

THE OFFENCE OF OUTRAGING THE MODESTY OF WOMEN IN INDIA

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ABSTRACT

Modesty means the sexual dignity of women- the essence of a woman's modesty in her "sex". For over a century, courts tried thousands of words, which is the exact meaning of a woman's modesty. And after so many struggles & cases etc. court finally found the precise woman's modesty. In this article, I will talk about 'The offence of outraging the modesty of women in India'. We can understand this concept by introduction, where we can understand the meaning of modesty, women's modesty, essential ingredients etc. with some examples, then we can look after provisions related to this offence as section 10, 354, 354A, 354B, 354C, 354D, 509 under the Indian Penal Code, 1860, then look after the crime rates regarding outrage the modesty, after it author's contention and then we can understand this concept more admirably by some high court and supreme court cases. At last, end the article with a conclusion.

Keywords: Modesty, harassment, women, sex, dignity, etc.

INTRODUCTION

Modesty means the quality of not trying to make noticed by any person or not talking about your abilities with anyone. Example:- the woman, dressing and behaving in a way which is intended to avoid attracting sexual interest, another example not related to outrage the modesty of women but we can easily relate it and understand the concept, Arpita was appreciating her friend but does not want to notice her or seems to think that she is too important to Arpita. The modesty of women is the sexual dignity which is acquired by women since their birth. The concept of modesty is subjective to every woman i.e. the sexual limits are personal to every woman; there cannot be a set formula to judge the boundaries of the sexual honour of a woman. It is a virtue attached to a woman owing to her sex².

Outrage means a physical act. No matter whether a female is young or old, housewife or working, awake or sleep, the woman possesses modesty capable of being outraged. The

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modesty of a woman can be violated by touching her on any private part of her body i.e. which is unacceptable to her without having her consent.

But there are some essential ingredients:-

1. Accused have applied criminal force or assault on a woman to outrage her modesty.
2. The reaction of a woman is very relevant in judging that the accused had outraged her modesty.

In other words, outraging a woman's modesty as mentioned in Section 354 will apply to crimes against women that stop short of penetration, in which event it becomes rape. In which event it becomes rape. In the same judgement, the court ruled that penetration alone was sufficient to qualify as rape whether there has been ejaculation or not³. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive.

Example: - a man used any word or gesture towards a lady, and due to that word or gesture, that lady felt ashamed of her sexual dignity. Then man shall liable.

PROVISIONS REGARDING THE OFFENCE OF OUTRAGING THE MODESTY OF A WOMAN

There are some sections of the Indian penal code, 1860 which are Sec. 10, Sec. 354, Sec. 354A, Sec. 354B, Sec. 354C, Sec. 354D, Sec. 509

1. According to Sec. 10 of the Indian penal code, 1860

This sec. talks about the definition of man and woman, A male person of whatever age called a man and a female person of whatever age called woman.

Example:- if a 2-year-old girl is the victim of sexual harassment then she would be held as a woman under sec. 354.

2. According to sec. 354 of the Indian penal code, 1860

³ (Mahapatra 2007)

Any person uses assault or criminal force on any woman with having an intention or knowing it to be likely that he will by that means outrage her modesty.

If any man is liable under this section he shall be punished with imprisonment of not less than one year but maybe extend to five years and shall be liable to a fine.

There are some essential ingredients of sec. 354 of the Indian penal code, 1860

- There should be assault or criminal force.
- Apply assault or criminal force must be on a woman.
- Apply assault or criminal force on a woman with the intention of outraging her modesty.

This offence is cognizable and non-bailable. It is compoundable but with the permission of the court. This is triable by any magistrate having the jurisdiction of the matter.

Example:- A, boss of B (a female employee), A apply force on B and pushes her towards him, intending to outrage her modesty. So, A shall liable under this section with imprisonment and fine.

According to the criminal law (amendment) act, 2013. The sec. 354A, 354B, 354C, 354D and 509 were inserted in the Indian penal code, 1860 which explains disrobe, voyeurism etc. and the offender liable under this specific section, not another analogical section. The requirement to amend the act because of a new generation, new society and then new crimes. So, according to the change in time, new types of cases are discovered and new types of sections are inserted.

