



## Law relating to modesty of the woman in India

Suresh Puliganti <sup>LL.M.</sup>

University College of Law, Osmania University,  
Hyderabad-500 007.

**Abstract:** India, at the time of independence, was plagued with certain social maladies that had its roots in its history, customs, cultural moorings, myths and wrong perceptions. And on the other hand British had left this country with a rudimentary industrial and scientific base, tremendous poverty, social cleavages along caste and economic lines. So the framers of the Indian Constitution were deeply concerned to provide social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the people. These benign goals have been enshrined in the preamble of the Constitution of India.

**Key words:** Constitution of India, women suffer, Penal Code

### Introduction

Each year, hundreds of women suffer of cruelty in the hands of the patriarchal society. Yet these cases have low conviction rates due to the inefficiency of the law enforcement agencies and the dismal laws which are present in society.

Any person who assaults a woman or uses criminal force on any woman with the intention to outrage her modesty is guilty of an offence under section 354 of the Indian Penal Code. He may also do so with the knowledge that by doing so he would be outraging the modesty of the woman. Any person who utters any word or makes any sound or gesture or exhibits any object with the intention that it will be seen or heard by such woman or will intrude up on her privacy is guilty of insulting the modesty of that woman.

Assault or using criminal force is an offence under section 354 of the Indian Penal Code while insulting the modesty of the woman through words or gestures

is an offence under Section 509 of the Code. Some of the examples illustrating acts that amount to outraging the modesty of a woman are as follows:

- ☞ Hugging a woman without her consent, kissing her, touching her private parts or any act which is likely to put her to shame by outraging her modesty.

Examples of insulting the modesty of the woman are:

- ☞ Writing letters using vulgar language.
- ☞ Making vulgar gestures
- ☞ Displaying vulgar figures
- ☞ Singing songs with vulgar suggestions
- ☞ Entering a woman's house and making vulgar gestures
- ☞ Exhibiting his nude body

The offence under section 354 is punishable with imprisonment up to 2 years or fine or both while that under Section 509 is punishable with a simple imprisonment of 1 year or fine or both.



Both the offences are cognizable, bailable and compoundable with the permission of the court.

Any person may file a complaint and lodge an FIR against the offender in the nearest Police Station. The case can be tried by the Metropolitan Magistrate or a First Class or Second Class Judicial Magistrate.

Once the case is filed in the Court, the concerned woman has to prove the following:

- Under Section 354 of IPC, a) That the accused had assaulted the woman or has used criminal force on her. b) That he had done so with the intention of outraging her modesty or that he had done so knowing that thereby he outrage her modesty.
- Under Section 509 of IPC, a) That the accused has uttered any word or made any sound or gesture or exhibited any object to the woman with the intention that she sees or hears it or it intrudes her privacy. b) That he has done so with the intention of insulting her modesty.

The case will be decided as per the procedure laid down by the Criminal Procedure Code. Appeal lies to the next higher Court. The case may be compounded with the permission of the Court or the accused may resort to plea bargaining for sentence reduction or any other concession.

### **Modesty of woman**

The phrase "outraging the modesty of woman" or "simply the world modesty has also been subject to conflicting interpretation in the courts". In one of the landmark cases decided under the section 354 of IPC the Court went to

great lengths to decide what 'modesty' would mean.

However, section 354 IPC does constitute assault or criminal force to women with intent to outrage her modesty. Whoever assaults or uses criminal force on any women, 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 may extend to two years or with five or with both. However the imprisonment term in Andhra Pradesh is 7 years.<sup>1</sup> The crime is cognizable and bailable. This section is not well defined. This law changes from one culture to another, it depends upon the country, the religion and the culture to which one belongs.

The Supreme Court of India has held that any act done to or in the presence of a woman is clearly suggestive of sex, that act can be considered as an offense under section 354 of IPC.<sup>2</sup>

In court, it must be proved that the person assaulted was a female on whom criminal force is used to outrage her modesty. A charge of this nature is very difficult to prove, as there may be witnesses on several occasions. Touching a woman with criminal assault and violating, humiliating her on several occasions as reported in the newspapers that a woman is stripped and paraded in a public place.

