

OUTRAGING THE MODESTY OF WOMEN

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(Analyzing Sec. 354 of IPC, 1860)

DEFINING OUTRAGING THE MODESTY AND PRECEDENTS

Throughout the document, the term modesty isn't specified. The SC established the phrase by defining it on a situation basis, however, there are standard interpretations of expression modesty. In a few of the instances, modesty was described by the SC as the nature of a female's humility is her gender. The mindset of the perpetrator is the main talking point of the whole scenario. Female's answers are very important, but their omission isn't necessarily definitive. Humility is a characteristic connected to the supreme tool to determine if a female's modesty is already offended, abused, or humiliated is that the perpetrator's conduct ought to be reasonable that it can be viewed as something which can disturb a woman's integrity.² While dealing with the substantive question in the case of *State of Punjab v Major Singh* 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. Section 354 of the IPC comes into the picture when gestures are made with the intent to outrage the modesty of a woman.

In *Jagmal Singh v. the State of Rajasthan*³ “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.”⁴ In *Ram Das V. State of West Bengal* court stated “contacting a girl's belly is not guilty if it's not meant to simply place a girl's hand on a girl's belly should not be read to mean that the defendant employed violent methods to do such offense or inflict harm or irritation. It could be an opportunity to provoke the girl's interest.”

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

³Jagmal Singh v. State of Rajasthan, 1980 Cr L.J 9 (Raj.) 446.

⁴Id.

That judgment also claimed that the purpose to offend the integrity couldn't have been proven even if the attack had been there. While accepting that the actions of the perpetrator were contemptible because he had attempted to pursue the child, the HC affirmed the exoneration.

WOMEN

Sec. 10 of the IPC, 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

Using of assault or criminal force on a woman with the intent "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".

ESSENTIAL INGREDIENTS OF SECTION 354 - IPC, 1860

1. The assaulted person must be a woman.
2. The accused must have used criminal force.
3. The criminal force must have been used to outrage the woman's modesty.
4. It's indeed enough to recognize that humility is probably to be offended to entail the infringement without even any conscious intent of making such indignation simply for its purpose.

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 woman

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 section⁵ describes the word “Whoever” as a gender-neutral term. This section is not gender-specific, and the offender can be both male and female. 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 354-A, 354-B, and 354-C 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. The 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 which also shocks the sense of modesty, the person can be accused under section 354”. In *Surender Nath v. the State of Madhya Pradesh* court holds that pressing the bell-bottom pants or Chadar down what may be usually is an improper act. There must be 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

In *Vishaka v State of Rajasthan*⁶, and *Apparel Council v AK Chopra*, the apex court held that offense related to the modesty of women cannot be treated as trivial. The defining factor of the crime punished here under the provision is not the purpose. It could be done by people attacking another female or even using violent methods if he understands that perhaps the integrity of females is likely to be abused from such action. 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. When he replicated the action while he was inadequate, it can be concluded that he must have complete awareness that his arm will fall into touch with the woman's chest and her pride would indeed be offended. The second consistent effort to place the arm on the chest definitively shows the purpose of the perpetrator while snatching the

⁵ Section 354, Indian Penal Code 1860.

⁶ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

string could be the focal area. The charged was sentenced since information is necessary to find the convicted of the humility's horrific acts; in missing this severe and critical feature of rule, the prosecutor made a mistake. The HC set aside the guilty verdict and dismissed the appeal for lenient treatment, ruling that leeway contributes to a value being imposed on sex crimes and jeopardizing the dignity of the female gender.

SECTION 354 OR SECTION 376: EXPLAINS THE PRECEDENTS

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 person who was brought before the court was said to have been trying to molest a married female and he was making the try to undo 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 /511⁷ 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. 354.⁸

Some time back, a situation arose where accused individuals detained a female and stripped the kurta off her body, but fled after seeing someone coming, sec. 354 and not sec. 375/511 were drawn by their action. The sentence was changed to 354/34 within Sec. 376/511 interpreted in sec. 34.⁹

GENDER BIASED LAW

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. In *Sakshi vs Union Of India (UOI) and Ors* considering the issue of biasness of this law, the apex court directed the whole issue to the law commission and in the turn, 172nd Law Commission made a report for unbiased rape laws which in turn gave birth to Criminal Law Amendment Bill, 2012¹⁰ but in the meantime, the world witnessed Nirbahaya Rape Case which delayed this bill. Justice Verma Committee was then formed to redefine section 375

⁷Section 376 of IPC 1860 read along with Section 511 of IPC.

⁸Rameshwar, 1984 Cr LJ 786 (P&H), RamAsrey v. State of UP, 1990 Cr Lj405: 1989 All Lj 165, High Court can allow compounding of this offence.

⁹DamodarBehra v. State of Orissa, 1996 Cr LJ 346 (Ori).

¹⁰https://www.prsindia.org/sites/default/files/bill_files/Criminal_Law_%28A%29_bill%2C_2012.pdf

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 interestingly it too gave recommendations for neutralizing the rape laws. These recommendations were promulgated in the Criminal Law Amendment Bill 2013. 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 that talks about gender neutrality.

SEXUAL HARASSMENT AT WORKPLACE

Molestation of females at places where the work daily which is said to be done '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 MeToo campaign has been raging. Physical violence of female workers was regarded as a type of rape culture targeting women in 1993 at the ILO Workshop in Manila. In *Apparel export promotion council v. A.K. Chopra, SC* defined it as -

—Sexual harassment is a type of racial violence generated by inappropriate touching, the demand for special gratification as well as other verbally or physically behavior with sexual connotations, either explicitly or by inference, especially whenever the female worker submits or refuses such behavior and unreasonably interferes with her job productivity and has the impact of generating intimidation.

INTERNATIONAL MANDATES

India being the signatory authority of CEDAW comes under the international obligation of protecting women from all kinds of discrimination. Art. 7 of the ICECR acknowledges the female's right to equal workplace culture and represents the evidence that people are not exposed to physical abuse in the workplace, which can be harmful to the work setting.

VISHAKHA GUIDELINES

The Supreme Court in *Vishakha v. State of Rajasthan*¹¹ addressing a PIL filed by women activist group Vishakha the court to give certain directions regarding the sexual harassment

¹¹Vishakha v. State of Rajasthan, 1977 (6) SCC 241.

that women face at the workplace. The basic objective behind this PIL was to make the truthful striking to people's minds and helping them realize that all sexes are equal and understand the basics of gender.

DEFINITION

“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

- (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.”¹²

GUIDELINES

“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.

- (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.

¹²*Id.*

(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 meetings 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 suitably notifying the guidelines.

(h) Third Party Harassment- Where Sexual harassment occurs as a result of an act or omission by any third party or outside 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 the private sectors.

(j) These Guidelines are enforceable as law till 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."

CONCLUSION

We came across many nuisances of law how the Supreme Court has interpreted the term modesty in different cases. Section 354 talks about the use of criminal force and assault on women to outrage the modesty of women. As per the *J. Verma Committee Report*¹³, certain modifications were done under Sec. 354 and Sec. 509 of the Indian Penal Code. The committee also gave recommendations for gender-neutral laws but it was not done due to widespread protest but it's high time when it should be done in Indian laws. The Council further proposed that perhaps the usage of terms, actions, or movements that generate an unwanted risk of criminal favors must also be defined as sexually being discriminated against and should be prosecuted by incarceration for three years in jail, a hefty 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 law students must appreciate the Indian courts for analyzing 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 the 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.

