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Crime of Voyeurism and Stalking in India: Issues and Challenges

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ABSTRACT

The condition of women in Indian society in terms of facing crime is not appreciating; at this juncture, the increased numbers of crimes against women, responses from the law enforcement agencies are a matter of discussion and finding out of effective solution. The subject matter of this article is simply an attempt to analyse the role of police in the investigation process in offences of voyeurism and stalking. This paper discussed the concept of voyeurism, stalking, and judicial contribution to it. Ever since the incorporation of new offences such as voyeurism and stalking has taken place in the Indian Penal Code, 1860 through the Criminal Law (Amendment) Act, 2013 the role of Indian Police in the investigation becomes a major concern. No doubt still there are many areas where reforms are needed in the Indian criminal law and police system, be it the inclusion of more information technology in the crime investigation, bifurcation of police in the maintenance of law and order, and investigation. Public awareness, vigilance, participation in maintaining law and order and gender-neutral definition will to some curb the menace of such emerging crime.

Keywords: *Crime, Police, Stalking, Voyeurism, Justice.*

I. INTRODUCTION

Every human being and society protect its Privacy. But a new form of criminal act breaches personal privacy despite having stringent laws. The rights of women in criminal law are well protected. The protection is given through substantive and procedural criminal law. New offences such as voyeurism, stalking, punishment of violation of privacy have been included in the Indian Penal Code³ and I.T. Act, through the Criminal Law (Amendment) Act, 2013⁴ and Information Technology (Amendment) Act, 2008 respectively. Sexual abuse based on

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³ Indian Penal Code, 1860, No. 45, Act of Parliament, 1860 (India).

⁴ The Criminal Law (Amendment) Act, 2013, No. 13, Act of Parliament, 2013 (India).

image or video recording has lifelong impacts on the victim.⁵ It's related to the victim character, dignity, and personal privacy. These offences were in existence before enacting these provisions but in different forms such as sexual harassment, eve-teasing etc. Terming specific offences in the name of voyeurism and staking is very new. The offences of voyeurism and staking are information technology-based crimes since, in these offences modern gadgets, the internet is used. Stalking could of two types one is offline stalking, which is physical and another is online stalking which is internet-based.⁶ These offences are the result of the transition to modern technology and its misuse. As a result, many new sections⁷ were inserted in the Information Technology (Amendment) Act⁸. The main objective to incorporate these offences is to reduce crimes that harm women's privacy and dignity. Since these offences are inserted in the criminal law, the role played by the police in the investigation process is relevant for making the case and helping the court to deliver justice to the victim.

Crime has a direct impact on law and society. If a crime has been committed then responsibilities have to be borne by the law and justice system of the state. With the passage of time and advancement in technology, the nature of crime is also changing very fast, such as offences of stalking used to happen in the physical mode only, but now it is carried out in the online mode as well. Such rapid change compels society to be aware and prepare itself against the potential perpetrations. The criminal justice system of a nation has to regulate and address these social problems.

II. VOYEURISM: AN EMERGING CRIME

The term Voyeurism derived from the French word 'voir' which means 'to see', seeing the sexual act, bathing, undressing others for sexual excitement. The human being is influenced by a sense of gratification. But this sense of gratification has two aspects one is legal and another is illegal. If illegality is involved in sense gratification, then it will be a crime. Voyeurism is related to sense gratification, but here people are not allowed to see someone doing her private act. If a woman is watched or her images are captured while engaging in a private act where she usually does not expect anyone to observe her then such an act is termed voyeurism.⁹

⁵ Erika Rackley, et al. *Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse*. *Fem Leg Stud* (2021). <https://doi.org/10.1007/s10691-021-09460-8>.

⁶ <https://www.thehindu.com/news/cities/bangalore/incidents-of-voyeurism-causing-concern/article6309772.ece>.

⁷ Section 66A, 66C, 66D, 66E, 67, 67A Information Technology (Amendment) Act, 2008, No.10, Act of Parliament, 2009 (India).

⁸ Information Technology (Amendment) Act, 2008, No.10, Act of Parliament, 2009 (India).

⁹ “**354C. Voyeurism.**—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

Voyeurism is the most prevalent, and potentially illegal, sexual conduct. It is the practice of watching other people's sexual activities without their consent. In this type of offence even if the sexual offence in nature physical contact is not there.¹⁰

If the perpetrator watches or disseminates such private moments or images then he will be considered to have committed the offence of voyeurism. Here criteria in the commission of this offence are that the act in which the woman is engaging must be a private act, which exposes her body without clothes or body without cloths under the water. The places where the women would reasonably not expect to be seen, such as using the lavatory, engaging in a private sexual act, etc.

The consent of the victim in capturing her images or any act without cloths does not allow such images to disseminated with the third person, if disseminated then it will amount to the offence of Voyeurism. The word consent is very relevant in this offence, consent may be given for capturing her private moments with her partner but capturing such a moment does not allow the opposite person to share it with the public or any other third person.

