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“ROOT CAUSES OF CUSTOMARY PRACTICES OF VIRGINITY TESTING IN INDIA AND AFRICA”

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Abstract

Virginity testing, also known as the “two-finger” or “hymen” test, is a common practice in India. Despite its widespread use, virginity testing has been widely criticized by medical professionals and human rights organizations as being unscientific, unethical, and violate of an individual’s privacy and autonomy. In India, this practice has been used in various contexts, including as a condition of marriage, to determine the character of rape victims, and as a tool to determine the “virtue” of women. This paper provides an overview of virginity testing in India, including its history, current practices, and the ethical and legal implications of the practice. The paper argues that virginity testing is a violation of the fundamental rights guaranteed by the Indian Constitution and also highlights the physical and psychological harm caused by the test. The paper concludes with a critique of virginity testing, arguing that it should be abolished as it is violate of an individual’s rights and dignity.

KEY WORDS: Virginity, virginity test, two-finger test, female, hymen, violation of rights

1. Introduction

In India and the African region, there are several traditional practices conducted and performed by tribes. Long before the rise of modern global society, communities throughout the world prospered by harnessing natural resources in an attempt to adapt to the local natural environment. In the process, a wide-ranging body of knowledge, innovations, and practices evolved, inextricably linked to the use of natural resources. It enabled most communities to live within the limits of their local environment and contributed to shaping their cultural and spiritual identity as well. Any effort to conserve nature and ecosystems, therefore, must take into consideration the interface between nature and culture. The long and continuous usage by the community of the natural resources of the locality evolved into customary practices. And when customary practice from long usage obtains the force of law, it becomes customary law. In India and Africa, there are

several customary practices; a few are having a very harsh impact. The practice of virginity testing dates back to the early twentieth century in KwaZulu-Natal. Many regard virginity testing as the only way to revitalize what they view as lost cultural values. The aim of the study is to understand the reasons for undergoing virginity testing from the perspective of adolescent girls and boys. The study will explore the importance attached to virginity testing by adolescent girls and boys. In this present article, the researcher has focused on the practice of the virginity test and the reasons and root causes of this particular practice.

2. Virginity practice in Indian and African cultures

In India, virginity tests are performed in two ways firstly, in a medical way by a doctor or local physician, and secondly, in a customary way. In India, the Kanjarbhat community is one of the tribes in the western Indian state of Maharashtra, where young members are challenging the centuries-old tradition of “testing” the virginity of brides on their wedding night.¹ The practice, said to be 400 years old, determines whether the bride is a virgin or not by looking for bloodstains on a white bed sheet that the newlywed couple is instructed to use for intercourse on their wedding night. If the bride is determined not to be a virgin as a result of this “test,” her family faces being heavily fined or even ostracized from the community. A group of Kanjarbhat youths who have been actively trying to stop what they consider to be a heinous ritual have petitioned the government to make it illegal. However, orthodox community leaders are also pushing to keep alive what they see as a “tradition.” They have even threatened the youth group and their families with a social boycott that would see them excluded from normal social and commercial relations in the community. But through their activism, the young protesters have been able to attract the attention of the government. Last month, Ranjeet Patil, the Minister of State for Home, met a delegation of social organizations to discuss the issue of virginity testing. As a result, the minister said it will be considered “a form of sexual assault” on the female subject, and will soon be made a punishable offense by law. In South Africa, the practice of virginity testing is mostly common among the Zulu, and to a lesser extent by the Xhosa. In practice, it requires the physical examination of a girl in order to determine if her hymen is intact.² The testing always takes place at the residence of the local chief, where all the girls of the community are tested by old respected women of the village. In South Africa in the past virginity testing was conducted by the king’s wives or other nominated women qualified to do so. Usually it is an older woman who has

¹ Virginity test’ still haunts some Indian brides

Young members of an Indian tribe are fighting to end the 400-year-old practice March 13, 2019

