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# **VIOLATION AGAINST WOMEN MODESTY**

AUTHORED BY - ROHAN STHANU & ATHARVA DESHMUKH

## **Abstract**

Women in India have to go through severe breach of their modesty in the day-to-day life, though they are worshipped by people in myths and scriptures. The presented article dwells upon the cultural paradox of glorification and the society real face of modesty in legal, social, and psychological terms. It talks about different types of violence, sexual harassment, street harassment, online abuse, molestation, custodial violence among others and examines the reasons, patriarchy, victim-blaming culture, low policing, and absence of sex education. Although there are laws such as the IPC Sections 354 and 509, and Sexual Harassment of Women at Workplace Act, their capability to protect people remains limited in many cases. The article also gives a reflection of reforms that are needed and the path to follow so that women can have a more equitable and respectful atmosphere.

## **Introduction**

In India, where the women are regarded by the nation as goddesses in myths and legends, there is still a serious paradox of enduring defilement of women modesty. Although the idea of modesty lies in cultural and societal philosophical principles, it has been codified by the Indian Penal Code, and the Indian Penal Code takes into account dignity, bodily autonomy, and honor of women. However, the newspapers, trials, and personal experiences tell stories of gruesome events most women go through in India, such as catcalling during the streets, stalking, sexual harassment, and rape. In this article, the author discusses the various aspects of these violations, their reasons, effects, and the legal cure as well as the way forward.

## **Interpretation of the Concept of the Modesty of Women**

In the case of the female gender, modesty is usually defined as a way of behaving, dressing or even speaking to prevent impropriety or indecency. But legally in India and specifically under Section 354 and 509 of the Indian Penal Code (IPC) however; it becomes something more than cultural perception and any action that involves outrage or insult on the dignity of autonomy of the woman.

Outraging modesty involves criminal force or assault to a woman but insulting modesty may be non-acting such as making sexual-colored statements, gestures and showing pornography. Such notions of modesty are thus inseparably connected to personal taboo of dignity, liberty and body balance of a woman.

### **Types of Violence against modesty of Women**

Some of them are blatant and criminal, others are not noticeable but still, they are crimes against the modesty of women.

#### **1. Sexual Harassment**

One of the most widespread types of violation is the sexual harassment. It involves physical abuse, sexual advances or statements, or any request to do any sexual favors. Even since the Vishaka Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, a number of workplaces across India still finding many women being harassed with little or no institutional backing.

#### **2. Eve -Teasing and Street Harassment**

The less serious term for sexual harassment on the street is Eve-teasing which is an infestation that is being held in the streets as well as in the market places, buses and trains and even in educational institutions. One of the effects of this is stalking and lewd remarks, inadequate touching and gestures of the women in the streets that undermine the dignity of the women and very much hinders their association with others.

#### **3. Digital Harassment and Voyeurism**

As technology booms and with the advent of social media and smartphone, voyeurism has evolved in a different form- morphed pictures, sharing of private pictures without consent, and secretly recording women. Online threats and cyberstalking have established a virtual parallel world where often people do not abide by modesty with a sense of anonymity and impunity.

#### **4. Molesting and Assault**

Molestation, such as an unwarranted physical contact or forced caressing without the consent, is a serious offense. In most cases, women may be victims of these abuses both within the privacy of their homes and in the streets by family members, workmates or people that do not even know them. Many times, stigma is feared and thus it is not reported.

## 5. Custodial and Institutional Abuse

The ladies have had a number of unsettling cases of being tortured by police or in incarceration facilities, where they should have felt safe. The act of breaking modesty under such environments does not only betray the prerequisite of crime but a violation of trust and power abuse.

## **The Reasons why Such Violations Occur**

It is imperative to know the underlying factors to tackle this highly ingrained predicament.

### 1. Patriarchal Mindset

Indian society is so very patriarchal that it has made it mandatory to pay the high price of honor on the bodies of women and, at that, to objectify women. The prevalence of male domination and restriction of the choices of women, clothing, and movements, largely adds to such violations.

### 2. Silence and Victim blaming in Culture

Sexual misbehavior is culturally unwanted to talk about. The victim is then blamed, shamed, or told to adjust and this makes them reluctant to come out. It is not only this silence that empowers the perpetrators but also disempowers the survivors.

### 3. Poor Enforcement of laws

Although legislature on the matter is in place, justice is mostly denied due to poor enforcement, insensitivity on behalf of police, and slow court system. Police stations in the rural areas do not even have female officers, and therefore women find it difficult to report crimes.

### 4. Poverty in Sex Education/Gender Sensitization

One of the biggest contributors to violations is that other than medical sex education, there is no thorough sex education, and gender sensitization in schools. The young boys are raised up without the idea of consent and consideration of limits, leading to their abuse.

## **Case study**

### 1. State of Punjab v. Major Singh (1967 AIR 63)

- Background:

In this case Major Singh, was prosecuted, for outraging the modesty of a seven-and-a-

half-month-old-female child, by committing an act of sexual assault. The main question of law, which the Supreme Court had to decide was whether in the eyes of the law such a young girl could be said to have modesty to the extent of meaning the term in Section 354 of the Indian Penal Code (IPC) and whether her assault could be regarded as outraging of that modesty in the kind of law.