Why the need was felt for making such an act a punishable offence? In the twenty-first century, the advent of high-speed internet and smartphones and high-tech cameras facilitates to capture of high-quality images, making-of videos and share such images, videos with others pave the way for the use and misuse of information technology. The situation arises when such a boon to a human being is misused for entertainment, blackmailing, harassment, mental agony to the victim with criminal intent. Most of the criminal acts are committed in cyberspace. Therefore, the need was felt by the Indian Government to regulate and counter such heinous crimes by adding in the Indian Penal Code¹¹ through Criminal Law (Amendment) Act, 2013.

Section 66E of the Information Technology (Amendment) Act, 2008 deals with punishment of offender with 3 years imprisonment or fine up to 2 lakhs or both for clicking, publishing and sharing the image of private parts of any person intentionally without consent of the person and

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 1.—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.—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.”

¹⁰ Clay Calvert, *Voyeurism and Exhibitionism*, The Encyclopedia of criminology and Criminal Justice System, (June 20, 2021, 10:30 PM) <http://doi.org.nehulibrary.remotexs.in/10.1002/9781118517383.wbeccj009>.

¹¹*Supra* note 3.

such act violates the privacy of the concerned person. This provision is gender-neutral. The images usually shared through electronic mediums and such material can be reproduced in printed or electronic form. Capturing the images could be stored in videotape, recording etc. format by the offender.

III. OFFLINE AND ONLINE STALKING

There are many existing social problems in society, stalking is one of them. Stalk means to secretly follow someone and intruding on one's personal space.¹² The act of stalking is related to violence, sexual harassment, psychological agony. The stalker tends to harm the stalked person. In stalking majority of the victim are women. In some cases, famous people are also stalked by their fans. Stalking could be in the physical world or the virtual world. Stalkers are likely to have mental problems.¹³ Most western countries have enacted legislation on stalking to prevent such incidents. In India a stringent law on stalking has enacted under section 354D of the Indian Penal Code, 1860 by the Criminal Law (Amendment) Act, 2013.

"Once, reputation was hard-earned and carefully guarded. Today, your reputation can be created or destroyed in just a few clicks".¹⁴ Cyber-stalking is a direct online analogous to the offline crime of stalking, cyber-stalking may thus be defined as "the use of the Internet, e-mail, or other means of electronic communication to stalk or harass another individual. Cyber-stalking is more likely to result in severe and immediate emotional or physical harm.¹⁵ The element that distinguishes cyberstalking from cyber harassment is the requirement that the defendant communicates a credible threat.¹⁶

The offence of Stalking for the first time introduced in the Criminal law (Amendment) Act, 2013. The offence of stalking will be committed if a man follows a woman and try to contacts her and attempts repeatedly intending to foster personal interaction even after getting a clear sign of disinterest from the woman and constantly observe the use of the internet, email or other social media sites etc.¹⁷ This is stalking in the physical world. In the information technology

¹² Mullen, Paul E., and Michele Pathé, *Stalking. Crime and Justice* (2002) (July 1, 2021) <http://www.jstor.org/stable/1147710>.

¹³ *Id* at 274.

¹⁴ Michael Fertik & David Thompson, *How To Protect and Restore Your Online Reputation on the Untamed Social Frontier*, WW, 2 (2010).

¹⁵ Jacqueline D. Lipton, *Combating Cyber-Victimization*, No. 2, BTLJ, Spring, 1103-1155 (2011).

¹⁶ *United States v. Alkhabaz*, 104 F.3d 1492,1495 (6th Cir. 1997).

¹⁷ "354D. Stalking.—(1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

era, most of the stalker follow and monitor the victim through email, social media platform, internet. The following of any person as such on the internet is not an offence, but when it comes to physical and psychological harm to a person by such following then it will amount to the offence of stalking. However, there are some exceptions to the act of staking such as if it is pursued with the responsibility to prevent and detect crime and such responsibility is entrusted by the state, or under any law, and if the act of stalking in particular circumstances was reasonable and justified. The punishment prescribes for this offence is dependent upon the repetition of the offence. The former chief justice of India J S Verma in its report¹⁸ following December 2012 gang-rape had recommended prescribing 3 years imprisonment in offence of stalking. The second or subsequent conviction for the offence of stalking will increase the punishment up to 5 years of imprisonment and shall also be liable to a fine.

The offence of stalking involves many other offences because when a woman is stalked, she faces other criminal acts such as sexual harassment, criminal intimidation¹⁹, word, gesture or act intended to insult the modesty of a woman, assault²⁰. Most of the time there is a chance that the woman who was being stalked might get raped by the stalker.

