

LEGALFOXES LAW TIMES

VOYEUR ALERT: VOYEURISM VIS-À-VIS RIGHT TO PRIVACY

RESEARCH METHODOLOGY

TITLE: VOYEUR ALERT

AIMS & OBJECTIVES

- To analyse and understand the concept of Voyeurism under the Indian Penal Code, 1860.
- To study the concept of Voyeurism in relation to the Right to Privacy guaranteed under Article 21 of the Indian Constitution.

RESEARCH HYPOTHESIS

The researcher proceeds with the hypothesis that the social crime of Voyeurism is a violation of Right to Privacy.

RESEARCH PROBLEM

The research problem is to check whether the offence of Voyeurism affects the privacy of a woman.

SCOPE & LIMITATION

This research paper is an outline of the concept of Voyeurism in regards to Right to Privacy. This study is limited to data which is available online, due to limited time, thus the study is general in nature.

RESEARCH QUESTIONS

- What is the concept of Voyeurism as a social crime?
- What is the relation between Voyeurism and Right to Privacy?
- What is the judicial precedence in relation to the same?

RESEARCH METHODOLOGY

Nature of Study: This study is purely doctrinal.

Method of Data Collection: The researcher has relied upon secondary resources such as reports, journals, articles, various cases and web sources.

MODE OF CITATION

A uniform method of citation is followed throughout this paper.

INTRODUCTION

Voyeurism is an offence to both the privacy as well as the dignity of a person, by infringing upon the right of individuals to control the exposure of their bodies without their consent or knowledge, either through unwarranted observation of the individual or through the distribution of images or videos against the wishes or without the knowledge of the victim. Voyeurism is a criminal offence in many jurisdictions across the world such as Australia¹, the United States,² Canada,³ and the UK⁴, which criminalises either the capturing of certain images, or observation of individuals, or both.

Voyeurism is a social crime because it is affecting society at large. Marshall (1998) proposed the definition of social crime as “a cognizant challenge to a prevailing social order and its values”. Major social crimes include political crime, economic crimes, a crime against women, etc. In this study, ‘Social Crime’ is defined as a sexual crime committed towards women, which is considered against society by violating the societal norms, creating disturbances and fear among its members.

VOYEURISM IN REGARDS WITH RIGHT TO PRIVACY

Right to Privacy

Right to Privacy is a fundamental right which is guaranteed under art 21 of the Indian Constitution.⁵ Privacy has always been a natural right.⁶ The fundamental right to privacy would cover three aspects – (i) intrusion with an individual’s physical body, (ii) informational privacy,

¹ Crimes Act, 1910.

² Video Voyeurism Protection Act, 2004.

³ Section 162, Criminal Code of Canada.

⁴ Section 67, Sexual Offences Act, 2003.

⁵K S Puttaswamy v. Union of India (2017) 10 SCC 1.

⁶Govind v. State of MP (1975) 2 SCC 148.

and (iii) privacy of choice. It is part of liberty within the meaning of that expression in Art 21. Right to Privacy means “right to be let alone”; the right of a person to be free from any unwarranted interference.⁷

Privacy constitutes fundamental right but it is no absolute right and can be overridden by State's Compelling interest.⁸ It is subject to three-fold test given in the judgement: Legality, Legitimate State aim and Proportionality. To infringe anyone's privacy there should be the existence of law and a guarantee against arbitrary State action and a rational nexus or connection between objectives means to achieve them.

To commit an offence of Voyeurism which is to affect woman privacy is not protected as there is no law which allows doing so and it is not the State's requirement. It is also not proportional as the objective which accused want to achieve is illegal and so the means.

It is the privacy of a woman not to be observed when she is engaged in a private act. It is her privacy of choice. Voyeurism is an offence to both the privacy and dignity of a woman by being observed by a man without her consent when she is engaged in a private act where she is expected to not be observed. The word “*privacy*” has been used in explanation 1 to address that the offence of Voyeurism is an infringement of a woman's privacy. If the woman consent for the capturing the act and against her consent, it was shared with another individual then this will also amount to voyeurism.

Voyeurism is a ridiculous form of enjoyment for men but 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.⁹

Invasion of privacy is a violation of a “right not to be looked at”¹⁰. Privacy is the condition of there being no “undocumented personal information about oneself known to others.”¹¹ Interest in having reasonable expectation fulfilled and in being able to make informed choices once again

⁷Blacks Law Dictionary 11th edition

⁸K S Puttaswamy v. Union of India (2017) 10 SCC 1.

⁹State v. Shailesh Unique I.D. No. 02404R0032112014.

¹⁰ Thomson on Privacy “Philosophy and Public Affairs, Vol 4 (1975) p. 318.

