

Justice V.C. Misra
Chairman

U.P. State law Commission
Lucknow

Ra.Vi.Aa -1345/2011

Dated: AUG 02, 2011.

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith the **TENTH REPORT - 2011** of the U.P. State Law Commission proposing **AMENDMENT OF SECTIONS 354 AND 509, IPC AND SECTIONS 273 AND 327(2), Cr.P.C. AND FIRST- SCHEDULE TO THE CODE OF CRIMINAL PROCEDURE**. The subject was taken up by the Commission for consideration on a reference made by the **Hon'ble High Court, Judicature at Allahabad**, vide its judgments and Order dated 09-05-2011, passed in **Criminal Writ Petition No. 8207 of 2011, Amit Kumar @ Mittal Vs State of U.P. & others**.

The Commission has recommended for amendments of sections 354 and 509, IPC, and sections 273 and 327(2), Cr. P.C. and First- Schedule to the Code of Criminal procedure, to make them more stringent, deterrent and effective.

If recommendations are accepted and acted upon, the Commission is confident that it will protect the women and children from the menace of sexual offences against them and will also put a check on such crimes.

With kind regards,

Yours sincerely,

(Justice V.C. Misra)

Sushri Mayawati,
Chief Minister/Law Minister,
Uttar Pradesh,
Encl: A report with Proposed Draft of The
Criminal Law (U.P. Amendment) Bill, 2011

UTTAR PRADESH STATE LAW COMMISSION

TENTH REPORT, 2011

ON

**AMENDMENT OF SECTIONS 354 AND 509 IPC AND SECTIONS
273 AND 327(2) Cr.P.C. AND FIRST- SCHEDULE TO THE CODE OF
CRIMINAL PROCEDURE.**

UTTAR PRADESH STATE LAW COMMISSION

TENTH REPORT- 2011

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AMENDMENT OF SECTIONS 354 AND 509 IPC AND SECTIONS 273 AND 327(2) Cr.P.C. AND FIRST -SCHEDULE TO THE CODE OF CRIMINAL PRCEUDURE.

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**UTTAR PRADESH STATE LAW COMMISSION
TENTH REPORT, 2011**

ON

**AMENDMENT OF SECTIONS 354 AND 509 OF THE INDIAN PENAL
CODE AND SECTIONS 273 AND 327(2) OF THE CODE OF CRIMINAL
PROCEDURE AND FIRST -SCHEDULE TO THE CODE OF
CRIMINAL PRCEEDURE**

CHAPTER- 1

INTRODUCTION

1.1 The matter was taken up by the U.P. State Law Commission for consideration on a reference made by the Hon'ble High Court Judicature at Allahabad vide its Judgments and Order dated 09-05-2011, passed in **Criminal Writ Petition No. 8207 of 2011, amit Kumar @ Mittal Vs State of U.P. & others**, recommending the State of U.P. and the Union of India to amend the provisions of section 354 I.P.C and the First Schedule to the Code of Criminal Procedure by Prescribing a higher sentence for the offence and for making it non-bailable and triable by a Court of session, hence this Report on the subject.

" Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women-----."¹

1.2 Violence against women and girls continues to be a global epidemic. The empirical researches conducted in various countries reveal very disturbing facts about large scale unabated violence on women all over. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across line of income, class and culture.

¹The United Nations Declaration on the elimination Of violence against women, general Assembly, Resolution, December, 1993.

violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedom.

1.3 In India, Feminine glory was at its peak in the Vedic era, after which it has suffered a downfall.

1.4 **On 18 December, 1979, the Convention on the elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly.** it entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. The government of India has ratified the above resolution on June 25, 1993.

1.5 It shows the position of the women in India and globally and the women's movements. Thus sensitivity of the matter can easily be inferred. Being an international issue India is also taking various positive steps to protect the rights and dignity of the women.

1.6 After independence of India, the country followed not only the noble principle of justice, liberty, fraternity and equality, but also enacted several legislations to reform and develop the status of women and to fulfill the commitments towards gender justice and protection of women from injustice and various abuses against them, which, later on, opened the floodgates for feminist movements all over the world.

1.7 **Part III of the Constitution of India** deals with the fundamental rights. These provisions enshrined in the Articles- 12 to 35, which are applicable to all the citizens irrespective of religion, race, sex, caste and creed. However there are certain provisions which protect the rights of women.

1.8 **Article 14** of the Constitution guarantees to every person the right to equality before the law or the equal protection of the laws. **Clause(1) of Article 15** prohibits the state from discriminating against citizen on grounds only of religions, race, sex, cast, place of birth or any of them. **Clause(2)** provides that no citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition.

Clause (3) enacts that nothing in Article 15 shall prevent the State from making any special provision for women and children.

1.9 To check the social evil of sexual harassment of working women at all work places **Hon'ble Supreme Court of India in Vishakha and other vs State of Rajasthan and others (AIR 1997 SC 3011)**, has held that:

" 14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse."

1.10 **In Para 16** of the above landmark judgment **Hon'ble apex Court** has laid down the various guidelines and norms in the absence of enacted law to provide for effective enforcement of the basic human rights of gender equality and guaranty against sexual harassment and abuse of working women at all work places or other institution, until a legislation is enacted for the purpose.

1.11 **At the Fourth World Conference on Women in Beijing**, the government of India has also made an official commitment, to formulate and operationalize national policy on women.

1.12 This does not imply that there are no related laws in the Indian Penal Code that may be evoked when a woman is sexually harassed. However, these related laws are framed as offences that either amount to obscenity in public or acts that are seen to violate the modesty of women under sections 294, 354 and 509 of the Indian Penal Code. While section 294 of Indian Penal Code is a law applicable to both man and woman, the sections 354 and 509 have been classified and documented as 'crimes against women', in Crime in India Reports published by the Crimes Records Bureau. The very classification of crimes act as a source that indicates the semantic shifts that have occurred in the articulation of sexual harassment, signifying the influence of the Indian women's movement and the global discourses on women's rights.

1.13 Here, we are concerned with sections 354 and 509 of the Indian Penal Code, having regards to the above reference of Hon'ble High Court.

1.14 We would like to examine the provisions related to outraging the modesty of the women, whether they are adequate in its present form and sufficient to put a check on crimes of sexual violence against women and children as, at present, it is a grave issue before the society, and how to deal with it.

1.15 In this regard Hon'ble High Court in Amit Kumar @ Mittal case (supre) has observed:-

1.15.1 "We would like to point out that because of the mild penalty of sentence up to two years prescribed for an offence under section 354 IPC and the fact that the offence is bailable, such crimes of sexual violence against women are daily on the increase, although they are usually unreported. No woman going to college or for meeting friends or who is simply walking on the streets or travelling by a public transport vehicle for going to some place or as in the present case, even when she is present in her house, is completely safe, victims of such sexual crimes suffer great shame and humiliation. Likewise, little children are increasingly becoming victims of such child abusers and molesters who freely roam about. because of the attending social stigma and personal and family dishonor the aggrieved female is usually reluctant to lodge any complaint or FIR when she is made a victim of this sexual crime. In the rare case when she takes recourse to the law enforcing agency, an absolute mockery of justice results when the molester is let out on bail at the police station itself, as section 354 IPC is a bailable offence and he becomes free to again stalk and terrorize the victim or to commit another criminal assault on her for outraging her modesty.

