



## **MODESTY OF WOMEN**

*By: Sharlin Puppal<sup>1</sup>*

### **INTRODUCTION**

*'If society trivializes modesty, violence against women would result'<sup>2</sup>*

*In the wake of increasing crime against women, there is an incessant discussion about the laws that deal with offences against women. The marital offences against women include bigamy, adultery, criminal elopement among others. The one that is probably most common offence is cruelty. Over time, courts have expanded the ambit of the definition to include within it different instances. These include gestures, words, etc. that violate the privacy of the woman. These are offences that are understood to outrage the modesty of a woman.<sup>3</sup> Modesty is the attribute of womanhood. All women, irrespective of their age, possess modesty in varying levels that is capable of being outraged. There has to be a sense of propriety of behaviour when one is interacting with a woman. When anyone causes annoyance or insult to a woman's sense of decency and modesty or an affront to her dignity, both society and law takes a serious note of the same. Violating the autonomy of a woman's body, without her consent or against her will, is a punishable crime.<sup>4</sup>*

The word 'modesty' has not been defined anywhere in the code. The dictionary meanings of the word modesty are a 'state of being free from undue familiarities outrage'<sup>5</sup> which means an act of extreme violence and cruelty usually the courts go by the popular meaning and assert that males should observe some sense of propriety of behavior in their relations with women. However, in one of the cases the Supreme Court has defined 'modesty' it states 'the essence of women's modesty is her sex'.<sup>6</sup> Modesty is an attribute associated with female human being which reflects a particular class. The word 'modesty' is not to be interpreted with reference to a particular victim of an act, but as an attribute associated with female human beings of a class.<sup>7</sup> It is a virtue which is attached to a female on account of her sex.<sup>8</sup> The ultimate test for whether the modesty of women has been outraged, assaulted is that the

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<sup>2</sup> Lalitha Dhar Parihar, 'Women and Law: From impoverishment to Empowerment- A Critique' '*Offences against Women*', pp.120, Eastern book Publication.

<sup>3</sup> Ibid. pp. 121.

<sup>4</sup> Ibid. pp.121.

<sup>5</sup> Oxford English Dictionary.

<sup>6</sup> Ramkripal Singh vs State of Madhya Pradesh AIR 2007 (cril.) SC 370

<sup>7</sup> Aman Kumar vs State of Haryana AIR 2004 SC 1497.

<sup>8</sup> Tarkeshwar Sahu vs State of Bihar (2006) 8 SCC 560.



action of the offender should be such that it may be perceived as one which is capable of shocking sense of decency of a woman.

Section 354 deals with the case of assault or criminal force to women with intent to outrage her modesty. Whereas Section 509 talks about words, gestures or act intended to insult the modesty of a woman. Section 509 of the Indian Penal Code applies to all women. Law presumes them to be modest unless proved otherwise sending letter to a nurse containing indecent gestures and lewd and filthy suggestions is culpable under Section 509 IPC. The object of this section is to protect the modesty and chastity of a woman. The offence under this section is cognizable, bailable, non-compoundable and triable by a Magistrate of first class. This section does not require any element of criminal force or assault which is an essential element of an offence under section 354 IPC. Section 509 applies to cases which are an insult to the modesty of a woman while in Section 354 the modesty is intended to be outraged. Both these sections seem to overlap each other to some extent but they are different. Assault is an essential ingredient of Section 354 IPC, it also includes gestures which is an element of Section 354 proofs of intention is essential.<sup>9</sup>

### **PROVISIONS OF THE INDIAN PENAL CODE**

#### **Section 354. 354A. 354B. 354C. 354D and 509 of Indian Penal Code.**

*Assault or criminal force to women with intent to outrage her modesty--- Whoever assaults or uses criminal force to any woman, 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 shall not be less than one year but which may extend to five years, and shall also be liable for fine.)<sup>10</sup>*

#### **Explanation of section 354**

Section 354 IPC deals with the offence which is popularly known as molestation. According to Section 354 assaulting a woman or using criminal force against her with the intent to outrage her modesty is punishable with imprisonment for a term which shall not be less than one year but which may extend to five years. Section 354 applies when the acts of the accused go beyond causing insult or annoyance to the modesty of a woman and there is a

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<sup>9</sup> *Insult or Outraging the Modesty of women*, 'Section 354 and 509 of IPC', accessed on 15<sup>th</sup> Aug, 2017, 3:00pm, <http://shodhganga.inflibnet.ac.in/bitstream/10603/33145/3/chapter%203>.

