

## TEXT AND DISCOURSE STUDY ON CRIMINAL LAW

### Abstract

A text and discourse study on criminal law delves into the intricate linguistic and communicative dimensions of legal discourse within the context of criminal justice. This study explores how language constructs, interprets and communicates the complex web of rules, rights, and responsibilities that constitute the foundation of criminal law. The studies of discourse in the field of law are itself a very complex paradigm, the understanding of legal textology is one of the few options that most of the time falls on the list of ignorance. This is one of the reasons why there is such vast ambiguity present in this field compared to others, most legal practitioners do not seek to practice corpus juris over the legal language in which they operate on a daily basis. This legal mechanism has been subjected to interpretation but without a passive understanding of the story behind it, every law professional works on the technique but not on the history. Now this paper will focus on the two branches of criminal law those are CRPC and IPC and the section that we are going to deal with is 354, 354(A, B,C,D) of IPC, corresponding sections of CRPC. Beyond mere linguistic analysis, the study delves into the discourse surrounding criminal law. It dissects how legal arguments are constructed, how evidence is presented, and how language is used to persuade judges, juries, and other stakeholders. It scrutinizes the rhetoric employed to construct narratives, the framing of issues, and the implications of linguistic choices on the outcomes of legal proceedings. Most importantly this text creates a bridge between a common people and a lawyer yet enables and becomes a common medium to find the route to justice. Consequently, this paper will try to portray the importance of text behind the law, especially in the field of criminal law, the complex matrix of language its application in

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the field of advocacy ultimately  
understanding the entire legal field from  
different perspectives.

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## I. INTRODUCTION

The spectrum of provisions within the Criminal Procedure Code (CrPC) concerning the modesty of women unveils a journey through history, heralding the transformation of legal and societal paradigms. These sections, including Section 154, Section 157, Section 161, Section 164, Section 173, Section 190, Section 200, Section 202, Section 227, Section 228A, Section 229, Section 231, Section 233, Section 313, and Section 327, narrate a story of evolution, accountability, and empowerment. At its core, Section 154, the First Information Report (FIR), is a pivot of change. Its emergence in legal annals marked an end to the arbitrary exercise of power by authorities. This section ushered in transparency, rendering the government's actions visible to the public eye. By facilitating the recording of information about cognizable offenses, including those related to women's modesty, it transcended mere documentation, becoming a cornerstone of accountability and action. The Criminal Procedure Code, 1973, commonly referred to as the CrPC, 1973, establishes the procedures for pre-trial investigation, trial, and post-trial procedures for any offense that is criminal in nature. Thus, the Code establishes a bridge between the offense committed and the punishment or penalty given for it in the Indian Penal Code, 1860. The first Criminal Procedure Code came into effect in India in 1882 and was later amended from time to time to meet the needs of the country. Earlier, there was no such uniform procedural code for the whole of India, which was one of the major reasons for this code's development. The Code was first amended in 1898 and again on the recommendations of the 41<sup>st</sup> report of the Law Commission of India in 1973.

## II. LITERATURE REVIEW

In general, if we look into this perspective of text and discourse study on criminal law and its delving into genres one thing is clear language in law influences the way it is to be preserved and worked with. A vast influx of amendments has made it clear that due to time processes, it is the language of the law that needed to be reformed not the actual law cause from the very start law has been similar but the way it has been expressed changed its applicability and usage. Many researchers have done their research work in this field but most of them went away along with the technicality of the language and linguistics, they mostly emphasized what is law? What is language? There are various ways to understand them. etc. It becomes quite complex when you try to interpret the studies of philosophers and the vagueness they left on their texts because we are trying to interpret what is not constant and getting new definitions or meaning every single minute, it's been used. So, this entire paper is going to have a retrospective impulsion on the theory of the study of linguistics but won't limit itself to the language but will act as the guide that will help to understand how this text is critical and be advantageously used for protecting the modesty of a woman, men in the society it will also try to array down the understanding of this entire concept of phallogocentric dominance the rule of phallus and the victims of the others of our cultural society. Lastly, this paper will provide the insight text and its importance in the field of law and how specifically it deals with certain provisions like sections 354,354a,354b,354c, and 354d.

