



Offense of outraging the modesty of women in India

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Abstract: The notion of offences against women is increasing exponentially. This has, indeed, taken a toll on the lives of women leading to mental and physical agony. The concept of the outraging modesty of women is been described clearly in Section 354 of the Indian Penal Code, 1860. The Section 355 deals with use of assault or criminal force with the intention to dishonour person without any grave provocation. Moreover, the section 509 provides for the offence of outraging modesty as well. It is a well-established fact that the aspects of assault and criminal force require a deep explanation. The idea that these offences have been uprising in the society is hard to deny. However, it has also been observed that the misuse of these specific and crucial laws is rampant. With the amendments in the code, further provisions are seen to be added. This paper attempts to analyse the legal understanding of the Section 354 and Section 509 along with the analysis of the present scenario and the ongoing misuse of the provisions. This paper also tries to analyse interpretation made by Courts in various cases and suggests certain reforms in order to improve the provisions with the changing times with specific relevance to the in-depth meaning of assault, criminal force and other important terms with that regard. The clear distinction among the different sexual offences pertaining to women has explicitly discussed in order to seek clarity.

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Introduction:

With the advent of Indian Penal Code in 1860, the codification of enumerable offences took place. The offence of outraging the modesty of woman got its definition under Section 354 of the code. Also, the Section 509 provided an elaborative, yet, comprehensive definition of the offence leading to a co-joint reading of the two sections in almost all of the cases. It is pertinent to note that the term 'modesty' lacks an appropriate definition itself and hence has not been described anywhere explicitly in the entire code. Thus, the Supreme Court finally defined the meaning of the term modesty as the "essence of a woman's modesty is her sex itself". The offence under Section 354 has been made punishable with fine or with imprisonment which is not less than that of one year and may extend to five years³ as well and is of cognizable and non-bailable nature whereas under Section 509,⁴ the punishment is fine or three years of imprisonment and the offence is of cognizable, bailable and compoundable nature. In general sense, outraging modesty of a woman is known as molestation. Moreover, the Section 354A, 354B, 354C and 354D provides for the offences of sexual harassment, assault on woman with intention to disrobe, voyeurism and stalking respectively.⁵ In order to gauge deeper into the matter, it is important to understand the in-depth phenomenon of the offence as

there has been major recent developments leading to the evolution of the entire offence altogether. In order to create a clear perspective, there comes the need to understand the difference between the offence of outraging modesty of women and other sexual The law (Section 354 IPC) makes it a special crime to use force against a woman, or even threaten to use force, if the intention is to 'outrage her modesty'. It treats it more seriously than normal and criminal force by allowing the police to make arrests for such crimes without a warrant.

The law *does not* explain what 'outraging modesty' means. Courts usually make this determination by looking at all circumstances surrounding the incident. The Supreme Court referred to 'modesty' as *feminine decency* and a virtue that women possess owing to their sex.

The **punishment** is jail time of between one and five years along with a fine.

Important: It is not enough that the victim's modesty is outraged. It is an offence only when the accused *intended or knew it to be likely* that the acts in question would outrage the victim's modesty.

Example: Ramesh pulls on Nina's clothes while playing Holi and rips her T-shirt apart. It is a crime only if Ramesh intended or knew it to be likely that his acts would outrage Nina's modesty.

The Connotations of The Terms Used

The terms force, assault and criminal force have been explicitly defined in the distinct Sections of Indian Penal Code. The Section 349 provides the definition of force which states that if the motion is caused, or there is any change of motion or cessation of the motion which could affect the sense of other person's feeling it becomes the force when cumulatively understood in three other ways as described. Force is the contemplation of the presence of both the persons at once which means the presence of the person who has used it and the presence of the other person towards whom it is being used or directed.⁶ The concept of criminal force is being defined in Section 350 of Indian Penal Code, wherein, the definition of criminal force has been provided. According to this Section, a force becomes criminal when there is an intentional use of force or if there is any knowledge of the same. In this Section, the force of criminal nature can only be applied to a person and not to any inanimate object as a crime is always against a human being. The criminal force is known as battery in English law. In the Section 351 of Indian Penal Code, the definition of assault has been clearly defined. However, within the definition of assault, not every threat in the absence of physical violence amounts to assault because there should be a means to carry that threat into the direct effect.⁷ Also, this is applied to the offence of outraging modesty of women, although with a little expansion and extension of the aspects and the description of the offence under Section 354 of Indian Penal Code, the inclusion of acts done without the use of any physical force such as stalking are being covered within the ambit of the offence.⁸ The threat is an assault.⁹ Moreover, making any sort of gestures or any preparation can amount to the very use of criminal force to assault.¹⁰ However, mere words do not amount to any assault. However, if any word or certain words are being used in order threaten the person with an immediate intention to use criminal force would directly hold the person liable for this particular offence.

