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**A LEGAL JUDICIO STUDY OF OUTRAGE ON MODESTY OF
WOMEN IN INDIA**- Saba Khan¹**Abstract**

Gender-based violence against women has persisted throughout history, troublingly persisting in diverse communities. Women have experienced sexual assault, harassment, and a wide range of sexual offenses. The offense of outraging a woman's modesty, a notion intricately entwined with traditional conceptions of womanhood, is a noteworthy aspect of this assault. This offense includes not just physical abuse but also a range of behaviours that cause psychological, emotional, and physical harm to women, compromising their self-respect and sense of safety. The Indian Penal Code (IPC), 1860 has the legal framework that addresses this issue. It makes it illegal to use force against someone or to assault someone with the intention of offending a woman's modesty. This paper explores the complex legal, social, and judicial aspects of encouraging women's modesty in India. It looks at the legal framework that have strengthened rights for women.

Introduction

In the intricate tapestry of Indian law, the IPC, 1860 embodies a provision that delineates the crime of outraging a woman's modesty under Section 354. This legislation, despite its historical roots, does not explicitly define the concept of "modesty" leaving its interpretation somewhat open-ended. It was not until the Supreme Court of India, through its jurisprudence on numerous cases concerning this offence, provided a critical elucidation. The Court articulated that the essence of a woman's modesty is intrinsically linked to her gender, underscoring the gender-specific nature of this protection.²

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² *Ramkripal S/O Shyamlal Charmakar v. State of Madhya Pradesh*, (2007) Appeal (Criminal) No. 370/2007.

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Section 354 of the IPC is fundamentally designed to uphold public morality and decency, offering a shield to women against any acts or behaviour that might assault their dignity or decent modesty. The term “modesty” in a broader societal context generally connotes humility or the absence of vanity, alongside decency in one’s appearance, conduct, and attitude. On the other hand, “outrage” is characterized by profound shock and indignation. It is pivotal to recognize that every woman, irrespective of her age, intellectual capacity, or state of consciousness, harbours a sense of modesty that is susceptible to violation. The subjective nature of modesty implies that what may be deemed as an outrage to one woman’s modesty might not necessarily be perceived the same by another, highlighting the individualistic aspect of this legal protection.³

The discourse around modesty is not confined to a singular interpretation or linked to a specific victim profile but rather is acknowledged as a characteristic inherently associated with the female gender, signifying a particular social construct. This virtue, deeply enshrined within the fabric of societal norms, is regarded as a prized possession for women, devoid of any standardized measure or formula to ascertain its violation. Furthermore, it is critical to note that Section 354 is drafted in a gender-neutral manner, illustrating that the act of outraging modesty is not restricted to male perpetrators alone but can also involve female offenders.

The crux of establishing a violation under Section 354 lies in demonstrating the utilization of criminal force with the intent to offend a woman’s modesty. This legal framework is often considered in conjunction with Section 509, which similarly addresses acts or words intended to insult the modesty of a woman, further emphasizing the legal system’s commitment to safeguarding individuals and societal morals against such transgressions.

Violating the dignity and respect of women through acts that incite indignation is an abhorrent practice. Such violations often manifest through inappropriate gestures, utterances, or actions that infringe upon a woman’s privacy and sense of self-worth. Among these, workplace discrimination emerges as a particularly reprehensible form of injustice, undermining the professional and personal integrity of women in their places of employment. This form of discrimination encompasses a range of prejudicial treatments, including disparities in gender, role assignments, status recognition, compensation, exposure to sexual harassment, age biases, and several other dimensions. These prejudicial practices create

³*State of Punjab v. Major Singh*, (1967)AIR 63.

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hostile and unwelcoming environments, significantly impeding women's ability to thrive professionally.⁴

Gender-based discrimination in the workplace occurs when employers or colleagues treat female employees unfavourably solely based on their gender. Despite existing legal frameworks aimed at curbing such practices, gender discrimination persists, perpetuating a cycle of marginalization. This marginalization is not only about gender but often intersects with other social and economic factors, leading to compounded disadvantages for women. For instance, a highly qualified female job applicant might be offered a lower-paying position or overlooked for promotion, not because of a lack of skill or dedication, but merely due to her gender. This discrimination extends to role assignment, status within the organization, and salary, where women often find themselves relegated to positions that do not reflect their capabilities or financial worth, further demoralizing them.

