



A Gateway to all Post Graduate Courses

An MHRD Project under its National Mission on Education through ICT (NME-ICT)

Subject: **Criminology**

Production of Courseware

e-Content for Post Graduate Courses



Paper : **Fundamentals of Crime, Criminal Law and Criminal Justice**

Module :

Force, Criminal Force and Assault





Role	Name	Affiliation
Principal Investigator	Prof. (Dr.) Ranbir Singh	Vice Chancellor, National Law University, Delhi
Co-Principal Investigator	Prof. (Dr.) G.S. Bajpai	Registrar, National Law University Delhi
Paper Coordinator	Prof. (Dr.) G.S. Bajpai Dr. Debdatta Das	Registrar, National Law University Delhi Assistant Professor, Department of Law, The University of Burdwan
Content Writer/Author	Dr. Aneesh V. Pillai	Assistant Professor School of Legal Studies Cochin University of Science and Technology Kerala
Content Reviewer	Dr. Kavita Singh	Associate Professor, West Bengal National University of Juridical Sciences, Kolkata

DESCRIPTION OF MODULE

Items	Description of Module
Subject Name	Law
Paper Name	Fundamental of Criminology and Criminal Justice
Module Name/Title	Force, Criminal Force and Assault
Module Id	40
Objectives	Learning Outcome: <ul style="list-style-type: none">• To make the learners understand about the concept of Force, Criminal Force and Assault.• To give an idea about constituent elements of offence of Use of Criminal Force and Assault• To give an extensive idea about the judicial interpretations given to various terminologies used in IPC while defining the offence of Use of Force and Assault• To give a brief idea about various aggravated forms of assault or criminal force provided under Indian Penal Code.



Prerequisites	General understanding of criminal law and judicial process in India.
Key words	Force, Assault, Criminal Force, Outrage Modesty, Disrobe, Grave and Sudden Provocation

FORCE, CRIMINAL FORCE AND ASSAULT

SYNOPSIS

- ❖ Introduction
- ❖ Learning Outcome
- ❖ Force
- ❖ Criminal Force
- ❖ Assault
- ❖ Aggravated Forms of Assault
- ❖ Summary

1. INTRODUCTION

Every individual has a right to live in the society without any unreasonable interference by others. Sometimes people may interfere with the body of others by threat or force. Any such interference using threat or force is considered as an offence, as it affects the mental and bodily well being of the person to whom the said act is committed. The Indian Penal Code, 1860 declares unreasonable interference in the form of threat or application of force others body to as punishable offences.

The Sections 349 to 358 of the Code explains about the offence of Force, Use of Criminal Force, Assaults and various aggravated forms of Assaults. This module explains various aspects of the offences such as use of criminal force and assault. It also discusses the various aggravated forms of assault or criminal force such as Assault or criminal force to deter public servant from discharge of his duty; Assault or criminal force to woman with intent to outrage her modesty; Assault or criminal force



with intent to dishonour person, otherwise than on grave provocation; Assault or criminal force in attempt to commit theft of property carried by a person; Assault or criminal force in attempting wrongfully to confine a person; and Assault or criminal force on grave and sudden provocation.

2. LEARNING OUTCOME

The readers will get a thorough understanding about concept of Force, Criminal Force and Assault. It will also provides an understanding about various aggravated forms of criminal force such as deterring public servant form discharging his duty; outraging the modesty of woman; to disrobe woman; dishonour of a person; attempt to commit theft of property; and attempt to wrongfully confine a person.

3. FORCE

The term force means the exercise of one's energy upon another human being. It may be exercised directly or indirectly. The Oxford Dictionary defines force as coercion or compulsion, especially with the use or threat of violence. The Section 349 of Indian Penal Code explains the law relating to use of force. It says that, "A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling. Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described: Firstly, by his own bodily power; Secondly, by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person; and Thirdly, by inducing any animal to move, to change its motion, or to cease to move.

This Section elaborately defines what 'force' is and does not by itself constitute an offence. Sir James Stephen said, 'it is the most singular definition in the whole Code. The object of this Section is to provide a clear understanding about the concept of 'force' for the purpose of other subsequent Sections such as 350 – 358. Under the



terms of this Section to cause motion, change of motion or cessation of motion by one or other of the three means mentioned to another person, either directly or indirectly bringing some substance into contact with his body or with something that he is wearing or carrying or with something that thereby affects his sense of feeling, is to use force (Edirisuriya, 2016). To constitute force the following ingredients are necessary:

- i) The causing of motion or Change of motion or Cessation of motion of any person; or the causing of motion or Change of motion or Cessation of motion of any substance
- ii) By a person using his own bodily power or by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person or by inducing any animal to move, to change its motion, or to cease to move.