Even amidst the covid-19 lockdown, crimes against women are reportedly increasing. Domestic violence has increased manifold and several heinous crimes against women are being committed at the same pace. Therefore, the situation with the safety of women doesn't seem to have changed much, despite a curfew being in place. On the 18th of May, a 47-year-old man was booked for allegedly molesting a teen girl and just five days prior, on the 13th of May, a case was registered under section 354 of the IPC against the stepfather of a girl whom he allegedly molested. Therefore, instances of molestation or in other words, instances of a woman's modesty being outraged are being reported ever more.

Definition of 'modesty':

Section 354 of the IPC, 1860 deals with an assault or criminal force to woman with intent to outrage her modesty. Until 2007, there was a lot of ambiguity as to what constituted a woman's modesty and various speculations regarding the definition of modesty of a woman were present. Several cases were decided without a precise definition of a woman's modesty.

However, the supreme court in in the case of **Ramkripal v. State of Madhya Pradesh**, defined modesty by laying down that the '**essence of a woman's modesty is her sex**'. Therefore, any crime against women which falls short of penetration would constitute an offence under section 354 of the IPC, expanding the ambit of crimes falling under this section.

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It was further held in the Judgement that the word 'modesty' is not to be interpreted with reference to a particular victim of an act, but as an attribute associated with female human being which reflects a particular class. Therefore, modesty can be pertaining to a female human being of any age with differing degrees of what would constitute modesty at a given age of a female.

These group of words can often be substituted with molestation which means 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 can be molested.

Relevant legal provisions:

Section 354 of the IPC, 1860 has its place under chapter XVI of the IPC, 1860 which deals with 'offences against the human body'. The section runs as follows:

"Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it be likely that he will there by 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."

The punishment for an offence under this section is imprisonment of either description (simple or rigorous) for one to five years with a fine. The offence is classified as cognizable, non-bailable and triable by any magistrate.

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

will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. While section 350 defines criminal force as the intentional use of force to cause injury, fear or annoyance to the person whom such force is used.

It is to be noted here that existence of an intention and knowledge is the main ingredient for an offence to fall under section 354 of the IPC. Therefore, if a man unknowingly or unintentionally commits a crime which would fall under the ambit of the section, he cannot be held liable. Moreover, absence of reaction or retaliation from the victim is not a decisive factor to absolve the accused of his liability.

Yet another section of the IPC, section 509 deals with words, gestures or acts intended to insult the modesty of a woman. Offences of a less severe degree in comparison with section 354 fall under the ambit of this section. This section is also commonly referred to as the 'eve-teasing section' and finds its place under chapter XXII of the IPC which deals with offences of criminal intimidation, insult and annoyance.

The main difference as to sections 509 and section 354 of the IPC is that, when an act goes beyond causing insult to the modesty of a woman, with a clear threat of physical harm to the woman which also shocks the sense of modesty, such an offence is addressed by section 354 and therefore, offences under section 354 are more serious in nature in comparison with those falling under section 509 of the IPC.

Salient features:

Therefore, the salient features of an offence falling under Section 354 of the IPC, 1860 are as follows.

1. An act or omission must have been committed against **a woman**.
2. The accused must have **assaulted or used criminal force** against the victim.
 - There must be **an intention** on the part of the accused to outrage the modesty of the woman or a **knowledge** that such an act would outrage her modesty.
 - Absence of reaction or retaliation from the victim is not a decisive factor to absolve the accused of his liability.
 - A **female of any age**, including an infant can be molested and such acts fall under the ambit of this section. Although, the degree of modesty an infant possesses differs from the degree of modesty an adult female possesses, the severity of the act and intention/knowledge of the accused must be given the

utmost consideration and not the state of mind of the victim.

- A person committing an offence under this section is liable for an **imprisonment of either description** for a period of **one to five years**, and is also liable to pay a fine. The victim is entitled to compensation.

- An offence under this section is **cognizable, non-bailable and triable by any magistrate**.

