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## OUTRAGING THE MODESTY OF WOMEN

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(Analyzing Sec. 354 of IPC, 1860)

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### DEFINING OUTRAGING THE MODESTY AND PRECEDENTS

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The word modesty is not defined in the code. Though there are dictionary meanings of the word modesty, the Supreme Court has defined the term by interpreting on a case-to-case basis. In one of the cases, the Supreme Court defined modesty as the essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of women is very relevant but its absence is not always decisive. Modesty is an attribute associated with the ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted, or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.<sup>2</sup> While dealing with the substantive question in the case of *State of Punjab v Major Singh*<sup>3</sup> the court observed that whether modesty of a female child of seven and half months can also be outraged? The majority view was in the affirmative. The court thought that Young or old, intelligent or imbecile, awake or sleeping, the women possess modesty capable of being outraged. In one the other case Supreme Court said the woman may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the; nevertheless, and the offender is punishable for outraging the modesty.<sup>4</sup>

In the case of *State of Kerala v. Hamsu*,<sup>5</sup> the court held that the accused who beckoned the prosecution by winking his eyes in public and caught hold of her arm was guilty of outraging her modesty and can be punished accordingly. Section 354 of the IPC comes into picture when gestures are made with the intent to outrage the modesty of a woman.

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<sup>2</sup>*State of Punjab v. Major Singh*, AIR 1967 SC 63 , *Rupan Deol Bajaj v KPS Gill*, AIR 1995 SCC 194.

<sup>3</sup> *State Of Punjab v. Major Singh*, AIR 1967 SCR (2) 286.

<sup>4</sup>*Sanjay Das v. The State of MP*, 2011 CrLJ 2095 (Chh).

<sup>5</sup>*State of Kerala v. Hamsu* 1988 (2) Crimes 161.

In *Jagmal Singh v. the State of Rajasthan*<sup>6</sup> “the court held that since the intention of the offender could not be proved it was held that the appellant was wrongly convicted, so on appeal the conviction was set aside unless the guilty conscience is proved, mere touching the belly of a woman in a public bus cannot be called a deliberate act of outraging the modesty of a woman within the meaning of this section.”<sup>7</sup> In *Ram Das V. State of West Bengal*<sup>8</sup> court said that touching the belly of a girl is not culpable if it is not intended merely putting the hand on the belly of a girl cannot be construed to indicate that the accused was using criminal force to commit this offence or cause injury or annoyance<sup>9</sup>. It may be an attempt to attract the attention of the girl.

The court further said that though the assault was there the intention to outrage the modesty could not be proved. The High Court upheld the acquittal while agreeing that the conduct of the accused was reprehensible as he had tried to chase the girl. So far as the offense under section 354 IPC was concerned the allegations are not sufficient to fulfill the necessary ingredient.

## WOMEN

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Section 10 of the Indian Penal Code, 1860 gives a clear definition of a woman - A female human being of any age. So irrespective of age the woman's modesty can be concluded as outraged if the acts fall within the arena of interpretation of the honorable apex court.

## SECTION 354 OF IPC, 1860

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### Using of assault or criminal force on a woman with the intent to outrage her modesty

“Whoever assaults or uses criminal force to 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 for fine”.<sup>10</sup>

\*The offense is cognizable, non-bailable, and triable by any Magistrate.

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<sup>6</sup>Jagmal Singh v. State of Rajasthan, 1980 Cr L.J 9 (Raj.) 446.

<sup>7</sup> *Id.*

<sup>8</sup>Ram Das V. State of West Bengal, AIR 1954 SC 711.

<sup>9</sup> *Id.*

<sup>10</sup>Subs. by Act 13 of 2013, section 6, for shall be punished with imprisonment of either description for a term which may extend to two, or with fine, or with both (w.r.e.f. 3 February 2013).

