

class. It is virtue which attaches to a family owing to her sex. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady. The word "modesty" is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.¹⁰⁰⁶. In *State of Punjab v Major Singh*,¹⁰⁰⁷, a three-Judge Bench of the Supreme Court considered the question – Whether modesty of a female child of seven and half months can also be outraged. The majority view was in the affirmative. Bachawat, J, on behalf of majority, opined as:

The offence punishable u/s. 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define 'modesty'. What then is a woman's modesty? ... The essence of a woman's modesty is her sex. The modesty of an adult female is written 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 u/s. 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.¹⁰⁰⁸.

An indecent assault upon a woman is punished under this section. Rape is punished under section 376; but the offence under this section is of less gravity than rape.¹⁰⁰⁹. Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to outrage modesty. In this case the victim woman was brought into a room under false pretexts, the room was locked from outside, inside she was forced to drink, photographs taken in naked state and raped. All the participants were held to be guilty of outraging her modesty.¹⁰¹⁰. A person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section. Where the accused walked into the room where a female child of seven and a half months was sleeping and committed an indecent assault on the child, he was held to have committed an offence under this section as he had outraged and intended to outrage whatever modesty the little victim was capable of.¹⁰¹¹. Their Lordships of the House of Lords have pointed out that a person is guilty of indecent assault if he intentionally assaults the victim and intends to commit not just an assault but an indecent assault, i.e., an assault which right-minded persons would think is indecent. Accordingly, any evidence explaining the defendant's conduct, whether an admission by him or otherwise, is admissible to establish whether he intended to commit an indecent assault. In this case,¹⁰¹² a 26-year-old shop assistant pulled a 12-year-old girl visitor to the shop across his knees and smacked her with his hand 12 times on her bottom outside her shorts for no apparent reason. On being asked he explained his weakness as "buttock fetish". But for this admission there was nothing to convert the assault (to which he confessed) into an indecent one. His explanation to his secret motive was held to be relevant to hold him guilty of indecent assault. Moreover, according to [section 10, IPC, 1860](#) a woman denotes a female human being of any age. Where the woman is a consenting party there cannot be any outraging of modesty.¹⁰¹³. Unless culpable intention is proved mere touching the belly of a female in a public bus cannot be called a deliberate act of outraging the modesty of a female within the meaning of this section. In the circumstances of the case the act of the accused was held to be accidental and not intentional.¹⁰¹⁴. Where the accused caught hold of a married woman and tried to open the string of her *salwar* with a view to committing rape on her but being hit by the woman with a *kulhari* fled away, it was held that he could not be convicted under [section 376](#) read with [section 511 IPC, 1860](#) as

his action did not show a determination to have sexual intercourse at all events and in spite of resistance. The conviction of the accused was accordingly changed to one under [section 354, IPC, 1860](#).¹⁰¹⁵

Where the allegation was, while the victim was returning from home, the accused came from behind and pressed her breast, the Court convicted him under [section 354 IPC, 1860](#).¹⁰¹⁶ The accused came from behind her and caught hold of her and laid her down on the cot and sat on her chest. She shouted and after that the accused left her house. After hearing her shouts, her cousin mother-in-law came there. High Court rejected the defence of false implication and convicted the accused under [section 354, IPC, 1860](#).¹⁰¹⁷ Where a married woman alleged that the two accused persons had dragged her in her own home and raped her one after the other and the medical evidence showed that though there were traces of semen on her clothes, there were none on the clothes of the accused persons, the Court opined that the case was not made out; the presence of semen on the clothes of a married woman is not unusual and therefore, the accused could have been prosecuted only for outraging the modesty of a woman.¹⁰¹⁸

Some labourers, including a woman, were taken to a police station for some work. When they demanded wages, they were beaten up. The woman was stripped bare and thrashed. The matter came before the Supreme Court in a writ petition under [Article 32 of the Constitution](#). The Supreme Court held that the offence under [section 354, IPC, 1860](#) was established in reference to the woman and awarded compensation to be recovered from the salary of the guilty officers.¹⁰¹⁹ The offence was held to have been made out where a senior police officer slapped the posterior of the prosecutrix in the midst of guests in a party. The accused must have been fully aware that such an act would embarrass her and outrage her modesty. She made hue and cry immediately. Her conduct did not suggest that she was stage-managing things to malign the accused. The Court observed such behaviour was not expected from a high-ranked police officer. His conviction for the offence under the section was maintained by the Supreme Court.¹⁰²⁰