¹¹American Philosophical Quarterly, Vol 20 (1983) p 346.

appear to be more adequately reflect the foundation of the concept of privacy.¹² The expectation of privacy is highest in places where one can exclude others.¹³ The normative question of the reasonable expectation of privacy can be answered by law prioritizing the observed person interest in protecting their autonomy and sexual integrity over the accused's liberty of action.¹⁴ Privacy roots are embedded in the same soil as the sanctity of the home and the protection of one's property.¹⁵

Voyeurism is an offence by which an individual invades and encroaches upon the privacy of an individual, it can be said that the offence of voyeurism is in violation of article 21 of the Indian constitution.¹⁶

JUDICIAL PRECEDENCE

Prior to the Criminal Amendment 2013

Supreme Court of India discarded the age-old Hicklin test and proposed a new parameter named the "community standard" test in *Aveek Sarkar & Anders v. State Of West Bengal & Anr*¹⁷. In the case, a German magazine "STERN" published an article on Boris Becker, a renowned tennis player with a nude photo of him and his dark-skinned fiancé to portray his message "love triumphs hate". The same article along with the picture was republished in an Indian sports magazine. An avid reader of the magazine filed a case as he thought the picture could corrupt the mind of the young readers of the magazine and was against the cultures of the Indian society. The Supreme Court held that the picture was not lascivious or obscene as it should be seen in the context of the article along with it was published. According to the judgment only those sex-related materials which have a tendency of "exciting lustful thoughts" can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards."

¹²Nathan, Daniel O. "Just Looking: Voyeurism and the Grounds of Privacy." *Public Affairs Quarterly*, vol. 4, no. 4, 1990, pp. 365–386. *JSTOR*, www.jstor.org/stable/40435762. Accessed 1 Apr. 2020.

¹³ Queen v. Ryan Jarwis 2019 SCC Online Can SC 2.

¹⁴R v. Jarwis (2017) ONCA 778.

¹⁵R v. Landry (1986) 1 SCR 145.

¹⁶Lavanya Chawala, Droit Penale: Indian Law Journal on Crime & Criminology (online) vol 2 issue 1.

¹⁷ (2014) 4 SCC 257.

In the Indian scenario, in the case of *Ranjeet D. Udeshi v. the State of Maharashtra*,¹⁸ the Supreme Court admitted that Indian Penal Code doesn't define obscenity though it provides punishment for publication of obscene matter.

Post-Criminal Amendment 2013

In the case *State v. Rahul*¹⁹ on 29 November 2013, the accused was punished under section 354C IPC. The accused had established sexual relationships with a girl by force and without her consent and had also captured images of the victim's private parts without her consent. Later on, the accused threatened to post and disseminate the captured videos if she failed to maintain the sexual relationship with him. The district court has charged him guilty of the offence of Voyeurism under sec 354C and gave him required punishment.

In the case of *State v. Shailesh*²⁰, Delhi District Court gave judgement and convicted the accused for the offence of Voyeurism. Voyeurism is a ridiculous form of enjoyment for men but 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.

RECENT DEVELOPMENT

A new form of video voyeurism also known as 'cyber peeping' has emerged in recent times where images of the private area of subjects, mostly females are captured without her knowledge and then transmitted widely without her consent thus violating privacy rights.²¹ Video voyeurism is the act of secretly or discreetly photographing certain parts of the body mostly unclothed without the person's consent. It is, in fact, a very invasive and intimidating crime particularly in our society where the females are worshipped or respected. Many of the innocent victims, ladies or even minor girls have unwittingly become the object of video voyeurism websites whose privacy has been surreptitiously invaded using the high gadgets.²²

¹⁸ A.I.R 881, 1965 SCR 65.

¹⁹ SC No.249/13.

²⁰State v. Shailesh Unique I.D. No. 02404R0032112014.

²¹Deepthy S, Women as a Victim & Survivor in Cybercrimes, jlsr.thelawbrigade.com.

²² Neeraj Arora, Advocate, Article - Prying Eyes on Privacy through Peeping Toms, April 28, 2010, Archive for the Information Technology Act.

RELEVANT PROVISIONS IN CODE OF CRIMINAL PROCEDURE 1973

The relevant provisions related to the woman in CrPC are as follows:

- **Sec 46(4) CrPC:** As per this section woman cannot be arrested before sunrise and after sunset but it is subject to exceptional circumstances where a woman police officer shall take prior permission from Judicial Magistrate First Class with a written report.
- **Sec 47(2) CrPC:** Notice should be given to a woman for search in the place which is occupied by such female who as per custom did not appear in public.
- **Sec 51(2) CrPC:** Search of a woman shall be done by a female in which decency should be maintained.
- **Sec 53(2) CrPC:** The medical examination of a female accused shall be performed only by a registered female medical practitioner or under her supervision.
- **Sec 160 CrPC:** A woman is not required to attend the police station as a witness.
- **Sec 164A CrPC:** The medical examination of a victim of rape shall be done upon the consent of the victim and doctor's report is not conclusive proof of rape. It is judicial pronouncement and it should be adjudged by the judiciary itself.
- **Zero FIR:** An FIR can be registered in any police station irrespective of place of incidence.
- **Time does not matter:** Police cannot refuse to register an FIR even if a considerable period of time has elapsed since the incident.

