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Voyeurism under Indian Legal System

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ABSTRACT

In this age of unprecedented digital crimes, voyeurism is one among them where netizens who fall prey to such evils of cyberspace takes several resorts under the remodelled refineries of Indian statutes subject to certain desideratum's. The important point of consideration is whether these repositories are available to all covering enough information bank to act as suitable ward against the present social and virtual library whereby judiciary attempts to draw out the very quintessence of this kernel. This research article will linearly extrapolate the voyeurism related stipulations in India.

Keywords: Private Act, Electronic, Image, Consent, Voluntary.

I. INTRODUCTION

Voyeurism has been classified within the realm of paraphilias, where certain voyeuristic behaviours may cause distress or lead to dysfunctional interpersonal dynamics thereby if deemed an issue by the court, such person can be sent to a hospital to try and treat the disorder. Thus, the voyeuristic disorder may or may not lead to the offence of voyeurism.

Before independence in 1947, voyeurism was not specifically categorized but colonial legal structures often addressed related sexual offenses without adequately considering individual privacy or consent.

However, voyeurism remained unaddressed until a wave of public outcry highlighted the need for legal reforms soon after the Delhi Nirbhaya rape case(2012), which acted as a catalyst for urgent legislative action and appointment of a special committee named Justice Verma Committee to probe into the women related laws especially anti-rape laws. As per the 167th report on the Criminal Law (Amendment) Act, 2013, introduced *Sec. 354C*² to the Indian Penal Code, an affirmation to such societal demands for more robust legal protections. This marked the official criminalization of voyeurism specifically, defining it as the act of a man watching or capturing or publishing visual photographs of a female during personal or intimate moments without her consent. The law stipulates penalties ranging from one to three years of imprisonment for a first offense and three to seven years for repeat offenders, emphasizing the absence of consent as a critical factor in defining voyeuristic acts to safeguard the right to

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² The Indian Penal Code, 1860, § 354C, No.45, Imperial Legislative Council, 1860 (India).

privacy.

In addition to the IPC, the IT Act, specifically *Sec. 66E*³, addresses electronic voyeurism, criminalizing the capturing of images without consent through digital means. This section was enacted in response to the emerging threats posed by technological advances and the increasing prevalence of non-consensual dissemination of intimate images.

The IT Act interacts with provisions from IPC, particularly *Sec. 354C*, which also addresses voyeurism. This integration ensures that both physical and electronic forms of voyeurism are covered under comprehensive legal frameworks, aiming to enhance protections against privacy invasions.

Others, include the POCSO Act which does not explicitly define "voyeurism," it includes various sexual offenses that can be interpreted to cover voyeuristic acts under *Sec.11(3)*⁴, *13*⁵ & *15*⁶; For instance, behaviours that involve watching, making a child expose themselves, or engaging in any form of surveillance aimed at filming the child can be categorized under the Act.

II. ELEMENTS OF VOYEURISM AS A CRIME UNDER INDIAN CRIMINAL CODES

Voyeurism is addressed under the *Bhartiya Nyaya Sanhita (BNS), 2023*, specifically in *Section 77*⁷ which enhances the definition and penal provisions surrounding voyeuristic acts, while paving the way for gender neutrality in the definition of the perpetrator. Further, Voyeurism is classified as a non-cognizable, non-compoundable and bailable offense under the BNS. This classification indicates that while it is a serious offense, it allows for bail provisions most often for first time offender only, emphasizing the necessity of balancing legal repercussions with the rights of the accused. The concept of voyeurism is aligned with the right to privacy articulated under *Art.21*⁸ which stands in direct violation of such inherent rights.

General definition of "voyeur" - someone who gets delight out of eavesdropping others disrobe or having intercourse.

(A) Definition of Voyeurism in Section 77 BNS:

It defines voyeurism as *the act of watching or capturing the image of a woman engaging in a private act under circumstances where she has a reasonable expectation of privacy.* The section

³ The Information Technology Act, 2000, § 66E, No.21, Acts of Parliament, 2000 (India).

⁴ The Protection of Children from Sexual Offences Act, 2012, § 11(3), No.32, Acts of Parliament, 2012 (India).

⁵ The Protection of Children from Sexual Offences Act, 2012, § 13, No.32, Acts of Parliament, 2012 (India).

⁶ The Protection of Children from Sexual Offences Act, 2012, § 15, No.32, Acts of Parliament, 2012 (India).

⁷ The *Bhartiya Nyaya Sanhita, 2023*, § 77, No.45, Acts of Parliament, 2023 (India).

⁸ INDIA CONST. art. 21.

specifies that such actions are punishable by law, reflecting a commitment to protecting individual privacy rights in such intimate moments wherein the prosecution has the onus probandi to establish key ingredients.

Key Essentials:

- The perpetrator must have watched or captured an image of the woman.
- The victim should have reasonable expectation of privacy i.e. knowledge of not being observed.
- The act must be private in nature.
- The woman must not consent for dissemination/ circulation of such image.

(A) Doctrine of Reasonable Expectation

It is a legal doctrine that permits individuals to seek accountability for violations of their personal privacy whereby acting as a determinant factor altogether. It asserts that individuals have a right to privacy in certain contexts, allowing them to challenge unauthorized intrusions including the state. This expectation can be subjective, depending on the individual's sincerely held belief about their right to privacy, and objective, gauged against societal norms regarding privacy. This two-fold test serves as a standard in legal evaluations of privacy infringements on a case-by-case basis, especially in judicial contexts as provided below:

*K. Puttaswamy v. Union of India*⁹, wherein the Court of Appeal recognised, in accordance with Art. 21, the right to privacy as a basic right. The court emphasized that privacy should be respected in both public and private spaces, reiterating that individuals do not lose their right to privacy simply by being in public arenas.