[s 354.2] Parading a naked tribal woman.—

In a case of parading of a naked tribal woman after disrobing her on the village road in broad daylight by appellants, the Supreme Court held that the dishonour of the victim called for harsher punishment.¹⁰²¹

[s 354.3] Outraging modesty or Rape.—

Dividing line between attempt to commit rape and indecent assault is not only thin but also is practically invisible. Evidence of informant that when she went to the house of accused, she found that the victim was sleeping on the floor and accused was lying on her. Accused removed her nicker with a view to commit sexual intercourse. Medical evidence does not indicate as to whether accused has tried to force his penis inside the private part of girl but could not succeed. Offence committed by accused did not amount to attempt to commit rape punishable under [section 376](#) read with [section 511 of IPC, 1860](#) but was one under section 354.¹⁰²² Though there was ample evidence that the victim was disrobed by the accused and thus the accused, outraged her modesty there was no evidence of rape. Conviction under section 376 was altered to section 354.¹⁰²³ But in *State of UP v Rajit Ram*¹⁰²⁴ the Supreme Court set aside a judgment by which a conviction under section 376 was altered to section 354 and

remitted the case back to trial court. The accused in another case had forcibly laid the prosecutrix on the bed and broken her *pyjama*'s string but made no attempt to undress himself and when the prosecutrix pushed him away, he did not make efforts to grab her again. It was held that it was not an attempt to rape but only outraging of the modesty of a woman and conviction under section 354 was proper.¹⁰²⁵ But in *Ram Mehar v State of Haryana*,¹⁰²⁶ the accused caught hold of the prosecutrix, lifted her and then took her to a *bajra* field where, he pinned her down and tried to open her *salwar* but could not do so as the prosecutrix had injured him by giving a sickle blow. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of the prosecutrix was also corroborated by other evidence. It was held that conviction of the accused under sections 354, 376/511 was proper. The accused caught the victim from behind, pushed her on ground, removed her panty and attempted rape. Upon getting opportunity she kicked him in testicles and escaped from place of occurrence. The accused was convicted under section 511 read with section 376.¹⁰²⁷

[s 354.4] Punishment enhanced by Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).—

By the [Criminal Law \(Amendment\) Act, 2013](#) while no change has been made in the definition of the offence, the punishment for the offence prescribed in this section has been changed by providing a minimum sentence of one year and a maximum sentence of five years.

[s 354.5] CASES.—

Where the allegation was that the Principal of a school misbehaved with the girl student, the High Court declined to quash the FIR, though he was exonerated in Departmental proceedings.¹⁰²⁸ Where the prosecutrix did not state specifically about the act, but has loosely described as "fondling", the Supreme Court altered the conviction from section 376 to section 354.¹⁰²⁹ Victim, a deaf and dumb girl aged 13 years was lured by the accused from her house to a distant place. When family of victim reached place, the accused fled away leaving victim who was weeping. Her clothes were soiled with mud and accused concealed it. Accused was liable to be convicted under section 354.¹⁰³⁰ Where the accused touched the hand of the blind prosecutrix, removed the quilt with which she was covering herself and put his hand in her 'midi', conviction of the accused for attempt to commit rape was set aside but conviction under sections 354, 457 and 506 was confirmed.¹⁰³¹

Where the accused forcibly laid the prosecutrix on bed and cut the string of her *pyjama* and tore her underwear but did not undress himself, the offence fell under section 354 and the offence of attempt to commit rape was not made out.¹⁰³²

Where the accused persons caught hold of a woman and removed the 'saree' from her person but ran away on seeing someone approaching, their act attracted section 354 and not sections 375/511. Their conviction under sections 376/511 read with section 34 was altered to one under sections 354/34.¹⁰³³

Sexual harassment and punishment for sexual harassment.

