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Voyeurism: A Need for Amendment

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ABSTRACT

This research paper aims to make the readers aware about the crime of voyeurism, which is increasing day by day, but most of the people are not aware about it, and those are having knowledge they hesitate in registering the case if they are the victim of the case. There is a need for the amendment in the voyeurism laws in Bharat to make social media safe for the citizens of our country.

This research paper contains the introduction of the voyeurism, research methodology used in this research paper, jurisprudential aspect of the subject matter which contains various provisions and punishment given by the law.

Moreover, it contains content, classification, supporting case laws, final finding and results, suggestive measures to cure, and lastly the conclusion of the same.

Keywords: Peeping tom, LGBTQIA+, electronic voyeurism, morphed, photoshop.

I. INTRODUCTION

Nowadays a journal, newspaper, news channels, social media, are full of the news and stories of the crimes committed against women in Bharat, be it a posting the MMS of the studying girl in the medical college of Kerala which is shown in the movie *The Kerala Story*, or the scandals in which actress private videos are leaked on internet, the list goes on.

Instead of the declining of crime with the development of the country in the sector of education, awareness, special provisions made for the upliftment of some women, there is increase of the crime which shows the harsh reality of the society.

One of such crimes is **voyeurism**. The word voyeur is derived from the Latin word *voir* which means “to see”. Voyeurism is a practice under which an individual gain sexual pleasure by secretly observing or watching the others while they are indulge in any type of private act like naked or involved in some sexual or intimate activity like bathing, changing clothes, wearing only undergarments or in simpler words any type of private act in which person in having belief that nobody is watching them. The person committed voyeurism is known as “*voyeur*” or “*peeping tom*”.

Moreover, voyeurism not only related to the women but the other gender communities too like

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men, LGBTQIA+ which signifies Lesbians, Gays, Bisexuals, Transgenders, Queers, Intersexes, Asexuals and many more. There is 72+ genders living in the world.

Unfortunately, our country has recognised only three genders they are: Male, Female, and Transgender and voyeurism is criminalised for females only.

(A) Research Methodology

The method used for the research is the qualitative research of doctrinal nature. Various articles, Blogs., Research paper, news articles, case commentaries have been referred too. The Doctrinal Research methodology has helped researcher to study about the jurisprudential aspect of the subject matter and various journal articles, blogs and cases have been used for the qualitative research.

II. JURISPRUDENTIAL ASPECT OF THE TOPIC

Voyeurism is defined as, “Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine”.²

The years before 2013, there were no strict laws for the women for the crimes such as voyeurism, acid attack, sexual harassment, rape, gang rape, stalking. However, the unfortunate Nirbhaya gangrape case happened in December 2012, brought up an urgency to amend the Indian laws regarding sexual offences for women and made them very strictly applicable all over Bharat.

Criminal law (Amendment) Act 2013 was passed by the report made during January 2013 by the committee made under the chairmanship of former Chief Justice of India, J.S. Verma and voyeurism was introduced as the offence against women and added as 354 C in Indian Penal Code 1860 with the other amendments in the act.³

² Indian Penal Code, 1860, § 354C, Acts of Parliament, 1860 (India).

³ Pranjali Aggarwal, *how to combat voyeurism in India*, Ipleaders (September 09, 2023, 10:20 PM), <https://blog.ipleaders.in/how-to-combat-voyeurism-in-india/>.

(A) Provisions

Voyeurism is mentioned in the section 354 C of Indian Penal Code 1860 It is committed by a man if he watches or captures the photograph of a woman when she's engaged in private act, and she believes it to be under those circumstances where she can reasonably presume the fact that there is no one watching her. The offender can either be the perpetrator himself or any other person on the behalf of the perpetrator or the one who is spreading such pictures.⁴

Unfortunately. This offence in Bharat can be committed only against a woman by the man There is no gender-neutral law for the same.

Moreover. This section is not. The violation of principle of equality. In the country but. It comes under the special provision for women That is Article 15(3) As mostly it is suffered by the women of the country.

Two explanations are given under this section. In the Indian Penal Code, 1860;

Explanation 1 states that “For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public”

Explanation 2 states that “Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.”

