

SECTION 354- A SECTION TO PROTECT MODESTY OF WOMEN

INTRODUCTION:

No where in this section as it presently reads, mentions under the IPC modesty was defined. It says that the assault must be sexual in nature. Modesty is again something depends on person to person. There are some people who may very easily get offended on an act which may not affect other people. It is very easy to convict how you objectify an act towards you. I may say something to you, you may get very offended by it, and the same thing to others, they might be okay with it.

SECTION 354-

deals with Assault or criminal force to any woman with intent to outrage her modesty, the section reads as follows, whoever assaults or uses criminal force to any woman with an intent 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 fine, or with both.

First, we need to understand the meaning of Modesty according to this section. What is modesty? And how can it be outraged?

Here, presence/absence of the consent is very important. Supreme court in a case defined modesty as, 'the essence of a woman's modesty is her sex', it is the result of the lawyer of the bench comprising hon'ble justices, Arjit Pasayat and S.H. Kapadia. Section 354 is a section under chapter XVI, offences against human body which is covered from sections 299 to 377 of Indian Penal Code, 1890.

Section 354 is particularly based on force, assault and criminal force in combined, which is done against a woman.

The law makes it a special crime to use force against a woman or even threaten to use force, if the intention is to outrage her modesty. It treats it more seriously than normal assault and criminal force by allowing the police to make arrests for such crimes without a warrant. The law does not explain what outraging modesty means. Courts usually make this determination by looking at all circumstances surrounding the incident. The supreme court referred to modesty as feminine decency and a virtue that women possess owing to their sex. Here, we have to note that, "it is not enough that the victim's modesty is outraged. It is an offence only when the accused intended or knew it to be likely that the acts in question would outrage the victim's modesty. For instance, Jon pulls Arya's clothes while playing holi and rips her t-shirt apart. It is a crime only if Jon intended or knew it to be likely that his acts would outrage Arya's modesty.

In Ramkripal v. state of Madhya Pradesh, 2007, the bench said, outraging a woman's modesty as mentioned in section 354 will apply to crimes against women that stop short of penetration, in which event, it becomes rape. In the same judgement, the court ruled that penetration alone was sufficient to qualify as rape whether there has been ejaculation or not.

There are some key components that are required to be established by the prosecution in order to attract offence under section 354, IPC. They are:

- 1) That the assault must be on a woman
- 2) That accused must have used criminal force on her
- 3) That the criminal force must have been used on the woman intending thereby to outrage the woman's modesty.

UNDERSTANDING RELATION BETWEEN SECTION 354 AND SECTION 376: RAPE

There are stark differences between outraging her modesty and the offence of rape. In the case of *Jukaram govind yadav v. state of maharashtra*, 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 bottom of that particular woman, the offence of rape under section 376 of IPC was not being made out under the section 354 of IPC, as the medical evidence did not create the evidence of rape. In the case of *Jeet singh v. state*, 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.

Hence, the conviction of the section 376 was being altered to section 354 of IPC.

However, in the case of *Jai Chand singh v. state*, 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, also he did not grab her back again, once the girl pushed him away. It is there by held that since there is no evidence of rape, according to the facts and circumstances, the offence of rape was not made out since the penetration of penis did not take place.

MODIFICATIONS AND ORIGIN OF THE SECTIONS 354(a),(b),(c),(d).

There are many modifications which are being brought about in this particular offence of IPC 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 woman at large.

According to the justice verma committee report, 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 IPC. Also, it was being recommended that a quicker and speedy trial was the need of how in the offences which are committed against women. Considering the given recommendation, the major amendment was brought about in March 2013, Criminal Law Amendment Act, 2013 because of which many developments have took place. The punishments were increased. This amendment did not only bring reforms in the IPC but also in Indian Evidence Act, and CrPC respectively. In addition to the same, new sections are being added up in IPC which are section 354(a)- sexual harassment, section 354(b)- intention to disrobe a woman, section 354(c)- voyeurism and section 354(d)-stalking with separate punishments respectively, there have been major pronouncements since then.

DEPTH ANALYSIS OF THE SECTIONS:

Section 354(A)- sexual harassment: the definition of this section 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 colored remarks becomes liable for the offence of sexual harassment and shall be punished with imprisonment of 3 years or with fine or with both. However in *Vishaka v. state of Rajasthan*, the complete guidelines were being laid down by the honorable supreme court with regard to sexual harassment of women 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).

Section 354(B)- Assault or use of criminal force to woman with intent to disrobe: it reads, 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 which is not less than 3 years but which may extend to 7 years and shall also be liable to fine. The intention of this 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 clothers is utterly disgraceful, embarrassing and are of mortifying in nature. Moreover, such cases do not require any direct and physical touch. This offence is of cognizable In nature, wherein, the police officer is bound to register the offence. It is a non bailable offence.

In one of the cases, the Delhi sessions court held that, the bare reading of section 354(b), IPC reflects that only if the accused has the intention to disrobe the victim or compel her to be naked then only section 354(b) is attracted. In case of no intention can be imputed to the accused the offence will not come within the purview of this section. If the clothes were torn during a scuffle with the accused, this section will not come into play as there was no intention to disrobe the woman.

Section 354(C)- Voyeurism: This section talks about the privacy of a woman. This act is considered as an offence when any man captures or watches the image of a woman engaged in some private act. The explanations under this section provides for clear definition of private act as well as states that if a woman consents to capture such images or any act but does not consent 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 and anr v. state of nct delhi, which is popularly known as the Nirbhaya case, the new provision was made. The justice Verma committee held that the offences of stalking, voyeurism, eve teasing were perceived 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 gender-neutral .

Section 354(D)- Stalking: stalking refers to a form of harassment that comprises of the repeated and persistent intention of causing or harming a woman who is being followed. This can be done in physical as well as virtual form i.e., online. This section clearly states that despite the interest of a woman, if an individual is continuously found stalking her and then he will be liable for stalking under the section 354(D).

There are few exceptions to this section,, it was pursued with the purpose of detecting or preventing any crime or the person had been entrusted with the responsibility of detection and prevention of crime by the state or it was pursued under to comply with any conditions or requirement imposed by any person under any law. The punishment as prescribed is in 2 convictions, that is a term which can extend to 3 years and in subsequent conviction , the term may extend to 5 years.

IMPORTANT STATE AMENDMENT ACTS REALATED TO SECTION 354:

In a state amendment act of Chattisgarh,2015, it was decide that section 354 shall be inserted with namely 354(E) which says liability of person who fails to prevent the commission of offence under sections, 354 (A),(B),(C),(D)- whoever being present at the time of commission of an offence under these sections being able to prevent such offence, fails to prevent the commission of such offence, or ot being in position to prevent the commission of such offence, fails to give information to nearest magistrate or police officer, by any mode with the intention of screening the offender from legal punishment of either description which may extend to three years or with fine or with both.

In a UT jammu and Kashmir amendment act, section 354(E)-sextortion was included. Whoever being in a position of authority or being in a judiciary relationship or being a public servant misuses his official position to employ physical or non physical forms of coercion to extort or demand sexual favors from any woman in exchange of some benefits or other favours shall be guilty of offence of sextortion.

CONCLUSION:

I would like to conclude that the criminal laww amendment act,2013, which has widened its scope and now includes sexual harassment in hacles found by the cage of patriarchy and gender inequality. The whole legal definition of section 354, IPC 3 ingredients are important:

- i) That the assault must be on a woman
- ii) That the assault must be on a woman
- iii) That the accused must have used criminal force on her
- iv) That the criminal force must have been used on the women intentionally.

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