INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

NEUTRALITY VIS-A-VIS SPECIFICITY IN THE OFFENCE OF RAPE: A RIGID DICHOTOMY

AUTHORED BY - MOHIT GUPTA

ABSTRACT:

The present piece plainly engrosses upon a poser that whether Rape as an offence can ever touch the contours of neutrality. The present discussion appends an important moot point of whether our societal institutions are instinctual to be under threat as and when gender-specific offences move towards neutrality. It impels us to look into the colonial legacy wherein Sir Matthew Hale, Lord Chief Justice of the Court of King's Bench expounded a Common Law doctrine or principle that a husband cannot be held guilty of committing the rape qua his wife. Further, the Law Commission Reports played a pivotal role in shaping the neutrality within the contours of the term "Rape". The Courts have played an arduous task to accost the necessity of remaining gender-neutral while adjudicating gender-specific offences like Rape. The same gets buttressed by the fact that the courts, whilst adjudicating such gender-specific offences, appreciate the social context and situation of a particular gender who may be in a lesser advantageous situation than the other.

Keywords: Rape, Neutrality, Gender, Modesty, Law Commission Reports

NEUTRALITY VIS-A-VIS SPECIFICITY IN THE OFFENCE OF RAPE: A RIGID DICHOTOMY

The present piece plainly engrosses upon a poser that whether Rape as an offence can ever touch the contours of neutrality. To answer the above, one may need to look into the legislative history of 'Rape' as an offence. Rape as defined under Section 375 of the Indian Penal Code, 1860 ("**IPC**") in all its enormity cast upon the victim (woman) an indelible impression that trembles the foundation of a liberal society.

The Legislature whilst indicating "Rape" as a gender-specific offence has somehow taken upon itself an ineluctable burden to pass the muster of Articles 14, 15, 19, and 21 of the Constitution of India. The present discussion appends an important moot point of whether our societal institutions are instinctual to be under threat as and when gender-specific offences move towards neutrality. Certainly, this brings us to think about the social, cultural, and legal impact of Rape as an offence.

The essence of the present discussion impels us to look into the colonial legacy wherein Sir Matthew Hale, Lord Chief Justice of the Court of King's Bench expounded a Common Law doctrine or principle that a husband cannot be held guilty of committing the rape *qua* his wife. The doctrine propounded in the colonial era had a modicum of any rational basis. Resultantly, English courts excogitated ways and means to dilute the common law doctrine in some notable cases.

One such case was R v. R. [1991] UKHL 12 wherein English Courts whilst interpreting this doctrine observed in succinct terms that a husband is guilty of raping his own wife. The verdict passed by the House of Lords obliquely touched upon the pristine institution of marriage. It perforce resulted in an amendment in the Criminal Justice and Public Order Act, 1994. Section 142 was incorporated in the said Act which glaringly exposits that English Courts had made an attempt to stand the Rape Laws on *terra firma* of neutrality. Section 142 of the Criminal Justice and Public Order Act, 1994 is profitably reproduced as under:

> "***PART XI***
>
> *SEXUAL OFFENCES*
>
> *Rape*
>
> ***142. Rape of women and men***
>
> *For section 1 of the Sexual Offences Act 1956 (rape of a woman) there shall be substituted the following section –*
>
> ***"Rape of woman or man***
>
> *(1) It is an offence for a man to rape a woman or another man.*
>
> *(2) A man commits rape if –*
>
> *(a) he has sexual intercourse with a person (whether vaginal or anal) who at the time of the intercourse does not consent to it; and*
>
> *(b) at the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it."*

Section 142 plainly insinuated a position that Rape as an offence can be aggravated against a man also. With the shifting sands of time, the legislators in our country had culled out the definition of Rape in the draft IPC. The definition in the draft IPC convoluted the above position of neutrality (as enunciated in Section 142 above) by simply stating that it is always a man who will commit rape. One must allude to the fact that the fulcrum of the above argument is not accepted by some scholars and jurists.

