

The Offence Relating to Outraging Modesty of Women- An Evaluation

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Abstract

The notion of offences against women is increasing exponentially. This has, indeed, taken a toll on the lives of women leading to mental and physical agony. The concept of the outraging modesty of women is been described clearly in Section 354 of the Indian Penal Code, 1860. The Section 355 deals with use of assault or criminal force with the intention to dishonour person without any grave provocation. Moreover, the section 509 provides for the offence of outraging modesty as well. It is a well-established fact that the aspects of assault and criminal force require a deep explanation. The idea that these offences have been uprising in the society is hard to deny. However, it has also been observed that the misuse of these specific and crucial laws is rampant. With the amendments in the code, further provisions are seen to be added. This paper attempts to analyse the legal understanding of the Section 354 and Section 509 along with the analysis of the present scenario and the ongoing misuse of the provisions. This paper also tries to analyse interpretation made by Courts in various cases and suggests certain reforms in order to improve the provisions with the changing times with specific relevance to the in-depth meaning of assault, criminal force and other important terms with that regard. The clear distinction among the different sexual offences pertaining to women has explicitly discussed in order to seek clarity.

I. Introduction

“If society trivializes modesty, violence against women would result”- Lalitha Dhar Pariha

With the advent of Indian Penal Code in 1860, the codification of enumerable offences took place. The offence of outraging the modesty of woman got its definition under Section 354 of the code. Also, the Section 509 provided an elaborative, yet, comprehensive definition of the offence leading to a co-joint reading of the two sections in almost all of the cases. It is pertinent to note that the term ‘modesty’ lacks an appropriate definition itself and hence has not been described anywhere explicitly in the entire code. Thus, the Supreme Court finally defined the meaning of the term modesty as the “essence of a woman’s modesty is her sex itself”. The offence under Section 354² has been made punishable with fine or with imprisonment which is not less than that of one year and may extend to five years³ as well and is of cognizable and non-bailable nature whereas under Section 509,⁴ the punishment is fine or three years of imprisonment and the offence is of cognizable, bailable and compoundable nature. In general sense, outraging modesty of a woman is known as molestation. Moreover, the Section 354A, 354B, 354C and 354D provides for the offences of sexual harassment, assault on woman with intention to disrobe, voyeurism and stalking respectively.⁵ In order to gauge deeper into the matter, it is important to understand the in-depth phenomenon of the offence as there has been major recent developments leading to the evolution of the entire offence altogether. In order create a clear perspective, there comes the need to understand the difference between the offence of outraging modesty of women and other sexual

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² Indian Penal Code 1960, § 354.

³ Ibid.

⁴ Supra 1.

⁵ Jain Nirali, Outraging the modesty of a woman, 5 International Journal of Law 57, (2019).

offences committed against women. Also, the theories of victimology have a distinct reference to the offence and the view of cross examination being undertaken in such offences.

II. The Connotations Of The Terms Used

The terms force, assault and criminal force have been explicitly defined in the distinct Sections of Indian Penal Code. The Section 349 provides the definition of force which states that if the motion is caused, or there is any change of motion or cessation of the motion which could affect the sense of other person's feeling it becomes the force when cumulatively understood in three other ways as described. Force is the contemplation of the presence of both the persons at once which means the presence of the person who has used it and the presence of the other person towards whom it is being used or directed.⁶

The concept of criminal force is being defined in Section 350 of Indian Penal Code, wherein, the definition of criminal force has been provided. According to this Section, a force becomes criminal when there is an intentional use of force or if there is any knowledge of the same. In this Section, the force of criminal nature can only be applied to a person and not to any inanimate object as a crime is always against a human being. The criminal force is known as battery in English law. In the Section 351 of Indian Penal Code, the definition of assault has been clearly defined. However, within the definition of assault, not every threat in the absence of physical violence amounts to assault because there should be a means to carry that threat into the direct effect.⁷ Also, this is applied to the offence of outraging modesty of women, although with a little expansion and extension of the aspects and the description of the offence under Section 354 of Indian Penal Code, the inclusion of acts done without the use of any physical force such as stalking are being covered within the ambit of the offence.⁸ The threat is an assault.⁹ Moreover, making any sort of gestures or any preparation can amount to the very use of criminal force to assault.¹⁰ However, mere words do not amount to any assault. However, if any word or certain words are being used in order threaten the person with an immediate intention to use criminal force would directly hold the person liable for this particular offence.¹¹

The punishment of the offence of assault or criminal force which is not of the nature of grave and sudden provocation has been provided in Section 352 of Indian Penal Code and the punishment for assault or the use of criminal force is being provided under this section when there are no aggravating circumstances.¹² The instance of any individual pointing a loaded pistol at another person makes that individual accused liable under Section 352 of Indian Penal Code and not under the Section 307.¹³ Thus, in order to have a vivid understanding and clarity of the offence of outraging modesty of women it is extremely important to understand these crucial terms in detail as there has been an intense functionality.

