

# ENFORCING THE BAN ON THE TWO-FINGER TEST

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

File photo of the Supreme Court | Photo Credit: PTI

On October 31, the [Supreme Court declared](#) that any person conducting the ‘two-finger test’ on rape or sexual assault survivors will be found guilty of misconduct. The court said that the test is “regressive and invasive” and has “no scientific basis as it neither proves nor disapproves allegations of rape”. It instead “re-victimises and re-traumatises women who may have been sexually assaulted.” In 2013, too, in [Lillu v. State of Haryana](#), the Supreme Court had held that the [two-finger test violates the right of rape survivors](#).

Section 53A of the Evidence Act states that previous sexual experience “shall not be relevant to the issue of consent or the quality of consent” in prosecutions of sexual offences. In 2014, the Union Ministry of Health issued ‘guidelines and protocols’ proscribing the application of the two-finger test. It directed health providers to conduct a medical examination as per the detailed ‘proforma for medico-legal examination of survivors/victims of sexual violence’, a copy of which was annexed to the guidelines. The guidelines state that a copy of the medical report must be given immediately, and free of cost, to the survivor/victim. These guidelines were circulated to hospitals, but it appears that the instructions were not taken seriously by the doctors handling medico-legal cases.

It is important to note that the doctor’s medical opinion has a vital bearing on the outcome of a criminal case. In the case of sexual assault, the doctor is required to mention marks of resistance and sign(s) of recent intercourse. She is not supposed to give her opinion about rape, as rape is a legal term and not a medical diagnosis. It is for the investigating officer to conclude after their investigation whether or not rape was committed. An unsolicited opinion by a medical practitioner may create doubt and weaken the case. Therefore, it is undesirable to conduct the two-finger test (on a victim of sexual assault), which has no evidential value in the investigation.

The Supreme Court said that workshops must be conducted. This is relevant as there is no institutional platform to share such judgments with medical practitioners. Forensic science laboratories (FSLs) generally work under the Home Departments of States. Funds for the modernisation of the police are also planned and utilised by the police under the supervision of the Home Department. A part of these funds are used for the upgradation of FSLs. The police department’s interaction with the FSL is generally continuous, and both understand each other’s requirements.

However, despite the Health Department’s relevance in the investigation of offences relating to assault, rape, unnatural death, age determination (by the ossification method), etc., interaction between the Health Ministry and the Home Ministry (or the police department) is limited. Further, the Health Department is not one of the pillars of the Inter-Operable Criminal Justice System (ICJS), which is an extension of the Home Ministry’s mission mode project, the Crime and Criminal Tracking and Network Systems, and is operational at each police station of the country.

Editorial | [Reporting rape: On the trauma of rape survivor](#)

The police have an age-old system of ‘roll call’. Roll calls are supposed to be held every day in the morning and in the evening at police stations and reserve police lines. Besides allocating duty to every police personnel, every order of the Superintendent of Police (and of seniors

through him) is read and explained to everyone present and signatures obtained. This ensures accountability. However, this practice seems to have either become irregular or remained only on paper. This is evident from the fact that despite the Supreme Court's order scrapping Section 66A of the Information Technology Act, cases were registered at many police stations. The system of daily roll call must be revived at all police stations.

Training still remains one of the most neglected branches in most departments. With limited in-house training capacity, officers are often not spared for refresher courses even once in five years. The communication channels between the heads of department and the officers are never direct and straight. It is, therefore, quite likely that the two-finger test will continue to be conducted in some remote areas. The erring doctors (if any) will have all the reasons to justify their act and evade disciplinary action for any 'misconduct' so contemplated.

Also read | [Bible of forensic medicine drops two-finger test to establish rape](#)

Therefore, all departments which have a bearing on the investigation of offences or are stakeholders in the criminal justice system must come together periodically so that they can exchange best practices, latest developments in law, and court rulings. An institutional mechanism needs to be developed to ensure continuity of this process. The medico-legal section of the Health Department needs to be integrated with the ICJS as it is no less important than the FSL. Training capacity must also be reviewed, and communication channels improved to avoid the status quo.

[Our code of editorial values](#)

**END**

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com