Eve-teasing is another such crime which is neither readily reported nor recorded as often both the victim as well as the police personnel feel that the crime is of a mild nature. Eve-teasing is equated to Section 509 IPC word, gesture, or act intended to insult the modesty of a woman, 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 women or intrudes upon the privacy of such women, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both. The punishment is simple imprisonment for one year. The offense is cognizable and bailable.<sup>3</sup>

The offense is at the discrepancy of the officer-in-charge of the police station where the crime has taken place as it depends on the officer as to how, he will interpret the law and the gravity of the crime.

Sexual harassment may be homosexual as well as heterosexual. But the available data and court cases reveal that heterosexual mode is the most pervasive one. Women because of their oppressed and subjugated position in society are far more vulnerable to sexual harassment. The perpetrators of sexual harassment are males though the indulgence of females is not unheard of, but it comprises of extremely rare occasions. The available studies suggest that women are the recipients of physical and sexual abuse at least 10 times more frequently than are men.<sup>4</sup>

In order to free themselves from the clutches of male domination and exploitation due to economic dependence by making them self-reliant economically and in some cases to support the family income, women come outside the confines of home, hitherto secluded from the outside glare. But here new kind of exploitation, victimization and subordination is encountered by them in the form of sexual harassment. Thus sexual harassment in the workplace and

elsewhere has become a very important agenda for women's rights because of its widespread occurrence and its far reaching and disturbing effects.<sup>5</sup>

Whereas in India, in the absence of any statutory definition of sexual harassment, Supreme Court took the lead and recognised and defined the term for the first time in the year 1997 in *Vishaka v State of Rajasthan*<sup>6</sup> The Supreme Court took reference from international Conventions and norms and defines sexual harassment to include such unwelcome sexually determined behavior (whether directly or by implication) as physical contacts and advances; a demand or request for sexual favours; sexually – coloured remarks; showing pornography; any other unwelcome physical, verbal or non – verbal conduct of sexual nature.

The victim oriented approach mainly focusses on the victim and view it from the perception of victim only. And the reasonability approach looks at the alleged behavior from the standard of reasonable person in the circumstances although reasonable person standard depends upon the interpretation of the adjudicator. However the unwelcome approach looks at the situation from the lens of the reaction of the recipient. If the advance, request, favor or conduct of the harasser is not solicited, invited, acceptable or tolerable to the recipient, then it is considered to be undesirable, offensive, unacceptable, intolerable and hence unwelcome by the recipient. Thus neither of these approaches can address the problem under hand in isolation because that may lead to grave injustice to the aggrieved person. Therefore the combination of all these approaches can effectively redress the grievances of the person harassed.



### **Amendments to the Indian Evidence Act, 1872**

1. As section 53 A in this case Evidence of character previous sexual experience not relevant. In this the offences as per Indian Penal Code as section 354, Section 354-A to 354-D, Section 376, 376-A to E I.P.C. In these cases consent is important.

2. Substitution of section 114-A as presumption to absence of consent in certain prosecution for sexual assault clause (a) clause (m) of sub/Sec. (2) of Sec. 376 of I. P. Code the Sexual intercourse by the accused is proved and question is whether the consent was obtained or not will arise.

3. As section 119 and 146 of Evidence Act, the witness unable to communicate verbally interpreter assistance shall take by the court and other the offences which mentioned in IPC as offences against women are stated in the proviso inserted to give effect.

### **The Criminal Law (Amendment) 2013**

☞ Section 354-A pertains to sexual harassment and for punishment of the same if a man commits any of the following. i) If any physical contact and advances in the opening negotiations sexual overtures or ii) If demand or request for sexual favors or making sexually colored remarks iii) Showing pornography to woman against her will. iv) Making sexual coloured remark. These point (i) to (iv) in which in earlier Indian Penal code there was no offences related to pornography as per the change and other crime rate increasing there is stressing need to insert it the provision for the punishment. The punishment extents to rigorous imprisonment for the period of one

years to three year or with fine or with both or with both. In other case the less punishment as imprisonment up to one year or with fine or with both

☞ Sec. 354-B. This section provides punishment for assault or use of criminal force to woman with intending to disrobe her or compelling to her naked in the public place then the liability the punishment is minimum three years and maximum seven years and also liable to fine.

