To

1. Sushil Kumar Shinde,
Home Minister of India

2. Ashwani Kumar,
Minister for Law and Justice, GOI

3. Krishna Tirath,
Minister for Women and Child Development, GOI

4. Ghulam Nabi Azad,
Minister of Health and Family Welfare, GOI

5. Rashida Manjoo,
UNHRC Special Rapporteur on Violence against Women

Prohibit the “two finger-test” in rape cases: Institute Uniform National Protocol for the Treatment and Examination of Survivors of Sexual Assault in India

Sir/Madam,

Despite the public outcry for reform in rape and related sexual assault laws, the Indian government has not banned the colonial, misogynist, and degrading medico-legal practice of inserting two fingers in the vagina. The Human Rights Watch report, Dignity on Trial (2010), documented the widespread practice of this degrading test, which claims to document the size of the hymenal orifice, “laxity” of the vagina, or “old tears” in the hymen. Why is it so difficult for the government to understand that rape survivors experience such invasive tests as “re-rape”?

This clinical practice is a colonial relic, which leads to medical opinions such as whether or not the survivor is a “virgin” or habituated or used to sex. Even in cases where doctors merely record findings related to “old tears,” “laxity” of the vagina, or the number of fingers that pass through the vagina, prosecutors, defence lawyers and/or judges infer from such findings that the raped survivor is “habituated” or “used” to sex.

Even though past sexual history was disallowed in rape trials since 2003, the two-finger test by medicalizing consent allows past sexual history of the raped survivor to prejudice her testimony, or impact the outcome of the case. An analysis of judgments in cases where the burden of proof is reversed such as pertaining to gangrape shows an increased reliance on the findings of two-finger test.

The World Health Organization in its guidelines on medico-legal care for victims of sexual assault states that it is a commonly held myth that “rape leaves obvious signs of injury” and clarifies that “only approximately one-third of rape victims sustain visible physical injuries.” The Centre for Enquiry into Health and Allied Themes (CEHAT) has intervened to provide

medical treatment and examination modelled around the WHO medico-legal guidelines on victims of sexual assault. Based on the findings generated by its direct intervention to assist rape survivors in two hospitals in Mumbai, CEHAT has found that only 19 percent survivors showed any physical injury and 39 percent had genital injuries.

In order to effectively eliminate this dastardly practice from every hospital and court in India, a uniform protocol for medical treatment and examination across India should be introduced.

India does NOT have a uniform national protocol for the dignified treatment and medical examination of survivors of sexual assault. Because of the complex structure of management of hospitals, with some hospitals falling within the health ministry of the state or central government, and some hospitals falling under the ministry of home affairs (police hospitals), doctors in different hospitals use differing standards to treat and examine rape survivors, which continue to degrade rape survivors. In 2011, the office of the Director General of Health Services (DGHS) in the Indian Ministry of Health and Family Welfare amended its earlier protocol for examination of rape survivors and eliminated questions regarding the size of the hymenal orifice and opinion on habituation to sexual assault.

This is simply NOT enough since the 2011 DGHS protocol
♣ continues to over-emphasize the importance of hymenal injuries
♣ completely ignores the need for therapeutic care for survivors of sexual assault.
♣ is limited to a few central government hospitals.

Given the evidentiary implications that such a document has, all hospitals and doctors across the country should use the same protocol.

We demand that:

1. The Indian government should, at once prohibit the finger test and its variants from all medical examinations of women (under s. 375 and 376 IPC) and children, as it is an unscientific, inhuman, and degrading practice.

2. Develop and institute in consultation with Indian women's, children's, and health rights advocates, doctors, and lawyers, a protocol for the therapeutic treatment and gender-sensitive examination of survivors of sexual violence.

3. The protocol must comply with the standards and ethics issued by the World Health Organization, including the right to provide or refuse informed consent for medical treatment and examination.

4. The protocol should emphasise on the need to seek the history of the incident in order to collect only relevant medical evidence, correlate findings with the nature of sexual assault reported, record delay in reporting, and other activities such as bathing, douching, urinating after the sexual assault.

5. The protocol should exclude the following information: size of the vaginal

introitus/hymenal opening/number of fingers admitted by the opening; irrelevant comments on old tears of the hymen; comment on habituation to sexual intercourse; irrelevant obstetric history (such as history of past abortions); findings on women's built, nutrition, weight and height.

6. Devise special guidelines for the examination of child survivors of sexual abuse to minimize invasive procedures. Ensure that any test is only carried out with the fully informed consent of the child, to the extent that is possible, and the informed consent of the child's parent or guardian, where appropriate.

7. Provide funds for the training and monitoring of the use of the national protocol in sexual assault cases.

8. Instruct doctors not to comment on whether they believe the patient is "habituated to sexual intercourse" based on medical findings.

9. Instruct all senior police officials to ensure that police requisition letters for medical examinations do not ask doctors to comment on whether a rape survivor is "habituated to sexual intercourse."

10. Train trial and appellate court judges that finger test results and medical opinions about whether a survivor is "habituated to sexual intercourse" are unscientific, degrading, and legally irrelevant, and should not be presented in court proceedings related to sexual offences.

11. Institute specialized training for trial and appellate court judges on sexual assault to correct myths around rape based on findings in medical reports.

12. Disallow defense lawyers from asking questions about whether or not a survivor of rape is "habituated to sex".

13. Introduce a mandatory special curriculum on the dignified treatment and examination of sexual assault survivors as part of medical education.

14. Discontinue the use of medico-legal textbooks that perpetuate biases against survivors in medical schools and courtrooms.