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Press Release

**High Court Bans the “Two-finger Test” on Rape Survivors**

On 12<sup>th</sup> of April 2018, the Hon’ble High Court Division comprising Mr. Justice Gobinda Chandra Tagore and Mr. Justice AKM Shahidul Huq, delivered a judgment in writ petition no. 10663 of 2013, clearly banning the “two-finger test” on rape survivors. The Court also pronounced following 8 (eight) directions.

1. The TFT is not scientific, reliable, valid and hereby prohibited in any examination of rape victim.
2. 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; public prosecutors appointed in Nari O Shishu Nirjaton Tribunal and other interested private lawyers
3. Physicians/forensic experts shall issue medical certificates about examination of rape, they shall not use the degrading word “habituated to sexual intercourse” and shall not ask any questions of her previous sexual experience.
4. In case of a deep-seated intra-vaginal examination the matter shall be referred to a Gynecologist for an expert opinion to identify an injury or for medical reasons.
5. 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.
6. The bimanual test is not related to TFT and being related to obstetrician gynecological examinations only, same shall not be practiced in rape victim.
7. The Government shall appoint trained doctors and nurses for medical examination of rape victim. Such examination shall be conducted in presence of preferably female police, female relative and preferably by female physicians. The concern physicians and forensic experts shall strictly maintain the privacy of the victim.
8. The Nari-oShishu Nirjaton Tribunal shall ensure that no lawyer shall ask any degrading question to rape victim which is not necessary to ascertain any information of rape.

**Background:**

There was a widespread concern among medical professionals, law enforcement agencies and women’s rights advocates, as well as government officials that the so-called “two finger tests” whereby invasive examinations were conducted by physicians in medical colleges across the country on women and girls who have made complaints of rape, in many cases without the consent of such women or girls is unscientific and has no forensic value and subjecting them to further trauma. On 8<sup>th</sup> of October 2013, BLAST along with five leading human rights, women’s and development organisations (Ain O Salish Kendra, Bangladesh Mahila Parishad, BRAC, Manusher Jonno Foundation, Naripokkho) and two medical experts, Dr. Ruchira Tabassum Naved of and Dr. Mobarak Hossain Khan filed this writ Petition (WP No. 10663/2013) bona fide in the public interest challenging the validity of “two finger test and to ensure that appropriate actions are taken to uphold the fundamental rights to equality (Article 27) and to be treated in accordance with law (Article 31), and to protection from cruel,



inhuman and degrading treatment (Article 35 (5)), of women and girls who are complainants in cases of rape.

After preliminary hearing on 10 October 2013, the Hon'ble High Court Division comprising Mr. Justice Mirza Hussain Haider and Mr. Justice Muhammad Khurshid Alam Sarkar issued a [Rule Nisi](#) and interim direction upon the Secretary, Ministry of Health and Family Welfare to set up a Committee in order to develop a comprehensive guideline for police, physicians and judges of Nari o Shishu Nirjaton Tribunals on examination and treatment of women and girls subjected to rape and sexual violence. After the direction of the court, the Ministry of Health and Family Welfare (MOFHW) constituted a committee and on 25th of May 2014, the said committee prepared a Guideline namely “ধর্ষণ ও যৌন সহিংসতার শিকার নারী ও মেয়ে শিশুদের ডাক্তারি পরীক্ষা (মেডিকেল) দিক- নির্দেশনা”. On 12th of August 2015, the MOFHW filed an affidavit in compliance with the said Guideline. On 7<sup>th</sup> of August 2016, upon an application of the petitioners, a High Court Division issued an order requiring the presence and valuable opinion of several forensic experts. On 16<sup>th</sup> of August 2017, five experts appeared before the Court and gave their opinions orally, stating that the ‘two finger test’ is not a scientific test and is not required. On 18th of July 2017, BLAST filed a supplementary affidavit annexing the written opinion and reviewed MOFHW guideline where the experts concluded with the opinion that the two-finger test is not scientific, not reliable and is not valid for reporting on the examination of the rape victim. On 23 October 2017, the Government (Ministry of Health and Family Welfare) filed an application to call six more forensic experts, after making submissions that the TFT may be required in certain circumstances. Later, four experts made oral and written opinion of the usefulness of the TFT. On 10<sup>th</sup> of April, the respondent No. 1 not press the affidavit in opposition filed earlier and also filed supplementary affidavit annexing the Health Care Protocol namely “Health Response to Gender Based Violence-Protocol for Health Care Provider”. During the hearing, the Petitioners’ lawyer made submissions in court supported by citations from the most recent medical jurisprudence texts, World Health Organization publication, and the Government of India Health Protocol and the Health Care Protocol of the Ministry of Health and Family Welfare.

### Reactions of Petitioners:

Ayesha Khanam, President of Bangladesh Mahila Parishad said, “*Mahila Parishad has been working to protect rape victim and children rights for the last two decades. Later along with BLAST and ASK and many organization have started to provide legal support. This milestone judgment has come due to our collective efforts to protect women’s human rights and individual rights. Everybody should be concerned to implement this judgment*”.

Dr. Faustina Pereira Advocate said that, “*This is a long awaited judgment that has come as a big relief to victims and survivors of sexual assault, and also for criminal justice and health rights advocates. Much work now needs to be done to implement the letter and spirit of the guidelines and examination protocols. Enforced properly, this will bring a significant and positive change in the medico-legal approach to sexual violence; and for the survivors it will help create an environment of safety, dignity and privacy. The guidelines, if correctly applied, will ensure that the positive change is not limited to the physiological act of forensic or*



# বাংলাদেশ লিগ্যাল এইড এন্ড সার্ভিসেস ট্রাস্ট (ব্লাস্ট) Bangladesh Legal Aid and Services Trust (BLAST)

*medical examination, but also to attitude - where doctors, lawyers, social workers and others carry out their work with compassionate professionalism.”*

Rita Das Roy, Member, Naripokkho Said, *“We have received a very good directions and judgment, but we need to work on this until the service providing and implementing agencies follow it properly. We need proper monitoring for implementation of these milestone directions”*

Ruma Sultana, Program Coordinator, Manusher Jonno Foundation, said *“Manusher Jonno Foundation highly appreciates the judgment of the High Court abolishing the ‘two finger test’ for rape victims. This test violates women dignity and their human rights. This judgment is a milestone for protecting women from humiliating situation. The concern authority and the trial courts can play active role for implementation of this judgment.*

Dr. Ruchira Tabassum Naved of ICDDR,B said *“This is a big achievement for us, in future we have to work more on this issue, I hope we can work together to ensure the implementation of the judgment.”*

Dr. Mobarak Hossain Khan, Director, Marie Stopes Bangladesh stated *“It was an unnecessary humiliating test for victims of rape which needed to be scrapped much earlier because rape concerns a question of consent and force not whether the victim is habituated to sexual activity or not. So what was this test for? Moreover it is not scientific at all. I am relieved Bangladeshi women victims will not be subject to this disgraceful test any more. We thank the judges and all those who have fought the cause and won at last. Congratulations to Bangladeshi women”*

Barrister Sara Hossain with Advocate Masuda Rehana Rosy and Adv. Aynunnahar Lipi, assisted by Adv. Abu Obaidur Rahman, and Adv. Sharmin Akter represented the petitioners. Deputy Attorney General A S M Nazmul Huq appeared on behalf of the State.

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