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The offence of outraging the modesty of women in India

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Since ancient times, and even today, women have been the victims of sexual abuse, harassment, and more broadly, sexual offences. One such offence is that of outraging women's modesty. The virtue of modesty defines womanhood. Every woman, regardless of age, possesses modesty in varying degrees. It is an offence that has resulted in a great deal of suffering and mental, emotional, and physical distress for women. The offence is described under Section 354 of the Indian Penal Code, 1860. It is a provision to safeguard women from the instances when someone uses unlawful criminal force or an assault or attack on them coupled with the intent and knowledge of offending her modesty.

Keywords: *modesty, section 354, Indian penal code, 1860, assault, criminal force, intent, knowledge, outraging.*

INTRODUCTION

The law in India, as per the provisions of section 354¹ of the Indian Penal Code, 1860 makes it a crime to outrage a woman's modesty. The term "modesty" is not defined under this provision. But the Apex Court, while addressing the thousands of cases related to the offence of outraging modesty, has finally put forth a definition of the word modesty. Supreme Court

¹ Indian Penal Code, 1860, s 354

states, "The essence of women's modesty is her sex".² The purpose of Section 354 of the Indian Penal Code, 1860 is to protect public morality and decency. This section aims to provide protection to the women against any improper actions on the part of others that tends to injure women's dignity and decent modesty. In ordinary language, the word 'modesty' means "*the fact of not talking much about your abilities or possessions*" or an absence of arrogance or ego, as well as decency in appearance, attitude, and behaviour. Whereas, outrage can be defined as, a strong feeling of shock and anger. Apart from being young or elderly, intellectual or imbecile, conscious or asleep, every woman has a sense of modesty vulnerable to being offended, and the criminal purpose of the accused is the essence of the issue.³ There is no particular gauge to determine the amplitude of modesty for women, because this may vary from woman to woman. Any act or gesture that is outrageous for one woman might not infringe on other. A woman's modesty is her most prized possession, and there is no formula that can determine whether modesty is violated. The term 'modesty' should not be used to refer to a specific victim of an act, but rather to a characteristic linked with a female individual that signifies a specific social class. It is a virtue that is associated with a female because of her gender. This section is gender-neutral which means that it applies to both men and women equally. It can be inferred that a woman can offend another woman's modesty. The essential ingredient that is to be proven is that criminal force has been used to offend the modesty of a woman.

Section 354 of the Indian Penal Code, 1860 is often closely aligned with Section 509⁴ of the Indian Penal Code, 1860. It has been observed that these are offences that are not just against individuals but also against public morals and society. To achieve the objective, the word 'modesty' is to be perceived as a characteristic of a female individual regardless of whether the female in question has acquired adequate awareness to understand the seriousness of the crime or to recognize that this is objectionable to the fair female way of behaving or feeling of dignity concerned female's relationships with others.

² *Ramkripal S/O Shyamlal Charmakar v State Of Madhya Pradesh* (2007) Appeal (Criminal) No. 370/2007

³ *State of Punjab v Major Singh* (1967), AIR 63

⁴ Indian Penal Code, 1860, s 509

STATUTORY PROVISIONS

Section 354 of the Indian Penal Code states the assault or criminal force on a woman and the intent to outrage her modesty. This section explains what is considered 'outraging the modesty of a woman'. It explains that whosoever uses unlawful criminal force on women with intent or acquaintance that such an act might outrage her modesty, is to be held liable.

The following are the essential elements that must be present in order for an offence under Section 354 to be committed:

- That the individual who is assaulted must be a woman.
- That the accused used criminal force on her.
- That the criminal force used must be with the intention to outrage a woman's modesty.

