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Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.13537 of 2020

Sadaf Aziz etc
Versus
Federation of Pakistan etc

J U D G M E N T

Date of Hearing	05.03.2020, 30.06.2020, 11.09.2020, 14.10.2020 and 10.11.2020.
Petitioners By:	Barrister Sameer Khosa, Maria Farooq and Salman Ijaz, Advocates in WP No.13537/2020. Sahar Zareen Bandial, Hammad Saeed and Eamaan Noor Bandial, Advocates in WP No.27421/2020.
Respondents By:	Mr. Ishtiaq Ahmad Khan, Additional Attorney General for Pakistan and Mrs. Ambreen Moeen, Deputy Attorney General for Pakistan along with Dr. Sajid Bari, Civil Surgeon and Mian Waqar Ahmad, Law Officer from National Commission for Human Rights, Muhammad Ali Khan Mazari, Deputy Director office of Secretary, Ministry Human Rights, Mr. Fahad Azhar, Ms. Shahida Sukhera, Law Officers of Respondent No.7, Ministry of Human Rights, Rana M. Shafique, Legal Advisor Respondent No.5, Punjab Forensic Science Agency and Dr. M. Tahir Jamil, Ministry of National Health Services, Regulations and Coordination. Mr. Muhammad Shan Gull, Additional Advocate General, Punjab, Ch. M. Jawad Yaqub, Additional Advocate General Punjab, Mr. Akhtar Javed, Additional Advocate General and Sardar Qasim Hassan Khan, Assistant Advocate General with Aslam Javed, Senior Law Officer, Hamid Shahzad, Law Officer, Ali Rashid, Law Officer, Hafiz Yousuf, Law Officer, Dr. Umar Ishaq, Deputy Secretary Specialized Healthcare and Medical Education, Department, Khurram Abbas Wahga, Primary and Secondary Healthcare Department, Ahmad Osama, Section Officer,

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	Home Department, Abbas Ali, Law Officer, Secretary Special Healthcare Department, Kamran Razzaq, PMC (PMDC), Ms. Aasia Shafiq, Law Officer, WDD and Professor Dr. Arif Rasheed Malik, Chairman Department of Forensic Medicine KEMU, Lahore Surgeon Medico Legal Punjab, Lahore.
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Ayesha A. Malik J: This petition along with connected WP No.27421/2020 challenges the use and conduct of virginity tests specifically being the *two finger test* and *hymen examination* in cases of rape or sexual abuse. The Petitioners seek a permanent restraint against the use, conduct or facilitation of virginity tests by the Respondents and seek a direction to ensure that necessary and proper measures are taken with respect to the physical and mental health and safety of the women undergoing the medico-legal examination. The Petitioners further pray that the Respondents should rely on scientific methods of investigation as the virginity test is neither scientific nor medically required to establish the incident of rape or sexual abuse.

The case of the Petitioners

2. The Petitioners before the Court in the instant petition are a group of diverse women, who have been working in the public sphere, in the academia, as a sociologist, journalist, activist, lawyer and psychologist and in WP No.27421/2020, the Petitioner is a member of the National Assembly of Pakistan. These petitions have been filed in the interest of and for the benefit of victims of sexual violence who are subjected to virginity testing. The case of the Petitioners is that the Respondents carry out virginity testing as part of the medico-legal examination in cases of rape and sexual abuse. Virginity testing essentially comprises of the two finger test and the hymen test. The justification for both tests is to ascertain whether the victim is sexually active. They argue that the tests are irrelevant for the charge of rape or sexual abuse, particularly after the omission of Section 151 (4) of the Qanun-e-Shahadat Order, 1984 (QSO) under the Criminal Law

(Amendment) (Offences Relating to Rape) Act, 2016 (**Amendment Act, 2016**). Learned counsel argued that the circumstances in which the tests are conducted is such that first the consent is obtained from the victim for the purposes of carrying out the examination, however, the victim is neither aware of the reasons for carrying out either of the tests nor is she informed properly, with sufficient sensitivity, as to what the examination entails. Furthermore, generally the victim is not informed by the female medical practitioners that she can refuse to be tested. It is also argued that the virginity tests are neither necessary nor reliable or relevant for the purpose of investigation into the incident of rape or sexual abuse. Learned counsel state that the medico-legal examination reports rely on words such as *habituated to sex* or *not a virgin* which are totally irrelevant for the purposes of the incident under investigation and at the same time such derogatory language stigmatizes the victim, causing social and personal trauma. They relied on reported judgments to show how the virginity test is considered by the Courts to conclude about the virtue of the victim. It is their case that the practice of carrying virginity tests is still prevalent notwithstanding the fact that Article 151 (4) of the QSO has been deleted and that Section 164A of the Criminal Procedure Code, 1898 (“**Cr.PC**”) does not require the same. It is also their case that there is insufficient understanding on the relevancy of the virginity test and that there is not enough training with reference to the female medical officers appointed, who carry out the virginity tests and fill in the medico-legal report. Learned counsel stated that Pakistan is a signatory to several international treaties which totally denounce virginity testing, hence Pakistan is obligated to maintain its international commitments pursuant to Article 5 of the Universal Declaration of Human Rights, 1948 (**UDHR**), Article 7 of the International Covenant on Civil and Political Rights, 1966 (**ICCPR**) and Article 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (**CAT**). It is

also against Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 (**ICESCR**). They also stated that the Pakistan is also a signatory to and has ratified the Convention Against Elimination of All Forms of Discrimination Against Women, 1979 (**CEDAW**), which prohibits all forms of discrimination against women and declares the two finger test as discriminatory such that it amounts to a denial of rights to female victims of rape on the basis of her gender. It is argued that virginity tests violate the given standards of the right to human dignity as enshrined in Article 14 of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**). It also violates the right of privacy with respect to a women and her right over her own body and it violates Article 25 of the Constitution as it is specifically applied to female rape or sexual abuse victims making negative inference to her character in order to justify the incident of rape and sexual abuse but is not used where the victim is a male. Learned counsel also rely on a large variety of international literature by the WHO, UN Human Rights Office and UN Women wherein it is reported that virginity testing is associated with a series of adverse physical and psychosocial effects, that it has no evidentiary value, that it violates bodily integrity and the privacy of rape victims and unjustifiably subjects them to further trauma.

