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## Do “Sexually Provocative Clothes” implies an Invitation for Sexual Harassment

Jannat Chuchra<sup>a</sup>

<sup>a</sup>University of Petroleum and Energy Studies, Dehradun, India

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*Many rights are guaranteed to men by the virtue of being human only such as the Right to Liberty, Equality, Happiness, Clothing, Food, etc. Despite having all these rights the fear of styling and dressing up in the way they desire has been witnessed in almost every woman in our society. It has also been observed that usually in sexual harassment cases, the defence offers clothing to show the victim "welcomed" the sexual advances. By this, we can infer the judgemental mentality that is instilled in the mindset of our people. By stating that women wearing sexually provocative clothes welcome sexual harassment is completely unjustified because it is proven that not all individuals have the same experiences or knowledge, share the same culture, or view clothing within the same context, the variety of meanings that can be inferred from a particular combination of clothing items is vast. Kerala High court too held in its recent judgement that, everyone is free to dress however they please by the law. The norms that categorize women based on their attire and expressions cannot be tolerated, and it cannot be believed that women dress solely to attract male attention. Objectifying women by their clothes is never justifiable, and there is no reason to judge women for how they dress.*

**Keywords:** *clothing, sexual harassment, consent, liberty, equality.*

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## **INTRODUCTION**

In Today's world of Modernity, we talk of Rights such as the Right to Liberty, Equality, Happiness, Clothing, Food, etc. But do these rights as vested in papers get proper implementation? Even in Today's era, the fear of styling and dressing up every woman in the way they desire have commonly been observed. They always consider the aspect of 'approval of their dressing style' by society. Their desires become sidelined to adjust according to the proper standards set up by the community and the fear of being judged and mocked by society keeps on haunting them. We have also witnessed that women's clothing comes into question when crimes like sexual harassment, rape, etc have been committed against them.

The accuser frequently appears to argue that "She asked for it." These statements support the common misconception that women's attire entices rape, sexual assault, and sexual harassment. Consent to sex is a defence against rape and welcoming sexual advances is a defence against sexual harassment, due to this the accuser tries to demonstrate the victim's consent by the way she dresses. In our society, Inference is made by people to know the intent and attitude of others and this inference basis is the Clothing styles of others, this has been empirically proven fact. This is why people believe that clothing impliedly indicated women's consent to sexual harassment. These inferences are frequently incorrect, and clothing is not relevant or probative evidence of the wearer's intention or attitude. Additionally, the widespread misinterpretation of clothing strongly suggests that using it to convey intention or attitude will probably be negative. For these reasons, if offered to demonstrate the complainant's attitude or intent, clothing ought to be inadmissible in a criminal proceeding.

## **IMPLICATION OF CONSENT BY DIFFERENT DRESSING STYLES**

Although there is no available data showing how often clothing is introduced in rape or sexual assault cases to show consent, it does occur. In rape and sexual assault cases, the defence offers clothing to show the victim "consented." In sexual harassment cases, the defence offers clothing to show the victim "welcomed" the sexual advances. Clothing is an in-exact and more complex form of communication than language. Clothing is an ambiguous form of communication, and

it should not be introduced into evidence to indicate consent or welcomeness in the same manner as other forms of communication. Because of these reasons, the meaning of clothing can thus vary by an observer because different people associate different meanings with the same appearance or article of clothing. Given that not all individuals have the same experiences or knowledge, share the same culture, or view clothing within the same context, the variety of meanings that can be inferred from a particular combination of clothing items is vast. One person may find the lace bra delicate, glamorous, sophisticated, or feminine. However, others may find the bra provocative, sleazy, or racy.

Therefore, to assume that one particular style of clothing will imply consent on the part of women to sexual harassment or rape is a completely wrong inference.