1.15.2. Such a lenient punishment appears to have been prescribed for the crime under section 354 IPC because of a patriarchal mind set which does not accord equal status with a man or a woman, and is indifferent to the psychological trauma that a woman must undergo when criminal force is applied to her for outraging her modesty. As a matter of fact if a woman or girl child is viciously molested as in the present case, it can be a highly traumatic experience which can leave a permanent psychological scar on the woman or girl child as she suffers humiliation, degradation and violation in the same manner similar to that she would suffer if she were an actual victim of a rape. It is thus a crime similar to

the crime of rape and whilst it has been argued that such crimes affect the sexual integrity and autonomy of women and children and are violative of the right to life guaranteed under Art. 21. of the constitution of India, but the argument to this extent has not been accepted in **Sakshi v Union of India, AIR 2004 SC 3566** which has held that where there is no penile penetration, no offence of rape under section 375 IPC is disclosed. But Sakshi too has shown considerable concern for the woman or child victim of sexual violence, and has held in paragraph 34 that the provisions of sub-section (2) of S. 327, Cr.P.C. prescribing in camera trials shall in addition to the offences mentioned in the sub-section (i.e. Offences under section 376, 376A, 376B,376C, and 376D IPC) also apply in inquiry or trials of offences under Ss. 354 and 377 , I.P.C. In holding a trial of child sex abuse or rape a screen or some such arrangements may be made where the victim or witnesses who may be equally vulnerable like the victim) do not see the body or face of the accused, the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing, the victim of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required. Saki ahs also emphasized in paragraph 35 that as the cases of child abuse and rape are increasing at an alarming speed appropriate legislation by Parliament in this regard is, urgently required".

1.16 Hon'ble High Court further observed,-

1.16.1 "We think that it is high time that the State of U.P. and even the Union of India should become sensitive to this grave issue, and consider imposing stringent laws for putting a check on such crimes of sexual violence against women and children. We therefore recommend that the State of U.P. and the Union of India consider amending the provisions of section 354 IPC and the First Schedule to the Code of Criminal procedure by prescribing a higher sentence for the offence and for making it non-bailable and triable by a Court of Session".

1.17. In view of the above observation of the Hon'ble High Court and in the prevailing circumstances, U.P. State law Commission has decided to submit a Report on the subject

to amend sections 354 and 509 IPC and sections 273 and 327 (2) of the Code of Criminal procedure and First Schedule to the Code of Criminal Procedure, to make these provisions more stringent, deterrent and effective for putting a check on the crimes of sexual violence against women and children as per recommendations contained in the report.

1.18. In the meantime on June 20, 2011 (**As per news papers report Annexure-I and annexure-II**) a draft Ordinance has been sent to the Governor, by the U.P. State Government, to amend section 354 of the Indian Penal Code and sections 235, 437 and 439 of the Code of Criminal Procedure to make molestation a non-bailable offence and make securing bail more difficult in rape cases and to decide the rape cases within six months.

1.19 The Commission requested a copy of the aforesaid Draft ordinance from the concerned department vide letter No. 1336/2011 dated 21-07-2011 (**Annexure-III**) but no such copy has been made available to the Commission. However, aforesaid original letter was returned in original to the Commission with the following remarks by the Section officer, Vidhai Anubhag- 1:-

अध्यादेश जारी नहीं किया गया है। "क" पर महामहित राष्ट्रपति महोदय से instructions प्राप्त करने हेतु दिनांक 21 जून 2011 को मा० स० को पत्र भेजा है। उक्त निर्देश अभी प्राप्त नहीं हुए हैं।

1.20 It shows that the draft Ordinance presented to the governor for his assent, has been reserved for the consideration of the President. it means assent of the President is still awaited. Hence, so far, it has not taken a legal shape.

1.21 Under these circumstances and looking into the gravity and alarming nature of the matter the Commission has decided to submit this Report as stated earlier.

1.22 **Outrage the modesty** of a woman is a phrase that has dominated the print and electronic media in the passed few months. This term has been taken from section 354 of the Indian Penal Code, which runs as follows:-

". 354. 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 may extend to two years, or with fine, or with both".

1.23. The essential ingredients of offence under section 354 IPC are:-

1. That the assault must be on a woman
2. That the accused must have used criminal force on her, and
3. That the criminal force must have been used on the woman intending thereby outrage her modesty.

1.24 Act will amount to outraging of modesty if it is such which could be perceived as one capable of shocking sense of decency of a woman. the essence of a woman's modesty is her sex. It is a virtue which attaches to a female owing to her sex. Modesty is quality of being modest and in relation to woman, it is womanly propriety of behavior, scrupulous chastity of thought, speech and conduct².

1.25 The offence under section 354 IPC, at present is cognizable, bailable, and compoundable with the permission of the Court, and triable by any judicial magistrate as summons case, To be a warrant case maximum punishment should have exceeded two years imprisonment vide section 2(x) Cr.P.C., But here maximum corporeal punishment is only two years so in view of section 2 (w) Cr.P.C. it is summons case. No charge is needed to be framed.

1.26 Because of attending social stigma and personal and family dishonor the aggrieved female is usually reluctant to lodge any complaint or FIR when she is made a civictim of this sexual crim. In the rare case when she takes recourse to the law enforcing agency, an absolute mockery of justice results when the molester is let out on bail at the police station itself, as section 354 IPC is a bailable offence and he becomes free to again stalk and terrorize the victim or to commit another criminal assault on her and embolden to catch another prey for outraging her modesty.

² . Ramkripal v. State of Madhya Pradesh, 2007 CrL.J 2302 (SC)

1.27. The Commission is of the view that under section 354 of the Indian Penal Code punishment should be increased and some minimum punishment should also be made, and offence should be made non-bailable and triable by a Court of Session, as per recommendations contained in the report.

1.28 We feel that offence under section 509 IPC is also inter-related with the offence under section 354 IPC . In this regards if the accused by winking his eye at a woman and by beckoning her to the notice of others may insult her modesty. Even if those gesticulations were unnoticed by others except the woman those acts would amount to insult to her modesty. since she had no idea to reciprocate those gestures by doing such acts the accused had committed the offence u/s. 509, of the Indian Penal Code. Accused when without stopping at that caught hold of her arm which is an obvious act of assault to outrage her modesty, he commits the offence u/s 354 IPC as well³.

1.29. It will be better to go through Section 509 of the Indian Penal Code which runs as follows:-

"S. 509. 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 punished with simple imprisonment for a term which may extend to one year, or with fine, or with both".

1.30 An offence under section 509 has following essential ingredients:

1. Intention to insult the modesty of a woman;
2. The insult must be caused,
 - i. By uttering any word or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or
 - ii. By intruding upon the privacy of such woman.

³ State of Kerala v. Hamsa, (1988) 3 Crimes 161

1.31 In order to constitute an offence under Section 509, I.P.C. there must be some individual woman or women whose modesty has been outraged and though it is not necessary that individual woman should herself make a complaint, there must be an allegation that the action complained of, has insulted the modesty of some particular woman or women and not merely of any class or order or section of women, however, small⁴.

1.32 The offence under section 509 is cognizable, bailable and compoundable with permission of the Court and is triable by any judicial Magistrate as a summons case.

1.33 The Commission is of the view that punishment under section 509 IPC should also be increased and some minimum punishment should also be made and it should also be made non-bailable as per recommendations contained in the report.

1.34 In view of the above observations made by the Hon'ble High Court and various directions issued by the Hon'ble Supreme Court in **Sakshi case (Supra)**, sections 273, 327(2) of the Code of Criminal Procedure and First-Schedule to the Code of Criminal Procedure be also amended in the light of the above decisions and the provisions of sub-section (2) of section 327 of Cr.P.C. prescribing in camera trial shall in addition to the offences mentioned in the sub-section (i.e.) offences under sections 376, 376A, 376B, 376C, and 376 D IPC) also apply in inquiry or trial of offences under sections 354, 377 and 509 IPC. In holding a trial of sex abuse or rape a screen or some such arrangement may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused, accordingly section 273 Cr.P.C. may be amended, as per recommendations contained in the report.

