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THE MODESTY PARADOX: DECONSTRUCTING THE PATRIARCHAL FRAMEWORK OF SECTION 79 BNS

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ABSTRACT

This article critically examines Section 79 of the Bharatiya Nyaya Sanhita², 2023 (formerly Section 509³ of the Indian Penal Code), which criminalizes acts intended to insult the modesty of women. Through a doctrinal analysis of statutory provisions and judicial precedents, it identifies three core flaws in India's sexual harassment jurisprudence. First, the BNS continues to rely on the term "modesty", an undefined concept rooted in Victorian notions of feminine chastity, creating ambiguity. Second, the gender-specific nature of the provision violates constitutional equality by excluding men, transgender persons, and LGBTQ+ individuals from protection. Third, the morality-based framework dilutes harassment's reality, framing it as a violation to honour rather than violation of bodily autonomy. This research proposes a paradigm shift towards a dignity and bodily integrity-based framework grounded in Article 21. It advocates for gender-neutral protection that places individual autonomy and human dignity at the core, addressing sexual harassment as a human rights violation rather than a moral transgression.

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² Bharatiya Nyaya Sanhita, No. 45 of 2023, § 79 (India)

³ Indian Penal Code, No. 45 of 1860, § 509 (India).

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KEYWORDS: Section 79 BNS, Section 509 IPC, outraging modesty, judicial interpretation, gender-neutrality, feminist legal theory, sexual harassment, legal reform.

RESEARCH OBJECTIVES:

1. To critically examine the judicial interpretation of "modesty" and legal tests developed under Section 79 BNS, tracing their evolution through landmark judgments and identifying inconsistencies.
2. To analyse the gendered limitations in the provision and demonstrate how it excludes men, transgender persons, and LGBTQ+ individuals from legal redress, thereby violating constitutional principles of equality under Articles 14 and 15.
3. To evaluate the application of 79 BNS/Section 509 IPC in digital and online contexts, examining how courts have adapted colonial-era provisions to address contemporary forms of cyber harassment and virtual outrages to modesty.
4. To distinguish between "general insult" and "insult to modesty" by analysing the legal tests applied by courts.
5. To deconstruct the patriarchal roots of the "modesty" framework by examining how judicial reasoning reinforces Victorian notions of chastity and feminine virtue.

RESEARCH METHODOLOGY:

This research is qualitative, analytical, and descriptive in nature. It is qualitative, focused on analysing judicial reasoning, statutory language, and conceptual frameworks rather than quantitative data. Analytical, critically examining legal principles, identifying contradictions, and proposing theoretical alternatives. Descriptive, documenting the evolution and current state of legal interpretation

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regarding modesty-based offences. The study is based on the following methods of analysis:

1. **Doctrinal Analysis:** Examining statutory text, legislative intent, and essential ingredients of Sections 509 IPC/79 BNS.
2. **Case Law Analysis:** Extracting legal principles (*ratio decidendi*), tracing chronological evolution (1967-2025), categorizing cases thematically (by acts, context, outcomes), and analysing judicial reasoning patterns.
3. **Critical Feminist Analysis:** Deconstructing judicial discourse for patriarchal assumptions, examining how "modesty" is ideologically constructed, and analysing power dynamics in legal frameworks.
4. **Comparative Analysis:** Contrasting modesty-based vs. dignity-based frameworks and traditional vs. digital contexts.
5. **Gap Analysis:** Identifying legal exclusions (men, LGBTQ+ persons) and inadequacies in addressing contemporary harassment forms.

Limitations

Scope: focus primarily on Indian case laws; limited comparative analysis with other jurisdictions.

Temporal: limited judicial interpretation available on Section 79 BNS.

Methodological: doctrinal research cannot capture lived experiences of survivors or empirical data on conviction rates.

Access: analysis was limited to reported judgments available in legal databases.

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INTRODUCTION:

Under Indian law, Sections 74⁴ and 79 of the Bharatiya Nyaya Sanhita deal with the offences involving the concept of 'modesty of a woman'. The BNS has incorporated almost identical provisions that existed under the Indian Penal Code (IPC), 1860 (the erstwhile Indian criminal law). Therefore, to understand the offence of outraging modesty, the interpretations of related provisions of the IPC will serve as a useful guide.