A violation of Section 354 is penalised with imprisonment for a time period of not less than one year but which may extend to five years, a fine, or both. The offence under this provision is non-bailable and cognizable that can be tried by any magistrate. Therefore, to make a person liable under this section, it must be proved that he/she applies any unlawful force against a woman, with the intent or with an understanding that such an action would offend her decency and modesty. Section 509 of the Indian Penal Code, 1860 states, Word, gesture or act intended to insult the modesty of a woman. This section explains what constitutes an insult to the modesty of a woman. It states that when someone uses any word or makes any sound or symbolic gesture or shows any object with the intention to insult the modesty of any woman shall be held liable for the offence. This section is punishable with simple imprisonment for a term of up to one year, or fine, or both.

The offence committed under this provision is bailable, cognizable, and compoundable with the authorization of the Court. Section 10⁵ of the Indian Penal Code, 1860 defines the term "woman". It states, that the term "woman" refers to any female human being of any age. Section 351⁶ of the Indian Penal Code, 1860 states what assault is. This section defines assault

⁵ Indian Penal Code, 1860, s 10

⁶ Indian Penal Code, 1860, s 351

as any expression, gesture, or preparation made with the intention or knowledge to apprehend the person that criminal force might be used against him by the person making those gestures. Section 350⁷ of the Indian Penal Code,1860 states what is criminal force. This section explains that whosoever uses force against another person without his consent, and with an intention to commit an offence or having the knowledge that the use of such force might cause injury, fear, or annoyance to whom the force is applied, is said to use criminal force against the other.

RELEVANT CASE LAWS

State of Punjab v Major Singh: This is one of the most prominent cases involving the offence of outraging a woman's modesty. In this case, Major Singh was guilty of intervening with a seven-and-a-half-month-old infant's vagina and outraging her modesty in this instance. The victim was a seven-and-a-half-month-old baby. She hasn't acquired a sense of shame and was also not aware of her sexuality. Nonetheless, she possesses modesty, which is her gender trait, from the minute she is born. In this section, modesty must be considered as a trait of a human female, regardless of the mere fact that whether the sense of modesty has been acquired by her or not.

This case is an appeal from the Punjab High Court's judgement and decision dated May 31, 1963. Three learned judges heard the case, two of whom found the accused not guilty and the third found him guilty. As a result, the state prefers this appeal. The majority of the High Court's learned Judges believed that the crime was only constituted when a woman realized that her modesty had been offended. The reaction of the women concerned served as a key test for modesty outrage. The third learned Judge, who answered affirmatively, stated that the term modesty referred to accepted conceptions of womanly modesty, rather than the notion of the woman who was the victim of the offence. He observed that this section was written keeping in mind the woman's best interests as well as public morality, decency, and respectable behaviour, and the aim of the section could only be achieved if the word modesty was presumed a characteristic of a human female, regardless of whether or not she had formed sufficient understanding to identify that an act was disrespectful to decent female

⁷ Indian Penal Code,1860, s 350

behaviour and attitude. This offence is made up of this intention or knowledge, not the woman's feelings.

The final judgement was given by a three-judge bench consisting of Justice A.K Sarkar, Justice J.R Mudholkar, and Justice R.S Bachawat. The two judges of the Supreme Court who gave the majority decision that the offender was liable for outraging the seven-month-old female child's modesty proposed the following principles:

Per Mudholkar, J.: "Under s. 354 of the Indian Penal Code, while the individual reaction of the victim to the accused would be irrelevant, when any act was done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind, that act must fall within the mischief of the section and would, constitute an offence under the section."

Per Bachawat J: "The essence of a woman's modesty is her sex. Even a female of tender age from her very birth possesses the modesty which is the attribute of her sex. Under the section, the culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive."

Thus, the court has given the following order:

The appeal is permitted, the respondent's conviction is changed to one under S. 354 I.P.C., and he is sentenced to two years of rigorous imprisonment and a fine of Rs. 1,000/-, or six months of rigorous imprisonment if he does not comply with the sentence. If the fine is paid, the child will be compensated with Rs. 500/- from the fine.