The response by the Respondents

3. The Respondents before the Court are the Federation of Pakistan and Province of Punjab. Both have made a statement before the Court through Mr. Ishtiaq Ahmad Khan, Additional Attorney General for Pakistan and Mr. Muhammad Shan Gull, Additional Advocate General Punjab that in principle the Federation and the Province do not dispute the contentions of the Petitioners to the extent that the two finger test should not be conducted. Mr. Muhammad Shan Gull, Additional Advocate General Punjab informed the Court on 11.09.2020 that the matter in issue is under due consideration

before the competent authority and in this regard, new guidelines are under consideration.

4. Report and parawise comments on behalf of Respondent No.7, Ministry of Human Rights, Government of Pakistan and Respondent No.8, National Commission for Human Rights through its Chairman, have been filed. In terms thereof, it is stated that women in sexual abuse and rape cases are examined by authorized women medical officers in terms of Section 164A of the Cr.PC and that a detail procedure has been prescribed to preserve the rights and dignity of the victim. It is further stated that the said section does not require the two finger test, however it is noted that the practice to carry out the tests notwithstanding the amendments in the law continues. As per the report and parawise comments filed by Respondent No.7, it is categorically stated that two finger test is a violation of the constitutional right to dignity of women who are victims of rape or sexual abuse.

5. Respondent No.5, Punjab Forensic Science Agency (“**PFSA**”) is also before the Court and has filed its report and parawise comments in which they have stated that they do not rely upon virginity tests as they rely on scientific testing methods by collecting forensic evidence in rape or sexual abuse cases. Hence they carry out semen detection and DNA profile development in rape or sexual abuse cases. It is also stated that the PFSA has issued guidelines for rape and sexual abuse cases with respect to the collection and packaging and transportation of biological material for forensic DNA analysis, which is in line with the international practice. Hence to the extent of PFSA it does not require or rely on virginity testing.

6. Report and parawise comments on behalf of Respondents No.1 and 2, Secretary Health and Specialized Healthcare and Medical Education Department and as well as Surgeon Medico Legal Punjab have been filed in WP No.27421/2020. As per their report and parawise comments, the health department has issued instructions

prescribing the manner for examination of female victims of rape or sexual abuse which includes digital examination, speculum examination and specimen collection. It is also stated that an effort has been made to improve upon the manner of examination of female victims as well as of collecting evidence and on ensuring that the consent of the victim is obtained with due sensitivity. Further that the privacy of women victim is maintained; that the victim is examined by a female medical officer and that the medico-legal findings are carefully and clearly documented in the medico-legal report. In this regard, it is stated that digital examination is required to assess the status of the hymen, capacity, size, torn plus information regarding the victims history on sexual intercourse but the women medical officer cannot write words such as *habituated to sex* in any report. In terms of the report and parawise comments, the medico-legal report proforma requires physical examination which is by naked eye as well as digital and instrumental examination. In this context information on the rupture of hymen, if present, fresh or old is also required. It is also stated that the two finger test and hymen test is part of the digital examination and bilateral digital traction and is a necessary step as per textual protocol for the medical examination of female victims of rape and sexual abuse. It was however clarified that the two finger test is not conducted unless it is deemed necessary. By way of explanation, it was stated that in cases of minor girls, it is mandatory to inspect the hymen in detail to determine whether it is intact and if not then the nature of the injury.

7. Professor Doctor Arif Rasheed Malik, Chairman Department of Forensic Medicine KEMU, Surgeon Medico Legal Punjab, appeared in person and explained that the examination of the hymen is necessary for the provision of adequate and effective investigation and there are instructions in aid of the process, so as to determine the injuries, determine tears, laceration, bruises, abrasions, swellings and hyperemia where sexual violence is alleged. He clarified that women

medical officers are not allowed to write words like *habituated to sex* and cannot comment on the character of the victim. However, as per his understanding a report has to be given on the status of the hymen as the element of the victims virginity is relevant. In this regard, the Surgeon Medico Legal Punjab, categorically stated that digital examination will be conducted where-ever deemed necessary as it is an integral part of the process. In this regard, it is noted that the Government of Punjab placed before the Court draft guidelines including the proforma for medico-legal examination of female victims of rape or sexual abuse, which are to be implemented in all hospitals within the Province of Punjab. It was stated that these new guidelines have been devised consequent to the issues raised through the instant writ petitions.

8. During the course of arguments, Respondent, Specialized Healthcare and Medical Education Department presented a copy of Notification dated 10.11.2020 stating therein that the Guidelines for the Examination of Female Survivors/Victims of Sexual Abuse (**2020 Guidelines**) have been issued which contains the proforma of the report to be filled by the women medical officer. In terms of the arguments made by the Respondents, the 2020 Guidelines apparently redress the grievance of the Petitioners as it prohibits the two finger test. The Respondents have specifically relied on Clause 14 of the 2020 Guidelines, which states that two finger test must not be performed. However the Petitioners, having gone through the contents of the 2020 Guidelines raised objections with reference to the same. The Petitioners argued that the 2020 Guidelines have not prohibited virginity testing rather has left the matter open ended such that even though the two finger test has been prohibited, hymen testing has not been prohibited hence virginity testing continues even under the 2020 Guidelines. It was further argued that the 2020 Guidelines emphasizes on information with reference to the status of the hymen, which is essentially to conclude that the character of the victim is questionable

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as is her honesty and the truthfulness of her statement. Learned counsel for the Petitioners while reading Clause 14 and 15 of the 2020 Guidelines state that it provides for bilateral digital traction which essentially is a check on the status of the hymen stretching the hymen at 6 and 12 o'clock positions and further that in terms of the proforma provided for the medico-legal report there is a specific requirement for determining whether the hymen is intact or torn and whether the tear is fresh or old. Therefore, it is argued that the Respondents have retained the ability to conduct virginity testing and have not taken decisive steps towards the eradicating of the same.

9. On the basis of what has been argued, the Petitioners case essentially is that there is no medical or scientific basis to continue with virginity testing that is the two finger test or to test the status of hymen; that it violates the fundamental rights of the female victims such that it denies the female victim the dignity of life that she is guaranteed under the Constitution; that it breaches her right to privacy over her body and her personal life; that it is discriminatory as virginity testing is only done for female victims so as to discredit her. It has also been argued that the process under the Instructions Regarding the Conduct of Medicolegal and Postmortem Examination, 2015 (**2015 Instructions**) and now the 2020 Guidelines is not victim sensitive and meaningful consent is not obtained before carrying out the medico-legal examination.