⁴ . Khair Mohomad v. Emperor, AIR 1925 Sind 271

1.35 To come to the conclusion of the report the matter has been discussed with many legal luminaries at various level at its headquarter as well as its camp office at Allahabad. As an outcome of the discussions a Draft Report with a Model Draft Bill for " **AMENDMENT OF SECTIONS 354 AND 509 OF THE INDIAN PENAL CODE AND SECTIONS 273 AND 327(2) OF THE CODE OF CRIMINAL PROCEDURE AND FIRST -SCHEDULE TO THE CODE OF CRIMINAL PROCEDURE**", prepared by Sri Ishwar Dayal, Full-time Member of the Commission, was finally circulated to all the members of the Commissions and their views were invited thereon. The views on the Draft Report and Model Draft Bill was discussed. At a meeting of the Commission held **on July 12, 2011**. The Report of the Commission which has proposed certain amendments in the Ss 354 and 509 of the Indian penal Code and Ss 273, 327(2) of the Code of Criminal procedure and First- Schedule of the Code of Criminal Procedure, as per recommendations contained in Chapter-III of the Report, to be submitted to the State Government, has been finally settled, approved and signed by the Chairperson and members of the Commission at its meeting held **on August 02, 2011**.

1.36. We wish to express our appreciation for valuable services and assistance received from Sri Santosh Kumar Pandey, Secretary, of the Commission.

1.37. We also acknowledge the valuable services and assistance rendered by the other staff and officials of the Commission.

CHAPTER -II

LEGAL SCENARIO REGARDING OUR TRAINING OF MODESTY

2.1 **The Convention on the Elimination of All Forms of Discrimination against women was adopted by the United nations General Assembly on 18 December, 1979.** It entered into force as an international treaty on 3 September, 1981. The government of India has ratified the above resolution on **June 25, 1993.**

2.2 The Covention was the culmination of more than thirty years of work by the **United nations commission on the Status of Women**, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elinination of All Forms of discrimination against Women is the central and most comprehensive document.

2.3 Among the international human rights treaties, the convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, dignity, and worth of the human person, in the equal rights of men and women. The convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

2.4 In its preamble, the convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of e quality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the priniciple of equality by requiring States parties to take " all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (article 3).

2.5 As for as India is concerned **Part III of the Constitution of India** deals with the fundamental rights. These provisions enshrined in the Articles-12 to 35, which are applicable to all the citizens irrespective of religion, race, sex, caste, and creed. However there are certain provisions which protect the right of women. **Article 14** of the constitution guarantees to every person the right to equality before the law or the equal protection of the laws. **Clause (1) of Article 15** before the law or the equal protection of the laws. **Clause (1) of Article 15** prohibits the state from discriminating against citizen on grounds only of religions, race, sex, caste, place of birth or any of them. **Clause (2)** provides that no citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition. **Clause (3)** enacts that nothing in **Article 15** shall prevent the state from making any special provision for women and children.

2.6 Reading Clauses (1), (2) and (3) of Article 15 together it will follow that while there can be no discrimination in general on the ground of sex, special provisions in the case of women and children are permissible. Thus it would be no violation of Article 15 if institutions are setup by the state exclusively for women or places are reserved for women at public entertainments or public conveniences. **In Yusuf Abdul Aziz vs State of Bombay (AIR 1954 SC 321)** the special position given to women in regard to the offence of adultery was held valid under this Clause. Section 354 of IPC is not invalid because it protects the modesty only of women. These provisions of the constitution protect the rights of the women. Thus the Constitution of India guarantees to women all the rights, which are guaranteed to men.

2.7 **In government of A.P. Vs P.V. Vijay Kumar, AIR 1995 SC 1648**, the Apex Court gave a new dimension to Article- 15 (3) of the Constitution of India by holding that reservation for woman in State employment is also permissible under that provision notwithstanding separate provision in this regard under Article- 16.

2.8 Thus, framers of the Constitutions of India were very much aware of these problems since the inception of the Constitution and accordingly provisions were made to protect the rights of women and children, therein.

2.9 Against the growing social menace of sexual harassment of working women at the work places a three Judge Bench of the **Apex Court in Vishaka's case (Supra)** by a rather immovative judicial law making process issued certain guidelines after taking note of the fact that the present Civil and Criminal laws in the Country fo not adequately provide for specific protection of wmen from sexual harassment at places of work and that enactment of such a legislation would take a considerable time. Under these guidelines following definition of sexual harassment was also suggested:

" 2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- (a) Physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) Sexually coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non- verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might by visited if the victim does not consent to the conduct in question or raises any objection thereto".

2.10 **At the Fourth World conference on Women in Beijing**, the Government of India has also made an official commitment, to formulate and operationalize national policy on women.

2.11. This does not imply that there are no related laws in the Indian penal Code that may be evoked when a women is sexually harassed. However, these related laws are framed as offences that either amount to obscenity in public or acts that are seen to violet the modesty of women under sections 294, 354 and 509 of the Indian Penal Code, While section 294 of Indian Penal Code is a law applicable to both man and women, the sections 354 and 509 are speciafically oriented towards women. offences under section 354 and 509 have been classified and documented as 'crimes against women', in the Crime in india Reports published by the Crimes Records Bureau. The very classification of crimes act as a source that indicates the semantic shifts that have occurred in the articulation of sexual harassment, signifying the influence of the Indian women's movement and the global discourses on women's rights.

2.12 Here, we are concerned with sections 354 and 509 of the Indian penal Code having regards to the reference of Hon'ble High Court.

2.13 Now we would like to examine the provisions related to outraging of modesty of the women, whether they are adequate in its present form or not, and are sufficient to put a check on crimes on sexual violence against women and children as, at present, it is a grave issue befor the society and how to deal with it.

2.14 Term outraging of modesty is taken from section 354 of the Indian Penal Code which runs as follows:-

" s. 354. 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 eiber description for a term which may extend to two years, or with fine, or with both".

2.15. Hon'ble Supreme Court in the case of vidyadharan v state of kerala AIR, 2004 SC 536, has observed:

" **10.** In order to constitute an offence under section 354, IPC mere knowledge that the ,odesty of a woman is likely to be outraged is sufficient without any deliberate intention of hving such outrage alone for its object. There is no abstracts conception of modesty that can apply to all cases.

(See **State of Punjab V. Major Singh, AIR 1967 SC 63**). A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under S. 354 I.P.C. are as under:

- i. that the person assaulted must be a woman:
- ii. that the accused must have used criminal force on her, and
- iii. that the criminal force must have been used on the woman intending thereby to outrage her modesty.

11. Intention is not the sole criteria of the offence punishable under S. 354. I.P.C. and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her witness should receive same weight."

2.16 Now the question arises what is the modesty? What constitutes an outrage to female modesty is nowhere defined in the Indian Penal Code.

2.17 In **State of Punjab Vs Major Singh, AIR 1967 SC 63**, a question arose whether a female child of seven and half months old could be said to be possessed of "modesty" which could be outraged. In this case at about 9.30 pm the accused major Singh walks into the room where the baby was sleeping and switches off the light. He strips himself naked below the waist and kneels over her. In this indecent posture he gives vent to his unnatural lust, and in the process ruptures the hymen and causes a tear 3/4" long inside her vagina. In answering the above question the majority view was that "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". **Hon'ble Apex Court** further observed that:

"(16). 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 a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under S. 354. 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 anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section".

2.18 In **KANWAR PAL SINGH GILL V. STATE (ADMN., UT CHANDIGARH) THROUGH SECY. AND ANOTHER, (2005) 6 SCC 161**, ACCUSED A SENIOR IPS police officer (DGP at the time of incident), despite objection from a lady, a senior I.A.S. officer, gently slapping her on her posterior in the presence of guest at a dinner party, was found guilty of the offence punishable under sections 354 and 509 IPC. In this case to **Hon'ble Apex Court** followed the principle of modesty as held in **Major Singh case supra**.

2.19 The above position was also highlighted in **Raju Pandurang Mahale V. State of Maharashtra and another, AIR 2004 SC 1677**.