- 1. Historical Background on Section of IPC:** Sections 354A, 354B, 354C, and 354D of the Indian Penal Code (IPC) deal with various aspects of sexual harassment, assault, and stalking offenses. These provisions were enacted as part of law changes aimed at addressing and prosecuting crimes against women as well as safeguarding their safety and

dignity. Section 354 of the Indian Penal Code (IPC) is an important component of the legal system geared towards addressing gender-based offenses since it protects the dignity and personal integrity of women. The Indian Penal Code (IPC), enacted in 1860 during British colonial control, was a thorough effort to combine and codify many criminal laws that ruled the Indian subcontinent. Section 354 arose as a response to the necessity for legislative safeguards that protected women from assault and indecent behavior in the environment of the time.

Section 354's historical context reflects the cultural norms and attitudes common in the nineteenth century. Section 354 of the IPC seeks legal safeguards against activities that might jeopardize a woman's modesty and honor. Section 354 can be traced back to nineteenth-century society's values and legal ideas. During that time, British colonial officials sought to establish an exhaustive criminal code that could be enforced universally across India's many regions and people. British legal conceptions and practices, as well as historic native customs and laws, impacted the code. This clause gave women legal redress if they were subjected to unwanted approaches, obscene gestures, or efforts to offend their modesty. The passage of Section 354 signified a fundamental movement in the legal system toward recognizing and addressing women's rights and protection. While guided by British legal concepts, the IPC also recognized indigenous conventions and practices. Through the years, cultural developments, advocacy activities, and a rising awareness of equality between sexes led to IPC revisions and additions, such as Sections 354A, 354B, 354C, and 354D, which address particular types of assault and molestation against women. These amendments demonstrate the government's dedication to constantly enhancing laws designed to prevent gender-specific offenses.

- 2. The Intent Behind IPC Section 354: A Legal Provision:** From ancient times until now, it has been seen that many crimes have happened against women to harm their dignity. However, there are many psychological factors that can be used to explain why a woman reacts with such a strong sense of wrath when her modesty is violated. Her view of modesty is influenced by cultural standards, her upbringing, and the impact of body image. Immodesty may arouse vulnerability and shame, particularly if she feels objectified. Additionally, her many readings of events are influenced by her personal values and conservative ideas. Also, fear of judgment, power dynamics, media influence, past traumas, and peer pressure can contribute to a woman's fury at having her modesty violated. At the time of the enactment of the IPC in 1860, Indian society faced countless challenges, like acts of violence based on gender and the absence of proper legal solutions for women who were victims of these offenses. In the colonial period, social norms and cultural practices often failed to offer ample protection or remedies to women against harassment and assault. Section 354 of the IPC was there originally when the IPC was inaugurated, and the purpose behind it was to provide a legal regime for addressing crimes with respect to modesty and harassment, which has remained relevant as the law has adapted to existing challenges. Therefore, the addition of this section was an effort to offer women a legal means of seeking justice in situations where their modesty had been infringed, with the intention to tackle actions upon it. After the criminal law amendments (2013), the nature of offenses has changed, and the ambit of Section 354 has been amplified with the placement of Sections 354A, 354B, 354C, and 354D, which encompass such offenses as sexual harassment, and assault on a woman with the intention to disrobe, voyeurism, and stalking, respectively. The law acknowledges that women

should be able to live their lives unbound from the terror of unwanted advances and actions that may infringe on or violate their personal space and modesty. Furthermore, this section and its clauses provide remedies in cases where their modesty has been outraged so as to empower women in need of justice and may approach the court to hold offenders accountable for their actions. This section also contributes to social change that rejects demeaning behavior and promotes an admiring and equitable society.