Opinion of the Court

Nature of Medico-Legal Examination

10. As part of the investigation of the incident of rape or sexual abuse, the victim is required to undergo a medico-legal examination, once a complaint of rape or sexual abuse is registered with the relevant Police Station through a First Information Report. The victim, accompanied with a parent or a guardian, is presented before a medical officer for the medical examination which leads to the preparation of the report of medico-legal examination of the victim.

This medical examination is mandatory in terms of Section 164A of the Cr.PC, which calls for a medical examination of the victim of rape where an offence of committing rape or sexual abuse is under investigation. The section sets out the procedure to be followed for a medico-legal examination in the following terms:

164A. Medical examination of victim of rape, etc.-(I) Where an offence of committing rape, unnatural offence or sexual abuse or attempt to commit rape, unnatural offence or sexual abuse under section 376, section 371 or section 377B respectively of the Pakistan Penal Code, 1860 (Act XLV of 1860) is under investigation, the victim shall be examined by a registered medical practitioner, in the case of female victim by a female registered medical practitioner, immediately after commission of such offence:

Provided that in all cases, where possible, the female victim shall be escorted by a female police officer or a family member from a place of her convenience to the place of medical examination.

(2) The registered medical practitioner to whom such victim is sent under sub-section (1) shall, without delay, examine the victim and prepare a report of examination giving the following particulars, namely:—

- (a) name and address of the victim and of the person by whom she was escorted;
- (b) age of the victim;
- (c) description of material taken from body of the victim for DNA profiling;
- (d) marks of injury, if any, on body of the victim;
- (e) general mental condition of the victim; and
- (f) other material particulars in reasonable detail.

(3)The report under sub-section (2) shall state precisely the reasons for each conclusion arrived at.

(4)The report under sub-section (2) shall specifically record that consent of the victim or of his or her natural or legal guardian to such examination had been obtained.

(5)The exact time of commencement and completion of the examination under sub-section (1) shall also be noted in the report.

(6)The registered medical practitioner shall, without delay, forward the report to the investigation officer who shall forward it to the Magistrate along with other requirements as specified under clause (a) of sub-section (1) of section 173.

(7) Nothing in this section shall be construed as rendering lawful any examination without consent of the victim or of any person authorized under sub-section (4).

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As per the Section, the victim has to provide her name, address and age including the name of the person with whom she was escorted. The report requires a description of materials taken from the body of the victim for DNA profiling, marks of injury, if any, on the body of the victim; general mental condition of the victim and all other material particulars with reasons for each conclusion arrived at. Importantly the report has to specifically record the consent of the victim or of her natural or legal guardian to such examination.

Guidelines and Instructions

11. The Respondent Health Department issued Notification dated 28.10.2002 which establishes a three tier structure for conducting medico-legal work. The initial medico-legal examination is carried out by Medical Officers in Rural Health Centers, Tehsil Headquarters Hospital and District Headquarters Hospitals. The second tier consists of the District Standing Medical Board (“**District Board**”) where re-examination is required and the third tier is the Surgeon Medico Legal Punjab. The Surgeon Medico Legal Punjab is the Chairman of the Provincial Standing Medical Board, which is also the final appellate authority against the decisions of the District Boards. The Medico Legal Officers and the District Board fall under the control and supervision of Primary and Secondary Healthcare Department whereas the office of the Surgeon Medico Legal Punjab is an attached department of the Specialized Healthcare and Medical Education Department. They also issued Standard Operating Procedures for Medico Legal Examination of Women Survivors (“**SOPs**”), which includes the Performa to be used for medico-legal examination reports in all cases of sexual violence. As part of the SOPs there is an Operating Manual on Standard Operating Procedures, which essentially provides guidance to the doctors who perform the medico-legal examination in cases of rape or sexual abuse. The Surgeon Medico Legal Punjab issued the 2015 Instructions, which detail the general instructions for conducting the medico-legal examination. The

SOPs have statedly been replaced by the 2020 Guidelines, which were notified on 10.11.2020. Despite the statements of the Federation and the Government of Punjab that these virginity tests have been stopped, it is necessary to examine the requirements provided under the SOPs and the 2015 Instructions in comparison with the 2020 Guidelines to note whether virginity testing is still required under the 2020 Guidelines.

12. As per the SOPs and 2015 Instructions the examination of a female victim of sexual abuse or rape involves three steps, that is observation through naked eye, digital examination and speculum examination. The 2015 Guidelines referes to digital examination to ascertain the status of the hymen. It also refers to bimanual traction. These terms are not defined anywhere in the SOPs or 2015 Instructions, however as per the reply filed by the Surgeon Medico Legal Punjab digital examination is performed to assess the vaginal canal and to report any bleeding/stains etc. Furthermore that the two finger test is part of the digital examination and bilateral digital traction is done to determine the status of the hymen. Therefore, as per the admitted position, digital examination and bilateral digital traction are terms used for virginity testing. In comparison Clause 14 of the 2020 Guidelines provides for a two step process, essentially being inspection with naked eye and thereafter, bilateral digital traction or speculum examination. Clauses 14 and 15 of the 2020 Guidelines read as follows:-

“14. Local examination should be detailed in lithotomy position including inspection, bilateral digital traction and speculum examination. Inspection should be both with naked eye, magnifying lens and by use of Glaister Keen glass rod as \ mentioned in prescribed Proforma. **TWO FINGER TEST MUST NOT BE PERFORMED.**

- Bilateral digital traction of the labia majora makes the hymenal edges visible. This maneuver stretches the hymen at 6 and 12 o'clock positions and any tear at these areas become evident and visible.
- Specular examination of the vaginal canal should be performed only in mature women. An appropriate sized speculum is introduced into the vagina to inspect the conditions of vaginal mucosa, its roughness and to locate any bleeding, injury or any other condition of the vaginal mucosa and cervix. Preferably, this examination should be performed

in operation theatre or in well equipped medicolegal clinic under general anesthesia, if needed.

15. Digital and speculum examination must not be done when hymen is found intact. Per speculum examination is not a must in the case of children/ young girls when there is no history of penetration and no visible injuries. The examination and treatment as needed may have to be performed under general anesthesia in case of minors and when injuries inflicted are severe. If there is vaginal discharge note its texture, color and odour etc.”