<sup>10</sup> Indian Penal Code, 1860, Section 354.



clear threat of physical harm to her which also shocks the sense of modesty. Section 354 deals with the case of assault or criminal force to women with intent to outrage her modesty.<sup>11</sup>

In *Ramkripal Singh vs State of Madhya Pradesh*<sup>12</sup> the Court has defined ‘modesty’ and it states ‘The essence of women’s modesty is her sex’.<sup>13</sup> The word ‘modesty’ is not to be interpreted with reference to a particular victim of an act, but as an attribute associated with female human beings of a class.<sup>14</sup> It is a virtue which is attached to a female on account of her sex.<sup>15</sup> The ultimate test for whether the modesty of women has been outraged, assaulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking sense of decency of a woman.<sup>16</sup> Whoever uses criminal force to her with an intent to outrage her modesty commits an offence of Section 354 of IPC. The provision of Section 354 of IPC has been enacted to safeguard public morality and decent behaviour. Explaining this the court in *Surender Nath V. State of MP*<sup>17</sup>. It was held that pushing the bell bottom pant or chadar down than what is normally required is an indecent behaviour. By differentiating Insult to modesty and outraging the modesty the court In *Bankey V. State of U.P.*<sup>93</sup> the accused entered the apartment of a lady, caught hold of her and removed her garments, it was held that he had intruded upon her privacy and was convicted for outraging the modesty of a Women. This section does require an element of criminal force or assault which is an essential element of an offence under section 354 IPC. Section 354 will only apply when the modesty of a women is intended to be outraged. Assault is an essential ingredient of Section 354 IPC.

#### 354 A

1. *A man committing any of the following acts—*

*i) physical contact and advances involving unwelcome and explicit sexual overtures; or;*

*ii) a demand or request for sexual favours; or*

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<sup>11</sup> Justice KT Thomas, MA Rashid, ‘*Ratanlal and Dhirajlal The Indian Penal Code*’, pp.810, 34<sup>th</sup> edition, Lexis Nexis.

<sup>12</sup> *Ramkripal Singh vs State of Madhya Pradesh* AIR 2007 (cr.) SC 370.

<sup>13</sup> *Ramkripal Singh vs State of Madhya Pradesh* AIR 2007 (cr.) SC 370.

<sup>14</sup> *Aman Kumar vs State of Haryana* AIR 2004 SC 1497.

<sup>15</sup> *Tarkeshwar Sahu vs State of Bihar* (2006) 8 SCC 560.

<sup>16</sup> *Aman Kumar vs State of Haryana* AIR 2004 SC 1497.

<sup>17</sup> *Surender Nath V. State of MP* 1982 Cr LJ (M.P. HC Notes) 10 (2)



iii) *showing pornography against the will of a woman; or*

iv) *making sexually coloured remarks, shall be guilty of the offence of sexual harassment.*<sup>18</sup>

2. *Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.*

3. *Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*

### **Explanation of Section 354A**

This section was inserted in the IPC the Criminal Laws (Amendment) Act, 2013 and explains what amounts to the offence of sexual harassment and prescribes punishment for the same. Under this new provision the victim of sexual harassment may be a man or a woman but the perpetrator can only be a man. In '*T Manikadan v The State (Govt of NCT of Delhi)*'<sup>19</sup> the High Court thoroughly examined the difference of section 354 and it was decided in this case that Section 354 deals with assault or criminal force used against a woman with an intention to outrage her modesty while Section 354A deals with the offences that amount to sexual harassment and provides punishment for it. So, it is an act more than mere physical contact under this provision, whereas a mere physical contact with advances would attract Section 354A IPC.<sup>20</sup>

***Assault or use of criminal force to woman with intent to disrobe.***

*354B. Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.*<sup>21</sup>

### **Explanation of Section 354B**

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<sup>18</sup> Indian Penal Code, 1860, Section 354A.