Ram Kripal Singh v State of Madhya Pradesh⁸

The term Modesty as laid down in the case of Major Singh was followed subsequently in this case. According to the Supreme Court. The core of a woman's modesty is her sex. The criminal intention of the accused is at the core of the case. A woman's reaction is important, but it is not necessarily decisive. In this section, modesty is a characteristic associated with female humans

⁸ *Ram Kripal Singh v State of Madhya Pradesh* (2007), AIR 370

as a class. It is a quality that a woman has as a virtue of her womanhood. Ramkripal, the appellant was held accountable for violating Section 376⁹ of the Indian Penal Code,1860. He was given a seven-year sentence in prison. The verdict was then appealed to the Supreme Court by Ramkripal.

In this case, the victim went to a field near Makararbandh to collect green grass. The appellant stopped her on her way back to her house and proposed sexual intercourse with her. The victim raised an objection and stated that she would notify her mother about this. The appellant told her not to talk about this to her mother and that he would offer her Rs.10/- if she did. The appellant assaulted her by throwing her to the ground, stripping her of her underwear, and ravishing her. She was weeping in pain and to this, the appellant had put her garments in her mouth to stop her from crying. The appellant's genital had penetrated her genital, causing her severe pain, and the appellant then left. She noticed that blood was dripping from her private parts, which smeared her undergarment.

When it comes to the subject of whether Section 354 of the Act applies, it must be observed that this provision makes it a crime to assault or use criminal force against a woman in order to outrage her modesty. The word 'modesty' is not defined in the Indian Penal Code. But the Court in reference to the Shorter Oxford Dictionary's definition of modesty has held that modesty is defined as the quality of being modest, as well as womanly appropriateness of conduct and behaviour; rigorous integrity of thought, speech, and conduct, in reference to women. It is an inherent resistance to improper or indecent notions that causes a reserve or a sensation of shame.

The Court has further cleared that in this case the crime of actual rape has been committed. 'Penetration, not ejaculation, is the sine qua non of the crime of rape'. Ejaculation without penetration is considered a rape attempt rather than actual rape. The definition of 'rape' under Section 375¹⁰ of IPC is sexual intercourse, and the interpretation of this section states that penetration is sufficient to establish the sexual intercourse required for the offence of rape. The

⁹ Indian Penal Code,1860, s 376

¹⁰ Indian Penal Code,1860, s 375

term "intercourse" refers to a sexual connection. That relationship has been clearly established in this case.

***Major Singh Lachhman Singh v The State*¹¹ AIR 1963 PH 443**

In this case, the term 'modesty' in relation to women has been discussed. The Court defined modesty as decorative in manner and behaviour; not forward or indecent; embarrassment fast, and absolutely pure. 'Modesty' is described as the characteristic of being modest, and when applied to women, it signifies 'womanly decency of conduct, rigorous purity of thought, speech, and conduct. Justice S Cooper said that the sense of appropriateness of conduct with respect to the woman against whom the offence is alleged to have been committed has something to do with modesty. There must be a subjective element in terms of the woman against whom the assault is performed or the criminal force used, in addition to the accused's bodily actions, such as assault or the use of criminal force. This outcome seems to continue as a result of the usage of the words outraging her modesty in Section 354 of the code.

Regardless of the age of the female victim if the assault was perpetrated or unlawful force was used against her with the intent or knowledge specified in Section 354 of the IPC, then the defendant would be held liable. This can be supported by the opinion of Justice Gurdev Singh, that the offence will be complete once the required intention or knowledge relating to the commission of an assault or use of criminal force is established, and there will be no reason to inquire into the outcome of the act complained of, and, it will not help the offender to argue that the victim of his assault was too young or too old to understand the purpose or implications of his act.

Raju Pandurang Mahale v State of Maharashtra and Anr. AIR 2004 SC 1677: In this instance, the court stated the elements that must be present for section 354 to be violated.

The following are the essential elements of the offence under Section 354 of the IPC:

- (a) That the assault must be committed against a woman.

¹¹ *Major Singh Lachhman Singh v The State* AIR 1963 PH 443

(b) She must have been subjected to criminal force by the accused.

(c) That the woman must have been subjected to criminal force in order to outrage her modesty.