The various terminologies used in this Section for defining force are exemplified by illustrations given under Section 350 (Criminal Force). Illustration (a) exemplifies the word 'motion'. It states that 'Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part'.

Illustration (b) exemplifies the word 'change of motion'. It provides that 'Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has, therefore, used force to Z'.

Illustration (c) exemplifies the word 'cessation of motion'. It provides that 'Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has, therefore, used force to Z'.

Illustration (d) provides an example for the idea 'bring that substance into contact with any part of that others body'. It provides that 'A intentionally pushes against Z in



the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has, therefore, used force to Z'

Illustration (g) exemplifies the idea of 'others sense of feeling'. It provides that 'Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has, therefore, used force to Z.

In order to constitute force there must be at least the causing of motion, change of motion or cessation of motion in another (Gour, 1973, p.53). In *Jai Ram v. Emperor* (1940), the Accused raises his stick to strike the Plaintiff, the plaintiff seeing the accused raising the stick moves away, Accused is said to use force within the meaning of this Section (Gaur, 2013, p.497).

In *Chandrika Sao v. State of Bihar* (1967), the accused snatched the account books and passed to his servant from the hands of Assistant Superintendent of Commercial Taxes during an inspection. The Supreme Court observed that it would be clear from a bare perusal of the section that one person can be said to have used force against another if he causes motion, change of motion or cessation of motion to that other. Hence, the Court held that the action of the accused amounts to use of force as contemplated by Section 349 of Indian Penal Code.

The force contemplated in this Section is force against a human being and not against an inanimate object. In *Maiku v. The State* (1953), it was held that, if any motion, change of motion or cessation of motion, is caused to any property without affecting a human being, there is no use of force, within the meaning of Section 349. In *Shadshiv Mondal v. Emperor* (1915) the Court held that 'Force' does not contemplate the use of force against inanimate objects. This is clear from the use of word "another" in this section. The word "another" refers to another human being in the ambit of this section.

Force does not imply a causing or cessation of motion by personal contacts however the presence of the parties are essential under this Section. In *Bihari Lal* (1934) it was held that the Section contemplates the presence of the person whom it is used, that is



to say, it contemplates the presence of the person using the force and of the person to whom the force is used (Ratanlal & Dhirajlal, 2006). Inducing an animal to move may even amount to using force. Likewise, inducing an animal to attack a human being amounts to use of force (*In re Kanna Kondaiyah*, 1923). The word ‘animal’ denotes any living creature, other than a human being (Section 47). However, in *Sheo Pratap Singh v. Emperor* (1930), it was held that driving cattle by shouts and cries does not amount to use of force under the Section.

4. CRIMINAL FORCE

Force or use of mere force does not amount to an offence. When the force applied to a person is a criminal force it will certainly amount to an offence. The law relating to criminal force or under what circumstance an application of force would amount to a criminal force is explained under Section 350 of the Indian Penal Code, 1860. Section 350 of IPC provides that: “Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other”. This Section provides various illustrations from (a) to (h) and thereby provides a better understanding about the ingredients of the offence. These illustrations talk about situations in which a force is used without consent and use of force to injure, frighten or annoy another.

Ingredients

To constitute the offence of criminal force, the following ingredients are necessary:

- i) There must be an intentional use of force to any person
- ii) Such force must have been used without that person’s consent
- iii) It must have been used:
 - a) in order to the committing of any offence; or
 - b) with the intention to cause or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom the force is used (Nelson, 1970).



Intentional Use: One of the primary condition for considering any use of force as criminal force is intentional use of such force. The in every cases use of force must be intentional. The nature and extent of the offence will depend upon the offenders intention or knowledge or the likelihood of causing injury, fear or annoyance (Raghavan, 2000).

Without Consent: As a general rule if consent is freely given by a rational and sober person, knowing the nature of the act, it is an answer to an indictment or assault unless the consent is to do bodily injury amounting to mayhem or to acts likely or intended to do bodily harm or to an injury constituting a breach of the public peace (*R. v. Donovan*, 1934). Hence, consent can never be a defence when the alleged act consists of an unlawful act. Likewise mere consent by one who does not know the nature of the act done cannot be consent. The detailed law relating to consent is discussed under Section 90 of IPC.

Commission of an Offence: The force must have been used for the purpose of committing an offence. The word offence means any act punishable under Indian Penal Code (Section 40).