- 3. Section 354 States That:** *"Assault or criminal force on a woman with intent to outrage her modesty. — Whoever assaults or uses criminal force against 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 a fine, or with both."* [1]

In the case, *The State of Punjab v. Major Singh* [2], the core ingredients of section 354 of the Indian penal code are explained. The relevance of this case resides in how it pertains to the legal comprehension of Section 354 of the IPC, emphasizing the importance of purpose and context in assessing whether the offense is proven. The main question before the Supreme Court was how to interpret Section 354 and the obligation to prove the offense. It is not essential to demonstrate that female modesty was truly violated. The court emphasized that an attack or use of criminal force against a woman with the purpose of offending the woman's modesty is enough to establish the offense. Whoever employs illegal force on her with the purpose of offending her modesty commits a crime punishable under Section 354. The accused's responsible intent is at the heart of the case.

Section 354B deals with the offense of assault or use of criminal force on a woman with intent to disrobe her. Section 354C is intended to tackle the invasion of a woman's private space or the undermining of her modesty when photos of her intimate moments are obtained without her agreement and subsequently exploited to breach her personal space or compromise her modesty. The provision recognizes the value of an individual's sovereignty over their own body and private moments, and it tries to empower victims of such invasive activities with legal remedies. Section 354D acknowledges the emotional anguish and potential injury caused by unwelcome, prolonged scrutiny and interaction. The section's goal is to keep people from feeling frightened, abused, or intruded upon as a result of an individual's unwanted approaches and surveillance. Prior to the inclusion of Section 354 in the Indian Penal Code (IPC), offenses against the modesty and dignity of women were mainly dealt with under Section 509 and Section 323. A word, gesture, or act intended to insult the modesty of a woman, which came under Section 509 of the IPC, was utilized in circumstances when somebody used abusive language, made crude remarks, or assaulted a lady with words meant to diminish her modesty and dignity. This may involve verbal abuse, harassment, or public humiliation. These activities, while not involving physical contact, were intended to create a hostile or offensive atmosphere for the lady. Punishment for Voluntarily Causing Hurt under Section 323 Though this clause mainly pertains to bodily harm, it has been used on occasion concerning offenses against women's modesty and dignity, particularly where the conduct caused damage or impairment. In particular scenarios, physically injuring a woman may be followed by verbal abuse or unpleasant behavior meant to offend her modesty. Officials may employ Section 323 in conjunction with other applicable laws to treat the whole offense completely.

#### 4. Comparison Among the Different Sections:

- **Section 354A:** Unwanted sexual touches, advances, or remarks are all considered sexual harassment under IPC Section 354. In a similar vein, Title VII, a federal statute that forbids workplace harassment, and state legislation both cover sexual harassment in the United States.
  - **Section 354B:** Discusses cases where someone assaults someone or uses force on someone with the purpose of forcing a woman to strip off her clothing. Similar laws exist in various nations that make it illegal to commit violent acts or attacks with the intention of stripping a victim, frequently falling under different penal regulations depending on the legal system of the country.
  - **Section 354C:** The abovementioned section deals with voyeurism, which includes the unlicensed recording or video of a woman engaging in a private activity with the intention of protecting privacy and discouraging the unlicensed broadcast of intimate content. Many countries, like the United Kingdom, the United States, Canada, and others, have similar laws that make it illegal to engage in "revenge porn" or share explicit images without authorization.
  - **Section 354D:** This section deals with stalking and outlaws persistent, unwanted communication that makes a woman feel scared or distressed. Numerous nations, particularly Western nations like the United States, the United Kingdom, and Australia, have stalking laws. These rules make it unlawful to repeatedly approach, bother, or pursue someone notwithstanding their indicated preference.
5. **Relevant Sections:** If section 354 along with its umbrella terms 354 A, B, C, and D were to be rescinded, there are abundant sections of the IPC that may cover relevant offenses or topics about the protection of women's honor and safety. Section 509, including clause A (insult to modesty), altogether criminalizes words, gestures, or acts done intentionally to demean a woman's modesty. This provision may apply to the actions of a stalker that are offensive to a victim's modesty. Sections 503 and 506 address criminal intimidation, which may apply when a stalker makes threatening or frightful statements. It can be applicable if the actions outline the practice of intentionally sowing fear of harm or slander that induces fear or unease in a woman. In the case of sexual harassment (including the terms stalking, voyeurism, violence, insult, etc.), the IPC has several sections that address such crimes under Sections 503-511. The rape rules mentioned in Section 375 deal with sexual actions without consent and, while distinct from offenses involving modesty, may be applicable in situations regarding the use of force or violence against women. Under Sections 499 and 500, when false claims are made that harm a woman's reputation or sense of modesty, defamation laws may come into play.
6. **The Ambiguity in the Philosophy of Law:** This particular section, even after the amendment of 2013, fails to provide equal protection between individuals as it is a gender-biased concept safeguarding women only against crimes, ignoring the fact that men might be victims of similar offenses. The burden of proof lies on the prosecution, and it might be difficult to establish the intent to offend modesty in a court of law. It has been discussed whether Section 354 and other IPC sections like Sections 354A (sexual