⁶ Bihari Lal v. Lalita Prasad, (1934) Lah 786, 789.

⁷ Stephens v. Myers, AIR 1830 SC 349.

⁸ Ibid.

⁹ Rupabati v. Shyama, (1979) CrLJ 1275.

¹⁰ Indian Penal Code, 1860, § 351, Illustration (a).

¹¹ A.C. Cama v. H.F. Morgan, (1864) 1 BHC 205.

¹² Nagar Prasad v. State of U.P., AIR 1998 CrLJ 1580.

¹³ Swadesh Mahato v. State, AIR 1979 CrLJ 1275.

III. An Elaborate Discussion

The issue of offence relating to modesty of woman cannot be treated as trivial or a petty offence.¹⁴ As it has been clearly mentioned in the Section 354 of Indian Penal Code, wherein, it has been provided that whoever assaults or uses the criminal force to any woman with an intention or knowledge that he will likely to thereby outrage the modesty of a woman will be held liable to the punishment as has been prescribed and defined in the section.¹⁵

The essential and the differentiated element of the section is use of assault or criminal force, thus, where the bottom pants of the woman were being pulled down,¹⁶ the act was termed as outraging the modesty. The ultimate test for establishment of the fact that whether the woman's modesty has been outraged or not is that the very action of the offender should be such that it may be perceived as one which is capable of shocking the entire sense of decency of a particular woman or women at large.¹⁷ The judgment of *State of Punjab v. Major Singh*,¹⁸ has been proven to be a landmark one where the question arose that whether the modesty of a seven and a half months' child being outraged or not, it was held that the word 'modesty' has the meaning of the accepted notions of womanly modesty and not only the reactions and other notions pertaining to the woman against whom the offence has been committed. This is known to be the major case as far as the question of modesty is concerned.

In *Major Lachhman Singh v. The State*,¹⁹ the term 'modesty' pertaining to the woman has been considered and was being discussed. As far as the offence under Section 354 of Indian Penal Code was being considered wherein it was being explicitly held that all the allegations were not sufficient to fulfil the necessary and essential ingredient of the offence.²⁰ However, the clear definition and description of the word modesty was given in the judgment of *Ramkripal Singh v. State of Madhya Pradesh*.²¹ The Section 509 on the other hand makes the intention to insult the modesty of the woman as an essential and the most important ingredient of the offence as it has been mentioned that whoever intends to insult the modesty of any woman, utter any word, makes any sound, or gesture or exhibits any object intending that such word or sound will be heard or intrudes the privacy of the woman shall be punishable according to the prescribed term.²² In the landmark case of *Swapna Barman v. Subir Das*,²³ it was being held that under this particular provision of Section 509 the term 'modesty' does not only lead to the contemplation of sexual relationship of an indecent character but also includes indecency.²⁴ Therefore, it is essential to consider that any act which falls short of rape needs to be attributed as outraging modesty of the woman. Furthermore, a woman can also be tried for the offence of outraging the modesty of any woman as the codified sections themselves are gender neutral and does not make an individual of

¹⁴ *Vishaka and others v. State of Rajasthan and others*, AIR 1997 SC 3011.

¹⁵ Ratanlal and Dhirajlal, *The Indian Penal Code* (35th ed., Lexis Nexis, 2017).

¹⁶ *State of M.P. v. Surendra Nath*, 2006 (1) MPHT 215.

¹⁷ *Supra* 4.

¹⁸ *State of Punjab v. Major Singh*, AIR 1967 SC 63.

¹⁹ *Major Lachhman Singh v. the State*, AIR 1963 CriLJ 390.

²⁰ *Supra* 14.

²¹ *Ramkripal Singh v. State of Madhya Pradesh*, AIR 2007 SC 370.

