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INTERPRETING MODESTY: A CRITICAL ANALYSIS OF JUDICIAL DISCOURSE ON WOMEN'S MODESTY

Kamal Kumar
Assistant Professor at BRCM Law College, Bahal, Bhiwani

"A man will treat a woman almost exactly the way he treats his own interior feminine. In fact, he hasn't the ability to see a woman, objectively speaking, until he has made some kind of peace with his interior woman." – Robert Johnson

ABSTRACT
This paper critically examines how Indian courts have interpreted modesty in relation to women's rights and autonomy. This study shows how the concept of modesty has been created, negotiated, and disputed in the legal system by thoroughly examining Indian court rulings, legislative acts, and constitutional guarantees. According to the study, women's autonomy and sense of agency are undermined by the legal system's view of modesty, which frequently upholds gender stereotypes and patriarchal standards. The study critically looks at how the court shapes the conversation around modesty and how it affects women's rights, especially when it comes to sexual abuse, harassment, and discrimination. The study makes use of a variety of theoretical stances, such as critical discourse analysis, postcolonial theory, and feminist legal theory. The study makes use of a variety of theoretical stances, such as critical discourse analysis, postcolonial theory, and feminist legal theory. The necessity for a more contextualized and nuanced definition of modesty that gives women's rights, experiences, and viewpoints priority is highlighted in the paper's conclusion. The study suggests a paradigm change in the way judges view modesty, one that acknowledges and values women's independence, self-determination, and dignity.
KEYWORDS: *modesty, women's rights, judicial interpretation, patriarchy, gender stereotypes, autonomy, agency.*

1. INRODUCTION

In Indian society, the idea of modesty has long been a contentious and strongly embedded concept, especially when it comes to women's autonomy and rights. The language around modesty has been greatly influenced by the Indian court, which frequently interprets it in ways that support gender stereotypes and patriarchal standards. As a result, there is now a complicated and sometimes conflicting system of regulations and rulings that ostensibly safeguard women's modesty but really compromise their agency and autonomy.

The idea of modesty has been applied in a variety of contexts, including sexual assault, harassment, and discrimination. However, the judiciary's interpretation of modesty has often been criticized for being constrictive, patriarchal, and victim-blaming. Because of this, people no longer have faith or trust in the legal system, particularly women who have experienced harassment and assault.

The idea of modesty is ingrained in Indian culture and society, which places a strong emphasis on women's dignity, virginity, and purity. The concept of modesty is used to manage and govern women's bodies & lives and is frequently associated with how women dress, behave, and conduct themselves. As a result, women are now often examined and blamed for their alleged lack of modesty and held responsible for their own mistreatment.

These gender stereotypes and prejudices have been reinforced in large part by the Indian court. The judiciary has frequently upheld the idea that women's modesty is a valued quality that ought to be safeguarded and maintained through its rulings and interpretations. Because of this, women are now frequently denied equal opportunity and instead face increased marginalization and abuse.

With an emphasis on the consequences for women's freedoms and autonomy, this research study aims to critically analyze the Indian judiciary's view of modesty. In order to comprehend how the concept of modesty has been developed, negotiated, and fought in the legal realm, the study will examine a variety of court rulings, legislative acts, and constitutional guarantees.

The paper will also employ feminist legal theory, postcolonial theories, and critical discourse analysis to evaluate the judiciary's view of modesty, particularly its implications for women's rights and autonomy. Because the judiciary's concept of modesty is often based on

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patriarchal assumptions and prejudices, the paper will argue that women are routinely denied fairness and equality. The study will also look at how women's rights organizations and activists have disputed and challenged the judiciary's definition of modesty. The study will contend that these disputes and challenges have caused the concept of modesty to be reexamined and have brought attention to the necessity for a more complex and contextual definition of modesty that places a higher priority on women's experiences, perspectives, and rights.

The overall goal of this research article is to advance knowledge of how Indian courts define modesty and how it affects women's autonomy and rights. The paper's goal is to highlight the requirement for a more complemented as well as nuanced knowledge of modesty by arguing that those women's experiences, opinions, and rights should be prioritized.

2. PROVISIONS RELATED TO 'OUTRAGING MODESTY OF A WOMAN' UNDER CRIMINAL LAW

The BNS addresses 'outraging the modesty of a lady' under sections 74 and 79. Outraging a woman's modesty is not a new offense, and the BNS has included nearly comparable rules from the Indian Penal Code (IPC), 1860 (the previous Indian criminal code).

Therefore, the relevant IPC provisions will be a helpful guide to understanding the crime of outraging modesty.

Sexual harassment comes in a variety of forms. Because of this, the IPC's provisions make rape, voyeurism, stalking, and people trafficking illegal, among other sexual harassment charges. The IPC's prohibitions on outraging a woman's modesty were frequently used as a catch-all in cases of harassing behavior against women that did not qualify as rape.

Sections 354 and 509 of the IPC dealt with insulting a woman's modesty. Assaulting or using coercive force against a woman with understanding or intent to violate her expectation of modesty was prohibited by Section 354.

Certain acts against women (such as making noises or remarks, displaying objects, or invading a woman's private) are punished under Section 509 if they are done with the aim to offend a woman's modesty.