[s 354.6] Compounding.—

Where the accused and respondent No. 2 had entered into a compromise and, accordingly, she had filed an affidavit before the Supreme Court during the pendency of appeal. Supreme Court allowed to compound the offences under [sections 354](#) and [506 IPC, 1860](#).^{1034.}

[s 354.7] Jurisdiction.—

The petitioners were charged with the offence of kidnapping and outraging the modesty of the victim girl. She was taken to different places by train. In the course of the journeys she was subjected to outraging. It was held that the Courts of the other place would have jurisdiction to try the offender for both the offences.^{1035.} The accused held the arms of the prosecutrix with one hand and put the other hand on her breasts. This was held to be an offence under section 354.^{1036.}

[s 354.8] Sentencing.—

The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of an appropriate punishment.^{1037.}

[s 354.9] Benefit of Probation.—

As the appellant has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the appellant behaved like a roadside *romeo*, the Supreme Court held that it is not a fit case where the benefit of the [Probation of Offenders Act, 1958](#) should be given to the appellant.^{1038.}

^{1000.} Subs. by Act 13 of 2013, section 6, for "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both" (w.r.e.f. 3-2-2013).

^{1001.} *Vishaka v State of Rajasthan*, [AIR 1997 SC 3011](#) [[LNIND 1997 SC 1081](#)] .

^{1002.} *Apparel Export Promotion Council v AK Chopra*, [AIR 1999 SC 625](#) [[LNIND 1999 SC 33](#)] .

^{1003.} *Aman Kumar v State of Haryana*, [AIR 2004 SC 1497](#) [[LNIND 2004 SC 184](#)] : (2004) 4 SCC 379 [[LNIND 2004 SC 184](#)] .

^{1004.} *Namdeo Dnyanaba Agarkar v State of Maharashtra*, [2013 Cr LJ 3946](#) (Bom); *Vidyadharan v State of Kerala*, [AIR 2004 SC 536](#) [[LNIND 2003 SC 985](#)] : (2004) 1 SCC 215 [[LNIND 2003 SC 985](#)] ; *State of Punjab v Major Singh*, [AIR 1967 SC 63](#) [[LNIND 1966 SC 130](#)] .

^{1005.} *Gigi v State*, [2013 Cr LJ \(NOC\) 228](#) .