(B) Punishments

Any person who commits the offence of voyeurism can be convicted under the section with the following punishment.

1. If he is convicted first time, he can be punishable with the imprisonment of minimum one year which can be extended up to three years or fine.
2. If there is second or subsequent convictions, person will be held liable for imprisonment from three years to seven years and fine too.

III. CONTENT OF THE TOPIC

Voyeurism is an offence under the 354 C section of Indian Penal Code 1860 which is added by

⁴ Pranjali Aggarwal, *How to combat voyeurism in India*, Ipleaders (September 10, 2023, 10:20 PM), <https://blog.ipleaders.in/how-to-combat-voyeurism-in-india/>.

the amendment made in Criminal Law (Amendment) Act 2013. Any act in which men is seeking pleasure by watching women in her private act like bathing, changing clothes or any act in which she is expecting privacy or not giving consent to watch her comes under voyeurism.

(A) Classification of Voyeurism

Since the Beginning of the term voyeurism, it was only related to. The physical peeping or watching into the bathrooms, homes, washrooms, other private places with the help of doors, windows, to watch people's and take pleasure while they are indulging in some intimate activities. For example, watching someone while bathing, changing clothes.

But as the era of technology is flourishing day by day, voyeurism is now committed with the help of electronic devices and the electronic voyeurism has now become a practice among the voyeurs. it has become more convenient for the voyeurs to capture intimate moments of a person without being physically available at the moment with the help of hidden cameras, CCTV cameras, camera pen, hiding mobile phone after switching on the camera and these can be placed easily in the bathrooms, washrooms, bedrooms, and other private places where a person can be captured in nude and obscene conditions.

This all above mentioned can be committed for the various reasons like taking sexual pleasures, taking revenge, selling the nude content to the pornographic websites to gain money, and mostly to blackmail the other person or the victim to harass them mentally as well as physically.

As the consequences of changes in the information and technology sector the IT information and technology act 2000 came into force which covers various cybercrimes, and the electronic voyeurism is also covered under this act. The amendment was made in the IT act 2000 by the information technology amendment act, 2008, in which separate section was introduced, which particularly deals with the electronic voyeurism.

Section 1801 of the video voyeurism prevention act of 2004, a Federal Law of USA dealing with the felonious act of video voyeurism has influenced Bharat to make an amendment in its IT laws.

1. Moreover, Section 66A of IT act 2008, recognises the right to protect the human body from unreasonable and obscene intrusion by video technology and protect the individual privacy from crime of video voyeurism, which destroys personal privacy and dignity by secretly videotaping or photographing, the unsuspecting individual. Sending obscene material (photos, pictures, films, messages) to a woman through social media is an act of sexual harassment under the Indian penal code or 1860. The punishment for

this offence can be the imprisonment from 3 to 7 years in fine. Under the section 67A of the IT act states that if material which is published online is sexually explicit, the person can be imprisoned for five years and be liable to pay a fine up to 10 lakhs.⁵

IV. SUPPORTING CASE LAWS

1. Ritu Kohli Case (2001)

This was the first case of cyber bullying in Bharat which came into limelight in 2001. In this case Ritu Kohli was the victim who was bullied by the illegal act of Manish Kathuria for stalking her on social media website and misuse her name and often used obscene and offensive language. He invited individuals to chat with her on the phone and disturbed her at her residence. After some time, she started receiving calls from different states and foreign countries, in which, people were talking salaciously with her. She reported the case to Delhi Police after not being able to find a solution herself. Her case was filed by the Police under section 509 for Insult to the modesty of women by the means of word, gesture or action. This law brought an Amendment to the Information Technology Act under section 66E which states, "Punishment for sending offensive messages through communication service, etc:

Any person who sends, by means of a computer resource or a communication device, -

- (a) any information that is grossly offensive or has menacing character; or
- b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device,
- (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages (Inserted vide ITAA 2008) shall be punishable with imprisonment for a term which may extend to three years and with fine.⁶

2. Kalandi Charan Lenka v State of Orissa (2017)

In this case, the accused threatened the girl, created the fake profile on social media by her name to sexually manipulate her and posted her nude and obscene pictures as she rejected accused's marriage proposal and for the same he was charged under Sections 354-A/354-D/465/469/506/507/509 of the I.P.C. and Section 66-C/66-D/67/67-A of the Information

⁵ Kiranjeet Kaur, *Voyeurism: The Silhouetted Crime in India*, SBHAMBRIADVOCATES, (September 08, 2023 11:50 PM), <https://www.sbhambriadvocates.com>.