²² *Ibid*.

²³ *Swapna Barman v. Subir Das*, AIR 2004 GLR 168.

²⁴ *Ibid*.

any particular gender] an offender for the actions.²⁵ Hence, both male and female can be prosecuted for this offence.

IV. The Quest Of Outraging Modesty And Rape

The offence of outraging modesty of women and rape has a major distinction as to the facts and the provisions which create the charge of either of the offences. Even, the offence of outraging modesty of women is entirely different from attempt to commit rape. However, it is a fact that it is a thin line difference. This sort of difference is actually invisible.

V. The Offence Of Rape

The definition of rape has been provided in the Section 375 of Indian Penal Code. The offence of rape has been made out in Section 376 of Indian Penal Code, 1860. The description of the offence of rape provides that whoever commits rape on any woman provided she is not the wife of that man, and the man is not below twelve years, would be held liable to the imprisonment which may extend to two years with fine or both. Moreover, in the sub-section (2) of the Section 376, it has been provided that any person who commits rape while fulfilling the conditions of the clauses provided in the sub-section would be liable to be punished with rigorous imprisonment for a term as prescribed in the Section 376 which provides for the punishment in accordance to the definition of the offence.

The infamous amendment was being brought about after the Nirbhaya case which was popularly known as Nirbhaya Act, the enormous and stringent changes were being brought about in the totality of circumstances. However, it has been seen that the 172nd report of Law Commission recommended making the rape laws gender neutral considering the present scenario which has not been implemented as of now and demand urgent execution.²⁶

VI. The Distinction

There are stark differences between outraging modest and the offence of rape. In the case of *Tukaram Govind Yadav v. State of Maharashtra*,²⁷ it was being held that where the accused was lying on the woman who was lying on the floor in suspicious circumstances and removed the bottoms of that particular woman, the offence of rape under Section 376 of Indian Penal Code was not being made out as there was no as such evidence of the penetration of penis according to the facts of the case. The offence was made out under the Section 354 of Indian Penal Code, 1860 as the medical evidence did not create the evidence of rape. In the case of *Jeet Singh v. State*,²⁸ although there were enough considerable evidences that the victim was being disrobed by the accused, it was held that the offence of outraging modesty of women was being made out and there was no offence of rape because there was no evidence of the same. Hence, the conviction of the Section 376 was being altered to Section 354 of IPC. However, in the case of State of Uttar Pradesh

²⁵ K.D. Gaur, Textbook on Indian Penal Code (6th ed., Universal Law Publishing, 2016).

²⁶ Soibam Singh, Explained: The Laws on Rape and Sexual Crimes, The Hindu, (last accessed on July 21, 2020, 8:00a.m.), Available at: <https://www.thehindu.com/news/national/what-are-the-laws-on-rape-and-sexual-crimes/article30233033.ece>

²⁷ *Tukaram Govind Yadav v. State of Maharashtra*, 2011 CrLJ 1501 Bom.

²⁸ *Jeet Singh v. State*, 2013 CrLJ (NOC).

v. Rajit Ram,²⁹ the Supreme Court overruled this particular judgment in which the conviction under Section 376 was being altered by Section 354 of Indian Penal Code and thus sent the case back to the trial court.

In the case of *Jai Chand v. State*,³⁰ the accused forcibly pushed and laid the prosecutrix on the bed and broke the string of her bottom, however, he did not make any attempt to undress himself at the moment. Also, he did not grab her back again, once the girl pushed him away. It was thereby held that since there is no evidence of rape according to the facts and circumstances which were narrated in the case to the court, the offence which was made out was of outraging modesty of women under the Section 354 of Indian Penal Code. However, in the case of *Ram Mehar v. State of Haryana*,³¹ wherein, the accused grabbed the prosecutrix and carried her up, later, pushed her down and tried opening the bottom of the victim, it was held that the offence of rape was not made out since the penetration of penis did not take place as she gave blow through the sickle. Also, the accused failed to give the sample of blood with result it could be presumed that the innocence was highly doubtful.