To cause or knowing it to be likely that he will cause, injury, fear or annoyance: The force must have been used with the intention to cause or knowing it to be likely that by the use of such fore he will cause injury, fear or annoyance to the person to whom the force is used (Thakker, C. K. & Thakkaer, M. C., 2010). The word injury here means any harm whatever illegally caused to any person, in body, mind, reputation or property (Section 44).

Criminal Force is equivalent to “battery” in English law or under law of torts in India, which means the intentional infliction of force by one person upon another against latter’s consent. If A spits over B, then A would be liable for use of Criminal Force as it must have cause annoyance to B. The offence of criminal force involves application of a non-consentient force to another for purposes of either commission of an offence or to cause or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom the force is used. The main requirement of Section 350 is that the force must be used by one person against the other. For example, in *Kalar Din v.*



Emperor (1941), it was held that, in order to constitute this offence, the criminal force must be directed against a person and not against a thing (Gaur, 2013, p.499).

In *Ram Chand v. Emperor* (1939), it was held that breaking lock of the house when the complainant was absent is not an offence amounting to criminal force. When a person strikes a pot which another is carrying and which is in contact with his body, was held to constitute the offence of criminal force in *Darshan Singh v. Emperor* (1941). In another case, snatching of ballot papers from public servants was considered as involving use of criminal force (*Bhupinder Singh v. State of Punjab*, 1997). In order to constitute the offence of use of criminal force it is not necessary that the offender had any particular implement in his hand (*Jashanmal Jhamatmal v. Brahmanand Sarupananda*, 1944). Where a victim is assaulted and his thumb impression taken forcefully on a blank sheet of paper the offence will fall under this section (*Jadunandan Singh v. Emperor*, 1941)

Nature and Punishment

The punishment for the offence of criminal force is broadly classified on the basis of involvement of grave and sudden provocation by the other party. According to Section 352, 'Whoever 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'. This offence is classified as a non-cognizable bailable offence triable by any Magistrate. Further this offence is also classified as a compoundable offence. The commission of criminal force on grave and sudden provocation is considered as another offence and discussed in detail under Section 358 of IPC.

5. ASSAULT

Assault means putting someone in fear of immediate unlawful personal violence (Riordan, 2003, p.26). It is an unlawful attempt to do a bodily hurt to another coupled with the present ability and intention to do the act. In the Concise Oxford Dictionary assault has been described as an act that threatens physical harm to a person (whether or not actual harm is done). According to Section 351 of the Indian Penal Code,



‘Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault’. However, mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Ingredients

The essential ingredients of assault are:

1. The accused should make a gesture or preparation to use criminal force
2. Such gesture or preparation should be made in the presence of the person in respect of whom it is made
3. There should be intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him
4. Such gesture or preparation has actually caused apprehension in the minds of the victim of use of criminal force against him (Raghavan, 1982, p.685).

The illustration (a) of Section 351 talks about a circumstance for gesture. It states that ‘A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault’.

The illustration (b) of Section 351 talks about a circumstance for preparation. It states that ‘A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z’.

The illustration (c) of Section 351 explains a circumstance in which mere words amounts to an assault. It says that, ‘A takes up a stick, saying to Z, “I will give you a beating”’. Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault’.



To consider an act as assault under Section 351 of the IPC, it is necessary that a gesture or preparation should be made by the person who would cause another to apprehend that the person was about to use criminal force to him then and there and the preparation taken with the words, must cause him to apprehend that criminal force would be used to him if he persisted in the particular course of conduct and there would be no assault if he desisted from the that conduct (Gour, 2016, p.3374). In *Nazir Uddun v. Emperor*, (1933) it was held that, a perusal of Section 351 shows that, the offence of assault can be committed only against a person and not against the public, even though it involves breach of peace (Gour, 2016, p.3374).

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. The gesture or preparation must be of such a nature that the person in whose presence it is made should apprehend that criminal force would be used to him (Thakker, C. K. & Thakkaer, M. C., 2010, p.1948). It is to be noted here that actual commission of use of force or causing hurt is not an essential ingredient for the offence of assault.

While determining apprehension for the purpose of this offence the ability of the alleged accused is also an important factor. For example if a person points a loaded gun and threatens, it will amount to an assault, since the accused have the ability to do so which will cause an apprehension in the mind of the victim. But when a person threatens to another with a toy gun, it will not amount to an assault, because of the inability of the accused to use force.