## **HUMAN RIGHT VIOLATION**

We continue to debate whether a woman may make her judgments, whether she can dress however she pleases, and whether or not a woman's character is always determined by the length of her clothing even after 75 erstwhile years of independence. Article 11 of ICESCR talks about the right to an adequate standard of living which includes the right to clothing along with other rights too. Similarly, Article 25 of UDHR recognizes the Right to clothing. So, we can say that right to clothing is our Human Right and it must be protected, the infringement of which leads to Human right violation.<sup>1</sup>

## **RECENT JUDGEMENTS**

The Civic Chandran Case, which took place in Kerala on February 8, 2020, involved a cultural camp on Nandi Beach. After the function, the victim was taking a break near the seashore, and she claimed that Civic Chandran forcefully embraced her and outraged her modesty. This case highlighted the question of whether a woman is entitled to the right to live the way she chooses. The Kozhikode Sessions Court had noted that the complainant's photograph, provided by the

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<sup>1</sup> 'Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 25' (United Nations, 04 December 2018) <<https://www.ohchr.org/en/press-releases/2018/12/universal-declaration-human-rights-70-30-articles-30-articles-article-25>> accessed 14 November 2022

accused in support of the bail application, would explain that she "herself is exposing to dresses which are some sexually provocative one," which is what the court had observed. The accused was an activist who was accused of two similar sexual assault cases. In one of those cases, he was granted anticipatory bail. After ruling that the offence of sexual harassment is not prima facie attractive because the woman was wearing a "sexually provocative dress," the District Session Court in Kerala sparked controversy. The decision was strongly rebuked by the state women's commission.

The case involved IPC Section 354A. (Sexual harassment and punishment for sexual harassment). And it was claimed that for the reasons stated above, Sec. 354A will not constitute a strong case against the accused. Following this, the district court granted bail to the accused, citing that the victim was dressed in SEXUALLY PROVOCATIVE attire. This is just one example of the numerous women who are sexual assault victims but are too afraid to come forward due to societal stigma. The high court of Kerala expunged the "provocative dress" remark of the Kozhikode Sessions Court after much controversy, but they were unable to resist the pre-arrest bail.

According to the Kerala High court, everyone is free to dress however they please by the law. The norms that categorize women based on their attire and expressions cannot be tolerated, and it cannot be believed that women dress solely to attract male attention. Objectifying women by their clothes is never justifiable, and there is no reason to judge women for how they dress.

## **MEASURES TAKEN BY THE INDIAN GOVERNMENT AGAINST SEXUAL HARASSMENT**

A flagrant violation of women's rights to equality and dignity is included in sexual harassment. Its roots can be found in patriarchy, which is characterised by the belief that males are superior to women and that some types of violence against women are acceptable. To combat this, various laws have been enacted in India to protect women from sexual harassment. These statutes have made criminal and civil remedies attainable.

- IPC Section 294<sup>2</sup> includes performing obscene acts in any public place and singing obscene songs to annoy others. The penalty is up to three months in prison or a fine, or both.
- IPC Section 354(A)<sup>3</sup> states that it is a crime to demand sexual favours, display pornography, or have physical contact despite indications of disinterest. The accused can face jail time ranging from one to three years, a fine, or both.
- Section 354 (B)<sup>4</sup> of the IPC deals with forcing a woman to undress, and it carries a sentence of three to seven years in prison and a fine.
- Under Section 354 (C)<sup>5</sup> of the IPC, Voyeurism is prohibited under this clause and includes seeing, recording, or disseminating photos of a woman doing a private act without getting her permission. The man might spend one to three years in prison. However, if that man is found guilty a second time, he may spend three to seven years in jail and pay a fine.
- IPC Section 354 (D)<sup>6</sup> states that following someone with or without their knowledge is known as stalking and is considered an act of sexual harassment. The punishment will be a jail term ranging from 3 – 5 years coupled with a fine.
- IPC Section 509<sup>7</sup> states that insulting the modesty of a woman by making sexually coloured remarks about her in a public space that intrudes on her privacy is punishable by jail for 3 years and a fine.

The police are to record an FIR in cases of sexual harassment/rape and any refusal by a police officer shall result in his imprisonment which may extend from 6 months to 2 years along with a fine (S. 166A, I.P.C.)<sup>8</sup> Also, The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013, has been enacted to prevent incidents of Sexual

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<sup>2</sup> Indian Penal Code, 1860, s 294

<sup>3</sup> Indian Penal Code, 1860, s 354(A)

<sup>4</sup> Indian Penal Code, 1860, s 354 (B)

<sup>5</sup> Indian Penal Code, 1860, s 354 (C)

<sup>6</sup> Indian Penal Code, 1860, s 354 (D)

<sup>7</sup> Indian Penal Code, 1860, s 509

<sup>8</sup> Indian Penal Code, 1860, s 166A

Harassment in the workplace. Under this act definition of Sexual harassment has also been provided.

