

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

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Volume 2 | Issue 3

2020

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# Voyeurism - 'The One Who Looks' and Gender Inequality

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SHRUTI AGARWAL<sup>1</sup>

## I. NATURE OF INDIAN SOCIETY ON THE BASIS OF CRIME

Indian society has a unique character and the offences have its own peculiar nature, we come across heinous crimes of sexual harassment but most of it remains unnoticed by the society. The main reason behind the illiteracy rate reaching to the peaks is the laid back attitude of Indian society and the cultural lag which has been prevailing since ages and it has clearly given rise to sexual offenses.

Women have remained neglected and have never received any particular label or positions by the men, especially in the backward classes and areas. It will be wrong to make sexual harassment completely gender biased, it is always seen from times immemorial that female is always the victim in any wrong doing but in the recent era it is erroneous to condemn the male strata as a whole when it comes to holding of accountability. It is not men of the society who should be criticised in particular instead the people who are to be accountable are not humans they are mere monstrous, brutal malefactors and they should not be labelled to be a part of any gender or precisely they should be shunned from the entire human strata as a whole. It is not one specific gender who should be referred to as outcastes , it is a few psychopaths of the society who hold divergent beliefs and commit wrongdoings therefore, it is unsuitable to hold the men accountable and cursing them for committing such heinous acts, by making it a prolonged belief or custom or holding the women accountable for not dressing appropriately or decorating herself way too much for some late night party to go to, it is the beliefs and thinking of a few atrocious bodies that lead to do such abominable cruelty, they should have no identity whether it is a male or female who is held accountable. It's highly recommended that more amendments are made towards gender equality in favour of men as well. We cannot predict the future but certainly can learn a lesson from the past. There are victims who were accused or maybe were assaulted and are facing judgments

from the society or maybe imprisonments for acts they didn't commit. In short it's time to make changes for both the genders. In this country most of the cases are of women which sometimes overshadow the crimes against men. The judicial system might also be biased

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towards the female groups more than keeping an open mind towards all genders. We need the law to have greater power rather than the people or the media doing the trial themselves. Also decisions in such matters should be taken without any delay by the Justice System so that people are spared the time and space to conclude or hypothesize. We cannot hold any target group responsible wholly for a crime. We should not generalize a particular gender who does this type of crime, instead we should take a quick action against that person. We have to remove them out from our society and also those people who are trying to save them, they do not deserve to live.

## **II. VOYEURISM AS A SEXUAL OFFENSE**

According to the Indian penal code section 354C defines voyeurism 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.”

### **EXPLANATION:**

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.

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.<sup>2</sup>

This is a new provision prescribing an offence based on the suggestions of the Justice JS Verma Committee, constituted in the aftermath of the December 2012 Nirbhaya rape incident. During the deliberations, the committee was surprised to find out that offences such as stalking, voyeurism, eve-teasing, etc., are perceived as ‘minor’ offenses, even though they are capable of depriving not only a girl child but frail children of their right to education and

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<sup>2</sup> Indian penal code 1860

their freedom of expression and movement. The Committee was of the view that it is not sufficient for the State to legislate and establish machinery of prosecution, but conscious and well-thought-out attempts are required to be made to ensure the culture of mutual respect is fostered in India's children. Preventive measures for the initial minor aberrations were deemed necessary to check their escalation into major sexual aberrations.

The definition of this offence has the following ingredients:

- 1) If a person-
  - (i) Either watches,
  - (ii) Or captures the image.
- 2) Of, a woman engaging in a private act.
- 3) In a circumstances where she would usually have the expectation of-
  - (i) Either not being observed by the perpetrator
  - (ii) Or not being observed by any other person at the behest of the perpetrator.<sup>3</sup>

### **III. VOYEURISM AND ITS PERSPECTIVE**

Voyeurism has a broader perspective to it, it also engages in activities by which people gain sexual pleasure to gratify their needs by viewing unsuspecting individuals undressing, already nude or involved in a sexual activity. It is also defined as spying on people doing actions that are generally regarded as private. New offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code.

#### **How Voyeurism and its Perspective should be Changed with Development of the Generation**

Women have remained neglected and have never received any particular label or positions by the men, especially in the backward classes and areas. It will be wrong to make sexual harassment completely gender biased, it is always seen from times immemorial that female is always the victim in any wrong doing but in the recent era it is erroneous to condemn the male strata as a whole when it comes to holding of accountability. It is not men of the society who should be criticised in particular instead the people who are to be accountable are not humans they are mere monstrous, brutal malefactors and they should not be labelled to be a part of any gender or precisely they should be shunned from the entire human strata as a whole. It is not one specific gender who should be referred to as outcastes , it is a few

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<sup>2</sup> The Indian Penal Code 36ed Ratanlal Dhirajlal (Ins by the Criminal Law (Amendment) Act,2013

psychopaths of the society who hold divergent beliefs and commit wrongdoings therefore, it is unsuitable to hold the men accountable and cursing them for committing such heinous acts, by making it a prolonged belief or custom or holding the women accountable for not dressing appropriately or decorating herself way too much for some late night party to go to, it is the beliefs and thinking of a few atrocious bodies that lead to do such abominable cruelty, they should have no identity whether it is a male or female who is held accountable.

