



Outraging the modesty of a woman

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Abstract

The word 'Modesty' has not been defined anywhere in the code. The dictionary meaning of the word 'Modesty' is a state of being free from undue familiarities. 'Outrage' means an act of extreme violence and cruelty. Usually the courts go by the popular meaning.

The Supreme Court has defined the term 'Modesty' in the Ramkripal case, wherein the accused convicted of rape, sought leniency pleading that he was, at worst guilty of outraging the woman's modesty under section 354, IPC and not rape. The accused was made liable for rape and the court said "the essence of woman's modesty is her sex." Any person who assaults a woman or uses criminal force on any woman with intention to outrage her modesty is guilty of an offence under section 354 of the Indian Penal Code like the act of hugging a woman without her consent, kissing her, touching her private part or any act which is likely to put her to shame by outraging her modesty. He may also do so with the knowledge that by doing so he would be outraging the modesty of the woman and any person who utters any word or makes any sound or gesture or exhibits any object with the intention that it will be seen or heard by such woman or will intrude up on her privacy is guilty of insulting the modesty of that woman as per section 509 of the code like writing letters using vulgar language, making vulgar gestures, displaying vulgar figures, singing songs with vulgar suggestions, exhibiting her nude body.

The offence under section 354 is punishable with fine or imprisonment up to 2 years or both while that under section 509 is punishable with a fine or imprisonment of 3 year. The offence under section 354 is cognizable and non-bailable in nature whereas the offence under section 509 are cognizable, bailable and compoundable with the permission of the court.

Keywords: cognizable, modesty, outrage, vulgar gestures

Background

On December 23, 2012 a three-member Committee headed by former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide quicker trial and enhance punishment for criminals, accused of committing Sexual assault against women. The report was submitted by Committee on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, child sexual abuse, trafficking, medical examination of victims, electoral and educational reforms.

Electoral reforms

The committee only recommended for the amendment of the Representation of People Act, 1951. Currently, the Acts provide for disqualification of Candidates for crime related to untouchability, secularism, fairness of elections, sati and dowry. The committee recommended that candidates should be disqualified for committing sexual offences.

Education reforms

The committee also recommended that children's experiences should not be gendered. It was also recommended that sexuality education should also be imparted to children. Adult literacy programs are even necessary for gender empowerment.

Introduction

In the wake of increasing crime against women, there is a need for laws that deal with offences against women. The marital offences against women includes bigamy ^[1], adultery ^[2]. The one that is most common offence is cruelty.

Over the time, the courts have expanded the ambit of the definition to include within it different instances. These include gestures, words, etc. that violate the privacy of the woman. These are the offences that are understood to outrage the modesty of women. Modesty is the attribute of the womanhood. All women irrespective of their age, possess modesty in varying levels that is capable of being outraged.

The word 'modesty' has not been defined anywhere in the code. The dictionary meaning of the modesty is 'a state of being free from undue familiarities outrage' ^[3], which means an act which is of extreme violence and cruelty. Usually the courts go by the general meaning and assert that males should observe sense of propriety of behaviour in their relations with women. In one case the Supreme Court has defined the word 'modesty' it states 'the essence of women's modesty is her sex' ^[4]. 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 ^[5]. It is a virtue which is attached to a female on account of her sex ^[6].

The ultimate test for whether the modesty of a woman has been outraged, assaulted is that the action of the offender should be such that it may be perceived as one which causes annoyance or insult to women's sense of decency and modesty or an affront to her dignity.

Assault or Criminal Force To a woman with intention of outrage her modesty

Whoever uses criminal force or assaults to any women, intending to outrage or knowing it to be likely that he will

there by outrage her modesty ^[8], (shall be punished with imprisonment 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) ^[9]. The offence is Cognizable, Non-bailable and triable by any magistrate.

Section 354 IPC deals with the offence which is generally known as molestation. It applies when the acts of the accused go beyond causing insult to the modesty of a woman and there is clear threat of physical harm to her which also shocks the sense of modesty. Section 354 IPC deals with the case of assault or criminal force to women with intent to outrage her modesty ^[10]. The provision of Section 354 of IPC has been enacted to safeguard public morality and decent behaviour. Explaining this the court in *Surender Nath v. State of Madhya Pradesh* ^[11] held that pushing the bell bottom pant or Chadar down that what is normally is an indecent behaviour. By differentiating Insult to modesty and outraging the modesty the court in *Bankey v. state of U.P.*, 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. The essential element of the offence under section 354 is the element of criminal force or assault.

Word gestures or act intended to insult the modesty of a woman

Whoever intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by chastity such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years and also with fine ^[12].