2.20 In **Ram Kripal V. State of Madhya Pradesh, JT 2007 (4) SC 393 Hon'ble Supreme Court** has defined the modesty in the following manner:

" 7 what constitutes an outrage to female modesty is nowhere defined in I.P.C. 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 female owing to her sex. The act of pulling a woman, removing her saree, 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 Dictionary (Third Edn.)** defines the word 'modesty' in relation to woman as follows:

"Decorous in manner and conduct ; not forward or lower; Shame -fast; Scrupulously chaste."

8. Modesty is defined as the quality of being modest; and in relation to 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. As observed **by Justice Patterson in Rex v. James Llyod (1876) 7 C & P 817**. In order to find the accused guilty of an assault with intent to commit a rape, court ,must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passion upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. **The point of distinction between an offence of attempt to commit rape and to commit indecent assault** is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her".

2.21 **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".

2.22 **In the Oxford English Dictionary (1933 Edn.)**, the meaning of the word ' modesty' is given as "womanly propriety of behavior ' 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".

2.23 **In Ramdas V. State of West Bengal, AIR 1954 SC 711** the accused was convicted for an offence under section 354 IPC by the Magistrate. Appeal filed by the accused against the conviction was dismissed by the Sessions Judge and High Court. A revision petition was also rejected by the High Court. Hon'ble Apex Court observed that " the truth appears to be that the appellant who had been travelling from Calcutta in a crowded compartment changed over to the compartment where there were only four passengers with a view to get sleeping accommodation. Finding all the three lowers berths occupied, he made an attempt

to forcibly occupy the seat on which P.W. 6 (victim) was lying with her babe. There was opposition from her, and in overcoming it, the appellant assaulted her". In this case Hon'ble Supreme Court while acquitting the accused/ appellant for the offence under section 354, convicted him under section 352 IPC. **Hon'ble Apex Court** held that "while the appellant was undoubtedly guilty of having assaulted P.W. 6 (victim) it can not be held that he did so with intent to outrage her modesty, or with the knowledge that it would be outraged. We, therefore, acquit the appellant of the charge under section 354, and substitute therefore a conviction under section 352 for assault".

2.24 **In the case of Madan Lal V. State of Jammu and Kashmir, AIR 1998 SC 386** Hon'ble Supreme Court has differentiated the offences of assault under section 354 IPC and attempt to commit rape under section 376 read with 511, IPC as follows:-

"12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her flat on the ground undresses himself and then forcibly rubs his erected penis on the private part of the girl but fails to penetrate the same into vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354, I.P.C. and not an attempt to commit rape under Section 376 read with 511, I.P.C. In the facts and circumstances of the present case the offence of an attempt to commit rape by accused has been clearly established and the High Court rightly convicted him under Section 376 read with 511, I.P.C. "

2.25 **In the case of Apparel Export Promotion Council V.A.K. Chopra, AIR 1999 SC 625,** delinquent a Superior Officer, found by departmental authorities to be guilty of molesting and of having tried to physically assault a subordinate female employee. The Disciplinary Authority agreeing with the report of the Enquiry Officer, imposed the penalty of removing him from service with immediate effect on 28-06-1989. In writ petition High Court set aside the dismissal order. **Hon'ble Supreme Court** held " The act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly

amounted to sexual harassment of Miss X and the punishment imposed by the appellant, was, thus, commensurate with the gravity of his objectionable behavior and did not warrant any interference by the High Court in exercise of its power of judicial review".

2.26. In the case of Tarkeshwar Sahu V. State of Bihar (Now Jharkhand), (2006) 8SCC 560, on 18-02-1998, at about 41.30 am, when the prosecutrix, aged about 12 years, came out of her house to answer the call of nature, the appellant forcibly took her to his Gumti for committing illicit sexual intercourse with her. The said Gumti of the appellant was only a few feet away from the house of the prosecutrix. The prosecutrix raised an alarm, and immediately thereafter several persons including father of the prosecutrix came from the adjoining houses and caught the appellant before he could even make any attempt to ravish the prosecutrix. The trial court convicted the appellant under section 376/511 IPC and sentenced him to seven years' rigorous imprisonment. Appeal filed by the appellant was dismissed by the High Court. **Hon'ble Apex Court** held that " we are of the opinion that crime committed by the accused was at initial stage of preparation. The accused had neither undressed himself nor even asked the prosecutrix to undress so there so there was no question of penetration. In the absence of any attempt to penetrate the offence committed does not come within the purview of offence punishable under sections 376/511 IPC. The offence committed squarely covers the ingredients of sections 366 and 354 IPC.

2.27. Hon'ble Apex Court in Tarkeshwar Sahu case (supra) has elaborately distinguished offences under sections 376, 376/511 and 354 IPC, in the following manner:

"Under Section 375 IPC, Six categories given therein are the basic ingredients of the offence. The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In absence of penetration to any extent would not bring the offence within the four corners of Section 375 of the Indian Penal Code. Therefore, the basic ingredients for proving a charge of rape are the accomplishment of the act with force. The other

important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. In order to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains.

In the absence of any attempt to penetrate the conviction under sections 376/511 IPC is wholly illegal and unsustainable.

So far as the offence under section 354 IPC is concerned, intention to outrage the modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.

The essence of a women'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 is an attribute associated with female human being as a class. it is a virtue which attaches to a female owing to her sex."

2.28. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady⁵

⁵ Rupal Deol bajaj V. Kanwar Pal Singh Gill, (1995) 6SCC 194

2.29 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 Sex⁶.

2.30 **In State of Kerala v. Hamsa, (1988) 3 Crimes 161 (ker) it was observed as under:**

" What the legislature had in mind when it used the word modesty in Sections 354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were created not only in the interest of the woman concerned, but in the interest of public morality as well. 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."

2.31. A well known author **Kenny in his book " Outlines of Criminal law⁷"** has dealt with the aspect of indecent assault upon a female. The relevant passage reads as under:

"In England by the Sexual Offences Act, 1956, an indecent assault upon a female (of any age) is made a misdemeanour and on a charge for indecent assault upon a child or young person under the age of sixteen it is no defence that she (or he) consented to the act of indecency."

2.32. In the light of the above discussions and various pronouncement of the **Apex Court and high Courts** main ingredients of the offence under section 375 punishable under section 376 IPC is penetration, while an attempt to penetrate constitute the offence under section 376/511 IPC and in the absence of any attempt to penetrate offence under section 354 IPC is made out, and intention to insult the modesty of a woman is the essential ingredient of the offence under section 509 IPC. It shows that these offences are somehow related to each other.

⁶ Major Singh lachhman singh V. State , AIR 1963 Punj 443(FB)

⁷ 19th Edn, Para 146, P. 203

2.33. Now the question arises whether the punishment prescribed under section 354 and 509 IPC is sufficient to put a curve on crimes of sexual violence against women and children.

2.34 As stated earlier offence under section 354 IPC is cognizable, bailable, and compoundable with the permission of the court and triable by the any Judicial Magistrate as summons case and punishable with imprisonment for two years, or fine or both. The offence under section 509 IPC is also cognizable, bailable and compoundable with permission of the court and triable by the any judicial Magistrate as summons case and punishable with simple imprisonment for one year or fine or both. it means that offences under both sections have no minimum punishment and under both offences only fine may also be imposed by the court.

2.35 First- Schedule to the Code of Criminal procedure reveals that section 324, 332 and 353 IPC which were bailable have been made non-bailable by the Code of Criminal Procedure (Amendment) Act, 2005 (Act No. 25 of 2005. They appears to be less grave offences, which have been made non-bailable, whereas section 354 IPC which is grave offence against the modesty of a woman is bailable. House trespass with preparation for causing hurt, assault etc. even when no hurt is actually caused punishable under section 452 IPC and triable by a Magistrate is a non- bailable offence. An offence of mere criminal intimidation without any actual assault punishable under section 506 IPC has been made cognizable and non-bailable in the State of U.P., vide notification dated 31.7 89. U.P. State Government has presented a draft ordinance to the Governor which has been reserved for the consideration of the President to amend the section 354 IPC with other provisions. As details of the Draft Ordinance is not known we do not think it proper to discuss and elaborate it at length or make any comment on its adequacy, but news papers report shows that section 354 IPC has been made non-bailable but still it is awaited to take a legal shape.