#### A. What Is Sexual Harassment?

Any physical, psychological, graphical, emotional, verbal, written, or electronic behaviour, as well as offensive gestures, etc. is deemed unacceptable by the policy. The other person's dignity should not be violated by any action, whether intentional or not. If this is done, then the person who did it will face serious disciplinary action.

#### B. There are many types of sexual harassment:

Unwanted pressure for sexual favours,

Unwanted dating pressure,

Unwanted remarks or questions about sexuality,

Using words like "girl," "hunk," "doll," "babe," or "honey" to describe an adult, sexist remarks, bringing up sexual issues in workplace discussions, asking about sexual preferences, fantasies, or past, and many more.

### **RECOMMENDATIONS FOR TEENAGERS & YOUNG ADULTS**

#### A. FOR WOMEN AND GIRLS

**Recognize Sexual Harassment:** Harassment is anything that humiliates or uncomfortably intimidates you. What matters is not what the other person intends, but rather how you feel. You are entitled to protest if you experience harassment. Loudly and firmly say "NO": When you are being harassed, confront the offender. Preparing a few responses, such as "I don't like this" or "STOP," might be helpful. To make it automatic, you should practice saying it to yourself.

**Be alert and self-assured:** Keep your cool and look the people who are threatening you straight in the eye. To convey that you are aware of who you are and that you have the right to be where you are, speak with clarity and firmness. **Support and socialize:** You might feel vulnerable when

you are alone. Being able to talk to and support one's friends and acquaintances can go a long way toward preventing harassment. In addition, if anyone is being harassed in your presence, always be prepared to respond and offer support.

Report the incident: It is fundamental to make a formal complaint to the police for action in case of sexual harassment. Sexual harassment is a crime and must not be ignored. It is a serious violation of human rights and must be reported to the concerned authorities. Don't feel bad about being harassed: Harassment or any other form of unwelcome behaviour is not a result of your attire or attitude. Harassment is wrong on the part of men and not women. Not being able to respect women, disgraces men and not women. Stand strong and fight for justice because it is your right.

## B. FOR MEN AND BOYS

Be mindful of your behaviour around women. Women detest intimidation, excessive friendliness, and coercive intimacy. Act and speak with respect. Stay away from using sexist language, slang, and profanity. Consider practising polite, appropriate ways of speaking and acting that aren't overly familiar or scary. Treat women equally as men. Recognize the value of women as friends and co-workers. Healthy connections are frequently put at risk by a superiority complex.

Disregard the notion that women enjoy being "teased." Sexual harassment is an offence and is undesirable. Women detest being harassed and are never amused by offensive comments or taunting. Their denial does not imply approval. Contrary to clichés from Hindi movies, harassment makes people feel uneasy and apprehensive. Harassment even against women who dress "daringly" is not justified. Neither your attitude nor your behaviour is reflected in what you wear. Both men and women are entitled to dress however they see fit. Sexual harassment is a crime that cannot be excused in any way.

## CONCLUSION

All of these incidents have always highlighted the reverse mentality of society, which considers the length of a woman's dress to be a reflection of her modesty. Women are equally capable as men, and have achieved equal milestones still the fingers are always pointed toward women, even in the 21st century. Rights have been provided to everyone but successful implementation of the same has not been achieved yet. So, what's needed is the promotion of respect for women, especially among today's young generation. As we usually see youngsters have started to commonly use slang, whose literal meaning is quite offensive for women in our society. As language plays a very important role in setting up the mentality of society and in the propagation of ideas, it becomes our duty to give them the right education on what is right and wrong. As it's not women who need saving it's the boys who need saving here.

No means no, and women's skirts, dresses, shirts, socks, shoes, scarves, hats, or hair ties do not say otherwise. The view that dressing style has anything to do with the crimes against women is nothing but a myth as it is the observer's point of view and knowledge that allows him to decide whether he chooses to commit a crime or not. And subject to the laws of the land, everyone has the right of freedom to wear whatever he/she wants to wear and it cannot be curtailed.