<sup>19</sup> *T Manikadan v The State (Govt of NCT of Delhi)* CRL.REV. P. 404/2016

<sup>20</sup> *T Manikadan v The State (Govt of NCT of Delhi)* CRL.REV. P. 404/2016

<sup>21</sup> Indian Penal Code, 1860, Section 354B



Disrobe means to take off or remove one's clothes. Under Section 354B of the IPC assault or use of force on a woman with the intention to disrobe her or compel her to be naked are punishable with imprisonment for a term ranging from minimum three to a maximum of seven years.<sup>22</sup> Disrobing is a very serious offence that is derogatory to the dignity of womanhood, thus even abetment of disrobing has been made a punishable offence under this section.<sup>23</sup>

### ***Voyeurism.***

*354C. Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.*<sup>24</sup>

### **Explanation of section 354C**

The "private act" includes an act of watching carried out in a place which, in the circumstances, which is expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered and the victim is using a lavatory; or the victim is doing a sexual act that kind which ordinarily done in public.<sup>25</sup> Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination of the act shall be considered an offence under this section. Such a provision was needed to counter the menace of installing hidden cameras in changing rooms in shops, in public urinals, in hotels, rest houses, rented houses and even paying guest accommodations. There are frequent cases involving girls

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<sup>22</sup> Indian Penal Code, 1860, Sec. 354C.

<sup>23</sup> Justice KT Thomas, MA Rashid, '*Ratanlal and Dhirajlal The Indian Penal Code*', pp.809, 34<sup>th</sup> edition, Lexis Nexis.

<sup>24</sup> Indian Penal Code, 1860, Section 354C

<sup>25</sup> Justice KT Thomas, MA Rashid, '*Ratanlal and Dhirajlal The Indian Penal Code*', pp.809, 34<sup>th</sup> edition, Lexis Nexis.



whose pornographic pictures are taken by their boyfriends and then circulated via MMS or uploaded on the net bringing great disrepute to them and their families.<sup>26</sup>

### ***Stalking.***

354D.

1. *Any man who—*

- i. follows a woman and contacts, or attempts. to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or*
- ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:*

*Provided that such conduct shall not amount to stalking if the man who pursued it proves that—*

- i. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or*
- ii. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or*
- iii. in the particular circumstances such conduct was reasonable and justified.*

*2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.<sup>27,</sup>*

### **Explanation of Section 354D**

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<sup>26</sup> Ibid.

<sup>27</sup> Indian Penal Code, 1860, Section, 354D.



This section means harassing someone by following the person around or trying to force any kind of contact by unwanted phone calls, derogatory text messages and emails that disturb the peace of mind of a person or hacking email accounts or conducting any other mode of spying. Whoever monitors the use by a person of the Internet, email or any other form of electronic communication that results in a fear of violence, or interference with the mental peace of such person, commits the offence of stalking.<sup>28</sup> Any sort of misuse of electronic communication to harass someone and hacking into someone's email account would be a criminal offence as well. Stalking is a criminal offence which is punishable with one to three years in jail. Hence, even after clear indication of disinterest of women, if she is followed by a man either in person or through the electronic medium, then he is guilty of the offence of stalking.<sup>29</sup>

**509. 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 woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years and also with fine.<sup>30</sup>

#### **Explanation of section 509**

This section is referred as the 'Eve Teasing Section'. The object of the section is to protect the modesty and chastity of a woman. 'Eve Teasing' has become pernicious, horrid and disgusting practice.<sup>31</sup> The Indian journal of Criminology and Criminalistics had categorized eve-teasing into five heads: -

1. Verbal eve-teasing
2. Physical eve-teasing
3. Sexual harassment
4. Harassment through some object<sup>32</sup>

The essential elements of the section are:

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<sup>28</sup> Lalitha Dhar Parihar, 'Women and Law: From impoverishment to Empowerment- A Critique' 'Offences against women', pp.125, Eastern book Publication, 2014.

<sup>29</sup> Justice KT Thomas, MA Rashid, '*Ratanlal and Dhirajlal The Indian Penal Code*', pp.809-819, 34<sup>th</sup> edition, Lexis Nexis.

<sup>30</sup> Indian Penal Code, 1860, Section 509.