In Indian society, if a girl is stalked by any man, then most of the time victim-blaming tendencies can be witness be it from the family or the society. The absence of visible harm caused by stalking designates it a seemingly benign behaviour. Yet stalking can result in physical, psychological, social, and economic consequences ranging from unpleasant to dangerous to the victims.²¹ Stalking is the minimizing or romanticizing of the acts, it can be noticed in many Bollywood and Hollywood movies, which subconsciously influence the young mind and provoke to commit stalking on college-going and other girls. In Indian society, the act of eve-teasing is very common, but most of the time these eve-teasings are not considered serious. These acts are not protested by the victim either, so as result it gains momentum and takes the shape of serious crime.

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term 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 may extend to five years, and shall also be liable to fine.]”

¹⁸www.prsindia.org/report.../justice-verma-committee-report-summary (May 25, 2021).

¹⁹ Supra note 3, s.503.

²⁰ *Id.*, s.509.

²¹ Joanne Belknap, Nitika Sharma, *The Significant Frequency and Impact of Stealth (Nonviolent) Gender-Based Abuse Among College Women*, 15, TV&A, 181-190 (2014).

IV. NATIONAL CRIME RECORD BUREAU (NCRB) DATA ANALYSIS ON VOYEURISM AND STALKING CASES

The crime incident of voyeurism and stalking in Indian from the year 2014-2019 can be analysed from the following given data. After careful observation it has come to notice that the incidence of crime against women has been increasing even after incorporating voyeurism and stalking in the Indian Penal Code, 1860 by the Criminal Law (Amendment) Act, 2013.

Newly Incorporated IPC Offences by The Criminal Law (Amendment) Act, 2013	2014	2015	2016	2017	2018	2019
	The trend of Increasing Crime Incidence against women per one lakh					
Voyeurism (Sec. 354C), IPC, 1860	674	838	932	1090	1393	1319
Stalking (Sec. 354D), IPC, 1860	4699	6266	7190	8145	9438	8890

Fig. 1 Source: NCRB

According to National Crime Record Bureau (NCRB)'s latest statistics, incidents of voyeurism jumped to 1,393 cases in 2018 from 1,090 such cases in 2017, and 932 reported incidents in 2016. Maharashtra reported the highest number of cases of voyeurism at 252, followed by Madhya Pradesh with 163 cases and Kerala with 126 cases. Among cities, Mumbai recorded the maximum number of cases of voyeurism at 47, followed by Delhi at 31 cases.

There has also been a dramatic rise in the number of cases of stalking. In 2018, a total of 9,438 cases of stalking were reported compared with 8,145 such cases in 2017 and 7,190 cases in 2016. Maharashtra reported the maximum number of cases of stalking numbering 2,088, followed by Telangana at 1,459 cases and Madhya Pradesh at 1,255 cases. Among the cities, Mumbai recorded the maximum number of cases of stalking with 513 reported cases, followed by Delhi at 410 and Kolkata at 119 cases. As per the 2019 report of Crime in India²² it can be seen that the number of crimes against women increasing yearly wise, in 2017 it is 359849, in 2018 it is 378236 and in 2019 it is 405861.

The high pendency of investigation in crime against women (58%) and children (55%) in 2019 is a major cause of concern.²³ The Delhi Police filed a charge sheet in just 16% of cases registered under the Indian Penal Code in 2019 as against the lodging of 3,20,983 cases. Also,

²²<https://ncrb.gov.in/en/crime-india-2019-0> (Oct. 11, 2020).

²³Editorial, "90% of IPC Cases Pending Trial: Report" TOI, Nov. 7, 2020.

90% of the total IPC cases were pending trial at the end of the year.²⁴ Gender violence is a serious concern for India, whereas, as per the report of the National Crime Record Bureau in the past four years there is a rise in crime against women and the percentage it shows is 34%.

These incidents are reported, but many cases go unreported either by the victim or the family of the victim. Sometimes the victim of sexual offences reluctant to report to police due to lack of knowledge of criminal procedure, complexities of the criminal justice system, uneasiness to approach the police station. If police station is made convenient for the public to report any such incidents by the way of email, Whatsapp, letters, Facebook posts, etc., then there is a possibility that the data on offences against women will increase more. The system of reporting lacks in its standardization across India and systematic underreporting renders official statistics incomplete.²⁵ There is a difference between victim reported crime and police recorded crime. It shows the magnitude of under-reporting of crime, but most of the time, police statistics helps to get an idea about the crime zones, because if there is more victim of crime reporting, there will be more record of crime by the police.²⁶

V. ROLE OF POLICE IN VOYEURISM AND STALKING CASES

The practical application of the law for the safety and liberty of people are executed by the police. Police have always remained as a central agency of the criminal justice system. The functioning of police is law in action. The efficient operation of the modernized police force is essential to preserve the 'Rule of Law' in the modern social structure of India.²⁷

The function of police in the adversarial system of justice is a very old practice inspired by the common law, where the police as law enforcement and investigating agency require submitting reports of investigation to court for justice delivery process. In most cases, the delivery of justice by the court depends upon the investigation done by the police in various types of offences.