2.36 We would like to draw attention of the State Government that certain other States of India have already amended section 354 IPC, in the following manner:-

2.36.1. State of Andhra Pradesh, by Act 6 of 1991, has made the following amendment:

" 354. Assault or criminal force to woman with intent to outrage her modesty- whoever assault 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 five years but which may extend to seven years and shall also be liable to fine.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years".

2.36.2. By Act No. 3 of 1992, the First- Schedule to the Code of Criminal Procedure has also been amended in Andhra Pradesh and the offence has been made non-bailable and triable by a Court of Session.

2.36.3. State of Madhya Pradesh, by Act No. 14 of 2004, has inserted new section 354 A as follows:

After section 354, the following new section shall be inserted, namely-

"354 A. Assault or use Criminal force to woman with intent to disrobe her. - Whoever assaults or uses criminal force to any woman or abets or conspires to assault or uses such criminal force to any woman intending to outrage or knowing it to be likely that by such assault, he will thereby outrage or causes to be outraged the modesty of the woman by disrobing or compel her to be naked on any public place, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine."

2.36.4. The First- Schedule to the Code of Criminal Procedure has also been amended in Madhya Pradesh and the offence has been made non-bailable and triable by a Court of Session.

2.36.5 **State of Orissa, by Act No. 6 of 1995**, in the First Schedule to the Code of Criminal Procedure, 1973 in the entry under column 5 relating to section 354 of the Indian Penal Code, 1960 for the word 'bailable' the word 'non-bailable' has been substituted.

2.37. When crimes of sexual violence against woman and children are increasing we think that it is high time that the State of Uttar Pradesh should become more sensitive to this grave issue and consider imposing stringent punishment by amending sections 354 and 509 IPC and First - Schedule to the Code of Criminal Procedure for putting a check on such crime of sexual violence against women and children as per recommendations contained in the report.

2.38. **Sakshi case (supra)** has shown considerable concern for the woman or child victim of sexual violence, and has observed " The provisions of sub-section, would also apply in inquiry or trial of offences under Ss. 354 and 377, IPC. Deposition of the victims of offences under S. 354 and 377, IPC can at times be very embarrassing to them. The whole inquiry before a Court being to elicit the truth. It is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273, Cr.P.C merely requires the evidence to be taken in the presence of the accused. The section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-a- vis S. 273, Cr.P.c. is permissible. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. Whenever a child or victim of rape

is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section(2) of S. 327 Cr.P.C. should also apply in inquiry or trial of offences under S. 354 and 377, IPC".

2.39. **In Sakshi case (supra) Apex Court on 13.01.1998** referred the matter to the Law Commission of India for its opinion on the main issue raised by the petitioner, namely, whether all forms of penetration would come within the ambit of section 375 IPC or whether any change in statutory provisions need to be made, and if so, in what respect/ The Law Commission had considered some of the matters in its 156 Report and the relevant extracts of the recommendation made by it in the said Report, concerning the issue involved, were placed before the Court. Para 9.59 of the Report reads as under:

" 9.59. Sexual-child abuse may be committed in various forms such as sexual intercourse, carnal intercourse and sexual assaults. The cases involving penile penetration into vagina are covered under Section 375 of the IPC. If there is any case of penile oral penetration and penile penetration into anus, Section 377 IPC dealing with unnatural offences, i.e., carnal intercourse against the order of nature with any man, woman or animal, adequately takes care of them. If acts such as penetration of finger or any inanimate object into vagina or anus are committed against a woman or a female child, the provisions of the proposed Section 354 IPC whereunder a more severe punishment is also prescribed can be invoked and as regards the male child, the penal provisions of the IPC concerning 'hurt', 'criminal force' or assault as the case may be, would be attracted. A distinction has to be naturally maintained between sexual assault/use of criminal force falling under Section 354, sexual offences falling under Section 375 and unnatural offences falling under Section 377 of the Indian Penal Code. It may not be appropriate to bring unnatural offences punishable under Section 377 IPC or mere sexual assault or mere sexual use of criminal force which may attract Section 354 IPC within the ambit of 'rape' which is a distinct and graver offence with a definite connotation. It is needless to mention that any attempt to commit any of these offences is also punishable by virtue of Section 511 IPC. Therefore, any other or more changes regarding this law may not be necessary."

2.40. The Law Commission, in its response, did not accept the said request in view of Section 273 Cr.P.C. as in its opinion the principle of the said Section which is founded upon natural justice,

cannot be done away in trials and inquiries concerning sexual offences. the Commission, however, observed that in an appropriate case it may be open to the prosecution to request the Court to provide a screen in such a manner that the victim does not see the accused while at the same time provide an opportunity to the accused to listen to the testimony of the victim and give appropriate instruction to his counsel for an effective cross-examination. The law Commission suggested that with a view to allay any apprehensions on this score, a proviso can be place above the Explanation to Section 273 of the Criminal Procedure Code to the following effect:

"Provided that where the evidence of a person below sixteen years who is aggeded to have been subjected to sexual assault or any other sexual offence, is to be recorded, the Court may, take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring The right of cross - examination of the accused."

2.41. Section 327 of the Code of Crininal procedure which deals with the right of anaccused to an open trial was also a mended by addition of sub-section 2 and 3 after re-numbering the old Section as sub-section (1). Sub-section 2 and 3 of section 327 Cr.P.C. provides as follows:

"Section 327. Court to be open-

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376-A Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code shall be conducted in camera:

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.

(3) Where about proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court".

2.42 Sub-sections (2) and (3) of section 327 of the Code of Criminal Procedure are in the nature of exception to the general rule of an open trial. In spite of the amendment, however, it is seen that the trial courts either are not conscious of the amendment or do not realize its importance for hardly does one come across a case where the enquiry and trial of a rape case has been conducted by the court in camera. The expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub-section (2) of Section 327 Cr. P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc invariably 'in camera'. The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr.P.C. and hold the trial of rape cases in camera⁸.

2.43. In this regard, reference is invited to the observations of a **renowned expert "Susan Brownmiller, Against Our Will 1986"**. on the issue of sexual abuse:

"-----in rape----- the intent is not merely to "take", but to humiliate and degrade ----Sexual assault in our day and age is hardly restricted to forced genital copulation, nor is it exclusively a male-on-female offence. Tradition and biologic opportunity have rendered vaginal rape a particular political crime with a particular political history, but the invasion may occur through the mouth or the rectum as well. and while the penis may remain the rapist's favourite weapon, his prime instrument of vengeance---- it is not in fact his only tool. Stricks, bottles and even fingers are often substituted for the "natural" thing. And as men may invade women through other orifices, so too, do they invade other men. Who is to say that the sexual humiliatin suffered through forced oral or rectal penetration is a lesser violation of the personal, private inner space, a lesser injury to mind, spirit and sense of self?"

2.44. having regards to the various pronouncements of the Hon'ble Supreme Court and High Courts wherein certain directions have also been issued and our anxious thought to different reports of the Law Commission of India on the point .

⁸ State of Punjab V. Gurmeet Singh and others, AIR 1996 Sc 1393.

Particular Reports 41, 42, 84, 154, 156 and 172, we are of the view that sections 354 and 509 of the Indian Penal Code and sections 273 and 327(2) of the Code of Criminal Procedure and First- Schedule to the Code of Criminal Procedure are required certain amendments to make them more stringent, deterrent and effective in the present social scenario to protect the women and children from the menace of sexual offences against them, and will also put a check on such crimes, as per recommendations contained in the report in the later chapter.