<sup>31</sup> Justice KT Thomas, MA Rashid, '*Ratanlal and Dhirajlal The Indian Penal Code*', pp.811, 34<sup>th</sup> edition, Lexis Nexis.

<sup>32</sup> Ibid.



1. Accused uttered any word, made any sound or made a gesture or exhibits any object or intrude the privacy.
2. Accused intended that words uttered, sound made or gesture shown or object exhibited seen or heard by the woman.
3. It has to be directed towards a woman or group of women.

The criminal law (Amendment act), 2013 was passed in which section 509 of the Penal Code, for the words ‘*shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both*’, the words “*shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine*’ has been substituted. The term has not been defined in IPC. In the famous case of Major Singh Lachhman Singh vs The State<sup>33</sup> the word “modest” in relation to woman has been considered. It says that modesty is ‘Decorous in manner and conduct; not forward or lewd; shame fast’. Hence, when used for men, it means the quality of being modest, and in relation to woman, ‘womanly propriety of behavior; scrupulous chastity of thought, speech and conduct’. In the case Swapna Barman Vs. Subir Das<sup>34</sup>, ‘Under Section 509 that the word ‘modesty’ does not lead only to the contemplation of sexual relationship of an indecent character. The section includes indecency, but does not exclude all other acts falling short of downright indecency.’ An insult to the modesty of the woman is an essential ingredient of this offence. If a man exposes his person in an indecent way or use obscene words which he intends that it should be heard or his obscene drawings should be seen, he is held to be an offender under S.509 of IPC. The intention to insult the modesty of woman must be coupled with the fact that the insult is caused. It means that the other party understands that he is insulted. If a person intrudes upon the privacy of a woman, then also he is considered to be liable under this section. The intention to insult the modesty is very important as held in Santha vs State of Kerala<sup>35</sup> that even when a man exposes his private organs to a woman, he can also be charged under section 509 of IPC. The offence may occur in private or public place.

In the case of Deputy Inspector General Police vs S. Sauthiram, the Court stated that the experience of women and girl children in over-crowded buses, metros, trains etc. are horrendous and painful ordeal.<sup>36</sup> As per the Justice Verma Committee Report, certain

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<sup>33</sup> Major Singh Lachhman Singh vs The State AIR 1963 P H 443.

<sup>34</sup> Swapna Barman Vs. Subir Das (2004)1GLR 168.

<sup>35</sup> Santha vs State of Kerala 2006 (1) KLT 249.

<sup>36</sup> Deputy inspector general police vs S.Sauthiram SCC 598 AIR 2013.





modifications were made in Section 509 of the IPC. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 3 years of imprisonment or fine or both.<sup>37</sup>

### **Report on the Committee on Amendments to Criminal Law (Justice Verma Committee Report)**

On the question of Section 354 relating to outraging modesty of women and indecent assaults, the 84th Report suggested that Section 354A, 354B, 354C and 354D must be inserted in section 354 of IPC. The 84th Report also opined that eve teasing was been amply covered under Section 509 of the IPC.

Recommendation as to Section 354-A, Indian Penal Code. —Accordingly, they recommended that, while incorporating S. 354-A in the Indian Penal Code, after the words ‘obscene manner’, the words “with or without the consent of the minor” should also be added. Regarding section 509 IPC they had mentioned here that the acts which do not amount to an “assault”—acts such as indecent gestures and acts that have come to be known as ‘eve teasing’—are amply covered by S. 509 of the Indian Penal Code. The matter strictly does not fall within the purview of rape or assault, but they referred to it because one of the women's organisations with whom they held discussions was anxious that the law should penalise such behaviour in public places or on public transport vehicles particularly.<sup>38</sup> Where there is physical contact or threat of physical contact, the offender can be charged under S. 354 of the same Code, punishing a person who “assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty. The punishment is imprisonment of either description up to five years and fine which was earlier 2 years. Both the offences are, as the law now stands, cognizable.<sup>39</sup>

### **Supreme Court Guidelines on Eve-Teasing**

Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro

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<sup>37</sup> Report on the committee on amendments to criminal law ,(Justice Verma Committee), pp 101-102.

<sup>38</sup> Report on the Committee on Amendments to Criminal Law, (Justice Verma Committee), pp. 101-102 2013.