VII. Developments Thereafter

There are innumerable modifications which are being brought about in this particular offence of Indian Penal Code in order to make the provision stricter with the intention to curb the increasing rate of criminal records of such offence and to avail the provision of safety, security and protection to the woman at large. According to the Justice Verma Committee Report, which was being submitted on January 23, 2013, the non-penetrative forms of sexual contact needed to be considered as sexual assault and the punishment should be increased to five years under the Section 354 of Indian Penal Code. Also, it was being recommended that a quicker and speedy trial was the need of an hour in the offences which are committed against women. The Committee was headed by the then Chief Justice of India J.S. Verma and it was identified by the committee the root cause of sexual offences is the failure of the governance. This particular report plays a considerably crucial role in bringing about the major amendment of 2013. Considering the given recommendations, the major amendment was brought about in the March 2013 through the Criminal Law (Amendment) Act, 2013,³² because of which sporadic developments have took place. The punishments were increased.

This amendment did not only bring reforms in the Indian Penal Code, 1860 but also in Indian Evidence Act and Criminal Procedure Code, 1973 respectively. In addition to the same, new sections are being added up in Indian Penal Code, 1860 which are: Section 354A (sexual harassment), Section 354B (intention to disrobe a woman), Section 354C (voyeurism) and Section 354D (stalking) with separate punishments respectively. There have been major pronouncements since then. In the recent judgment, Delhi High Court has ruled that showing middle finger to a woman amounts to outraging her modesty thereby proving the laws to be more stringent as they were earlier. However, the misuse and abuse of the provisions has become rampant. There have been innumerable cases which are being filed and have been proven to be the false accusations. In

²⁹ *State of Uttar Pradesh v. Rajit Ram*, 2011 (6) SCALE 477.

³⁰ *Jai Chand v. State*, 1996 CriLJ 2039.

³¹ *Ram Mehar v. State of Haryana*, (2016) 2 AICLR 957.

³² Rituparna Bhattacharyya, *Criminal Law (Amendment) Act, 2013: Will it ensure women's safety in public spaces?* Space and Culture India, 2013.

2019, in a particular judgment, Calcutta High court ruled that pushing accidentally is not outraging modesty of woman under the Section 354.³³

VIII. Laws Of Sexual Harassment

The definition of sexual harassment has been explicitly provided under the Section 354A of IPC and the offence is created in the same Section under sub section (2) and sub section (3). It has been provided that any person who makes any physical contact or advances which involves sexual overtures or demands any sexual favours or shows any pornographic content to a woman without her consent as well as makes sexually coloured remarks becomes liable for the offence of sexual harassment. However, under the leading case of *Vishakha v. State of Rajasthan*,³⁴ the complete guidelines were being laid down by the Hon'ble Supreme Court with regard to sexual harassment at workplace and it was held that offence related to outraging modesty of women cannot be taken as a trivial offence. The guidelines which were being laid down by the Supreme Court got statutory recognition thereby making an enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

This offence of sexual harassment has been, now, made a cognizable offence in criminal law; hence, this also allows the withdrawal of complaints at workplaces which are usually followed by a compromise and thus, it does not actually stand at the scrutiny in the court of law. Moreover, the government is of the view that there is, in general, no such harm in providing women the alternative of either settling the matter within the organization on their own in which the offence has taken place or complaining to the police itself.³⁵ In the case of *State of Himachal Pradesh v. Prem Singh*,³⁶ it was held that while reading the evidence of the prosecutor, the case of rape could not be made out on the part of the defendant and hence he was not liable under the Section 376 of IPC since there exist a thin line difference between the offence of rape and sexual harassment and both should not be confused with each other. If a woman has clearly refused someone for the sexual advances and she has been met with threats to harm her physically or her reputation is being threatened to be harmed or the property, this creates the offence under Section 503 of IPC leading to punishment of two years imprisonment or fine or both. If any individual morphs the pictures of a woman and shares the same with the intention to harass her and defame her, it makes an offence under Section 499 of Indian Penal Code with imprisonment if up to two years or fine or both. In 2019, a case of sexual harassment was being attended and decided by the in-house committee of Supreme Court in which the then Chief Justice of India Ranjan Gogoi was alleged of sexual harassment at workplace, it was held that there was no as such substance to the charges of sexual harassment.

IX. Intent to Disrobe a Woman

The offence of intent to disrobe a woman is being made out in the Section 354B of IPC wherein it has been stated that if any man assaults or uses the criminal force to any woman or makes the

³³ Editor, Pushing accidentally is not outraging modesty of woman under Section 354 of IPC, SCC Online, (last accessed on 21 July, 2020, 8:11 a.m.), Available at: <https://www.sconline.com/blog/post/2014/07/19/pushing-accidentally-is-not-outraging-modesty-of-woman-under-section-354-ipc/>.

