

The section requires two things—

- (1) Making of any gesture or preparation by a person in the presence of another.
- (2) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

**1. 'Makes any gesture, or any preparation'.—**Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. As seen from the definition of "assault", a gesture or even a preparation on the part of accused would be sufficient to constitute "assault" and accused need not have even attacked the deceased.

The apprehension of the use of criminal force must be from the person making the gesture or preparation, and if that apprehension arises not from that person but from somebody else, it does not amount to assault on the part of that person. Further, criminal force cannot be said to be used by one person to another by causing change in the position of another human being. Where, therefore, the accused himself did nothing which could come under the definition of assault but simply made a gesture at which his followers advanced a little forward towards the complainant in a threatening manner, it was held that he was not guilty of the offence of assault under section 353.<sup>968</sup> Where the accused, armed with a sharp-edged weapon, went to the shop of a man and hurled a challenge to him from some distance asking him to come out and threatening him that he would not go back without killing him, it was held that the manner in which the accused hurled the challenge, he committed an assault within the meaning of section 351 and the retaliation by that man was in self-defence.<sup>969</sup>

Though mere preparation to commit a crime is not punishable (see section 511), yet preparation with the intention specified in this section amounts to an assault: see ill. (b).

**2. 'Intending or knowing it to be likely'.—**Intention or knowledge is the gist of the offence. Inadvertent recklessness, i.e., a failure to give thought to the possibility of risk involved in pursuing a course of action, is insufficient to amount to *mens rea* requisite for a conviction for assault.<sup>970</sup>

### **[s 351.2] Explanation.—**

Mere words do not amount to an assault, but the words which the party threatening uses at the time either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In the latter case, the effect of the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.<sup>971</sup> A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault, if there is no evidence to show that the accused was about to use criminal force to him then and there.<sup>972</sup>

### **[s 351.3] Blood transfusion without consent.—**

A person, aged 57, and a *Jehovah's* witness was seriously injured. He carried a card stating that no blood was to be administered under any circumstances. The doctor

administered blood transfusions which he considered necessary to preserve the victim's life. The doctor was held liable in battery for treating the adult patient in a manner to which he did not consent.<sup>973</sup>.

965. *Stephens v Myers*, (1830) 4 C&P 349.

966. *Rupabati v Shyama*, (1958) Cut 710.

967. *Swadesh Mahato*, [1979 Cr LJ 1275](#) (Pat); See also *James*, (1844) 1 C&K 530; *Vijaidutta Jha*, (1947) Nag 237.

968. *Muneshwar Bux Singh*, [\(1938\) 14 Luck 409](#) .

969. *Mathew v State of Kerala*, [1993 Cr LJ 213](#) (Ker). *R v Chan-Fook*, [\(1994\) 2 All ER 552](#) , the complainant suffered no physical injury as a result of the assault, he felt abused, humiliated and frightened.

970. *R v Nash*, [\(1991\) Cr LR 768](#) (CA), Offences Against the Person Act, 1861, section 47 (English).

971. *AC Cama v HF Morgan*, (1864) 1 BHC 205.

972. *Birbal Khalifa*, [\(1902\) 30 Cal 97](#) .

973. *Macette v Shulman*, (1991) 2 Mad LR 162 (CA).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**[s 352] Punishment for assault or criminal force otherwise than on grave provocation.**

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.*—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

#### COMMENT.—

This section provides punishment for assault or use of criminal force when there are no aggravating circumstances.<sup>974</sup> Section 352 constitutes a minor offence in relation to [section 354 IPC, 1860](#). The offence under [section 354 IPC, 1860](#) includes the ingredients of the former.<sup>975</sup> See section 300, Exception 1, which is identical with the explanation to this section.

