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Public Masturbation as a Crime in India

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ABSTRACT

Public masturbation has been an issue long ignored and strategically side-lined due to its pervasiveness, by the law and the society, in spite of the large perpetration rate it bears in India. Although ubiquity stresses on the need of a remedy, yet no recognized legal category has been in place exclusively for Public Masturbation. This can be attributed to the reality of women's sexual treatment by men.

Offences like that of public masturbation usually are not only large in number, but have far reaching results. Public Masturbation resembles the conduct prohibited by certain sections of the Indian Penal Code, 1860. Yet, by the absence of the effective usage of laws and the frivolous and unconcerned attitude towards public masturbation as a crime, it becomes imperative to understand its frequency in India and the slow application rate of a bunch of laws which do not directly target the issue.

This paper aims to broach this recurring subject and analyse the application of laws which encompass indecent exposure along with other relevant charges. Further, it seeks to analyse the medical conditions of public masturbators by the virtue of which they are inclined towards masturbating in public. It also studies the Hobbesian Perspective on Street Harassment and its relation to the crime of public masturbation. It also analyses the perspective of minors and LGBTQ as victims of public masturbation.

The paper adopts the doctrinal method of study to analyse and comment on the efficacy of the existing laws. The paper concludes that the current scattered laws are inadequate to curb the issue by citing various incidents of public masturbation in India.

Keywords: *Public Masturbation, Indian Penal Code, Street harassment laws, Indecent exposure.*

I. INTRODUCTION

Incidents of street harassment inflicted on women, like sexually explicit comments, public masturbation and stalking are no news these days. This paper focuses on public masturbation, which forms a major part of other men-inflicted crimes in India. It majorly involves women and children of both sexes as victims. A social problem is rarely followed by low

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documentation in spite of having very high rates of penetration. Public masturbation is yet another example of a repetitive subject in feminist knowledge.² Although being masturbated at is not physically violating, as the victim is not being touched or harmed in any physical way, but it is personally violating. Masturbation in public as opposed to masturbation in a private sphere is not protected free expression. The obvious reason being that masturbation in public or masturbating at women in public is an act grossly indecent and does outrage the modesty of a woman. Public masturbation encompasses indecent exposure, assault, an offense against public order and violations of the exercise of women's civil rights.

Masturbation is defined as an “*erotic stimulation especially of one's own genital organs commonly resulting in orgasm and achieved by manual or other bodily contact exclusive of sexual intercourse*”.³ As per the Black's Law Dictionary, obscenity is defined as “*the character or quality of being obscene; the conduct tending to corrupt the public merely by its indecency or lewdness*”.⁴ This act comes under the ambit of a crime when it is done in public with a victim who is masturbated at.

II. THE HISTORY OF PUBLIC INDECENCY IN THE CONTEXT OF PUBLIC MASTURBATION

In ancient times, sexual explicitness in various arts was not regulated by the state. The Sumerian literature portrayed human love as closely connected to both procreation and sexual pleasure.⁵ Roman drama and poetry were filled with eroticism, sexual innuendo and sensuality. The idea of the law interfering with free sexual expression would have been met with derision by the people.⁶ Even so, it cannot be said that the Romans had no sense of impropriety. On the contrary, they clearly believed that certain subjects and actions were out of place in some circumstances.⁷

The Indian Penal Code, 1860⁸ does not define the term “gross indecency” but this term is common in English criminal law.⁹ A Concise Dictionary of Law defines it as “*a sexual act that is more than ordinary indecency but falls short of actual intercourse*”.¹⁰ In the case of

² Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L.J. 149, 150 (2000).

³ *Masturbation*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/masturbation>.

⁴ *Devidas Ramachandra Tuljapurkar v. State of Maharashtra*, MANU/SC/0612/2015.

⁵ Joan Goodnick Westenholz, *Love Lyrics in the Ancient Near East*, IV CIVILIZATIONS OF THE ANCIENT NEAR EAST 2471, 2471-74 (1995).

⁶ Geoffrey R. Stone, *Origins of Obscenity*, 31 N.Y.U. REV. L. & SOC. CHANGE 711 (2007).

