AILET

Sexual Offences in IPC: Outraging Modesty, Disrobing, Voyeurism, and Stalking

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Sexual Offences

Sexual offences imply the physical or mental injury caused to women due to any unwanted act of others. They not only violate the victim's integrity but leaves indelible marks on the very soul of the helpless female.

Following are the sexual offences against women which are punishable in Indian Penal Code (IPC)

Outraging Modesty

Principle: 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 guilty for the offence of outraging the modesty of a woman.

Modesty means sexual dignity of a woman which is acquired by her since the time of her birth. The concept of modesty is subjective to every woman i.e. the sexual limits are personal to every woman; there cannot be a set formula to judge the boundaries of the sexual honour of a woman. It is a virtue attached to a woman owing to her sex. For example, a simple touch on the shoulder might be unacceptable to a woman who lives in a rural area but for a woman in an urban area it could be a casual gesture to greet people. However, there are certain acts which are bound to violate the modesty of every woman and these are the concerns of law.

The word 'outrage' implies a physical act. Herein, the modesty of a woman is violated by touching her without her consent at such parts of her body which are unacceptable to her. It is necessary that the accused should have used criminal force or made such gestures to outrage the modesty or the knowledge that it would outrage her modesty. The reaction of the woman is very relevant in judging as to whether an assault to her amount to outraging her modesty as this offence differs from woman to woman but there are certain acts which are bound to be outrageous to the modesty of every woman such as touching on her posterior sexual organs etc.

See this video by Theory of Abrogation

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The ultimate test for ascertaining whether modesty has been outraged is whether the act by the accused is capable of shocking the sense of decency of the woman. The essence of a woman' 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 modesty capable of being outraged.

Insulting Modesty

Principle: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be guilty of insulting her modesty

The word 'insult' refers to a situation where a woman is made to feel ashamed of her sexual dignity i.e. lowering the sexual honour of a woman in her own eyes. It may be done by passing sexual obscene remarks or making such gestures, sounds or showing sexual objects to her.

The modesty of a woman is insulted without actually touching her but by uttering any word, making any sound or gesture or exhibiting any object which has a sexual connotation with the intention that it be heard, seen or intrudes upon the privacy of such woman. If a person with an object to insulting the modesty of a woman exposes private parts of his body to her or uses obscene words or exhibits obscene drawings he shall be liable for the offence of insulting the modesty of a woman. However, the offender himself doesn't need to personally exhibit the object; he may employ an agent for the same.

Even if the exact words of the accused could not be placed on record but if the court arrives at a finding that the accused had such an intention for which purpose he uttered the offending words, it can punish the accused. However, it is important to note that the intention must be to insult the modesty of some particular woman or women and not merely any class or section of women, however small.

Disrobing

Disrobing is a very serious offence which can shatter the self-esteem and dignity of a woman. A man shall be guilty of the offence of disrobing if he compels a woman by assaulting or using criminal force to remove her clothes and be naked in any public place. The accused must have the requisite intention to disrobe or compel a woman to get naked but if the clothes of woman get torn in a scuffle unintentionally the accused shall not be guilty of the offence of disrobing.

Voyeurism

A 'voyeur' is generally defined as a person who derives sexual gratification from the covert observation of others as they undress or engage in sexual activities. Under IPC a man shall be guilty of the offence of voyeurism if he watches a woman when she is engaged in a private act in circumstances where she would usually expect not being observed. It includes sexual acts or when private parts are exposed in situations of changing clothes in a trial room or lavatory etc. A reasonable expectation of privacy means that in the circumstances whether in a public or private place, the victim has a reasonable expectation that she is not being observed engaging in private acts.

Voyeurism is not only a violation of a person's privacy but also transforms into gross violation of human rights of women's dignity and reputation thus also if a woman has agreed to engage in a sexual act voluntarily, then video graphing the same and making it available to the third person without her consent shall be punishable as once recorded video finds a place in the pornographic market.

The inclusion of voyeurism as a crime in IPC has made the sale of pornography, invasion of piracy and all forms of sale of defamatory pictures prohibited.

Stalking

Any man who, follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman or monitors the use by a woman of the internet, email or any other form of electronic communication or watches or spies a woman in any manner that results in fear of violence, distress in the mind of such woman, interferes with the mental peace of the woman commits the offence of stalking.

Provided that such conduct shall not amount to stalking if the man who pursued it proves that:

- it was pursued to prevent or detect crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- in particular circumstances, such conduct was reasonable and justified

Following a woman, attempting to foster personal interaction, despite indication of victim's disinterest, spying, monitoring her electronic communications is punishable under the offence of stalking. Stalking may or may not be an act which physically threatens the security of a woman, however, it causes mental trauma and fear to the person being stalked.

The offences of 'disrobing', 'voyeurism' and 'stalking' are not gender-neutral i.e. such offences can be committed only by a man on a woman.

Read our previous post on offences against property under ipc here.

Take our test on offences against property under ipc here.

Read our post on the Landmark Judgements of 2019-2020.

Read our post on Elements of Crime.

Read CLATapult's post on offer and acceptance here. Also, try their mocks for more legal reasoning practice questions.