Section 509 is also referred as the 'Eve Teasing Section'. The main object of the Section is to protect the and modesty of a woman. 'Eve Teasing' has become pernicious, horrid and disgusting practice ^[13].

The Act was passed in which section 509 of the Penal Code, for the words 'shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both', the words 'shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine' has been substituted ^[14]. In the famous case of *Major Singh Lachhman Singh v. The State* the word "modest" with regard to woman has been considered. It says that modesty is 'Decorous in manner and conduct; not forward or lewd; shame fast, which means when used for men, it means the quality of being modest, and in relation to woman, 'womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct' ^[15]. In *Swapna Barman v. Subir Das*, 'Under Section 509 the word 'modesty' does not lead only to the contemplation of sexual relationship of an indecent character but also includes indecency, it does not exclude all other acts falling short of downright indecency ^[16].

The essential ingredient of this offence is an insult to the modesty of a woman. If a man exposes his person in an indecent way or use obscene words, he is held to be an offender under section 509 of Indian Penal Code. The intention to insult the modesty of a woman should be coupled with the fact that the insult is caused, which means that the other party should understand that he has been insulted. The intention to insult the modesty is very

important as held in *Santha v. State of Kerala*, that even when a man exposes his private organs to women, he would be charged under section 509 of IPC ^[17]. The offence may occur in public or private place. In *Deputy Inspector General Police v. Sauthiram*, the court stated that the experience of woman and girl children are horrendous and painful ordeal in over-crowded buses, metros, trains etc ^[18].

As per the Justice Verma Committee Report, certain modifications were made under this Section. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 3 years of imprisonment or fine or both ^[19]. On the question of Section 354 relating to outraging modesty of women and indecent assaults, the report suggested that Section 354A, 354B, 354C and 354D must be inserted in section 354 and also opined that eve teasing was been amply covered under Section 509 of the IPC. Where there is threat of physical contact or physical contact, the offender can be charged under Section 354 of the same code, punishing a person who "uses criminal force or assaults any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty. Punishment for this is imprisonment of either description up to five years and fine which was earlier 2 years. Both the offences are, as the law now stands, cognizable ^[20].

Supreme Court Guidelines on Eve-Teasing

Some urgent measures are necessary to be taken, before undertaking suitable legislation to curb eve-teasing so that it can be curtailed to some extent. We are inclined to give the following directions in public interest:

1. All the Union Territories and State Government are directed to depute plain clothed female police officers in the precincts of bus-stands, metro stations, railway stations, shopping malls, beaches, places of worship cinema theatres, parks, public service vehicles etc. So that they can supervise and monitor incidents of eve-teasing.
2. The State Government and Union territories will be further directed to install CCTV itself would be a deterrent and if detected, the offender could be caught.
3. Person's in-charge of the places of worship, bus stands, cinema theatres, educational institutions, railway stations have to take steps as they deem fit to prevent eve-teasing, within their precincts and, if a complaint is being made, the information must be passed to the nearest police station or the Women's Help Centre.
4. Where any eve-teasing is committed either by the passengers or the persons in charge of the vehicles, in a public service vehicle, the crew of such vehicle shall take such vehicle to the nearest police station, on a complaint made by the aggrieved person, and give information to the police. Failure to do so will lead to the cancellation of the permit to ply.
5. Directions are given to the State Government and Union Territories for establishment of Women's Help Centre in various cities and towns, to curb eve-teasing within three months.
6. There must be exhibited suitable boards cautioning acts of eve-teasing, in all public places including precincts of bus stands, railway stations educational institutions, parties beaches places of worship, public services vehicles etc.

7. The passers –by on noticing such incidents, should report the nearest police station or to the women help line to save the victims from such crimes.
8. The Union Territories and State government of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of police so as to take effective and proper measures to curb such incidents of eve-teasing^[21].

Woman can be tried for the offence under section 354 and 509

Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will there by outrage her modesty^[22].

Whoever intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by chastity such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years or fine^[23].

These Section are not gender specific, and the offender can be both male and female. The essential ingredient of this offence is an insult to the modesty of a woman. In other words, the facts and circumstance have to be considered in order to conclude whether the act caused modesty or not.

Cases Dealing With Section 354 And 509

Section 354 provides for outraging the modesty of a woman. According to this whoever assaults or uses criminal force on any woman, intending to outrage or knowing it to be likely that he will thereby, outrage her modesty, shall be punished with imprisonment or either description for a term which may extend to two years, or with fine, or with both^[24].

State of Punjab v. Major Singh, air 1967 S.C 63.

Major Singh was accused of interfering with the vagina of seven and half month-old child and deemed to outrage her modesty. This case is an appeal from the judgement and order dated May 31, 1963 of the Punjab High Court. The matter was heard by three learned Judges, two of whom did not hold the person guilty while the third judge held him guilty. Hence this appeal is preferred by the state^[25].

