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LEGISLATING  
VIRGINITY:



*The Laws and Ethics of Hymenoplasty  
and Virginity Testing*

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## Introduction

According to Merriam Webster, the definition of a ‘virgin’ is someone who has never participated in sexual intercourse.<sup>1</sup> This definition revolves around heterosexual relationships and the assumption that the intercourse will involve a person with a penis and another with a vagina. However, what one considers sexual intercourse can vary from person to person (for example, whether oral sex is included) and the definition incurs greater difficulty when linked to anatomy, specifically the hymen.<sup>2</sup> The hymen is a thin membrane of skin near the opening of the vagina, which consists of leftover fragments of tissue formed during foetal development, found only in female mammals.<sup>3</sup> The presence of the hymen still holds significant importance in most religions as it is believed to determine a woman’s ‘purity’ and ability to marry, an essential factor for their position within their community, due to the commodification of female virginity. Consequently, women often face violence when they are accused of not being a virgin, or are found to have a hymen which is not intact. Due to the gender binary being imposed by the concept of virginity, this essay assumes that most people with hymens identify as women, whilst still acknowledging that trans\*, non-binary and intersex people can also share this anatomical feature.

This essay will discuss the cultural practices that encourage virginity testing and hymenoplasty, followed by an analysis of potential harm-reduction solutions with reference to the historical and religious background which places virginity as a gendered concept. Whether the measures put in place by the Health and Care Act 2022 are sufficient in preventing the violence against women which stems from practices surrounding virginity will be discussed in the context of the practical realities of virginity testing. This idea will be explored within the framework of the UK’s legal system with reference to other European jurisdictions for context.<sup>4</sup>

## Section I: Misconceptions of Virginity in Religion

The physical presence of a hymen is seen as the determining factor in establishing a woman’s virginity, following the idea that the hymen will break and bleed during first sexual intercourse. This is normally put within the context of the traditional cisheteronormative standard of vaginal penetration by a penis.<sup>5</sup> Not only does this definition ignore queer sex, the World Health Organisation (WHO) has found that the appearance or non-appearance of a hymen cannot determine virginity. The hymen can be destroyed or torn during physical activity, and some women are born without one at all.<sup>6</sup> Despite this evidence, the hymen is still regarded as proof of virginity in women. Virginity is a prerequisite for marriage in all major religions: Christianity (1 Corinthians 6:13, 3:16); Islam (al-Isra’ 17:22); Judaism (Mishnag Ketubbot 1:2); Hinduism (chapter 17-Shloka 14); and Sikhism.<sup>7</sup> Today, virginity testing is no longer commonly practised but in certain highly-religious communities a couple’s wedding bed sheets are examined by the groom’s family for blood to ensure the bride’s premarital virginity.<sup>8</sup> Women are subjected to greater expectations and further oppression by the continuation of these traditions which are rooted in false medical practices, unlike men who have no inherent physical evidence of their having sexual intercourse. Virginity is therefore a gendered concept, relying on an outdated assumption of female anatomy. Historically, gender has been a prominent characteristic of practices surrounding virginity which is visible in the custom of giving higher dowries to families whose daughter appeared to be a virgin.<sup>9</sup> Freud posits in “The Taboo of Virginity” that:

*The demand that a girl shall not bring to her marriage with a particular man any memory of sexual relations with another is, indeed, nothing other than the logical continuation of the right to exclusive possession of a woman which forms the essence of monogamy, the extension of this monopoly over the past.<sup>10</sup>*

The belief that a virgin woman is inherently more valuable can result in a sense of entitlement of men in the control of women, mandating obedience and encouraging punishment, including murder, to preserve ownership.<sup>11</sup> Although more moderate religious communities no longer see a woman's virginity as imperative, in highly religious communities the ability to marry, and therefore virginity, continues to be intrinsically linked to one's social status. Being a loyal member of the community and having children are seen as being guaranteed through maintaining virginity until marriage.<sup>12</sup>

Being found not to be a virgin brings deep shame to the party's family. <sup>13</sup> A woman found to have had premarital sex will be seen as 'spent' and 'dirty', leading to her alienation, which, in the religious communities that carry out these practices, is often her entire social group including family members.<sup>14</sup> To avoid this, a woman must be found to be a virgin, which is achieved through physical examination of her anatomy.

## Section II: Virginity Testing

Virginity testing, also known as hymen testing, is a physical examination performed upon a woman which involves the insertion of fingers into a woman's vagina to assess whether she has a hymen, purportedly to determine virginity. <sup>15</sup> Virginity testing has been recorded globally, recently including countries with no previous history of the practice such as Belgium, Canada, and the Netherlands.<sup>16</sup> This could be partly due to modern migration patterns but it should be noted that hymen testing is not only a practice carried out in Muslim countries and communities (which is a common misconception)<sup>17</sup>; virginity testing is also rife among the Christian community in the Bible belt of North America.<sup>18 19</sup>

Additionally, it has been discovered that the British government inflicted virginity tests upon immigrants throughout the 1970s, predominantly

on Indian women to supposedly assess whether they were truly engaged to a British citizen for their visa claim, based on the stereotype that Indian women abstain from sex until marriage.<sup>20</sup>

Generally, women detainees are at a higher risk of abuse, including forced virginity tests with the aim of disempowering and humiliating them, despite this being clearly prohibited by the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders<sup>21</sup> (otherwise known as the Bangkok Rules).<sup>22</sup> In addition, until very recently the Indonesian government subjected its female military candidates to virginity tests as part of its recruitment process, demonstrating the systemic use of the tests, despite their scientific dispute.<sup>23</sup> It is clear from their varied use that virginity tests are not a solely religious practice.