The principle of equal remuneration for equivalent work, enshrined in legislations such as the Equality Act 2010, mandates that employees, irrespective of gender, should receive equal pay for performing the same roles. Yet, the reality remains starkly different. Women, even those who match or surpass their male counterparts in skill and effort, frequently receive lower compensation and are confined to lower-status roles. This disparity not only undermines their financial independence but also their professional growth and self-esteem.⁵

Moreover, age discrimination adds another layer of injustice, disproportionately affecting women. As they age, women face increasing difficulties in securing and retaining employment, a stark contrast to the aging male workforce, which is often perceived more positively. This age bias forces many women out of their jobs prematurely, and those attempting to re-enter the job market encounter significant barriers, including lower pay and limited opportunities.

Sexual harassment in the workplace is yet another grievous affront to women's dignity. It manifests in two primary forms: quid pro quo, where employment benefits are contingent upon the submission to sexual advances, and the creation of a hostile work environment through unwelcome sexual conduct. Such harassment not only violates women's rights but

⁴*An Overview of IPC Section 354 (Burden of Proof in Outraging Women's Modesty)*. (2022, March 24). Law Insider India. Retrieved February 19, 2024, from <https://www.lawinsider.in/columns/an-overview-of-ipc-section-354-burden-of-proof-in-outraging-womens-modesty>.

⁵*IS THE MODESTY OF A WOMAN REALLY WHAT'S OUTRAGED?* (2021, June 14). Jus Corpus. Retrieved February 19, 2024, from <https://www.juscorpus.com/is-the-modesty-of-a-woman-really-whats-outraged/>.

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also engenders a climate of fear and intimidation, compelling many to endure in silence to safeguard their livelihoods.

Conceptual Framework of Women's Modesty

The concept of 'modesty' remains undefined within the statutes of the Indian Penal Code; nonetheless, it encapsulates the essence of a woman's sexual dignity, a trait inherently hers from birth. This dignity is highly personal and subjective, with each woman drawing her own distinct boundaries that define her sexual honour. There is no universal standard to gauge what might infringe upon this dignity, as perceptions vary greatly among individuals. For instance, a casual touch on the shoulder could be perceived as an intrusion by a woman from a rural setting, whereas it might be seen as a normal gesture of greeting in urban spheres. The variability in perception extends to workplace environments, where attitudes towards discrimination can significantly differ among women. Discrimination, in this context, is understood as the unjust treatment or exclusion based on gender, sexual orientation, race, or religion, leading to adverse effects on societal health and individual well-being.⁶

In addressing the issue of sexual harassment in the workplace, the landmark judgment of *Vishaka v. State of Rajasthan and Others* paved the way for establishing comprehensive guidelines.⁷ These guidelines not only delineate the contours of what constitutes sexual harassment but also mandate employers to adopt proactive measures aimed at preventing such acts, regardless of whether they are perpetrated by employees or third parties. Employers are further required to institute mechanisms for addressing and penalizing such behaviour.

Another dimension of workplace discrimination against women concerns perceptions of their capabilities. The predicament faced by many women today is rooted in a paradox: a highly competent woman is often subject to unfavourable judgments, deemed unlikable by both male and female colleagues. This is contrasted with the reception of competent men, who are typically viewed as assertive and deserving of professional advancement. Women showcasing proficiency are frequently labelled as aggressive or manipulative, an unfortunate stereotype that undermines their professional standing. This dichotomy extends to perceptions of women

⁶*Outraging The Modesty Of Women*. (2020, December 18). Law Corner. Retrieved February 19, 2024, from <https://lawcorner.in/outraging-the-modesty-of-women/>.

⁷(1997) 6 SCC 241.

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who may not exhibit overt confidence or capability, who are then criticized for their perceived lack of suitability for their roles.⁸

The persistence of gender discrimination is a grim reality for many women, with its manifestations ranging from overt to subtle. Historical perceptions of women primarily as caregivers have relegated them to secondary status in professional domains. Identifying and proving discrimination can be challenging, as behaviours interpreted as benign or unintentional may mask underlying prejudices. Notably, societal biases operate on a subconscious level, with ingrained stereotypes influencing perceptions of gender roles in professional and domestic settings.