Likewise the apprehension required for constituting the offence of assault must be about an imminent one. For example if a person threatens to another person by showing a knife, 'I will kill you with this knife on next Sunday', it does not amount to an assault because of the threat is not an imminent one. Thus the apprehension of use of criminal force against the person should be in the present and immediate (Suresh, V. & Nagasaila, D., 2000, p.686). If the preparation causes a reasonable apprehension in the mind of the person against whom it is directed, such preparation will amount to



the offence of assault. Hence, mere preparation not amounting to an attempt will itself be an offence under Section 351 (Raghavan, 2000, p.316).

Nature and Punishment

The punishment for the offence of assault force is broadly classified on the basis of involvement of grave and sudden provocation by the other party. According to Section 352, 'Whoever uses assault 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'. This offence is classified as a non-cognizable bailable offence triable by any Magistrate. Further this offence is also classified as a compoundable offence. The commission of assault on grave and sudden provocation is considered as another offence and discussed in detail under Section 358 of IPC.

5.1. ASSAULT AND CRIMINAL FORCE

Generally assault is considered as an attempt to commit criminal force. Hence assault is lesser in degree and gravity compared to criminal force. In every case of criminal force there is a physical contact but in case of assault there is no physical contact between accused and victim. Though there is a slight difference between assault and criminal force, the Indian Penal Code prescribes similar punishments for both these offences. The Section 352 provides punishment for assault or criminal force otherwise than on sudden provocation; and Section 358 provides punishments for assault or criminal force on sudden provocation.

5.2. ASSAULT AND AFFRAY

Assault and affray are two offences relate to human body. However both are two distinct offences. The primary distinction is that the assault is an offence against the person of an individual whereas affray is an offence against the public tranquillity. Assault may be committed by one or more persons whereas affray may be committed by two or more. Assault can be committed either in a public or private place however affray can take place only in public place. In assault there is no physical contact but in



affray there is physical contact and fight between two or more persons (Gaur, 2009, p.606). Another major difference is in assault only accused will get punishment whereas in affray both the parties will get punishment. Lastly, the punishment for affray is always lesser than that of assault. The punishment for affray is imprisonment for a description up to one month or fine up to Rs.100 or both. In case of assault the punishment is imprisonment for a description up to three month or fine up to Rs.500 or both.

6. AGGRAVATED FORMS ASSAULT OR CRIMINAL FORCE

The various aggravated forms of the offence of assault or criminal force are:

- a) Deterring public servant from discharging his duty: Section 353
- b) Outraging the modesty of woman: Section 354
- c) To disrobe woman: Section 354B
- d) Dishonour of a person: Section 355
- e) Attempt to commit theft of property: Section 356
- f) Attempt to wrongfully confine a person: Section 357

6.1. DETERRING PUBLIC SERVANT FROM DISCHARGING HIS DUTY

Generally public servants are exposed to considerable risks while performing their duties. Hence it is necessary to provide special protection them so that they can discharge their functions properly. The offence is intended to provide special protection to public servants against persons who prevent the public servant from performing their duties. According to Section 353, “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”.

To constitute this offence the following ingredients are necessary:



- 1) There must be assault or use of criminal force
- 2) Such assault or use of criminal force must have been made on a public servant
- 3) It must have been on a public servant:
 - a) While he was acting in the execution of his duty; or
 - b) With intent to prevent or deter him from discharging his duty; or
 - c) In consequence of anything done or attempted to be done by him in the discharge of duty (Thakker, C. K. & Thakkaer, M. C., 2010, p.1952)

The term public servant is defined under Section 21 of the Indian Penal Code. In case it is doubtful whether the person in question is a public servant or not within the meaning of Section 21, the accused should be given the benefit of doubt, however conviction can be given under Section 352 (*Fazal Nabi v. State*, 1952). A mere obstruction or resistance without use of force or assault is no offence under this Section (*Chandrika Sao v. State of Bihar*, 1967). To constitute this offence assault or use of criminal force is necessary. It is also essential for a conviction under this Section that the public servant was at the time of assault exercising his duty as public servant (*Bhim Singh v. State of J & K*, 1984). Thus it is always essential that at the time of assault the officer must be discharging his lawful duty and it does not cover an act done by him in good faith under colour of his office (Raghavan, 1982, p.706). If the acts of the public servant were not in accordance with his official duty, offence does not fall under Section 353 but may fall under Section 352. An officer exercising his official duties grossly, illegally and in an outrageous manner, cannot be deemed to be a public servant in the execution of his duty (*Dhannalal v. State*, 1951). Unlawful act of public servant is a good defence for this Section.