- Issues

This case presented two important issues of law, first, as to whether a female newborn child who has no cognizance or knowledge of sexual acts can be said to possess modesty which constitutes offences under Section 354 IPC, and second, whether an act of sexual assault made on such child amounts to outrage to her modesty under the applicable law?

- Judgement

In an opinion by Justice M. Hidayatullah, it was held that the state of being modest is such a trait of the female gender and not dependent on the age or not necessarily on awareness. He stressed that a female infant is supposed to have modesty that can be offended. As such, any sexual assault meant against such a child will fit right into Section 354 IPC. The Court also explained that the test to prove whether or not modesty is outraged refers to how a reasonable person would interpret the act and not necessarily how the victim himself or herself would picture it. A forced sexual relationship with a female is an offence to her honor in itself and does not matter whether the female is old or having the understanding or not.<sup>1</sup>

## 2. Ram Kripal v. State of Madhya Pradesh (AIR 2007 SC 370)

- Background

The victim had gone to the field to collect green grass where the appellant approached her for sexual intercourse. At the victim's protest, the appellant took the victim to the ground and proceeded to conduct sexual intercourse with her by force. This left the victim bleeding from her genitals. The appellant was charged under section 376 of IPC and found guilty for the same.

- Issues

whether you could lower an offence of rape to outraging modesty under Section 354 IPC

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<sup>1</sup> (1967 AIR 63)

on the ground of testimony like medical testimony.

- Judgment

The Court simply reiterated the basis of Section 354; assault with criminal force on a woman with the intent to outrage her modesty, and held up the judgment of the lower courts, that the nature of the act (penetration) was in fact rape and not an outrage to modesty.

Using precedents, such as, *State of Punjab v. It was Major Singh* to whom the Court referred:

- I) It is natural to all females because of sex.
- II) The test is the reasonableness of a person, and not the response of the victim who is the one who is offended, but the outrage of the modesty is tested.
- III) Nevertheless, once penetration is achieved, the offence amounts to rape in the Section 376 IPC.

### 3. *Golding* (United Kingdom, 2014)<sup>2</sup>

- Background

This is a case from United Kingdom, David Golding tested positive with genital herpes (HSV- 2) in April 2008 and in July 2009 he had sex with his former girlfriend (named CS) without condom thus infecting her. He was not informing anybody about his condition although he was not ignorant about the seriousness of the problem and the way it is transmitted. She had to experience painful symptoms, was in need of the medical treatment, and her living standards and of mental wellbeing as well were influenced greatly.

- Issues

- I. Was the plea of guilty by Golding on Section 20 of the Offence Against the Person Act 1861 with regard to inflicting a grievous bodily harm (GBH) as really informed and voluntary?
- II. Was the concealed sexual transmission of herpes really serious harm to body?
- III. Did the situation have enough of a reckless view since he was aware he was infected and that transmission was possible?

- Judgment

The appeal by Golding was rejected by the Court of Appeal:

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<sup>2</sup> [2014] EWCA Crim 889

Validity of Guilty Plea: The pleas were concluded as informed and voluntary; procedural breaches did not occur.

Really Serious: The Court did not disagree that genital herpes may constitute really serious bodily harm, as it is incurable, can be very painful during the first outbreaks, has recurring episodes and affects the mind/psychological state. It concurs with the testimony of experts in medicine.

Irresponsible: Golding has an understanding of being infected and considered risks in transmitting. The fact that he did not disclose his failure or provide any protective interference meant to be reckless (such as condoms).<sup>3</sup>

#### 4. People v. Kevin Bollaert (California, USA, 2016)

- Background

Kevin Christopher Bollaert is a web developer who ran two sites that were interconnected:

- I. “UGotPosted.com”, where people posted exposed images of former partners (by involving the details: names, social media, location) anonymously.
- II. In “ChangeMyReputation.com”, the images were removed after victims paid 250350 to take them down.

Between December 2012 and September 2013, it uploaded about 10,000 pictures.

- Issues

Identity theft and Extortion

- Judgement

On April 3, 2015, he was sentenced to up to 18 years in prison, which was then retracted to 8 years in prison followed by 10 years of Mandated Supervision on a condition that he pays the restitution (\$15,000) and a fine (\$10,000). Can be on parole after a decade or so.<sup>4</sup>

### Conclusion

Decency of women, as being deep-rooted in Indian society and favored by the statutory rule, is always in danger of being persecuted by direct acts of violence as well as indirect social considerations. A patriarchal outlook and cultural deafness, and the inability of the law enforcement mechanism to take adequate steps reinserts an environment where women have lost their independence and their dignity is being trampled constantly. All these concerns

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<sup>3</sup> AIR 2007 SC 370

<sup>4</sup> D067863

require a multi-pronged solution that incorporates effective legal advocacy, early childhood gender sensitization, effective institutional infrastructure and more importantly a social reform that reinvents respect and equality towards women. It is because only then will India be able to respect its women not just as figures in mythology, but as a reality.

