



Offense and outraging the modesty of women in India

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Abstract: Section 354 of the IPC, 1860 deals with associate degree assault or criminal force to lady with associate degree intent to outrage her modesty. Until 2007, there was an excellent deal of ambiguity on what implanted a lady's modesty and diverse speculations regarding the definition of modesty of a girl were gift. Several cases were determined whereas not an exact definition of a woman's modesty. However, the Supreme Court in inside the case of Ramkripal v. State of Madhya Pradesh, printed modesty by giving birth down that the essence of a woman's modesty is her sex'. Therefore, associate degree crime against women that falls wanting penetration would represent an offence beneath section 354 of the IPC, increasing the reach of crimes falling beneath this section. It had been extra command inside the judgement that the word modesty' is not to be understood with relation to a particular victim of associate degree act, but as associate degree attribute associated with female person who reflects a particular class. Therefore, modesty is regarding a female individual of any age with differing degrees of what would represent modesty at a given age of a female. These cluster of words can usually be substituted with molestation which suggests to force physical and usually sexual contact on someone and to make unwanted or improper sexual advances towards someone and a female of any age is misunderstood.

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Introduction: Indian society places great emphasis on the modesty of women and any act that is seen as an insult to modesty is considered to be a grave offence. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended to insult the same. The offence is considered to be cognizable, non-bailable, and non-compoundable by nature. In recent years, the issue of the safety and security of women has come to the forefront in India, with several high-profile cases of sexual offences against women being reported. The Indian government has taken steps to strengthen laws against sexual offences, including the introduction of stricter deterrents for rape and sexual assault. However, sexual offences against women continue to be a major problem in India and efforts are still needed to ensure that laws are effectively implemented. It is important for individuals to be aware of their rights and for society to take a zero-tolerance approach toward sexual offences. This article aims to provide an overview of the offence of outraging the modesty of women in India and the efforts being made to strengthen laws against sexual offence.

Section 351 of the IPC, 1860 lays down what constitutes associate assault. The section states that: Whoever makes any gesture, or any preparation intending or knowing it to be attainable that such

gesture or preparation will cause someone gift to apprehend that he UN agency makes that gesture or preparation is on the brink of use criminal force to that person, is speculated to commit associate assault.

Whereas section 350 defines criminal force as a result of the intentional use of force to cause injury, concern or annoyance to the person whom such force is used. It's to be noted here that existence of associate intention associated information is that the most ingredient for associate degree offence to be section 354 of the IPC. Therefore, if someone unknowingly or accidentally commits against the law which could be the extent of the section, he cannot be command liable. Moreover, absence of reaction or revenge from the victim is not a determinative to absolve the litigant of his liability. An extra section of the IPC, section 509 deals with words, gestures or acts speculated to insult the modesty of a woman. Offences of a less severe degree as compared with section 354 are often the extent of this section. This section is in addition commonly spoken as a result of the eve-teasing section' and finds its place to a lower place chapter XXII of the IPC that deals with offences of criminal intimidation, insult and annoyance.

The foremost distinction on sections 509 and section 354 of the IPC is that, once associate act goes on the so much facet inflicting insult to the modesty of a woman, with a clear threat of physical hurt to the lady

that in addition shocks the sense of modesty, such associate offence is addressed by section 354 and therefore, offences to a lower place section 354 are extra serious in nature as compared with those falling to a lower place section 509 of the IPC.

Outraging the modesty of a woman – provisions under the IPC

The offence of outraging the modesty of a woman in India is a serious offence defined under Section 354 of the Indian Penal Code, 1860. The section states that any person who assaults or uses criminal force on any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

Essentials of Section 354 of the Indian Penal Code, 1860

What is modesty

The act of outraging a female's modesty is increasing exponentially thereby taking a toll on the lives of women leading to mental and physical agony. Modesty has been defined as a quality or state of being modest, which is characterised by humility, restraint, simplicity, and good taste. In the context of outraging the modesty of a woman, it refers to the virtue that attaches to a female owing to her gender and is an attribute associated with females in general. It is a sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. Put simply, the court of law while deciding on the case of *State of Punjab v. Major Singh* (1966), has observed that modesty to a woman has evolved as altogether a different concept which has very little to do with the physique of the woman. The court further states that the modesty of a woman is intimately connected with femininity including her sex.