The difficulty in this case was caused by the words “outrage her modesty”. The learned judges of the High Court held, that these words showed that there must be a subjective element so far as the woman against whom criminal force was used is concerned. The judges took the view that the offence could be said to have been committed only when the women felt that her modesty had been outraged. According to them, the test of outrage of modesty was the reaction of the women concerned^[26].

The view of the third judge, who answered the question in the affirmative, was that the word “modesty” meant, accepted notions of womanly modesty and not the notions of the women against whom the offence was committed. According to his observation the section was intended as much in the interest of the woman concerned as in the interest of public morality and decent behaviour. The Chief Justice of Supreme Court also observed that the offence does not depend on the reaction of the woman subjected to the assault or use of criminal force. This intention or

knowledge is the ingredient of the offence and not the woman’s feelings^[27].

It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence^[28]. In same way if the knowledge or intention was proved then the fact that woman did not feel her modesty was outraged is irrelevant as the necessary ingredient would have been proved. The sense of modesty varies from woman to woman. Knowledge and intention are the course states of mind. They cannot be proved by direct evidence but have to be inferred from circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it^[29].

The outrage modesty’s test must, therefore, be whether a reasonable man will think that the act of the offender was known to be likely to or was intended to outrage the modesty of the woman.

The majority judgement allowed the appeal and the conviction of the respondent was altered to one under section 354 of IPC, and he was awarded rigorous imprisonment for a term of two years and a fine of rupees 1000/-. Out of the fine, if realized, Rupees 500/- shall be paid as compensation to the child^[30].

Ramkripal Singh v. State of Madhya Pradesh air 2007(cr.l.) Sc 370

Ramkripal was found guilty of offences punishable under section 376 of IPC and was punished with imprisonment for seven years. Ramkripal then challenged this decision in appellat court.

In a field near Makrarbandh the victim went to bring green grass and after collecting it she was on her way back to home. Ramkripal came and proposed her for sexual intercourse. The victim protested and also told that she will inform her mother. The appellat persuaded her not to tell anything to her mother and he will provide Rs. 10/- to her. The appellat threw her on ground and removed her clothes and ravished her. The victim was crying in pain and to this the appellat had stuffed her mouth with clothes. He gave her immense pain as his genital penetrated into her genital, and thereafter he left her. She saw blood flowing from her private part which has besmeared her undergarment^[31].

In this case it was noted that the provision makes penal assault or use of criminal force to a woman to outrage her modesty.

The essential ingredients of offence under Section 354 IPC are:

1. That the assault must be a woman.
2. That the accused have used criminal force on her.
3. That the criminal force have been used on the woman intending thereby to outrage her modesty^[32].

An outrage to female modesty has nowhere been defined in IPC. It was stated in this case that woman’s sex is the essence of her modesty. The crux of the matter is the culpable intention of the accused. The act of pulling a woman, removing her sari and requesting her for sexual intercourse, is such as would be an outrage to the modesty of a woman. As indicated above, the word modesty has not been defied in IPC, but it defines the word ‘modesty’ in relation to woman as follows:

“Decorous in manner and conduct; not forward or lower;

Shame-fast; scrupulously chaste^[34].

The quality of being modest has been defined as modesty; and in relation to woman, scrupulous chastity of thought, speech and conduct, womanly propriety of behaviour. Therefore, this case was an important case as the term 'modesty' was defined.

Other important cases dealing with section 354 and 509 of Indian penal code.

Section 354 of the Indian Penal Code provides for outraging the modesty. According to this section- whoever assaults or uses criminal force on any woman, intending to outrage or knowing it to be likely that he will thereby, outrage her modesty, shall be punished with imprisonment or either description for a term which may extend to two years, or with fine, or with both^[34].

State V. Vijay Singh^[35]

It was held that section 10 IPC rules out any consideration of the age of the victim for the determination of the guilt of the accused^[36].

Ram das v. State of West Beangal^[37]

Though the assault was there but 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 offence under section 354 IPC was concerned all the allegations are not sufficient to fulfil the necessary ingredient^[38].

State v. Hetram^[39]

A girl of about 15 years of age was coming from her mother's place. The accused suddenly appeared from a lane he dragged her towards other side of lane, and took her to the secluded spot, it was held sufficient to book the accused under section 354 IPC^[40].