In *State of Himachal Pradesh v. Durga* (1980), it was held that resistance to a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so will not amount to an offence under Section 353. It is to be noted that Madras High Court has taken a different view in this regard and observed that, 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 (Ratanlal & Dhirajlal, 2006,



p.643). A constable even if not on duty is entitled to arrest the offender for having inflicted injuries with a knife and if the constable is assaulted while he attempts to effect the arrest, it is an offence under Section 353 (Raju, 1982, p.912).

Nature and Punishment: The offence under Section 353 is cognizable, bailable, non-compoundable and triable by any magistrate. Punishment includes imprisonment up to two years, or fine or both (Gaur, 2009, p.608).

6.2. OUTRAGING THE MODESTY OF WOMAN

The law relating to outraging the modesty of woman is explained under Section 354 of the Indian Penal Code. The object of this provision is to protect women against indecent behaviour of others which is offensive to morality as well as to safeguard the interest of public morality and decent behaviour. This offence is not only an offence against the individual but also against public morals and society as well (*State of Punjab v. Major Singh*, 1967). Hence this Section punishes an assault or use of criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged (Gaur, 2009, p.608). The Section says that, "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 one year but which may extend to five years and shall also be liable to fine".

The provision makes penal the assault or use of criminal force to a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are:

- (a) That the assault must be on a woman.
- (b) That the accused must have used criminal force on her.
- (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty (*Ramkripal S/O Shyamlal Charmakar v. State of Madhya Pradesh*, 2007).



6.2.1. Modesty of Woman

The word 'modesty' is not defined in the Indian Penal Code. According to Shorter Oxford English Dictionary, 'modesty' is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions" (*Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr*, 1995)

In *Ramkripal S/O Shyamlal Charmakar v. State of Madhya Pradesh* (2007) it was held that, 'Modesty in Section 354 is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex'.

In *Tarkeshwar Sahu v. State of Bihar* (2006) it was held that, "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. The essence of a woman's 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".

6.2.2. Outrage of Modesty

The question what constitutes an outrage to female modesty is nowhere defined in IPC. The Dictionary meaning of 'Outrage' is an act of extreme violence or viciousness; or a wantonly vicious or cruel act; or a gross violation of decency, morality, honour, etc. In *State of Punjab v. Major Singh* (1967), it was held that, 'the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one which is capable of shocking the sense



of decency of a woman'. In *State v. Sri Ananta Gogoi (Sivasagar, G. R. Case no. 898/09)*, it was stated that, 'Any type of conduct that is degrading to the decency or morality of a woman may be termed as outraging the modesty'.

In *Keshab Padhan v. State of Orissa (1976)*, the Court observed "The test of outrage of modesty is whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman". In this case, the prosecutrix was 15 years of age and in the midnight while she was coming back with her mother the sudden appearance of the petitioner from a lane and dragging her towards that side sufficiently established the ingredients of Section.

In *State of Kerala v. Hamsa (1988)*, it was observed that, "The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society". In this case the accused who beckoned the prosecutrix by winking his eyes in public and caught hold of her arm was held guilty of outraging her modesty. Thus it can be seen that, even gestures when they are made with the intention of outraging the modesty of a woman attract the section 354 of the IPC.

In *Ram Mehar v. State of Haryana (1998)*, the accused caught hold of the prosecutrix, lifted her and then took her to a bajra field where he felled her down and tried to open her salwar but could not do so as in order to make the accused powerless the prosecutrix had injured him by giving a blow of the sickle. The accused was convicted under Section 354.

In *Jai Chand v. State (1996)*, the accused had forcibly laid the prosecutrix on the bed and broken her pyzama's string but made no attempt to undress himself and when prosecutrix pushed him away, he did make no efforts to grab her again. It was held that it was not attempt to rape but only outraging of the modesty of a woman.

In *Surinder Nath v. State of MP (1982)*, it was held that pushing the bell bottom pant or chadar down than what is normally required is an indecent behavior.



In *Nuna v. Emperor* (1912), the accused took off a girl's clothes, threw her on the ground and then sat down beside her. He said nothing to her nor did he do anything more. It was held that the act of accused would amount to outraging the modesty of victim.

In *Mrs. Rupan Deol Bajaj & Another v. Kanwar Pal Singh Gill & Another* (1996), it was held that slapping a woman on her posterior amounts to outraging modesty within the meaning of Section 354.