*R v. Jarvis*¹⁰, this doctrine was applied to ascertain the expectations of privacy of female students who were secretly filmed by a teacher. The court considered various factors when determining whether the victims could reasonably expect privacy, such as the location i.e. areas typically associated with privacy, like bathrooms and changing rooms, automatically suggest a higher expectation of privacy, plus the context of the observation, and the nature of the activity being recorded.

(B) Scope and Penalties:

The penalties for voyeurism under the Sec 77 (BNS) are substantial similar to IPC. A first

⁹ K. Puttaswamy v. Union of India, 2019 (1) SCC 1.

¹⁰ R v. Jarvis, [2002] 3 SCR 757.

conviction carries a prison term from one to three years and a fine, while repeat offenses leads to an imprisonment from three to maximum up to seven years along with extra fines respectively. This tiered penalty structure underscores the seriousness with which the law treats these offenses.

(C) Gender-Neutral Language:

One of the significant advancements in the BNS is the introduction of gender-neutral language significantly broadening the scope of the law unlike previous legislation where voyeurism was primarily defined within a gendered framework under Sec. 354B/354C of IPC with (perpetrator as “man” and victim as “woman”), Sec. 77 states that the perpetrator can be "whoever," thereby expanding the applicability to all genders. This change indicates a move towards inclusivity in addressing sexual offenses.

EXPLANATION 1: Interpretation of "Private Act"

The BNS provides clarity on what constitutes a "private act" as it encompasses situations where a woman's private parts/reproductive organs, such as her genitals, are exposed or visible, even if only covered by underclothing's, including instances like using a restroom or engaging in private sexual acts typically conducted discreetly. The definition aims to cover various scenarios indicative of privacy expectations.

EXPLANATION 2: Interpretation of "Voluntary or Free Consent"

If the woman consents to the capture of the image but not to its dissemination, spreading that image is also an offence.

III. REDRESSALS FOR PROTECTION TO VICTIMS UNDER SECTION 173 (BNSS) [PREVIOUSLY SEC.154¹¹ CRPC]

According to *Section 173(1)*¹² [BNSS], a person has two alternatives regarding lodging a report/FIR i.e. in words or via written form irrespective of the local police station's location i.e. jurisdiction.

Under the *first proviso*, every detail given by a female witness about the designated offences must be documented by a female police officer. The *second proviso* stipulates that the information must be tracked alongside the presence of an authorised counsellor or interpreter, either at the witness's dwelling or at an alternate spot of her choice. The police officer must also have the statement officially registered by a judicial magistrate while having it captured on

¹¹ The Code of Criminal Procedure, 1973, §154, No.2, Acts of Parliament, 1973 (India).

¹² The Bhartiya Nagarik Suraksha Sanhita, 2023, §173(1), No.46, Acts of Parliament, 2023 (India).

camera.

*Sec. 173(2)*¹³ extends the right to receive a free copy of the FIR not just to the informant, but also to the victim

If a police officer refuses to record the FIR, *Sec. 173(4)*¹⁴ provides a clear recourse for the aggrieved party under sub-section (1) wherein an individual can Submit written copies of all the details in their entirety to the Superintendent of Police (SP) who is mandated to act if satisfied that a cognizable offense has occurred. This provision acts as a safeguard, ensuring that the victims' complaints cannot be arbitrarily dismissed by the police.

1. *Sonu v. State*¹⁵

The High Court ruled that taking a bath, even in a temporary structure, is fundamentally a private act, and labelling it public merely due to the nature of the structure is irrational/immaterial as the man's act of peeping into a bathroom with sexual intent, coupled with vulgar remarks and gestures, constitutes a serious breach of privacy under Sec. 354C of IPC wherein the sexual integrity of every individual must be respected, and any violation should be met with strict legal consequences.

The fact that a bathroom lacks a door or has temporary walls cannot be construed as a public space, and the act of bathing still remains private. Even in a common public religious place, women have a reasonable expectation of privacy, and taking photographs or videos of them while bathing would similarly amount to an act of voyeurism.

2. *Shivam Sharma v. State of Madhya Pradesh*¹⁶

It was well-decided by the court that the accused act of sharing intimate images of the victim with her father, without her consent, constituted a prima facie offense under Sec. 354C of the IPC, which criminalizes voyeurism. Besides, court clarified that consent to take a photograph does not imply consent for its distribution, even if initially granted. The intent to capture or share such images without permission is sufficient to establish the offense of voyeurism. The judgment also underscored the serious psychological harm these actions can inflict on victims.

IV. CONCLUSION

Consequently, while voyeurism under the BNS & IT Act focuses primarily on visual invasions of privacy, such as revenge porn and extortion through possession of indecent images, it does

¹³ The Bhartiya Nagarik Suraksha Sanhita, 2023, §173(2), No.46, Acts of Parliament, 2023 (India).

¹⁴ The Bhartiya Nagarik Suraksha Sanhita, 2023, §173(4), No.46, Acts of Parliament, 2023 (India).

¹⁵ *Sonu v. State*, 2023 SCC OnLine Del 1955.

¹⁶ *Shivam Sharma v. State of Madhya Pradesh*, CRR-448-2022.

not explicitly address the capture of intimate audio recordings or conversations. This creates a significant gap in the law, as auditory invasions of privacy can have similarly damaging effects, such as post-traumatic stress disorder and emotional turmoil etc. The absence of provisions covering these forms of privacy violations underscores the need for more comprehensive legislation that protects individuals from all types of privacy breaches, not just visual ones, suggesting that auditory invasions may require clearer legal regulation.
