

## Legal Provision on Sexual Assault Crime Against Women: A Case study of Sexual Harassment of Women in Workplaces in India



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### Abstract

In recent years, sexual offences against women have risen at an alarming rate. Outraging a woman's modesty is one such crime against women that has resulted in significant trauma and distress. The Indian Penal Code, 1960, defines this offence as Section 354 of the Indian Penal Code. The author of this essay has covered the basic elements of this crime as well as the legal requirements in our justice system that pertain to this crime. This crime's most recent situation has also been mentioned. The author also attempted to highlight the razor-thin line that exists between outraging a woman's modesty and attempting to rape her. Sexual harassment is a hot topic and a source of concern in today's society. Sexual harassment infringes on women's essential fundamental rights, including their right to equality under Articles 14 and 15 of the Indian constitution, as well as their right to life and dignity under Article 21 of the constitution. The current paper provides a comprehensive backdrop on female sexual harassment in India. The origin of sexual harassment was derived from the Bhanwari Devi case, and the current study also includes an account of the Vishaka and Otrs. vs Union of India 1997 ruling. From various time perspectives, the current research paper attempts to emphasise the causes that likely to spontaneously increase in sexual harassment cases. The male dominated organisational setup is one of the prominent causes highlighted in the current research paper, i.e. much of the harassment that women face at work isn't 'sexual' in content or design, but the motive behind it is to show the dominance of male folk, inferior job positions where women typically wield less hierarchical power in an organisation and men have more sexual harassment serves as one method of the powerful asserting control. From the last decade to the present, sexual harassment has steadily increased, with 29.20 percent of occurrences reported in 2020, resulting in violations of women's basic immunities at work. The information for this study was gathered from both primary and secondary sources, and it was analysed utilising a specific research approach and instrument. The findings of this study, however, show that, despite efforts to abolish it, sexual harassment is still common in India's workplace. Finally, the current study suggests that the time has come to take a closer look at the problem and to implement preventive measures that will help to better analyse the situation.

**Keywords:** Law, Sexual Harassment, Women, Work place, IPC, Section 354, Crime, Gender

### Introduction

A United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and ratified by India, advocates for gender equality in terms of human rights and fundamental freedoms in the political, economic, social, cultural, and civil spheres. It emphasizes that discrimination against women and attacks on their dignity are incompatible with the idea of equality of rights. In the United States, the Equal Employment Opportunity Commission has produced a relevant definition of sexual harassment as follows: "Unwelcome sexual approaches, requests for sexual favours, and other verbal or physical acts of a sexual nature constitute sexual harassment."

Section 354 of the Indian Penal Code, 1960, defines the crime of outraging a woman's modesty. It is usually read in conjunction with Section 509 of the Indian Penal Code, 1960, which provides a detailed and full definition of the crime. In the code, the term "Modesty" is not

defined. As a result, the Supreme Court has defined the term modesty as follows: "Modesty is a female sex feature that she possesses regardless of her age in various judgments. The purpose of this section is to safeguard women from indecent behaviour by others that is insulting to morality and degrades women's dignity. This section is intended to protect public morals and decency."

### Legal Provision

Assault or criminal force to woman with intent to outrage her modesty: Whoever assaults or uses criminal force to any woman, intending or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term not less than one year but not more than five years, and shall also be liable to fine,' says Section 354 of the Indian Penal Code, 1960.

The following are the fundamental criteria for the crime of outraging a woman's modesty: 1. The person assaulted must be a woman, 2. The accused must have used criminal force on her, and 3. The criminal force must have been used

on a woman with the intent to outrage her modesty.

Thus, in order to convict someone under Section 354 of the IPC, the prosecution must show beyond a reasonable doubt that: 1. An assault was committed, or criminal force was used, the object of the assault or criminal force was a woman. It was done with the intent to outrage a woman's modesty, or with the knowledge that her modesty would be outraged.

In Section 10 of the Indian Penal Code, the term 'Woman' is Defined. "The word "woman" signifies a female human being of any age".

An offence under this clause is punishable by one to five years in jail and a fine. Depending on the circumstances, imprisonment might be easy or severe. This is a cognizable offence that is not bailable and can be tried by any magistrate.