Virginity testing, and its lack of attention in the public eye, proves that myths about female anatomy prevail and continue to be used in the oppression of women and girls. As the aforementioned practices seen in Britain were carried out on Indian women and female inmates, who are largely minorities, women of colour are disproportionately affected.<sup>24</sup> Virginity testing remains largely underreported, especially when it is practised within societies who generally oppose it.<sup>25</sup> WHO has described the practice as "a violation of the victim's human rights and is associated with both immediate and long-term consequences that are detrimental to [her] physical, psychological and social well-being."<sup>26</sup> This definition from WHO can be seen as a step towards a more nuanced view of virginity testing, where the victim's psychological well-being is also seen as a priority. Women and girls who have to undergo virginity tests will have increased anxiety around being discovered as 'impure', making the practice a form of psychological torment, in addition to being physically degrading and painful. Infection and bleeding are shown to be common side effects, in

addition to sexually transmitted infections and Human Immunodeficiency Viruses (HIV) in situations where the examination is performed in an unhygienic manner.<sup>27</sup> This type of practice overlooks the myths about the hymen, sexual autonomy, and the possibility that women may lose their physical signs of virginity during sexual assault. Especially when an estimated one third of women in the United States will be raped in their lifetime.<sup>28</sup> In this vein, virginity testing is also employed to investigate whether a woman has been raped, mimicing the original sexual trauma.<sup>29</sup> <sup>30</sup> Additionally, the test perpetuates the idea that the hymen will always break during penetration, which is not strictly true due to its elasticity.<sup>31</sup> Inversely, ‘certified virgins’ can also experience adverse effects from their test as some communities believe that having sexual intercourse with a virgin can cure AIDs and HIV, encouraging those infected to have sex with a virgin and ‘cure’ themselves.<sup>32</sup> Virginity testing is perceived to have social and cultural benefits, such as reducing the spread of STIs and HIV, preventing unwanted pregnancies, and communal tradition, but the supposed benefits against the spread of STIs and unwanted pregnancies have not been proven empirically.<sup>33</sup>

From the psychological side effects to physical harm, it is evident that virginity testing is an oppressive tool used against women which reinforces the patriarchy. It is one which only has consequences for women, disproportionately affecting those who belong to religious communities.<sup>34</sup> It upholds socio-cultural norms that reinforce women’s inequality and serve as a form of control over the actions of women and girls. It violates basic human rights, including the liberty and security of the person (specifically physical integrity), discrimination based on sex, and occasionally the right to life, in the case of honour killings.<sup>35</sup> To avoid such violence, women can turn to extreme measures, including surgery, to appear to have a hymen.

### Section III - Hymenoplasty

*“Hymenoplasty is driven by a cultural expectation. It is a wider indication of a very patriarchal and culturally dominant society over women.”<sup>36</sup>*

Hymenoplasty is defined in section 148(2) of the UK’s Health and Care Act 2022 as “a surgical intervention that involves reconstructing the hymen.”<sup>37</sup> This can be done in a number of ways, but it usually involves sewing the remnants of the hymen back together with dissolvable stitches or reconstructing it entirely with skin grafts. The technical goal of the procedure is to ensure the woman will bleed when she next has sexual intercourse, the motivation for 30% of the women seeking hymenoplasty.<sup>38</sup> In the study conducted by the British government, it is cited as being readily available in the private medical sector, with procedures costing two thousand pounds and being performed by twenty-two identified private clinics.<sup>39</sup> Many of the reasons for wanting the surgery seen in the British study can be attributed to oppressive patriarchal stereotypes, such as the goal of ‘feeling tight’ which 12% of the study’s participants cited (with 35% seeking both tightness and blood loss) and 13% expecting the operation to boost their self-esteem (which can be linked with the value that patriarchal standards place upon virginity).. Outside of this, 9% of women participating in the study were seeking hymenoplasty as part of their goal to overcome a traumatic sexual experience. By the end of the study, only 29% of the participants (nineteen women) decided to go through with the (surgery, with only two achieving their goals of bleeding on their wedding night: hymenoplasty does not often achieve its goal.