1006. *Tarkeshwar Sahu v State of Bihar*, (2006) 8 SCC 560 [LNIND 2006 SC 795] : 2006 (3) SCC (Cr) 556; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] ; *Raju Pandurang Mahale v State of Maharashtra*, AIR 2004 SC 1677 [LNIND 2004 SC 194] .
1007. *State of Punjab v Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 1 .
1008. Also see *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh).
1009. *Madan Lal v State of Rajasthan*, 1987 Cr LJ 257 (Raj). *Man Singh v State of Rajasthan*, (1995) 2 Cr LJ 2050 (Raj), no proof of either alleged rape or of outraging modesty. *State of TN v P Balan*, 1996 Cr LJ 3705 (Mad), girl forcibly laid up, seminal stains were absent from the body or clothes, held offence not proved, punishment under sections 341/354.
1010. *Raju Pandurang Mohale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] .
1011. *Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 6 .
1012. *R v Court*, (1988) 2 All ER 221 (HL).
1013. *Sadananda*, 1972 Cr LJ 658 (Assam).
1014. *SP Mallik*, 1982 Cr LJ 19 (Pat). *Divender Singh v Hari Ram*, 1990 Cr LJ 1845 HP, pushing and beating a girl, intention to outrage modesty not established. **Citing**, *Ram Das v State of WB*, AIR 1954 SC 711 : 1954 Cr LJ 793 . Assault by one public servant upon another public servant would be covered by section 355 and not by this section. *Santanu Kumar Sadangi v State of Orissa*, 1989 Cr LJ 2353 (Ori).
1015. *Rameshwar*, 1984 Cr LJ 786 (P&H). *Ram Asrey v State of UP*, 1990 Cr LJ 405 : 1989 All LJ 165, High Court can allow compounding of this offence.
1016. *Asharaf Khan v State of MP*, 2013 Cr LJ 1286 (MP)
1017. *Namdeo Dnyanaba Agarkar v State of Maharashtra*, 2013 Cr LJ 3946 (Bom). *Pritam Singh v State of HP*, 2012 Cr LJ 468 (HP); *Dhannula Govindaraju v State of AP*, 2011 Cr LJ 395 (AP).
1018. *State of Orissa v Musa*, 1991 Cr LJ 2168 (Ori). For another case of dragging a woman and making her forcibly naked and committing some acts, but no proof of rape and therefore, the court opining conviction under this section, see *Basudev Naik v State of Orissa*, 1991 Cr LJ 1594 (Ori). The accused loosening the cord of the petticoat of the prosecutrix and about to sit on her waist when she cried out for help. Conviction under this section and not for rape. It was not even attempt to rape, but only a preparation for it. *Ankariya v State of MP*, 1991 Cr LJ 751 .
1019. *Peoples' Union for Democratic Rights v Police Commissioner, Delhi Police Headquarter*, (1989) 4 SCC 730 : 1990 SCC (Cr) 75. See also *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] , charge under the section was fully established; *Rafi Uddin Khan v State of Orissa*, 1992 Cr LJ 874 (Ori), essentials of rape not made, but those of outraging modesty established.
1020. *Kanwar Pal S Gill v State (Admn. of UT, Chandigarh)*, 2005 Cr LJ 3443 : AIR 2005 SC 3104 [LNIND 2005 SC 558] : (2005) 6 SCC 161 [LNIND 2005 SC 558] , delay in filing complaint was due to the fact that she first struggled for administrative action and having failed, filed a complaint.
1021. *Kailas v State of Maharashtra*, (2011) 1 SCC 793 [LNIND 2011 SC 22] : AIR 2011 SC 598 [LNIND 2011 SC 22] .
1022. *Tukaram Govind Yadav v State of Maharashtra*, 2011 Cr LJ 1501 (Bom).
1023. *Jeet Singh v State*, 2013 Cr LJ (NOC) 365 ; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184] .
1024. *State of UP v Rajit Ram*, 2011 (6) Scale 477 : (2011) 14 SCC 463 .
1025. *Jai Chand v State*, 1996 Cr LJ 2039 (Del); *Bisheshwar Murmu v State of Bihar*, 2004 Cr LJ 326 (Jhar).