⁶ DU LLB ONLINE, <https://dullbonline.wordpress.com/> (Last visited September 10, 2023).

Technology Act .The accused was held prima facie guilty and thus was convicted.

3. **R V Jarvis Case**

Ryan Jarvis (Jarvis) was a high school teacher in the Thames Valley District School Board (School Board) at Beal Secondary School (School) in London, Ontario. He used to teach the students of 14 to 18 yrs and he never had any allegations either upon his teaching or on his behaviour. Jarvis was recording female students through a pen which had camera fitted inside and the videos were made without the consent of the students.

Neither the school nor the school board gave him the permission to do so. When the co-worker knew about this, he informed it to the principal of the school and the principal later informed it to the police authorities and it was found that there were 17 active videos of 30 different individuals 27 were female students at the school. The focus of the audio and video footage was on females' chest areas. Jarvis was charged under section 162(1) (c) of the Criminal Code of Canada for committing the offence of voyeurism. The section states that everyone commits an offence who, surreptitiously, observes-including by mechanical or electronic means-or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if the observation or recording is done for a sexual purpose.

The trial judge held that Jarvis' behaviour was immoral and breach of his obligation to his profession. Recording done for a sexual purpose of the test could not be met, Jarvis was found to be not guilty of the offence and was acquitted. But the Supreme court of Canada found him guilty as the recording violated the policy of the school board, and the relationship of trust between a teacher and a student. The videos targeted specific female students, often with a focus on their breasts. The students would never expect their school to be recorded in such a manner, by a teacher. Apparently, they had a reasonable expectation about privacy.⁷

4. **M.J Akbar Vs. Priya Ramani**

The very recent case of the above mentioned is a perfect example of how men enjoying a privileged class, status and mostly a dominant position by means of money, muscle power and highly designated positions when accused of sexual harassment or assault are able to shut the victim's mouth by taking cognizance of section 499 of IPC i.e the "Criminal Defamation" is the most common defense mechanism used by assaulters against the women who had dared to speak about their morally and ethically wrong deeds. It was held in this case that sexually harassing someone not only by means of touching somebody inappropriately but also by means

⁷ LEGAL SERVICE INDIA, <https://qwww.legalserviceindia.com/> (Last visited September 10,2023).

of using unpleasant or discomforting words making a woman uncomfortable and conscious about her surroundings and the people present around her is a biggest attack on a women's dignity and modesty and the court was also of the view in this case that the women have a right to speak about their experiences on any platform, even decades later, as in maximum of the cases related to sexual harassment, the women are always scared to disclose such things, so keeping in mind the societal factors there should be no such time limitation or restriction where a women could speak about the wrong done to her held a High Court in Delhi.

5. Male nurse of Sanjay Gandhi Institute of Trauma and Orthopaedics

Recently a thirty-year-old male nurse of Sanjay Gandhi Institute of Trauma and Orthopaedics situated in Bengaluru has been arrested for capturing the recording of the female nurse and lady doctors near the operation theatre under the section 354C and 201 of IPC. The incident came into light when 28-year-old lady surgeon went to change room around 9:30 pm on Friday. She noticed a mobile phone kept secretly on record mode, she picked and found it capturing her while changing clothes. The matter is still in consideration for the judgement.