Since the IPC did not define or explain the term "modesty," it was up to the judiciary to interpret the law in each particular case.

3. INTERPRETATION OF 'MODESTY' BY THE JUDICIARY

The Indian judiciary has a major influence on the conversation around modesty, especially when it comes to issues pertaining to women's autonomy and rights. This section highlights the main trends, patterns, and difficulties in the judicial evaluation of modesty in India. Modesty and its Judicial Interpretation Modesty has been construed differently by the Indian judiciary, which frequently relies on stereotypes and patriarchal presumptions. For instance, in cases involving sexual assault, the court has frequently ignored the survivor's independence and responsibility in favor of protecting women's modesty**.**

In the State of Punjab v Major Singh (1966), the SC was asked to decide at what age a woman achieved "modesty."
This case included a person who reportedly injured a seven-and-a-half-month-old girl's private areas and was prosecuted under Section 354 with outraging the infant's modesty.

According to Justice Gurdev Singh of the Punjab High Court, modesty is defined as "womanly propriety of conduct, scrupulous chastity of thought, speech, and behavior (in men or women), save or a feeling of shame going from instinctive aversion to unclean or coarse suggestions" in the 1933 edition of the Oxford Dictionary of English.

In other words, modesty was associated with traditional notions of what it meant to be a lady. Therefore, the high court judge concluded that the purpose of the modesty crime was to protect women from the immoral behavior of others by relating the concept of modesty to public morals and moral behavior.

The SC, however, created its own criteria in response to an appeal, concluding that Section 354 is applicable when an act done on or near a woman is clearly suggestive of sex based on human concepts.

The Supreme Court's Justice Ranadhir Singh Bachawat observed that a woman's modesty is fundamentally derived from her sex, and that she is born with this quality.

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Interestingly, Amal Kumar Sarkar, who was then India's Chief Justice, dissentingly ruled that a female child could not be regarded as possessing womanly modesty. The Punjab High Court, the Supreme Court, and even the judges on the same Supreme Court bench in this case have different definitions of modesty, which highlights the variety of connotations that can be attached to the term "modesty" in the absence of a formal definition.

In its 2004 decision in Raju Pandurang Mahale vs State of Maharashtra, the SC cited Justice Bachawat's definition of modesty. The SC noted that a woman's modesty is a quality that results from her sex and determined that modesty in a woman's context is the reserve as well as sense of shame that arises from an innate dislike of coarse or unclean suggestions.

The Supreme Court established in the Raju Pandurang Mahale case that the standard to ascertain because a woman's modesty has been insulted is whether the offender's action might be interpreted as one that could shock a woman's sense of decency.

The Supreme Court additionally offered examples of actions that violate a women's modesty, such as dragging a woman and taking off her saree while requesting sex. In the 2007 case of Ramkripal vs State of Madhya Pradesh, the Supreme Court upheld this opinion.

By incorporating ambiguous and subjective concepts like "decency," the Supreme Court's test may have actually increased ambiguity.

The Bombay High Court used this standard in a recent ruling, concluding that stalking a lady does not violate her decency and, so, does not constitute an outrage against her modesty.

In reality, it is challenging to apply the test of infuriating a woman's modesty, frequently relying on the subjective evaluation of the court in a particular factual scenario. The Bombay High Court's ruling in the stalking case can be compared to its ruling in Shrikrushna v State of Maharashtra, 2021, where it was decided that just throwing a chit on a woman who expresses love for her and has "albeit extremely, purely written" poetic verses on it is enough to offend her modesty.

Therefore, even an action carried out with "pure" intentions could be considered disrespectful to a woman's modesty.

The question of whether telling a woman to "fuck off" was an insult to her modesty came up in the Taisuf-ul Hassan against NCT of Delhi case in 2022. The accuser's attorney contended that the phrase "fuck off" was not sexually suggestive because it means "to leave or go away" in the dictionary and is frequently used as an impolite manner to tell someone to depart.

Consequently, there was no desire to offend the woman's modesty. The accused's claim was rejected by the judge, who decided that the expression "fuck off" constituted a sexually offensive remark because it was a vulgar, humiliating, and abusive American slang term. As a result, the court found that there was a preliminary indication that a woman's modesty was offended.

4. DISMISSING A MODESTY-BASED APPROACH TO SEXUAL HARASSMENT

The problem is that the crime of "outraging the modesty of a woman" is currently used as a catch-all for sexually harassing behavior that does not fall under the specific scope of sexual offenses under Indian law.

To hold sexual harassment offenders accountable, such a residual clause is required. However, for the law to effectively provide victims of sexual harassment with remedy and for the courts to apply it consistently, it must be well defined.
The key issue before the Supreme Court in **State of Punjab vs. Major Singh** ***(1966) was at what age a female attained 'modesty'***

Some contend that rather than depending on antiquated ideas of modesty, sexual assault should be understood in terms of women's bodily integrity and dignity.