In terms of the 2020 Guidelines the first step is an inspection with the naked eye and then a bilateral digital traction of the hymen and a speculum examination in mature woman. The term *mature woman* is not defined but it appears to suggest married women as they are not virgins hence the need for a speculum examination. Furthermore, digital examination meaning the two finger test is specifically prohibited in Clause 14 of the 2020 Guidelines but as per Clause 15 it is not done where the hymen is intact, meaning that it can be done where the hymen is not intact. As per the attached Proforma for Medico Legal Examination (“**the Proforma**”) observations by naked eye, digital traction and instrument examination require inspection of the hymen to determine if torn, fresh or old. Interestingly it also allows a per-vaginum examination where required and per-vaginum examination is understood to mean the two finger test. The case of the terms digital examination bilateral digital traction and per-vaginum examination is likely to create confusion as to whether the two finger test is required to be carried out and will mean the continued practice of virginity testing as it is set in the process and procedures carried out over the years. Hence the 2020 Guidelines continues with the practice of virginity testing and has only attempted to confuse the issue rather than prohibit it.

13. The Surgeon Medico Legal Punjab, Lahore appeared and explained that digital examination is conducted as it is considered a necessary step in the textual protocol for medical examination of female victims of sexual abuse; that the two finger test is only conducted if deemed necessary and only through authorized women

medical officers and that the consent of the victim is always obtained as per the given proforma. Further that the hymen test or two finger test is required to correlate the victims statement with the history of the victim. In this regard, he stated that the findings regarding the rupture of hymen, if fresh or old is done through bilateral digital examination and also through inspection of the naked eye. As per his contention, it is necessary to carry out these tests in order to adequately and effectively ascertain whether the incident of sexual abuse or rape did in fact take place. In his professional opinion the hymen is ruptured in very rare cases while carrying out certain sporting activities or cycling and therefore, the reliance on the status of the hymen in no manner prejudices the rights of female victims.

14. In this context, it is clear from a reading of the 2020 Guidelines that the Respondents still require virginity testing and although the 2020 Guidelines specifically state that the two finger test must not be performed, it is qualified such that it is not performed where the hymen is found intact. Consequently, this means that in terms of the 2020 Guidelines virginity testing through bilateral digital traction and digital examination or even per-vaginum examination may be carried out and the two finger test will not be carried out where the victim is a minor, presumably a virgin. However even in such cases the status of the hymen is examined to confirm her virginity.

The Consequences

15. In support of the arguments made, the Petitioners relied on a series of judgments to show the prejudice caused by virginity testing through the orders of the court. As per the judgments provided, the common conclusion drawn by the courts, based on the medico-legal examination report, is as follows:-

- As per deposition of lady doctor, the victim was proved to be habitual to sexual intercourse;
- Hymen had got healed tears; Vaginal orifice admits two fingers;
- As per the opinion of the lady medical officer, the victim is not a virgin as her vagina admits two fingers easily and the hymen was not found intact;

- The vagina of the examinee admitted two fingers easily and hence an unmarried girl of sixteen years of age appears to be not of a fair virtue;
- According to the Medico-legal Report the hymen was torn fresh and the vagina admitted two fingers tightly;
- Lady doctor had observed that vagina of victim admitted two fingers which was, prima facie, not possible if rape was committed only once with a virgin victim;
- On examination, vagina admitted two fingers with or without pain on genital examination and no discomfort noted;
- In the opinion of the doctor she was used to sexual act.

As per the different medico-legal examination reports examined by the Court, the status of the hymen is provided for and some reports state that *two fingers were easily inserted into the vagina* along with the opinion of the medical officer as to whether rape or sexual abuse took place. From a bare reading of the 2020 Guidelines and the Proforma and the filled in reports it appears that the process of virginity testing through *two fingers* or *hymen examination* are standardized and form the basis of the medical officers opinion or the court's opinion on the virtue and character of the victim. Often enough the opinion of the medical officer is carried into the judgments of the court and language such as *habituated to sex, women of easy virtue, habitual to sexual intercourse, indulging in sexual activities* are used to describe the victim. The basis being that a woman habituated to sex, is likely to have raised a false charge of rape or sexual abuse.

16. There is no law governing the requirements of virginity testing specifically the two finger test and the hymen test. At the core of the Respondents case, the justification is that these tests are carried out on the basis of established medical protocols in cases of rape and sexual abuse. In this regard, reliance has been placed on Modi, A Textbook of Medical Jurisprudence and Toxicology (**Modi's Textbook**), which is relied upon for the purposes of medico-legal examination protocols. There is a chapter on Virginity, Pregnancy and Delivery and on Sexual Offences where it is stated that the question of virginity arises in case of rape. In terms of the 24th Edition of Modi's Textbook, the question

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of virginity is relevant and can be ascertained through an inspection of the status of the hymen, even though he states that an intact hymen is not an absolute sign of virginity. Modi's Textbook also provides the methodology for the examination of the hymen and justifies the same on the strength of establishing whether or not the victim is a virgin. He emphasized on the concept of false charges which is common in rape cases, hence it is necessary to examine the veracity of the victims statement by checking her virginity. However, Modi's Textbook in its 26th Edition shows a change in perspective as it now provides as under:-

It is demeaning to the status of a woman to be forced by orders of Court to carry out test of virginity of woman and must be taken as a grave threat to privacy, a cherished fundamental right. The testimonial compulsions for DNA testing described elsewhere the book with reference to judgments of the Supreme Court shall apply, a fortiorany virginity tests also. Unlike a DNA test which is scientific and assures 99.99 percent accuracy, virginity test, where there is no pregnancy or child birth, could never be conclusive. While Section 53 Cr.PC which allows for taking samples of blood or urine the course of criminal investigation, there is no scope for clinical violation of a women body on specious grounds of unraveling truth. Another instance where Courts have refused any medical practice that is invasive of privacy and regarded as despicable, requiring to be discarded is 'the two finger test' to assess past sexual conduct of the woman in cases of sexual abuse. For the same reason, virginity test shall also be discarded. (emphasis added)

Hence the reliance on medical protocol has taken a total shift from its original view and now as per accepted medical protocols, virginity testing is no longer considered to be relevant in cases of rape or sexual abuse as it is has no scientific or medical basis.