<sup>39</sup> Report on the Committee on Amendments to Criminal Law, (Justice Verma Committee), pp. 101-102 2013.



stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.

2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.

3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.

4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.

5) State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.

6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship etc.

7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.<sup>40</sup>

### **State of Punjab vs Major Singh, AIR 1967 S.C 63.**

According to the factual matrix, one Major Singh was accused of interfering with the vagina of seven and half month-old child and deemed to outrage her modesty. The present case is an appeal from the judgement and order dated May 31, 1963 of the Punjab High Court. In the

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<sup>40</sup> 'Supreme Court Guidelines on Eve-Teasing', accessed on 15h Aug, 2017, 5:00pm, [www.lawweb.in/2013/05/guidelines-for-curtailling-eve-teasing](http://www.lawweb.in/2013/05/guidelines-for-curtailling-eve-teasing)



High Court, the matter was heard by three learned Judges, two of whom did not hold the person guilty while the third judge was of the opinion that the person is guilty. Hence this appeal is preferred by the State.<sup>41</sup>

The difficulty in this case was caused by the words “outrage her modesty”. The majority of the learned Judges in the High Court held that these words showed that there must be a subjective element so far as the woman against whom criminal force was used is concerned. They appear to have taken the view that the offence could be said to have been committed only when the woman felt that her modesty had been outraged. According to them, the test of outrage of modesty was the reaction of the woman concerned.<sup>42</sup>

According to the third learned Judge of the High Court who answered the question in the affirmative was of the view that the word “modesty” meant, accepted notions of womanly modesty and not the notions of the woman against whom the offence was committed. He observed that the section was intended as much in the interest of the woman concerned as in the interest of public morality and decent behavior. The Chief Justice of the Supreme Court also observed that the offence does not depend on the reaction of the woman subjected to the assault or use of criminal force. This intention or knowledge is the ingredient of the offence and not the woman’s feelings.<sup>43</sup>

It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence.<sup>44</sup> Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same; it varies from woman to woman. In many cases, the woman’s sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage her modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, the reaction of the woman would be irrelevant.

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<sup>41</sup> State of Punjab vs Major Singh, AIR 1967 S.C 63.

<sup>42</sup> Ibid. pp10.

<sup>43</sup> Ibid. pp12.

<sup>44</sup> Ibid. pp11.



Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it.<sup>45</sup> The question in each case must be: will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman.

The majority judgement allowed the appeal and the conviction of the respondent was altered to one under section 354 of IPC, and he was awarded rigorous imprisonment for a term of two years and a fine of Rupees 1000/-. Out of the fine, if realized, Rupees 500/- shall be paid as compensation to the child.<sup>46</sup>

### **Mrs Rupan Deol Bajaj Anr v Kanwar Pal Singh Gill Anr 1996 AIR 309**

The Rupan Deol Bajaj vs KPS Gill case was one of the most publicized, high-profile legal cases in India and remained in the media limelight for many years. The case also is known as '*The Butt-Slapping Case*'.<sup>47</sup>

In this high-profile case, KPS Gill, at the time Director General of Police, Punjab, was held guilty of the charges of molestation. On 20 August 1998, the High Court of Punjab and Haryana upheld Gill's conviction under Section 354 and Section 509 for his action against Rupan Deol Bajaj . Rupan Deol Bajaj was at that time an Officer of the Indian Administrative Service (I.A.S) belonging to the Punjab Cadre. She filed a complaint against KPS Gill, saying that he had molested her modesty by patting her posterior during a party hosted on 18 July 1988 at the Chandigarh residence of then Punjab Financial Commissioner, S L Kapoor. She was at that time working as the Special Secretary, Finance, as an I.A.S. officer.<sup>48</sup>

Her husband Mr. B.R. Bajaj, was a senior I.A.S. officer of the Punjab Cadre, had filed a complaint in the Court of the Chief Judicial Magistrate for the same offenses, described above against KPS Gill and was a party to the case. Rupal Deol Bajaj was an IAS Officer

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<sup>45</sup> State of Punjab vs Major Singh, AIR 1967 S.C 63.

<sup>46</sup> State of Punjab vs Major Singh, AIR 1967 S.C 63.

