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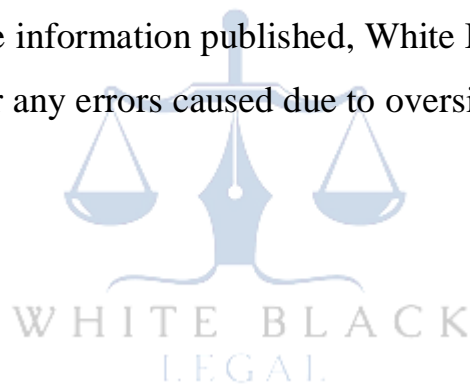
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With this thought, we hereby present to you

OUTRAGING THE MODESTY OF A WOMAN
WITH SPECIAL
REFERENCE TO SEXUAL HARASSMENT
UNDER SEC 354A

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Abstract

The sexual instinct motivates much human conduct, and strongly influences many aspects of social and cultural life. Rules regulating behavior with sex have been very common in legal systems from early times. Legal rules concerning sex and sexual conduct are of various kinds. Protective rules are seeking to penalize sexual relations with females who do not consent or are deemed incapable of consenting, rules seeking to prevent offenses to the public, including public sexual activity, exhibitionism, nudity, near-nudity, and rules seeking to maintain strict sexual morality, including extra-marital relations, incest homosexuality, prostitution, and the like. What is permissible and what is not depends upon the accepted customs and practices of the society and its stratum in which the parties live. The Indian Penal Code, 1860, has a section 354 that deals with assault or unlawful force against a woman to offend her modesty, and sec 509 deals with the word, gesture, or act intended to insult the modesty of a woman. This clause was designed to protect women from indecent assault and to maintain public morals and decency. Similarly, sec 354A deals with sexual harassment introduced by Criminal Law (Amendment) Act, 2013.

KEYWORDS: Female, Modesty, Sexual, Harassment, Outrage, Insult

1. Outrage Of Female Modesty

1.1 Introduction: Section 354 is to protect women against indecent behavior of others that is offensive to morality. The offenses created by Sections 354 of the IPC serve the interests of the women involved and public morality and decent behavior.¹ Therefore, if any person uses criminal force upon any woman to know that the woman's modesty will be outraged, he is to be punished. Acts done with the intent to offend a woman's modesty, which may or may not involve physical advances, are brought under the purview of a separate law, Section 509 of the IPC. The 'Eve Teasing Section' is another name for this section.²

1.2 Essential Ingredients Of Sections 354 And 509: The essential elements of the offense under Section 354 IPC are as follows:

- (i) the person assaulted must be a woman;
- (ii) the accused must have used criminal force on her, and
- (iii) that the criminal force must have been used on the woman with the intent to offend her modesty.

As a result, to be convicted under Section 354, the prosecution must show:

- (a) an assault has occurred or criminal force has been used,
- (b) the victim of the assault or criminal force is a female, and

that it was done with the intent of offending a woman's modesty or with the knowledge that her modesty would be offended as a result.

Sec 509 punishes anybody who, intending to offend a woman's modesty, exposes himself indecently to her, speaks obscene words with the intent that she hears them, presents any obscene drawing, makes obscene gestures, and so on. But the mere use of abusive language addressed to a woman would not be an offense punishable under this section. Instead, it will be punishable under Section 506, IPC.

1.3 Meaning Of Modesty: The IPC does not define 'modesty'. A woman's sex is the essence of her modesty. An adult female's modesty is emblazoned over her skin. The lady, whether young or old, intellectual or idiotic, awake or asleep, has a modesty capable of offense. Anyone

¹Mayank Madhaw, Criminal Law-I, (Singhal Law Publications, Delhi, 2017-2018)

² Ibid

who employs criminal force against her with the goal to offend her modesty violates Section 354.