³⁴ *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

³⁵ P.S. A Pillai, Criminal Law (13th ed., LexisNexis, 2017).

³⁶ *State of Himachal Pradesh v. Prem Singh*, AIR 2009 SC 1010.

abetment of such act with an intention of disrobing the woman or with intention to compel her to become naked is liable for the punishment of imprisonment for three years or fine or both. The intention of the legislature was to make such act an offence as it thinks in its wisdom that such instances and acts of stripping a woman off her clothes is utterly disgraceful, embarrassing and are of mortifying position. Moreover, such cases do not require any direct and physical touch. This offence is of cognizable nature, wherein, the police officer is bound to register the offence. It is not a bailable offence.

Voyeurism

The offence of voyeurism has been made out in Section 354C of IPC, wherein, if a man watches a woman or captures any private act or disseminates any such image becomes liable under two subsequent convictions. The explanations under this section provides for the clear definition of private act as well as states that if a woman consents to capture such images or any act but does not consents the dissemination of the same to the third person, such act, if done, would make the man liable under this section. After the case of *Mukesh & Anr. v. State for NCT Delhi*,³⁷ which is popularly known as Nirbhaya Case, the new provision was being made. The Justice Verma Committee has a major role to play when the question of voyeurism arises. It was being recommended that the punishment for the offence of voyeurism must be up to seven years of imprisonment. However, during the deliberation which went while the Committee was being incorporated, it was found out that the offences of stalking, voyeurism, eve teasing were perceived to be the minor offences and they did not really have serious punishments leading to the digression in the society. After the amendment, this offence ceased to be the gender-neutral offence. It was keenly noted that such offences created a fear in the mind of girls, depriving them not only the freedom guaranteed under Constitution but also the Right of Education for that matter. As it was not possible to establish any machinery of prosecution but certain preventive measures were being created in order to prevent it from escalating into major aberrations.

Stalking

The offence of stalking is being provided in the Section 354D of Indian Penal Code.³⁸ Under this concept, the offence states that if a man attempts to follow or tries to make a contact with the woman, even after the fact that she has given a clear indication of no interest, that particular man becomes liable of the offence. It also includes the monitoring the use of woman of the internet or any other electronic platform. The punishment as prescribed is in two convictions, that is, in the first conviction the accused is punished for a term which can extend to three years and in subsequent conviction the imprisonment of a term which may extend to five years is provided. For the advent of this particular offence, the Justice Verma Committee has played a major role thereby leading to the Criminal Law Amendment, 2013 and bringing about this particular offence in existence.

³⁷ *Mukesh & anr. v. State for NCT Delhi*, AIR 2017 SC 1.

³⁸ Indian Penal Code, 1860.

Acid Attack

The Section 326 of Indian Penal Code deals with the offence of acid attack. The Eighteenth Law Commission of India marks the introduction two new Sections namely Section 326A and Section 326B in the Indian Penal Code. Moreover, the Section 114B in the Evidence Act,³⁹ was being incorporated which provides for the presumption in the cases of acid attack. The Section 326A defines the term acid and lays down the punishment for throwing the same which is ten years of imprisonment or fine or both. The infamous case of *Laxmi v. Union of India*,⁴⁰ provides for the decision of the Supreme Court, wherein, it issued the direction for the regulation of acid to the State as well as Union Territories. This has been the most famous case of acid case. In the case of *Ravinder Singh v. State of Haryana*,⁴¹ the acid was being poured by the husband upon his wife just because she denied divorcing him. The accused was charged under Section 302 of IPC; however, he was not provided life imprisonment though the victim died. In 2019, a plea was filed by Advocate Anuja Kapur who was accompanied by a male acid attack survivor, wherein, she sought directions to State and the Central governments for the compliance to the existing guidelines and the policies for the rehabilitation and the compensation of the survivors of acid attack. This petition came before Chief Justice Ranjan Gogoi at that very point of time.