RELEVANT PROVISION IN INDIAN PENAL CODE, 1860

The relevant provisions specifically related to the woman in IPC are as follows:

- **Sec 228A IPC:** Nobody can disclose the identity of the victim of certain sexual offences and if the person does so punishment has been prescribed.
- **Sec 302/304B IPC:** Punishment has been provided for murder and dowry death within 7 years of marriage if death has occurred unnaturally and before death woman was subjected to cruelty or harassment by husband or any relative of husband.
- **Sec 354 IPC:** Punishment has been provided if a person uses criminal force to outrage the modesty of a woman.

- **Sec 354A IPC:** Punishment for sexual harassment has been provided if a man physically contacts or unwelcomed remarks or request sexual favours or shows pornography against the will of the woman.
- **Sec 354B IPC:** Punishment has been provided for disrobing a woman.
- **Sec 354C IPC:** Punishment has been provided for committing the offence of Voyeurism.
- **Sec 354D IPC:** Punishment has been provided for committing the offence of stalking.
- **Sec 376 IPC:** Punishment has been provided if a man commits rape against a woman.
- **Sec 509 IPC:** Punishment has been provided if anybody through words or gestures or act insults the modesty of a woman.

CONCLUSION

The offence of Voyeurism is a social crime as it affects society at large and shows the criminal intention of a man that affects the dignity and integrity of a woman. The accused violates and infringes the very privacy of a woman as he observed the woman where she is engaged in a private act where she would not like to be observed or exposed or where she wanted that privacy should be maintained. The person committing the offence violates the fundamental right to privacy that is guaranteed under art 21 of the Indian constitution.

Every person has a right to choose which signifies that every woman has a right to maintain her privacy and nobody should infringe her privacy where she wanted that she should not be observed. The offence of voyeurism under sec 354C IPC is closely connected to Right to Privacy. Art 21 that is right to life and personal liberty can only be deprived by the fair procedure defined under the law which should be reasonable and just.

The act of voyeurism violates the privacy which is an essential facet of right to life and personal liberty and this act does not come within the purview of the fair procedure according to the law as it is done only for sexual pleasure. The judicial precedence shows that voyeurism affects the very right to privacy and dignity of a woman which signifies that the offence of voyeurism and right to privacy is closely related to each other. The hypothesis stands proved.

BIBLIOGRAPHY

Journal

1. Singh Dalla Harpreet. Cyber Crime – A threat to person, property, Government and Societies. IJARCSSE. 2013; 3(5).
2. Prof. Walker MB. Chamber's Dictionary of Science and Technology, Ed. 4, Allied Chambers, New Delhi India. 2001, 1246.
3. Meg S. Kaplan and Richard B. Krueger, "Voyeurism: Psychopathology and Theory" in Sexual Deviance: Theory, Assessment and Treatment (New York: The Guilford Press, 1997), pp. 297-310, at p. 297.
4. Lance Rothenberg, Article on Rethinking Privacy: Peeping Toms, Video Voyeurs, and the failure of criminal law to recognize a reasonable expectation of privacy in the public space, American University Law Review, 49, 1127, (1999).
5. Thomson on Privacy "Philosophy and Public Affairs, Vol 4 (1975) p. 318.
6. American Philosophical Quarterly, Vol 20 (1983) p 346.
7. Nathan, Daniel O. "Just Looking: Voyeurism and the Grounds of Privacy." *Public Affairs Quarterly*, vol. 4, no. 4, 1990, pp. 365–386. JSTOR, www.jstor.org/stable/40435762. Accessed 1 Apr. 2020.
8. Lavanya Chawala, Droit Penale: Indian Law Journal on Crime & Criminology (online) vol 2 issue 1.
9. Deepthy S, Women as a Victim & Survivor in Cybercrimes, jlsr.thelawbrigade.com.
10. Neeraj Arora, Advocate, Article - Prying Eyes on Privacy through Peeping Toms, April 28, 2010, Archive for the Information Technology Act.

Cases

1. State of Uttarakhand v. Ajam LNIND 2017 UTTAR 613.
2. KS Puttaswamy v. Union of India (2017) 10 SCC 1.
3. Govind v. State of MP (1975) 2 SCC 148.
4. State v. Shailesh Unique I.D. No. 02404R0032112014.
5. Queen v. Ryan Jarvis 2019 SCC Online Can SC 2.
6. R v. Jarwis (2017) ONCA 778.
7. R v. Landry (1986) 1 SCR 145.

8. Anvish Bajaj v. State 3 CompLJ 364 Del, 116 (2005) DLT 427
9. Regina v. Hicklin L.R. 3 Q.B. 360 (1868).
10. Aveek Sarkar & Anrs v. State of West Bengal & Anr(2014) 4 SCC 257
11. Ranjeet D. Udeshi v. State of Maharashtra A.I.R 881, 1965 SCR 65.
12. State v. Rahul SC No.249/13.

Statutes

1. Indian Penal Code 1860.
2. Code of Criminal Procedure 1973.
3. Information Technology Act 2000.
4. Crimes Act, 1910.
5. Video Voyeurism Protection Act, 2004.
6. Criminal Code of Canada.
7. Sexual Offences Act, 2003.

Web-Sources

1. www.westlaw.com
2. www.lexisnexisadvance.com
3. www.scconline.com
4. www.heinonline.com
5. www.jstor.org
6. www.manupatra.com
7. www.legalserviceindia.com