## ESSENTIAL INGREDIENTS OF SECTION 354 - IPC, 1860

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1. The assaulted person must be a woman.
2. Accused must have used criminal force.
3. The criminal force must have been used to outrage the woman's modesty.
4. The knowledge that modesty is likely to be outraged is sufficient to constitute the offense without any deliberate intention of having such outrage alone for its object.<sup>11</sup>

Now, to get a better understanding of this section and the crime as a whole we will analyze the above-mentioned ingredients:

### 1. The assaulted person must be a women

There has been a lot of hue and cry over this section because of the bias and it is also used rapidly in a negative sense. Though there have been a plethora of cases where this particular section along with sections 375/511/509 has been used against the men as a weapon of taking revenge but the substantial question of law is whether a woman can be held liable for this particular section? The section<sup>12</sup> describes the word "Whoever" as a gender-neutral term. This section is not gender-specific, and the offender can be both male and female. The essential ingredient of this offense is an insult to the modesty of a woman. In other words, the facts and circumstances have to be considered to conclude whether the act has outrage of modesty or not.

But the question is if this section is gender-neutral then how come the section has been used as a pseudo weapon against men? Well, the answer lies in the section. The starting word of sections 354A, 354B, and 354C specifically mentions repeatedly the word 'Any man' which undoubtedly makes this section gender-based and can be considered as an irony in this sense.

### 2. Accused must have used criminal force

In general or layman terms 'molestation' is a word used in section 354. "When the act of the accused causes insult to the modesty of a woman and there is a threat of physical harm to her

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<sup>11</sup>Aman Kumar v State of Haryana, AIR 2004 SC 1497: (2004) 4 SCC 379.

<sup>12</sup> Indian Penal Code 1860 Sec.354.

which also shocks the sense of modesty, the person can be accused under section 354”.<sup>13</sup>The primary objective of the provision of Section 354 of IPC is to safeguard public morality and decent behavior. In *Surender Nath v. State of Madhya Pradesh*<sup>14</sup> court held that pushing the bell-bottom pant or Chadar down that what is normally is an indecent behavior. “By differentiating Insult to modesty and outraging the modesty the court in *Bankey v. State of U.P.*<sup>15</sup>, the accused entered the apartment of a lady, caught hold of her, and removed her garments, it was held by the court that he had intruded upon her privacy and was convicted for outraging the modesty of women”<sup>16</sup>. The essential element of the offense under section 354 is the element of criminal force or assault.

### **3. Use of criminal force and mere knowledge of the act that modesty can be outraged by the said act**

The provision of section 354 IPC has been enacted to safeguard public morality and decent behavior. Therefore if any person uses criminal force upon any woman with the intention or knowledge that the woman’s modesty can be outraged, he is to be punished. In *Vishaka v State of Rajasthan*<sup>17</sup>, and *Apparel Export Promotion Council v AK Chopra*,<sup>18</sup> the apex court held that offense related to the modesty of women cannot be treated as trivial. The intention is not the sole criterion of the offense punishable under this section. It can be committed by a person assaulting or using criminal force to any woman if he knows that by such act the modesty of the women is likely to be affected. Neither the use of criminal force alone nor the act of outraging the modesty alone is sufficient to attract an offense under section 354 IPC, 1860.<sup>19</sup>In the case of *Ramadas v. State of M.P.*<sup>20</sup> while attempting to snatch a gold ornament laying in the neck of the lady the accused had put his hand on her breast. When once he was unsuccessful he repeated the act, it can be presumed that he had full knowledge that his hand would come in contact with the breast of the lady and her modesty would be outraged. The second repeated attempt of putting the hand on the breast conclusively proves the intention of

<sup>13</sup>Justice KT Thomas, MA Rashid, ‘Ratanlal and Dhirajlal the Indian Penal Code’, 34th edition, Lexis Nexis. 810.

<sup>14</sup>*Surender Nath v. State of Madhya Pradesh* 1982 Cr LJ (M.P. HC Notes), 10(2).

<sup>15</sup>*Bankey v. State of UP*, AIR 1961 All 131, 1961 CriLJ 330.

<sup>16</sup> *Id.*

<sup>17</sup>*Vishaka v State of Rajasthan* AIR 1997 SC 3011.

<sup>18</sup>*Apparel Export Promotion Council v AK Chopra* AIR 1999 SC 625.

<sup>19</sup>*Gigi v. State*, 2013 Cr LJ (NOC) 228.

<sup>20</sup>*Ramadas V. State of M.P.*, 1982 Cr. LR 36.

the accused though the primary object may be to snatch the chain. The accused was punished because knowledge is sufficient to hold the accused guilty of outrages the modesty; the magistrate committed an error in ignoring this serious and vital aspect of law. The High Court set aside the acquittal and rejected the request for leniency holding that leniency in sex offenses results in putting a premium and endangering the modesty of the weaker sex.

