-the-expert/Hymn-breaks-only-during-intercourse/articleshow/4756946.cms>

¹¹ Liesl Gerntholz, women's rights directors at Human Rights Watch

¹² IRC, Myths Surrounding virginity; January 2018; <https://www.igwg.org/wp-content/uploads/2018/03/virginity/Booklet-20180116.Pdf>

PHYSICAL EFFECT/HARM¹³- The outcome of the virginity test may cause physical effect on the women or girl. In some of the cases women causes self-harm as committed suicide to these tests or the consequences thereof.

SOCIAL EFFECT/HARM- Virginity is usually connected noxious traditions that disclose girls or women's to stained & perceived humiliation & worthless to themselves. In some of the cases women's or girls are boycotted by their families & by their communities¹⁴ as well; even murdered because they have had sexual intercourse before their marriage.

CONFLICTS OF RIGHTS WITH VIRGINITY

**“Gradually the scope of Legal Rights of broadened, & now the Right to life has come to mean the Right to Enjoy Life-The Right to be let alone”
-LOUIS BRANDEISJ.**

Article 21 of the Indian Constitution states that **No person shall be deprived of his life & personal liberty¹⁵ except according to procedure established by law.**

As said by **J. Field** that the word “Life” is more than mere animal existence & it embraces within it self not only the physical existence but also the quality of life.¹⁶The express Personal Liberty not only the mode of Freedom from detention / confinement or from arrest but also protects those rights & privileges that are necessary to achieve happiness with Freedom.

WHERE AS ARTICLE 21 OF INDIAN CONSTITUTION INCLUDES

RIGHT TO PRIVACY & PERSONAL LIBERTY

Allowing Medical Examination of a women for her virginity amounts to violation of her **Right to Privacy & Personal Liberty enshrined under Article 21 of the Indian Constitution.**¹⁷

RIGHT TO LIFE & TO LIVE WITH DIGNITY

These tests are inequitable & adverse to **Right to Equality enshrined under Article 14 & 21 the Constitution of India.** Because in some of the cases women have been murdered, committed suicide or boycotted from their families or by their communities in cases the practice violates individual's Fundamental Rights.

THE RIGHT TO PROTECT FROM DISCRIMINATION BASED ON SEX

These tests violate women's or girls right & it has to be protected from discrimination based on sex. The genesis of the word virginity test is totally based on patriarchal system of gender discrimination & violence against women & it also violates **Right to Equality enshrined under Article 14 of the Indian Constitution.**

Virginity Testing violates the rights of women as granted under **Article 1, 3, 5,7,22 of Universal Declaration of Human Rights (UDHR)** as well.

¹³ https://www.researchgate.net/publication/315869253_statement_on_virginity_testing

¹⁴ <https://www.news18.com/news/india/thane-family-faces-social-boycott-for-opposing-virginity-test-for-women-approaches-police>

¹⁵ Maneka Gandhi v/s UOI, 1978 SCR (2) 621

¹⁶ Munn v/s Illinois (AIR 1876) 94 U.S.113

¹⁷ Punjab High Court in the case of Surjit Singh Thind v/s Kanwaljit Kaur (AIR 2003) PH 353

SUGGESTIONS

- ✓ All must respect their daughter in-law as their own daughter
- ✓ All must understand and campaign must be started to make everyone aware that hymen and two finger test relation with virginity is misnomer
- ✓ All girls must be aware of their rights and dignity
- ✓ Men must understand that privacy of a girl is at par with privacy of men
- ✓ We all citizens of this nation must respect each and every human and raise our voice against malpractices prevalent in the society.

CONCLUSION

Still the concept of privacy and dignity are bookish concepts. Virginity will be a taboo in this society till citizens of this society will think in patriarchal manner. Women's must come forward and raise their voice against such shameful acts. The truth and concept of virginity and the associated malpractices must be included in curriculum as a part of sex education at secondary level.