Section 74 BNS or 354 IPC⁵ prescribes the punishment for outraging the modesty of a woman by an act of assault or the use of criminal force. Section 79 BNS or 509 IPC, making punishable even a verbal attack of insulting the modesty of a woman, addressing eve-teasing. The law does not necessitate physical contact; mere intention and execution of an act offending a woman's modesty are sufficient. The essence of this section lies in the intent behind the act.

This article analyses the judicial interpretation of "modesty", the distinction between general insult and insult to modesty, the provision's gendered limitations, its application to online contexts, and proposes a paradigm shift toward a dignity and bodily integrity-based framework aligned with constitutional values. Through systematic case law analysis, this research demonstrates that the current framework: (1) relies on undefined and subjective concepts linked to public morality rather than individual dignity; (2) excludes men, transgender persons, and LGBTQ+ individuals from legal protection, violating constitutional equality principles; and (3) applies paternalistic and protectionist approaches that deny women's agency.

Section 79 BNS provides that "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or

⁴ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 74 (India).

⁵ *Indian Penal Code*, No. 45 of 1860, § 354 (India).

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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 three years, and also with fine".

The essential ingredients of Section 79 BNS are as under:

- i. Intention to insult the modesty of a woman;
- ii. The insult must be caused by;
 - a. uttering any words, 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
 - b. intruding upon the privacy of such a woman.

Section 79 identifies two essential components for establishing an offence: first, the presence of an intention to insult the modesty of a woman, and second, the manner in which this insult is perpetrated. While this appears doctrinally clear, judicial application reveals conceptual instability.

SCOPE AND JUDICIAL EXPANSION:

The scope of this section is broad, covering a range of behaviours from verbal insults to non-verbal gestures and privacy intrusions, safeguarding women against various non-physical but equally degrading acts. It has dealt with acts outraging women's modesty via gestures, words, letters⁶, and even emails.

In *Abhijeet.J.K vs State Of Kerala*⁷, the Kerala High Court observed that "Section 509 I.P.C criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act." The petitioner followed the

⁶ *Emperor v. Tarak Das Gupta*, 1925 SCC OnLine Bom 28 (Bom.).

⁷ *Abhijeet J.K. v. State of Kerala*, 2020 SCC OnLine Ker 703 (Ker.).

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complainant on a motorcycle and invited her to accompany him, making sexual gestures to the victim lady with the middle finger of his hand. The court dismissing the quashing petition, held that acts allegedly committed by the petitioner, considered in the light of the facts of the case, prima facie, it can be found that his intention was to insult the modesty of the victim lady. The acts allegedly committed by the petitioner amount to an affront to her feminine decency. Such acts could be perceived as capable of shocking the sense of decency of the victim lady,

*State of Tamil Nadu v. Suhas Katti*⁸, the court recognised that acts capable of insulting a woman's modesty can be committed through electronic means, including emails and online posting, and upheld convictions under both the IPC and the IT Act. This marked an early judicial acknowledgment that colonial-era provisions could extend to digital spaces.

This approach was reaffirmed by the Bombay High Court, which refused to quash proceedings under Sections 354, and 509 IPC read with Section 67 of the IT Act.⁹ The Court extended the scope of Section 509 IPC to include written and electronic communications, emphasising that the protection of a woman's modesty should adapt to contemporary forms of communication. The court emphasized that statutory interpretation must evolve with the modes of communication to ensure continued protection. The Court observed:

"Interpretation must correspond to societal transformations and re-evaluate legal principles to ensure fairness, justice, and equity."

These decisions demonstrate the judiciary's willingness to adapt Section 509 IPC to contemporary forms of communication and the added words "in any form" in Section 79 BNS clearly shows the legislature's intent as well. However, this

⁸ *State of Tamil Nadu v. Suhas Katti*, C.C. No. 4680/2004 (Chief Metro. Mag. Ct., Egmore, Nov. 5, 2004)(India).

⁹ *Joseph Paul De Sousa v. State of Maharashtra*, 2024 SCC OnLine Bom 2719 (Bom.).

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expansion remains technological rather than conceptual, retaining a morality-based framework ill-equipped to address the lived realities of harassment.

