



MODESTY BLAZE

To hell with modesty

Kim Arora | January 19, 2013



The vocabulary of sexual assault framed in the 19th century still persists in the IPC.

Language is seldom value-neutral. It is more like a looking glass that shapes perceptions, creates moral codes and tells us who we are and what we stand for or against. The vocabulary of sexual assault, as laid down in the Indian Penal Code and used in the courtroom, is no exception. Not only does it betray a lack of empathy for the victim but also shows distinct gender insensitivity and the influence of patriarchy.

Take for instance the use of the word, modesty, in legal parlance. Section 354 of the IPC criminalises "assault or criminal force to woman with intent to outrage her modesty. "

The Oxford English Dictionary (2005) defines modesty as "dressing or behaving so as to avoid impropriety or indecency, especially to avoid attracting sexual attention". In other words, any woman dressed "immodestly" is part of the problem because she seems to be attracting attention. Incidentally, the word "modesty" does not appear in the law specifically pertaining to peno-vaginal penetrative sexual assault, but in those concerned with molestation and sexual harassment. Section 509 of the IPC penalises "Word, gesture or act intended to insult the modesty of a woman. "

Activist lawyer Madhu Mehra of Partners for Law in Development (PLD) insists that "language is not an innocent side issue; rather, it is the way we adjudicate and perceive rape victims. " PLD has made a submission to the Justice Verma Committee raising the issue of the vocabulary of the country's rape laws. Adds Dr Ranjana Kaul, lawyer and member of the Delhi Commission for Women, "The language currently used in our statute is terribly Victorian and patriarchal. It looks at 'modesty' as something to be guarded. There is an utmost urgency to give clarity to what sexual assault means. "

The language goes back to 1860 when the Indian Penal Code drafted by Lord Macaulay came into practice. Though the IPC has been amended countless times since, the immense concern with a woman's private sexual conduct remains. And it seems that on the issue of women's sexual autonomy, present-day Indian jurisprudence is in agreement with the 19th century British administrator and the era he belonged to. Judges through the decades have tried wrapping their heads around the issue, without once coming up with the idea of formally acknowledging that not just the word, but the entire concept of sexual "modesty" is outdated.

Consider this. Back in 1966, while hearing a case of a penetrative assault on a seven month old, the then Chief Justice of India A K Sarkar made some interesting observations. The accused was being tried for "outraging the modesty of a woman" under section 354, and not rape. The judgment, eventually passed in the favour of the prosecutor, had the following remarks by Justice Sarkar: "I do not think a reasonable man would say that a female child of seven and a half months is possessed of womanly modesty. If she had not, there could be no question of the respondent having intended to outrage her modesty or having known that his act was likely to have that result. I would for this reason answer the question in the negative. "

How the lack of "womanly modesty" nullifies the violence of an assault is a point that Justice Sarkar neglected to make. He did, however, make one allowance for the women of India. "If it is proved that criminal force was used on a sleeping woman with intent to outrage her modesty, then the fact that she does not wake up nor feel that her modesty had been outraged would be no defence to the person doing the act. The woman's reaction would be irrelevant in deciding the question of guilt, " he added in the judgment.

Fast forward to March 2007. The apex court of the country made an observation that set a precedent for codifying women's sexual behavior and autonomy within the legal system. A Supreme Court bench comprising Justices Arijit Pasayat and S H Kapadia ruled: "The essence of the woman's modesty is her sex". Critics say this observation only

reinforces objectification of women. Says Madhu Mehra, "Modesty has nothing to do with a woman's sex. This reduces her personhood to a sexual characteristic. "

The much talked about Ruchika Girhotra case dragged on for over two decades in various courts. The 14-year-old Ruchika was molested by a senior police officer in Panchkula. After three years of criminal intimidation, systematic physical torture of her brother and threats of violence followed by her complaint, the young teenager ended her own life. Everything Rathore did was covered under "outraging the modesty of a woman" for which he was convicted. The 2010 Punjab Haryana High Court judgment in relation to the case goes so far as to point to the exact moment when the young victim's modesty was outraged. "The other act of the petitioner of encircling the waist and holding one hand of Ms. Ruchika and pushing her towards his chest is enough to conclude that her modesty had been outraged at that moment itself. "

As of now, the Criminal Law Amendment Bill still retains the word "modesty". "Whoever has drafted these laws has no knowledge of feminist jurisprudence, " says lawyer Vrinda Grover. Until that comes about, the women of India will have to guard what the courts deem to be their "honour".

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