A Woman can be held guilty: The word 'whoever' in Section 354 means a male or female. Thus the offence under this Section can be committed by any man or a woman with the necessary intent or knowledge. In *Girdhar Gopal v. State* (1953) it was held that, "a woman can assault or use criminal force to any other woman as equally and effectively as any man. The pronoun 'he' used in the expression 'that he will thereby outrage her modesty' must therefore be taken under Section 8 as importing a male or a female. It is thus clear that under Section 354 a man as well as a woman can be held guilty of the offence of assaulting or using criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged, and be punished for the offence".

Relevance of Age: The word 'woman' is defined under Section 10 of the Indian Penal Code. It says the word 'woman' denotes a female human being of any age. Thus it can be seen that, if an assault is committed or criminal force is being used with intention or knowledge specified in the Section, the offender would be guilty irrespective of the age of the female victim (Thakker, C. K. & Thakkaer, M. C., 2010, p. 1905). In *State of Punjab vs. Major Singh* (1967), the Court addressed the question whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. The Court held, when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. In this case Justice Bachawat observed, 'the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex'. Thus it can be seen



that the age of prosecutrix is an irrelevant consideration while dealing with the guilt of the accused under Section 354.

Relevance of Intention: To establish an offence under Section 354 of the Indian Penal Code the intention or knowledge specified in the Section has to be made out. If such intention or knowledge is lacking, even if it is proved that the assault had been committed or criminal force used and the victim was a woman, the act would not amount to an offence under Section 354 of the Indian Penal Code but it may amount to an offence under Section 352 (*Major Singh Lachhman Singh v. The State*, 1963). In the case of *State v. Sri Ananta Gogoi (Sivasagar, G. R. Case no. 898/09)*, the Court stated, ‘in order to constitute the offence under Section 354, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object’.

Reaction of the Woman: The words used in Section 354 are that, the act has to be done ‘intending to outrage or knowing it to be likely that he will thereby outrage her modesty’. Thus intention or knowledge is the ingredient of the offence and not the woman’s feelings. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage ‘her’ modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, it was held in *State of Punjab v. Major Singh* (1967), the reaction of the woman would be irrelevant under Section 354. In *Tarkeshwar Sahu v. State of Bihar* (2006), the Court observed, “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”.

Nature and Punishment: The offence of outraging modesty of woman under Section 354 is cognizable, non-bailable, non-compoundable and triable by any Magistrate.



Punishment includes minimum imprisonment of one year and may extend up to five years, or fine or both.

6.3. TO DISROBE WOMAN

Disrobe means to take off or remove one's clothes. This offence was introduced by the Criminal Law (Amendment) Act, 2013 popularly called as the Nirbhaya Act, 2013. According to Section 354B, "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".

Thus under this Section the assault or use of force on a woman with the intention to disrobe her or compel her to be naked are punishable with imprisonment for a term ranging from minimum three to a maximum of seven years. The act of disrobing is a very serious offence as it is derogatory to the dignity of womanhood hence even an abetment of disrobing has also been made as punishable act under this section. The offence of disrobing a woman is classified as a cognizable and non-bailable offence triable by any Magistrate. It is also classified as a non-compoundable offence.

Nature and Punishment: The offence of disrobing a woman under Section 354 B is cognizable, non-bailable, non-compoundable and triable by any Magistrate. Punishment includes minimum imprisonment of three years and may extend up to seven years, or fine or both.

5.4. ASSAULT OR USE OF CRIMINAL FORCE TO DISHONOUR ANOTHER PERSON

The Section 355 of the Indian Penal Code deals with this offence. The Section says that, 'Whoever assaults or uses criminal force to any person, intending thereby to dishonour that 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 two years, or with fine, or with both'. Thus it can be seen that the object of this Section is to punish assault or use of criminal force with intent to



dishonour a person otherwise than on grave and sudden provocation. For the application of this offence, the following essentials must be present:

1. There must be an assault or use of criminal force
2. There must be an intention to dishonour the person assaulted or against whom the criminal force was used
3. The said assault or use of criminal force must have committed otherwise than on grave and sudden provocation.

The intention to dishonour the person assaulted or whom the criminal force shown is an essential ingredient of the offence (*Kalipada Ghosh v. State of Bihar*, 1978). The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults, such as kicking a man, pulling a man's nose, assaulting with a shoe or laying a whip across the shoulders (Thakker, C. K. & Thakkaer, M. C., 2010, p.1972).

Nature and Punishment: The offence of assault or use of criminal force to dishonour another person Section 355 is non-cognizable, bailable, compoundable and triable by any Magistrate. Punishment includes imprisonment up to two years, or fine or both.

