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Outraging the modesty of a woman & Laws in India: An overview

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Abstract: *Indian Society places great emphasis on the modesty of woman and any act that is seen as an insult to modesty is considered to be a grave offence. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended to insult the same. The offence is considered to be cognizable, non-bailable, and non-compoundable by nature. As per the Indian Penal Code, 1860, the punishment for outraging a woman's modesty is imprisonment of either description for a term that shall not be less than one year but which may extend to five years, and shall also be liable to a fine. The Criminal Amendment Act, 2013, no doubt, emerged as a revolutionary amendment when it came to the protection of women, as it provides various safeguards to women in cases of acid attacks, and sexual offences.*

Key words: Unique features, untraditional Ideas, Shantiniketan, Indian Society, modesty

With the development of society, increase in population in small or large area; needs of people have been instrumental in rise of crimes. It was existing since old days. It is increasing day by day as population is increasing and people demands are not being completed. Since very beginning, kings, Jamindars, rulers used to control the criminal acts by very hard punishment and even death penalty in the opening place of their kingdom. During British Raj, there was also harsh punishments for criminal acts.

Indian Society places great emphasis on the modesty of woman and any act that is seen as an insult to modesty is considered to be a grave offence. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended to insult the same. The offence is considered to be cognizable, non-bailable, and non-compoundable by nature. In recent years, the issue of the safety and securities of women has come to the forefront in India, with several high-profile cases of sexual offences against women being reported. The Indian Government has taken steps to strengthen laws against sexual offences, including the introduction of stricter deterrents for rape and sexual assault. However, sexual offences against women continue to be a major problem in India and efforts are still needed to ensure that laws are effectively implemented. It is important for individuals to be aware of their rights and for society to take a zero-tolerance approach towards sexual offences. This article aims to provide an overview of the offence of outraging the modesty of women in India and efforts being made to strengthen laws against sexual offence.

The offence of outraging the modesty of a woman in India is a serious offence defined under section 354 of the Indian Penal Code, 1980. The section states that any person who 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 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 to fine.

Punishment for the offence of outraging of female's modesty under IPC, 1860 : As per the Indian Penal Code, 1860, the punishment for outraging a woman's modesty is imprisonment of either description for a term that shall not be less than one year but which may extend to five years, and shall also be liable to a fine. This means that if a person is found guilty of outraging the modesty of a woman, he can be sentenced to a minimum of one year in prison and a maximum of five years in prison. The offender will also be liable for a fine.



It is important to note that the punishment for this offence is not limited to imprisonment and fine but also includes other forms of punishment such as community service, counseling, and rehabilitation programs. The court also has the discretion to impose additional punishment if it deems it necessary. In cases of repeat or aggravating circumstances, the court can impose a stricter punishment. In cases of gang rape or rape of a minor, the punishment is imprisonment for a term that shall not be less than 20 years, but which may extend to life imprisonment, and shall also be liable to a fine.

In addition, certain laws such as the Protection of Children from Sexual Offence Act, 2012 (POCSO), and the Criminal law (Amendment)Act, 2013 also provide for harsher punishment for sexual offences against children. It is important to note that the punishment for the offence of outraging the modesty of a woman is not limited to the offender alone. The Indian Judiciary has held that the punishment for the offence must be such to deter the offender from committing the crime again and also to deter others from committing similar offences.

1. The Criminal Law (Amendment) Act, 2013 : Criminal Law in India was amended in Year 2013 and the ordinance may be called the Criminal Law (Amendment) Ordinance, 2013. It shall come into force at once.

In the Indian Panel Code in Section 100, after Clause Sixthly, the following clause shall be inserted namely :“Seventhly – An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

After section 16 of the Penal Code, the following sections shall be inserted namely : “166A. Whoever, being a public servant, Knowingly disobeys any direction of law which prohibits him from requiring the attendance at any place of any person for the purpose investigation into an offence or any over matter, or

- (a) Knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- (b) Fails to record any information given to him under sub-section (l) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

Shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

166B. Whoever, being in charge of a hospital, public or private, whether run by the Central Government , the State Government, the local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

In Section 354 of the Penal Code, for the word “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”, the words “shall be punished with imprisonment of either description for a term of one year which may extend to five years and shall also be liable to fine” shall be submitted.

After section 354 of the Penal Code, the following sections shall be inserted, namely :‘354A.

1. The following acts or behavior shall constitute the offence of sexual harassment –

- i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. a demand or request for sexual favour; or
- iii. making sexually coloured remarks; or
- iv. forcibly showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.



2. Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

3. Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both. 354B. Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than 3 years but which may extend to seven years and with fine.

354C. Whoever watches, or captures the image of, a woman engaging in private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

In one case of Modesty of Woman, the Supreme Court of India has maintained the decision of High Court of M.P. at Judicature Jabalpur : Ramkripal S/o Shyam Lal Charmakar vs State of Madhya Pradesh on 19 March, 2007 :- the following Judgement followed (Arising out of SLP (Crl.) No. 5881 of 2006) Dr. Arijit Pasayat, J.

The Supreme Court clarified this issue in 2007, in this case where it is noted that although the IPC does not define what constitutes an outrage to female modesty, the “essence of a woman’s modesty is her sex”.

“Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court at Jabalpur, dismissing the appeal filed by the appellant against the judgment

of the learned III Additional Sessions Judge, Satna. Appellant was found guilty of offences punishable under Section 376 of the India Penal Code, 1860 (in short the ‘IPC’) and was sentenced to undergo RI for seven years.