The Criminal Law (Amendment) Act, 2013 has amended section 197 of the Code of Criminal Procedure which provides that no sanction required to prosecute public servants in case they are alleged to have been committed specific offences against women.²⁸ In case of recording of

²⁴NGO Praja Foundation.

²⁵Aaron, Karp, Sonal, Marwah, et al. "Unheard and Uncounted: Violence against Women in India" SAS, 2015, www.jstor.org/stable/resrep10686.

²⁶ Kislaya, Prasad, A *Comparison of Victim-Reported and Police-Recorded Crime in India*, 48, EPW, 49, 47-53 (2013), JSTOR, www.jstor.org/stable/23528089.

²⁷DALBIR BHARTI, *THE CONSTITUTION AND CRIMINAL JUSTICE ADMINISTRATION* 138 (APH Publishing Corporation, 2002).

²⁸ "In Section 197 of the Code of Criminal Procedure, sub-section (1), the following Explanation shall be inserted, namely:-

statement of women against whom offence of stalking and voyeurism have been committed, their statement will be recorded by a women police officer or any women officer.²⁹ Under section 164 of the code of criminal procedure, 1973 statement of the victim is recorded by the Judicial Magistrate, by the Criminal Law (Amendment), Act, 2013 amendment has been made under this section as well.³⁰

The role of the police in solving crime and any other society related issues needs common people, civil societies help and support. The approach of the police in the maintenance of law and order and crime investigation must be collaborative. The image of police must be supportive so that all citizens can approach the police station or any police personnel without hesitation. The proper training of police personnel in the police academy will play a prominent role in shaping the psychology and behaviour of police towards them as well as society.

The humanitarian approach should be adopted by the police force while handling the victim of crime. The number of women police officers must be increased and trained with investigation skills to deal with any sort of crime against women. Proper care should be taken while dealing with the witnesses in offences of voyeurism and stalking so that they don't turn hostile in the middle of the trial in the court of law.

For the effective functioning of police, many reports and recommendations have already been submitted, one of them is the separation of police in law and order and investigation. The

“Explanation- For the removal of doubt it is hereby declared that no sanction shall be required in case of a public servant accused of any offences alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code.”

²⁹ “In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following shall be inserted, namely: -

“Provided further that the statement of a women against whom an offence an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E, or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.”

³⁰ “In section 164 of the Code of Criminal Procedure, after sub-section (5), the following sub-section shall be inserted, namely: -

“(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.”

investigation wing should be separated from the law-and-order wing.³¹ This separation will foster the speedy investigation of cases and eventually make it convenient for the court to give justice to the victim in time. Better expertise and improved rapport with the people is the need of the hour to ensure full coordination between the two wings. The separation, to start with, may be affected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.³²

There is a need for the Law and society to trust the police and the police leadership to ensure improvement in their credibility. The recommendations of the Malimath Committee³³ to improve investigation must be implemented word by word. In solving cases of voyeurism and stalking the investigating officer must know about information technology since most of these crimes are committed through electronic gadgets and in cyberspace. Every police station in India must be given proper infrastructure with I.T. Cell in it which will deal with criminal cases involving internet and electronic devices. No doubt Indian Police is equipped with all systems of information technology setup to deal with cybercrimes but still many district police stations are not equipped with such information technology setup.

Where a perpetrator of sexual violence is known to his victim, she can be left in a dangerous situation if she is not believed and protected by police. At the same time, any woman whose report of sexual assault has been “unfounded” faces long-term danger, because the police are much less likely to believe her if she reports another sexual assault.³⁴ The disbelieving attitude of the investigating officer on a victim of sexual assault poses a dangerous impact on the criminal investigation. If the report of the sexual assault has not been taken seriously then the perpetrator escapes free from the punishment and by such an act investigating agencies encourage the perpetrator to repeat the same crime against women.³⁵

Recently, Parliamentary Standing Committee 316th report on Issues Related to Safety of Women has given several recommendations for speedy justice, safety and empowerment to women. Some of them are-³⁶

³¹Government of India, Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, Mar, 2003).

³²Government of India, Justice Verma Committee Report on Amendments to Criminal Law (Jan, 2013).

³³*Id* at 272.

³⁴ Jan Jordan, *The Word of a Woman: Police, Rape and Belief*, NY:PMM, 151 (2004).

³⁵ DuBois, Teresa, *Police Investigation of Sexual Assault Complaints: How Far Have We Come Since Jane Doe?* SAC:LLPWA, 191–210, (2012), JSTOR, www.jstor.org/stable/j.ctt2jcb92.13.

³⁶Government of India, 316th Report on Issues Related to Safety of women (Rajya Sabha, Department-Related Parliamentary Standing Committee on Human Resource Development, (March, 2020).