According to the Supreme Court, a woman's modesty is defined by her sex. Modesty is a trait linked with female humans as a class. It is a characteristic that a female possesses as a result of her gender. The act of pulling a woman and removing her saree, followed by a request for sexual intercourse, is an outrage to a woman's modesty.¹²

ACTUAL TEST

In the case of *State of Punjab v Major Singh*, the Supreme Court established the ultimate test for determining whether a woman's modesty had been outraged. Intention and knowledge are of course states of mind.¹³ Regardless, they are evidence that can be proven. Though they are difficult to prove with direct evidence. They must always be derived from each case's facts. Only a reasonable person could draw such an inference based on the facts of the case. As a result, the test of outraging the modesty must be whether a reasonable man would believe that the offender's act was meant to or was believed to be likely to outrage the woman's modesty. As a result, rather than a woman's feelings, it is her intention or awareness that must be considered essential to be proved. If the woman's reaction was the measuring stick, it would have to be proven that the offender was aware of the woman's modesty quality and standard, because otherwise, it would be impossible to prove that he had intended to offend "her" modesty or that his act was likely to do so. In the majority of the cases, it would be impossible to prove. The terms 'intending to or knowing it to be likely that he will' must be appended to the term 'outrage her modesty.' As read, it appears that, while the woman's modesty is being considered, the term "her" was not used to imply her reaction. When read as a whole, the terms describe an act performed with intent or understanding of offending the woman's modesty, with the focus on the knowledge and intention. For the defence under Section 354 of

¹² *Raju Pandurang Mahale v State of Maharashtra and Anr.*, (2004) Appeal (Criminal) No. 616/2003

¹³ *State of Punjab* (n 3)

IPC, it is essential to prove that there was no intention to offend the modesty, beyond reasonable doubt and that the woman is the party who has consented to the act.

AMENDMENTS PROPOSED BY JUSTICE VERMA COMMITTEE

The Justice Verma Committee was set up to investigate the criminal law and any reforms required to ensure speedy justice and harsher punishment for the criminals convicted of sexual assaults against women. In the context of Section 354, the committee has proposed the following recommendations-

Section 354 of the Indian Penal Code shall be substituted or amended by the following:

- 354. Sexual Assault and Punishment for sexual assault. Intentional non-consensual sexual touching, as well as words, actions, and gestures that generate an unwelcome sexual threat or result in an unwelcome approach, were included in this provision. It encompasses the public display and distribution of pornographic materials.

After Section 354, the following new provisions shall be introduced:

- 354A¹⁴. Assault or use of criminal force on a woman with intent to disrobe her
- 354B¹⁵. Voyeurism
- 354C (1)¹⁶. Stalking
- Section 354C (2)¹⁷. Punishment for stalking

The committee also proposed that the use of remarks or statements, actions, or symbolic motions that imply an unwanted sexual menace be classified as sexual assault and be penalised by three years in prison, a fine, or both. These modifications were entirely accepted and were thereby introduced in the Indian Penal Code, 1860. Following the report given by Justice Verma Committee, the Government promulgated an ordinance and Parliament passed

¹⁴ Indian Penal Code, 1860, s 354A

¹⁵ Indian Penal Code, 1860, s 354B

¹⁶ Indian Penal Code, 1860, s 354C (1)

¹⁷ Indian Penal Code, 1860, s 354C (2)

the Criminal Law Amendment Act, 2013. This Act became operative on 3 February 2013. The goal of this Act is to safeguard women's dignity and rights.

CONCLUSION

Even after the proposed amendments and the stricter interpretation of the laws, the crime rate has remained similar. It is distressing to notice that criminal violence against women is on the rise at an alarming rate and thereby, it is the need of the hour to understand and inform everyone about the rights that the law provides to women, as well as the legal provisions that deal with the punishment of crimes against women. Given the widespread and increasing incidents of such sexual assault crimes against women and children, it is high time to pay attention to this serious issue and consider enacting strict laws to address these crimes.