<sup>47</sup> "Rupal Deol Bajaj Case", accessed on 16<sup>th</sup> Aug, 2017, 6:00pm, [www.bhaskar.com](http://www.bhaskar.com)

<sup>48</sup> Mrs Rupan Deol Bajaj Anr v Kanwar Pal Singh Gill Anr 1996 AIR 309



belonging to Punjab Cadre. She lodged a FIR against Mr. KPS Gill the Director General of Police u/s 341, 342, 352, 354 and 509 of IPC.

On the said date, in the party of KPS Gill the accused around 10 pm walked across a group of ladies and joined them. After sometime some of the ladies started leaving and going into the house. The victim did notice that Mr. KPS Gill was misbehaving with them. KPS Gill that called the victim to talk about something. On realization by victim a out of order behavior by Gill, she avoided going. After a while Gill reached out to her amongst the other ladies who were sitting together and told her in an obnoxious manner to get up and come along. She resisted and turned back and started moving away from that place and at that time he slapped on her posterior.<sup>49</sup>

In 1998 the High Court of Punjab and Haryana booked Mr. Gill under section 354 that is outraging modesty of women and under section 509 that is an act, word, gesture intended to insult a lady. In 2005, the Supreme Court of India upheld the charges and conviction of KPS Gill for the offense. He was spared from undergoing the three-month jail sentence as it was converted into probation by the Punjab and Haryana High Court. KPS Gill was sentenced to pay a fine of Rs. 200,000, be imprisoned rigorously for 3 months and simply for 2 months, and finally to serve 3 years of probation.<sup>51</sup> Rupen Deol Bajaj declined to accept the monetary compensation. The court ordered that it be donated to women's organizations. After final appeals before the Supreme Court of India in July 2005 the conviction was upheld and the jail sentences were reduced to probation.<sup>50</sup>

### **Ramkripal Singh vs State of Madhya Pradesh AIR 2007 (crl.) SC 370**

In this case Ramkripal was found guilty of offences punishable under Section 376 of the Indian Penal Code and was sentenced to undergo imprisonment for seven years. Ramkripal Challenged this decision in the appellat court.

The victim had gone in the field near Makararbandh to bring green grass and after collecting the green grass she was on her way back to her home. Ramkripal came to her and proposed for sexual intercourse. The victim protested and told that she will inform her mother in respect thereof. The appellant induced her not to say so to her mother as he will provide Rs.10/- to her. The appellant felled her on the ground and removed her undergarment and ravished her. She was crying in pain and at this the appellant had stuffed her mouth by

<sup>49</sup> Mrs Rupan Deol Bajaj Anr v Kanwar Pal Singh Gill Anr 1996 AIR 309

<sup>50</sup> Rupal Deol Bajaj Case', accessed on 16<sup>th</sup> Aug, 2017, 6:00pm, www.bhaskar.com



clothes. The genital of the appellant had penetrated in her genital which gave immense pain to her and, thereafter, the appellant left her. She saw blood oozing from her private part which has besmeared her undergarment.<sup>51</sup>

In this case it was noted that the provision makes penal the assault or use of criminal force to a woman to outrage her modesty.

The essential ingredients of offence under Section 354 IPC are:

- (a) That the assault must be on a woman.
- (b) That the accused must have used criminal force on her.
- (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.<sup>52</sup>

Since an outrage to female modesty is nowhere defined in IPC. It was stated in this case that the essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC, but it defines the word 'modesty' in relation to woman as follows:

"Decorous in manner and conduct; not forward or lower; Shame-fast; Scrupulously chast." <sup>53</sup>

Modesty is defined as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions.

Therefore, this case was an important case as the term 'modesty' was defined. As well as the essential ingredients of offence of section 354 of IPC was discussed.

### **Other important cases dealing with Section 354 and 509 if Indian Penal Code**

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<sup>51</sup> 'Facts of Ramkripal vs Sate of M.P Case', accessed on 18<sup>th</sup> Aug, 2017, 3:00pm, [www.firstpost.com/tag/ramkripal-so-shyاملal-charmakar-vs-state-of...](http://www.firstpost.com/tag/ramkripal-so-shyاملal-charmakar-vs-state-of...)