In Voyeurism there is a peculiarity which is disparaging i.e. it clearly states men to be accountable for the filming, leaking, publicising of women's privity by invasion but it has no grounds for men, it can be a women who commits voyeurism but this is not specified in the Indian Penal Code which again holds men accountable for the crime and women are given liberty.

#### **IV. ELECTRONIC VOYEURISM UNDER INFORMATION TECHNOLOGY ACT, 2008**

The section has been introduced in the IT Act, 2000 by Information Technology Amendment Act, 2008 by the influence of Section 1801 of Video Voyeurism Prevention Act of 2004 a Federal Law of USA dealing with the felonious act of video voyeurism which says:

a. Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

b. In this section:

1. the term 'capture', with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

2. the term 'broadcast' means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

3. the term 'a private area of the individual' means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

4. the term 'female breast' means any portion of the female breast below the top of the areola; and

5. the term 'under circumstances in which that individual has a reasonable expectation of privacy' mean:

A. circumstances in which a reasonable person would believe that he or she could disrobe in

privacy, without being concerned that an image of a private area of the individual was being captured; or

B. circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

c. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

The amendment was made and the section is inserted to attempt to prohibit voyeuristic conduct and to protect the privacy of an individual. Internet is the most common thing now a days and a large number of women and teenagers are being trapped here. Security in the present cyber world is the most sensitive element.

The Section 66E IT Act, 2008 recognizes the right to protect the human body from unreasonable and obscene intrusion by video technology and adequately protects the individual privacy from the crime of video voyeurism which destroys personal privacy and dignity by secretly videotaping or photographing unsuspecting individuals.

Sending obscene material (photos, pictures, films, messages) to a woman through social media is an act of sexual harassment under the IPC. Showing or sending a woman pornographic or sexually explicit material without her consent is a form of sexual harassment under Section 354A of the IPC.

The perpetrator of such a crime can be punished with 3 years of imprisonment, or a fine, or both. It is a crime if the woman gave consent for the pictures to be taken but did not give consent for these private pictures to be shared online. The punishment for this offence can range from 3 to 7 years and a fine. Section 67A of the IT Act states that if material which is published online is sexually explicit, the person can be imprisoned for 5 years and be liable to pay a fine of upto ten lakhs.<sup>4</sup>

## **V. FEW CASES AND JUDGMENTS RELATED TO VOYEURISM**

A Delhi district court dealt with a case of voyeurism by awarding the accused with a year's simple imprisonment along with a fine of ten thousand rupees. A point of interest was the characterisation of the offence of voyeurism under Section 354C of the Indian Penal Code in terms of privacy, in the latter part of the judgment. Authored by Justice Susheel Bala Dagar, the portion in question reads:

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<sup>4</sup> Information Technology Act, 2008 (Electronic voyeurism)

*“Voyeurism is a ridiculous form of enjoyment for men but a mental torture for women. Men who indulge in such enjoyment do not seem to realize that they are infringing on the fundamental right to privacy of her body of the woman. Due to such offenders the women do not feel safe inside such places where she would usually expect not to be observed.”*

This conception of the right to privacy was famously expounded in one of the first pieces of academic writing to argue for the existence of a right to privacy. Simply titled ‘The Right to Privacy’, the article was one written by Samuel Warren and Lois Brandeis, the latter of whom would go on to become a judge in the Supreme Court of the USA. This conception of the right to privacy was later transformed into a legal principle through application in American tort law. It encapsulates the relevant aspect of the right as ‘intrusion upon seclusion’, which is said to occur when a person “intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns”.

The case in question dealt with a 19 year old male peeping into a lavatory whilst in use by a woman. Along with the conception of privacy as described by Warren and Brandeis, the judge also mentions the aspect of being in a place “where she would usually not expect to be observed”. Indeed, even if a potential victim occupies a public place, it has been made clear in a number of later judgments such as *Nader v. General Motors Corporation*, that a person does not automatically make public everything that they might do in a public space. The point is however moot, as the facts involve circumstances that are clearly more grave and fall clearly into the mischief of the section as described in the Penal Code.

An encouraging thread observable in the District Court judgment was the focus on the activities of the defendant, as opposed to those of the complainant, as is seen to be the case in so many analyses of crimes against women. The judge does make it a point to question the defendant on his lack of a reaction if his alleged unprovoked slap by the complainant was in fact true. This apart, she also points out that the objective of the punishment in this case is not merely to make an example of the accused for the cause of deterrence. The larger objective is to reduce the amount of crimes committed against women, and reformative action forms part of this agenda. To once again quote the judgment,

*“The seriousness of the offence lies not in the extent of punishment it carries but on the impact, it has on the social psyche and public order. A societal change is required via education and awareness to curb such kind of crimes. Also, there is a need for formulation and implementation of policies by the government to create sensitization of the masses, more so, the youth in schools and colleges towards the need for gender equality...”*

It is extremely heartening to see an example of judicial decision making at the Trial Court level displaying the breadth of vision to not fall prey to the practice of inflicting retributive justice, and more importantly to lend a voice to the articulation of the right to privacy in India. The right to bodily privacy in an enclosed space is one of the basic forms of privacy that can be asserted by an individual, prior to norms of data security in technology, and it is imperative that such a right is clarified in Indian jurisdictions so as to enable further jurisprudence to engage with the larger questions in the field of privacy.