'Modesty' refers to a sense of propriety with the woman against whom the offense is said to have been committed. In addition to the accused person's intention or knowledge, as mentioned in the section, there must be a subjective element involving the woman against whom the assault or criminal force is committed or used. This appears to be the result of the use of the words "outrage her modesty" in Section 354 of the Code and the concept of modesty as described above.³

In section 354 of the IPC, modesty is an attribute associated with female humans as a class. It is a virtue that a female possesses due to her gender. The act of pulling a woman and removing her saree, combined with a request for sexual intercourse, is such that it would be an outrage to a woman's modesty, and knowledge that such modesty is likely to be outraged is sufficient to constitute the offense without any deliberate intention of having such outrage alone as its object.⁴

"To constitute an offender under Section 354 IPC, mere awareness that a woman's modesty is likely to be violated is sufficient without any conscious intention of having such outrage alone as its object," the Supreme Court ruled. There is no one-size-fits-all definition of modesty that can be applied to all situations." Knowledge and intention are fundamentally mental constructs that cannot be demonstrated in the same way that tangible objects can. The existence of intent or knowledge must be determined from the numerous circumstances in which and against whom the alleged offense was allegedly committed. A molestation and indignation victim is in the same situation as an injured witness, and her evidence should be given equal weight.⁵

The petitioner was an IAS officer belonging to the Punjab cadre and was posted as Special Secretary, Finance at the relevant time. At a dinner party at her colleague's house, accused K.P.S. Gill, who was Director-General of Police, called her to sit next to him. When she was going to sit, he pulled her chair near to his at which she was surprised and again pulled the chair back to its original place. Realizing something wrong, she immediately left him. Ten minutes later K.P.S. Gill got up and went near her and called her by finger to join him. The petitioner seriously objected to Gill's behavior and asked him to leave. But instead of leaving the accused asked her in commanding tone to accompany him. When the petitioner herself tried to go away apprehending misbehaviour from the accused, the latter blocked her way and slapped her at her posterior in presence of all the ladies and guests. Thereafter, the petitioner filed an F.I.R. against the accused but the accused moved the High Court and the Court quashed the F.I.R. on the

³ Dr. A.R. Myneni, Law Of Crimes (Indian Penal Code, 1860),387 (Asia Law House, Hyderabad, 2019)

⁴Ram Kirpal s/o Shyam lal Charmakar vs State of MO, 2007 II Cr LJ 2032 (SC)

⁵ Shekara v. State of Karnataka 2009 (14) SCC 76

ground that the allegations made therein did not make out a cognizable offense and the matter was a trifling one. However, on appeal, the Supreme Court held that an offense relating to outraging the modesty of a woman, should under no circumstances be termed as trivial and that quashing of F.I.R. by the High Court was illegal.⁶

When the prosecutrix was cooking food in her kitchen, the accused suddenly entered and embraced her in his arms and pressed her breast. When the woman shouted for help, her neighbors came and the accused ran away from there. He had no satisfactory explanation as to why he entered the kitchen and why he ran away if he had no mal-intention. He was, therefore, convicted for the offense under Section 354.⁷

The accused was alleged to have loosened the prosecutrix's petticoat cord and was about to sit on her waist when she cried out for her husband; the accused's actions would not constitute an attempt to commit rape, but only preparation for it. The distinction between an offense of rape and an offence of indecent assault is that there must be some action on the part of the accused indicating that he intends to have a sexual relationship with her. It was decided that the offence committed by the accused would be one under Section 354 IPC.⁸

The accused's conviction for attempted rape was overturned, but his conviction under Section 354 was upheld because he touched the blind prosecutrix's hand and removed the quilt with which she was covering herself.⁹

The prosecutrix was returning from her field back to village at about 9.30 a.m. on August 25, 1987 when the accused Premiya all of a sudden came and caught hold of her, threw her on the ground, put off his Payjama, lifted her ghagra, and committed rape on her. When she resisted and cried for help, the accused gave a blow to her face and threatened to kill her if she made any sound. Hearing her cries, her aunt-in-law came there and challenged the accused. Upon this, the accused fled away. The victim was medically examined at 2 p.m. the same day. The accused was charged with the offense of rape under Section 376, IPC to which he pleaded not guilty. Seven witnesses were examined. The trial court had convicted the accused of rape and sentenced him to seven years R.I. However, the Supreme Court held the accused guilty of the offense of outraging the modesty and not rape, describing his act as mere fondling, and reduced the sentence to two years which the accused had already undergone.¹⁰

The accused met the prosecutrix in a lonely place and after removing his clothes showed his penis (private part) naked to her. The offence of attempt to rape could not be proved against him, but he was held guilty of the offence of insulting the modesty of a woman under Section

⁶Rupan Deol Bajaj v. Kanwar Pal Singh Gill & another AIR 1996 SC 309

⁷ Baldeo Prasad Singh v. the State of Orissa 1954 Cr LJ (NOC) 122 (Ori)

⁸Ankariya v. State of MP, 1991 Cr.LJ 751

⁹Keshav Baliram Naik v. State of Maharashtra, 1996 Cr.LJ 111 (Bom.)