Medical and Scientific Views on Virginity Tests

17. The uses and impact of medico-legal evidence, globally is discussed by Janice Du Mont and Deborah White in their review titled The uses and impact of medico-legal evidence in sexual assault cases: A global review commissioned by the World Health Organization. As per the review *medico-legal evidence is collected from a victim's body in order to corroborate her account of a sexual assault for a court of law. In any legal action pursued in relation to her case, this evidence*

is typically used to aid the investigation and prosecution of the accused. In this regard, the objective of the forensic evidence is to prove or exclude a physical connection between individuals and objects or places. More specifically, the medico-legal evidence taken from a sexually assaulted woman may be used in determining the occurrence of recent sexual activity, identifying the assailant, establishing the use of force or resistance and indicating an inability to consent due to the influence of alcohol and drugs or an otherwise diminished mental capacity. As per the review, the relevant features of a medico-legal examination in cases of sexual violence are the written consent from the victim, medical history of the victim, the sexual assault history with relevant details including the date, time and location of the occurrence as well as details of the assailant. The medico-legal findings are relevant with respect to the clothing worn by the victim, the women's hair, urine or blood samples and alcohol. A physical examination is required to identify injuries caused to the victim which are then properly documented. A speculum, colposcope, anoscope and a staining agent like toluidine blue dye may be used to further detect injuries to the ano-genital area. The skin is examined for secretions and body cavities are swabbed for seminal fluid. A victim's emotional state may be observed and recorded. As per the review virginity testing is not relevant to establish rape or sexual abuse.

18. Reviews conducted of medical literature by United Nations Human Rights, World Health Organization and UN Women on Eliminating Virginity Testing, An Interagency Statement have concluded that appearance of the hymen cannot give conclusive evidence of vaginal penetration or sexual history:

The utility of hymen examination as a test for virginity was reviewed. The studies indicated, as has been described in previous reviews, that the inspection of the hymen cannot give conclusive evidence of vaginal penetration or any other sexual history. Normal hymen examination findings are likely to occur in those with and without a history of vaginal penetration. A hymen exam with abnormal findings is also inconclusive: abnormal hymenal features such a hymenal transection, laceration, enlarged opening, or scars are found in females with and without a

history of sexual intercourse. One hymenal feature commonly examined in virginity testing is hymenal opening size. Hymenal opening size also was found to be an unreliable test for vaginal penetration. Hymen opening size varies with the method of examination, the position of the examinee, the cooperation and relaxation of the examinee, and the examinee's age, weight, and height.

19. Similarly, Rose McKeon Olson and Claudia Garcia-Moreno in Reproductive Health wrote in *Virginity Testing, A Systematic Review* on the two finger test in which it is stated that the medical community does not consider vaginal laxity an indicator of sexual intercourse:

Another form of virginity testing is performed by insertion of two fingers into the vagina to examine its laxity. This form of virginity testing was not included in the review of literature because the medical community has not considered vaginal laxity a clinical indicator of previous sexual intercourse. The vagina is a dynamic muscular canal that varies in size and shape depending on individual, developmental stage, physical position, and various hormonal factors such as sexual arousal and stress.

20. The World Health Organization, the United Nations Office on Drugs and Crime, and Stop Rape Now - UN Action on Sexual Violence in Conflict have developed a toolkit titled “Strengthening the Medico-Legal Response to Sexual Violence” which assists state bodies in developing an effective response to incidents of sexual violence. In this document, these organizations have also stressed that:

The hymen may not appear injured even after penetration has occurred. Hence, the absence of injury does not exclude penetration. The health practitioner cannot make any comment on whether the activity was consensual or otherwise.

Furthermore, they have also stressed that:

Digital examinations of the vagina and anus are rarely warranted. They should not be used to assess the tone of the orifice or to comment on the likelihood or frequency of penetration.

21. In addition the Independent Forensic Expert Group (IFER), a group of 35 independent forensic specialists from 18 countries established by the International Rehabilitation Council for Torture Victims (IRCT) to provide technical advice on issues where allegations of torture or ill treatment are made, issued a statement in 2014 on virginity testing. In the said statement they also cover the medical perspectives on such tests and state:

Published and peer-reviewed medical literature establishes that virginity examinations have no scientific value. The status of the hymen has no correlation with previous penetration or sexual contact; it does not enable a determination of whether penetration of the hymen or vagina by a penis or any other object has occurred. Virginity examinations also do not assist in the detection of sexually transmitted infections.

While examination of the hymen may, in very limited contexts, be useful in the diagnosis of sexual assault in prepubescent females, it is not an indicator of sexual intercourse or habituation. An individual with an undamaged hymen may or may not have experienced penetrative sexual contact. There similarly may be no trace of hymenal lesion following sexual assault.

At puberty, the hymen is exposed to oestrogen, which alters its appearance, shape, and elasticity. Studies demonstrate that hymen configurations vary, and the hymen may exhibit changes prior to sexual intercourse. The belief that absence of the hymen confirms that there has been penetration of the vagina is incorrect; equally false is the notion that the presence of a 'normal' or 'intact' hymen means that penetration has not occurred.

Further illustrating the non-utility of this type of examination, in a survey of forensic physicians conducted in Turkey, two-thirds of respondents reported that their findings from at least one virginity examination conducted in the previous twelve months contradicted a recent virginity examination of the same patient. In 73 percent of those cases, the contradictory findings were made by general practitioners or gynecologists.

Health professionals therefore have no medical foundation for conducting virginity examinations; the examinations are irrelevant and harmful to women, and serve as a form of social control of their sexuality. (emphasis added)

22. As per a report published in 2018 by the World Health Organization and United Nations Human Rights titled *Eliminating Virginity Testing: An Interagency Statement*, virginity testing is unscientific, medically unnecessary and unreliable and it can be painful, humiliating and traumatic for the victim. The Independent Forensic Expert Group Report titled *Statement on Virginity Testing* has stated that *virginity examinations are premised on a correlation between the practice of sexual intercourse and immorality or criminal deviancy. Be nature, as they can only be conducted on those who are unmarried, the examinations are discriminatory. In the justice context, correlating virginity to purity elevates the repugnance of sexual violence against women who are 'virgins'. Yet, it similarly diminishes the perception of the severity of sexual violence against women who have previously engaged in sexual intercourse; and it has*

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been used to suggest that those women are somehow responsible for the acts perpetrated against them. It also states that the status of the hymen has no correlation with previous penetration or sexual contact; it does not enable a determination of whether penetration of the hymen or vagina by a penis or any other object has occurred. Virginitv examinations also do not assist in the detection of sexual transmitted infections. While examination of the hymen may, in very limited contexts, be useful in the diagnosis of sexual assault in prepubescent females, it is not an indicator of sexual intercourse of habituation. An individual with an undamaged hymen may or may not have experienced penetrative sexual contact. There similarly may be no trace of hymenal lesion following sexual assault. Finally it states that the concept of virginitv also has no relevance to the forensic medical examination, diagnosis, and documentation of sexual assault. In this context there are volumes in international publications issued by the WHO, United National Human Rights and UN Women, who have also deprecated the practice of virginitv testing. These reports and statements make it clear that internationally there is clarity and consensus that virginitv tests by way of the two finger test and hymen test cannot indicate definitively that there was any sexual violence. Hence globally these tests are neither considered to be medically or scientifically viable for investigating sexual violence.