Efforts to dismantle these biases require a shift in societal attitudes, recognizing the equal potential of men and women in achieving professional excellence. The global community is gradually embracing this shift, with an increasing emphasis on policies that ensure equitable opportunities irrespective of gender. The imperative is clear: everyone, regardless of gender, merits the chance to realize their potential, underscoring the universal principle of equality.

Judicial Frameworks

The case of *State of Punjab v. Major Singh* is a landmark judgment that significantly broadened the legal understanding of the offence of outraging a woman's modesty.⁹ Major Singh was convicted for his actions against a seven-and-a-half-month-old infant, which involved inappropriate contact with the infant's genital area. This case challenged conventional perceptions about the applicability of the offence of outraging modesty, as outlined in section 354 of the IPC, especially considering the age and consciousness of the victim regarding her modesty and sexuality.

The infant, being incapable of understanding or expressing shame or a sense of modesty due to her tender age, became the centre of a legal debate on whether her modesty could be considered outraged in the absence of her awareness. The critical legal question was whether the notion of modesty, as protected by the IPC, is an inherent attribute of female individuals that warrants protection regardless of their capacity to recognize an act as an affront to their modesty.

⁸*Supra* note 5.

⁹*Supra* note 2.

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During the appeal in the Supreme Court, the majority opinion held that the essence of a woman's modesty is intrinsically linked to her sex and that even infants possess this modesty by virtue of being female. Justice Mudholkar emphasized that the crucial factor is the nature of the act and its connotation in the common understanding of sexuality, not the subjective experience or reaction of the victim. Justice Bachawat reiterated that the core issue is the accused's intent, and the lack of the victim's reaction does not diminish the gravity of the offence.

Consequently, the court overturned the Punjab High Court's majority view that required the victim's awareness of the offence for modesty to be considered outraged. The Supreme Court's ruling underscored that modesty is an attribute of females by their gender, and any act violating this dignity constitutes an offence, independent of the victim's perception or reaction. Major Singh was convicted under section 354 IPC, emphasizing the law's protective stance towards the inherent dignity and modesty associated with women, irrespective of their age or consciousness of such virtues.

This was influential in subsequent cases, including *Ram Kripal Singh v. State of Madhya Pradesh*, where the Supreme Court further elaborated on the concept of modesty.¹⁰ In this instance, the appellant Ram Kripal Singh was convicted for the rape of a woman, reinforcing the principle that the essence of a woman's modesty is her sex, and the offence focuses on the perpetrator's intent rather than solely on the victim's subjective experience.

In the landmark case of *Major Singh Lachhman Singh v. The State*,¹¹ the discourse centred around the interpretation of 'modesty' within the legal framework, particularly in the context of offenses against women. The Punjab High Court delved deeply into the essence of modesty, articulating it as an attribute characterized by decorum in demeanour and conduct, embodying the absence of anything that is forward or indecent. The court emphasized that modesty encapsulates an intrinsic embarrassment fastness, underlining an unblemished purity.

Elaborating further, the court posited that modesty, when referred to in the context of a woman, transcends the mere act of being modest. It embodies the quintessential essence of womanly decency, encompassing a stringent adherence to purity in thoughts, speech, and actions. Justice S. Cooper underscored the criticality of subjective interpretation in matters of

¹⁰(2007) AIR 370.

¹¹AIR 1963 PH 443.

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modesty. He highlighted that the perception and feelings of the woman, who is the subject of the alleged offense, play a pivotal role in determining the infringement of modesty. The judgment illuminated that the act of outraging a woman's modesty involves not only the physical actions, such as assault or the application of criminal force by the accused but also a significant subjective component concerning the woman's personal sense of violation.

This interpretation gains further clarity in the context of Section 354, which penalizes the act of outraging a woman's modesty. The court elucidated that the age of the woman is irrelevant in determining the culpability under this section. What is paramount is whether the assault or use of criminal force was carried out with the requisite intent or knowledge as specified under Section 354. Echoing this sentiment, Justice Gurdev Singh articulated that the establishment of the accused's intent or knowledge suffices to complete the offense, rendering any inquiry into the aftermath of the act unnecessary. This perspective firmly establishes that arguments attempting to diminish the gravity of the offense based on the victim's age or perceived awareness are futile.