² <https://scholar.google.it/citations?user=h9tDyMwAAAAJ&hl=en>

already reached menopause. In addition, it should also be an older person who is no longer sexually active and who has herself undergone virginity testing. In South Africa, according to virginity testing is seen as part of Zulu cultural identity and is strongly associated with self-respect, modesty, and pride. One of the key missions of virginity testing is to keep a record of how many virgins there are in a particular society and also to identify the young girls who are no longer virgins. In addition, virginity testing is seen as a means of safeguarding fertility. Many regard virginity testing as the “only way to instil what they view as the lost cultural values of chastity before marriage, modesty, self-respect and pride”³

3. Reasons behind customary practice of Virginity Test

Proving virgin in a virginity test is a indicates purity of women. That woman has never engaged in a sexual relationship this is a mind-set. Securing Virginity is important aspect for marriage. A girl Virgin before a marriage is a pride thing for a family and if not that can be stigma on family, clan or society. Let’s discuss reasons behind virginity test on women

3.1 Virginity as essential criteria for marriage

Premarital sex is taboo, and there is pressure on young women to maintain their virginity until marriage. Families and communities try to keep young women and girls ignorant about sexual matters. Many regard virginity testing as the “only way to instil what they view as the lost cultural values of chastity before marriage, modesty, self-respect, and pride.” Women should lose their virginity on the first day of their marriage, as this will help to sustain the marriage, meaning they will not have problems in their marriage because the husband will respect the woman. Virginity testing instils pride and ensures the dignity of a woman.

3.3 Virginity tests as pride for family.

Virginity testing was also conducted at marriage, and this is a particularly crucial test because if a woman proves to be a virgin, her family retains its honour, but if she fails, her family is shamed, and she is treated as an outcast. Strong emphasis was therefore placed on ensuring virginity until marriage, and it was socially regulated. Even on the wedding eve, virginity testing was done to ensure that the groom had not paid lobola for someone who was no longer a virgin. Preserving virginity was important because it increased a woman’s value, especially in marriage, and the bride’s family would be in a position to negotiate a high bride price, or lobola. If a woman was

³ Faculty of Humanities, Development and Social Science, University of KwaZulu-Natal, Durban, South Africa.2009
<https://researchspace.ukzn.ac.za/server>

found not to be a virgin, her mother would be given a white sheet with a big hole in the center, signifying that the girl is no longer a virgin.

3.4 Virginitv testing as a pregnancy prevention strategy

In India, pregnancy before marriage is a shameful thing. Virginitv testing is associated with pride and self-respect. Virginitv test practice is based on pre-marital sexual relations. Adolescent pregnancy is attributed to the low utilization of contraceptives, especially at first intercourse. It has been reported that adolescents regard family planning services principally for families and not for young people.⁴The high rate of teenage pregnancy among 15–19 year-olds shows a lack of contraception and condom use, as well as that adolescents are engaging in sexual activities. Virginitv testing is one of the strategies that aim to delay sexual initiation.

3.5 Myth in Africa virgin girl can cure HIV Aids

Virgins are more vulnerable to rape due to the myth that sex with a virgin will cure AIDS. Some respondents reported that not only virgins are being raped because of the myth but also old grannies whose husbands died a long time ago. There are usually one or two girls who are raped after the reed dance ceremony but rape is something that is not common in the community. They argued that men who rape girls are arrested but that the community sometimes also takes responsibility for punishing these criminals. Some girls were well informed about the myth that if a man has sexual intercourse with a virgin he will be cured of AIDS, and therefore felt vulnerable to rape.

3.6 Preventive measure to control HIV AIDS

KwaZulu-Natal is the province the hardest hit by the HIV/AIDS epidemic. Respondents believe that virginitv testing will help to reduce the spread of HIV/AIDS, and delaying the onset of sexual activity among young women will help to curb the number of people infected with HIV/AIDS. Some girls believe that virginitv testing empowers them as young women and reduces their risk of HIV/AIDS and teenage pregnancy. It presumed that virginitv testing helps to combat the spread of HIV/AIDS because young adolescents will not engage in sexual relationships. They will have a fear of engaging in sexual relationships because they know that when they have to undergo virginitv testing, the testers will find out that they are no longer virgins.⁵