Conclusion

The essence of women's modesty is her sex^[41]. The word modesty is an attribute associated with female human being which reflects a particular class. It is a virtue which is attached to a female on account of her sex^[42]. The word 'modesty' is not to be interpreted with reference to a particular victim of an act but rather it is to be interpreted as an attribute associated with female human beings of a class^[43]. Section 354 deals with the cases of criminal force and assault to women with the intention of outraging the modesty of women on the other side Section 509 talks about words, gestures or act which intended to insult the modesty of women. The test to know whether the modesty of women has been outraged, assaulted is that the action of the offender must be such that it may be perceived as the one which is capable of shocking sense of decency of a woman. There is very wide difference between Section 354 and Section 509; Section 354 deals with outraging the modesty of the woman whereas Section 509 specifically talks about the insult and modesty of the women.

As per the Justice Verma Committee Report, certain modifications were done under Section 354 and Section 509 of the IPC. The committee has also suggested that the use of words, acts or gestures that creates 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. It has been observed that in cases dealing with Section 354 and Section 509, Ramkripal Singh v. State of Madhya Pradesh^[44] was an important case which has defined modesty of a woman. The case State of Punjab v. Major Singh and Rupan Deol Bajaj case^[45] had specifically dealt with the offence of outraging the modesty of women as well as insult to modesty of women i.e. both Section 354 and Section 509.

As the criminal activities against women are increasing at an alarming rate, there is a need and it is essential to understand the provision in law which deals with the punishment of such offences committed against women.

Reference

1. University of Petroleum and Energy Studies, Dehradun.
2. Indian Penal Code, 1860, Section 494.
3. Indian Penal Code, 1860, Section 497.
4. Oxford English Dictionary.
5. Ramkripal Singh v. State of Madhya Pradesh AIR 2007 (crl.) SC 370.
6. Aman Kumar v. State of Haryana AIR 2004 SC 1497.
7. Tarkeshwar Sahu v. State of Bihar (2006) 8 SCC 560.
8. Criminal Law (Amendment) Act, 2013
9. Indian Penal Code, 1860, Section 354.
10. Justice KT Thomas, MA Rashid, '*Ratanlal and Dhirajlal The Indian Penal Code*', 34th edition, Lexis Nexis. 810.
11. Surender Nath v. State of Madhya Pradesh 1982 Cr LJ (M.P. HC Notes), 10(2).
12. Indian Penal Code, 1860, Section 509.
13. Justice KT Thomas, MA Rashid, '*Ratanlal and Dhirajlal The Indian Penal Code*', 34th edition, Lexis Nexis. 811.
14. Criminal Law (Amendment) Act, 2013.
15. Major Singh Lachhman Singh v. The State AIR 1963 PH 443.
16. Swapna Barman v. Subir Das (2004)1GLR 168.
17. Santha v. State of Kerala 2006 (1) KLT 249.
18. Deputy inspector general police v. Sauthiram SCC 598 AIR 2013
19. Report on the Committee on Amendments to Criminal Law, (Justice Verma Committee), 101-102 2013.
20. Report on the Committee on Amendments to Criminal Law, (Justice Verma Committee), 101-102 2013.
21. Supreme Court Guidelines on Eve-Teasing', accessed on 15 Aug, 2017, 5:00pm, www.lawweb.in/2013/05/guidlines-for-curtailing-eve-teasing.
22. Criminal Law (Amendment) Act, 2013
23. Indian Penal Code, 1860, Section 509.
24. Indian Penal Code, 1860, Section 354.
25. State of Punjab v. Major Singh, AIR 1967 S.C 63.
26. Ibid.pp10.
27. Ibid.pp12.
28. Ibid.pp11.
29. State of Punjab v. Major Singh, AIR 1967 S.C 63.
30. State of Punjab v. Major Singh, AIR 1967 S.C 63.
31. 'Facts of Ramkripal v. State of M.P Case', accessed on 18th Aug. 2017, 3:00pm, www.firstpost.com/tag/ramkripal-so-shyamlal-charmakar-v.-state-of...
32. Ramkripal S/O Shyamlal Charmakar v. State of Madhya Pradesh.
33. Ramkripal Singh v. State of Madhya Pradesh AIR 2007 (crl.) SC 370.
34. Indian Penal Code,1860, Section 354.

35. 297(Raj) Cr C (297)
36. State v. Vijay Singh 297(Raj) Cr C (297)
37. AIR 1954 SC 711
38. Ram Das v. State of West Bengal AIR 1954 SC 711.
39. 1982(2) Cr L.J. (Raj) 522
40. State v. Hetram 1982(2) Cr L.J. (Raj) 522
41. Ramkripal Singh v. State of Madhya Pradesh AIR 2007 (cr.) SC 370.
42. Tarkeshwar Singh v. State of Bihar (2006) 8 SCC 560
43. Aman Kumar v. State of Haryana AIR 2004 SC 1497.
44. AIR 2007 (cr.) SC 370.
45. AIR 1995 6 SCC 194.