Assault is defined in Section 351 of the Indian Penal Code. "Whoever makes any gesture, or any preparation, intending or knowing that such gesture or preparation will lead any person present to suspect that he who makes that gesture or preparation is about to use criminal force against that person, is said to constitute an assault," according to this provision. Criminal force is mentioned in Section 350. "Whoever intentionally uses force against any person without that person's consent in order to commit any offence, or intending to cause, or knowing it to be likely that by using such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force against that other," it says. As a result, we can conclude that proof of intent to offend a woman's modesty is extremely important and is the primary ingredient for this crime to be committed. If a person commits the offence of outraging a woman's modesty accidentally or unintentionally, he or she cannot be held accountable under section 354 of the IPC. The intent to offend a woman's modesty is dealt with in Section 509. This clause makes it illegal to use words, gestures, or actions with the intent to offend or disrespect a woman's modesty. Simple imprisonment for a duration of up to three years, as well as a fine, will be the penalty. It is a less serious offence than IPC Section 354 because it merely indicates the intent to conduct the crime rather than the actual commission of the crime.

### Statement of Problem

When considering their efforts in economic support, household activities, and emotional traits, women supply an arm and play a key role

in the nation's development. As a result, she should be approached to a safe and secure workplace environment when executing these responsibilities. As a result, sexual harassment has an impact on women's social and psychological conduct both inside and outside the workplace. As a result, sexual harassment jeopardizes women's job stability and affects their earning potential.

### Objective

The goals of this study are to:

- (1) To know study of legal perspective of women issues basically IPC Section 354 provision.
- (2) Highlight the factors that contribute to workplace sexual harassment of women.
- (3) Examine and investigate the available data on the increase and fall of sexual harassment.
- (4) Make some recommendations to combat workplace sexual harassment instances involving women.

### Methodology

The current research, is mostly based on secondary data gathered from various sources. The primary data was gathered from a variety of government reports and actions. In terms of secondary sources, they were gathered from a variety of research papers, periodicals, and books. The content analysis research tool was utilised to analyse data collected from various sources for the current study, and the descriptive research method was employed to conduct the research.

### What Exactly is Outraging a Woman's Modesty?

For more than a decade, courts have tried several individuals for 'outraging the modesty of women,' despite the fact that the term 'Modesty' is not defined anywhere in the Indian Penal Code, 1960. On various occasions, however, the Supreme Court has elaborated on what defines a woman's modesty. The core of a woman's modesty, according to the Supreme Court, is her sex. 8. modesty is a quality connected with female humans as a group. A lady, regardless of her age, has modesty. This means that even a one-day-old girl infant has a sense of modesty that might be offended.

In the case of State of Punjab vs Major Singh, the court held that a woman's modesty might be violated whether she is 'young or old, clever or imbecile, awake or sleeping.' Anyone who uses criminal force against her with the purpose to offend her modesty is guilty of an offence under Section 354 of the Indian Penal Code. The crux

of the case is the accused's responsible intent. The victim in this case was a seven-and-a-half-month-old baby. She had not yet formed a sense of shame or been exposed to sex. Nonetheless, she possesses modesty, which is a sex trait, from the moment she is born. As a result, the court found the accused guilty under Section 354 of the IPC and sentenced him to two years in prison and a fine of Rs. 1,000/.

When an offender's act jeopardises a woman's decency and dignity, her modesty is enraged. A woman's modesty is outraged by any conduct that offends her sense of modesty, decency, or is abhorrent to womanliness. For example, she slaps a lady on the buttocks, disrobes her, and asks her for sexual favours, among other things.

Intention and knowledge, both of which are required to commit an offence under Section 354, are mental states. Direct evidence cannot be used to prove them. They must be deduced from each case's circumstances. Only a prudent, rational individual can make such inferences. As a result, the final criteria for determining whether a woman's modesty has been outraged or insulted is whether the offender's act is seen as capable of upsetting a woman's sense of decency. As a result, the criteria for outrage of modesty must be whether a reasonable man would believe that the offender's act was intended to or was known to be likely to outrage the woman's modesty.

'In order to constitute the offender under Section 354 IPC, mere awareness that a woman's modesty is likely to be violated is sufficient without any conscious intention of having such outrage alone as its object,' the Supreme Court said in *Shekara vs the State of Karnataka*. There is no one-size-fits-all definition of modesty that can be applied to all situations."

### **Outraging Modesty vs Attempt to Commit Rape**

The border between offending a woman's modesty and attempting to murder her is extremely thin, hazy, and nearly impenetrable. Every rape or attempted rape is an act of indecent assault. The accused's act must have progressed beyond the stage of preparation in order to be considered an attempt to commit an offence. If the accused's act does not go beyond preparation and does not amount to an attempt, he may be exempt from culpability under Section 376 read with Section 511 of the IPC and convicted solely of indecent assault.

In *Jai Chand vs State*, the accused forcibly lay the prosecutor on the ground, breaking a pyjama

string but making no attempt to undress her. He made no attempt to seize the prosecutor when she pushed him away and fled. As a result, the court determined that it was not unlawful under Section 376, which defines attempted rape, but merely under IPC Section 354, which defines outraging a woman's modesty.