Further, modesty is not only limited to physical modesty but it also includes moral and psychological modesty. The moral modesty of a woman is said to be the sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. The psychological modesty of a woman is said to be her innate sense of self-respect and dignity.

What is the punishment for the offence of outraging of female's modesty under the Indian Penal Code, 1860

As per the Indian Penal Code, 1860, the punishment for outraging a woman's modesty is imprisonment of either description for a term that shall not be less than one year but which may extend to five years, and shall also be liable to a fine. This means that if a person is found guilty of outraging the modesty of a woman, he can be sentenced to a minimum of one year in prison

and a maximum of five years in prison. The offender will also be liable for a fine.

It is important to note that the punishment for this offence is not limited to imprisonment and fine but also includes other forms of punishment such as community service, counselling, and rehabilitation programs. The court also has the discretion to impose additional punishment if it deems it necessary. In cases of repeat offenders or aggravating circumstances, the court can impose a stricter punishment. For example, in cases of gang rape or rape of a minor, the punishment is imprisonment for a term that shall not be less than 20 years, but which may extend to life imprisonment, and shall also be liable to a fine.

In addition, certain laws such as the Protection of Children from Sexual Offences Act, 2012 (POCSO), and the Criminal Law (Amendment) Act, 2013 also provide for harsher punishment for sexual offences against children. It is important to note that the punishment for the offence of outraging the modesty of a woman is not limited to the offender alone. The Indian judiciary has held that the punishment for the offence must be such to deter the offender from committing the crime again, and also to deter others from committing similar offences. The punishment must also be such to reform the offender and bring about a change in his attitude toward women, hence can be termed as reformatory punishment.

Indian judiciary and its approach towards the concept of outraging female modesty

As has been mentioned previously, the notable case of *Major Lachhman Singh v. The State* (1952), has considered and discussed in length, the term 'modesty' pertaining to the woman. As far as the offence under Section 354 of the Indian Penal Code, 1860 was placed under consideration, it was explicitly held that only allegations would not be sufficient enough to fulfil the necessary and essential ingredient of the offence of outraging a female's modesty. Further, it was the case of *Ramkripal Singh v. State of Madhya Pradesh* (2007), where the Supreme Court of India had considered the relationship between Section 354 and Section 509 of the Code of 1860. Section 509 makes the intention to insult the modesty of the woman an indispensable ingredient of the offence mentioned under Section 354.

The landmark case of *Swapna Barman v. Subir Das* (2003), had held that under the provision of Section 509, the term 'modesty' does not only limit itself towards leading to the contemplation of a sexual relationship of an indecent character but also stands inclusive of indecency. Therefore, it is necessary to consider that any act which can be termed to have fallen short of rape needs to be attributed as outraging the modesty of the woman. Furthermore, it is significant to state that a woman can also be tried for

the offence of outraging the modesty of any other woman as the codified sections of the Indian Penal Code, 1860, are themselves gender neutral and do not specify an individual of any particular gender as an offender for the actions. Thus prosecution for this offence extends in cases of both males and females.

The Indian judiciary has been significant in contributing to the innumerable modifications which are being brought about with regard to the offence under Section 354 of the Indian Penal Code, 1860, with an aim to make the provision stricter and with an intention to curb the accelerating rate of criminal records of such offence thereby making the provision of safety, security and protection to the woman at large, available. As per the Justice Verma Committee Report, which was submitted on January 23, 2013, non-penetrative forms of sexual contact were required to be considered sexual assault and the punishment was to be increased to five years under Section 354 of the Indian Penal Code, 1860. A quicker and more speedy trial of such an offence was also recommended by the Committee. Headed by former Chief Justice of India J.S. Verma, the Committee identified the root cause of sexual offences was the failure of governance. This report has played a considerable role in introducing the major amendment of 2013 in the Indian Penal Code, 1860. Considering the recommendations that were given, the crucial amendment was brought in March 2013, by means of the Criminal Law (Amendment) Act, 2013. The punishments were increased by means of the same.