⁷ NORMAN ST. JOHN, *Obscenity and the Law*, 2 (1956).

⁸ The Indian Penal Code, 1860, No. 45 of 1860.

⁹ Jack Lee Tseng-Ta, *Equal Protection and Sexual Orientation*, 16 SING. L. REV. 228 (1995).

¹⁰ *Gross Indecency*, A CONCISE DICTIONARY OF LAW, 2nd ed, 1990.

*Ng Huat v PP*¹¹ it was held that:

“What amounts to a grossly indecent act must depend on whether in the circumstances, and the customs and morals of our times, it would be considered grossly indecent by any right-thinking member of the public... The court does not sit to impose its own moral standards or precepts, but to enforce the morals of the general public.”

Thomas Babington Macaulay had completed his draft Indian Penal Code in 1837. He stated:¹² “We are unwilling to insert, either in the text, or in the notes, anything which could give rise to public discussion... the injury which would be done to the morals of the community by such discussion would far more than compensate for any benefits which might be derived from legislative measures framed with far more precision.”¹³

A close examination of the above would lead to the consideration of the fact that there is very less discussion and debate on topics like that of masturbation which leads to less public awareness and also opens a (fearless) space for the harassers to commit the crime and get away scot free.

III. INDIAN LAW

Public Masturbation resembles the conduct prohibited by Section 354¹⁴ of the Indian Penal Code, 1860, which deals with “assault or criminal force with intent to outrage a woman’s modesty”, Section 509¹⁵ which deals with “gesture or act intended to insult the modesty of a woman”, Section 268¹⁶ which handles cases of “public nuisance” and/or Section 355¹⁷ which deals with “using criminal force to any person, intending to dishonour that person”. There is **no** specific punishment or mention of public masturbation under the Indian legal system. Broadly, it is an obscene punishable act. Although, because of underreporting and absence of a specific law, there are few exclusive cases of public masturbation and very few convictions have been upheld.¹⁸ Like many other sexually-based offenses against women, underreporting of crimes is a problem. Women are many a times discouraged from filing a complaint because of the vanity of recovery. Many offenders are harm-proof and police are not likely to

¹¹ *Ng Huat v PP*, 2 SLR 783, 792G (1995).

¹² Bret Boyce, *Sexuality and Gender Identity under the Constitution of India*, 18 J. GENDER RACE & JUST. 1 (2015).

¹³ THE INDIAN LAW COMMISSIONERS, A PENAL CODE 72 (G.H. Huttman ed., Bengal Military Orphan Press, Calcutta 1837).

¹⁴ The Indian Penal Code, 1860, No. 45, § 354.

¹⁵ The Indian Penal Code, 1860, No. 45, § 509.

¹⁶ The Indian Penal Code, 1860, No. 45, § 268.

¹⁷ The Indian Penal Code, 1860, No. 45, § 355.

¹⁸ *Commonwealth v. Duncan*, 363 A.2d 803 (Pa. Super. Ct. 1976).

take it gravely.¹⁹ Also precedent does not support women certainly in such cases. Analysis of the scarce case law points out the hurdles in a courtroom including but not limited to:

- Lack of evidence (if the incident of public masturbation is not recorded or there are no eyewitnesses) and the reluctance to impose liability for such an alleged incident.
- Reliance on the statement of the victim alone.
- The undermining of the severity of street harassment in the eyes of the law.

Victims of public masturbation often describe feeling unsafe and intimidated even when no physical act is present.²⁰ Furthermore, acts of street harassment often pave the way for legally cognizable harms like stalking, rape, sexual assault and so on. The fear of these legally cognizable harms incarcerates women to the “private sphere”.²¹ This prevents women from attaining full citizenship. **When Publicly Masturbated at, a woman loses her full citizenship due to fear of recurring harassment.**

A Hobbesian perspective aids to understand the obligations of the state and the harms of street harassment. Women specific laws are crafted in such a way that it will protect them from a lawless public space and the threat it carries. The state also needs to protect women in the prototypical public space, i.e. the street or any public area, and not leave women to protect and fend for themselves all the time.²²

Minors and LGBTQ as Victims of Public Masturbation:

There have been instances of minors being victims of masturbation in public places.²³ Also, taking into consideration the varied sexual orientations of humans, there can be complex instances where public masturbators may harm a person completely unrelated to the incident altogether. For example, a gay masturbating looking at another gay. Or a gay spotting another man masturbating at a woman. What kind of rights and laws are in place for such kind of a situation? Such situations will have multiple victims and laws should be crafted in such a way that it would serve the purpose of not just women, but of all those who would be probable victims of public masturbation. A high rate of verbal and physical harassment is suffered by

¹⁹ Holly Kearl, *Stop Street Harassment: Making Public Places Safe and Welcoming for Women*, 49 (2010).

²⁰ Emily Smith, *Hey Baby! Women Speak Out Against Street Harassment*, CNN (Oct. 6, 2012, 2:02 PM), <http://www.cnn.com/2012/10/06/living/street-harassment>.

²¹ Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 HARV. L. REV. 517, 520 (1993).

²² Sopen B. Shah, *Open Season: Street Harassment as True Threats*, 18 U. PA. J.L. & SOC. CHANGE 377 (2016).

²³ Vineet Upadhyay, *Video of man sexually harassing teen on Delhi-Doon train posted online*, THE TIMES OF INDIA (Oct. 3, 2017, 07:48 AM), <https://timesofindia.indiatimes.com/city/dehradun/video-of-man-sexually-harassing-teen-on-delhi-doon-train-posted-online/articleshows/60915271.cms>.

gay and transgender people in public spaces.²⁴ Notwithstanding the additional minors and LGBTQ victims apart from women, there haven't been any specific laws related to public masturbation which would address such complex situations.

IV. MEDICAL JURISPRUDENCE ON PUBLIC MASTURBATION:

A popular anthropology textbook contains the sentence: "The very definition of what is normal or abnormal is relative to the cultural frame of reference."²⁵

People suffering from paraphilia are likely to masturbate in public. Paraphilia is basically a condition where one has fetishes towards unusual objects. It is an intense fetish. When a person with paraphilia masturbates in public, it is obvious that it causes harm to the object (women) of the person's fetish.

There could possibly be circumstances in a person's life which prevent the release of sex energy along the normal channels. This creates a diversion resulting in a criminal offence through an outlet in certain individuals which are already predisposed.²⁶

Public masturbators may also suffer from regression. Regression is considered as a sign of psychopathology. It includes behavioural patterns like extreme passivity, profound withdrawal from social relations, extreme aggressiveness and open masturbation or soiling. It may represent a frank disinclination to try any longer to cope with social demands.

Exhibitionism, is a form of paraphilia. Exhibitionists (usually males) expose their genitals, to unsuspecting strangers and become sexually excited while doing so.²⁷ In an incident where a man had publicly masturbated at two women said that the presence of a woman made the act more realistic for him. He imagined them as present during coitus and this imagination assisted the masturbation.²⁸

V. INSTANCES OF PUBLIC MASTURBATION IN INDIA

A man was caught masturbating in a crowded bus for which the Delhi Police had announced a reward for any information about the said man.²⁹ A cab driver in Hyderabad was caught masturbating while looking at the victim through the rear-view mirror while driving.³⁰

²⁴ Empire State Pride Agenda, *Anti-Gay/Lesbian Discrimination In New York State*, 3-4 (May 2001).

²⁵ John J. Honigmann, *Toward a Distinction between Psychiatric and Social Abnormality*, 31 SOC. F. 274 (1953).

²⁶ W. Norwood East, *Medical Aspects of Crime* (1936).

²⁷ George R. Brown, *Exhibitionism*, MSD MANUAL CONSUMER VERSION (Aug. 2019).

²⁸ W. Norwood East, *supra* note 25.

²⁹ *Police announce Rs 25k reward for info on man who masturbated on Delhi bus*, DECCAN CHRONICLE (Feb. 17, 2018, 11:51 AM), <https://www.deccanchronicle.com/nation/crime/170218/delhi-police-announce-reward-information-man-masturbated-bus-delhi-uni.html>.