#### [s 352.1] CASE.—

Where the accused persons formed an unlawful assembly with a common object, act of unlawful assembly cannot be attributable with the subsequent change in the common object of some of the other members of the assembly, it was held that members who did not share common intention and stood outside were liable to be convicted under section 352 read with 149 and not under section 326 r/w. 149.<sup>976</sup>

**974.** *Nagar Prasad v State of UP*, [1998 Cr LJ 1580](#) (All); *R v Onabanjo*, (2001) 2 Cr App R (S) 7 [CA (Crim Div)], The accused appealed against a total sentence of 15 months' imprisonment, having been convicted of common assault against his former girlfriend and of putting her in fear of violence contrary to the Protection from Harassment Act, 1997 section 4 after she had ended their relationship. The accused contended that the offences had been committed whilst he was under the influence of alcohol and in response to his inability to cope with the breakdown of the relationship.

It was held that repeated threats by the accused to kill justified the sentence imposed, notwithstanding the presence of several mitigating factors including his attempts to seek help for his alcohol addiction and depression. *R v Tucknott*, (2001) 1 Cr App R (S) 93 [CA (Crim Div)], the accused was convicted for threatening to kill his ex-girlfriend and her new partner. The threats were issued in prison to prison officers, stating intentions on release. The sentence was imposed as it was deemed necessary in order to protect the public from a man who the court held and shown himself to be capable of extreme violence against previous partners and who, the medical experts and probation service agreed, was likely to re-offend.

It was held that given his early guilty plea and the fact that he could not realistically have carried out the threats as he had been in prison at the time, the sentence was reduced to five years to bring it in the sentencing in comparable cases.

**975.** *RD Bajaj v KPS Gill*, [AIR 1996 SC 309](#) [LNIND 1995 SC 981] : (1995) 6 SCC 194 [LNIND 1995 SC 981] .

**976.** *Bhimrao v State of Maharashtra*, [AIR 2003 SC 1493](#) [LNIND 2003 SC 167] : (2003) 3 SCC 37 [LNIND 2003 SC 167] . See also *Ashok Chintawar v State of Maharashtra*, [2006 Cr LJ 2234](#) (Bom); *Hanuman v State of Haryana*, [AIR 1977 SC 1614](#) : (1977) 4 SCC 599 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**[s 353] Assault or criminal force to deter public servant from discharge of his duty.**

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

#### COMMENT.—

The public servant must be acting in the discharge of a duty imposed by law on him in the particular case, and the section will not protect him for an act done in good faith under colour of his office.<sup>977</sup> If hurt is caused under the circumstances mentioned in the section then either section 332 or section 333 will apply.

#### **[s 353.1] CASES.—Defect in warrant.—**

It is made clear in the illustrations that the words alone will not amount to assault. So also, the mere gesture of picking up a stick alone will not constitute assault unless accompanied by other circumstances. The gesture explained by the words alone amounts to assault. Therefore, mere preparation of carrying a weapon and standing before the victim without making any gesture which will disclose the intention or knowledge will not constitute assault. As seen from Illustration (c), mere carrying a stick without being accompanied by a statement which will disclose the intention or knowledge will not constitute assault. But there is nothing in evidence to reveal commission of any of the overt acts to constitute offence under [section 353 IPC, 1860](#). The prosecution has failed to prove any of the offences alleged against appellants.<sup>978</sup> Resistance to an illegal order of attachment is not an offence under [section 353, IPC, 1860](#).<sup>979</sup> Where the accused allegedly assaulted the District Revenue Officer who distributing flood relief in village and made an attempt to snatch the cash and evidence of witnesses was found cogent, convincing and credit worthy, conviction was upheld.<sup>980</sup> Accused allegedly snatched the service revolver of complainant police officer and fired at him. All the witnesses who were independent witnesses, turned hostile. Offence under sections 307 and 353 was held not proved.<sup>981</sup>

#### **[s 353.2] Search without proper order or warrant.—**

Where the accused resisted a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so, he was held to have

committed no offence under this section.<sup>982</sup> But the Madras High Court has held that a search without a search warrant does not justify an obstruction or resistance to an officer, if he was acting in good faith and without malice.<sup>983</sup> Even though an illegal search under [section 165, Cr PC, 1973](#) can be resisted, yet there is no justification to assault an officer after he has finished the search and left the house. Such an act amounts to an offence under [section 353 IPC, 1860](#).<sup>984</sup> In this connection see also sub-head "Cases" under section 340 *ante*.