IX. The Analysis of The Present Scenario

The present scenario pertaining to the legal stance of the said provision has seen to be mostly used fraudulently, however, the provisions have been proven to be highly woman centric in order to protect women from such grievous offences. The onus lies on the man to prove that he is innocent. Moreover, in such cases, if a woman wants to file the FIR against a male, the police has to register it, even if it is mala fide, the police official cannot deny registering the same as it was being held in *Lalita Kumari v. Government of U.P.*,⁴² and in *Amit Kumar v. Joginder Singh*,⁴³ the SHO was being suspended and it was held that there are mandatory directions to the police departments of all the states that the police officials are duty bound to register the FIR in respect of the complaint which discloses cognizable offence and denial to register the same could lead to stringent action.

In contradiction to the misuse and abuse of the law by the women, it has been noticed that in certain incidents, huge of number of cases of outraging modesty remain unreported and women tend to suffer throughout their lifetime. The position tends to stand in extreme degrees of different situations and there is the need to bring out the amendments that not only protect women but also aims at preventing the misuse of the same. The modifications should be such that provisions strike equilibrium. It should be put across that all the offences pertaining to outraging modesty must be made non bailable and the authenticity of the charges made by women at the time of reporting the offence should be checked well in advance in order to prevent the misuse.

X. The Ongoing Misuse- An Alarming Situation for Men in India

³⁹ The Indian Evidence Act, 1872.

⁴⁰ *Laxmi v. Union of India*, AIR 2014 SC 427.

⁴¹ *Ravinder Singh v. State of Haryana*, AIR 1975 SC 856.

⁴² *Lalita Kumari v. Government of U.P.*, AIR 2013 SC 243.

⁴³ *Amit Kumar v. Joginder Singh*, CRM-M-41761-2015 (O & M), 2019.

The infamous KPS Gill who was being convicted under Section 354 for slapping the posterior of Rupan Deol at the instance of a particular party, the judges made strong statement while upholding his conviction that it was impossible to believe that he had no intention to outrage the modesty of the victim as it was extremely difficult to compare the act of slapping the posterior of the woman to shoving her in a course of random argument or a quarrel and thus it becomes the takes a great judicial latitude to even compare the same.⁴⁴ In order to understand the common misuse and have a clear understanding of what does not constitute the outraging modesty of woman, it is important to note that mere knowledge that the modesty of a woman could likely be outraged is completely sufficient to constitute the offence without any calculated or conscious intention of outraging her modesty.

The Section 354 applies to each and every sexual act which is committed or has been intended against the particular woman, thereby actually falling short of penetration.⁴⁵ However, it has been observed that, time and again, there has been a lack of actual assessment of the entire issue as whole in its great depth and it is this fallacy of not being able to carefully consider the intent of the law and measure the weight of a complaint of a particular person which affect the courts throughout the board. In addition to the same, it has also been observed that mere lack of protest on the part of woman against the offence being committed should not be termed as alibi for the offender.

The leading judgment was being given by the Hon'ble Supreme Court in the case of Vidyadharan v. State of Kerala,⁴⁶ wherein, the act fell under the aggravated form of the offence which was needed to be punishable under Section 354 of Indian Penal Code, thus, it was held that no separate sentences were being awarded for the offence of outraging modesty. Moreover, the appeal before the High Court of Kerala was brought about and this too did not bring any relief to the appellant. However, the Supreme Court, for the offence under the Section 354 of Indian Penal Code and the Section 448 of Indian Penal Code, decided to sentence the accused for the custodial sentence, thereby, according to the records it was revealed that it was of approximately three months and should accordingly meet the ends of justice taking into consideration the background facts and certain features which were special to the case.

In the matter of Rupan Deol Bajaj v. Kanwar Pal Singh Gill,⁴⁷ where, the accused who was popularly known as super cop named K.P.S. Gill was being convicted for slapping the posterior of the petitioner, R.D. Bajaj, accurately highlights the problematic and the remarkable nature of male chauvinism often meted out towards women in the society.⁴⁸

On one hand, there are the cases of women being molested while on the other hand there is end number of cases which shows that such provisions are getting misused by them to a large extent. In the matter of Arnesh Kumar v. State of Bihar & Anr,⁴⁹ the Supreme Court ruled that accused that were charged under the law regarding anti dowry could not be arrested anymore automatically before an ultimate probe has taken place in the matter. Thus, this particular action was taken in

⁴⁴ R.K. Tejas Motwani, Analysis of Section 354/355 of Indian Penal Code, SEMANTIC SCHOLAR, (last accessed on July 21, 2020, 8:22 a.m.), Available at: <https://www.semanticscholar.org/paper/Analysis-of-Section-354%2F355-of-Indian-Penal-Code-Motwani/cfeb7f7d78dc3656dcaedb269474c335b8d4e90>.