harassment) and 354D (stalking) overlap. To make sure that each section handles specific offenses, clarification may be required. The section might not explicitly address situations where a woman may be assaulted, but the act is consensual. This raises questions regarding whether an act that is mistakenly regarded as voluntary under this provision might be considered an infraction. Misusing this section by women out of their own interests, which is happening often nowadays, may result in the punishment of innocents.

- 7. Physiological Interpretation of CRPC in relation to IPC:** The historical backdrop of these provisions reveals a heteronormative society that marginalized cases concerning women, particularly their privacy. This historical bias painted women as inconsequential. However, time unfolded a metamorphosis. Reforms emerged, igniting a seismic shift in societal perspectives. Women's voices resonated louder, cases gained recognition, and a once-dismissed realm assumed significance. In the backdrop of cognizable and non-cognizable offenses, each section sketches a distinct purpose. Section 157, delineating the procedure for investigation, was envisaged to ensure a seamless quest for justice. Yet, this "outlined procedure" often casts a shadow of harassment upon victims and those intertwined in the legal web. The saga of these sections reverberates with multifaceted significance. They transcend their legal veneer, embodying instruments of change, accountability, and empowerment. These sections obliterate the shadows of obscurity, as they steer investigations, underscore the rights of individuals, and demand the meticulousness of government officers. India is a country where female gods are worshipped, and the sacred texts provide verses that say that in places where females are worshipped and given respect, gods reside there. But in reality, a contrasting effect can be observed where women have been subjected to humiliation, disrespect, torture, and sexual harassment since ancient times. Before British laws were enforced in India, the country was governed by the religious laws given in the scriptures. There was no uniformity in laws and legal procedures. The first codification of criminal laws, which would have the same effect across the country, came into force on January 1, 1862. The code was named 'The Indian Penal Code, of 1860'. The topic being discussed in this paper is all about using criminal force and assault with the intention to outrage the modesty of women under Section 354, IPC, 1860. Later, in the year 2013, the Criminal Law (Amendment) Act, 2013, inserted Sections 354A, 354B, 354C, and 354D into the act.

While the historical echoes may resonate, these sections stand as beacons of transformation, propelling justice into the limelight of transparency and equity. While dealing with such a diverse and complicated piece of work it is to be kept in mind that every single aspect of this work makes up the whole binding of law so we cannot give less importance to any of the topics that will act as a backdrop to the entire study. Reflecting to which The major statements that are given in section 354 of the Indian Penal Codetalk mainly about female modesty but is it only the females who are harassed this day, The purview of sec 354 will be very constrained if we talk prospect. In the corridor of justice, the resonance of fairness echoes through Section 202. This provision dons the robe of balance, giving rise to a preliminary inquiry. Before the gavel strikes the summons or warrant, Section 202 calls for a moment of introspection. In the days of yore, complaints were met with swift action, a summons cast as swiftly as a die. Yet, the dawn of Section 202 reframed the canvas. An inquiry ensues, led by the guardians of law, to sift through the grains of veracity. This provision is the judiciary's way of ensuring the seeds of justice fall on fertile ground. It checks the rash march to summon and takes the torch of inquiry in hand, illuminating the path to justice with a careful examination of facts.