³⁰ *Uber Driver Allegedly Masturbates In Front Of Passenger, Arrested*, NDTV (Oct. 22, 2017, 8:05 AM),

Another story was shared by a woman of a train journey from Dehradun to Delhi during which a man was masturbating by staring at her niece.³¹ A man publicly masturbated at a student in a local train.³² A woman was stopped by a man on his bike for asking an address. Beneath the piece of paper on which the address was scribbled, he was masturbating.³³ During a social audit, it was found that many college students always wrapped themselves in a dupatta in public places or carried a change of clothes in case someone masturbated at them.³⁴ A 32-year-old professor had gone to the terrace of the building when the accused had followed her there. Suddenly, he unzipped his pants and started touching himself. When the woman attempted to run past him, the accused grabbed her and groped her.³⁵ A police officer was caught masturbating in front of a woman complainant.³⁶ Another public masturbator used to masturbate after seeing girls in parks.³⁷

These admonitions in the form of the above incidents would not be usual if the threat were not real.

VI. CONCLUSION

Public masturbation has been an issue long ignored and strategically side-lined in spite of the large perpetration rate it bears in India thereby trivializing women's sexual harassment experiences. Instead of expiating the offense and trying to fit it into categories like that of indecent exposure or outraging the modesty of a woman, lawmakers must create a separate category for the offense with punishments suitable to the gravity of the offense. A law should be made which covers indecent exposure, outraging the modesty of a woman, along with other relevant charges for the purpose of punishment, prevention, public protection and social standards. Laws should deal directly with the harmful conduct that the lawmakers desire to

<https://www.ndtv.com/hyderabad-news/police-arrest-uber-driver-who-allegedly-masturbated-during-car-ride-in-hyderabad-1765458>.

³¹ Vineet Upadhyay, *supra* note 22.

³² The Ladies Finger, *India has a public masturbation problem: Trivialising it emboldens men and discourages victims from speaking up*, FIRSTPOST (Oct. 25, 2017, 05:02 PM) <https://www.firstpost.com/india/india-has-a-public-masturbation-problem-trivialising-it-emboldens-men-and-discourages-victims-from-speaking-up-4174851.html>.

³³ Sushmitha Ramakrishnan, *Public masturbation: A menace which passes off as a 'victimless crime'*, THE INDIAN EXPRESS (Feb. 19, 2018, 05:35 PM), <http://cms.newindianexpress.com/states/tamil-nadu/2018/feb/18/public-masturbation-a-menace-which-passes-off-as-a-victimless-crime-1775026.html>.

³⁴ Sushmitha Ramakrishnan, *supra* note 32.

³⁵ Munish Pandey, *Man gropes Delhi professor; masturbates in front of her, flees with her mobile*, INDIA TODAY (Dec. 2, 2017 07:45 PM), <https://www.indiatoday.in/india/story/woman-professor-molested-masturbation-mobile-theft-delhi-connaught-place-1098910-2017-12-02>.

³⁶ *UP cop arrested, dismissed from service for masturbating before woman*, HINDUSTAN TIMES (Jul. 02, 2020, 03:28 PM), <https://www.hindustantimes.com/india-news/up-cop-arrested-dismissed-from-service-for-masturbating-before-complainant/story-9rmwNPMfddSdCepos1CiaO.html>.

³⁷ *Delhi: After 11-day chase, youth accused of masturbating in front of girls in parks arrested*, MIRROR NOW DIGITAL (Sept. 18, 2019, 08:08 AM), <https://www.timesnownews.com/mirror-now/crime/article/delhi-after-11-day-chase-youth-accused-of-masturbating-in-front-of-girls-in-parks-arrested/490736>.

prevent. By doing so, the number of public masturbation incidents can be reduced and the courts can, without hesitation, recognize the grievous concerns of harassment victims.

As indecent exposure also includes public urination, sunbathing nude etc., the courts should develop an elaborate analogy between (criminal acts like that of) public masturbation and other indecent acts done in public.

Bearing the Indian context in mind, proper studies should be conducted with regard to public masturbation from a legal as well as a medical perspective. Leveraging sexual harassment law to deter perpetrators from committing the crime of public masturbation is most desirable in today's times.