### **SECTION 354 OR SECTION 376: EXPLAINS THE PRECEDENTS**

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My basic objective of comparison of these two sections is to explain the differences between these two as there is a fine hair-line difference and we have a plethora of cases where the conviction was made under section 376 but was later converted to 354.

The accused caught hold of married women and tried to open the string of her salwar. Then he was hit by women with a kulhari and he fled away, it was held that he could not be held under sec. 376 /511<sup>21</sup> as his action did not show a determination to have sexual intercourse at all events and despite resistance. The conviction was accordingly changed to sec. 354.<sup>22</sup>

A case in which married women alleged that the two accused persons had dragged her in her own home and raped her one after the other and the medical evidence showed that though there were traces of semen on her clothes, there were none on the clothes of the accused persons, the court opined that the case was not made out; the presence of semen on the clothes of a married woman is not unusual and therefore, the accused could have been prosecuted only for outraging the modesty of women.<sup>23</sup>

In another case, the accused had forcibly laid the prosecutrix on the bed and broke her pajama's string but made no effort to undress him and when the prosecutrix pushed him away he made no effort any grab her again. It was held that it was not an attempt to rape but only outraging the modesty of women.<sup>24</sup>

In *Ram Mehar v State of Haryana*,<sup>25</sup> the accused caught hold of the prosecutrix lifted her, and then took her to the Bajra field where he pinned her down and tried to open her salwar but

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<sup>21</sup>Section 376 of IPC 1860 read along with Section 511 of IPC.

<sup>22</sup>Rameshwar, 1984 Cr LJ 786 (P&H), Ram Asrey v. State of UP, 1990 Cr Lj 405: 1989 All Lj 165, High Court can allow compounding of this offence.

<sup>23</sup>State of Orissa v. Musa, 1991 CrLJ 2168 (Ori).

<sup>24</sup>Jai chand v. State, 1996 Cr LJ 2039 (Del).

<sup>25</sup>Ram Mehar v State of Haryana, 1998 Cr LJ 1999 (P&H).

could not do so as the prosecutrix had injured him giving a sickle blow. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of the prosecutrix was also corroborated by other evidence. It was held that conviction under 354, 376/511 was proper.

In another case where accused persons caught hold of a woman and removed the saree from her person but ran away on seeing someone approaching, their act attracted section 354 and not section 375/511. Their conviction under Section 376/511 read with section 34 was altered to 354/34.<sup>26</sup>

## GENDER BIASED LAW

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The law-makers have severely failed to interpret the word 'Victim'. The victim can nowhere in a law dictionary be only construed to gender-specific. Victims of any crime can be a male can be a female or any third gender likewise perpetrator as well can be a male, female, or any third gender. A survey reveals that rape crime is quite frequent amongst third genders.<sup>27</sup> A survey conducted among college students reveals that 10.5% of men have been the rape victim and another 10.5% were those on whom attempt to rape was committed.<sup>28</sup> A survey reveals that out of 28.6% of men who experienced sexual assault, 54.8% reported females as the perpetrator.<sup>29</sup> While dealing in a case of rape, the court said that men should be provided the equal protection of the law as that of female victims.<sup>30</sup> In *Sakshi vs Union Of India (UOI) and Ors*<sup>31</sup> considering the issue of biasness of this law, the apex court directed the whole issue to the law commission and in the turn, 172<sup>nd</sup> Law Commission<sup>32</sup> made a report for unbiased rape laws which in turn gave birth to Criminal Law Amendment Bill, 2012<sup>33</sup> but in the meantime, the world witnessed Nirbahaya Rape Case which delayed this bill. Justice Verma Committee was then formed to redefine section 375 and increase the ambit of this definition not to keep it construed to Penial-Veginal intercourse. Verma Committee put forth many interesting recommendations and also very

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<sup>26</sup>Damodar Behra v. State of Orissa, 1996 Cr LJ 346 (Ori).