- i. The Fast-Track Special Court should decide the sexual violence cases within six months of the incident.
- ii. Ministry of Law and Justice should have a balanced distribution of Fast Track Special Courts to states for expedite disposal of cases and ideally, one such court should be placed within 500 km of radius.
- iii. No bail should be granted to accuse involved in heinous crimes against women.
- iv. The charge sheet should be filed within 30 days in crime against women and time-bound investigation must be followed.
- v. Conclusion of trial within a year.
- vi. Setting up of women cell in every police station with female police officer/staff so that victim of a sexual offence can approach police station without any hesitation for lodging complaints.
- vii. Setting up a strong network of forensic laboratories in every state capital for evidence, which would help the prosecution in building a strong case against the sexual offenders.

The committee³⁷ has rightly pointed out, the importance of inculcating moral values to the next generation through education for respecting dignity and integrity of women, but unfortunately in the Indian education system, mainly in the NCERT textbooks, enough chapters have not been given on such aspects to nourish young minds. By including chapters on moral values people's mindsets can be changed and which will eventually lead to a safe society for women.

VI. CHALLENGES FACED BY THE POLICE WHILE DEALING WITH OFFENCES OF VOYEURISM AND STALKING

In most stalking and voyeurism cases police have to struggle with understanding the law on stalking and voyeurism. Mainly the investigating officer of a police station is not well trained to deal with an offence of stalking related cases. In online stalking cases, investigations are usually done by the officer of the rank of Deputy Superintendent of Police (DSP). However, after the Information Technology (Amendment) Act, 2008 officers not below the rank of Inspector can investigate IT-related offences.³⁸

The collection of evidence in stalking and voyeurism is a difficult task for the investigating officer. Relevant evidence helps the case to establish in the court of law. The prosecution

³⁷*Ibid.*

³⁸ *Supra* note 7, s.78.

always loses the case for either the lack of evidence or non-submission of charge sheet by the police within the stipulated time and which help the accused to get bail and remain free. Even such freeness from the court of law in bail encourages the accused to pursue more offences of such nature. The offence of stalking must be made non-bailable even in the first instance of the offence.

In voyeurism cases, training of the investigating police officer is very pertinent. Lack of knowledge in the information technology of the investigating officer may lead to a weak investigation of the crime; as a result, there is a poor conviction rate. The network of sharing data related to crime must be made easy for the investigating officer in the process of investigation.

As a suggestion to improve the standard of investigation in offences against women, the focus must be given to ground level police officers such as officers-in-charge of police stations. Usually, the initial investigation is conducted by them, so they need more intense training in the investigation, filing of the charge sheet, use of technology in criminal investigation, dealing with victims sensitively etc. Such initiative will surely help in speeding up the investigation process and eventually increase the conviction rate. Shortage of police forces severely impacting investigation in heinous crimes, dire need to fill up sanctioned posts. The modernization of the police scheme can be a big boost for the improvement of the police force and their investigation in tracking offenders. Many police modernization schemes have been introduced such as crime and criminal tracking networks and systems (cctns), inter-state police wireless, eprisons and programmes for upgrading police infrastructure including forensic laboratories and equipment, etc.,³⁹

VII. VOYEURISM AND STALKING IN THE USA

The offence of voyeurism in the US criminal law was incorporated long back. This offence created unrest in the society due to its fast spreading and which put the morale of the society at risk. Eventually, in the year 2004 video voyeurism declared an offence on US soil. The crime of voyeurism has incorporated in US criminal law through Video Voyeurism Prevention Act, 2004. This offence is gender-neutral in the USA. A person will be guilty of video voyeurism if an image of a private area of an individual is captured without consent and under such circumstances where anyone expects privacy then the punishment shall be of fine or

³⁹ MPF is a central scheme administered by the Ministry of Home Affairs, Government of India, aimed at assisting states in strengthening police infrastructure. Since 27.09.2017 For more information, see Government of India, Ministry of Home Affairs, Umbrella Scheme of Modernization of Police Forces, https://mha.gov.in/sites/default/files/MPF_19022018.pdf. (May 25, 2021).

imprisonment for a term, not more than 1 year or both. The image could be recording, film, photograph, or broadcast. Private area of an individual means naked, buttocks, or [female breast](#), undergarment clad genitals etc.⁴⁰

As per the US federal law, if a person travels within the territory of the United States with the purpose of murder, hurt, harass, intimidate, or keep the targeted person under continual surveillance to commit harmful acts that put the victim in fear of death, bodily injury, emotional distress and uses electronic communication services for following the targeted person and also include harm to pet, horse of the victim person then it is a crime of stalking.⁴¹

In the USA, the cases of stalking and most of the law-related issues are supervised by the Department of justice; even the victims of stalking can approach the National Center for Victims of Crime. All the states and the federal government in the U.S. have addressed the issue of stalking in their criminal law. But the definition of stalking varies from state to state in the U.S. The variation can be seen in an element of crime such as victim fear, emotional distress and the intent of the stalker. Some state law requires that the victim have been frightened by the stalking and others requires that stalking creates fear in the mind of the victim, the level of fear created by the stalking. To prove the offence of stalking in some states the prosecutor needs to establish the fear of death or bodily harm to the victim and in other states establishing that the victim has suffered emotional stress is enough to hold the accused guilty. Interstate stalking is defined by federal law⁴²

As per the data of Supplemental Victimization Survey (SVS) conducted by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice⁴³ some of the facts can be drawn such as: firstly, divorce or separated person (3.3%), became a victim of stalking compared to single or widow, secondly, female were stalked more in comparison to male but both the gender experience harassment, thirdly, nearly half of stalking victims (46%) say they receive at least one unwelcome contact each week, and 11% say they have been pursued for five years or more, fourthly, women (41%) and men (37%) victims of Stalking were equally likely to be reported to the authority, lastly, nearly seven out of ten stalking victims knew their stalker in some way.