### **[s 353.3] Public servant must be acting in execution of duty.—**

Where the accused created hindrance in the discharge of duties of police in order to avoid arrest, it was held that conviction under section 353 was justified.<sup>985</sup> Where a cart owner refused to give his cart for the use of a Forest Settlement Officer who required it as per executive orders of Government, and assaulted the peon in preventing him from seizing his cart, it was held that he could not be convicted of an offence under this section, because the rules aforesaid had not the force of law, and a public servant acting under them was not acting in the execution of his duty.<sup>986</sup> Similarly, where a forest officer who was authorised to arrest a person only when the offence was committed within five miles of the border arrested the accused when there was no evidence that the offence was committed within the five mile belt, it was held that the arrest not being justified, the accused did not commit any offence under this section by inflicting some injuries on the officer during a scuffle.<sup>987</sup> Legality of the execution of duty is the *sine qua non* for the application of [section 353 IPC, 1860](#).<sup>988</sup> Where a Headmaster of a school was assaulted with a ruler by a fellow teacher out of previous personal grudge and not due to any performance of public duty, it was held that the accused could not be convicted under section 353 though his conviction under [section 325, IPC, 1860](#) was legal as the Headmaster suffered a dislocation of the right shoulder joint.<sup>989</sup> In this connection see also comments under section 332 *ante*. Where the Assistant Superintendent of Commercial Taxes paid a surprise visit to the shop of the accused and took up some books of account maintained by the shop for inspection, as he was empowered to do under the State's Sales Tax Law, and the accused snatched away the books from him, it was held by the Supreme Court that the act of the accused amounted to use of criminal force and he could be convicted under this section. It was observed that to feel annoyed at this action of the accused would be the natural reaction of the Assistant Superintendent.<sup>990</sup> Where the driver of the Transport Department prevented a Deputy *Sarpanch* from entering the bus through driver's cabin and was kicked by the latter and thus suffered a grievous injury, it was held while driving or standing by the bus the driver was on public duty and by stopping a trespass into driver's cabin he was undoubtedly acting in the discharge of his duty as public servant. The Deputy *Sarpanch* was, therefore, clearly liable under [section 353, IPC, 1860](#).<sup>991</sup>

Petitioner used vulgar and fitting language against complainant when he went to petitioner's office to ask reason for not permitting him to mark his presence in Attendance Register. It was held that act of petitioner cannot be defined to be an act in discharge of official duty. There was no need of previous sanction to prosecute him.<sup>992</sup>

### **[s 353.4] Posting adverse comments of social media site.—**

The appellant posted adverse comments against the police officer on Facebook. The threat must be with intention to cause alarm to the complainant to cause that person to

do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. Offence not made out.<sup>993.</sup>

### **[s 353.5] To deter public servant from discharging duty.—**

Where the accused was asked by a sub-inspector to stop his car and he while pretending to stop sped away and in this process hit the mudguard of the motor-cycle on which the Sub-Inspector was sitting, it was held that the facts of the case did not make out an offence of assault on a public servant or using criminal force so as to deter him from discharging his duties as public servant.<sup>994.</sup> The accused suspected that the complainant public servant was instrumental in his transfer. The complainant was proceeding to his office to resume his duty. On the way he was assaulted by the accused. It was held that no offence was committed under section 353 because the public servant was not assaulted to deter him from discharge of his duty.<sup>995.</sup> The wife of the accused was being taken to Police Station in execution of search warrant accompanied by a police constable. The accused attacked his wife and also the police constable. Conviction of the accused under section 353 was held to be proper, though no injury as such was caused to the constable. The Court observed that actual causing of injury is not necessary for conviction under section 353.<sup>996.</sup> In a complaint under sections 323 and 329 the investigating Head Constable demanded bribe for arresting some persons and was caught red-handed in a trap but on his call the villagers attacked the raiding party and snatched away their belongings and currency notes used in the trap, thus deterring the public servants from discharging their duties and rescuing the accused from the lawful custody of the Inspector of the raiding party. Conviction of the Head Constable under section 395 read with section 109, sections 353/109 and 224, the constable whom the head constable handed over the money under section 395 and the villagers under sections 353, 149, 226 and 147 was upheld.<sup>997.</sup> Four persons brought a woman to a room of a circuit house for the purpose of prostitution. When one of them was busy in sexual intercourse and others were busy in drinking, the police reached there and as they were about to arrest the accused, one of the accused obstructed the police officers in discharge of their duties. The conviction of that accused under section 353 was upheld.<sup>998.</sup>