1026. *Ram Mehar v State of Haryana*, 1998 Cr LJ 1999 (P&H).
1027. *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha).
1028. *KP Sharma v State*, 2013 Cr LJ (NOC) 367 (Raj); *Amit Kumar Alias Mittal v State of UP*, 2011 Cr LJ 3710 (All).
1029. *Premiya v State of Rajasthan*, AIR 2009 SC 351 [LNIND 2008 SC 1889] : (2008) 10 SCC 81 [LNIND 2008 SC 1889] .
1030. *State v Sangay Sherpa*, 2013 Cr LJ 2266 (Sik).
1031. *Keshav Baliram Naik v State of Maharashtra*, 1996 Cr LJ 1111 (Bom). *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh)—Allegation was that accused/appellants caught hold of prosecutrix's hand and tried to pull her to do bad work with her. There is no cogent evidence in respect of section 506 Part II of IPC, 1860. However, act done by accused is liable to be punished under section 354 of IPC, 1860.
1032. *Jai Chand v State*, 1996 Cr LJ 2039 (Del).
1033. *Damodar Behera v State of Orissa*, 1996 Cr LJ 346 (Ori). Another similar case is *State of Karnataka v Shivaputrappa*, 2002 Cr LJ 1686 (Kant), it was a murder taking place in the process of attempted rape. The accused was seen running away from the place of the incident. Medical evidence was not able to establish the precise cause of death. Medical evidence also showed that there was no sexual assault, but there were minor injuries on the lower part of the body from which the offence of outraging her body was made out. Conviction under section 376/511 was altered to one under section 354. *Shiv Shankar v State of UP*, 2002 Cr LJ 2673 (All), the accused caught hold of the victim and then made her fall to the ground. This was held to be not an attempt to rape but an outrage to the modesty of a woman. *Shoukat v State of Rajasthan*, 2002 Cr LJ 364 (Raj), taking away a nursing woman from her home under false pretences and then molesting and beating her on the way, held, outraging the modesty of a woman made out. *Bali v State of Rajasthan*, 2001 Cr LJ 909 (Raj), allegation of forcible rape not proved but application of force to outrage the modesty of women proved, punishment under section 354. *Tarachand v State of Rajasthan*, 2001 Cr LJ (Raj), victims primary school students of tender age, the sexual assailant was their head master, conviction. *Madan Lal v State of J&K*, 1998 Cr LJ 667 (SC), evidence showed that the accused had gone beyond the stage of preparation, mere non-penetration was not sufficient to absolve him of the offence of attempt to commit rape. It was not a case of mere assault under section 354. *Kuthu v State of MP*, 1998 Cr LJ 960 (MP), the accused took the prosecutrix by deception to a lonely place and cruelly pushed a bunch of leaves into her mouth. They untied her undergarments to satisfy their lust. Conviction proper, four months RI not interfered with. *Shivraj Chandrappa Yadav v State*, 1998 Cr LJ 3168 , the accused attempted to commit rape on a 10 year old girl. Sentence of two years RI and fine of Rs. 500 under section 354 and six months imprisonment and fine of Rs. 100 under section 342 was not interfered with. See also *Raja v State of Rajasthan*, 1998 Cr LJ 1608 (Raj); *Ram Mehar v State*, 1998 Cr LJ 1999 (P&H); *Peedikandi Abdulla v State of Kerala*, 1998 Cr LJ 2758 (Ker); *Shakuntala Devi v Suneet Kumar*, 1997 Cr LJ 335 (Del), accused entered house of complainant, dragged her out, tore her clothes and improperly behaved with her, *prima facie*, the offence made out. Refusal by court to frame charge was improper. *Raja Giri v State of Bihar*, 2003 Cr LJ 2347 (Pat), the victim woman intercepted and laid down on the ground with the intent of raping her, witnesses reached on her cries and they could not go further, guilty of outraging modesty.
1034. *Surat Singh v State*, (2012) 12 SCC 772 [LNIND 2012 SC 837] : 2013 (1) Scale 1 [LNIND 2012 SC 837] .
1035. *Devalla Venkateswarlu v State of AP*, 2000 Cr LJ 798 (AP).
1036. *State of HP v Ram Das*, 1999 Cr LJ 2802 (HP), her public image and position in family was damaged, even the accused was directed to pay a fine of Rs. 1000 only because of the fact that

the incident was fairly old.

1037. *State of MP v Bablu*, 2014 Cr LJ 4565 : 2014 (9) Scale 678 [LNIND 2014 SC 948] .

1038. *Ajaha Ali v State of WB*, 2013 (12) Scale 410 [LNIND 2013 SC 924] ; *Pritam Singh v State of HP*, 2012 Cr LJ 468 (HP)– Petitioner, aged about 28 years, agriculturist by profession, belonged to a respectable and peace-loving family – He would be stigmatised and in case he was sentenced his life would be ruined– Benefits of section 4 of Act was granted to petitioner.

THE INDIAN PENAL CODE

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

Of Criminal Force and Assault

1039.[[s 354-A] Sexual harassment and punishment for sexual harassment.

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks;

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

COMMENTS.—

This new provision has its origin in the judgment of Supreme Court¹⁰⁴⁰. dealing with the issue of sexual harassment in workplaces. The suggestions given by Supreme Court got statutory recognition by the enactment of [Sexual Harassment of Women at Workplace \(Prevention, Prohibition and Redressal\) Act, 2013](#).¹⁰⁴¹.

¹⁰³⁹. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3-2-2013).

¹⁰⁴⁰. *Vishakha v State of Rajasthan*, AIR 1997 SC 3011 [LNIND 1997 SC 1081] : (1997) 6 SCC 241 [LNIND 1997 SC 1081].

¹⁰⁴¹. Act 14 of 2013 (w.e.f 9 December 2013).

THE INDIAN PENAL CODE

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

Of Criminal Force and Assault

1042. [s 354-B] Assault or use of criminal force to woman with intent to disrobe.

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.]

COMMENTS.—

This new provision has not been based on any recommendation, but is an incorporation of the State Amendment made by Madhya Pradesh into the original section 354 which was numbered as a separate section 354A.

1042. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3-2-2013).