3. According to sec. 354A of the Indian penal code, 1860

This sec. talks about sexual harassment and punishment for sexual harassment. A man commits any of the acts like a physical contact, giving unwelcome sexual interest, demand or request for sexual favours or showing pornography to a woman without her consent or last, making sexually coloured remarks; intending to outrage the modesty of the woman. He shall be guilty under offence. Who commits 'making sexually coloured remarks' offence shall be punished with imprisonment which may be extended to one year or with a fine or both? Except for this offence, any person who commits the offences given above shall be punished with rigorous imprisonment which may extend to three years or with a fine or both.

This offence is cognizable and bailable. This offence-related case can be triable by any magistrate. This offence is non-compoundable.

This sec. States that this act is committed by any person is punishable. It is not just against any individual, but also public morals. It compels a woman to stay at home more and more and increases the fear of getting harassed.

Example:- A man forces a 7-year-old girl to watch porn. So, the girl is held as a woman in this section and the man is held liable under this section or punished for imprisonment for 3 years or fine or both.

4. According to Sec. 354B of the Indian Penal Code, 1860

This sec. Talks about intent to disrobe to woman. If any man assaults or criminal forces or abets such act with the intention to disrobing to the woman or compelled her to be naked, then a man shall be punished with imprisonment which may be less than 3 years but extend to seven years and shall be liable to fine or both.

There are some essential ingredients:-

- Assault or criminal force on any woman, or
- Abet any of the above acts.
- Such abetment or assault or criminal force must be to disrobe a woman or compel her to be naked.

The offence under section is a cognizable offence but non-bailable. Any case under this section will triable by any magistrate.

Example:- A male photographer compel a model to disrobe for photography but she is not interested, he applies criminal force and compels her. So, he would be liable under this section.

5. According to Sec. 354C of the Indian penal code, 1860

This sec. Talks about voyeurism offence. If any woman engages in her private activity, and she expects that she can't be seen or observed by any person or by any other who does this on someone's behalf if he watches or captures and dissemination the image intentionally of a woman while she is doing her private activity by an offender or by a person on behalf of the

offender, he shall liable for imprisonment which may not be less than one year, but which may extend to three years and shall be liable for fine also on first conviction. And be punished on a second or succeeding conviction, which may not be less than 3 years but extends to seven years and shall also be liable to a fine.

Explanation 1:- Private Act includes an act of watching carried out in a place, which is expected to grant privacy and where the victim's breasts are unsheltered, covered only in underwear or any sexual act which is not ordinarily done in public.

Explanation 2:- Where the victim allows capturing the image but does not grant consent to spread the image to any 3rd person. If any person spread an image without consent held liable under this sec.

The committed offence under this section is cognizable and bailable at first conviction. If the offence is repeated then it shall be cognizable & non-bailable at a second conviction.

Example:- A person clicks the picture of a woman, who is naked and she didn't grant permission to him to share this image with any third person. But he sent those pics to his friend. So, he would be liable under this section.

6. According to sec. 354D of the Indian penal code, 1860

This section talks about stalking.

(i) if any man follows or contact or maybe attempts to contact a woman with having an intention to personal interaction even after he had known that woman had shown him a clear manifestation of disinterest.

(ii) detect that woman's internet, email or any other form of an electronic device.

It shall be held that a person commits the offence of stalking.

There are some exceptions to stalking:-

- If any person believes that he is bounded by the state and stalks any woman to prevent the crime.
- If any person complies with any condition or requirement imposed under any law.

- If the conduct of stalking was reasonable, fair and justified.

Whoever commits the offence of stalking shall be punished with imprisonment which may extend to 5 years and shall be liable to a fine at first conviction. If repeat the offence then shall be liable for imprisonment which may extend to 5 years and shall also be liable to a fine.

At first conviction, this committed offence under this section is cognizable and bailable. But at subsequent conviction, this committed offence under this section is cognizable but also non-bailable. If any case arises under this section shall be triable by any court.

Example:- A, a batchmate of B in college. A has an interest in B, but B has not. Also, B gives a clear indication of disinterest but A still follow her everywhere and which creates fear in her mind of B. So, A shall be liable under this sec.

7. According to Sec. 509 of the Indian penal code, 1860

This section talks about the word, gesture or act intended to insult the modesty of a woman. if any person says any word, makes any sound or shows any object which may intend to insult the modesty of any woman and if those words or sounds may be heard and gestures or object seen by woman, which disturbs the privacy of a woman. Then, that person shall be punished with simple imprisonment which may extend to three years and also with a fine.