In *Ram Mehar vs the State of Haryana*, the accused apprehended the victim, pinned her to the ground, and attempted to open her salwar but was unsuccessful due to the victim's injury. The accused's refusal to provide a blood sample created suspicions, and the court assumed his innocence was suspect. The court ruled that the accused was guilty under section 376 of the IPC (attempt to commit rape).

In the "Nirbhaya" case, *Mukesh & Anr v. State For Nct Of Delhi & Ors* on 5 May 2017, the Supreme Court of India said: The gruesome offences were committed with highest viciousness. Human lust was allowed to take such a demonic form., but the brutality with which the gang-rape was carried out on a moving bus; iron rods were put in the victim's private parts; and the coldness with which both victims were stripped nude on a chilly December night strikes society's collective conscience. The present instance certainly falls into the category of the rarest of rare cases, in which any alternative sentence is clearly out of the question. If there is ever a case that justifies the imposition of a death sentence, this is it' (*Mukesh & Anr vs State For Nct Of Delhi & Otrs* on 5 May 2017).

### **Is it Possible For a Woman to Offend Another Woman's Modesty?**

Section 354 is a gender-neutral law, which means that any woman can offend another woman's modesty. This is due to the fact that IPC Section 354 states, 'anyone assaults or uses unlawful force...' The term 'whoever' can refer to either a guy or a woman. This section's most important component is to irritate a woman's modesty. As a result, the facts of each case are considered in determining whether or not a person is accountable for this crime.

### **Women Sexual Harassment on Work Place**

The Indian legislature's female legislators expressed their worry and sensitivity to the issue of sexual harassment. Ms. Kamla Sinha introduced a bill in parliament in May 1994 to provide for the prevention of sexual harassment of female employees at work. Ms. Sinha noted in the statement of objects and reason that women make up a substantial part of the workforce in

practically every sphere of economic activity. Women are pushed to labour in the poorest service circumstances at work. They are sexually harassed at work by male coworkers, managers, employers, and others. Despite the fact that crimes such as physical assault and molestation are now criminal under the Indian penal code, working women remain insecure since the legislation does not cover all areas of their lives. As a result, there is a pressing need to deal with the problem more forcefully. As a result, the bill addresses workplace offences involving sexual harassment of women. Prior to the introduction of this bill, Bhanwari Devi, a rural change agent, was hired by the state of Rajasthan as a sathin (friend) in 1992 to advocate against the practise of child marriage. She averted the marriage of a one-year-old girl in the community throughout the course of her work. Her work was met with outrage and abuse from the men in the neighbourhood. Bhanwari Devi reported this to the local government, but nothing was done about it. That omission cost Bhanwari dearly when she was gang raped by those men. A PIL was filed by Vishaka and other women's groups against the state of Rajasthan and the union of India in the supreme court of India based on the facts of the Bhanwari Devi case. In 1997, a three-judge bench of India's Supreme Court issued a key verdict known as the Vishaka judgement, which must be followed by all foundations when dealing with sexual harassment prevention and remedy. For the first time, the ruling identifies and defines workplace sexual harassment of women. Prior to the 1997 verdict, the only recourse available to women workers who were subjected to sexual harassment at work was to file a complaint under parts of the Indian penal code. Furthermore, organisations, foundations, establishments, and employees are not held responsible for the safety and security of their female coworkers. Following this, various organisations made commitments and expressed concerns, one of which was the National Commission for Women, which submitted versions of a Code of Conduct for the Workplace in 2000, 2003, 2004, 2006, and 2010.

Krishna Tirath, the then-Minister of Women and Child Development, introduced a bill in 2007 called The Protection of Women Against Sexual Harassment at Workplace Bill. The bill was approved by the Union Cabinet in January 2010 and presented to the Lok Sabha in December 2010. As a result, the bill was forwarded to the