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

Landmark judgements:

State of Punjab v. Major Singh, AIR 1967 SC 63:

In this case, the accused interfered with the vagina of a seven and half month-old child and was tried under section 354 of the IPC. The Patna and Haryana high courts held that the modesty of the victim could not be outraged as the victim was of a tender age. However, in an appeal to the Supreme Court, the apex court held that knowledge or intention on the part of the accused is the decisive factor and not the feelings of the woman against whom such an act is committed. Moreover, where such an intention or knowledge has not been proved, the proof of the fact that the woman felt her modesty was outraged does not constitute an offence, as an intention or knowledge on the part of the accused is the essential ingredient.

Therefore, the appeal was allowed and the accused was convicted by the Supreme court and was awarded rigorous imprisonment for a period of two years. A fine of rupees 1000/- was to be paid by the accused out of which rupees 500/- was paid as a compensation to the child.

2. Ramkripal Singh v. State of Madhya Pradesh, AIR 2007 (cr.l.) SC 370

In this landmark case, the Supreme Court finally defined modesty by laying down that the essence of a woman's modesty is her sex. The term modesty in relation to a woman was defined as "Decorous in manner and conduct; not forward or lower; Shame-fast; scrupulously chaste". The accused pleaded that he be given a lighter punishment and that he be held liable under section 354 for outraging a woman's modesty. However, as penetration had taken place, the supreme court held that it constituted rape. Only acts which stop short of penetration fall under the ambit of section 354 of the IPC. Therefore, the appeal was dismissed.

3. Ram Pratap v. State of Rajasthan

Where the accused allegedly entered the victim's house when she was alone and forced her to lie on a cot and misbehaved with her, but no

preparation to commit rape was done, the accused was held guilty under Section 354 of the IPC, 1860.

Critical analysis:

Section 354 makes an assault or use of criminal force against a woman with an intention to outrage her modesty a punishable offence. Moreover, the intention or knowledge of the accused is the decisive factor and the state of mind of the victim is not.

In addition, it is to be noted here that Section 354 is gender-neutral and even a woman can outrage the modesty of another woman as the terminology of the section goes “whoever assaults or uses criminal force.” The main ingredient of the offence is an intention to outrage a woman’s modesty. Therefore, the circumstances of each case are taken into account to hold a person liable under this section.

Since, the state of mind of the victim is not heeded much importance, there have been several instances of the section being misused. Thus, where a man accidentally touched a woman’s belly in a running bus and there was no such intention on the part of the accused to outrage the woman’s modesty, he was held ‘not guilty’.

Conclusion:

The offence pertaining to the outraging of modesty of women has gone through the process of immense evolution. According to the statistics of National Crime Record Bureau, there have been 8685 and 7305 cases which have been registered under insult to the modesty of women pertaining to the section 509 of Indian Penal Code during 2015 and 2016 respectively. It has been explicitly noticed that with the major amendment in the entire criminal law in 2013, the misuse of the provisions is also being uprisings. In order to eliminate the evil from the society, there is an urgent need to bring a stop at the misuse of the provisions at first and ensure the safety of both men who have been often falsely accused and the women who are often abused. Moreover, the distinction between the concepts of rape and outraging modesty of women has to be made out, since, there always exist a dichotomy. Since, the offence of rape and outraging modesty are the offences which does not have the factor of distinction because of the close similarities between the facts and the circumstances of the cases. In addition to this, after the major and the most revolutionary amendment made in 2013, the laws and provisions for the offence of outraging modesty got entirely changed and sexual harassment, intention to disrobe women, voyeurism, stalking and acid attack were being added. It is pertinent to note that, since, the changes have been brought about in order to create such offences of heinous and grave nature. It has been keenly observed that the provisions of the amendment

made are seen to be flawed, right from the very basic stage of framing of charge and arrest itself. However, the National Commission for Women has been formulated for the redressal of certain specific issues pertaining to women. Thus, in order to prevent the misuse of the provision and to ensure the safety and protection of women, certain amendments in the law needs to be brought about such as stricter provisions should be made if the laws are being misused at the instance of any woman and should be codified in a separate statute as well as the recent amendment of Criminal Law (Amendment) Act, 2018 has made the offence of rape of a girl below the age of 12 years punishable with death penalty and the minimum punishment is of 20 years of imprisonment for the first time in the legal history. Also, the provisions pertaining to the rape of a girl below 16 years have also been added along with the increase of term of imprisonment for the offence of rape in general. Thus, it is necessary to understand the gravity and the profundity of the matter at large.

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