

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/A/2014/000986

Yogesh Kumar v.PIO, Family & Welfare Dept.

Important Dates and time taken:

RTI: 17.02.2014	Reply: 04.03.2014	Time: ---
FAA: 11.03.2014	FAO: 15.04.2014	Time:
SA: 01.07.2014	Hearing: 20.01.2015	Decision: 21.01.2015
Result:	Adjourned	

Summary: Experts opined that the two finger test or PV test is absolutely not necessary since forensic evidences can be collected without doing finger test. Maharashtra Government has done away with finger test on rape victims saying such test is non-scientific most of the time, often resulting in hurdles in investigations and miscarriage of justice.

Planning Commission's working group headed by secretary, women and child development ministry, in its report in January, 2012 recommended abolition of this test in order to protect victims of sexual abuse from further mental trauma.

Hon'ble Supreme Court of India in **Lillu @ Rajesh and Anr. V. State of Haryana [(2013)14SCC643]** had held that the two-finger test on a rape victim violates her right to privacy, and asked the government to provide better medical procedures to confirm sexual assault.

In March 2014, the Department of Health Research (DHR) along with Indian Council of Medical Research (ICMR) with the help of experts formulated a set of national guidelines for dealing with criminal assault cases, to put an end to the "horrendous" medical process.

Some of the medical books still continue to propagate the test and many time students are subliminally picking up the message. The text books mention the test but do not mention its disadvantages.

Parties Present:

Appellant not present. Public Authority is represented by Mr Ashok Kumar and Mr. S.R Meena.

Information sought:

1. Applicant filed the RTI application dated 17/2/2014 with the PIO Department of Health and Family Welfare, Govt. of Delhi in reference to the vide no. F.No.3(D)/PR/PVtest/52 d. 27.01.2014 regarding banning Two Finger Test. Applicant sought following information:-

1. Whether Department has taken any action in this regard. Kindly provide photocopies of file notings, correspondence done/received and other related documents.
2. Applicant seeks to inspect the concerned files, please provide date and time for the same.

PIO response:

2. Applicant received information through a letter, vide no. F.No. F.1/ID-5746/RTI/H&FW/2014/204 dated 4/03/2014 from concerned PIO (H&FW) along with a letter of Mr. Binod Kumar, Superintendent (H-II) which says that **"whose reference is given by the applicant in his application has not been received in this section"**. Applicant filed first appeal before First Appellate Authority on the ground that the concerned PIO is misleading the applicant and hiding the information, though the applicant is in receipt of the letter through mail from PA to Secretary (H&FW), which states that **"the**

matter has been forwarded to DHS and circular will be issued after vetting from the concerned people” .

Ground for First Appeal:

3. Being unsatisfied with the information furnished.

First Appellate Authority Order:

4. First Appellate Authority heard the matter on 9/4/2014 and requested the DHS to look into the matter and arrange to provide desired information to the applicant within 20 days. Thereafter, applicant received the information through a letter, vide no. F. No. PIO/DHS/2014/Misc./28987 dt. 28/05/2014 from the Dr. Lily Gangmei, PIO, Directorate of Health Services, along with the letter of Dr. R.N. Das, Medical Superintendent - Nursing Home, saying that **“a draft advisory was prepared by the members of the committee constituted by competent authority. The advisory has been sent to the office of Secretary (H&FW) for perusal and approval with the main file”**. But applicant claimed that he neither provided documents nor the date of file inspection as sought. Therefore, applicant wrote a letter to FAA regarding non-compliance of order and requested him to give direction again to the PIO to furnish proper information but the FAA did not accept applicant’s request and disposed off the matter.

Ground For Second Appeal:

5. Applicant sought action taken report with reference to a letter written to Minister, Department of Health and Family Welfare regarding banning of Two Finger Print Test. It was very strange that the concerned PIO of the Department was reluctant to provide

any information despite the fact that the information pertains to the same department. A file must have been maintained in the department.

