



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Physical Assault – A Critical Appraisal With Special Reference To Criminal Law

1Dr. M. Bhagavad Geetha, 2Dr. S. Snehalatha

1I/C Principal, 2Assistant Professor

1Bhaskar Law College,

2Bhaskar Law College

INTRODUCTION:

Ancient dharmasastras and puranas have learned toleration to the people through the discourses. All the people are asked to follow the discourses and adjust their mental balance. Love, affection, sympathy, kindness and charity are the main principles of ancient dharmasastras. But the society has changed so fast. All the men and women are selfish and their only objective is to fulfill their own desires by not taking care of others. Jealousy, intolerance and impatience make the people to drag their colleagues into problematic issues. The unwanted and unhappy life makes the people to resort violence against their friends or relatives. These issues are clearly dealt by the criminal law i.e., IPC or the modern penal code passed by the Parliament in 2024. Present article highlights the issues relating to physical assault and other incidents coupled with intimidation of the men and women.

THEME OF THE ARTICLE:

Physical assault is a form of domestic violence to which most of the women are subjected. The physical assault is coupled with cruelty. IPC deals with the physical assault. IPC did mention clearly about the physical assault or use of criminal force to outrage the modesty of a woman. Section 354, section 366 and section 376 are directly dealing with physical assault. But it is already discussed that the provision of 376 which deals with the attempt to rape. Here two provisions will be discussed about the physical assault.

According to section 10 of IPC, it denotes a female human being of any age. An offender cannot, therefore, contend that the victim of his assault was too young, or too old, to understand the purport or significance of his act. The essence of a woman's modesty is her sex. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty capable of being outraged, perpetrated on her has to be

rejected. Even if a victim is a baby of seven and a half months old, she possesses, from her birth, the modesty which is the attribute of her sex. Therefore, if an accused deliberately interferes with the vagina of the child, he must be deemed to have outraged her modesty and is punishable¹.

What constitutes an outrage to female modesty is not defined anywhere. 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 in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her sari, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford English Dictionary (Third Edition) defines the word 'modesty' in relation to woman as follows: 'Decorous in manner and conduct; not forward or Lowe; Shame fast' scrupulously chaste'. Modesty is defined as the quality of being modest; and in relation to a woman, womanly propriety of behavior scrupulous chastity of thought, speech and conduct. It is the reserve or sense of shame, proceeding from instinctive aversion to impure or coarse suggestions.

This section deals with another aggravated form of assault or use of criminal force. The offence under this section is committed only when a person assaults or uses criminal force upon a woman, intending to outrage, or knowing it to be likely that he will thereby outrage her modesty. It is not the act of outraging the modesty that is made an offence under this section. In order to constitute an offence under this section, there must be an assault, or use of criminal force, to any woman with the intention or knowledge that the woman's modesty will be outraged².

As the section is intended to promote morality, its operation is not confined only to females above a certain age. 'Modesty', in this section, is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. 'Modesty' is to be considered to be an attribute of a female human being, irrespective of the fact whether the female concerned has developed enough understanding as to appreciate the nature of the act or realize that it is offensive to decent female behavior or sense of propriety concerning the relations of a female with others.

On the other hand, the intention or knowledge, required by sec.366, is of compelling her to marry somebody against her will or seducing her to illicit intercourse. In the absence of some evidence, that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, a conviction under section 366 cannot stand. Where all that is known is that the accused caught hold of a woman and dragged her, but there is nothing to indicate what his real intention was, he cannot be convicted of an offence

¹*State of Punjab V. Major Singh* AIR 1967 SC 63, Cr LJ 1.

²*GirdharGopal V. State* AIR 1953 MB 147,148, 54 Cr LJ 964;

under section 366. However, it may be taken that he, at least, intended to outrage the modesty of the woman, or, at any rate, the culprit knew it to be likely that her modesty would be outraged by his act, and he may be convicted of an offence under this section.

The Ancient Hindu texts like Ramayana, and Mahabharatha had considered women as a symbol of holy life.³ Manu and other law givers had expected chastity on the part of women. The people according to these sastrik writers should not disturb the purity of women. On the basis of this purity and chastity the forcible cohabitation with women will be treated as a rape. Rape is nothing but to demoralize the character of a woman. In the western countries there is no such presumption on the part of women to maintain chastity. But in India IPC clearly states that the Rape is heinous crime for which the offenders will be penalized with rigorous imprisonment and compensation to be awarded to the victim. On the basis of section 375 and 376 of IPC several guidelines have been framed by judiciary and several enactments passed by the Parliament.

Rape is a crime which can be committed either indoors or outside of the house. Generally the rape may be committed within doors. The made servants and other female members who are living in the house may be subjected to rape. So rape can be considered as a part of domestic violence. A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
4. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married.
5. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under sixteen years of age.

These points indicate how the rape is a serious crime. On the basis of these points particularly the sexual enjoyment without the consent of women, the Supreme Court reacted sharply in case of Banwari Devi. The Supreme Court in its judgment had dealt with several issues by considering the evidence produced by the victim in support of the allegation of crime which would be penalized on section 375 and 376 of IPC. Evidence should be so strong to take the cognizance of the crime. All these are discussed in an elaborate

³ Aranyakanda, Ramayanam, written by Valmiki

manner in Banwari Devi's case and in most of the other cases have been acquitted by the trial courts on one or more of the following grounds⁴:-

1. Because the trial court did not believe the testimony of the prosecutrix for want of corroboration of her statement with some other independent evidence.
2. Because the medical test when done on the prosecutrix, on the orders of a magistrate, failed to establish the presence of accused person's semen in the vagina of the prosecutrix.
3. Because the prosecution failed to convince the trial court that the prosecutrix had not consented to sexual intercourse with the accused person.