Judicial Review

23. The issue of virginitv testing has been considered by the Supreme Court of India in its judgment dated 11.04.2013 passed in Criminal Appeal No.1226/2011 titled Lillu @ Rajesh & ANR v State of Haryana wherein it has been held that:-

the two finger test and its interpretation 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, be given rise to presumption of consent.

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In another case, Allahabad High Court of India in its judgment dated 28.08.2014 passed in case Capital Cases No.574 of 2013 titled Akhtar v. State of U.P has held that:-

These finger insertion tests in female orifices without the victim's consent have been held to be degrading, violative of her mental and physical integrity and dignity and right to privacy and are re-traumatizing for the rape victim. Relying on the International Covenant on Economic, Social and Cultural Rights, 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 it was further held in Lillu v. State of Haryana, (2013) 14 SCC 643 that no presumption of consent could be drawn ipso facto on the strength of an affirmative report based on the unwarranted two fingers test.

The High Court of Gujarat at Ahmedabad in its judgment dated 17.01.2020 passed in R/Criminal Appeal No.122 of 1996 with R/Criminal Appeal No.25 of 1996 titled State of Gujarat v. Remeshchandra Ramabhai Panchal has held that:-

The test itself is one of the most unscientific methods of examination used in the context of sexual abuse and has no forensic value. Whether a survivor is habituated to sexual intercourse prior to the assault has absolutely no bearing on whether she consented when the rape occurred. Section 155 of the Indian Evidence Act, does not allow a rape victim's credibility to be compromised on the ground that she is "of generally immoral character".

The issue of virginity testing has also been examined by the Bangladesh High Court Division in its judgment dated 12.04.2018 passed in WP No.10663/2013 wherein it has been held that:-

The TFT is not scientific, reliable, valid and hereby prohibited in any examination of rape victim. The respondents shall make available the health care protocol (Health Response To Gender Based Violence-Protocol For The Health Care Providers) to forensic experts, physicians who conduct medical examination on rape victims; police officers who conduct investigation of rape case.

With reference to virginity test, the European Court of Human Rights in the case of Aydin v. Turkey No.57/1996/676/866 has held that:-

The various medical examinations ordered by the public prosecutor and the corresponding doctors' reports also failed to meet the needs of an effective investigation into a complaint of rape, focused as they were on the question as to whether or not she was a virgin as opposed to a rape victim. The focus of the examinations should really have been on whether the applicant was a rape victim, which was the very essence of her complaint.

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These courts have all held that there is no scientific or medical basis to carry out virginity testing in the form of *two finger test* or to rely on the status of the hymen whether it is torn or intact as it has no relevance to the investigation into the incident of rape or sexual abuse.

24. The august Supreme Court of Pakistan has considered this issue in the case titled *Muhammad Akram vs. The State* (PLD 1989 SC 742) where in the Supreme Court of Pakistan has held that:

The other argument based on the assumption that the prosecutrix in this case having been used to sexual intercourse should not have been relied upon because of her so-called moral depravity, is also not tenable as it is too wide to be accepted in every case. In the present case it is only an assumption that she might have been used to sexual intercourse and on that basis the benefit of possible consent has been allowed to the appellant in the conviction and sentence for lesser offence. Otherwise; firstly, the medical evidence does not disclose as to whether, the condition of the genitals of the prosecutrix was necessarily due to abusive sexual intercourse or on account of intercourse under compulsion or deceit etc. and/or; whether or not the condition found on examination was not on account of other causes including self-abuse. Therefore, mere opinion of a Doctor, as in this case, would not weaken the testimony of the prosecutrix and would not for that reason necessitate any further corroboratory/supporting evidence for basing the conviction on her statement, if otherwise she appears to be reliable and her testimony inspires confidence

In *Shahzad alias Shaddu and others vs. The State* (2002 SCMR 1009)

the august Supreme Court of Pakistan held that:

We have also examined the question as to whether any advantage can be taken by the petitioners on the allegation that prosecutrix was a girl of an easy virtue. The answer would be in negative as blanket authority cannot be given to ravish the modesty of such-like girls. (emphasis added)

In *Shakeel and 5 others vs. The State* (PLD 2010 SC 47) the august Supreme Court of Pakistan held that:

It reveals from the scrutiny of record that she was medically examined on 18-2-2000 by lady Doctor namely Musarrat Parveen (PW2) and the swabs were found stained with semen as per the report of Serologist (Exh.PW). We have not been persuaded to agree with the prime contention of learned Advocate Supreme Court that since the vagina of Mst. Asia Bibi (PW1/prosecutrix) admitted two fingers easily hence being a lady of an easy virtue her statement should have been discarded for the simple reason that even if it is admitted that she was a girl of an easy virtue, no blanket authority can be given to rape her by anyone who wishes to do so. The only question which needs determination on the basis of medical evidence would be as to whether she was subjected to Zina-bil-Jabr. (emphasis added)

International Obligations

25. It is also noted that the United Nations Committee on the Elimination of All Forms of Discrimination against Women and the United Nations Committee on the Rights of the Child, the United Nations Special Rapporteur in Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences have all declared virginity testing to be a harmful practice. Pakistan is a signatory to and has ratified the CEDAW which prohibits all forms of discrimination against women and has stated that there is no medical or scientific basis for carrying out virginity testing in sexual abuse or rape cases, where the victim is a female. As per the International Covenant on Economic, Social and Cultural Rights, 1966, (which Pakistan has ratified), two-finger test has been denounced for having adverse physical, psychological and socioeconomic consequences. Further the 1995 Beijing Declaration and Platform for Action of the Fourth World Conference on Women (to which Pakistan is signatory) called upon all states to take all appropriate measures to eliminate harmful, medically unnecessary or coercive medical interventions. Consequently it denounced carrying out virginity testing not only for being discriminatory but also for having harmful consequences.