### **[s 353.6] Section 353 vis-a-vis [Section 186 IPC, 1860](#).—**

There is an essential distinction between the offences punishable under [sections 353](#) and [186 IPC, 1860](#). The ingredients of the two offences are distinct and different. While the former is a cognizable offence, the latter is not. A mere obstruction or resistance unaccompanied by criminal force or assault will not constitute an offence under [section 353 IPC, 1860](#). Where an accused voluntarily obstructs a public servant in the discharge of his duties, [section 186 IPC, 1860](#) is attracted. But under section 353, there must be in addition to the obstruction use of criminal force or assault to the public servant while he was discharging his duty. It may also be noted that the quality of the two offences is also different. While section 186 occurs in Chapter X dealing with contempt of the lawful authority of public servants, section 353 appears in Chapter XVI which deals with offences affecting the human body. This is also a clear indication that use of criminal force contemplated under [section 353 IPC, 1860](#) is against a person and not against any inanimate object.<sup>999.</sup>

977. *Dalip*, (1896) 18 All 246 ; *Raman Singh v State*, (1900) 28 Cal 411 , 414; *Bolai De*, (1907) 35 Cal 361 ; *Provincial Government, Central Provinces and Berar v Nonelal*, (1946) Nag 395. See, however, *Yamanappa Limbaji*, (1955) 58 Bom LR 551 .
978. *Prasad v State*, 2013 (1) KLD 714; *State of HP v Dinesh Chander Sharma*, 2011 Cr LJ 2418 (HP).
979. *State of HP v Durga*, 1980 Cr LJ (NOC) 10 (HP).
980. *Raj Singh v State of Haryana*, 2008 Cr LJ 3205 (PH).
981. *Sumersinh Umedsinh Rajput v State of Gujarat*, AIR 2008 SC 904 [LNIND 2007 SC 1450] : (2007) 13 SCC 83 [LNIND 2007 SC 1450] .
982. *Narain*, (1875) 7 NWP 209.
983. *Pukot Kotu*, (1896) 19 Mad 349.
984. *Shyam Lal*, 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] ; See also *State of UP v Sant Prakash*, 1976 Cr LJ 274 (All—FB).
985. *Bhairon Singh v State of Rajasthan*, 2010 Cr LJ 1177 (Raj).
986. *Rakhmaji*, (1885) 9 Bom 558. A teacher, against whom an inquiry had been conducted by a constable, abused a constable who was waiting for a bus to the police station, thinking that he was the same constable, was let off with admonition. *State of Karnataka v M Chandrappa*, 1987 Cr LJ 950 (Kant).
987. *State of Tripura v Sashimohan*, 1977 Cr LJ 1663 (Gau).
988. *Poulose*, 1985 Cr LJ 222 (Ker).
989. *SN Roy*, 1978 Cr LJ 1514 (Gau). See also *Sagwan Passi*, 1978 Cr LJ 1062 (Pat).
990. *Chandrika Sao*, AIR 1967 SC 170 [LNIND 1962 SC 316] : 1967 Cr LJ 261 .
991. *Manumiya*, 1979 Cr LJ 1384 : AIR 1979 SC 1706 [LNIND 1979 SC 93] .
992. *Prakash Chandra Bafna v Oba Ram*, 2011 Cr LJ 416 (Raj).
993. *Manik Taneja v State of Karnataka*, 2015 Cr LJ 1483 .
994. *P Rama Rao*, 1984 Cr LJ 27 (AP). See *BS Narayanan v State of AP*, 1987 SCC (Cr) 791 : 1987 Supp SCC 172 , where the offender was released under the Probation of Offenders Act, 1958. There was a long lapse of time and also the chance of the offender losing his job. *Shaik Ayyub v State of Maharashtra*, (1995) 1 Cr LJ 420 : (1994) Supp 2 SCC 269. Killing police officers to resist arrest, punished under the section.
995. *Rajendra Datt v State of Haryana*, 1993 Cr LJ 1025 (P&H).
996. *Devisingh v State of MP*, 1993 Cr LJ 1301 (MP).
997. *Ami Lal v State of Rajasthan*, 1996 Cr LJ 1585 (Raj).
998. *Kalyanasundaram v State of TN*, 1994 Cr LJ 2487 (Mad).
999. *Devaki Amma v State*, 1981 Ker LT 475 .



