

CAN A WOMAN BE HELD GUILTY OF OUTRAGING OTHER WOMAN'S MODESTY?

Anshika Batham*

ABSTRACT

Section 354 of the Indian penal code is one of the offenses against women in which a person will be liable if that person outrages a woman's modesty. To hold a person liable under this section there should be the four main essential ingredients mentioned in this short article. One of the most essential is culpable intent. Supreme court of India has also cleared that women irrespective of their age will possess modesty. In this article, we will observe that this section is gender neutral offense i.e., the accused can be a man and a woman too. In the case in which 11 women were convicted under this section, the court has cleared the confusion regarding the word 'he' used in the definition and stated that 'he' and its derivatives are used for any person and not for only the male accused. Furthermore, it will discuss a recent case in which a woman was held liable under this section.

Keywords: Women, Culpable Intent, Gender-Neutral, Offense.

INTRODUCTION

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Outraging a woman's modesty is a crime under section 354 of the Indian Penal Code, 1860. This section states that "Whenever a person assaults or uses criminal force on a woman with malicious intent or knowingly does an act that outrages her modesty, then that person will hold liable with a punishment of a term which can be extended up to two years or with fine or with both".¹

The main essentials of this section are:²

1. Use of criminal force or assault.
2. Malicious intention to commit the act.
3. Knowing the act he/she is committing.

*FIRST YEAR, BA LLB, DR. RAM MANOHAR LOHIYA NATIONAL LAW UNIVERSITY, LUCKNOW.

¹ Indian penal code 1860, S 354

² Arshaya Chaudhry "The Offence of Outraging the Modesty of a Woman" (2022) Vol. 5 (Issue 1), International Journal of Law Management & Humanities, 2513.

4. Aggrieved must be a woman.

This section aims to provide safety to women and maintain a healthy environment in public. Section 350 of the Indian penal code constitutes criminal force. It says that “whoever intentionally uses force to any person, without that person’s consent, to the committing of any offense, 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.”³

Assault is constituted in section 351 Of the Indian penal code. It states that “Whoever makes any motion, or any preparation intending or knowing it to be likely that such motion or preparation will cause any person present to apprehend that another person will or is about to use criminal force, is said to commit an assault”⁴

Section 509 reads about “culpable intention”. It states that “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 such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”⁵ Without intention or if a person does any act unintentionally then that person cannot be held liable under section 354 of IPC. The intention is a gist for this crime. That person should have a malicious intention to be held liable under this section.

WHAT DOES OUTRAGING A WOMAN’S MODESTY MEAN?

Indian penal code does not constitute a precise definition of the term modesty but courts are trying for over a decade to give the most accurate decisions in the cases related to this section. However, the Supreme Court has tried to explain the term modesty and what outraging a woman’s modesty means several times. According to SC, “the essence of a woman's modesty is her sex.”⁶ Every woman has modesty irrespective of her age. Whether the woman is 60 years old or she is a newborn baby, she will possess modesty.

³ Indian penal code 1860, S 350

⁴ Indian penal code 1860, S351

⁵ Indian penal code 1860, S 509

⁶Dhananjay Mahaptra “SC defines what is woman’s modesty”(Times of India), 21 March, 2007 <<https://timesofindia.indiatimes.com/india/SC-defines-what-is-a-womans-modesty/articleshow/1785567.cms>> accessed on 10 february 2023.

In *STATE OF PUNJAB VS. MAJOR SINGH*, 1967⁷ the accused Major did an obscene act with a baby girl who was just seven and a half months old when she was alone in a room sleeping. As a result, her hymen got broken and causes a 3/4 long tear inside her vagina.

The issue, in this case, was whether the accused is liable under section 354 of IPC or not as the victim was not a fully grown woman. The supreme court of India held Major Singh guilty under section 354 stating that a woman will possess modesty irrespective of her age thus, in the present case baby girl who was 7 and a half month's old modesty was outraged. The judges also stated, "reaction or the feeling of a female cannot be a test to determine if her modesty is outraged or not".⁸ Thus, if the accused is using criminal force and also has malicious intentions then that person will be held liable irrespective of the female reaction or feeling. A female reaction is very relevant and important to the case but making it the decisive factor in every case is not suitable for every situation.⁹

*RUPAN DEOL BAJAJ VS. KANWAR PAL SINGH GILL*¹⁰ : Mrs. Rupan Bajaj is an IAS officer in the Punjab cadre. At the time when the incident happened, she was a special secretary (finance). During a dinner party, the accused Mr. Gill allegedly slapped oh her butt when they were talking with each other. After that, she filed an FIR against him, under different sections including 354 of IPC by the director general of police (Punjab)

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Mr. Gill filed a petition in the high court under section 482 of CrPC¹¹ for quashing the FIR. The high court of Haryana and Punjab quashed the FIR stating that the accusations were unusual and there was a delay in filing FIR as it should be done in the prescribed time. Then Mrs. Bajaj filed a petition before the Supreme court of India.¹²

If a person is arrested for a non-compoundable offense, that person will have the right under article 226¹³ of the constitution to file a writ petition in a high court under section 482(1) of CrPC.¹⁴

⁷ *State of Punjab v Major Singh* [1967] AIR 63, 1966 SCR (2) 286.