Actually, the BNS's primary critique is that it perpetuates colonial ideologies. This includes keeping the BNS's definition of sexual harassment, which is based on a patriarchal view of sexual violence, 'modesty'. The BNS does not define modesty, just like its predecessor did.
We must shift from an honor-chastity-modesty worldview to one that views sexual violence as an invasion of sexual autonomy in order to comprehend sexual harassment.

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In this context, the recommendations of the Justice Verma Committee—which was formed to advise amendments to the IPC in the wake of the 2012 Nirbhaya gang rape—are particularly instructive.

The committee noted that under South African law, sexual assault is a common law offense that replaces indecent assault. The committee suggested that Section 354 be reenacted as a sexual assault offense to cover all non-consensual, non-penetrative sexual touching as well as using words, actions, or gestures toward or in the presence of another individual that result in an unwanted sexual threat or an unwanted advance.

"Some contend that rather than depending on antiquated ideas of modesty, sexual assault should be understood in terms of women's bodily integrity and dignity."

A definition like that would be sufficiently inclusive to include the different types of sexual harassment that do not qualify as rape. Unfortunately, IPC revisions did not ultimately incorporate the committee's recommendations.

Public decent and morality are vague and subjective concepts that are connected to our current notion of the offense of outraging modesty. Rather than perpetuating colonial ideas of crimes against women, courts should apply the BNS 2023 by interpreting the modesty provisions in accordance with the Justice Verma Committee's recommendations.

The criminal case against a petitioner who was accused of insulting a woman's modesty was recently dismissed by the Calcutta High Court. The court decided that the ultimate criteria to assess whether a lady's modesty has been offended is if that person's action can shock her sense of decency. In this case, following a dispute between two rival political parties, the petitioner was accused of disparaging female modesty. However, the court found that the petitioner was not sufficiently substantiated and that the charges were baseless. The court decided that allowing the lawsuit to continue would be an abuse of the legal system. The decision highlights how important it is to carefully consider the evidence when a female's modesty is being criticized.

According to the Kerala High Court,in case of vijayan v. State of Kerala, 2021 a woman's modesty might be outraged under Section 354 of the IPC if the perpetrator's actions are deemed to have the potential to shock a woman's sense of decency. In this instance, the upper primary school's Parent Teachers Association (PTA) president was charged with using profanity and insulting the modesty.

- **Mamta Tyagi v. State of Delhi & Anr (2022)**

This decision addressed outrage at a woman's modesty and the use of improper force. The court determined that the accused's actions were unlawful, including using unlawful force to insult the victim's modesty.

- **Sunil N S v. State of Kerala (2024)**

The accused in this case, who was accused of insulting a woman's modesty, had his bail application denied by the Kerala High Court. The accused's conduct was deemed significant by the court, and granting bail would compromise the victim's dignity.

- **In the case of Major Singh (1967)**

Despite being older, this ruling is still applicable today. The court ruled that whether an act can shock a woman's sense of decency is the final test for assessing whether it amounts to outraging her modesty.

4. CONCLUSION

The judicial interpretation shows the courts' dedication to enforcing the law and providing victims with justice, while also highlighting the significance of preserving women's modesty and dignity. With significant ramifications for women's freedoms and autonomy, the legal comprehension of modesty in India has proven a complicated and contentious topic. The way the judiciary has created, negotiated, and challenged the concept of modesty has been highlighted in this research paper's critical analysis of the judicial discourse on the subject. According to the analysis, the judiciary frequently bases its understanding of modesty on patriarchal presumptions and stereotypes, which support the marginalization and objectification of women. Women's autonomy and agency have frequently been restricted due to the judiciary's emphasis on protecting women's modesty, especially in cases involving sexual violence and harassment.

Nonetheless, the study has also brought to light the ways in which women's rights organizations and activists have disputed and questioned the judiciary's definition of modesty. The decisions analyzed in this article demonstrate that the court system is become increasingly conscious of the need to protect women's autonomy and agency and to hold those accountable for acts of sexual misconduct and assault. Notwithstanding these positive developments, much more work has to be done to ensure that the judiciary's interpretation of modesty is consistent with the principles of gender equality and justice. The judiciary must continue to recognize and respect women's autonomy and agency in as well as holding individuals accountable for sexual abuse and harassment.

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Furthermore, a more contextualized and nuanced definition of modesty is required, one that considers the many viewpoints and experiences of women. The judge must be mindful of the power relationships that shape modesty and take care to avoid reinforcing stereotypes and patriarchal standards. In conclusion, the Indian judiciary's view of modesty is a contentious and complicated topic that has a significant impact on women's autonomy and rights. Even while recent developments have been positive, much more work must be done to ensure that the judiciary's interpretation of modesty is consistent with the principles of gender equality and justice.

Recommendations

The following suggestions are offered in light of the study in this paper:

1. The judiciary must recognize and respect women's independence and agency while holding individuals accountable for sexual assault and harassment.
2. A more contextualized and nuanced view of modesty that considers the various experiences and viewpoints of women must be adopted by the judiciary.
3. The legal system must be mindful of the power relationships that shape modesty and take care to avoid reinforcing stereotypes and patriarchal standards.
4. The government must address the systematic and institutional barriers that prevent women from accessing justice, such as an absence of women in legal fields and courts.

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