On completion of investigation the charge-sheet was placed. Accused faced trial. In order to establish the accusations the prosecution examined 10 witnesses. The accused pleaded innocence and false implication. According to him, a false case was posed at the instance of Rambhan Singh, Surpanch (PW-3). The Trial Court found the evidence of the prosecutrix to be cogent and credible and accordingly as noted above, it found the accused guilty.

In appeal, the conclusions of the Trial Court were affirmed by the High Court.

In support of the appeal, Ms. Promila, learned Amicus Curiae appearing for the appellant submitted that the Trial Court and the High Court failed to notice inconsistencies in the evidence of the witnesses and in any event no offence under Section 376 IPC is made out. Strong reliance is placed on the evidence of the doctors PW-7 and PW-8 to contend that at the most of the offence can be in terms of Section 354 IPC or Section 511 IPC.

Per contra, learned counsel for the respondent-State submitted that the Trial Court and the High Court have analysed the evidence in great detail and have rightly concluded that offence punishable under Section 376 IPC.

Coming to the question as to whether Section 35 of the Act has any application, it is to be noted that the provision makes penal the assault or use of criminal force to a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are :

- a. That the assault must be on a woman.
- b. That the accused must have used criminal force on her.



c. That the criminal force must have been used on the woman intending thereby to outrage her modesty.

The evidence of PW-7 is also relevant. It has been noted by the High Court as follows : “PW-7, Dr. Asha Saxena has deposed to have examined PW-1, Jalebia on 29.2.1998 and she had found superficial laceration present over perineum just at the bottom of labia majora and Labia Minora, the size of which is <cms. X<cms. She has further deposed that the hymen membrane of the victim was found torn and there was fresh bleeding from slight touch and she had also found that her vaginal orifice admits one finger with difficulty.”

Above being the position, we find no merit in this appeal which is accordingly dismissed. We record our appreciation for Ms. Promila, learned Amicus Curiae who placed the relevant materials for consideration “.

In other case of Nirbhaya rape case (Mukesh & Anr. Vs. State (NCT of Delhi) & Others), the Supreme Court ruled that the case fell within the ambit of rarest of the rare cases. Thus by considering all the facts and circumstances of the case, HC ruled for the death penalty of all the four convicts. Following the judgement:

All six men, including a juvenile, were convicted in the case.

Ram Singh, a bus driver, committed suicide during the trial.

Mukesh, Akshay Paswan, and Vinay were sentenced to 3 years in a Reform Facility.

The Supreme Court dismissed the review petition filed by Akshay Singh on 18 December 2019. The 4 convicts, who received the death penalty for the gang rape and murder of medical student, were hanged on 3 March 2020.

The death warrant was issued after the Tihar Jail Authorities informed the Trial Court that 3 of the convicts had exhausted all legal opinions.

Akshay Singh had not filed a Curative Petition or Mercy Plea to the President which was refused.

After Nirbhaya Gang rape case happened in December, 2012, the Criminal Law (Amendment) Act, 2013 was approved. The Act amended a number of directions of the Criminal Procedure Code, Indian Evidence Act, and the Indian Penal Code. By way of this amendment, several new offences have been recognized and incorporated into the Indian Penal Code, including acid attack (Section 326 A & B), voyeurism (Section 354C), stalking (Section 354D) attempt to disrobe a woman (Section 354B), sexual harassment (354A), and sexual assault which causes death or injury causing a person to be in persistent vegetative state (Section 376A). The Act also amended the already existing offences to make them more stringent. The Rape laws got strict but the rape offences are still that brutal like Shakti Mills gang Rape 2013, 5 men including a juvenile raped a 22 years old Photo Journalist at Mumbai Shakti Mills compound weeks later a 18 year old telephone operator reported that she was also raped in the same compound of that mill in March 2014 Mumbai Court found 5 men guilty in those 2 rape cases and awarded death penalty to 3 repeat offenders but in 2021 Bombay High Court changed the death penalty to life imprisonment.

Unnatural offences according to Section 377 of IPC: Unnatural offences means which are against the order of nature for – anal sex or sodomy which is usually present in a majority of the rape cases. In the case of Sanil Kumar Vs. State of Kerala and Ors.(4), the accused who promised the victim to marry for committed rape which included unnatural offences too. In the case of Raju vs. State of Haryana (5), the appellant was found guilty of committing sodomy upon a female of nine years and sentenced to three years imprisonment, considering the nature of offence and age of the appellant, the court ordered the authorities to keep the accused in an institution rather than imprisoning him in a cell so that the accused can regret and consider what he did and it is to be considered as adequate punishment which can be given under such circumstances.



II. Amendments to the Indian Evidence Act, 1872 :A. After Section 53 of the Indian Evidence Act, 1872 , the following section shall be inserted, namely:

“53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376S or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

For section 114 of the Evidence Act, the following section shall be substituted , namely ‘114A.

In a prosecution for sexual assault under clause (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), or clause (m) of sub-section (2) of section 376 of the Indian Penal Code , where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person states in that person’s evidence before the court that such person did not consent, the court shall presume that such person did not consent.

For section 119 of the Evidence Act, the following section shall be substituted, namely- “119.

A- witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the court shall take the assistance of a special educator or interpreter in recording the statement, and such statement videographed.”

B- In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:-

“ Provided that in a prosecution for an offence under sub-section(1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the India Penal Code or for attempt to commit any such offence, where the question of consent in an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”

Conclusion : Central Govt. has framed many amendments in Criminal Laws specially on the modesty of woman and child welfare as well as POCSO in 2012. The Criminal Law Amendment Acts, 2013 and various amendments in controlling the crimes against woman and child have been instrumental in taking fast decisions by the various courts in India.

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