There are some essential ingredients:-

- Intention to insult the modesty of a woman.
- Insult by using sound, words, gestures, and showing any object or any of them.
- Interfere on the privacy of a woman.

This section is cognizable and bailable. Cases filed under this section will triable by the magistrate. This section is non-compoundable.

Example:- A bus driver shows some gesture to a lady passenger, which insults her modesty. So, he shall be liable under this section.

CRIME RATES OF OFFENCE AGAINST WOMEN IN INDIA

There is a 30% increase in the crime rate against women in 2021 as compared to 2020 as 23,722 complaints were received. Nearly 31,000 complaints were received by the national commission for women (NCW) for crimes committed against women by last year, the highest since 2014, with over half of the crimes from Uttar Pradesh. But the maximum of 11,013 was related to the right to life with dignity takes account the emotional abuse of women, followed by 6,633 rates for domestic violence and 4,589 for dowry death according to the NCW data.

The most populous state of Uttar Pradesh recorded the highest number of complaints of crimes against women at 15,828, followed by Delhi at 3,336, Maharashtra at 1,504, Haryana at 1,460 and Bihar at 1,456 complaints⁴. The highest number of cases of crime against women has been highest since 2014, in 2014 there were 33,906 complaints were received by NCW.

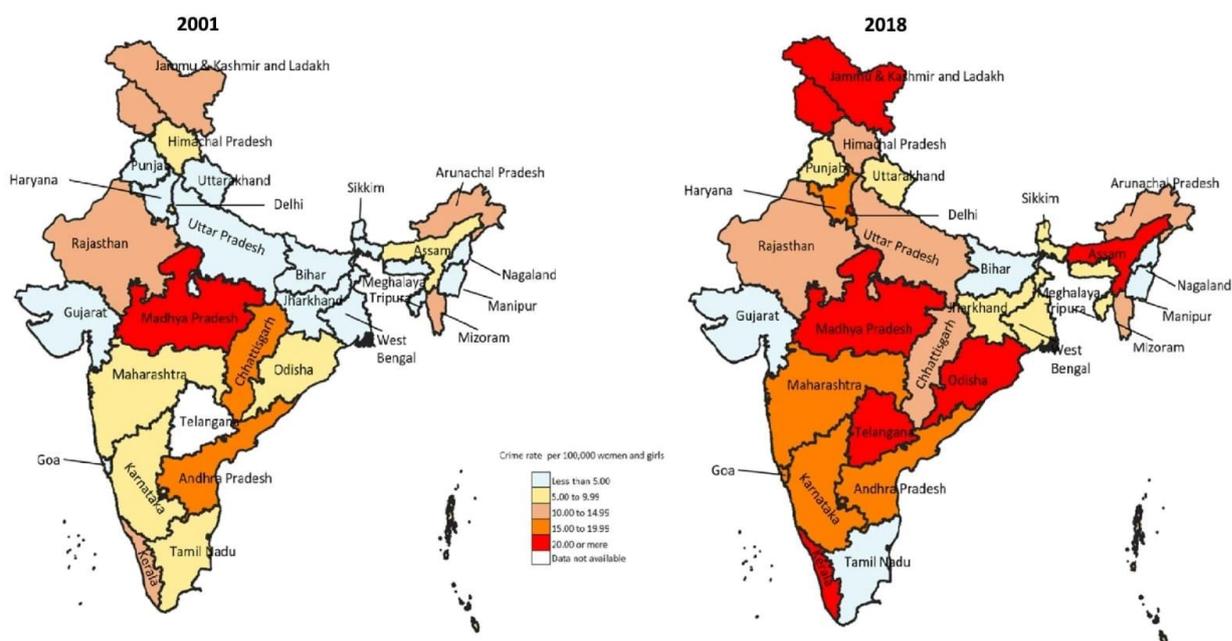
Table 1: Outrage the modesty-related crimes reported in NCRB per 1,00,000 women in India and by the socio-demographic index (SDI) states group. Here, CI stands for ‘confidence interval’.