VIII. VOYEURISM AND STALKING IN THE UK

Dedicated legislation on voyeurism i.e., Voyeurism (Offences) Act 2019 (VOA 2019)

⁴⁰ 18 U.S.C § 1801.

⁴¹ 18 U.S.C. § 2261A.

⁴²<https://www.justice.gov/ovw/stalking> (May 1, 2021).

⁴³ Bureau of Justice Statistics, National Crime Victimization Survey, Supplemental Victimization Survey, 2006.

introduced as a private member bill and eventually passed to curb the emerging offence. In England and Wales voyeurism is criminalised by this piece important of legislation.⁴⁴ The Sexual Offences Act 2003 was amended by the Voyeurism (Offences) Act, 2019 to incorporate section 67A which define voyeurism. A person will be guilty of voyeurism if he uses equipment or record to capture an image of genitals, buttocks covered with underwear or expose of the opposite person without consent to gain sexual gratification, humiliating, distressing the opponent and punishment for this offence will extend up to 1 year imprisonment or fine or both if it is summary conviction and in case of conviction on indictment of such offence punishment of imprisonment extends up to 2 years.

Two new sections 2A and section 4A were inserted in the Protection from Harassment Act, 1997 which makes stalking a criminal offence. These two new sections were inserted by the Protection of Freedoms Act, 2012. As per Section 2A,⁴⁵ a person will be guilty of stalking if his known course of conduct is harassment in nature to another person and such course of conduct could be an act or omission associated with stalking. If a person follows, contacts or attempts to contact, publish any material, monitor the use of the internet, email, and other electronic communication, spying any person, loitering in any place with the intent to spy and follow any person then such act will associate with stalking.

Under section 4A⁴⁶ to establish the offence of stalking there must be involvement of fear of violence or serious alarm or distress, and in such type of offence, punishment will be ten years imprisonment, or fine. The best and possible solution to prevent any further stalking related offence is to punish the offender and along with it to issue a restraining order to the offender. Crime Survey of England and Wales shows that up to 700, 000 women are stalked each year (2009-12). Statistics reveal that only 11% of stalkers received an immediate custodial sentence for section 2A stalking and just 9% for a section 4A stalking offence in 2013.⁴⁷ The majority of the victim is female where male victims are very less.

IX. CONTRIBUTION OF INDIAN JUDICIARY IN OFFENCES OF VOYEURISM AND STALKING

The contribution of the Indian Judiciary in delivering justice to women is splendid. Some of them are discussed below:

⁴⁴ALISDAIR A. GILLESPIE, *TACKLING VOYEURISM: IS THE VOYEURISM (OFFENCES) ACT 2019 A WASTED OPPORTUNITY?* 82 MLR, 1107-1131 (2019).

⁴⁵The Protection of Freedoms Act, 2012 (Gr. Brit.).

⁴⁶Protection from Harassment Act 1997 (Gr. Brit.).

⁴⁷National Stalking Advocacy Service, 2015 (Gr. Brit.).

The attitude of criminal law towards sex offenders can be seen in two ways, one where the severe penal sanction is imposed on the sexual offenders and the other was considering that sexual offenders are different from other offenders mentally and should be treated differently. The Indian Judiciary has rightly dealt with the cases concerning sexual harassment, voyeurism, stalking, etc., The different treatment followed in countries like the U.S.A. under its law such as psychopath sexual offenders laws where sexual offenders treated with psychotherapeutic treatment, detention of offenders to disable him from committing a sexual crime. Some other method followed in Norway to counter sexual offenders is that the offender will be given an option between castration, with or without a relatively shorter prison sentence and a longer sentence.⁴⁸

The case of *State through reference v. Ram Singh and Ors.*⁴⁹ widely known as the Nirbhaya gang-rape case which led to the Criminal Law (Amendment) Act of 2013. Most of the countries in their criminal law and courts system follow severe penal sanctions, but the relevance of rehabilitative in the context of sexual offences can be seen from the observation of Krishan Iyer J in the case of *Phul Singh v. State of Haryana*⁵⁰

“Sentencing efficacy in case of lust-loaded criminality cannot be simplistically assumed by award of long incarceration, for, often that remedy aggravates the malady....A hypersexed home sapien cannot be rehabilitated by humiliating or harsh treatment...given correctional courses through meditational therapy and other measures his erotic aberration may wither away. A man like the appellant has a reasonable prospect of shaping into a balanced person, given propitious social environs, curative and congenial work and techniques of internal stress release or reformatory self—expression.”