Lord Thomas B. Macaulay whilst drafting IPC had entailed the definition of Rape under Section 359 of the draft IPC which was later transmogrified into Section 375 of the IPC (as it stands today). Afterwards, the draft IPC was discussed and deliberated upon by the Indian Legislators in its Report on Penal Laws, 1844. For ease of reference, Section 359 of the draft IPC is reproduced below:

> *"OF RAPE*
>
> ***359. Rape. – A man is said to commit "rape" who**, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the 5 following descriptions:…"*

LAW COMMISSION REPORTS

For percipience, the germane of the present discussion impels us to traverse through the relevant extracts of the Law Commission Reports. These Reports help to fetter out the aspect of neutrality vis-a-vis specificity in the offence of Rape. Starting off with the 42nd Report, the Law Commission in its prefatory remarks summed up the deliberations and efforts being undertaken to complete the exercise of revising the Penal Code.

Chapter 16 titled "*Offences affecting the Human Body*" dealt with sexual offences wherein the Law Commission engrossed upon the "consent" of women to define "Rape" as an Offence. Intriguingly, one may note that the Law Commission in clause 16.121 of the concerned chapter had touched upon the aspects of neutrality on a miniscule level. It made an attempt to unfold a situation where a mature woman compels or seduces a boy under sixteen years of age to sexual intercourse. The author believes that the concerned clause exemplifies the aspects of neutrality where a woman can also be held liable for seducing a male person but falls short of terming it as "Rape". The same is profitably reproduced here:

"Sexual offences

.....

16.113. The definition of rape in section 375, which Section refers to the woman's consent in four of its five clauses, raises the question as to how far,if at all, the general exception in section 90 is applicable in relation to the consent "intended" by the second clause of the definition. Concretely, if the consent is given by a woman, who from unsoundness of mind or intoxication, is unable to understand the nature and consequence of the act to which she has in fact submitted, has the man committed rape?....

....

16.121. It was suggested that a mature woman, who compels or seduces a boy under sixteen years of age to sexual intercourse, should be just as severely punishable as a man in the converse case. Apart from the physiological fact that forcing a boy, in the strict sense, to perform the act is impossible, complaints of either forcing or seducing minor boys to such illicit intercourse are unheard of. Such lascivious acts on the part of the woman are socially not so evil as to merit a penal provision…."

Afterwards, Law Commission its 156th Report further dealt with the offence of Rape thereby making some necessary recommendations that penile/oral penetration and penile/anal penetration be covered by Section 377 IPC. Further, it deliberated upon the penetration which need not be expounded being discrete from the present discussion.

In its 172nd Report on "*Review of Rape Laws*", Law Commission focused on the need to review the rape laws in light of increased incidents of custodial rape and crime of sexual abuse against youngsters. Chapter 3 of the said Report draws our consideration whereby it recommended changes in the IPC. It premised such chapter on the desideratum of substituting the definition of "Rape" by the definition of "Sexual Assault".

The Chapter begins off with the sparkling words that *"Not only women but young boys, are being increasingly subjected to forced sexual assaults."* The prefatory words suggest that the Law Commission was cognizant of the situations wherein the female (aggressor) seduces the male (victim). This further gives wings to an appurtenant point on the term "Victim" which shall be dealt with in the later part of this Article. The suggestions made by the Law Commission in its 172nd Report hinged on the recommendations made by "Sakshi" (an organization interested in the issues concerning women) in Writ Petition (Criminal) No.33 of 1997. The prefatory words in the concerned chapter *ipso facto* array the intent of the Law Commission. The same is reproduced herein for your ready reference:

"CHAPTER THREE

Changes recommended in the Indian Penal Code, 1860

3.1. Substitution of definition of `rape' by definition of `sexual assault'.

0.0.0.0.0.0.0.000000000000000000

Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence. Boys and girls both are being subjected to oral sexual intercourse too. *According to some social activists like Ms Sheela Barse, both young girls and boys are being regularly used for all kinds of sexual acts and sexual perversions in certain tourist centres like Goa – mainly for edification of the foreign tourists.* ***Sakshi have also recommended for widening the scope of the offence in section 375 and to make it gender neutral. Some of the Western countries have already done this. It is also necessary to include under this new definition (sexual assault) not only penile penetration but also penetration by any other part of the body (like finger or toe) or by any other object. Explanation to section 375 has also been substituted by us to say that penetration to any extent whatsoever shall be deemed to be penetration for the purpose of this section.*** *This is so*

provided for the reason that in the case of children, penetration is rarely complete - for physical reasons. So far as the Exception is concerned, we have retained the existing Exception the only change made being in the matter of age; we have raised the age of the `wife' from fifteen to sixteen. The age of the person assaulted sexually referred to in the clause "sixthly" has also been raised to sixteen from fifteen…."