Outranging of female modesty vis-a-vis rape

It is ideal to note that the offence of outraging the modesty of women and rape has a significant distinction as to the facts and the provisions which are responsible for creating the charge for either of the offences. Although the line of difference between the two offences is negligible, both can in no way be considered similar. Before proceeding with the differences between the two, it is necessary to have a general idea about the offence of rape.

The offence of rape

Rape as a criminal offence has been defined under Section 375 of the Indian Penal Code, 1860 with Section 376 dealing with the punishment for the commission of the same. Rape can be described as the offence committed by a man on a woman, provided she is not the wife of that man, and the man is also not below twelve years. Sub-section (2) of Section 376, provides that any person who commits rape by means of fulfilling the conditions of the clauses provided in the sub-section would be held liable for committing rape and has to serve rigorous imprisonment for a term as has been prescribed in Section 376.

Difference between outraging modesty and rape

In the case of *Jeet Singh v. State* (1992), lack of evidence of the offence of rape categorized disrobing of the victim under the offence of outraging modesty of women thereby altering Section 376 with that of Section 354 of the Indian Penal Code, 1860. Further, the case of *Tukaram Govind Yadav v. State of Maharashtra* (2010) draws attention while talking to the difference between Section 354 and Section 375, as although the case was perceived to be falling under the latter provision, the Bombay High Court with its due reasoning reached to the conclusion that as penetration of penis was not involved in the female's body, the offence of Section 354 could only be made out with the support of medical evidence presented.

The facts of the case of *Jai Chand v. State* (1996) draw attention for in this case, the accused exercising force on the prosecutrix had pushed the latter onto the bed with the intention to disrobe by undressing her. Although after the prosecutrix herself exercising self-defence pushed the accused away and the latter not going back to carry on the offence, the interesting question before the court of law was whether the accused be held guilty of rape or will also be confined to the ambit of Section 354 of the Code of 1860. It was held that since there was the absence of evidence of rape according to the narrated facts and circumstances before the court, the offence which was made out was that of outraging the modesty of women under Section 354 of the Indian Penal Code, 1860.

Another case to be noted in this regard is the case of *Ram Mehar v. State of Haryana* (2016), in which the accused had grabbed the prosecutrix thereby trying to undress her. The offence of rape was not made out since the penetration of the penis had not taken place as prior to that, the aggrieved party had given a blow through the sickle on the accused. Thus, the accused was held to be guilty under Section 354.

These judgments were overruled by the Supreme Court's decision in the case of *State of Uttar Pradesh v. Rajit Ram* (2011), in which the conviction under Section 376 being altered by Section 354 of the Indian Penal Code, 1860, was scrapped and thus sent back to the trial court. The Apex Court in this case was dissatisfied with the decision-making of the Allahabad High Court for there wasn't any rational reason provided by the same while converting an offence under Section 376 to that of Section 354. Thus while stating that the reasoning is not sustained in the legal eyes, the top court rejected the High Court's judicial reasoning.

What can be concluded taking into account all the above judgments is that, while the offence of rape has its own set of requirements laid down under Section 375 read with Section 376 when it comes to outraging of female modesty under Section 354, the act of

causing insult to the female or an intention to harm her dignity has to be made out. Put simply, Section 375 read with Section 376 is inclusive of the offence under Section 354 of the Indian Penal Code, 1860.

Efforts made by the Indian government to strengthen provisions for outraging female's modesty

In recent years, the Indian government has taken a number of steps to strengthen laws against sexual offences in the country, in an effort to combat the issue surrounding the same. Some of the key efforts include:

1. **The Criminal Law (Amendment) Act, 2013:** This amendment to the Indian Penal Code, 1860 introduced stricter punishment for rape and sexual assault, including the death penalty in cases of repeat offenders or cases where the victim is left in a vegetative state. The amendment also expanded the definition of rape to include acts such as vaginal, oral, and anal penetration, and the insertion of objects and body parts into the vagina, mouth, and anus.