CHAPTER-III

CONCLUSIONS AND RECOMMENDATIONS

3.1 In view of the discussion in the preceding chapters and Having regards to the various pronouncements of the Hon'ble Supreme Court and High Courts particularly Judgment and Order dated May 05, 2011, passed in **Criminal Writ Petition No. 8207 of 2011, Amit Kumar @ Mittal Vs State of U.P. & others, by the Hon'ble High court Allahabad**, wherein certain directions have also been issued and our anxious thought to different reports of the Law Commission of India on the point particularly Reports 41, 42, 84, 154, 156 and 172, we are of the view that sections 354 and 509 of the Indian Penal Code and sections 273 and 327 (2) of the Code of Criminal Procedure and First-Schedule to the Code of Criminal Procedure are required certain amendments to make them more stringent, deterrent and effective in the present social scenario to protect the women and children form the menace of sexual offences against them and will also put a check on such crimes.

3.2 Now the question arises what amendments should be made in the above sections of the Indian Penal Code and the Code of Criminal procedure to make them adequate and more effective to curve the sexual offences against the women and children.

3.3 **First we deal with sections 354 and 509 of the Indian penal Code.** In this regard para 9.35 of the 156th Report of law Commission of India runs as follows:

9.35 To deal with the issue of increasing sexual violence on women and female children, the law Commission recommends that the offence of sexual assault be added to the existing offence of outraging the modesty of women in section 354 and punishment be increased from two years to five years. Accordingly, section 354 be amended on the following lines:

" 354. Assault or criminal force to woman with intent to outrage her modesty- Whoever assault or uses criminal force to any woman, intending to outrage her, modesty or to commit sexual assault to her or knowing it to be likely that he will thereby outrage her modesty or commit sexual assault to her, shall be

punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine".

Expanding the scope of section 354 in the above manner, would in our view, cover the varied forms of sexual violence other than rape on women and female children.

3.4. The Law Commission of India is further of the view that the offence of eve teasing falls within the scope of section 509 and there is no need for a new section 376 F as recommended by the national Commission for Women. However, the Law Commission feels that the quantum of punishment be increased from 1 year to 3 year and fine. Accordingly, we recommend that section 509 be amended in the following manner:

"509. Word, gesture or act intended to insult the modesty of a woman.- 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 objects shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

3.5. The law Commission of India has proposed the aforesaid amendments in section 354 IPC. In which the words " her modesty or to commit sexual assault to her" and words " or commit sexual assault to her" her has been added in the present section 354 IPC. It has also increased the punishment from two years to five years.

3.6. As stated earlier in Chapter-II in the State of Madhya Pradesh, a new section 354 IPC has been inserted and punishment has been made not less than one year, but which may extend to ten years and fine. Offence has also been made non-bailable and triable by a Court of Session. In the State of Andhra Pradesh punishment for offence under section 354 IPC has been made not less than five years, which may extend to seven year and fine, for adequate reasons lesser sentence may be imposed, but which must not be less than two years. It has also been made non-bailable and triable by a Court of Session. While in the State of Orissa offence under section 354 IPC has been made non-bailable. As per news paper report (Annexure-I& II)

in the State of U.P. offence has been made non-bailable vide a draft Ordinance (Ordinance has been reserved for consideration of the President), which has not taken a legal shape, so far.

3.7 After going through aforesaid State amendments and Report of Law Commission of India and keeping in mind the gravity of offence, the Commission is of the view that punishment under section 354 IPC should be increased and a minimum punishment should also be prescribed, and offence be made non-bailable and triable by a Court of Session. First- Schedule to the Code of Criminal procedure be also amended accordingly. Accordingly, we recommend that by state amendment for existing section 354 of the Indian penal Code, the following section shall be substituted, namely:

" 354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults **or abets or conspires to assault** or uses criminal force to any woman, intending to outrage **her modesty by disrobing or compel her to be naked on any public place or commit sexual assault to her** or knowing it to be likely that he will thereby outrage her modesty **or commit sexual assault to her**, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine."

3.8 Law Commission of India has also proposed aforesaid increased punishment for offence under section 509 IPC, i.e. punishment is increased from one year to three years and fine. In 172nd Report also the Law Commission of the India has recommended same punishment under para 7.2.7 of its Report. In this regard para 47.8 of Vol. 1 of 41st Report of Law Commission of India runs as follows:

"47.8 Offence under section 509 to be cognizable.- A State Government has suggested that the offence of intentionally insulting the modesty of a woman by word or gesture punishable under section 509 of the Penal Code, should be made cognizable so that in the changed social circumstances of the day, when women are coming out in larger numbers and taking greater part in various professional and business activities, they may have a sense of security. The States of Madhya Pradesh, Maharashtra and Mysore have already amended this

item in the second Schedule making the offence cognizable. We agree that the amendment should be made in the code so as to be of all- India application."

3.9 Under these circumstances the Commission is of the view that punishment under section 509 IPC should be increased and a minimum punishment should also be prescribed, and offence be made non-bailable and triable by a Magistrate of First- class. Accordingly, we recommend that section 509 be amended in the following manner:

Amendment of Section 509

In the section 509, for the words " shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both", the words " shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine which shall not be less than Rupees five thousand" shall be substituted."

3.10 Now we deal with the amendment of provisions under section 273 and 327 (2) of the Code of Criminal procedure and First- Schedule to the Code of Criminal Procedure.

3.11 As stated earlier in **Sakshi case (supra) Hon'ble Apex Court** referred the matter to the Law Commission of India. The Law Commission, in its response, did not accept the said request in view of Section 273 Cr.P.C. as in its opinion the principle of the said Section which is founded upon natural justice, cannot be done away with in trials and inquiries concerning sexual offences. The Commission, However, observed that in an appropriate case it may be open to the prosecution to request the Court to provide a screen in such a manner that the victim does not see the accused while at the same time provide an opportunity to the accused to listen to the testimony of the victim and give appropriate instructions to his counsel for an effective cross-examination. The Law Commission suggested that with a view to allay any apprehensions on this score, a proviso can be placed above the Explanation to Section 273 of the Criminal Procedure Code to the following effect:

"Provided that where the evidence of a person below sixteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the Court may, take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused⁸".

3.12 In Sakshi case (supra) Apex Court has issued the following directions:

" 34. (1) The provisions of Sub-section (2) of Section 327 Cr.P.C. shall, in addition to the offences mentioned in the sub-section , would also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

- (i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
- (ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

The directions are in addition to those given in **State of Punjab v. Gurmit Singh**".

3.13 We think it will be proper to reproduce section 273 of the Code of Criminal procedure which runs as follows:

" **273. Evidence to be taken in presence of accused.**- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation.- In this section, " accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

3.14. In this regard **in Sakshi case (supra) Hon'ble Apex Court has observed as follows:**

" 31. The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-à-vis Section 273 Cr.P.C. has been held to be permissible in a recent decision of this Court **in State of Maharashtra v. Dr. Praful B desai**⁹. There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are hand- maiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties."

3.15 As per recommendations of the Law Commission of India and having regards to the directions given by the **Apex Court in Sakshi case (supra)**, and certain observations made therein, the commission is of the view that before Explanation to section 273 Cr.P.C, a proviso can be placed, to allay any apprehension on this score. Accordingly, we recommend that in section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely:

⁹ (2003) 4SCC 601

" Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that a screen or some such arrangement are made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused while at the same time ensuring the right of cross examination of the accused".

3.16 Now we will deal with section 327 (2), of the Code of Criminal Procedure, which deals with camera proceeding of offences mentioned therein. In this regard, **Hon'ble supreme court in Sakshi case (supra)**, has observed:

" The provisions of the sub-section (2) of section 327, Cr.P.C. should also apply in inquiry or trial of offences under sections 354 and 377 IPC".