Behind the veil of Section 227, a Magistrate dons the robes of discernment. This provision sketches the contours of prudence, enabling the Magistrate to ascend the dais of discretion. The pages of history whisper tales of its genesis – a response to the clamor for a safeguard against the unmerited march to trial. Section 227 is the sentinel stationed at the gates of justice, tasked with evaluating the legality and gravity of accusations. The section weaves a cloak of protection, shielding the accused from the storm of baseless allegations. It offers a lens for judicial introspection before the curtain of trial is drawn, holding the scales of justice with steady hands. With the entry of Section 313, the courtroom transforms into a stage for dialogue. This section summons the accused to the stand, inviting them to recount their narrative. The historical roots of this interaction reach deep, aiming to create an intersection of voices in the realm of justice. Section 313 wears the garb of inquiry, affording the accused a chance to be heard, to share their perspective, and perhaps to shed light on the shadows of doubt. It is a spotlight on the canvas of justice, illuminating the contours of the accused's mind while inviting them to engage with the tapestry of truth. One of the spotlight sections is 161, this section talks about the examination of the witness. Why am I considering it one of the spotlight sections?

- **Section 354, IPC, 1860:** Section 354 of the Indian Penal Code, 1860 was in the original draft of the main text. The current provision that stands in the code today is a result of various amendments made to the main source document. The first schedule of the Code of Criminal Procedure, 1973 states the offense under this section is a cognizable, non-bailable offense triable by any Magistrate and punishable with one to five years of imprisonment and/or with a fine.
- **Section 354A**
- **Section 354B**
- **Section 354C**
- **Section 354D**

8. **CrPC and its Relevancy to the Above Sections:** The Code of Criminal Procedure, 1973 lays down the procedural aspect of criminal law. Thus, to understand the above-mentioned sections and to reach the ending point, there is no other way but to follow the path laid down by CrPC. This document or code distinguishes offenses into Cognizable and Non-Cognizable offenses. The definitions are given in S. 2(c) and 2(l) of the code. The Code provides further provisions related to the pre-trial proceedings which basically begin with a complaint or First Information Report (FIR) at the police station leading to the initiation of the entire process of investigation, taking into cognizance all the matters by the magistrate, arrest (if any), trial and finally pronouncement of judgment.

The Code of Criminal Procedure, 1973, does not specifically classify criminal case proceedings into pre-trial, trial, or post-trial proceedings, but it is a mere interpretation of the code that makes the proceedings classified into these different parts. Upon thorough interpretation, we can conclude that the provisions of what is being referred to as the post-trial proceedings in this paper and the provisions related to them are contained mainly in the following chapters of the Code: Chapter XXVII (The Judgment), Chapter XXVIII (Submission of death sentences for confirmation), Chapter XXIX (Appeals), Chapter XXX (Reference and Revision), Chapter XXXI (Transfer of criminal cases), and Chapter XXXII (Execution, suspension, remission and commutation



of sentences). India follows the reformatory theory of punishment. This theory seeks to change the mind of the person who has committed a crime and has been convicted and given punishment and bring him back to the normal world, where he can again live as a law-abiding citizen. It is the mind that, under the influence of certain factors and situations, goes on to make a person commit a crime. Thus, changing the mind of the convicted is the main objective.<sup>1</sup>