Parliamentary Standing Committee, whose report was released in November 2011 and it was in May 2012 that the law was amended by the Cabinet. The Lok Sabha passed the modified Bill in September 2012, and the Rajya Sabha communicated its final decision on the bill in February 2013, giving it a final shape. The measure, known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, was signed by President Obama in April 2013 and went into effect on December 9, 2013. The Vishakha Guidelines are preserved in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, which extends on its provisions. It expands the concept of 'Aggrieved Woman' to encompass all women of any age or employment position, as well as clients, customers, and domestic workers. It broadens the definition of 'Workplace' to include all types of companies across sectors, as well as non-traditional workplaces (such as those that incorporate telecommuting) and places where employees go for work. It requires the formation of an internal complaint committee (ICC) and the consequences if one is not formed as well as the filing of an audit report detailing the number of complaints received and the actions taken at the end of the year. It outlines the employer's responsibilities, such as holding regular workshops and awareness programmes to educate employees about the Act and providing ICC member onboarding sessions. If an employer fails to form an ICC or violates any other condition, they are subject to a punishment of up to rupees 50,000. The fine is doubled if the perpetrator is a repeat offender. If the employer has been convicted of an offence under the Act before, he will be punished twice, and the second offence will result in his license being revoked or not renewed. The offence punished under the Act is tried by a Metropolitan Magistrate or a Judicial Magistrate of the First Class. All of this has given women working in government or private sector organizations a sense of safety against sexual assault. By providing them with a safe working environment, they will be able to reach their full potential.

## **Current Situation NRCB Data Results and Discussion**

Due to a lack of evidence in many rape cases, the accused cannot be prosecuted for the crime of rape. In such circumstances, the offender is



found guilty of outraging the modesty of a woman.

In the case of State vs Musa, the victim, a married woman, claimed that two men dragged her and raped her, and that traces of semen were discovered on her clothes, which were used as medical evidence. However, no traces of the substance were discovered on the accused's clothing. Due to a lack of evidence, the court ruled that it was not a case of rape, but the defendants were convicted of the offence under IPC Section 354 because they had pulled the victim with the goal of outraging her modesty.

As a result, we can conclude that for a case to be established under IPC Section 354, the prosecution must prove the use of assault or unlawful force against a woman, as well as the intent to offend a woman's modesty. It must be proven beyond a reasonable doubt in the latter case. In situations involving IPC section 354, it is critical for the defense to show that the lady was a willing participant in the act. There is a well-established notion that there can be no outraging of modesty if the woman is a consensual party to the act.

According with data, 398,620 people were detained in 2020 for crimes against women, 488,143 were charged, and 31,402 were convicted. In addition, the number of offenses against women in cities decreased by 8.3 percent in 2020 compared to the previous year. Rape, outraging modesty, dowry deaths, harassment, acid attacks, and kidnappings are all crimes against women. With 49,385, Uttar Pradesh had the most such cases among states and union territories, followed by West Bengal (36,439), Rajasthan (34,535), Maharashtra (31,954), and Madhya Pradesh (31,954). (25,640). The majority

of cases under crimes against women were registered under [the category of] cruelty by husband or his relatives (30.2 percent), followed by assault on women with intent to outrage modesty (19.7%), kidnapping and abduction of women (19.0%), and rape (7.2 percent), "The Central government puts greatest emphasis to protecting the protection and security of women and has undertaken several legislative and structural measures in this regard the ministry stated when asked about actions done by the government to ensure fast justice for victims of such crimes. It further stated that police and public order are issues that are dealt with by the state. The government has put in place a Investigation Tracking System for Sexual Offenses, an online analytic tool for tracking probes, according to the ministry. A national database of sexual offenders has also been established.

While dividing the crime of head assault on women with the goal to offend her modesty, we discovered that the most cases were filed under the category of Sexual Harassment. A total of 8,613 cases of assault or use of criminal force to women with intent to disrobe (section 354B IPC) and a total of 838 cases of voyeurism (section 354C IPC) and 6,266 cases of stalking (section 354D IPC) were also reported in the country during year 2020.

The level of sexual harassment appears to be increasing day by day, according to statistics records. It plainly illustrates that, rather than avoiding the causes already mentioned, they are being executed without regard for the worst possible results. Despite the existence of several social, legal, and constitutional laws, this societal scourge is rapidly spreading.

**TABLE-1 (Crime Against Women Year 2018-2020)**

SL	State/UT	2018	2019	2020	Mid-Year Projected Population (in Lakhs) (2020)	Rate of Total Crime against Women (2020)	Chargesheeting Rate (2020)
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
<b>STATES:</b>							
1	Andhra Pradesh	16438	17746	17089	262.9	65.0	91.6
2	Arunachal Pradesh	368	317	281	7.4	38.0	72.5
3	Assam	27687	30025	26352	170.7	154.3	63.8
4	Bihar	16920	18587	15359	584.9	26.3	79.7
5	Chhattisgarh	8587	7689	7385	145.7	50.7	87.7
6	Goa	362	329	219	7.7	28.5	76.5