V. FINAL RESULTS AND FINDINGS

There is a rapid increase in the voyeurism cases in Bharat in the recent years. There were 1,513 reported cases of voyeurism in India in the year 2021, according to the National Crime Record Bureau. The state with the highest number of cases was Maharashtra (210), followed by Andhra Pradesh (159) and Odisha (148). Mumbai had the most reported instances with 73, followed by Delhi with 22, Hyderabad with 18, Chennai and Kolkata tied for fifth with 17 each.⁸

Recently, in a shocking allegation, a 19-year-old girl accused her father of voyeurism and molesting her in Gomti Nagar Vistar police station area in Lucknow. Based on her complaint, police registered a case and launched an investigation. In her complaint, the girl alleged that her father had evil intentions for her and was eve-teasing her for the past one year. "He frequently touches me improperly and even attempts to sexually exploit me.," the victim alleged. Gomti Nagar Vistar SHO Vinay Chaturvedi said an FIR has been registered and statements of family members will be recorded.⁹

These cases are only the voyeurism against the women, many cases are taking place which happened with the men but as there is no law and punishment for the voyeurism against men, those case has not been taken into consideration.

⁸ BAR AND BENCH, www.barandbench.com (Last visited September 09, 2023).

⁹ THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/> (Last visited September 10, 2023).

VI. SUGGESTIVE MEASURES

The recent Voyeurism Laws have some loopholes which should be taken under consideration and following are the measures which can be look upon for the same:

i. Equal laws and punishment:

One of the major problems about the recent law is that. It is only deals with the voyeurism against women. According to the recent law, only women can be the victim and men can be the accused, which is not at fair.

Equal law should be made which clarified that anyone peeping into someone's privacy will be termed as voyeurism and punishment should be given equally irrespective of their gender and according to the severity of the offence. Moreover, it should not be considering only men and women but also other 72 communities like LGBTQIA+ as everybody has their right to privacy and right to life.

Moreover, in the present law the definition does not include photoshopped or morphed images or videos of the victim that are copy pasted or curated by the offender by transposing the face of victim from non-intimate photo to the intimate or obscene content

ii. Awareness

Nowadays, mostly everyone is using mobiles, smart phones, tablets, computers, but many are not aware about the bad effects of them if they are not aware. People should be made aware about posting photos, videos and other information on social networking sites, locking profile, not share too much personal information, etc. Also there should be awareness among the population about the voyeurism laws so that they can not only know how to claim if such happens but also knows about the perpetrator of such act.

Moreover, it can be said that pornographic sites and porn content is available very easily but not the sex education due to which mostly illiterate people commit rapes, so there should be proper sex education which will lead to decrease in voyeurism and rape cases.

iii. Maintenance of anonymity

Many victims in India do not approach to the police or file the cases against the accused due to the humiliation faced by the police or the society.

Thus, some measures should be developed to ensure anonymity of the victim which will make them fearless while registering the case and not to abused them by the character If their images or videos are leaked

VII. CONCLUSION

Any person who seeks sexual pleasure while watching someone in the private act like changing clothes, bathing, disrobing any personal in which they are not having knowledge that somebody seeing them or right to be alone is known as voyeurism and it is offence under the Section 354 C of Indian Penal Code, 1860. The person who commits voyeurism is known as voyeur or peeping Tom. It not only affects the victim physically but also mentally due to which many victims attempt suicide when they are not able to handle it.

With the change in the life of people, there is a drastic change in the type of voyeurism taking place.

Earlier, it was only physical voyeurism by seeing somebody in private act and seeking sexual pleasure through the window or doors, but now electronic voyeurism has taken place like putting hidden cameras in changing room, bedrooms, bathrooms, washrooms but now the electronic voyeurism is increasing day by day in which the hidden cameras are placed in the private places like bedroom and washrooms to capture them when they are nude or in personal situation where nobody should watch them. Capturing the video, posting them on social media or pornographic sites, making MMS to blackmail or harass the victim is the new type of voyeurism emerging in today's era.

There is rapid increase in the cases of a voyeurism day by day. There should be the amendment in laws as it is only restricted to the woman as a victim and there should be awareness to the people that they can register the complaint in the cyber cells if they are victim of the same and also to the people who are taking it as the enjoyment and pleasure so that they should have idea that they are committing crime as the accused will be behind the bars which can lead to the destroying of their and their families lives .

Measures written above should be taken into consideration to reduce the cases of voyeurism and amending them is the need of urgency for our country.