Because most of the time the actual merit of the cases can be judged through the examination procedure where the witnesses are made to speak up the truth of the matters, utilizing this process many a time a case is formulated totally in the opposite direction to that of the real incident, this section has been threat to real victims through intimidation and harassment, framing false narrative, tampering with evidence and advantage to the influencers by delaying justice, misdirecting focus, lacking accountability. Section 161 can potentially be a double-edged sword, both aiding investigations and enabling manipulation. Its misuse can undermine the interests of real victims, threaten justice, and provide undue advantages to powerful individuals. Legal reforms, transparency, and accountability mechanisms are crucial to mitigate these risks and ensure a fair and just investigative process. This section empowers Judicial Magistrates to record confessions and statements. It ensures the credibility and legality of these statements by conducting them in a controlled and impartial environment. Section 164, the let's talk about After the investigation, the police submit a report under this section to the Magistrate. The report contains the investigation findings, evidence, and recommendations for further legal action. The delivery of justice can be then ensured through section 170. Now the further section Section 190: Magistrates are empowered to take cognizance of offenses. They have the authority to begin legal action based on police reports, complaints, or other credible information, section 200: This part allows Magistrates to question the complainant and witnesses, ensuring that their voices are heard and their viewpoints are taken into account during the trial. Section 228A: This clause protects the identification of victims of certain offenses, preserving their dignity and shielding them from unwarranted exposure. Section 229: In cases involving many charges stemming from a single occurrence, this section allows charges to be consolidated into a single trial, encouraging efficiency. Section 231: During the trial, this section orchestrates the order of production and examination of prosecution witnesses, ensuring a systematic presentation of evidence. Section 233 wields the brush of consolidation, enabling the court to conduct a joint trial for several offenses committed in the course of a single transaction. This provision harmonizes the proceedings, presenting a unified narrative and reducing legal complexity. Lastly, Section 327 ushers the trial into an open arena. It mandates that the trial of any offense be conducted in an open court unless otherwise provided. This transparency ensures that justice is not only served but also perceived as such, fostering trust in the legal process.

## 9. Case Commentary:

**Case Title:** Gurmit Singh v. State of Punjab 1996<sup>2</sup>

**Date:** August 1, 1996

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<sup>1</sup>Kakoli Nath, *Theories and types of punishment in India*, Finology Legal (August 24, 2023, 9:49 pm), <https://blog.finology.in/Legal-news/theories-of-punishment#:~:text=There%20are%20various%20theories%20of,Retributive%20Theory>

<sup>2</sup>1996 AIR 1393, 1996 SCC (2) 384

The case focused on how Section 354 of the IPC should be interpreted and applied. Gurmit Singh was found guilty of violating a woman's modesty by employing criminal force under Section 354 of the Indian Penal Code (IPC). The accused was accused of molestation after the alleged crime, which involved him caressing the victim's waist without getting her permission.

- **Definition of Modesty:** It was made clear that "modesty" should be interpreted in light of current social norms and standards from the victim's point of view. One individual's idea of modesty might not be the same as another's.
- **Criminal Intent:** The court emphasized that the intention of the accused to offend the woman's dignity is a crucial component of the offense under Section 354. If an act constitutes a legal offense, intent is a key factor to consider.
- The significance of the woman's lack of permission as a key factor in determining whether an action qualifies as assault under Section 354 of the Penal Code To ensure that a person's private boundaries are safeguarded, consent is important.
- The court pointed out that any unwanted physical interaction or attempt that infringes on a woman's dignity and solitude may constitute a violation of Section 354 of the Criminal Code.

The decision of the court emphasized the significance of safeguarding women's privacy and dignity while also advancing our comprehension of the act that violates Section 354 of the Criminal Code.

### III. LIMITATION

This paper has not been able to cover a vast part of the history related to the section dealt herein, there has been a shortage of infield studies of the topic.

### IV. CONCLUSION

This entire arena of anything starts from communication to reading breath with language, text, and blink with interpretation. So, the study of this discourse will help us to create a broader understanding of the course and withhold the essence of it, the exploration of criminal law from the perspective of language unveils the power of precise terminology, semantics, and syntax in shaping the interpretation and application of the law. This linguistic scrutiny becomes especially crucial in cases involving women's modesty, where nuances of language can profoundly impact the perception of events and the legal outcomes. As legal systems progress, the integration of technology and modern communication tools further influences the discourse on criminal law. Digital spaces facilitate the dissemination of legal knowledge, enabling broader participation and informed discussions. However, they also raise concerns about misinformation and ethical considerations in legal communication. The study of text and discourse in criminal law, in essence, reveals a dynamic interplay between language, power, and justice. It emphasizes the significance of exact linguistic analysis in comprehending legal writings, as well as the relevance of inclusive, culturally sensitive, and egalitarian discourse in creating legal interpretations and reforms. Scholars, practitioners, and society at large contribute to a more just and informed criminal justice system by critically scrutinizing legal terminology and engaging in meaningful debates.

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