The Law Commission in its 172nd report had recommended the insertion of Section 376 titled *"unlawful sexual contact'"* in the IPC. It must be pointed out that the words employed therein were scrupulously chosen by the Law Commission to signify the crucial attempt to make it gender-neutral. It reads as follows:

"376E. ***Unlawful sexual contact*** *(1) Whoever, with sexual intent, touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person, not being the spouse of such person, without the consent of such other person, shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.*

(2) ***Whoever, with sexual intent, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites, or touches, with sexual intent, directly or indirectly, with a part of the body or with an object any part of the body of a young person, shall be punished with imprisonment of either description which may extend to three years and shall also be liable to fine.***

(3) Whoever being in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency, touches, directly or indirectly, with sexual intent, with a part of the body or with an object,

any part of the body of such young person, shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

Explanation: "Young person" in this sub-section and sub-section (2) means a person below the age of sixteen years."

REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

To further accost the present discussion, we can have an empirical view of the Report of the Committee on Amendments to Criminal Law. The Committee constituted under the chairmanship of Hon'ble Mr. Justice J.S. Verma, former Chief Justice of India proposed certain amendments to the Criminal Law.

Chapter 2 of the Report titled *"Gender Justice And India's Obligations Under International Conventions"* unravels the state obligations to ensure gender justice. The Committee has distinctly made use of the International Conventions to obligate the state to find congruity in its laws and justice. While traversing through the relevant paragraphs of the concerned chapter, it becomes palpable that the Committee somehow bounded itself to give a wider interpretation to gender justice. Presumably, the Committee wanted to construe gender justice through the lens of differential access to justice by women in this country. For ease of reference, relevant extracts of Chapter 2 are reproduced below:

"CHAPTER TWO

GENDER JUSTICE AND INDIA'S OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS

1. ***The Committee notes that the obligation of the State to ensure gender justice (including protecting women from crime and abuse) arises from many sources of international law. We note some of these below:***

The Declaration on Elimination of Violence against Women 1993 and Convention on Elimination of all forms of

Discrimination against Women

23. ***We are further of the opinion that merely facial gender neutral laws and policies cannot deny what has perceptively called "…..differential access to justice faced by women seeking to engage with the legal system….."***

28. We must add that there is a special definition of violence against women. We need to note that this definition is an extraordinarily wide but perceptive definition. It seeks to capture both the act of violence as well as the consequence of violence upon the individual. It also clarifies that the said Act is a direct deprivation of liberty whether occurring in public or in private life. ***At this juncture, we would like to say that Article 1 of the DEVW clearly defined violence against women as any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life.***

29. We also must note that further elaboration of violence against women has been described as "…..physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non spousal violence and violence related to exploitation…."42.

31. We are therefore of the opinion that failure to frame a domestic law, which is requisite for dealing with violence against women, will constitute a breach of the international Convention. Secondly, the law must be implemented in a manner that satisfies the criteria of impartial administration

of justice, which is the fundamental cornerstone of the rule of law. We also need to add that while physical violence is an offence, it also constitutes deprivation of human rights and liberty, and is a form of sex discrimination. Thus, violence against women has a dual characteristic……We therefore wish to caution the State and suggest to the Legislature that it must keep aside all other business and first correct this aberration of the Constitution which has been permitted in the Indian society for so many decades…"

Chapter 3 of the said Report titled *"Rape and Sexual Assault"* enunciates the term "Rape" in light of the tests laid down under Section 90 of the IPC for establishing "consent". In addendum, the Committee in its propriety expounded the term "consent" on the cornerstone of jurisdictional laws in different countries. The Committee draws out two contrasting positions whereby (1) the term "Rape" be replaced by "sexual assault" or (2) the offence of "Rape" be retained within a wider offence of sexual assault. It brings to the fore the South African legislation which distinguishes between the "Rape" and other forms of sexual assault. Under South African law, "Rape" is defined as to include all penetrative offences. Contrariwise, "Sexual penetration" is defined in broader and gender-neutral terms that go well beyond the prior common law restriction to penile-vaginal penetration.