6. FAA requested the Directorate of Health Services to provide the information as sought under RTI. When applicant informed the FAA regarding non-compliance of the order, the FAA dealt the matter very casually without understanding that the PIO has provided incomplete information and it amounts to non-compliance of FAA's order.
7. None of the PIOs (either at the Department of Health and Family Welfare or Directorate of Health Services) provided the documents related to action taken on the letter, vide no. F.No.3(D)/PR?PV test/52 dt.27.01.2014, as sought in query no.1. Also they did not respond to the query no.2 regarding file inspection.
8. Applicant submitted that both the PIOs (at Department of Family and Health welfare and Directorate of Health Services) intentionally misleading the applicant and hiding the information. Hence, action should be taken against the PIOs as per provisions of the RTI Act, 2005
9. Despite FAA direction, the concerned PIO provided incomplete information and didn't provide documents and allowed inspection of concerned files. The concerned PIO should be directed to provide the sought information at the earliest.

Proceedings before the Commission:

10. After perusing the files the Commission observes that the appellant has raised a very important issue in public interest. It is

clear from the reply of the PIO that they have issued no circulars and there was no prohibition of PV test. The PIO claimed that medical officers have been sensitized. When applicant sought inspection, the PIO says 'not applicable. The Commission finds it no responsible response.

11. The First Appellate Authority in his order dated 15.4.2015 wrote:

"PIO (H&EW) though has made efforts by seeking information from certain branches at Delhi Sectt. but efforts to know the movement of the said letter from the office of the Hon'ble Minister (received on 27.1.2014) have not been made. Actually, the above said matter / letter was forwarded to DHS as informed by PA to Secretary (H&FW) vide mail dated 25.2.2014 to the appellant. During hearing, undersigned enquired about this matter from Spl Secretary (Project) and Director (DHS) on telephone and it was informed that the said issue is presently being dealt by DHS. Therefore, Director (DHS) is requested to kindly look into the matter and arrange to provide the desired information to the appellant within 20 days."

12. Nodal officer, Sexual Assaults Cases, Dr CD Jassal in his letter dated 14.1.2011 that such test is absolutely not necessary since forensic evidences can be collected without doing finger test. He explained: Forensic evidences are collected by using a sexual assault evidence collection kit or sexual assault forensic evidence (SAFE Kit) by female medical personnel.

13. Maharashtra Government has done away with finger test on rape victims by issuing a Government Resolution GR during May 2013. The Resolution says such test is non-scientific most of the time, often resulting in hurdles in investigations and miscarriage of justice. This GR was issued based on a report by eight member panel appointed by Maharashtra Government. The GR explained that the procedure of finger test is degrading and crude and medically and scientifically irrelevant. Information about past sexual conduct

has been considered irrelevant and the doctor need not verify if the victim habitually has sexual intercourse.

14. Planning Commission's Working Group headed by Secretary, Women and Child Development Ministry, in its report in January, 2012 recommended abolition of this test in order to protect victims of sexual abuse from further mental trauma. The group also suggested to review the Code of Criminal Procedure Code to make the procedures more women and child friendly. Social activists have for long been demanding a ban on the "archaic and outdated" practice. They termed the test "unscientific and degrading". (Jan 30, 2012 <http://timesofindia.indiatimes.com/india/Ban-2-finger-test-on-rape-victims-Panel/articleshow/11679130.cms>)

15. Hon'ble Supreme Court of India in **Lillu @ Rajesh and Anr. V. State of Haryana [(2013)14SCC643]** had held that the two-finger test on a rape victim violates her right to privacy, and asked the government to provide better medical procedures to confirm sexual assault. The Court said: "Undoubtedly, the two-finger test and its interpretation violate 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, be given rise to presumption of consent," "Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy". Keeping in mind 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, the apex court said, rape survivors are entitled to legal recourse that does not re-traumatise them or violate their physical or mental integrity and dignity. "They are also entitled to medical procedures conducted in a manner that respects their right to consent," it said. (<http://www.thehindu.com/news/national/no-twofinger-test-for-rape-sc/article4729774.ece>, PTI report, May 9, 2013)