¹⁰Premiya alias Prem Prakash v. State of Rajasthan, AIR 2009 SC 351

509, IPC and sentenced accordingly.¹¹

The accused entered at night in a room occupied by four women who were sleeping. When they saw the accused, they shouted for help but the accused ran away. He was apprehended and charged with invading the privacy of ladies under Section 509 of the IPC, as well as criminal trespass under Section 441.¹²

The accused sent a letter by post addressed to an unmarried nurse containing indecent overtures. Despite having no prior acquaintance with the nurse, he was found guilty under Section 509 of the IPC. He contended that he did not personally exhibit the object, but the Court rejected his plea and held that though the letter was sent in a closed envelope, but when it was read by the nurse, her modesty was insulted and thus the offence under Section 509 was completed.¹³

1.4 Outraging Modesty V. Attempt To Commit Rape (Section 354 V. Section 376 R.W. Section 511): The boundary separating "attempt to commit rape" and "indecent assault" is not only narrow, but also almost undetectable. The accused's act must have progressed beyond the stage of preparation to be considered an attempt to commit an offense. If the accused's act does not go beyond preparation and does not amount to an attempt, he may be exempt from prosecution under Section 376/511 of the Indian Penal Code and simply be charged with indecent assault.

The accused caught hold of a married woman and tried to open the string of her salwar to commit rape on her but being hit by the woman with a kulhari fled away. It was held that he could not be convicted under Section 376/511, IPC (i.e. for an attempt to commit rape) as his action did not show a determination to have sexual intercourse at all events and despite resistance. The conviction of the accused was accordingly changed to one under Section 354, IPC.¹⁴

The accused had forcibly laid the prosecutrix on the bed and broken her Pyzama's string but did not attempt to undress and when the prosecutrix pushed him away, he did make no efforts to grab her again. It was held that it was not attempt to rape but only outraging of the modesty of women and conviction under Section 354 was proper.¹⁵

The accused caught the victim from behind, pushes her to the ground, removed her panty, and attempted rape. Upon getting the opportunity she kicked him in the testicles and escaped from

¹¹Bankey v. State of U.P., AIR 1961 All. 131

¹²Parmanando Shah v. Brindaban Chung, (1895) 22 Cal. 994

¹³Emperor V. Tarak Das Gupta, AIR 1926 Bom. 159

¹⁴Rameshwar v. State of Haryana, (1984) Cr.L.J. 786 (P&H),

¹⁵Jai Chand v. State, 1996 Cr.L.J. 2039 (Del)

the place of occurrence. Conviction is under Section 376/511 attempt.¹⁶

2. Sexual Harassment

This new provision has its origin in the judgment¹⁷ of the Supreme Court dealing with the issue of sexual harassment in workplaces. For the first time, Section 354A was incorporated into the IPC by the Criminal Law (Amendment) Act, 2013, which statutorily defines and punishes sexual harassment.

2.1 Background: Sexual harassment is growing rapidly now-a-days. The Supreme laid down exhaustive guidelines to prevent this harassment. In this case, the Court held that the employer has to prevent sexual harassment within premises. In the present case, a writ petition was filed by Vishaka, a non-governmental organization working for 'gender equality'. It was filed by way of Public Interest Litigation (PIL) seeking enforcement of fundamental rights of working woman under Articles 14, 19 and 21 of the Constitution. In this instance, the court relied on international conventions and standards that are important in interpreting the implied guarantees of gender equality, human dignity at work, and protections against sexual harassment.¹⁸

In 1997, the Supreme Court of India recognised sexual harassment in the workplace as a human rights violation for the first time in the Vishaka Judgment. The Supreme Court cited the United Nations General Assembly's 1979 adoption of the Convention on the Elimination of All Forms of Discrimination Against Women, which India had both signed and ratified. The Supreme Court outlined the Guidelines in its decision, which require employers to provide sympathetic and non-retaliatory means to ensure working women's right to gender equality. According to the Vishaka Judgment, the Guidelines have the force of law until a legal framework on the issue is drafted and adopted, and the Guidelines must be followed by organizations in both the commercial and public sectors.¹⁹

1. Without prejudice to the generality of his duties, all employers, persons in charge of workplaces, whether public or private, should take the following precautions to prevent sexual harassment:

a) Sexual harassment, which includes contact and advance; a demand or request for sexual favours, sexually coloured remarks: exhibiting pornography, or any other unwelcome physical,

¹⁶Rajesh Vishwakarma v. State of Jharkhand, 2011 Cr.L.J.2953, (Jhar.)