⁴ Patterns of Contraceptive Use Within Teenagers' First Sexual Relationships [Jennifer Manlove, Suzanne Ryan,](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1473988/) and [Kerry Franzetta](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1473988/) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1473988/>

⁵<https://www.researchgate.net/publication/282704893> Probing the efficacy of virginitv testing

4. Indian and African constitutional shield against virginity test.

Virginity of women is a gross violation of right to privacy and life with dignity, right to equality. In Africa Section 14: Right to Privacy

Everyone has the right to privacy, including the right not to:

- Be body-searched without a court order
- Have your home searched without a court order
- Have your things taken from you
- Have your letters opened or your telephone tapped

The Interception and Monitoring Prohibition Amendment Act (1996) prevents peoples' conversations being intercepted⁶ Moreover, per Justice Laurie Ackermann, the court had that the right has more force in more personal contexts:

it is only the inner sanctum of a person, such as his/her family life, sexual preference and home environment, which is shielded from erosion by conflicting rights of the community. Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly⁷ In India right to privacy is having a big ambit and scope. The right to live with dignity is a fundamental human right recognized in international law, national constitutions, and various judicial rulings. It encompasses a range of essential elements that ensure a person's life is free from suffering and humiliation, and allows them to live with respect, autonomy, and fulfilment.

Components of the Right to Live with Dignity:

- **Basic Needs:** This includes access to essentials like food, water, shelter, clothing, healthcare, and sanitation. Deprivation of these basic needs can constitute a violation of the right to live with dignity.
- **Physical and Mental Well-being:** Freedom from torture, cruel, inhuman, or degrading treatment or punishment is crucial for living with dignity. This also extends to protection from violence, abuse, and exploitation.

⁶ <https://legalfundi.com/legal-question/section-14-right-to-privacy>

⁷ Plessis, GA du; Nel, W. N. (11 October 2021). "[The dimensional elements of the right to freedom of religion or belief in the South African Constitution](#)". *Journal for Juridical Science*

- **Social and Cultural Rights:** Participation in society, access to education, work, and cultural expression are essential for a dignified life. Discrimination on the basis of factors like race, gender, religion, or sexual orientation undermines this right.
- **Personal Autonomy and Self-determination:** Individuals have the right to make their own choices about their lives, free from coercion or manipulation. This includes the right to privacy, freedom of movement, and freedom of expression.
- **Environmental Sustainability:** A clean and healthy environment is crucial for a dignified life. Pollution, climate change, and environmental degradation can significantly impact people's well-being and access to basic resources.
- **Indian Constitution Article 21:** The primary source, guaranteeing the right to life and personal liberty. Though not explicitly mentioning "dignity", the Supreme Court has broadened its interpretation to encompass a dignified existence.

5. Conclusion

Men and women equally have the right to human dignity and all other fundamental freedoms. However, in Zimbabwe just like with the rest of African societies, virginity testing as a cultural rite has been only performed on women and not men thereby having the effect of limiting girls and women reproductive rights. Furthermore, it has also been established that subjecting women alone to the practice of virginity testing is discriminatory on the basis of sex as the burden is placed only on girls and women to be chaste for the benefit of society's morality. Thus, under such circumstances, it is argued that the cultural practice of virginity testing basically views women as second class citizens and subordinate to their male counterparts thereby undermines the notion of equality as guaranteed by the constitution itself. This inquiry demonstrated that executing virginity testing on girls and women for whatever reason infringes on their right to equality, human dignity, bodily integrity and privacy and as such should not be tolerated in an open and democratic society. Virginity examinations are medically unreliable and inherently discriminatory, and, in almost all instances, when conducted forcibly, result in significant physical and mental pain and suffering. It is our opinion that forcibly conducted virginity examinations have no clinical or scientific value and constitute cruel, inhuman and degrading treatment, and may amount to torture depending on the individual circumstances. When virginity examinations are forcibly conducted and involve vaginal penetration, the examination should be considered a form of sexual assault and rape. The involvement of the health professional in these examinations is a violation of the basic standards and ethics of profession.