16. The guidelines which are available on website (http://mohfw.nic.in/WriteReadData/1892s/9535223249GuidelinesandProtocolsosexualviolence_MOHFWf.pdf) mentioned former CJI Justice Verma was the first one to highlight the need to standardize medical evidence collection during such victim's treatment process. Shri. Keshav Desiraju, the then Secretary/ Health and Family welfare, who realizing the gravity of this issue, responded to the challenge and expeditiously set up a committee for framing the guidelines in a time bound manner.
17. A PTI report dated 4th March 2014 (<http://www.ndtv.com/article/india/new-government-guidelines-ban-insensitive-two-finger-tests-on-rape-survivors-491106>) said: An experts' group on Gender and Health was formed by Dr V M Katoch, Secretary to GOI-DHR and Director General ICMR in November 2011 under the chairmanship of Dr M E Khan (Secretary, Sexual Violence Research Initiative) to formulate these guidelines which can be used at Primary Health Centres and district hospitals whenever a rape victim approaches them. Later, Indrajit Khandekar, in-charge Clinical Forensic Medicine Unit (CFMU) & Associate professor at Mahatma Gandhi Institute of Medical Sciences (MGIMS) Sevagram-

Wardha (on whose study report titled "pitiable & horrendous quality of forensic medical examination of sexual assault cases" a PIL was filed in Bombay High Court) was given the responsibility to draft these guidelines. Then the guidelines drafted were made available to public and experts and their opinion was sought. Following this, the guidelines were released for circulation on December 16, 2013.

18. In March 2014, it was reported that the Department of Health Research (DHR) along with Indian Council of Medical Research (ICMR) with the help of experts formulated a set of national guidelines for dealing with criminal assault cases, to put an end to the "horrendous" medical process. The maligned two-finger test that was used by doctors to opine whether the girl is habituated to sexual intercourse or not, was opposed and the manual recognises that it is no way scientific and shall not be performed. However it is not clear whether there is any specific ban on conducting pv test, which the appellant is seeking to know officially.

20. On December 15, 2014, a media report referred various medical text books where the two finger test is still promoted. (<http://ibnlive.in.com/news/despote-ban-medical-books-continue-to-propagate-twofinger-test-to-detect-rape/518227-3.html>) In India, almost every textbook on medical jurisprudence has blindly promoted the Two Finger Test over the years emphasizing that women falsely allege rape giving rise to prejudicial medical evidence. "Sometimes, false charges are made by a consenting woman, when the act is discovered by the parents or husband, when she becomes pregnant, or for the purposes of revenge or blackmail," reads The Essentials of Forensic Medicine and Toxicology by Dr KS Narayan Reddy, a popular textbook prescribed in many

medical colleges. CK Parikh's text book of medical jurisprudence and toxicology states that "the possibility of false accusation must be kept in mind while examining the victim. Rape is an allegation, easily made - hard to prove and harder to disprove."

21. Not just this, B Lyon's textbook of 2010 states that "sometimes a woman may take intoxicating beverage and loose her self control and may give consent for sexual connect. But after the effect wears off she may realise her mistake and a lodge complaint against the male." So, while prejudicial medical evidence continues to influence rape trails, forensic experts argue that the two finger test has no bearing on sexual assault or rape.

22. Two finger test (TFT) is used to figure out habituation, as it was called, was brought into the text books from the early 19th and 20th century and has continued in the textbooks ever since as it has not been removed by revising editors of these books from that point of time. While there is lengthy analysis of medical assessment of rape in Indian medical jurisprudence textbooks, there is only a footnote in Modi's medical jurisprudence and toxicology of 2011 which mentions that the Two Finger Test should not be used to determine whether the woman has had prior sexual intercourse or not.

23. But for the majority, medical books still continue to propagate the test and many time students are subliminally picking up the message. The text books mention the test but do not mention its disadvantages. What needs to be kept in mind is that the impact of these forensic medical textbooks is not confined to the classrooms. They have a significant impact on rape trials in India. Doctors use these books as models for preparation of their medical reports

which are then submitted in court as so called scientific evidence which have an impact on the manner in which the court decides whether to believe the testimony of the woman on whether she has been raped or not. So unless the forensic medical books are revised and the medical syllabus is changed, it will be difficult to effectively implement the new rape law that was enacted.