Another seminal case, *Raju Pandurang Mahale v. State of Maharashtra and Anr.*,¹² provided further clarity on the elements necessary for constituting an offense under Section 354 of the IPC. The Supreme Court outlined that for an act to be considered a violation under this section, it must involve an assault committed against a woman, where she is subjected to criminal force by the accused, with the intent to outrage her modesty. Through this judgment, the Supreme Court reaffirmed that modesty is an attribute inherently associated with the female gender, a characteristic that stems from the very essence of being a woman.

The court's interpretation in this case also extended to real-life scenarios, illustrating that acts such as pulling a woman's saree with a subsequent proposition for sexual intercourse unequivocally constitute an outrage to a woman's modesty. This case further solidified the legal understanding and protection of the concept of modesty, reinforcing the judiciary's stance on maintaining and upholding the dignity and respect of women against acts of violation and assault.

Comprehensive Reforms to Address Sexual Violence: Insights into the Justice Verma Committee's Recommendations

¹²AIR 2004 SC 1677.

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The Justice Verma Committee, established in the wake of a deeply troubling surge in sexual offenses against women, embarked on a thorough examination of criminal laws, aiming to introduce reforms that would guarantee both swift justice for victims and the imposition of more stringent penalties on perpetrators of sexual assault. This committee's work led to a series of recommended amendments, particularly focusing on Section 354, which deals with outraging a woman's modesty. The suggestions put forth by the committee aimed to broaden the scope of what constitutes a sexual offense and to introduce new categories of crimes that address contemporary issues related to sexual violence against women.

The committee proposed a comprehensive redefinition of Section 354 to include not only physical acts of non-consensual sexual touching but also to encompass actions, words, or gestures that create an unwelcome sexual threat or environment for the victim. This expanded definition was designed to cover a wider array of sexual offenses, reflecting a deeper understanding of the various forms that sexual harassment and assault can take. The inclusion of the public display and dissemination of pornographic materials under this section aimed to address the growing concern over the use of such materials to harass or intimidate women.¹³

In addition to revising Section 354, the committee recommended the introduction of several new sections to the IPC to address specific crimes:

- *Section 354A*: This section was proposed to specifically tackle the act of assault or the use of criminal force with the intent to disrobe a woman, recognizing the particular violation and trauma associated with such actions.
- *Section 354B*: Introduced to criminalize voyeurism, acknowledging the privacy violations and the sexual exploitation that such acts represent.
- *Section 354C (1)*: Aimed at making stalking an explicitly defined offense, recognizing the persistent and unwanted attention that can cause significant distress and fear for the victim.
- *Section 354C (2)*: Specifies the punishment for stalking, ensuring that the legal system provides a deterrent to such behaviour.

Furthermore, the committee underscored the necessity of penalizing not just overt physical acts but also remarks, statements, gestures, or any symbolic motions that convey an unwelcome sexual threat, recommending a punishment of up to three years in prison, a fine,

¹³Mansi. (2022). The offence of outraging the modesty of women in india. Jus Corpus Law Journal, 2(4), 336-345.

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or both. This approach represented a significant shift towards recognizing the psychological and emotional aspects of sexual assault, in addition to its physical dimensions.

Following the committee's report, the Government took swift action by issuing an ordinance, which was subsequently passed by Parliament as the Criminal Law (Amendment) Act, 2013. This act, which became effective on February 3, 2013, marked a pivotal moment in India's legal landscape regarding the protection of women's rights and dignity.¹⁴ The amendments introduced by this act were aimed at creating a safer and more just environment for women, ensuring that the law could more effectively respond to and deter acts of sexual violence.

Conclusion

Despite the introduction of proposed legislative amendments and a more stringent interpretation of existing statutes, there has been no significant change in the overall crime rate. Alarming, there is a notable escalation in violent crimes against women, underscoring an urgent necessity for heightened awareness about the legal protections and rights afforded to women, alongside the judicial measures in place to penalize offenses against them. In light of the persistent and growing prevalence of sexual assault crimes targeting women and children, it is imperative to prioritize this grave matter and contemplate the formulation of rigorous laws to combat such offenses effectively.

¹⁴*Ibid.*

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