☞ Sec. 354-C is as to voyeurism which includes watching, capture the images of a woman who engaged in her private acts in her ordinary course with her aspectation of not being observed by others and punishment provide is imprisonment of one years to seven years and also fine depending upon the gravity of the offence.

☞ Sec. 354-D is pertaining to stalking. If anyone follows a woman pursuate her for contact for his personal interaction knowingly that woman is not interested and monitors her internet, e-mail or her electronic communication is liable for imprisonment extending for three years to five years and also fine.

And he knowingly disobeys any other direction of Law regulating the manner in which he shall there he is binding to conduct investigation of if he is not willing to record or fail to record any information given to him under sub-section (1) of 154 about the first information report of the procedure of criminal law 1973 (2of 1974) those offences which are of cognizable in nature and punishable under section 326 A here use of acid is given which is or voluntary causing grievous hurt and in section 326 B this section is about voluntarily throwing or attempting to throw acid



both these section which was inserted as per criminal Law amendment and other important section such as newly added sections 354, 354-B , Section 370, Section 376, Section 376 A to 376 E and section 509 here under this section the enhance punishment given earlier in this section 1 year imprisonment was given but presently because of amendment the punishment extended to three years imprisonment was given but presently because of amendment. The punishment extended to three years all these sections which are the offences against women here the duty of the public servant even the state responsibility to protect the rights of women or any other person as to protect Human Right.

In this case the accused who slapped the back of lady I.A.S. officer of Punjab7 cadre in public place this act of the accused prima facie amounted to outraging of modesty of women or lady 354 This section 354 substituted by the criminal Law Amendment Act 2013 And also inserted section 354 – A which prescribes punishment For sexual harassment four elements has been given and punishment also prescribed. In Section 354-B is about intent to disrobe and using criminal force and assault to any women and in section 354-C is about the offence Voyeurism capture the images of a women the punishment as above 3 years to 7 years where as the offence voyeurism is also same and shall also liable to fine In Section 354 – D is about stalking is about the electronic means if any kind of email or communication made by the person is also liable under I.P.C.

### **Subjective test**

The subjective test i.e. reaction of the recipient and the objective test i.e. other

factors like religious, cultural, ethnic or moral standards of the parties at a particular time, the content or circumstances in which that conduct was exhibited or otherwise, the age, sex or other qualifications of the parties etc. are to be applied to analyze and interpret the situation or behavior accordingly. From the above analysis, it is inferred that following are the essential elements of sexual harassment :- (i) the conduct or behaviour must be unwanted or unwelcome, (ii) the conduct or behaviour must be of sexual nature, (iii) it has the purpose or effect of violating the dignity of a person, and (iv) it is by creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment may be coercive or non-coercive i.e. the harasser offers a benefit or reward in return or threatens some harm or damage as the adverse consequence or simply to annoy or offend the person harassed rather than performing sexually for the harasser. These leads to further classification into two forms :- (1) quid pro quo harassment and (2) hostile environment harassment.

**Quid pro quo harassment** is committed by the breach of trust and abuse of power or authority by the employer or his agent to whom authority over terms, conditions and manner of doing work by the employer is delegated. The harasser may demand or request for sexual favours in order to keep or obtain job benefits like hiring, promotion, training opportunity, rise in salary or transfer etc. So this can be termed as 'sexual blackmail'. This is very dangerous because it is difficult to prove as it appears to be consensual act though there may be economic coercion behind it.



**Hostile environment harassment** is caused by sexually coloured remarks, jokes, teasing, showing pornography, sexual assaults, manhandling like touching, pinching, patting, brushing against the body etc. This type of harassment is also very perilous because it creates adverse, unfriendly, unwelcome, abusive, hostile and offensive work environment. By the creation of this type of environment, women as a class may be threatened because they are given the message that this is the adverse consequence of intruding into the hitherto exclusive terrain of men.