In its concluding remarks, the Committee opined that "Rape" as an offence must be kept separate in the Indian context. It rests its opinion on the notion that any effort to move towards a generic crime of 'sexual assault' will run a risk of diluting the political and social commitment to respect, protect, and promote women's right to integrity, agency, and autonomy. The relevant excerpts of Chapter 3 are reproduced below:

"CHAPTER THREE

RAPE AND SEXUAL ASSAULT

…..

9. The United Nations Handbook points out that the definitions of rape and sexual assault have evolved over time, from requiring use of force or violence, to requiring a lack of positive consent.

.....

11. Similarly, under Canadian law, the accused cannot argue that there was belief in consent if the accused did not take reasonable steps to ascertain that there was consent to the specific sexual activity. It is not enough that the accused subjectively believed there was consent. He must also demonstrate that he took reasonable steps to ascertain it.

....

65. ***Two contrasting positions on this issue have been taken in other jurisdictions examined here.***

a. ***A wide definition of sexual assault to replace the offence of rape and indecent assault:***

….

b. ***Retaining an offence of 'rape' within a wider offence of sexual assault.***

i. This approach retains the specific offence of rape but includes it in a cluster of offences under the category of sexual assault. This is the approach of the legislation in England and Wales, which specifies offences of 'rape' 'assault by penetration', 'sexual assault' and 'causing a person to engage in sexual activity without consent'

.....

ii. A similar approach is taken by the South African legislation, which distinguishes between rape and other forms of sexual assault. Under South African law,

1. 'Rape' is defined as all penetrative offences. 'Sexual penetration' is defined in broad and gender-neutral terms which go well beyond the prior common law restriction to penile vaginal penetration.

…..

67. ***We are of the considered opinion that in the Indian***

context it is important to keep a separate offence of 'rape'. This is a widely understood term which also expresses society's strong moral condemnation. In the current context, there is a risk that a move to a generic crime of 'sexual assault' might signal a dilution of the political and social commitment to respecting, protecting and promoting women's right to integrity, agency and autonomy. *However, there should also be a criminal prohibition of other, non-penetrative forms of sexual assault, which currently is not found in the IPC, aside from the inappropriate references to 'outraging the modesty' of women in Sections 354 and 509. We recommended the enactment of Section 354 in another form while we have recommended the repeal of Section 509.*

68. ***We have kept in mind that the offence of rape be retained but redefined to include all forms of nonconsensual penetration of a sexual nature. Penetration should itself be widely defined as in the South African legislation to go beyond the vagina, mouth or anus.***

69. ***An offence of sexual assault should be introduced to include all forms of non-consensual nonpenetrative touching of a sexual nature. It is recommended here that the Canadian approach be followed, according to which the 'sexual nature' of an act is established if****: 'viewed in the light of all the circumstances… the sexual or carnal context of the assault [is] visible to a reasonable observer.' Courts will examine the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, threats, intent of the accused and any other relevant circumstances. It should not be a prerequisite that the assault be for sexual gratification. The motive of the accused is 'simply one of many factors to be considered…"*

SEXUAL INTERCOURSE

On a general notion, one can have *carte blanche* to have different views on the present discussion. An empirical view can be taken whereby one can allude to the fact that the words employed in the definition of Rape under Section 375 of the IPC some-how pushed the term "Sexual Intercourse" in the arena of specificity whereby it is a man who will always be the aggressor to cultivate the elements of sexual intercourse with any female (victim). The above view simpliciter exposits that the definition of the term "sexual intercourse" cannot be reduced to husk by juxtaposing it with the term "Rape" as defined under Section 375 of the IPC.

