

Two-finger Test of Sexual Assault Victims

Why in news?

In a progressive call, the Supreme Court has said that those conducting the 'two-finger test' on alleged rape victims will be held guilty of misconduct.

What is the two-finger test?

- A "per vaginum" or two-finger test is an explicitly intrusive physical examination wherein a doctor inserts two fingers inside the vagina of a rape survivor to check if
 - The hymen is intact or not, and
 - The size of the vaginal opening and the laxity of vagina
- It is used to determine if the woman has engaged in or has been subjected to sexual intercourse.
- As per WHO, the two-finger test has no scientific validity.

What has the court inferred?

According to National Crime Records Bureau data, rapes often go unreported, and the conviction rate is low too (28.6% in 2021).

- **Present case** - The court has said that whether a woman is habituated (accustomed) to sexual intercourse is irrelevant for determining the ingredients of Section 375 (rape) of the IPC in a particular case.
- The court held that the so-called test is patriarchal and is based on the incorrect assumption that a sexually active woman cannot be raped.
- It added that the probative value of a woman's testimony does not depend upon her sexual history.
- **Previous cases** - In 2013, the Supreme Court had held that the two-finger test and its interpretation violated the right of rape survivors to privacy, physical and mental integrity and dignity (right to privacy).
- The Court also invoked the International Covenant on Economic, Social, and Cultural Rights 1966 and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.
- Recently, the Madurai Bench of the Madras High Court directed the State to ban two-finger test on victims of sexual offences, particularly on minor victims.

The judgment so significant as it addresses the issues with two-finger test which

- Played out as an effective instrument of moral judgement
- Has been used as a yardstick to ascertain the veracity of the victim's claims
- Lacks scientific validity
- Is regressive and offensive to the dignity of women
- Re-victimises and re-traumatises women who may have been sexually assaulted

What are the efforts taken to prevent the use of two-finger test?

- **Committee recommendations** - The Justice JS Verma committee, set up after the 2012 gangrape incident in Delhi, had recommended its banning.
- **Legislations** - The Criminal Law (Amendment) Act 2013 stipulates that a victim's character or previous sexual experience should not be relevant to the issue of consent in prosecuting sexual offences.
- **Government guidelines** - In 2014, the Union health ministry released a document with guidelines and protocols (not legally binding) to be followed for survivors/victims of sexual violence.
 - The two-finger test must not be conducted for establishing rape/sexual violence.
 - The size of the vaginal opening has no bearing on a case of sexual violence.
 - Per vaginum examination can be done only in adult women when medically indicated.
 - A rape victim's consent (or her guardian's, if she is minor/mentally disabled) is necessary for any medical examination.
 - Even if the consent is not provided, the victim cannot be denied medical treatment.
- **NMC's modified modules** - The National Medical Commission (NMC) modified modules for forensic medicine, where students will be trained on how to brief courts about unscientific basis of these tests.

References

1. [The Indian Express | Two-finger test' of sexual assault victims](#)
2. [The Indian Express | No to two-finger test](#)
3. [The Hindu | Reporting rape: On the trauma of rape survivor](#)