The above hostile procedure requiring the rape victim to prove that she was not a willing party to the sexual intercourse with the accused appears to be flowing from the following propositions of law:-

1. The evidence of victim of rape is to be treated almost like the evidence of an accomplice requiring corroboration.
2. When it is proved that the prosecutrix has been used to sexual intercourse, in order to accept her statement that she was compelled, threatened, or otherwise induced to go with the accused, there should be corroboration in some material particular from some independent source and her bare statement cannot form the basis of conviction.
3. The burden of proof is on the prosecution to prove all the elements of the offence.
4. The absence of any injuries either on the accused or the prosecutrix clearly showed that she did not put up any resistance to the alleged rape committed by the accused. The only irresistible inference therefrom was that she was a consenting party.

The above propositions of law which appear to be followed by most of the trial courts, treat the rape victim, not as a wronged party but as a co-accused, thereby creating an outright prejudice in the mind of the trial court against the prosecutrix. Under these circumstances it is not very surprising that most of the trial courts demand the prosecution to prove and that too with the help of some independent witness that the accused had actually ravished the prosecutrix, little appreciating that there can seldom be an independent witness to the commission of such an offence. While doing so, they also seem to forget that the rule of corroboration is only a rule of prudence and not a rule of law as is clear from section 133 of Evidence Act which provides that the conviction of an accused will not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Similarly the trial courts, while seeking to replace 'ear with the eye', by looking into the medical evidence to find the presence of accused person's semen in the vagina of the prosecutrix, seem to overlook the law which clearly lays down that the test of rape is penetration and not ejaculation (Section 375 IPC).

So far as the most important ingredient of the charge of rape, namely 'consent' is concerned, it is submitted that with the insertion of Section 114-A in the Evidence Act (Act 43 of 1983, Section 6), the trial

⁴Lt.Col. Lalit Kumar (Retired), Advocate "RAPE LAWS AND JUDICIARY", Dehradun, P.83.

courts are duty bound to adopt a new approach towards the issue of 'consent', as would become amply clear from its explanation which follows.

As per the new law 114-A. Presumption as to absence of consent in certain prosecutions of rape⁵. In a prosecution for rape under clause(a) or clause (b) or clause(c) or clause(d) or clause(e) or clause(f) of sub-section 2 of Section 376 of the Indian Penal Code (45of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent.

In may be mentioned just for the sake of clarification that the interpretation of the words "shall presume" used in the aforesaid Section 114-A is to be construed on the basis of Section 4 of the Evidence Act which reads as follows:-

Section 4 shall Presume Whenever it is directed by this Act that the Court 'shall presume' a fact, it shall regard such fact as proved, unless and until it is disproved.

A trial Court will be under legal obligation to presume that the prosecutrix did not give her consent to sexual intercourse with a person mentioned in sub-section 2 of the section 376 (clause(a) to (f).

So far as the circumstances other than those mentioned in Clauses (a)to(f) of sub-section 2 of Section 376 of IPC are concerned, the trial court would be deemed to be under moral obligation to presume that no woman would come forward to make a humiliating statement against her honour of having been raped unless it was true, and therefore corroboration of her statement should not always be insisted upon. This view now finds favour with the Supreme Court also, as is evident from various judgments pronounced by it in the recent past.

By virtue of the amended law as explained above, the trial court would be under a compelling moral as well as legal obligation to treat the rape victim as the wronged party and not as an accomplice, thereby leaving no room or scope for entertaining any prejudice against her under any circumstances.

It is about the time the trial courts, responding to the needs of the society and amended laws, adopt a fresh approach towards one of the most heinous social crime and make it near impossible for an offender to escape the clutches of law on mere technical grounds. It may not be out of place to suggest that a trial Court should treat the accused as guilty of the offence unless proved to be innocent on one or more of the following grounds:-

1. A sheer physical incapability.
2. Criminal conspiracy.
3. Alibi.

⁵ Ibid. P.84

CONCLUSION:

The physical assault is being considered as serious crime under their present and previous criminal laws. Physical assault is coupled with domestic violence employed against men and women. Domestic violence is nothing but violence committed against both the sexes within the doors. Anybody may employ the domestic violence against their near and dear ones. The domestic violence is common in the Muslim societies and the Hindu societies. In the Western countries, cases relating to the domestic violence have been not reported to the courts regularly. In India, the domestic violence is a common happening employed against all the sections such as men, women, children and old aged. Rape, sexual assault, sexual harassment, manhandling and harassment at public places are being considered as the parts of the physical assault or physical abuse. Acid attacks, forcible intercourse, forcible abortions, burning to death such as dowry deaths, etc are being particularly dealt by the criminal law under physical assault. Thus the concept of physical assault is broad and cannot be understood so easily by the lawmen or laymen. The present article tries to bring out the connected issues to the physical assault.