24. The Commission further has taken into consideration the several provision of the Criminal Law which determine **the rights of victim in rape** case. Section 164 (A) of the Criminal Procedure Code lays out following legal obligations of the health worker in cases of sexual violence:

- a. Examination of a case of rape shall be conducted by a registered medical practitioner, (RMP) employed in a hospital run by the government or a local authority and in the absence of such a practitioner, by any other RMP.
- b. Examination to be conducted without delay and a reasoned report to be prepared by the RMP.

25. The Criminal Law Amendment Act 2013, in Section 357C Cr.PC says that both private and public health professionals are obligated to provide treatment. Denial of treatment of rape survivors is punishable under Section 166 B IPC with imprisonment for a term which may extend to one year or with fine or with both. Health professionals need to respond comprehensively to the needs of survivors. The components of a comprehensive response include,

- a. Providing necessary medical support to the survivor of sexual violence,
- b. Establishing a uniform method of examination and evidence collection by following the protocols. [in the Sexual Assault Forensic Evidence (SAFE) kit] [The contents of the kit are

- listed under Operational Issues (Page No.20)],
- c. Informed consent for examination, evidence collection and informing the police.
 - d) First contact psychological support and validation,
 - d. Maintaining a clear and fool-proof chain of custody of medical evidence collected,
 - e. Referring to appropriate agencies for further assistance (eg. Legal support services, shelter services, etc).

Thus it is a right of survivor/victim to get medical treatment and support and any test or practice which violates her right to privacy and other rights cannot be conducted.

26. The expert's team has developed a very useful set of Guidelines & Protocols, Medico-legal care for survivors/victims of sexual violence during March 2014 and circulated it among the doctors and other concerned personnel. It advises the doctors to be sensitive to the survivor as she has experienced a traumatic episode and she may not be able to provide all the details. It contained specific "NO" to PV test in following terms: Per-Vaginum examination commonly referred to by lay persons as 'two-finger test', must not be conducted for establishing rape/sexual violence and the size of the vaginal introitus has no bearing on a case of sexual violence. Per-Vaginum examination can be done only in adult women when medically indicated.(at page 28 of Guidelines and Protocols) and at it was also found on one page instruction for doctors at page 60. Whether this would amount to complete prohibition? It is named as guideline. How it will be implemented or what are consequences of violation of this guideline are the questions.

27. Mr. Ashok Kumar, PIO, submitted that he requested the Director of Health Services to comply with the order First Appellate Authority, and they have not received any reply. Mr. H. R. Sarma was the PIO, who retired 45 days ago. The present PIO joined the duty on 19th Jan 2015, yesterday. The PIO says that his department (Health & Family Welfare) was not concerned with this decision making and only the Directorate of Health Services has to take a decision. Because of these reasons, and that the PIO in this case cannot take any decision as that was not in their purview, the Commission cannot issue show cause notice to the PIOs.

DECISION:

28. The Commission **directs** the PIO of Directorate of Health Services to attend the hearing on 2nd March, 2015 with concerned files and response of the directorate on following points:

- (a) whether they have taken any decision or not in regard to banning of two finger test on victims of sexual assault,
- (b) if not what are the reasons for not taking any decision,
- (c) what actions are available if their guidelines are not followed,
- (d) when guidelines are specifically dissuading doctors from conducting this notorious test, why the medical text books are not revised accordingly, etc.

This is an important policy decision the public authority is expected to take, and inform the reasons under mandatory disclosure policy as per **section 4 of RTI Act**. It is also the duty of Directorate of

Health & Family Welfare to disclose such a significant policy for the welfare of the women in public interest.

29. The appeal is disposed of. Posted for compliance on **02.03.2015.**

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Dy. Registrar

Address of the parties

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