JUDICIAL CONSTRUCTION OF 'MODESTY':

In *State of Punjab vs. Major Singh*¹⁰ a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. The learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. It emphasized that a woman's modesty, rooted in her sex, is an inherent attribute which she possesses regardless of her age or intelligence. The learned Sessions Judge and two of the three learned Judges of the High Court who heard the appeal against the decision of the Sessions Judge were of the view that a child seven-and-a-half-month-old being incapable of having a developed sense of modesty, the offence was not punishable under section 354. The third learned Judge, Gurdev Singh, J., however, took a different view. He quoted the meaning of the word "modesty" given in the Oxford English Dictionary (1933 Edn.)- which is, "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in men or women) reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions". In other words, modesty referred to the "accepted notions of womanly behaviour and conduct", not the notions of the woman against whom the offence was committed. Further, the High Court judge tied the notion of modesty to "public morality and decent behaviour."

Interestingly, the then Chief Justice of India Amal Kumar Sarkar gave a dissenting opinion, holding that such a young female could not be said to possess womanly modesty. The differing interpretations of modesty by the Punjab High Court and the Supreme Court and even between the judges of the same Supreme Court Bench indicate the varied meanings that one may ascribe to 'modesty', leading to further

¹⁰ *State of Punjab v. Major Singh*, AIR 1967 SC 63 (India).

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ambiguity in the absence of a legal definition. However, the majority view was that the essence of a woman's modesty is her sex and every female from her very birth possesses the modesty which is the attribute of her sex.

The Apex Court in the case of *Ramkripal v. State of Madhya Pradesh*¹¹ has discussed the essence of a woman's modesty. The relevant portion of the judgment has been reproduced as under:

"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 females as a class. It is a virtue which attaches to a female owing to her sex..."

JUDICIAL TESTS FOR OUTRAGING MODESTY:

Sarkar C.J. did not support Justice Gurdev Singh's views as per which modesty have to be decided according to the prevalent notions of modesty in the society. Such notions may be different for a child and for a mature woman, hence these notions would have to be decided separately in each case. Thus, according to him the test applied should be of a reasonable man. On the other hand, Justice Mudholkar held 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 act must fall within the mischief of this section."

The majority held the woman's reaction to be irrelevant, recognising the varied nature of a woman's sense of her modesty. The court observed that 'if the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned. This would be impossible to prove in the large majority of cases.' It would follow that if the

¹¹ *Ramkripal v. State of M.P.*, (2007) 11 SCC 265 (India).

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intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant.

Thus, the common test is whether a reasonable man would perceive the act as "suggestive of sex" and likely to outrage modesty, based on societal standards and common understanding, not whether the woman felt her modesty was outraged. A reasonable person, considering the circumstances and the woman's characteristics, should assess whether the accused intended to or knew that the act was likely to outrage the woman's modesty. Therefore, emphasis is on the intent or knowledge of the accused and the reaction of the woman is not the decisive factor.

The Supreme Court while discussing the test for outraging the modesty of a woman under Section 509 in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*¹², observed that:

"From the dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case it appears to us that the ultimate test for ascertaining whether modesty has been outraged, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman." The Supreme Court reaffirmed this view in *Raju Pandurang Mahale v. State of Maharashtra*¹³ (2004).

Arguably, the test laid down by the Supreme Court has ended up creating more ambiguity by introducing vague and subjective terms such as 'decency.'

GENERAL ABUSE VS INSULT TO MODESTY:

An illustrative case that demonstrates the thin line between general insult and insult to modesty is *Varun Bhatia v. State & Anr*¹⁴ wherein, the complainant, a woman

¹² *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 (India).

¹³ *Raju Pandurang Mahale v. State of Maharashtra*, (2004) 4 SCC 371 (India).

¹⁴ *Varun Bhatia v. State*, 2023 SCC OnLine Del 5288 (Del.).

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accused her superior officer of using the term 'Gandi Aurat', which she claimed outraged her modesty. However, the Delhi High Court held that the accused did not possess the necessary intent or knowledge to reasonably anticipate that his words would trigger such intense emotional reaction so as to amount to an outrage to her modesty. The judgment further clarified that merely using the term 'Gandi Aurat' in isolation, without any preceding or succeeding words, gestures, or actions, would not attract the provisions of Section 509 of IPC.

In *Madhushree Datta v. State of Karnataka*¹⁵, the Supreme Court held that the use of "filthy language" does not amount to outrage of modesty under Section 509 of IPC. The complainant alleged that her employment was forcefully terminated and her colleagues reprimanded her using "filthy language." She claimed that her modesty was outraged. The Karnataka High Court refused the accused person's plea to quash proceedings. The Supreme Court set aside the High Court's order. It held that in light of the employer-employee relationship between appellants and complainant, existing dispute between them relating to the employment, and "filthy language" in isolation without any context or accompanying words, does not suggest intent to outrage the modesty of a woman, and does not fall within purview of Section 509 IPC.