2. **The Protection of Children from Sexual Offences (POCSO) Act, 2012:** This Act provides for stricter punishment for sexual offences against children, extending to life imprisonment in certain cases. The Act also provides for measures to protect the rights of child victims, including the use of closed-circuit television cameras in courtrooms and the use of video conferencing to record the testimony of child victims. The act also makes it mandatory for all cases of sexual offences against children to be tried in special courts within a period of one year from the date of the commission of the offence.

3. **The Nirbhaya Fund:** This fund, established in 2013, is aimed at enhancing the safety and security of women in the country. The fund is used to support initiatives and schemes to improve the safety and security of women, including the setting up of fast-track courts to try cases of sexual offences and the strengthening of police machinery to deal with such offences.

4. **The Criminal Law (Amendment) Act, 2020:** This Act introduced several changes to the Indian Penal Code, 1860, including the introduction of stringent deterrents for sexual offenses, such as rape, acid attack, and stalking. The Act also introduced a new provision for the punishment for sexual harassment, including the punishment for sexual harassment at the workplace. The Act also makes it a punishable offence to disclose the identity of the victim of sexual offences or their family members.

5. **The Suraksha Setu App:** The Suraksha Setu App is a mobile application launched by the Indian government in 2020 to provide support and assistance to women in distress. The app provides a range of

services such as emergency assistance, emergency contacts, and emergency alerts to women in distress.

Salient features:

Therefore, the salient choices of associate offence falling below Section 354 of the IPC, 1860 are as follows:

An act or omission ought to be committed against a woman.

The litigant ought to have abused or used criminal force against the victim.

There ought to be associate intention on the part of the litigant to outrage the modesty of the woman or associate degree data that such associate act would outrage her modesty.

Absence of reaction or revenge from the victim is not a determiner to absolve the litigant of his liability.

A female of any age, at the side of associate are going to be slapped and such acts comprise the scope of this section. Although, the degree of modesty related to infant differs from the degree of modesty associate feminine possesses, the severity of the act and intention/knowledge of the litigant ought to lean the utmost thought and not the state of mind of the victim. A person committing associate offence below this section is accountable for associate imprisonment of either description for a quantity of one to five years, and is in addition in danger of pay a fine. The victim is entitled to compensation.

An offence below this section is cognisable, non-bailable and triable by any court.

The essence of a woman's modesty is her sex.

CURRENT SCENARIO

In many Rape cases, the accused cannot be punished for the offence of rape due to lack of evidence. In such cases, the accused is convicted for the offence of outraging the modesty of a woman. In the case of State v. Musa¹⁶, the victim who was a married woman, alleged that two men dragged her and raped her traces of semen were found on her clothes which were produced as medical evidence. However, no traces were found on the clothes of the accused. Thus, the court opined that it was not a case of rape due to lack of evidence but convicted the accused for the offence under Section 354 as they had dragged the victim with the intention of outraging her modesty. Thus, we can conclude that for a case to establish under Section 354, the prosecution the use of assault or criminal force against the woman and also the intention to outrage the modesty of a woman. The latter has to be proved beyond a reasonable doubt. For the defence in the cases under section 354, it is essential to establish that the woman was a consenting party in the act. It is a well-settled principle that if the woman is a consenting party to the act, there cannot be any outraging of modesty

Conclusion

The offence of outraging the modesty of a woman is a severe offence in India and is punishable by means of both imprisonment and a fine. Efforts have been made to strengthen laws against sexual offences in recent years, however, sexual offences against women continue to be a major problem in India and efforts are still needed to ensure that laws are effectively implemented and perpetrators are brought to justice. It is important for individuals to be aware of their rights and for society to take a zero-tolerance approach toward sexual offences. Increased cases of offences against women take a major toll on them and cause them great mental agony and pain. The current trend shows that a lot of cases of outraging the modesty of women go unreported, and women tend to suffer throughout their lifetime. Thus, it is the need of the hour to make stricter laws to prevent such crimes against women. Even though several amendments have been made, however, the crime rate still remains the same. The present laws require modifications and amendments. All the offences relating to outraging the modesty of a woman should be made non-bailable. It is high time now that we understand the gravity of this offence and try to make a society where women can live safely without any fear in mind.

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