⁴⁵ Supra 24.

⁴⁶ Vidyadharan v. State of Kerala, AIR 2004 SC 215.

⁴⁷ Rupan Deol Bajaj v. Kanwar Pal Singh Gill, AIR 1996 SC 309.

⁴⁸ Supra 34.

⁴⁹ Arnesh Kumar v. State of Bihar & Anr, AIR 2014 SC 273.

order to keep a strong and powerful check upon women who were constantly filing the false and inappropriate cases against their husbands and against the relatives of husband and right after the same, this specific provision came into applicability upon the Section 354 of Indian Penal Code.⁵⁰

XI. Cross- Examination During Trials- The Incidents Of Leading Questions

The aspect of cross examination and the leading questions during the trials of such offences has been the most crucial one. It is often observed that of victims of such offences often suffer at the cost of the perpetrators. Moreover, the cross examination is often known as the art and not everyone can master it. The leading questions often become a major part and parcel of the entire process of the trial. These questions are usually framed considering the response it tends to evoke from the individual that is being questioned. The definition of leading questions has been explicitly provided in the Section 141 of Indian Evidence Act and they are nothing but any such questions which often brings out the desired answer from the witness being cross examined and such questions are asked both in evidence in chief as well as in cross examination.

In the leading case of *Mohinder Singh v. State*,⁵¹ it was held that the judge of the trial is duty bound to not allow the questioning which are of scandalous nature as the purpose of the cross examination of a victim of rape or of molestation is not to humiliate and cause discomfort but the questions should simply aim at bringing out the truth and should not be directed towards causing embarrassment and uneasiness.

Also, the Section 152 forbids any questions that are intended insult or annoy or are of offensive nature. In the case of *Fatima Riswana v. State*,⁵² it was held that when the evidence of a particular offence committed is of a nature that could cause embarrassment and discomfort not only to the presiding officer but also to the woman who is witness or accused or any decent person, the presiding officer is deemed to make certain arrangements in the procedure.

XII. Conclusive Remark

The offence pertaining to the outraging of modesty of women has gone through the process of immense evolution. According to the statistics of National Crime Record Bureau, there have been 8685 and 7305 cases which have been registered under insult to the modesty of women pertaining to the section 509 of Indian Penal Code during 2015 and 2016 respectively. It has been explicitly noticed that with the major amendment in the entire criminal law in 2013, the misuse of the provisions is also been uprising. In order to eliminate the evil from the society, there is an urgent need to bring a stop at the misuse of the provisions at first and ensure the safety of both men who have been often falsely accused and the women who are often abused. Moreover, the distinction between the concepts of rape and outraging modesty of women has to be made out, since, there always exist a dichotomy. Since, the offence of rape and outraging modesty are the offences which does not have the factor of distinction because of the close similarities between the facts and the circumstances of the cases. In addition to this, after the major and the most revolutionary amendment made in 2013, the laws and provisions for the offence of outraging modesty got

⁵⁰ Ibid.

⁵¹ *Mohinder Singh v. State*, (2007) 1 SCR 1185.

⁵² *Fatima Riswana v. State*, Appeal (Crl.) 61-62 of 2005.

entirely changed and sexual harassment, intention to disrobe women, voyeurism, stalking and acid attack were being added. It is pertinent to not that, since, the changes have been brought about in order to create such offences of heinous and grave nature.

It has been keenly observed that the provisions of the amendment made are seen to flawed, right from the very basic stage of framing of charge and arrest itself. However, the National Commission for Women has been formulated for the redressal of certain specific issues pertaining to women. Thus, in order to prevent the misuse of the provision and to ensure the safety and protection of women, certain amendments in the law needs to be brought about such as stricter provisions should be made if the laws are being misused at the instance of any woman and should be codified in a separate statute as well as the recent amendment of Criminal Law (Amendment) Act, 2018 has made the offence of rape of a girl below the age of 12 years punishable with death penalty and the minimum punishment is of 20 years of imprisonment for the first time in the legal history. Also, the provisions pertaining to the rape of a girl below 16 years have also been added along with the increase of term of imprisonment for the offence of rape in general. Thus, it is necessary to understand the gravity and the profundity of the matter at large.