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7	Gujarat	8329	8799	8028	329.1	24.4	94.6
8	Haryana	14326	14683	13000	137.3	94.7	57.9
9	Himachal Pradesh	1633	1636	1614	36.3	44.5	78.9
10	Jharkhand	7083	8760	7630	185.9	41.0	78.8
11	Karnataka	13514	13828	12680	327.6	38.7	84.7
12	Kerala	10461	11462	10139	183.9	55.1	94.1
13	Madhya Pradesh	28942	27560	25640	405.3	63.3	83.8
14	Maharashtra	35497	37144	31954	593.8	53.8	82.0
15	Manipur	271	266	247	15.6	15.8	56.1
16	Meghalaya	571	558	568	16.3	34.9	66.0
17	Mizoram	249	170	172	6.0	28.8	98.8
18	Nagaland	75	43	39	10.5	3.7	67.6
19	Odisha	20274	23183	25489	225.7	112.9	82.0
20	Punjab	5302	5886	4838	143.2	33.8	77.0
21	Rajasthan	27866	41550	34535	381.6	90.5	55.0
22	Sikkim	172	125	140	3.2	44.2	91.4
23	Tamil Nadu	5822	5934	6630	381.1	17.4	86.5
24	Telangana	16027	18394	17791	186.5	95.4	90.1
25	Tripura	907	1070	874	19.9	44.0	82.5
26	Uttar Pradesh	59445	59853	49385	1095.9	45.1	77.1
27	Uttarakhand	2817	2541	2846	55.2	51.6	79.9
28	West Bengal	30394	29859	36439	478.2	76.2	88.2
<b>TOTAL STATE(S)</b>		<b>360339</b>	<b>387997</b>	<b>357363</b>	<b>6397.3</b>	<b>55.9</b>	<b>78.7</b>
<b>UNION TERRITORIES</b>							
29	A&N Islands	147	135	143	1.9	76.1	97.4
30	Chandigarh	442	515	301	5.5	54.8	64.2
31	D&N Haveli and Daman & Diu@	54+	82+	61	3.7	16.3	96.6
32	Delhi	13640	13395	10093	94.9	106.4	75.0
33	Jammu & Kashmir@	3437*	3069*	3405	63.4	53.7	75.1
34	Ladakh @	-	-	9	1.3	7.0	81.8
35	Lakshadweep	11	38	15	0.3	45.5	100.0
36	Puducherry	166	95	113	8.1	14.0	100.0
<b>TOTAL UT(S)</b>		<b>17897</b>	<b>17329</b>	<b>14140</b>	<b>179.1</b>	<b>79.0</b>	<b>75.3</b>
<b>TOTAL ALL INDIA</b>		<b>378236</b>	<b>405326</b>	<b>371503</b>	<b>6576.3</b>	<b>56.5</b>	<b>78.6</b>

● Source- <https://ncrb.gov.in/>

### Suggestion and Recommendation

Here are a few tips and recommendations that will aid in the prevention of workplace sexual harassment:

- Where it is appropriate, all firms should train their employees about sexual harassment and its legal implications.
- Seminars, workshops, and mock drills on the horrible practise of sexual harassment should be organised by the responsible authorities.
- Women should be given the greatest number of employment opportunities and promotion slots, since this will prevent them from becoming emotionally involved and causing future stress.
- Every organisational setup, whether governmental or private, should establish an internal complaints committee and grievance cells to monitor occurrences of sexual harassment.

- Each department in the government and commercial sectors should design and organize legal awareness programmes to educate women employees about their rights and benefits.

## Conclusion

India is one of the world's most populous Sexual harassment in the workplace is more prevalent today than ever before. Our research indicated that sexual harassment is a relatively new societal scourge that is rapidly spreading and causing authorities to be concerned. The current study also identifies the factors that have resulted in an upsurge in sexual harassment incidents in India. Men's dominance in the workplace should be challenged by giving women an extra advantage for promotions and other benefits, which will undoubtedly reduce the number of cases reported each year. Apart from that, the higher educational profile of women who are being misled and made sexual approaches by the executives of a company in exchange for a job must be dealt with extreme caution. The current study also looked at data from the National Crime Records Bureau, which was released by the agency in 2020, and conducted a thorough assessment of the cases mentioned in the report. In a nutshell, it has been noted that incidences of sexual harassment of women at work in India are on the rise and there is a need to create a process that will help to better stop the situation and limit the number of incidents. Increased cases of crimes against women have a significant impact on them, causing them severe emotional anguish and pain. According to current trends, many incidences of outraging women's modesty go undetected, and women suffer for the rest of their lives. As a result, tighter rules are urgently needed to prevent such atrocities against women. Despite the fact that various adjustments have been made, the crime rate has remained same. Modifications and adjustments to the current laws are required. All offences involving insulting a woman's modesty should be rendered non-bailable. It is past time that we recognise the seriousness of this crime and work to create a society where women can live without fear.

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