<sup>52</sup> Ramkripal S/O Shyاملal Charmakar vs State of Madhya Pradesh

<sup>53</sup> Ramkripal Singh vs State of Madhya Pradesh AIR 2007 (crl.) SC 370



Section 354 of the Indian Penal Code provides for outraging the modesty According to this section - 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 or either description for a term which may extend to two years, or with fine, or with both.<sup>54</sup>

In *State of Kerala V. Hamsu*<sup>55</sup> held that the accused who beckoned the prosecution by winking his eyes in public and caught hold of her arm was guilty of outraging her modesty and can punished accordingly. Even gestures when they are made with the intention of outraging the modesty of a woman attract the section 354 of the IPC. In *State V, Hetram*<sup>56</sup> a girl of about 15 years of age was coming from her mother's place. The accused suddenly appeared from a lane he dragged her towards the other side of the lane, and took her to a secluded spot, it was held sufficient to book the accused under Sec 354 IPC. Woman 's modesty is her sex whoever uses criminal force with an intent to outrage it commits an offence under section 354 IPC. The intention of the accused is the crux, no conviction can be based on surmises, guesses or conjectures in the absence of any evidence.

In *Jagmal Singh V. State*<sup>57</sup> the court held that since the intention of the offender could not be proved it was held that the appellant was wrongly convicted, so on appeal the conviction was set aside unless the culpable intention is proved, mere touching the belly of a woman in a public bus cannot be called a deliberate act of outraging the modesty of a woman within the meaning of this section. Touching the belly of a girl is not culpable if it is not intentional Merely putting the hand on the belly of girl cannot be construed to indicate that the accused was using criminal force for the purpose of committing this offence or causing injury or annoyance. It may be an attempt to draw the attention of the girl. In *Ram Das V. State of West Bengal*<sup>58</sup> though the assault was there but the intention to outrage the modesty could not be proved. The High Court upheld the acquittal while agreeing that the conduct of the accused was reprehensible as he had tried to chase the girl. —So far as the offence under section 354 IPC was concerned the allegations are not sufficient to fulfill the necessary ingredient.

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<sup>54</sup> Indian Penal Code, 1860, Section 354.

<sup>55</sup> *State of Kerala V. Hamsu* 1988 (2) Crimes 161

<sup>56</sup> *In State V, Hetram* 2002 CriLJ 4528

<sup>57</sup> *Jagmal Singh V. State* AIR 1954 SC 711 1980

<sup>58</sup> *Ram Das V. State of West Bengal* AIR 1954 SC 711



## CONCLUSION

The essence of women's modesty is her sex'.<sup>59</sup> Modesty is an attribute associated with female human being which reflects a particular class. The word 'modesty' is not to be interpreted with reference to a particular victim of an act, but as an attribute associated with female human beings of a class.<sup>60</sup> It is a virtue which is attached to a female on account of her sex.<sup>61</sup> The ultimate test for whether the modesty of women has been outraged, assaulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking sense of decency of a woman. Section 354 deals with the case of assault or criminal force to women with intent to outrage her modesty. Whereas Section 509 talks about words, gestures or act intended to insult the modesty of a woman. There is a difference between Section 354 and 509. Section 509 specifically talks about the insult and modesty of the women whereas Section 354 deals with outraging the modesty of the women.

As per the Justice Verma Committee Report, certain modifications were made in Section 354 and 509 of the IPC. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 3 years imprisonment or fine or both. In cases dealin with section 354 and 509 of the Indian Penal Code, it was observed that Ramkripal Singh vs State of Madhya Pradesh was an important case which has defined modesty of women in particular. The case State of Punjab vs Major Singh and Rupan Deol Bajaj case were the specific cases which dealt with the offence of outraging the modesty of women as well as insult to modesty of women (Section 354 and 509). As the criminal activates against women are increasing at an alarming rate it is essential to understand the provision in law which deals with punishing the offences committed against women.

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<sup>59</sup> Ramkripal Singh vs State of Madhya Pradesh AIR 2007 (crl.) SC 370

<sup>60</sup> Aman Kumar vs State of Haryana AIR 2004 SC 1497.

<sup>61</sup> Tarkeshwar Sahu vs State of Bihar (2006) 8 SCC 560.