FEMININITY

The upshot of the above also brings to the fore an important aspect that the victim in the offence of Rape is a gender having "femininity" or having a female character. Courts in umpteen of judgements have defined the term "femininity" as a set of qualities, behaviour, and role generally associated with woman and girls. Feminine characteristics include gentleness, empathy, humility, and sensitivity. However, the position attained above in a cursory reading seems to be antithetical when we see the definition of "victim" given under Section 2 (wa) of the Code of Criminal Procedure, 1973 ("**CrPC**"). The definition of the term "victim" reads as under:

> *"2. Definitions.—In this Code, unless the context otherwise requires,—*
>
> *....*
>
> *(wa) "**victim**" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."*

On perusal of the above, it becomes palpably clear that the words employed in the definition of the term "Victim" do not narrow down its interpretation within the shackles of specificity. Presumably, any narrow interpretation of the above would bring the mortified by its own idiocy. The fulcrum of the present context is further strengthened by looking upon the term "Gender" given under Section 8 of the IPC. In succinct terms, the term "Gender" touched upon the principles of neutrality.

"CHAPTER II

GENERAL EXPLANATIONS

8. Gender.—The pronoun "he" and its derivatives are used of any person, whether male or female."

MODESTY

At this juncture, one may also look at the term "modesty". It is the modesty of a woman that *inter alia* serves as a distinguishing factor between a male and a female. The term "Modesty" encompasses a range of meanings that converge on a common theme of propriety, chastity, and adherence to societal norms. Hon'ble Courts in the plethora of judgments have defined the term "Modesty" as a commitment to, scrupulous chastity in thought, speech, and conduct. Some of the notable judgements are reproduced herein:

1. State of Punjab vs. Major Singh 1966 SCC OnLine SC 51: The Hon'ble Apex Court defined the term "modesty" as the woman's sex. It observed:

> *"15.* ***I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body.*** *Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section."*

2. Ramkripal vs. State of M.P. (2007) 11 SCC 265: The Hon'ble Apex Court had discussed the essence of woman's modesty. The relevant portion has been reproduced as under:

> *"12.* ***What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex.*** *The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive.* ***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 thrust of the above gains momentum when we see the Sections 354 and 509 of the IPC. Both these sections use the word "Outraging the modesty of a woman" to denote its specificity though by different means. In essence, Section 354 primarily deals with cases that involve physical assault or the use of force against a woman i.e., wherein her modesty is violated through actions that involve direct contact or physical harm. Contrariwise, Section 509 covers the cases where words, gestures, or acts are employed with the deliberate intent to insult or offend a woman's modesty without necessarily involving physical force.

Notably, IPC recognizes assault, criminal force, or insult of a woman's modesty as an offence. This affirms the position that the term "modesty" (as defined by the Hon'ble Apex Court) by no stretch of imagination can be widened to include an assault, criminal force or insult to the male ones.

CONCLUSION

It will be wrong to suggest that our legislation, whilst defining the offence of Rape as a gender-specific offence, intends to treat a male as an aggressor. The upshot of the present discussion exposits the fulcrum of the above argument that it is the inherent obligation of the legislation to address the unique issues faced by a particular gender. One must take note of the fact that the specificity of any offence does not solely attribute to the culpability of any accused. Adherence to the due process of law and the availability of adequate evidence plays a significant role in effectuating the fundamental principles of fairness and justice.

The Courts have played an arduous task to accost the necessity of remaining gender-neutral while adjudicating gender-specific offences like Rape (as discussed above). This equilibrium must not be tilted in favour of any specific party thereby upholding the principles of neutrality. The gender-related factors must not be served as an impetus to influence the Court unless specific

presumptions are legislated in favour of a particular gender in law.

In sum, neutrality is the bedrock of fair and equal treatment to both men and women. Gender specificity of any offence must not be considered as adversarial to any specific gender. Rape as a gender-specific offence entails two individuals i.e., the complainant (woman) and the other being the accused (man). The specificity of Rape as an offence must not be considered as an aggravating factor to define the culpability of males as an aggressor. The same gets buttressed by the fact that the courts, whilst adjudicating such gender-specific offences, appreciate the social context and situation of a particular gender who may be in a lesser advantageous situation than the other.