The British Association of Aesthetic Plastic Surgeons “does not recognise or support hymenoplasty as a cosmetic procedure” and it has no formal training, being widely disapproved of in medical ethics, yet it is still being performed.<sup>40</sup> This is a trend that has



spread throughout Europe, for example, 63.2% of medical clinics in Switzerland have had hymenoplasty requested in their clinic, with 64.3% of these clinics performing the surgery.<sup>41</sup> All surgery has implied risks, but hymenoplasty has its own unique risks including sexual difficulties, narrowing of the introitus, acute bleeding during the procedure, and increased pain sensation. On top of the physical negatives, there are also the same psychological effects as associated with virginity testing; guilt, shame, and fear of the surgery being discovered to name only a few. The study found that the issue for many doctors, especially those with religious or moral views surrounding virginity, is balancing saving a woman's life and deceiving her future husband. As such, women's safety cannot be said to be the priority. Hymenoplasty itself could result in the murder of a woman, as shown by a study of Lebanese students in which some male participants said they would 'hurt' (5.3%) or 'kill' (4%) a woman who had the surgery.<sup>42</sup> Not only are there risks from the surgery itself, but from its possible violent consequences.

It must nonetheless be noted that there can be certain benefits associated with hymenoplasty, namely that it can provide a form of liberation to women faced with the pressure to remain virgins before marriage. If these women can finance the surgery, then they can be free to have sexual partners before getting married. This is an elitist form of freedom since it must be bought, but a form of freedom, nonetheless. In a similar vein, hymenoplasty can be lifesaving, as it can create the appearance of virginity for a hymen test, preventing honour-based violence (HBV) even if no bleeding occurs during intercourse.<sup>43</sup> Additionally, the procedure could have a psychological benefit to the women who seek it in order to feel reparation from sexual assault and be 're-virginised', if they feel their virginity was stolen from them. However, women seeking hymenoplasty for reasons of sexual trauma

are in a very small minority (9%) according to a Dutch study.<sup>44</sup>

Hymenoplasty is an issue in its own right due to its ineffectiveness and harmful side effects, but it is also a symptom of the perpetuation of the detrimental beliefs surrounding virginity and virginity checking. Due to its inherent links to violence and abuse, hymenoplasty can rarely be seen as having been freely consented to.<sup>45</sup> The Health and Care Act 2022 is Britain's legislative answer to the issue. It forbids any person from carrying out a virginity test or hymenoplasty and from aiding or abetting someone for carrying out either practise for the reason that violence can be incited by both procedures.<sup>46</sup> Based on the heavily gendered nature of the problem, the legislation is targeted towards the protection of women. However, by illegalising hymenoplasty without first dealing with the ideas surrounding virginity which encourage virginity testing, women are left vulnerable if they are subjected to an illegal virginity test. Without being supported by changed practices in sexual education, specifically debunking ideas surrounding the hymen, the legislation risks leaving women vulnerable to practices performed illegally by members of their community without the solution of hymenoplasty. Medical tourism is already a common way for women to access hymenoplasty, with many travelling to Tunisia where it is commonly practised.<sup>47</sup> Although this is prohibited by the 2022 Act, medical tourism leaves only women who cannot afford to travel for surgery subject to the interdiction.<sup>48</sup> As a result, the legislation furthers the financial pressures hymenoplasty can bring without dealing with the expectations surrounding virginity which make surgery desirable.

The dangers of the surgery should be made public knowledge so that people travelling to acquire it understand the possible consequences.

Legislating on practices such as virginity testing without taking active measures to prevent it from taking place risks a performative ban where the practices remain ongoing behind closed doors. Therefore, in tandem with the legislation now in place in Britain, preventative measures for the practices which lead to and encourage virginity testing and hymenoplasty should also be implemented: the root cause must be dealt with as well as its symptoms.

#### **IV - Proposals and Conflict To raise awareness**

among young people, myths concerning virginity should be ‘debunked’ within school’s sexual education classes and health classes in general. An education on the subject will aid in dispelling fear and shame surrounding virginity and the normalisation of the topic should make it easier for girls suffering abuse to seek help. For example, teachers could facilitate police reports. In addition, a public education campaign could be initiated to educate the European and global population generally, as was done with the risks of smoking, of which there are now very high levels of awareness.<sup>49</sup> The ban of virginity testing and education that would demystify the hymen, should eventually treat the root cause of the violence against women that stems from virginity testing but it cannot be implemented in isolation. The same steps should be taken in prohibiting hymenoplasty. The Minister for Care and Mental Health, Gillian Keegan, has stated that the 2022 Act was introduced for “safeguarding vulnerable women and girls”.<sup>50</sup> Though this may be a possible outcome of the 2022 Act, a move past virginity in measuring girls’ and women’s worth is needed, not only legislation. The Health and Care Act 2022 can be seen as a promising step in the right direction but it will not be possible to live in a post-virginity checking society unless public opinion on a whole is changed.

#### **Section V - Conclusions**

Luckily, opinions on virginity are indeed changing, and in very high places. In 2018, the Pope declared that ‘brides of Christ’ no longer need to undergo a virginity test before being declared as consecrated virgins.<sup>51</sup> As society becomes more aware of the false stereotypes and violent abuse surrounding virginity, hymenoplasty and virginity testing could fade out of existence. However, this requires action from the government to raise awareness among the population. The potential for gender norms surrounding virginity to change grows as science and feminist theory work together to dismantle the idea of virginity itself. Though we may be far from a post-virginity society, legislation regulating virginity testing and hymenoplasty are a step in the right direction, despite not being the end of the journey.

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