5.5. ASSAULT OR CRIMINAL FORCE IN ATTEMPT TO COMMIT THEFT OF PROPERTY CARRIED BY A PERSON

The Section 356 of the IPC explains about this offence. It states that, 'Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both'. This Section deals with attempts of theft of property carried on one's person such as generally, watch, ring or money purses usually in crowded places. It is also directed against pick pockets (Raghavan, 1982, p.711). To constitute an offence under this Section, the following ingredients are necessary:

1. There must be an assault or use of criminal force to another person
2. The other person must wear or carry the property



3. The accused must attempt to steal such property

It is to be noted here that in cases where there is actual commission of theft this offence does not constitute. This offence is cognizable, bailable, non-compoundable and triable by any Magistrate. Punishment includes imprisonment up to two years, or fine or both.

5.6. ASSAULT OR CRIMINAL FORCE IN ATTEMPTING WRONGFULLY TO CONFINE A PERSON

The Section 357 of IPC explains about this offence. The Section provides that, 'whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both'. The object of this Section is to punish assault or criminal force in attempting wrongfully to confine a person. The term wrongful confinement is defined under Section 340 of the Indian Penal Code. It states that, 'Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person'.

The Section is intended to apply only to those cases where assault is made or criminal force is used to disarm opposition offered against getting into confinement. Hence, this Section does not apply to cases when assault is made or criminal force is used to a person who is already in confinement. To constitute an offence under this Section, the following ingredients are necessary:

1. There must be an assault or use of criminal force to another person
2. The said assault or criminal force was done so in attempting to wrongfully confine the person who is assaulted or against whom the force is used.

This offence is cognizable, bailable, compoundable by the person assaulted or to whom the force was used with the permission of the court and triable by any Magistrate. Punishment includes imprisonment up to one year, or fine of 1000 rupees or both.



5.7. ASSAULT OR CRIMINAL FORCE ON GRAVE AND SUDDEN PROVOCATION

The Section 358 of Indian Penal Code explains about this offence. It states that, ‘Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both’. The Explanation to Section 358 says that, “The last section is subject to the same Explanation as section 352”. The word ‘last section’ in the Explanation appears to be wrong. It should have read as ‘this section’ (Raghavan, 1982, p.711). The Explanation to Section 352 says, ‘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’.

The Section 358 punishes assault or use of criminal force on grave and sudden provocation as against Section 352 of IPC. The test of ‘grave and sudden’ provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. Sometimes the words and gestures may also cause grave and sudden provocation to an accused (*Venkatesan v. State of Tamil Nadu*, 1997). This offence is non-cognizable, bailable, compoundable by the person assaulted or to whom the force was used with the permission of the court and triable by any Magistrate. Punishment includes simple imprisonment for one month or fine of 200 rupees or both.

5.8. SUMMARY

The law relating to Force, Use of Criminal Force and Assault are explained under Section 349 – 358 of Indian Penal Code. The Code first defines the concept of ‘force’



under Section 349. Subsequently the Code explains about the offence of 'Use of Criminal Force' and 'Assault' under Sections 350 & 351. Further IPC categorises the offences of 'Use of Criminal Force' and 'Assault' into different aggravated forms on the basis of involvement of certain special circumstances. They are Assault or criminal force to deter public servant from discharge of his duty; Assault or criminal force to woman with intent to outrage her modesty; Assault or criminal force with intent to dishonour person, otherwise than on grave provocation; Assault or criminal force in attempt to commit theft of property carried by a person; Assault or criminal force in attempting wrongfully to confine a person; and Assault or criminal force on grave and sudden provocation.





References

1. Edirisuriya, Chandra Tilake (2016, August 18). Criminal Force and Assault. Retrieved from <https://www.ceylontoday.lk/print20160701CT20161030.php?id=4398>
2. Framework. (n.d.). (2016, August 18). *Collins English Dictionary - Complete & Unabridged* (12th ed.). Retrieved <http://www.dictionary.com/browse/framework>
3. Gaur, K.D. (2009) *The Indian Penal Code* (4th ed.). New Delhi: Universal Law Publishing Co. Ltd.
4. Gaur, K.D. (2013). *The Indian Penal Code*. (2nd ed.). New Delhi: Universal Law Publishing Co.
5. Gour, Dr. Hari Singh (1973). *Law Relating to Wrongful Restraint, Wrongful Confinement*. Allahabad: Delhi Law House.
6. Gour, Hari Singh. (2016). *Penal Law of India*. (11th ed.) Allahabad: Law Publishers (India) Pvt. Ltd.
7. Influence. (n.d.). (2016, August 18). *The American Heritage® Dictionary of the English Language* (4th ed.). Retrieved from <http://www.dictionary.com/browse/influence>
8. Nelson, Reginald A. (1970). *The Indian Penal Code*. (6th ed., Vol.II) Allahabad: Law Books Co.
9. Raghavan, V. V. (2000). *Law of Crimes*. (5th ed.) New Delhi: India Law House.
10. Raghavan, V.V. (1982). *Law of Crimes* (2nd ed.) Allahabad: Orient Law House
11. Raju, V.B. (1982). *Indian Penal Code, 1860*, (4th ed., Vol.II) Lucknow: Eastern Book Company.