¹⁷ Vishaka vs. State of Rajasthan, AIR 1997 SC 3011

¹⁸ Ibid

¹⁹ See supra 17

verbal, or non-verbal activity of a sexual nature, should be noted, documented, and shared in acceptable ways.

b) The conduct and discipline regulations of government and public sector entities should contain laws against sexual harassment and provide for suitable punishments against the offender.

c) In the case of private employers, procedures should be taken to insert the aforementioned prohibition in the Industrial Employment (Standing Orders) Act of 1946's standing order.

d) Appropriate work conditions should be provided in respect of work leisure, health, and hygiene to further insure that there is a hostile environment towards women at the place of work and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. The employer must take legal action by registering a complaint with the authorised authority if such behaviour amounts to specific criminal charges under the Indian Penal Code or any other legislation.

3. The victim of sexual harassment should be able to request that the perpetrator be transferred or that they be transferred themselves.

2.2 Analysis Of Section 354a: Section 354A provides that a man shall be guilty of sexual harassment against a woman in the following situations:

(i) Makes uninvited and explicit sexual propositions by making physical contact.

(ii) Requests or demands for sexual favours;

(iii) Shows pornography against a woman's will;

(iv) Make sexually colored remarks.

It is a gender-specific offense and only a man can be punished under this provision. The punishment for the offense specified in clauses (i) to (iii) is rigorous imprisonment for a term which may extend to 3 years or with a fine or with both and in the case of an offense specified in clause (iv), it is imprisonment for either description for a term which may extend to one year or with a fine or with both.

The accused A.K. Chopra who was the Chairman of the PSU Export Council Sexually assaulted the woman who was his subordinate employee by touching her inappropriately on the pretext of teaching her how to take dictation and molested her in the hostel lift. She pressed the emergency button of the lift to force open the door and foiled the evil design of the accused. She complained to the Director Six days later. The departmental inquiry found Chopra guilty and he was sacked but the Delhi High Court ordered his reinstatement. The Supreme Court, however, held that sympathy in such cases was uncalled for and upheld the removal of Chopra from service. Chopra was ready to go to the victim's house and tender an unqualified apology for his

misbehavior. But the Supreme Court maintained that Chopra's act was outrageous and it amounted to sexual harassment hence he deserved no sympathy. As a result, his appeal was dismissed.²⁰

The Supreme Court began overseeing the implementation of the 'Vishaka Guidelines' throughout the country. In this case, a university student accused a professor at M.S. University in Baroda, Gujarat, of sexual harassment. Ms. Medha's letter was taken into consideration by the Supreme Court and regarded as a writ petition. Every state government was required to produce affidavits detailing the efforts they had taken to put the guidelines into effect. The court then requested that the petitioners and other groups file a rejoinder outlining the adjustments and additions to the guidelines that they desire. As a result, several other women's organizations began a discussion and debate on the problem of state rejoinders. A series of discussions were held to ensure national participation to raise awareness of the guidelines and strengthen them further.²¹

The court found that the Vishaka guidelines had not been properly implemented by various Indian states and departments, and pointed to the directive it had issued at the time to aid in improved coordination and execution. The Court went on to say that several states did not appear to have followed previous court orders requiring them to comply with the Vishaka Guidelines in their legislation. It was decided that the Vishaka recommendations should not be merely symbolic, but rather provide direction until legislation is enacted.²²

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, was passed by Parliament to address this issue.

²⁰Apparel Export Council v. A.K. Chopra AIR 1999 SC 625

²¹Medha Kotwal Lele v. UOI, 2013 1 SCC 297

²²Ibid

3. Conclusion

The above discussion on judicial response to sexual harassment cases reveals that the judicial interpretations on the concept of modesty and its outrage or insult are very outdated and conservative. But remarkably judicial innovations are exhibited in cases of sexual harassment at workplace. The analysis of molestation cases reveal that the judicial interpretations are filled with ambiguous interpretations of modesty and its outrage. The decisions in sexual harassment cases exhibit very enthusiastic judicial activism protecting the rights of the victims in the absence of a legislative enactment. Thus, the judicial response in sexual violence cases reflects a mixture of regressive and progressive approaches.



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