



Critical analysis on virginity testing

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Abstract

In India women have a very respectful status like that of a goddess, but this is the sad reality that on the other side, women are subjected to cruelty, violence and discrimination by our society. One of the most humiliating forms of violence is virginity test. Virginity is used as a parameter for assessing her character. This research focuses on social and legal aspects regarding the virginity test practice in India.

My research highlights the steps taken by various social actions, constitutional remedies, and judicial pronouncements to uphold the dignity of women against the virginity test practices.

[a virginity test is a physical examination for finding ruptures in a woman's hymen and then determining whether the woman is still virgin or not.]

Keywords: virginity, testing, women

Introduction

Virginity testing is a controversial practice that aims to determine whether a girl has had sexual intercourse or not. In some cultures, females' virginity is highly valued and expected for marriage or employment.

Girls who have had sexual experience may be deemed 'impure' and or not worthy of respect. Testing may also be conducted in women who are being evaluated for sexual assault. Virginity testing is practiced around the world, particularly in parts of Africa, Asia and the Middle East. It has also been found in western countries like Canada, Spain, Sweden and the Netherlands.

Research Methodology

The specialist has embraced doctrinal exploration technique which inferred utilization of optional sources while making the venture. Different books, articles and diaries have been explored and assessment of the equivalent was finished while composing this examination. Further reference of the milestone cases was taken, but not all cases might have been covered. Other sources like web have likewise been utilized and a total examination of the multitude of sources utilized, was finished.

Virginity Testing: A White Bedsheet, A Bride's Wedding Night Humiliation: (Priyanka Tamyachekar's Case: April 5, 2018)

Key Points of the Case

- Wedding night virginity testing is practiced by the KANJARBHAT ethnic group of India
- Brides who fail can be subjected to beatings, humiliation and even divorce
- Opponents campaigning to end the practice have faced violence and threats
- The bridegroom will go inside with a white bed sheet and he has to come out with a red blood stain on it.
- People outside are sitting, waiting and they will ask him if the „product“ was good or not good.

- The product is „her“, the bride. And if she does not bleed on her wedding night, she can be subjected to beatings and communal humiliation and even a divorce.
- The groom is given a white cloth to use while having sex with his bride on wedding night.
- Elders sit outside the door of couple's room until the act is complete.
- Before the couple enters, the elders sweep the room for any sharp objects that may be used to produce blood.
- The bride's bangles are removed so that she can't cut her skin with them.
- In case, the couple is not in a mindset, or they are not able to go through intercourse, they will even demonstrate to them with a real couple.
- They will send a couple inside and they will do the physical act in front of them, they will show them porn videos. They will do anything to pressure them, but they have to pass the test.
- After sex, the groom is expected to display the white bed sheet for inspection by the relatives and elders.
- "He is supposed to tell the whole caste counsel consisting of 150,200 people that my„ product“ was pure, my „product“ was perfect.”
- To be noted: The process ignores medical evidence that a woman's hymen can be ruptured without sexual intercourse.
- In the present case, bride's brother was not ready to let her sister go through the test.
- He calls this humiliating and a violation.
- His mother threatened to throw him out of the house and cancel the marriage if he refused to follow the tradition.

Violence, Threats for Opposing the Ritual

- Taking a stand against tradition hasn't come without consequences for the members of the group.
- Three of them said they were bashed by about 40 people at a community wedding earlier this year.

- 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 parent’s house as punishment.

Noritual Exists to Test The Groom“ Svirginity. Hymen and Myths about Hymen Which People Need to Break Now

- The hymen made out to be a symbol of virginity and purity when all it really is, a part of your body.
- The hymen is largely misunderstood not only by men but also women all over the world. It is made out to be a symbol of virginity and purity when all it really is, a part of your body.
- Medically speaking, having a hymen or losing it does not make any difference to a person’s health but social pressure in some cultures to have an intact hymen at the time of marriage can have a negative impact on mental health.
- Myths surrounding the hymen are largely to blame for this social pressure. Here are some myths and the truths about it.

1. The hymen is a barrier and it breaks

The hymen is a membranous tissue that does not cover but surrounds the vaginal opening. Your hymen does not technically break but it can stretch.

- Hymen can stretch or even tear during many intense physical activities like cycling, swimming, horse riding, etc.
- Use of tampons and inserting something into your vagina like fingers or sex toys can also stretch your hymen.

2. Every Woman is Born with a Hymen

Not every woman is born with a hymen. As it plays no physiological role, it isn’t harmful at all.

3. Examining the hymen can indicate whether a sexual assault took place

The hymen may/may not be damaged during the rape and therefore, an examination of it can’t confirm sexual abuse. Lacerations on the hymen from abuse can’t be differentiated from natural changes. A full physical exam should be administered for gathering evidence of an assault.

4. Hymen can grow back

Unlike the vaginal opening, once stretched, a hymen does not return to its former shape or grow back.

5. A gynaecologist can tell if you have a hymen or not (and whether you’re virgin or not)

Just like vaginas, every hymen is unique. Some are smaller and thinner, others are bigger and thicker. It couldn’t be visible, or it couldn’t be. Its appearance also changes with age. There is no hard and fast rule here. Due to variation in different hymens and also because the absence of a hymen isn’t an indicator of sexual activity.