Offences	2001 (95% CI)	2005 (95% CI)	2010 (95% CI)	2015 (95% CI)	2018 (95% CI)	% change 2001– 2018
Assault on women with intent to outrage her modesty	6.61 (6.54–6.68)	6.15 (6.08–6.21)	6.70 (6.64–6.77)	12.6 (12.5–12.6)	13.2 (13.1–13.3)	99.7
Insult to the modesty of	1.89 (1.85–1.9)	1.80 (1.76–1.83)	1.64 (1.61–1.68)	1.32 (1.30–1.35)	1.04 (1.01–1.06)	45.1

⁴ (“Nearly 31K complaints of crimes against women received in 2021, over half from UP: NCW | India News” 2022)

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Table 2: Crime rate for assault on women with intent to outrage her modesty per 1,00,000 women and girls for 2001 and 2018.



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According to the author's contention, there are effective and strict provisions in India regarding outrage the modesty of women and from time to time, generation to generation when society faces/discovered new types of cases then the court compels legislation to insert new provisions or amend the earlier provisions. Due to this, women get justice and people are afraid of committing these types of offences. But when a male person is the victim of sexual harassment or rape then what should he do? There is no specific provision for sexual harassment etc. against men except sec. 377 of the Indian penal code, 1860 but it is not much relevant to sexual harassment against men.

Sexual violence can happen to any soul, no matter what the age is, no matter what gender identity etc. We usually listen and see the sexual harassment cases against females and this is the reason legislation always thinks that sexual harassment etc. cases are for females only and

make the provisions according to it. But it does not mean men are away from heinous offences like sexual harassment. Even men face sexual harassment cases mostly at the workplace by the female boss or maybe by male colleagues etc. at workplace sometimes female colleagues compel the male employee to lift their shirt and show their muscles, shout at them and insult them in front of co-workers. These kinds of enactment push the males as the victim of sexual harassment. According to Roberta Chinsky Matuson “Many people mistakenly believe that harassment is limited to females”. Sexual harassment against men is not only at the workplace it is even performed in schools, coaching centres, prisons and colleges etc. Sexual harassment not only means physical touch etc., it sometimes destroys the soul and mental peace of the human body.

Nowadays, males face one in ten cases of exasperation also. Men and boys who have been sexually pestered may have many of the identical feelings as other survivors of sexual assault, but they face many additional challenges because of ‘social ridicule’ and ‘stereotypes’ about men masculinity⁵. While in the past few years the number of sexual harassment types of cases declined among women due to the effective and efficient provisions made by the legislation. But these rates are increasing among men.

CASES

Ankariya V. State of Madhya Pradesh 1991 CriLJ 751

This case dealt with sec. 354. In this case, the question was raised that if an accused loosens the cords of the petticoat of the victim, then it will be held under which section 1991 CriLJ 751 As the offence of outraging the modesty of women under sec. 354 or the offence of committing rape under sec. 375. Then, the court made a point of distinction between the above two sections that if, on the part of the offender there is reflecting his intentions of having sexual interaction with the victim, so, it will constitute the offence under sec. 375. It was therefore held that in the act of the accused was punishable under sec. 354. The intention is sufficient enough to violate the outrage “her” modesty.

State of Punjab v. Major Singh 1966 SCR (2) 286

The question raised in this case was whether the act of the accused causing injury to the private part of the minor constitutes the offence of outraging her modesty. Then, the court held that if

⁵ (“Sexual Harassment of Men”, n.d.)

the accused has caused injury or private part and believes himself to do something in good faith or outrage in respect of the care of a reasonable man. If the accused thinks that the act was committed sufficient enough to believe that he did outrage the modesty of a woman internally in bad faith held liable.

Apparel export council v. A.K. Chopra AIR 1999 SC 625

In this case, the facts were the chairman of the PSU export council sexually assaulted the woman who was his subordinate employee by touching her improper way in the lift. So, the employee filed suit and the Delhi high court held Chopra guilty. But Chopra was ready to go to the victim's house and apologise to her for his inappropriate behaviour but the Supreme Court dismissed his appeal because he was guilty of sexual harassment hence, he deserved punishment instead of sympathy.

CONCLUSION

These sections grant protection for women under cases, other than Rape. In India, there are sexual harassment types of cases are coming to the force and these cases are increasing day by day. So, it's the court's responsibility to protect the women from the accused by giving them justice and punishment to the accused and also responsibility to protect the males through amending new provisions by legislation. The Indian penal code, of 1860 has not provided a specific definition of outrage on the modesty of women. The court interpreted the definition given by Merriam Webster, Oxford English dictionary etc.