In *Inspector General of Police v. S. Samuthiram*⁵¹ case, a member of the law enforcement agency, a police officer, was discovered in the act of eve-teasing a married woman, which resulted in a criminal and disciplinary investigation and his removal from service. In the public interest, the Supreme Court has issued directives to state governments and union territories concerning eve-teasing cases, including deputing female police officers in public places such as parks, metro stations, bus stands, cinema theatres, parks, etc., installing CCTV in places where there is a higher risk of crime, and person-in-charge of any place of worship, railway stations, educational institution to receive a complaint and forward it the concerned authority. It

⁴⁸S.M. AFZAL QADRI, AHMAD SIDDIQUE'S CRIMINOLOGY PENOLOGY AND VICTIMOLOGY 133-134 (7th ed., 2017).

⁴⁹ 13.03.2014 – DELHC, (MANU/DE/0649/2014) (India).

⁵⁰ (1979) 4 SSC 413 (India).

⁵¹ AIR 2013 SC 14 (India).

has been directed that if any eve-teasing incident or any crime against women committed in public service vehicle by the passenger or by any person then on the complaint of the aggrieved information must be given to police by the crew and vehicle need to be taken to the nearest police station. The establishment of women helpline in the cities and town to curb eve-teasing, Caution Board on eve-teasing must be hanged in prominent places such as precincts of education institution, railways station, bus station, mall, cinema theatres, place of worship, etc. The general public or anyone who stand nearby the incidents of eve-teasing should report such incident to the nearest police station and the State Government and Union Territories would instruct the concerned authorities such as District Collector, Superintendent of Police to take measure for curbing incidents of eve-teasing and related offences against women.

The social condition prevailing in the society, the modesty of a woman has to be strongly guarded and if the convict of sexual offence behaved like a roadside Romeo, then the benefit of the Probation of Offenders Act⁵² should be given to the convict.⁵³ This is the observation made by the Supreme Court in the case of *Ajaha Ali v. State of West Bengal*. on 6.11.1995, Nasima Begum (PW. 1), aged about 16 years filed a complaint alleging that on that day while she was going to attend her tuition along with her friend Nilufa Khatun, she met the Appellant on the way who suddenly came and forcibly caught hold of her hair and planted a kiss, resultantly, she suffered a cut over her lower lip and started bleeding. Appellant was held guilty in trial for the offence punishable under Section 354 of Indian Penal Code, 1860.

In some cases, the stalker tries to show a relation with the victim the female of having conjugal relation to justifying the act of stalking. To prove the conjugal relation to the stalker, produce a fake marriage invitation and receipt issued by the temple.⁵⁴ Stalking which is not physical, but takes place in a virtual world can be known as online stalking, if any cases of online stalking come then there should be a combined study of Section 354D of the Indian Penal Code with the Information Technology (Amendment) Act, 2008. In the case of *Kalandi Charan Lenka v. State of Orissa*⁵⁵, the Orissa High Court held that the accused liable for the offences of sexual harassment⁵⁶, online stalking⁵⁷ under the Indian Penal Code⁵⁸ and identity theft⁵⁹,

⁵² The Probation of Offenders Act 1958, NO. 20, Act of Parliament, 1958 (India).

⁵³ *Ajaha Ali v. State of West Bengal* (04.10.2013 - SC): MANU/SC/1016/2013 (India).

⁵⁴ *Indhumathi v. Prithviraj* (30.04.2021 - MADHC): MANU/TN/3596/2021MANU/TN/3596/2021(India).

⁵⁵ 2017(I)OLR543 (India).

⁵⁶ *Supra* note 3, s.354A.

⁵⁷ *Id.*, s. 354D.

⁵⁸ *Supra* note 3.

⁵⁹ *Supra* note. 6, s. 66C.

impersonation⁶⁰ transmitting obscene and sexually explicit material online⁶¹ under the Information Technology (Amendment) Act, 2008. In this instance, despite the accused's marriage proposal, the marriage was not consummated. As a result, the accused began sending scandalous mail, writing filthy notes, and attempting to destroy the victim girl's character. The accused made a false Facebook account in the name of the victim girl to sexually exploit her and torment her mentally. The accused followed the victim girl when she changed her place of study. The crime of offline and online internet stalking can be seen here.