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

##### [s 354] Assault or criminal force to woman 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, <sup>1000.</sup>[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 to fine.]

#### State Amendments

**Andhra Pradesh.**—*The following amendments were made by Act No. 6 of 1991.*

In its application to the State of Andhra Pradesh, for [section 354 of the Indian Penal Code, 1860](#), the following section shall be substituted namely—

**354. Assault or criminal force to woman 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 five years but which may extend to seven years and shall also be liable to fine:

*Provided* that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years.

[Vide Andhra Pradesh Act 6 of 1991].

Chattisgarh—In section 354, insert the following proviso, namely:

"Provided that where offence is committed, under this section by a relative, guardian or teacher or a person in a position of trust or authority towards the person assaulted, he shall be punishable with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine."

[Vide Chattisgarh Act 25 of 2015, sec. 3 (w.e.f. 21-7-2015).]

**Madhya Pradesh.**—*The following amendments were made by Act No. 14 of 2004.*

In its application to the State of Madhya Pradesh, after [section 354 of the Indian Penal Code, 1860](#), the following section shall be inserted namely—

**"354A. Assault or use of Criminal force to woman with intent to disrobe her.**—Whoever assaults or uses criminal force to any woman or abets or conspires to assault or uses such criminal force to any woman intending to outrage or knowing it to be likely that by such assault, he will thereby outrage or causes to be outraged the modesty of the woman by disrobing or compel her to be naked on any public place, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine."

[Vide Madhya Pradesh Act 14 of 2004, sec. 3 (w.e.f. 2-12-2004)].

**Orissa.**—In the First Schedule to the [Code of Criminal Procedure, 1973](#) in the entry under column 5 relating to [section 354 of the Indian Penal Code \(45 of 1860\)](#) for the word 'Bailable', the word 'non-bailable' shall be substituted (*vide* Orissa Act 6 of 1995, section 3, w.e.f. 10-3-1995).

## COMMENT.—

The provisions of [section 354 IPC, 1860](#) has been enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with the intention or knowledge that the woman's modesty will be outraged, he is to be punished. In *Vishaka v State of Rajasthan*,<sup>1001</sup>. and *Apparel Export Promotion Council v AK Chopra*,<sup>1002</sup>. the Supreme Court held that the offence relating to modesty of woman cannot be treated as trivial. In order to constitute the offence under [section 354, IPC, 1860](#) mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty.

The essential ingredients of the offence under [section 354, IPC, 1860](#) are as under:

- (1) That the person assaulted must be a woman.
- (2) Accused must have used criminal force on her intending thereby to outrage her modesty.
- (3) What constitutes an outrage to female modesty is nowhere defined—The essence of a woman's modesty is her sex.
- (4) Act of pulling a woman, removing her dress coupled with a request for sexual intercourse, as such would be an outrage to the modesty of a woman.
- (5) Knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention of having such outrage alone for its object.<sup>1003</sup>.

Intention is not the sole criterion of the offence punishable under [section 354, IPC, 1860](#) and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed.<sup>1004</sup>. Even though it is true that assault or criminal force to woman is one of the essential pre-conditions for applicability of [section 354 IPC, 1860](#) but the same has to be with an intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty. Neither the use of criminal force alone nor act of outraging the modesty alone is sufficient to attract an offence under [section 354 IPC, 1860](#).<sup>1005</sup>.

## [s 354.1] Modesty.—Meaning.—

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 is an attribute associated with female human beings as a