<sup>27</sup> This survey was conducted by PUCL Karnataka

[http://pucl.org/sites/default/files/reports/Human\\_Rights\\_Violations\\_against\\_the\\_Transgender\\_Community.pdf](http://pucl.org/sites/default/files/reports/Human_Rights_Violations_against_the_Transgender_Community.pdf)

<sup>28</sup> <https://sci-hub.tw/https://doi.org/10.1007/s12119-000-1023-7>

<sup>29</sup> [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_sofindings.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf)

<sup>30</sup> Smt. Sudesh Jhaku vs K.C.J. And Others 1998 CriLJ 2428, 62 (1996) DLT 563, 1996 (38) DRJ 22.

<sup>31</sup> Sakshi vs Union of India (UOI) and Ors 1999 CriLJ 5025, 1999 (5) SCALE 376, (1999) 6 SCC 591.

<sup>32</sup> <https://www.legal-tools.org/doc/1c639d/pdf/>

<sup>33</sup> [https://www.prsindia.org/sites/default/files/bill\\_files/Criminal\\_Law\\_%28A%29\\_bill%2C\\_2012.pdf](https://www.prsindia.org/sites/default/files/bill_files/Criminal_Law_%28A%29_bill%2C_2012.pdf)

interestingly it too gave recommendations for neutralizing the rape laws. These recommendations were promulgated in the Criminal Law Amendment Bill 2013.<sup>34</sup> Unfortunately, this was opposed to a very large scale by numerous women groups. The outrage was because it was believed that it would intensify women's vulnerability. As a result, to date, there has been no development in this bill which talks about gender neutrality.

## SEXUAL HARASSMENT AT WORKPLACE

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Harassment of women at the workplace 'sexually' has been a very major problem not only in our country but is a global problem. There has been an innumerable number of cases where the harassment of women by their colleagues or other higher-ranked officers has come to light. The recent Me Too campaign has been the best example of this incident of sexual harassment at the workplace results in the violation of the Right of life and liberty guaranteed by the Constitution of India. In 1993 at the ILO Seminar held at Manila, sexual harassment of women at the workplace was recognized as a form of gender discrimination against women. Supreme Court in *Apparel export promotion council v. A.K. Chopra*<sup>35</sup> defined sexual harassment at the workplace as

—Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee and unreasonable interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.<sup>36</sup>

## INTERNATIONAL MANDATES

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India being the signatory authority of CEDAW<sup>37</sup> comes under the international obligation of protecting women from all kinds of discrimination. CEDAW and Beijing Declaration direct all state parties to make adequate provisions to protect the right of women and culminate all types of discrimination against women. Article 7 of The International Covenant on Economic

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<sup>34</sup> <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>

<sup>35</sup> *Apparel export promotion council v. A.K. Chopra* AIR 1999 SC 625.

<sup>36</sup> *Id.*

<sup>37</sup> Convention on the Elimination of All forms of Discrimination against Women, 1979.

and Cultural Rights recognizes women's right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment.

## VISHAKHA GUIDELINES

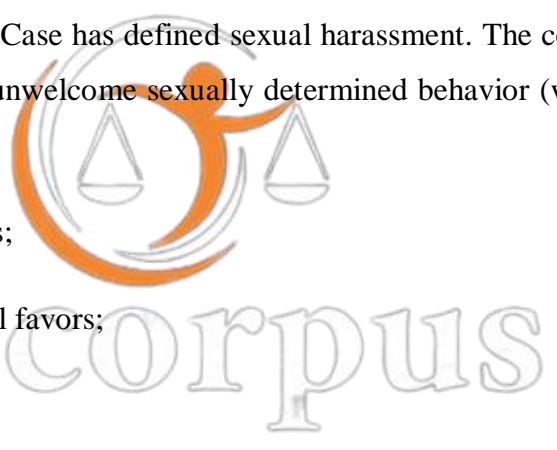
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The Supreme Court in *Vishakha v. State of Rajasthan*<sup>38</sup> addressing a PIL filed by women activist group Vishakha the court to give certain directions regarding the sexual harassment that women face at the workplace. The basic objective behind this PIL was to make the true realization of the concept of Gender Equality and to prevent sexual harassment of women at the workplace.