26. These international obligations cast a responsibility on the Government of Pakistan to ensure that all necessary steps are taken to prevent discrimination and specifically to prevent carrying out virginity testing, as globally it is accepted that virginity testing does not establish the offence of rape or sexual abuse nor does past sexual conduct have any relevance in the medico-legal examination which aims to collect evidence on the charge of sexual violence. In this regard, the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 deleted Article 151(4) of the QSO which effectively prohibits adopting a line of questioning on the character of the victim.

Hence her past history with reference to sexual intercourse or her being of easy virtue or habituated to sex is totally unnecessary and in fact degrading so far as the victim is concerned. In this regard, it is noted that Section 13 of the Anti-Rape (Investigation and Trial) Ordinance, 2020 (“**2020 Ordinance**”) specifically prohibits the two finger virginity testing for the purposes of medico-legal examination of a victim related to Scheduled Offences. It also specifically provides that any evidence to show that the victim is of immoral character shall be inadmissible.

Fundamental Rights

27. Virginity testing is highly invasive, having no scientific or medical requirement, yet carried out in the name of medical protocols in sexual violence cases. It is a humiliating practice, which is used to cast suspicion on the victim, as opposed to focusing on the accused and the incident of sexual violence. This in effect amounts to gender based discrimination as it is neither a medical condition which requires treatment nor does it provide any clinical benefit to the victim. Its sole purpose is to determine whether the victim is habituated to sexual intercourse so as corroborate her statement on the charge of rape and sexual abuse. When seen in the context of an investigation into the incident of sexual violence, whether the victim was previously accustomed to sexual intercourse is hardly the determinative question. The issue is whether the accused committed rape on the victim in the time and circumstances complained of. If the victim, is found to not be a virgin, it cannot and does not suggest that she was not raped or sexually abused. What it does is place the victim on trial in place of the accused and shifts the focus on her virginity status. In this regard, the victim’s sexual behaviour is totally irrelevant as even the most promiscuous victim does not deserve to be raped, nor should the incident of sexual violence be decided on the basis of a virginity test. When seen in the context of fundamental rights Article 9 of the Constitution provides for the right to life and liberty as per

law and Article 14 of the Constitution provides for the fundamental rights of dignity of man. These rights ensure that life is to be lived with a dignified existence protecting one from degradation and ensuring accessibility to a decent physical, social and cultural environment. It also protects a person from structured stigmatizing as stereotype discrimination adversely impacts the dignity of a person. Furthermore, it ensures that right to receive healthcare of a high standard and to the highest attainable standard of physical and mental health. Reliance is placed on Ahmad Abdullah and 62 others v. Government of the Punjab and 3 others (PLD 2003 Lahore 752), Bashir Ahmad and another v. Maqsood Ahmad and another (2010 P.Cr.LJ 1824), Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others (PLD 2013 Lahore 413), Hafiz Junaid Mahmood v. Government of Punjab and others (PLD 2017 Lahore 1), Government of Sindh through Secretary Health Department and others v. Dr. Nadeem Rizvi and others (2020 SCMR 1) and Mst. Beena v. Raja Muhammad and others (PLD 2020 SC 508).

28. The virginity test by its very nature is invasive and an infringement on the privacy of a woman to her body. It is a blatant violation of the dignity of a woman. The conclusion drawn from these tests about a woman's sexual history and character is a direct attack on her dignity and leads to adverse effects on the social and cultural standing of a victim. It is also discriminatory as the test is carried out primarily to ascertain whether or not *she* is sexually active, for which there appears to be no justification as being sexual active is irrelevant to the incident of rape or sexual abuse. If at all, there is any testing of the status of the hymen, it can only be for medical purposes with respect to injury or treatment. However, there is no justification for such information to be used for the purposes of determining whether or not the incident of rape or sexual abuse took place.

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29. Sexual violence/rape is the most heinous of crimes. It is an intrusion on the privacy and dignity of a woman and victim should be treated with care and caution. Where evidence is to be collected in the form of a medico-legal examination, it is necessary to acknowledge that the only reason the two finger test and the hymen examination is carried out is to ascertain if the victim was a virgin. A lot has been stated that prior to carrying out these tests, the consent of the victim is obtained, however it is noted that even the consent obtained through the written form, is neither meaningful nor instructional. As per the 2020 Guidelines and even in the 2015 Instructions the consent form is as follow:-

<p>I _____ (patient's name) hereby give consent for all the procedures of medico-legal examination that have been explained to me by the doctor on duty. This will include photography for identification, examination of genitalia, collection of specimens for evidence, medical treatment if required and release of report for police and court purposes. I also declare that on oath that I have not undergone any Medico Legal examination previously from any doctor regarding the present incidence and I have described all the information & facts truly.</p>	
<p>میں سمات ----- حلقیہ بیان کرتی ہوں کہ متعلقہ ڈاکٹر صاحبہ نے جسمانی اشرفی معائنہ کرنے کی بابت تمام امور مجھے کہ تصاویر برائے شناخت، معائنہ، اعصابہ خصوصاً اور نمونہ جات حاصل کرنے کے بارے میں وضاحت کر دی ہے۔</p>	
<p>میں اپنا اپنی بچی کا جسمانی اشرفی معائنہ کرنے کی اجازت دیتی ہوں اور یہ بھی حلقیہ بیان کرتی ہوں کہ اس سے پہلے جسمانی اشرفی معائنہ ڈاکٹر صاحبہ بذلیا کسی اور ڈاکٹر صاحبہ سے نہیں کروایا اور جو متعلقہ معلومات دی ہیں وہ میرے علم و یقین کے مطابق سچ ہیں۔</p>	
<p>_____ Signatures thumb impression of victim)</p>	<p>_____ (Name, Signature & thumb impression of guardian for victims below 12 years of age)</p>
<p>CNIC No <input type="text"/></p>	
<p>Signature of doctor: _____</p>	

This consent form does not explain why the two finger test or hymen test is required or what its purpose is. To the contrary, it misleads the victim into thinking that she will be examined to collect evidence of the incident or rape or sexual abuse and not evidence with respect to her sexual history or promiscuity. In this regard, the two finger test and the hymen test conducted for the purposes of obtaining the status of the victims virginity is a violation of her personal integrity. It is a

physical invasion of her body and the mere fact that as per the proforma, consent is taken it does not in any manner justify carrying out such a test. It is vital that in such cases, the victim understands the requirements of the medical examination, the manner in which the examination will be carried out and the purpose for which it is being conducted. It is only on the victims understanding of these elements that it can be said that she has given her consent for a physical examination. As has already been stated, rape and sexual abuse is a heinous crime which amounts to a life changing event for the victim which is irreparable. Hence responding to the victim appropriately is just as important as collecting evidence from the person of the victim.