⁸ *State of Punjab* (n6)

⁹ *State of Punjab* (n6)

¹⁰ *Rupan deol bajaj v Kanwar singh gill* [1996] AIR 309, 1995 SCC (6) 194

¹¹ Code of criminal procedure 1973, S 482.

¹² *Rupan deol bajaj* (n9)

¹³ Constitution of India 1950, art 226

¹⁴ Code of criminal procedure 1973, S 482

Judgment- Based on the State of Punjab v. Major Singh¹⁵, the court held that slapping the posterior region of a woman results in outraging her modesty. So he was held guilty under section 354 of IPC¹⁶ and section 509 of IPC¹⁷ as he had culpable intention while committing the act.

WOMEN CAN ALSO BE GUILTY UNDER SECTION 354 OF THE IPC

We have seen the above cases in which the accused were men and both were held guilty under section 354 of IPC as they had culpable intention while committing the act. But if a woman does the same act as those men did will she be held liable under this section? On 17 June 2010, eleven women and a man assembled in front of a 22-year-old woman's house, bring her out of the house, and started tearing her clothes making her naked to teach her and her family a lesson in Sewri. The court observed here that the act was done to outrage the woman's modesty. As they had culpable intentions while committing the act, they were held liable under section 354 of IPC and sentenced to two years of rigorous imprisonment.¹⁸

Later, a defense plea was filed by the accused that a woman cannot be held guilty under section 354 of IPC as the section's definition states "he" which is a pronoun of a man and not of a woman. The court rejected the defense's plea stating that "Section 8 of IPC¹⁹ deals with gender denoted that the pronoun 'He' and its derivatives are used for any person, whether a male or female. 'He' in section 354 (outraging a woman's modesty) of IPC requires to be read as per the definition of gender under section 8 of IPC which applies to the male or female. So in such a situation, section 354 of IPC would apply to women also."²⁰

STATE OF MAHARASHTRA V ROVENA @ AADNYA AMIT BHOSLE:²¹

Facts- In this case, the accused and the informant were neighbors. They both used to reside in the same building and on the same floor. Before the incident, the accused and the victim were not on good terms, and the accused used to verbally abuse her several times. On 19/09/2020, the accused came out of her house and started abusing the informant. Another neighbor, Naznin

¹⁵ *State of punjab* (n 6)

¹⁶ Indian penal code 1860, S 354

¹⁷ Indian penal code 1860, S 509

¹⁸ Rebecca Samervel '11 women jailed for outraging modesty' (*Times of India*), Dec 30, 2015

<<https://timesofindia.indiatimes.com/city/mumbai/11-women-jailed-for-outraging-modesty/articleshow/50374229.cms>> accessed on 24 february, 2023.

¹⁹ Indian penal code 1860, s 8.

²⁰ Rebecca Samervel (n 18)

²¹ *State of maharashtra v Rovena @ Aadnya Amit Bhosle*, Judgment in C.C. No.7000138/PW/2021 <https://www.livelaw.in/pdf_upload/order-446352.pdf> accessed on 24 february 2023.

Mahate informed the victim about the behavior of the accused. The victim came out of her and then the accused took a chappal and throw it toward her. Then later she took another chappal and assaulted the head of the informant. The accused tore the nighty gown of the informant in front of everyone. The whole incident was witnessed by six people in total including two of her neighbors.²²

Judgment- The court observed that the act done by the accused, outrages the modesty of the informant as she was humiliated and assaulted in front of everyone with malicious intention. Regarding section 354 of IPC, the judges said that “a woman can assault or use criminal force to any other woman as equally and effectively as any man.” Judges also mention section 8 of IPC²³ and define ‘He’ as it was defined in the case above. Noting the evidence presented in front of the judge observed that “By beating the informant and tearing her nighty, the accused has infringed the right of privacy of informant”.²⁴

The accused woman was sentenced to 1 year of rigorous imprisonment and with a fine of Rs. 5000/- in default to suffer rigorous imprisonment for six months in respect of an offense punishable under section 354 of IPC and sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs. 1,000/- (Rupees One Thousand Only) in default to suffer rigorous imprisonment for one month²⁵ in respect of offense punishable under section 323 IPC.²⁶ In the aforesaid cases, women were held guilty under section 354 of IPC. Courts have also cleared the meaning of ‘he’ used in this section as a gender-neutral pronoun.

CONCLUSION

Section 354 of IPC is a crime against women whose purpose is to provide a safe environment to women and maintain the decency of the environment. Through the above cases, we can conclude that this section is gender-neutral. A woman can also be held guilty as much as a man will be held guilty while committing this crime. Restricting this crime to one gender will be an injustice to the other gender. Although in most cases the accused is a male and the female is a victim but it will be very wrong to carry this mindset in cases where the accused is a woman. No matter who did wrong to a woman, he/she should be punished equally. As crimes are rapidly

²² State of maharashtra(n 21)

²³ Indian penal code 1860, s 8.

²⁴ State of maharashtra(n 21)

²⁵ Ibid.

²⁶ Indian penal code 1860, s 323

increasing among women, this section acts as a safeguard for women protecting them from the men and women who tries to humiliate them and tries to outrage their modesty.