## DEFINITION OF SEXUAL HARASSMENT GIVEN BY THE SUPREME COURT

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"The Supreme Court in Vishakha Case has defined sexual harassment. The court opined that sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as

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- (i) Physical Contacts and advances;
  - (ii) A demand or request for sexual favors;
  - (iii) Sexually colored remarks;
  - (iv) Showing pornography;
  - (v) Any other unwelcome physical verbal or non-verbal conduct of a sexual nature."<sup>39</sup>

## Guidelines issued by the Supreme Court in Vishakha Case <sup>40</sup>

"The Supreme Court has laid down the following guidelines under Article 141 of the Constitution to prevent sexual harassment of working women in the place of their work until legislation is enacted for the purpose.

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<sup>38</sup>*Vishakha v. State of Rajasthan* 1997 (6) SCC 241.

<sup>39</sup> *Id.*

<sup>40</sup> These guidelines have been superseded by Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.



(a) **Preventive Steps-** All employers, persons in charge of the workplace, whether in the public or private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of her obligation: he should take the following steps-

(b) (i) Express prohibition of sexual harassment at the workplace, should be notified, published, and circulated in appropriate ways.

(ii) The Rules/ Regulations of the government and public sector bodies relating to conduct and discipline should include rules/ regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(iii) As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing orders) Act, 1946

(iv) Appropriate work conditions should be provided in respect of work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at the workplace and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

(b) **Criminal Proceeding-** Where such conduct amounts to a specific offense under the IPC or under any other law, the employer shall initiate appropriate action per law by making a complaint with the appropriate authority.

(c) **Disciplinary Action-** Where such conducts amount to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer following those rules.

(d) **Complaint Mechanism-** Whether or not such conduct constitutes an offense under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such a complaint mechanism should ensure the time-bound treatment of the complaints.

(e) **Complaints Committee-** The Complaint mechanism should be adequate to provide, where necessary, a complaints committee, a social counselor, or other support services, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the

possibility of any undue pressure or influence from senior levels, such complaints committee should involve a third party, either an NGO or other body who is familiar with the issue of sexual harassment.

**(f) Worker's Initiative-** Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate forums and it should be affirmatively discussed in the Employer-Employee meeting.

**(g) Awareness-** Awareness of the right of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner.

**(h) Third Party Harassment-** Where Sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

**(i) Duties of Government-** The Central/ State Government are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sectors.

**(j) These Guidelines are enforceable as law till a legislation is enacted**

The Hon'ble Supreme Court held that these guidelines and norms would be strictly observed in all works places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field."<sup>41</sup>

## CONCLUSION

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We came across many nuisances of law how the Supreme Court has interpreted the term modesty in different cases. In one of the cases, SC has interpreted as the word modesty is an attribute associated with a female human being which reflects a particular class. It is a virtue that is attached to a female on account of her sex.<sup>42</sup> The word 'modesty' is not to be

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<sup>41</sup> This guidelines has been superseded by Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

<sup>42</sup>Tarkeshwar Singh v. State of Bihar (2006) 8 SCC 560.

interpreted concerning a particular victim of an act but rather it is to be interpreted as an attribute associated with female human beings of a class.<sup>43</sup> Section 354 talks about the use of criminal force and assault to women to outrage the modesty of women on. As per the *Justice Verma Committee Report*<sup>44</sup>, certain modifications were done under Section 354 and Section 509 of the IPC. The committee also gave recommendations for gender-neutral laws but it was not done due to widespread protest but it's a high time when it should be done in Indian laws. The committee has also suggested that the use of words, acts, or gestures that create an unwelcome threat of a sexual nature shall also be termed as sexual assault and should be punishable for 3years imprisonment or fine or both.

We also came across certain provisions as to where a conviction under section 376 was converted to section 354 based on the material evidence. There are many conflicting judgments in Indian laws wherein one of the scenarios was an acquittal whereas in the other case the culprit was awarded punishment. It all depends basically on situations and societal changes. There can be multiple views on this but we as a law student must appreciate the Indian courts for analyzing the things in every detail so that justice is been availed to each citizen of this country. As our Indian courts work on the principle of 'presumption of innocence' and 'Let a hundred guilty be acquitted, but one innocent should not be convicted'. So alteration of such charges must be praised. We must also praise the apex court for their different opinions and their guidelines in Vishakha judgment. The courts and laws have done a lot for the protection of women and their advancement. It's time for our executives to make a proper check and balance with the laws.

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<sup>43</sup>Aman Kumar v. State of Haryana AIR 2004 SC 1497.

<sup>44</sup>Justice Verma Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The Committee submitted its report on January 23, 2013.