In *Shashi Bala v. NCT of Delhi and ors.*¹⁶ The court, regarding the alleged word "saali," observed that this is generic abuse and at best, amounts to use of derogatory language, but lack the sexual connotation or suggestive element required to bring them within the ambit of Section 509 of IPC.

These decisions delineate a clear judicial boundary that general insults, even if offensive, fall outside the purview of Section 509 IPC, unless they are accompanied by deliberate intent to outrage modesty or sexual connotation or suggestion having the effect of outraging modesty.

¹⁵ *Madhushree Datta v. State of Karnataka*, (2025) 3 SCC 612 (India).

¹⁶ *Shashi Bala v. State (NCT of Delhi)*, 2025 SCC OnLine Del 6017 (Del.).

PROBLEMATIC JUDICIAL REASONING:

In the Shashi Bala case, the Delhi High Court has delivered a significant judgment ruling that calling a woman "r***i" constitutes an offence under Section 509 of the IPC, now Section 79 BNS. The allegations levelled by the petitioner were that the principal, along with respondent nos. 2 to 4, had subjected her to indecent remarks, abusive language, and shameful gestures. With respect to the accused Hari Kishan who had allegedly called the complainant "r** *i", the court was of the opinion that such an expression cannot be regarded as a mere abuse or a casual insult, it would prima facie fall within the ambit of Section 509 IPC. The court held the word to be laden with sexual innuendo, directly imputing unchastity to her. It specifically attacks a woman's character by questioning her sexual dignity and portraying her as of loose moral character. Such a term attacks her very status as a woman. A similar view was taken in State Vs Vikrant Grewal @ Vikky.¹⁷

Similarly, in a judgment by the Delhi District Court in State v. Hemant @ Jeet¹⁸, affirmed that using the word "Haram" with sexually suggestive undertones amounts to impugning the woman's character and dignity, and falls under the purview of Section 509 IPC. The words uttered by the accused are that " haram ka maal le k aa gayi hai, kitno se karwa ke aai hai". The court observed that this word implies that the woman is disloyal. Secondly, the words " Kitno se karwa ke aai hai" is not a simple insult but it directly hits at the sex of a woman and casts an aspersion on her character. The words also mean that she is engaged in sexual intercourse with various people. Hence, the court held that the words spoken by the accused intended to insult the modesty of complainant.

In Shrikrushna v. State¹⁹, the Bombay high court held that throwing a love chit containing poetic verses, albeit extremely, purely written, on a 'married' woman

¹⁷ State v. Vikrant Grewal, 2025 SCC OnLine Dis. Ct. (Del.) 29.

¹⁸ State v. Hement @ Jeet, Judgment dated May 17, 2025 (Dist. Ct., Central Dist., Tis Hazari Courts, Delhi).

¹⁹ Shrikrushna v. State of Maharashtra, 2021 SCC OnLine Bom 2932 (Bom.).

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constituted an outrage to modesty. The court observed that modesty of a woman is her 'most precious jewel' and there cannot be a straightjacket formula to ascertain whether modesty is outraged.

This reasoning becomes untenable when applied to women whose conduct or life choices do not confirm to dominant moral standards. if modesty is outraged because words portray a woman as possessing "loose moral character" or "unchastity," what happens when the victim is a sex worker? Would courts hold that she lacks the very moral virtue, chastity, and sexual propriety that the law purports to protect?

The law does not protect women's dignity as autonomous human beings with bodily integrity; rather, it protects an abstract notion of feminine virtue. This highlights the paternalistic and protectionist approach wherein the man is the protector and the woman is the modest victim, who is to be protected, reducing them to a subordinate position. This view denies people of other genders legal redress. The State lacks the framework within which women's bodies are not further regulated or pressurized.

The Shrikrushna judgment is problematic on multiple levels. The court's observation of modesty as a woman's "most precious jewel" reinforces Victorian notions that a woman's value lies in sexual purity that can be tarnished or lost. Further, the court's emphasis on the woman being 'married' suggests that married women possess heightened modesty requiring greater protection, and reinforces patriarchal notions of married women as husband's property. The conduct should be analysed not through "shocking decency" test but as unwelcome advances, persistent harassment, and intrusion upon privacy, as violations of bodily autonomy and the right to dignity and privacy.