-Facts: 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:

Every one 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.

Judgement:

The trial judge concluded 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.

-Goa Police filed a charge sheet against four employees of Fabindia in connection with the voyeurism case filed against them after Union Minister **Smriti Irani** alleged that the store

had a CCTV camera in the trial room. Goa Police SP (Crime Branch) Karthik Kashyap said on September 10 that the charge sheet was filed a month ago before the Judicial Magistrate First Class court at Mapusa in North Goa.

Paresh Bhagat, Prashant Naik, Karim Lakhani and Raju Payancha, all of them in-charge of sections at the Fabindia store have been named in the charge sheet. They were arrested and later released on bail. Crime Branch officials, however, said that Fabindia MD William Bissel and CEO Subrata Dutta have not been named in the charge sheet.

The charge sheet has been filed under sections 354 (assault or criminal force to woman with intent to outrage her modesty), 354C (voyeurism), 509 (intruding privacy) of the IPC and 66E (punishment for violation of privacy) of the Information Technology Act, 2000.

On April 3, 2015, a case of alleged voyeurism came to light at the Fabindia outlet in Goa's Candolim after Ms. Irani raised an alarm over a CCTV camera in the trial room.

## **VI. CONCLUSION**

Voyeurism also violates right to privacy and right to life which is a fundamental right of a basic citizen, the provisions related to voyeurism safeguards women that their privacy has been respected and taken care of. The Indian penal code in furtherance should keep in regard that men should have a provision too in case their privacy is violated by any means and it should be implemented in the same manner.

There is a need of more stringent punishments so that people intending to commit a crime are intimidated by the same.

India has a widespread network with provisions that allow all the people of different classes to have access to internet. It is crucial that all the people having access to it should be educated about the productivity it can bring into one's life and should educate them about what is reprimanded by the provisions laid by the laws of land.

It's highly recommended that more amendments are made towards gender equality in favour of men as well. We cannot predict the future but certainly can learn a lesson from the past. There are victims who were accused or maybe were assaulted and are facing judgments from the society or maybe imprisonments for acts they didn't commit. In short it's time to make changes for both the genders.

In this country most of the cases are of women which sometimes overshadow the crimes against men. The judicial system might also be biased towards the female groups more than keeping an open mind towards all genders.

We need the law to have greater power rather than the people or the media doing the trial themselves. Also decisions in such matters should be taken without any delay by the Justice System so that people are spared the time and space to conclude or hypothesize. We can't hold any target group responsible wholly for a crime.

We should not generalize a particular gender who does this type of crime, instead we should take a quick action against that person. We have to remove them out from our society and also those people who are trying to save them, they don't deserve to live. Molestation is not a small crime, our government should amend the law for this as a person who is going through this, he's not only physically or verbally molested but also that affects mentally which leads to depression, suicide and many more things. The law shouldn't be gender biased .

Sexual harassment and the abuses related to it should have provisions which are made equally beneficial for all the genders. It should not label the male strata as a whole to be liable for all cruel deeds because it is a few atrocious bodies who engage there mindsets to do such heinous acts which can cause harm to the society both mentally and physically. In this era, it will be erroneous to condemn only the male strata because clearly, all the genders are equally liable when it comes to holding of accountability. Yes, in the past it had been a male dominant society and women had to face cruelty by the men but now unlike the past it is the men and the LGBTQ Community who are getting rape, being a victim of molestation or getting harassed too so it will be wrong to make generalizations when it comes to holding of accountability to only one gender as a prolonged myth which believes all men to share the same mentality or all men to be capable of harming the other gender. The malefactor should be challenged in the court of law and the victim should be given justice rather than making assumptions and passing judgments which are gender biased. The psychopathic bodies who engage in doing such crimes, cannot be a reason for us to open our gates for criticism or cursing any particular gender the wrong doer belonged to. They should not be given any position or labels under any gender and should be shunned from the entire human race and should be left non-identical.

Just for the wrongdoings of a particular individual of any gender, the mass shouldn't be generalized and blamed for the same. Men have been victims of false allegations innumerable times as a way of demanding and extorting money or other resources in the past. Females too have been accused for putting false allegation for the same extortion purposes and proven wrong even if they weren't. The society, government and the law should change and provide equal stance and opportunities to both the genders and no assumptions or judgements should be made without proof. The media has the biggest and most vital role to play here. Instead of

twisting stories and shaping public opinion for the worse just for views and TRP, if the media brings the truth out, half of the battle for gender equality is won already.

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