In the case of *Raja and Ors. vs. State of Haryana*⁶² the High Court of Punjab And Haryana has issued the following directions:

1. The Senior Police Superintendents are responsible for ensuring the quick filing of FIRs in offences relating to Sections 326A, 326B, 354A, 354B, 354C and 354D of IPC throughout the states of Haryana, Punjab and the Union Territory of Chandigarh. The investigation shall, under the supervision of the Gazetted Officer, be completed in all these issues within seven days, and the Challan shall thereafter be placed before the relevant criminal tribunal within seven days. In the event of a faulty investigation, the Gazetted Officer has personal responsibility.
2. Cases of sexual harassment, stalking, voyeurism and the use of acid must be handled quickly. The criminal courts of proceedings in each of the States of Haryana, Punjab and the Union Territory of Chandigarh are instructed to hear on an everyday basis, conclude the trial within three months, and if unable to conclude within the stipulated time, then sufficient reason must be recorded by the court.
3. In the cases of the trial under Sections 326A, 326B 354A, 354B, 354C & 354D of I.P.C. till the conclusion, the Governments of the States of Haryana and Punjab and also of the Union Territory of Chandigarh directed to give security to eyewitnesses throughout the trial.

A similar judgement has also given by the High Court of *Uttarakhand* in the case of **the State of Uttarakhand v. Ajam** (2017), The role of the police in registering FIR in voyeurism and stalking cases plays an important role to punish the offender. Without proper investigation of FIR and non-submission charge sheet, the offender may get away with the provision of default bail.⁶³ In the case of *Shri Deu Baju Bodake v. The State of Maharashtra's* (2016) the victim has committed suicide due to constant harassment and stalking by the offender. The victim was constantly harassed and stalked with a marriage proposal by the offender at the workplace. In

⁶⁰ *Id.*, s. 66D.

⁶¹ *Id.*, s. 67.

⁶² (28.05.2019 - PHHC): MANU/PH/0569/2019.

⁶³ Robin Sharma and Ors. v. State of Punjab 2020(3) RCR(Criminal)721.

this case, the charge of abetment of suicide has been made, but as per the opinion of the Bombay High Court, the charges of stalking could have been registered.⁶⁴ At the initial stage, the offence of voyeurism is committed for sexual gratification but later the offender based on recorded sexually explicit material starts harassing the female victim and insist on marriage and also threaten to viral video or image.⁶⁵

X. CONCLUSION AND SUGGESTIONS

Vigilant by the public in their surroundings and uses of the internet with caution can to some extent curb voyeurism, offline and online stalking. In case of any intimacy, circumstances exercise by the people then they must be careful about any foreign object nearby them to avoid any voyeurism related offences. The effective investigation by the police is possible only when the procedure of law gives flexibility to enforcement agencies. It is the need of the hour to revisit the current criminal law of India, which is age-old and enacted in the colonial era. There have been many changes in Indian criminal law to suit the need and aspirations of the people. But it is high time to bring some new changes by which there can be an effective investigation of crimes by the police and other investigating agencies. Innovative thought such as community policing should also be given importance with limited power and restriction. The police patrolling in the deserted areas in urban and rural areas must be increased. There should be a regular check on the misuse of power even by the police personnel, so that police personnel use the power as per the Rule of Law. There is a need to make reform the police stations, as per the 316th Report on Issues Related to Safety of women, each police station must have a police officer to take cases of gender-based violence and must be trained to handle victims of gender-based violence with a more humane and compassionate manner. Recently a new Committee on Criminal Law Reform⁶⁶ has been constituted for making suitable changes in criminal law to include growing new forms of crimes in India. The modernisation of Indian police with science and technology, such as wearing cameras in the uniform so to record the whole process of investigation and at the same time capture the offender act while arresting. If any unusual event happens while arresting the offender, then such recorded video can be produced in the court of law as evidence. Gender-sensitive infrastructure and services should be in place. Feminist urban planning might be one of the strategies to preventing stalking instances in public spaces. The feminist urban design makes it easier to have well-lit streets,

⁶⁴<https://www.soolegal.com/roar/introduction-of-stalking-into-indian-legal-regime>.

⁶⁵ (2019)ILR 11All83.

⁶⁶Committee for Reform in Criminal Law to start online, <https://www.thehindu.com/news/national/committee-for-reform-in-criminal-law-to-start-online-consultation-soon/article31958256.ece>.

free public restrooms, conveniently accessible police services, and community housing, among other things.⁶⁷ Awareness among people is also effective prevent measure to counter offences of stalking and voyeurism. The definition of voyeurism in the Indian Penal Code, 1860 is not gender-neutral. The definition should be amended to make voyeurism a gender-neutral offence because the victim could be both the gender.⁶⁸ The public must act as a guardian and protector if any stalking related incidents take place in the public place and public participation in the law and enforcement is the best remedy.

⁶⁷ Vidhi Centre for Legal Policy, Report: *Making A Feminist City: Planning Safety and Autonomy for women A Legal and policy Perspective* (Feb., 2021).

⁶⁸ The News Minute. 2021. *Smriti Irani case: Did you know there is a law that deals specifically with voyeurism?*. [online] Available at: <<https://www.thenewsminute.com/article/smriti-irani-case-did-you-know-there-law-deals-specifically-voyeurism-28692>> [Accessed 21 July 2021].