It is important to understand that real harm is not to modesty but to the woman's autonomy. The law should recognize that continued contact after expressed disinterest constitutes harassment not because it offends feminine virtue, but because it violates individual autonomy and creates hostile, unsafe environments.

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These cases reveal that judicial reasoning is rooted in morality-based assessments of sexual propriety rather than dignity-based recognition of individual autonomy.

DOCTRINAL AMBIGUITY AND NEED FOR REFORM:

The fundamental ambiguity in Section 509 IPC/ 79 BNS is apparent in an unresolved question: whose modesty matters? It is unclear whether modesty is the victim's subjective sense of shame (impossible for an infant to possess), society's objective standards of feminine behaviour (courts would have to interpret each woman's modesty in every case), or an inherent attribute of female sex (essentialising women and denying agency). This vagueness allows arbitrary application.

This ambiguity has produced three competing tests. Test 1 (Chief Justice Sarkar, Major Singh) applies a "Reasonable Man" standard based on prevalent societal notions. Test 2 (Justice Mudholkar) relies on "Common Notions of Mankind," holding that acts "clearly suggestive of sex" fall within the section's scope. Test 3 (Rupan Deol Bajaj v. K.P.S. Gill) applies a "Shocking Sense of Decency" standard, asking whether the act could be perceived as "capable of shocking the sense of decency of a woman." The "Reasonable Man" gives rise to the question- why should male perspective determine whether a woman's modesty is outraged? Why not "reasonable woman"? This test centres male perception, marginalising women's lived experiences.

Moreover, these tests are inherently subjective. What amounts to "shocking sense of decency" varies depending on whose perspective is taken and which social standards (conservative/ progressive, patriarchal/feminist) are applied. Similarly, "common notions of mankind" is vague and raises the question of whose notions are treated as common. Replacing the undefined idea of "modesty" with equally vague terms like decency, common notions, and suggestive of sex only deepens the ambiguity instead of resolving it.

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By tying modesty to "sex" as its "attribute", possessed from birth, the majority in *Major Singh* suggest that modesty is inseparable from the female being. This has the effect of linking women's legal protection to an undefined virtue tied to their existence. The reasoning is that modesty equals an attribute of female sex; females possess modesty; therefore, women have modesty because they are women. This explains nothing about what modesty actually means.

Further, it excludes men and persons belonging to LGBTQ+ community, denying that modesty could be gender-neutral. Such exclusion fails the test of reasonable classification under Article 14²⁰, as there exists no intelligible differentia between genders in experiencing sexual harassment. It is assumed that a man's 'modesty' cannot be outraged, for their sexuality is inviolable. This negates the possibility of abuse of men, while reaffirms that there is nothing 'harrowing' about those instances, for it is the body of a woman which when violated signifies a 'dent' in the family name and honour. Also, the entire discussion regarding 'modesty' has no reference to the LGBTQ+ community.

CONCLUSION:

This doctrinal analysis of Section 79 BNS and Section 509 IPC reveals a fundamental contradiction. While the Constitution guarantees dignity, bodily autonomy, and equality, sexual harassment law remains anchored in Victorian notions of feminine chastity and public morality. This research establishes the urgent need for a dignity and bodily integrity-based framework aligned with constitutional values.

The traumatic experiences of women are diluted by the very language that aims to capture the abuse. When law describes abuse as conduct that 'outrages the modesty' or 'insults' women, it gives the impression that it merely 'offends' women, while diminishing the harassment as an act of violation and expression of power. Therefore, sexual harassment must be understood as violation of dignity, privacy

²⁰ INDIA CONST. art. 14.

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and bodily autonomy. Even after the J.S. Verma Committee Report suggested the use of gender-neutral terms like sexual assault, unwelcome advances, and violation of bodily integrity, the word 'modesty' has neither been removed nor defined in these Sections. Thus, courts applying the BNS should interpret these provisions in line with constitutional principles and the recommendations of the Justice Verma Committee, instead of reinforcing colonial notions. Such an approach would bring clarity, reduce arbitrary interpretations, and move towards a blanket gender-neutral legislation against harassment. A shift from modesty to dignity would not only align sexual harassment law with constitutional values but also render it more inclusive, objective, and responsive to contemporary forms of harm.

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