12. Ratanlal & Dhirajlal (2006). *The Indian Penal Code* (30th ed.). Nagpur: Wadhawa.
13. Riordan, Jimmy O'.(2003). *A2 Law for AQA*, Oxford: Heinemann Learning Publishers.
14. Suresh, V. & Nagasaila, D. (2000). *PSA Pillai's Criminal Law*, New Delhi: Butterworths India, New Delhi.
15. Thakker, C. K. & Thakkaer, M. C. (2010). *Ratanlal & Dhirajlal's Law of Crimes*. (34th ed., Vol.II) New Delhi: Bharat Law House, New Delhi.

Cases Referred:

1. *Bhim Singh v. State of J & K*, (1985) 4 SCC 677
2. *Bhupinder Singh v. State of Punjab*, 1997 Cr LJ 3416 (PH)
3. *Bihari Lal v. Emperor*, AIR (1934) 5 Lah 786
4. *Chandrika Sao v. State of Bihar*, AIR 1967 SC 170
5. *Chandrika Sao v. State of Bihar*, AIR 1967 SC 170.
6. *Darshan Singh v. Emperor*, AIR 1941 Lah 297
7. *Dhannalal v. State*, AIR 1951 MB 42
8. *Fazal Nabi v. State*, 1952 Cr LJ 217
9. *Girdhar Gopal v. State*, 1953 CriLJ 964
10. *In re Kanna Kondaiah*, AIR 1923 Mad. 608
11. *Jadunandan Singh v. Emperor*, AIR 1941 Pat 129
12. *Jai Chand v. State*, 1996 CriLJ 2039
13. *Jai Ram v. Emperor* (1914) 15 Cr. L.J. 231(All)
14. *Jashanmal Jhamatmal v. Brahmanand Sarupananda*, AIR 1944 Sind 19



15. *Kalar Din v. Emperor*, (1941) 42 Cr LJ 272
16. *Kalipada Ghosh v. State of Bihar*, 1978BLJ 824
17. *Keshab Padhan v. State of Orissa*, 1976 Cutt LR (Cri) 236
18. *Maiku v. The State*, AIR 1953 All 749
19. *Major Singh Lachhman Singh v. The State*, AIR 1963 P H 443.
20. *Mrs. Rupan Deol Bajaj & Another v. Kanwar Pal Singh Gill & Another*, AIR 1996 SC 309
21. *Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr*, 1995 SCC (6) 194
22. *Nazir Uddun v. Emperor*, AIR 1933 All 609
23. *Nuna v. Emperor*, (1912) 13 Cri LJ 469
24. *R. v. Donovan*, (1934) 2 KB 498.
25. *Ram Chand v. Emperor*, AIR 1939 Lah 184
26. *Ram Mehar v. State of Haryana*, 1998 CriLJ 1999
27. *Ramkripal S/O Shyamlal Charmakar v. State of Madhya Pradesh*, 2007 CriLJ 2302
28. *Shadshiv Mondal v. Emperor*, AIR 1915 Calcutta 131
29. *Sheo Pratap Singh v. Emperor*, AIR 1930 All 820.
30. *State v. Sri Ananta Gogoi*. Decided by Court of Judicial Magistrate First Class, Sivasagar. G. R. Case no. 898/09, Court of Judicial Magistrate First Class, Sivasagar. (2016, August 18). Retrieved from www.sivasagarjudiciary.gov.in/JUDGMENT/GR898OF2008.pdf
31. *State of Himachal Pradesh v. Durga*, 1980 Cr LJ NOC 10(HP)
32. *State of Kerala v. Hamsa*, 1988 (2) Crimes 161



33. *State of Punjab v. Major Singh* AIR 1967 SC 63
34. *Surinder Nath v. State of MP*, 1982 Cr LJ (M.P.HC Notes) 10 (2)
35. *Tarkeshwar Sahu v. State of Bihar*, (2006) 8 SCC 560
36. *Venkatesan v. State of Tamil Nadu*, (1997) 3 Crimes 146 (Mad).