3.17 As stated earlier in Chapter-II this issue has also been discussed elaborately by the Apex Court **in State of Punjab V. Gurmeet Singh, 1996(2) SCC 384 and had highlighted importance of provisions of section 327(2) and (3), Cr.P.C.** and a direction was issued not to ignore the mandate of the aforesaid provisions.

3.19. After going through aforesaid decisions of the Apex Court and reports of the Law Commission of India on the point, the commission is of the view that sub-section (2) of section 327, Cr.P.c. should also apply in inquiry or trial of offences under sections 354, 377 and 509 IPC. Accordingly, we recommend that sub-section (2) of section 327 Cr.P.C. should be amended in the following manner:

Amendmen6 of Section 327

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters " trial of rape or an offence under section 376, section 376-A , section 376-B, section 376-C or section 376-D of the Indian Penal Code", the words, figures and letters" trial of rape or an offence under section 354,

section 376, section 376-A, section 376-B, section 376-C, section 376-D, Section 377 or section 509 of the Indian Penal Code ", shall be substituted.

3.20 As stated earlier the offence under section 354 IPC has been recommended as, cognizable, non-bailable and triable by a Court of Session, and offence under section 509 has been recommended as cognizable, non-bailable and triable by a Magistrate of First- class, therefore Commission is of the view that First- Schedule to the Code of Criminal Procedure be also amended accordingly.

3.21 Accordingly, we recommend that First- Schedule to the Code of Criminal procedure, under the heading " **1- OFFENCES UNDER THE INDIAN PENAL CODE**", should be amended, in the following manner:-

Amendment of First Schedule

In its application to the State of Uttar Pradesh in the first Schedule to the Code of Criminal Procedure, under the heading "1- OFFENCES UNDER THE INDIAN PENAL CODE",-

(i) for the existing entries relating to section 354, the following entries shall be substituted, namely:-

Section	Offence	Punishment	Cognizable or Non-Cognizable	Bailable Non-Bailable	By what Court triable
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Imprisonment not less than two years but which may extend to ten years and fine.	Cognizable	Non-Bailable	Court of Session

(ii) for the entries relating to section 509, the following entries shall be substituted, namely:-

Section	Offence	Punishment	Cognizable or Non-Cognizable	Bailable Non- Bailable	By what Court Triable
509	Uttering any word or making gesture intended to insult modesty of a woman, etc.	Imprisonment of not less than two years which may extend to five years and fine of not less than Rs. 5000/-	Cognizable	Non-Bailable	Magistrate First- Class

3.22 We recommend accordingly.

(Justice V.C. Misra)
Chairman

(Prof. Balraj Chauhan)
Member (Part-time)

(Ishwar Dayal)
Member (Full-time)

The times of India, wednesday, June 22, 2011

Maya tightens law to make UP safer for women CrPC To be Amended Soon

TIMES NEWS NETWORK

Lucknow : Facing heat over a string of atrocities against women over the past few days, Chief Minister Mayawati swung into damage control mode and announced a slew of legal measures to make things tougher for sexual offenders in UP. A poll-bound Maya also slammed the opposition for using misfortune and misery of women to settle political scores.

She will hold a meeting of top officials on June 27 to assess the situation and launch a month-long drive at the local police station level to curb crimes against women, she said. The state government is amending sections 437, 439 and 354 of the Cr.P.C. to make securing bail more difficult in a rape case and make molestation a non-bailable offence. The ordinance has been sent to the governor for formal clearance.

While sympathizing with victims and their families the CM did not miss the chance to hit out at the opposition parties for distorting facts under a conspiracy to malign the government ahead of the 2012 elections. Maya especially targeted the Samajwadi Party and recalled how her initiative to allow registration of FIRs not entertained during the SP rule resulted in 10,000 formal complaints, 1,460 of them were FIRs filed by women. She added that this figure did not include victims who were too shy to make their experience public.

The Chief minister also sought explanation from chief secretary Anoop Mishra for his statement to the media which allegedly made light of the situation. I am convinced that Mishra is incapable of such irresponsible utterance unlike Shivpal Yadav who dismissed the Nithari murders as trivia or a central minister who said that he did not possess a magic wand to arrest inflation, she said.

Armed with statistics from the national crime record bureau, the CM quoted higher crime figures in Congress and BJP ruled states. In Andhra Pradesh, sexual assaults were at 1.4%, in Assam 5.3% and MP it is 4.2%, Delhi reports 2.6%. In UP the figure is 0.9% she said.

Those crating such a hue and cry about the failed law and order here must also realize that UP happens to be the most populous state in the country. Therefore, the crime rate will also be automatically higher here. And the Samajwadi party she said, had absolutely the moral authority to point as accusing finger.

Five more rape cases reported

Despite all the hue and cry raised over the spurt in cases of crime against women, five more cases of rape came to light on Tuesday. While a minor was raped and murdered in Sitapur, two separate cases of rape were reported from Hathras and Hardoi, in Baghpat, a minor daughter of a Central Reserve Police Force (CRPF) personnel committed suicide after being raped by two local youths. In Aligarh, a woman accused a police constable and his aide of raping her. The first incident was reported from Sitapur, where one Salma, 12, (name changed) was allegedly raped and gagged to death late in the afternoon. P4

दैनिक जागरण

लखनऊ बुधवार, 22 जून, 2011

<h2>छह माह में मिलेगा इंसाफ</h2> <h3>बलात्कार की घटनाएं रोकने को सरकार गंभीर</h3>		
<p>लखनऊ, 21 जून (जागरण ब्यूरो) : बलात्कार से जुड़े मुकदमों का फैसला अब सिर्फ छह महीने में होगा । बलात्कार के आरोपी को तब तक जमानत नहीं मिलेगी, जब तक वह यह साबित न कर दें कि वह दोषी नहीं है और महिलाओं की शीलभंग से जुड़े सभी अपराध अब गैर जमानती हो जाएंगे । प्रदेश में बलात्कार और महिलाओं से छेड़छाड़ की बढ़ती घटनाओं के मद्देनजर राज्य सरकार ने सरकार मंगलवार प्रक्रिया संहिता (सीआरपीसी) और भारतीय दंड संहिता (आइपीसी) संबंधित धाराओं में संशोधन का फैसला किया है । इसका अध्यादेश भी मंगलवार को राज्यपाल को भेज दिया गया ।</p> <p>विधि विशेषज्ञों का कहना है कि सीआरपीसी और आइपीसी में बदलाव के लिए राष्ट्रपति की मंजूरी जरूरी होती है । ऐसे में राज्यपाल इसे राष्ट्रपति को संदर्भित कर देंगे । राष्ट्रपति से मंजूरी मिलने के बाद यह नए प्रावधान राज्य में लागू हो जाएंगे ।</p> <p>सीआरपीसी और आइपीसी की धाराओं में संशोधन करने के निर्णय की जानकारी मुख्यमंत्री मायावती ने एक प्रेस कान्फ्रेंस में दी । उन्होंने कहा कि कानून में इस संशोधन से महिलाओं के खिलाफ अपराध करने वाले असमाजिक तत्वों के मन में डर पैदा होगा और अपराध कम होंगे । राज्य सरकार ने सीआरपीसी और आइपीसी में संशोधन करने का जो निर्णय किया है, उसके तहत सीआरपीसी धारा 235 में उपधारा एक जोड़ी जा रही है, जिसके जरिए यह प्राविधान किया जाएगा कि बलात्कार के मुकदमों का फैसला छह महीने के अंदर हो जाए ।</p>	<h3>होगा कानून में संशोधन</h3> <ul style="list-style-type: none"> निर्दोष राबित न होने तक आरोपी को जमानत नहीं आईपीसी, सीआरपीसी की धाराओं में संशोधन का अध्यादेश राज्यपाल को भेजा मुख्यमंत्री 27 को करेगी पुलिस और प्रशासनिक अधिकारियों के साथ बैठक <p>मुख्यमंत्री के अनुसार महिलाओं का शोभंग करने के अपराध में संबंधित आइपीसी की धारा 354 में संशोधन करते हुए, शीलभंग के सभी कृत्यों को गैर जमानती अपराध घोषित कर दिया गया है इसी तरह बलात्कार के आरोपी की जमानत आसानी से न हो, इसके लिए दंड प्रक्रिया संहिता की धारा 4 और 437 में संशोधन किया जा रहा है ।</p> <p>27 जून को अधिकारियों के साथ बैठक: मुख्यमंत्री ने बताया कि बताया कि 27 जून को सभी जिलाधिकारी, पुलिस कप्तान, मंडलायुक्त, आइजी रंज एवं डीआइजी की एक बैठक लखनऊ में बुलाई गई है । इन अधिकारियों को महिलाओं के खिलाफ होने वाले अपराधों को रोकने के लिए एक माह तक आगियान चलाने का निर्देश दिया जायेगा । चरित्रहीन व्यक्तियों की सूची</p>	 <h3>मुख्य सचिव से जवाब तलब</h3> <p>लखनऊ: 21 जून : बलात्कार की घटनाओं पर मुख्यसचिव अनूप मिर का कथित तौर पर यह कहना कि ऐसी छिटपुट घटनाएं तो होती रहती हैं, उनके लिए परेशानी का सबब बन गया है । मायावती ने इस पर मुख्य सचिव से लिखित स्पष्टीकरण मांगा है ।</p> <p>मुख्यमंत्री ने कहा है कि किसी भी अफसर का इस तरह बयान देने को वह उचित नहीं मानती हैं ।</p> <p>—पेज—11</p> <p>सुधारने का प्रयास किया जाएगा इसके बाद भी यदि ऐसे लोगों का व्यवहार नहीं बदला तो उनके खिलाफ कड़ी कार्रवाई की जाएगी ।</p> <p>(संबंधित खबरें पेज -11)</p>