30. Medical forensic examination report should use appropriate language to describe the victim and her state and should totally restrain from commenting as to whether or not rape or sexual abuse has taken place. The damage caused by such comments and use of words describing the woman as habituated to sex or regularly involved in sexual intercourse can have far reaching effects on the victim socially as well as mentally and personally. Presumptions on her behaviour, her clothes, her activities and her past history are easy to form, yet difficult to erase. Sensitivity is the need of the victim, who has experienced physical and psychological trauma and may have physical injuries as well as psychological injuries. So far as, women medical officer is concerned, Section 164A Cr.PC clearly provides for information in cases of rape or sexual abuse. In this regard, the perception over sexual conduct should be avoided and the standardized manner with which the process is carried out should change. Each victim has to be dealt with care and caution and each incident of rape or sexual abuse, as reported in the medico-legal examination has to be in the context of tracing evidence and no more. Although it has been argued on behalf of the Respondents that there is a tendency to levy false charges of rape and sexual abuse, this does not justify carrying out virginity testing as the purpose of the medico-

legal examination is to ascertain whether or not an act of sexual violence has taken place. Hence even if the charge is false, a proper examination on the basis of science and forensic evidence will bring out the truth.

31. Furthermore, despite the fact that the Government of Punjab and the Surgeon Medico-Legal Punjab have emphasized on the efforts made with reference to the 2020 Guidelines, I find the same to be totally lacking in protocols and guidance. There is no evidence on how to ensure that proper consent is obtained, what is to be explained, what language is to be used and how to interact with the victim. The 2020 Guidelines or for that matter the 2015 Instructions and SOPs do not require that consent be obtained for every test and procedure undertaken and that the victim be informed that she can refuse any test at any point of the examination. There are no protocols on how to treat the victim, on how to take her history or even question her on sexual intercourse. The guidelines make no distinction between minors, adolescents or otherwise nor does it attend to disabilities or disabled victims. The instructions and guidelines are a reflection of the time and effort put into devising them and shows the seriousness attached to the issue. In this case, the 2020 Guidelines appear to be a hurried attempt to show vigilance and support, however in reality the Respondent, Government of Punjab has shown quite the opposite. The 2020 Guidelines do not categorically prohibit virginity testing, rather they attempt to camouflage the issue so as to continue this practice. Under the circumstances, the 2020 Guidelines should be revised so that all required protocols and instructions as detailed above and as per international practice are included.

32. For all what has been discussed above, in terms of the documents relied upon by the Respondents for the purposes of carrying out medico-legal examination in female victims of rape or sexual abuse, there is no clarity with reference to whether the 2020 Guidelines have replaced the 2015 Instructions and SOPs. This clarity

is vital as medico-legal examination must be carried out on the basis of a comprehensive code setting out the protocols and requirements leaving no ambiguity as to whether the two finger test or the hymen test to ascertain virginity is required. In this regard, it is clarified that the hymen test can be carried out if it is warranted medically or for treatment purposes and in this regard the 2020 Guidelines or the 2015 Instructions and the Proforma should specifically require the medical officer to stipulate the reasons for carrying out the hymen test. It is also noted that notwithstanding the promulgation of 2020 Ordinance which specifically prohibits the two finger test by way of Section 13, the Federal Government has taken no steps to enforce the requirements of the 2020 Ordinance or any steps to create awareness and training in order to change the habits of the medico-legal officers in carrying out the virginity test. As the concept of virginity testing is ingrained in the processes of the medico-legal examination without proper training and awareness programs, there can be no success in bringing the tests to an end. In this regard, it is noted that even with respect to obtaining consent from the victim, training is required for the staff and the medico-legal officers involved to understand what meaningful consent is and how to obtain that consent. Also to ensure that the victim understands the procedures for which she is giving her consent and the consequences in terms thereof. Through the course of hearing and despite the voluminous information placed before the Court by the counsel for the Petitioners, Respondent No.11, Surgeon Medico-Legal Punjab has defended the two finger test and hymen test on the basis of medical protocols which as per the information provided before this Court has also undergone change and no longer recognizes it as part of the medical protocols. In this regard, it is vital that Respondent No.11 himself along with his department as well as Specialized Healthcare and Medical Education Department, Lahore are aware of updated medical protocols and forensic science with reference to the cases of sexual violence. Change can only be brought

about when the people responsible for the change understand and acknowledge the reasons for changing old practices which no longer find any justification. Merely documenting change and not implementing change does not mean that the Federation or the Provincial Government have acted in accordance with the Constitution, the law and international obligations. Hence a concerted effort must be made so as to ensure that virginity tests are stopped in totality.

33. In view of the aforesaid, these petitions are **allowed** in the following terms:-

- (i) It is declared that two finger test and the hymen test carried out for the purposes of ascertaining the virginity of a female victim of rape or sexual abuse is unscientific having no medical basis, therefore it has no forensic value in cases of sexual violence;
- (ii) It is further declared that virginity test offends the personal dignity of the female victim and therefore is against the right to life and right to dignity enshrined in Article 9 and 14 of the Constitution;
- (iii) It is also declared that virginity tests are discriminatory against the female victim as they are carried out on the basis of their gender, therefore offends Article 25 of the Constitution;
- (iv) Consequently to the extent that the 2020 Guidelines, SOPs and the 2015 Instructions mandate the two finger test or the hymen test for the purposes of ascertaining the virginity of the victim are declared to be illegal and against the Constitution and the Federation and Provincial Government should take necessary steps to ensure that virginity tests are not carried out in medico-legal examination of the victims of rape and sexual abuse;

- (v) The Provincial Government should devise appropriate medico-legal protocols and guidelines, along with standard operating procedures, in line with international practice that recognize and manage sensitively the care of victims of sexual violence. This includes regular training and awareness programs so that all stakeholders understand that virginity tests have no clinical or forensic value.

(AYESHA A.MALIK)
JUDGE

Announced in an open Court on 4.1.2021.

JUDGE

Approved for Reporting

JUDGE