

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

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The Offence of Outraging the Modesty of a Woman

ARSHEYA CHAUDHRY¹

ABSTRACT

Sexual offences against women have increased at a rapid rate in recent years. One such offence against women that has caused immense trauma and distress is the offence of Outraging the Modesty of a woman. This offence has been defined under Section 354 of the Indian Penal Code, 1960. In this article, the author has discussed the essential ingredients of this crime and also the legal provisions present in our justice system concerning this crime. Recent scenario regarding this crime has also been mentioned. The author has also sought to clarify the very thin distinction between the offence of outraging the modesty of a woman and the attempt to rape.

I. INTRODUCTION

The offence of Outraging the Modesty of Woman is defined under Section 354 of the Indian Penal Code, 1960. It is mostly read with Section 509 of the Indian Penal Code, 1960, which provides an elaborative and comprehensive definition of this offence. The term “modesty” has not been defined in the code. Therefore, the Supreme Court, in several cases, has defined the meaning of the term modesty as – “Modesty is the attribute of female sex and she possesses it irrespective of her age²”.

The object of this section is to protect the women against any indecent behaviour of others that is offensive to morality and harms the dignity of women. This section intends to safeguard public morality and decent behaviour.

II. LEGAL PROVISIONS

Section 354 of the Indian Penal Code, 1960 reads:

“Assault or criminal force to woman with intent to outrage her modesty: 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

¹ Author is a student in India.

² State of Kerala v. Hamsa

be liable to fine.”³

The essential ingredients required for the commission of the offence of outraging the modesty of a woman are –

1. That the person assaulted must be a woman,
2. That the accused must have used criminal force on her,
3. That the criminal force must have been used on a woman intending to outrage her modesty.

Thus, for convicting a person under Section 354 of the IPC, the prosecution has to prove beyond reasonable doubt that-

1. An assault has been committed, or criminal force has been used,
2. The object of assault or criminal force is a woman,
3. That it was with the intention to outrage the modesty of a woman or with the knowledge that it was likely that her modesty would be outraged.

The term “woman” has been defined in Section 10 of the Indian Penal Code. Section 10 states that – *“the word “woman” denotes a female human being of any age.*”⁴

The punishment for an offence under this section is imprisonment of either description for one to five years with a fine. The imprisonment can be either simple or rigorous depending upon the case. This offence is a cognizable offence, non-bailable offence and triable by any magistrate.

Section 351 of the IPC states what constitutes assault. As per this section, *“Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.”*⁵

Section 350 mentions Criminal force. It states – *“whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”*⁶

³ The Indian Penal Code, 1960 S.354.

⁴ The Indian Penal Code, 1960 S.10

⁵ The Indian Penal Code, 1960 S.351.

⁶ The Indian Penal Code, 1960 S.350.

Thus, we can conclude that the proof of intention to outrage the modesty of a woman is very vital and is the main ingredient⁷ for this offence to be committed. If a person unknowingly or unintentionally commits the crime of outraging the modesty of a woman, then that person cannot be held liable under section 354 of the IPC.

Section 509 deals with the intention to outrage the modesty of a woman. Under this section, usage of words, gestures or acts that intend to outrage or insult the modesty of a woman is punishable. The punishment shall be simple imprisonment for a term which may extend to three years and also fine. It is a less severe offence as compared to Section 354 since it only mentions intentions to commit the offence and not the actual commission of the offence.

III. WHAT CONSTITUTES OUTRAGING THE MODESTY OF A WOMAN?

For over a decade, courts have tried many offenders for the offence of “outraging the modesty of women” without a precise definition of the term “modesty” since it is nowhere defined in the Indian Penal Code, 1960. However, the Supreme Court has elaborated on what constitutes the modesty of a woman on several occasions. According to the Apex Court, the essence of a woman’s modesty is her sex⁸. Modesty is an attribute that is associated with the female human beings as a class. A woman, irrespective of her age, possesses modesty. This implies that even a one-day-old girl child has modesty which is capable of being outraged.

In the case of *State of Punjab v. Major Singh*⁹, the court held that whether “young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354 of the IPC. The culpable intention of the accused is the crux of the matter. In this case, the victim was a seven and half months old baby. She had not yet developed a sense of shame and had no awareness of sex. Nevertheless, from her very birth, she possesses modesty which is the attribute of her sex. Thus, the court convicted the accused under Section 354 of the IPC and was awarded rigorous imprisonment for a term of two years and a fine of Rs. 1,000/-.”

The modesty of a woman is outraged when the act of the offender harms feminine decency and dignity. Any act which is offensive to the sense of modesty, decency and repugnant to womanly results in outrage to the modesty of a woman.¹⁰ For example – she is slapping a

⁷ Divender Singh and Anr. v. Hari Ram, 1990, Cr.L.J. 1845.