प्रेषक,

एस0के0 पाण्डेय,
सचिव,
उ0प्र0 राज्य विधि आयोग,
लखनऊ।

सेवा में,

श्री के0के0 शर्मा,
प्रमुख सचिव,
न्याय एवं विधायी,
उ0प्र0 शासन,
लखनऊ।

संख्या- रा0वि0आ0- 1336/2011

दिनांक: 21.07.2011

महोदय,

मुझे यह कहने का निदेश हुआ है कि, **Criminal Miscellaneous Writ Petition No. 8207 of 2011**, अमित कुमार उर्फ मित्तल बनाम उत्तर प्रदेश राज्य एवं अन्य में माननीय उच्च न्यायालय इलाहाबाद, की खण्डपीठ द्वारा पारित निर्णय व आदेश दिनांक 09.05.2011, जिसकी प्रति उ0प्र0 राज्य विधि आयोग के साथ-साथ महोदय को भी अनुपालन हेतु भिजी गयी है, के अनुपालन में धारा-354, भारतीय दण्ड संहिता में आवश्यक संशोधन हेतु शोध कार्य आयोग द्वारा किया जा रहा है। इसी मध्य यह ज्ञात हुआ है कि राज्य सरकार द्वारा धारा- 354 भारतीय दण्ड संहिता आदि विभिन्न प्राविधानों को संशोधित करने हेतु एक अध्यादेश जारी किया गया है।

आयोग द्वारा किये जा रहे उक्त शोधकार्य के फलस्वरूप शासन को प्रस्तुत की जाने वाली रिपोर्ट में उक्त अध्यादेश द्वारा किये गये संशोधन का उल्लेख आवश्यक है।

अतः अनुरोध है कि उक्त अध्यादेश की एक प्रति आयोग को उपलब्ध कराने की कृपा करें, जिससे मा0 उच्च न्यायालय के आदेश के अनुपालन में आयोग द्वारा रिपोर्ट प्रस्तुत की जा सके।

सादर।

भवदीय,

(सन्तोष कुमार पाण्डेय)
सचिव

THE UTTAR PRADESH STATE LAW COMMISSION

MODEL BILL FOR

TENTH REPORT - 2011

ON

**AMENDMENT OF SECTIONS 354 AND 509 OF THE INDIAN PENAL
CODE AND SECTIONS 273 AND 327(2) OF THE CODE OF CRIMINAL
PROCEDURE AND FIRST-SCHEDULE TO THE CODE OF CRIMINAL
PROCEDURE**

THE UTTAR PRADESH STATE LAW COMMISSION
MODEL BILL FOR
TENTH REPORT - 2011
ON
AMENDMENT OF SECTIONS 354 AND 509 OF THE INDIAN PENAL
CODE AND SECTIONS 273 AND 327(2) OF THE CODE OF CRIMINAL
PROCEDURE AND FIRST-SCHEDULE TO THE CODE OF CRIMINAL
PROCEDURE.

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The Criminal Law (Uttar Pradesh Amendment) Bill, 2011

A

Bill

Further to amend the Indian Penal Code and Code of Criminal Procedure, 1973, in its application to the State of Uttar Pradesh.

IT IS HERBY enacted in the Sixty- second year of the Republic if India, as follows:

CHAPTER-1 PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may called the Criminal Law (Uttar Pradesh Amendment) Act, 2011.
- (2) It shall extent to the whole of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may by notification in the official Gazette appoint.

CHAPTER-II AMENDMENT OF THE INDIAN PENAL CODE

2. Amendment of section 354

for the section 354, the fallowing section shall be substituted, namely:-

" **354. Assault or criminal force to woman with intent to outrage her modesty.-** Whoever assaults or abets or conspire to assault or uses criminal force to any woman, intending to outrage her modesty by disrobing or compel her to be naked on any public place or commit sexual assault to her to be naked on any public place or commit sexual assault to her be naked on any public place or commit sexual assault to her or knowing it to be likely that he will thereby outrage her modesty or commit sexual assault to her, shall be punished with imprisonment of either description for a term which shall not be

less than five years but which may extend to ten years and shall also be liable to fine".

3. Amendment of section 509

In the section 509, for the words " shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both", the words " shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine which shall not be less than Rupees five thousand" shall be substituted.

CHAPTER- III

AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE, 1973

4. Amendment of section 273

In section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely:-

" Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that a screen or some such arrangements are made where the victim or (who may be equally vulnerable like the victim) do not see the body or face of the accused while at the same time ensuring the right of cross examination of the accused".

5. Amendment of section 327

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters " trial of rape or an offence under section 376, section 376-A, section 376-B, section 376-C or section 376-D of the Indian Penal Code ", the words, figures and letters" trial of rape or an offence under section 354, section 376, section 376-A, section 376-B, section 376-C , Section 376-D, Section 377 or section 509 of the Indian Penal Code", shall be substituted.

6. Amendment of First Schedule

In its application to the State of Uttar Pradesh in the First Schedule to the Code of Criminal Procedure, under the heading " 1- OFFENCE UNDER THE INDIAN PENAL CODE".-

(i) For the existing entries relating to section 354, the following entries shall be substituted, namely:-

Section	Offence	Punishment	Cognizable Non-Cognizable	Bailable Non-Bailable	By what Court triable
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Imprisonment of less than five years but which may extend to five years and fine.	Cognizable	Non-Bailable	Court of Session

(ii) For the entries relating to section 509, the following entries shall be substituted, namely:-

Section	Offence	Punishment	Cognizable Non-Cognizable	Bailable Non-Bailable	By what Court triable
509	Uttering any words or making any gesture intended to insult the modesty of a woman etc.	Imprisonment not less than three years but which may extend to five years and fine of not less than Rs. 5000/-	Cognizable	Non-Bailable	Magistrate First-Class