The sexual harassment of women is considered to be discrimination on the basis of sex which in turn has its roots in the patriarchal social order and thus reflection of the status of women in society. The systematized prejudices, seclusion of women, economic dependence, violence and atrocities further relegates the status of women. So law of the land has a vital role in this aspect because law reflects the public opinion of the time and vice-versa. Thus the emphasis is on the study of actual social effects of legal institutions and legal doctrines, along with conducting sociological study in preparation for law making and studying the means of making rules effective.<sup>8</sup>

### **Constitutional Rights**

India, at the time of independence, was plagued with certain social maladies that had its roots in its history, customs, cultural moorings, myths and wrong perceptions. And on the other hand British had left this country with a rudimentary industrial and scientific base, tremendous poverty, social cleavages along caste and economic lines. So the framers of the Indian Constitution

were deeply concerned to provide social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the people. These benign goals have been enshrined in the preamble of the Constitution of India. Part III of the Constitution contains fundamental rights which are justifiable and no law can be made in violation of those rights. This part has been further strengthened under Article 35 which obligates the Indian parliament to make laws for giving effect to the provisions contained in this part i.e. part III of the Constitution.

The Indian constitution both in its fundamental rights and directive principles has provision for protecting the interests of the women. It tries to ensure that men and women are treated equally. Yet at several junctures it agrees to the fact that women have been ill-treated in society. Hence to remove this injustice and to re-introduce equality, the constitution allows the state to make special provisions favoring women. Article 39(c) of the constitution ensures that women are not exploited in society and not forced to work which may be unsuited to their age and strength. Again Article 51A (e) of the constitution provides that the citizens must ensure that the dignity of the women is preserved. Somehow, these enactments in effect remain on paper only. They are as if a token gesture.

Further, keeping in view that the Indian freedom struggle will be an unfinished mission until half of the population i.e. women are restored to their social, economic, political, intellectual, and cultural dignity in reality, the framers of Constitution laid down number of



provisions in the form of fundamental rights and directive principles of the State Policy. The pursuance of this objective is reflected in part III of the Constitution which abolishes inequality between man and woman by laying down in Article 14 that equality is the rule. But equality can only be among equals. When an equals are to attain equality, as for example between men and women, the dynamics of egalite demands special measures of equalization and protection. The intrinsic or initial handicaps, biological and other, that women labor under, calls for remedial care even as the historic inequality implicit in our conditioned culture and distorted legality demand provisions to neutralize ancient inferiorities.<sup>9</sup>

Thus on the one hand sex discrimination is considered to be anathema to the Constitutional law but on the other hand benign exception to this is enacted in article 15 (3). This provision enjoins the State for protective discrimination in favour of women to rescue them from disabilities and to dissolve all discrimination for advancement of their interest and hence providing them justice. The insertion of clause 3 of article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socioeconomic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that clause (3) is placed in article 15. Its object is to strengthen and improve the status of women.<sup>10</sup>

The protection under this clause also extends to matters relating to employment and appointment under the State under Article 16 because sex cannot be the sole ground of ineligibility or discrimination against women.

In addition to this explicit guarantee, there are also implicit references for the protection of women in part III of the Constitution. State is authorized to make any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

To further strengthen this struggle for advancement of certain sections of the society including women who have historically been backward, Article 16 (4) enjoins the State to make provisions for the reservation of appointments or posts in favor of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. Article 17 abolishes untouchability and forbids its practice in any form. Article 19 guarantees six fundamental freedoms to all citizens which includes, inter alia, to practise any profession or to carry on any occupation, trade or business.<sup>11</sup>

Further considering that right to life constitutes the superstructure while other rights supply meaning to it, Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. However, right to life does not merely mean the continuance of a person's animal existence. It means the fullest opportunity to develop one's personality and potentiality to the highest level possible in the existing stage of our civilization. Inevitably, it means



the right to live decently as a member of a civilized society. It includes within its ambit all freedom and advantages that would go to make life agreeable. The right denotes a reasonable standard of comfort and decency.<sup>12</sup>

So the term life as used in Article 21 means that something more than mere animal existence is required. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.<sup>13</sup>

Apart from Fundamental Rights, the drafters of the Constitution incorporated in part IV, Directive Principles of policy matter, *inter-alia*, for welfare of women. This part epitomizes the aspirations of the Constitution makers and of the people and describes it as a mechanism geared towards social levelling to which economic equality is a prelude. It is clear from Article 38 which directs the State to promote the welfare of the people by securing and protecting as effectively as is possible a social order in which justice, social, economic and political shall inform all the institutions of the national life. And in order to achieve this, State shall in particular strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations.<sup>14</sup> Thus social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society.<sup>15</sup>

Thus part III and IV is complementary to each other. Being conscious of the fact that women in India are in a disadvantaged position because of cultural patterns, historical prejudices and attitudes, the provision in the form of the fundamental duty was incorporated by the Constitution 42nd (Amendment) Act 1976. It obligates every citizen of India to renounce practices derogatory to the dignity of women under Article 51 A (e). Thus it can be said that the dignity of womanhood has been the salutary cynosure of Constitutional concern.