⁸ Ramkripal v. State of Madhya Pradesh, AIR 2007, (cr.) SC 370.

⁹ State of Punjab v. Major Singh, 1967 AIR 63, 1966 SCR (2) 286.

¹⁰ Major Singh Lachhman Singh v. The State, AIR 1963 P H 443, 1963 CriLJ 390

woman on her butt, disrobing her, asking her for sexual favour etc.

(A) The Ultimate Test

Intention and knowledge, which are the essential ingredients to constitute an offence under Section 354, are states of mind. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such inferences can only be drawn by a prudent, reasonable man¹¹. Thus, the ultimate test for ascertaining whether the modesty of a woman has been outraged or insulted is whether the act of the offender is such that it is perceived as one capable of shocking the sense of decency of a woman. The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman¹².

In the case of *Shekara v. the State of Karnataka*¹³, the apex court held that “in order to constitute the offender under Section 354 IPC mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases.”

IV. OUTRAGING THE MODESTY VS ATTEMPT TO COMMIT RAPE

The line of distinction between outraging the modesty of a woman and an attempt to murder is very thin, vague and is practically invisible. Every criminal act of rape or attempt does involve indecent assault. In order to amount to an attempt to commit an offence, the act of the accused must have proceeded beyond the stage of preparation. If the act of the accused does not constitute anything beyond preparation and falls short of attempt, he may escape the liability under Section 376 read with Section 511 of the IPC and may be convicted only for the offence of indecent assault.

In the case of *Jai Chand v. State*¹⁴, the accused forcibly laid prosecutrix on the ground broke a pyjama string but made no attempt to undress. When the prosecutrix pushed him away and to flee, he made no efforts to grab her. Thus, it was held by the court that it was not punishable under Section 376, which states attempt to commit rape but only punishable under Section 354, which is outraging the modesty of a woman.

In the case of *Ram Mehar v. the State of Haryana*¹⁵, the accused caught the victim, pinned her down to the ground and tried to open her salwar but failed in doing so since the victim injured

¹¹ State of Punjab vs Major Singh, 1967 AIR 63, 1966 SCR (2) 286.

¹² State of Punjab vs Major Singh, 1967 AIR 63, 1966 SCR (2) 286.

¹³ Shekara v. State of Karnataka 2009 (14) SCC 76.

¹⁴ Jai Chand v. State, 1996, Cr.L.J., 2039.

¹⁵ Ram Mehar v. State of Haryana, 1998, Cr.L.J. 2000 (P&H).

him. The accused failed to give his blood sample, which raised suspicion, and the court presumed that his innocence was doubtful. It was held by the court that the accused was punishable under section 376 of the IPC (attempt to commit rape).

Can a woman outrage the modesty of another woman?

Section 354 is a gender-neutral law meaning that even a woman can outrage the modesty of another woman. This is because Section 354 mentions “whoever assaults or uses criminal force....” The term “whoever” includes a man or a woman. The essential ingredient of this section is to outrage the modesty of a woman. Thus, the circumstances of each case are taken into account to hold a person liable for this offence.

V. CURRENT SCENARIO

In many Rape cases, the accused cannot be punished for the offence of rape due to lack of evidence. In such cases, the accused is convicted for the offence of outraging the modesty of a woman.

In the case of *State v. Musa*¹⁶, the victim who was a married woman, alleged that two men dragged her and raped her traces of semen were found on her clothes which were produced as medical evidence. However, no traces were found on the clothes of the accused. Thus, the court opined that it was not a case of rape due to lack of evidence but convicted the accused for the offence under Section 354 as they had dragged the victim with the intention of outraging her modesty.

Thus, we can conclude that for a case to establish under Section 354, the prosecution the use of assault or criminal force against the woman and also the intention to outrage the modesty of a woman. The latter has to be proved beyond a reasonable doubt. For the defence in the cases under section 354, it is essential to establish that the woman was a consenting party in the act. It is a well-settled principle that if the woman is a consenting party to the act, there cannot be any outraging of modesty¹⁷.

VI. CONCLUSION AND SUGGESTIONS

Increased cases of offences against women take a major toll on them and cause them great mental agony and pain. The current trend shows that a lot of cases of outraging the modesty of women go unreported, and women tend to suffer throughout their lifetime. Thus, it is the need of the hour to make stricter laws to prevent such crimes against women. Even though several

¹⁶ State vs Musa And Anr., 1991, CriLJ 2168

¹⁷ Sadananda Borgohain vs The State of Assam And Anr. 1972 CriLJ 658

amendments have been made, however, the crime rate still remains the same. The present laws require modifications and amendments. All the offences relating to outraging the modesty of a woman should be made non-bailable. It is high time now that we understand the gravity of this offence and try to make a society where women can live safely without any fear in mind.