Stop “V. Ritual” Movement

The fight against V.RITUAL begun with a new generation of young, educated ‘KANJARBHATS’ in

North India. (This community is a one-time nomadic community from Rajasthan).

- Under the Criminal Tribes Act, 1871, the British banned the „KANJARBHATS“ as „criminals“ and the tribe was identified post-independence.
- Who dare to speak out against the virginity test and rigid caste PANCHAYATS have faced social boycott situation. This is a harsh reality that no young woman or couple from the community has filed a Police complaint against the virginity test ritual so far.
- The move to challenge these traditional practices with the help of technology using the social connection, „stop the V.RITUAL MOVEMENT“ activist siblings VIVEK TAMYACHEKAR and PRIYANKA TAMYACHEKAR have created a group and added people in the group through social media.

Virginity Test Violates Right to Privacy under Article-21 of the Constitution

Article 21 of the constitution 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 1A.21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of 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.
- A person can be the proof of his life and personal liberty if two conditions are compiled with.
- First, there must be a law. Secondly, there must be a procedure prescribed by law, provided that the procedure is just fair and reasonable.
- Virginity tests leads to a violation of A.14 2stated equality before law. The state shall not deny to any person equality before 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 birth.
- 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.

Pure Patriarchy

- HYMENOPLASTY commoditise women, breaches privacy rights.
- Women are expected to retain their virginity prior to marriage and continue to be subjected to the patriarchal doctrine of the Indian society.
- In 2013, as many as 450 women in Madhya Pradesh were forced to undergo virginity test during a state-conducted mass marriage under „MUKHYAMANTRI KANYA VIVAH YOJANA“.
- The state argued that since the scheme supported poor women to get married, a virginity test would prevent already married women from taking advantage of the scheme.
- Under the scheme, women are provided assistance in the form of household items to the tune of Rs.9000 and other Rs.1000 for bearing the expenses to attend the mass marriage ceremony.

- In May, this year a family from the KANJARBHAT COMMUNITY in Thane District of Mumbai filed a Police complaint that they were facing social boycott from their „JATI“ because they had opposed the practice whereby a newly married woman has to prove virginity before the marriage. The family continues to face discrimination from community members, in spite of the practice being banned in Maharashtra in February, 2019.
- A summary of all these cases suggest that women are expected to retain their virginity prior to the patriarchal doctrine of Indian society.
- The United Nations last year urged all countries to ban the practice of virginity tests.
- The WHO also recommended that virginity tests „should not be conducted under any circumstances“.
- If a woman does not pass the virginity test she is forced to disclose the name the person with whom she had sexual relations.
- After which the family of the girl or the man whose name she declared are required to pay compensation to in-laws family, so that, they can accept an „IMPURE BRIDE“.
- If the family does not agree to pay, the issue is taken to PANCHAYAT. Then the community council accuses the girl and her family members are given an opportunity to prove the girl is a virgin in front of the community.

Judicial Pronouncements Related To Virginity Tests (Case laws based on states of Punjab and Haryana)

The courts in the case of R. RAJAGOPAL v. STATE OF TAMIL NADU and People's Liberties v. Union of India interpreted privacy as essential to life and is part of fundamental rights guaranteed under A.21, hence privacy is a right to be alone or a state of non- interference without any justifications by anyone.

Landmark Judgement: Lilu@ Rajesh and Another V. State of Haryana [2013]⁵

The SUPREME COURT said that the two-finger test is unconstitutional. It violates the right of rape survivors to privacy, physical and mental integrity and dignity.

Thus, this test, even if the report is affirmative cannot *ipso facto*; give right to the presumption of consent.

In the view of International Covenant on Economic, Social, 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.

Landmark Case of Sr. Sephy V. UoI⁷ [JAN 1st, 2009] HELD

It was unfortunate that the third accused was subjected to this ridicule, which does not serve any purpose, other than attempting to throw mud on a nun in public. It is even more unfortunate that private parts of a nun are made to be discussed in public, without serving any purposes for the case.

Surjit Singh V. Kanwaljit Kaur⁸[April 25th, 2003] Held

The question of virginity of wife (respondent) is not in issue, and the virginity test can not constitute the sole basis

to prove the consummation of marriage. The instant petition is without merits and is liable to be dismissed.

Rajiv V. Neetu Bharti [February 12th, 2015] [Punjab and Haryana High Court]

In the present case, wife had volunteered to undergo the virginity test and therefore, an application for constitution of free medical board to conduct her virginity test was moved, which had been declined vide the Impugned order. In the opinion of the court, it isn't necessary for the wife to have a virginity test, which in any case is not the only proof of non consummation of marriage.

- Learned trial court has rightly held that medical examination of a woman for virginity would certainly violate her right of privacy under A. 21 of the Constitution.

Suggestions

- Health professionals and their professional associations should be aware that virginity testing has no scientific merit and can't 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- stake holders should implement awareness campaigns that challenge myths related to virginity and harmful gender norms that emphasise control of woman's and girls' sexuality and bodies.
- Woman's grievance cell, helpline number should be active in various regions 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 girl is a huge violation of human rights. Virginity test practices in name of custom and traditional practice is a direct attack on the self esteem of an individual. Virginity tests should not be linked with 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 practitioner. 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 grievance cell for eradication and prevention of unethical virginity test practice from society.

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