### **Role of judiciary**

However, the right to life received a shot in arm at the hands of Justice Bhagwati with the observation that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one-self in diverse forms, freely moving about, mixing and comingling with fellow human beings.<sup>16</sup>

The Supreme Court observed that a good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty and property. The Court affirmed that the right to enjoyment of a private reputation was of ancient origin and was necessary to human society.<sup>17</sup>

And sexual violence apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It is a crime against the entire society, a crime against basic



human rights and hence violative of the victim's most cherished of the fundamental rights i.e. rights to life contained in Article 21.18

Thus women also have the right to life and liberty, they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. And rape is a crime against basic human rights and is also violation of the victim's rights to life under Article 21.19 Hence sexual harassment of women at work place is violative of right to life and personal liberty under Article 21.20

Further Article 24 prohibits traffic in human beings and begar and other similar forms of forced labour. And traffic in human beings includes traffic in women for immoral or other purposes, such as making them 'devadasi' or 'jogins'.<sup>21</sup>

### Conclusion

These national policies and programmes to ameliorate the lot of women have achieved only a negligible progress. Because Indian woman is still un free, exploited, sold as commodity, liquidated without the law and held hostage by an exploitative combination. Constitutional imperatives of equality of status and opportunity, social justice, dignity and personality for the Indian women remain paper rhetoric and fatuously futuristic so long as raw realities of life contradict with bleeding wounds and burnt flesh, daily humiliation and legal discrimination, the fighting creed writ into the founding deed.<sup>22</sup>

However the Penal Code recognizes three distinct forms of sexual violence, rape under Section 375-376, physical contact

short of rape as molestation under Section 354 and without physical contact i.e. verbal or through gestures as eve-teasing under Section 509. And sometimes even Sections 292- 294 which prohibit obscenity are used. However in the absence of the specific use of the term sexual harassment, the cases are being defined in terms of outraging or insulting the modesty of a woman.

The modesty is to woman what fragrance is to flower has rightly been defined.<sup>23</sup> The offences created by Sections 354 and 509 of the Indian Penal Code are as much in the interest of the women concerned as in the interest of public morality and decent behaviour. These offences are not only offences against the individual but against public morals and society as well and that object can be achieved only if the word modesty is considered to be an attribute of a human female irrespective of fact whether the female concerned has developed enough understanding as to appreciate the nature of the act or to realize that it is offensive to decent female behaviour or sense of propriety concerning the relations of a female with others.

Thus Vishaka Judgment heralded a new era in the struggle of Indian women for gender equality, right to work with dignity, economic independence and hence emancipation because for the first time the term sexual harassment was recognized and defined by the judge made law. However, in the absence of statutory enactment on the subject, elaborate legal framework for redressal of victims of sexual harassment is not available and legal redressal mechanism is also required to develop completely.

Further Universal Declaration of Human Rights also reaffirms faith in the equal



rights of men and women and that everyone is born free and equal in dignity and rights and has right to life, liberty and security of person and these rights are available to everyone without distinction of any kind such as race, colour, sex etc.<sup>24</sup>

In India Section 354 and Section 509 of Indian Penal Code, 1860 are viewed through the prism of obsolete and outmoded concept of 'modesty' However, since the precise definition of modesty is conspicuous by its absence, the same is

attempted to be derived from various judicial pronouncements. But in view of the divergent interpretations vagueness is intrinsic in the very conceptualization of modesty. Further, as modesty is linked to morality which itself being a varying concept and the same cannot be alluded to give the extract the exact meaning of the same. It is, therefore, suggested that the terminology which has outlived its utility should be done away with lock, stock and barrel and new terminology be adopted.

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