

COMBATING CYBER VOYEURISM: THE LAW NEEDS A RECONSIDERATION

Mr. George Meleth*
Mr. Lan Francis**

Abstract

Women, since time immemorial have remained victims of various forms of sexual offences. With the recent advancements in the field of science and technology, they have become victims of a cyber voyeurism, an emerging sex crime which has taken the internet by storm. The Indian Penal Code and other enactments such as the Information Technology Act provides for laws against cyber voyeurism, but these laws have had little impact in tackling this modern sex crime. Section 354C of the Indian Penal Code, for example, provides for special laws to protect women in this sphere, and prohibits a man from watching or capturing the image of a woman engaging in a private act. It further penalizes the dissemination of such images. However, justice is served only when the victim moves a complaint in this regard. In most cases, the voyeur does not have to make direct interaction with the subject of his interest, and hence they are often unaware of the fact that they are being observed. This in-turn reduces the possibility of such offences being reported, which leaves the victims in a situation where they are subjected to grave injustice and violation of human dignity, although they may not be aware of the same. This paper attempts to study the lacunae in the implementation of legislations relating to cyber voyeurism in India and suggest for procedures to be adopted by the legislature so as to effectively combat voyeurism and similar sex crimes that have crept into the cyber world.

Introduction

The cyber world is so vast, it covers countries and continents, enables one to contact the other in the glimpse of a second. With all the benefits it offers, the cyber world poses certain threats as well; and among these threats is cyber voyeurism; one of the most

* Student, 4thYear BA (Criminology) LL.B. (Hons.), Government Law College, Ernakulam.

** Student, 4th Year BA (Criminology) LL.B. (Hons.), Bharata Mata School of Legal Studies, Kochi.

inimical wrongs against women. Voyeurism can be defined as the act of spying on people who are engaged in private activities, for example; sexual intimacy, sexual behaviour, undressing, showering, or any other action which is of a private nature¹. A person may engage in an act of voyeurism simply by using his/her naked eyes, or by using cameras or binoculars. According to *Merriam-Webster*, a voyeur is said to be “one who obtains sexual gratification from observing unsuspecting individuals who are partly undressed, naked, or engaged in sexual acts”². The traumatic effect which voyeurism has on victims was well recognized in the English case *R v. Turner*³, where a criminal case was initiated against a sports store manager who recorded videos of women inside the shower room.

Nowadays, with the advancement of technology, one can engage in such activities even when not in a close proximity to the victim, as long as they have access to a mobile phone or a computer with an active internet connection. The most commonly occurring voyeuristic acts include spying through windows or keyholes, viewing male or female genital areas by means of hidden cameras, planting cameras in washrooms, changing rooms, pools, and bedrooms etc. where people can be filmed easily.⁴ Today, most voyeurs are armed with high-tech gadgets and mobile devices and this has taken voyeurism to new heights in India and elsewhere in the world.⁵ People who get snapped or captured are at the risk of their private images and clips being released on the internet for the cyber world to view, download, and share. Although in its inception voyeurism only included acts such as peeping through keyholes and windows, it has evolved into a cyber-crime today, capable of creating a drastic impact in the victim's life and leave the victim in a state of emotional trauma. The following part of this paper aims to analyze the impact of voyeurism as a cybercrime in India and discuss the failure of the legislations in the country in combating voyeurism.

¹ Magnus Hirschfeld, *Sexual Anomalies and Perversions: Physical and Psychological Development, Diagnosis and Treatment*, (2nd edition, 1938)

² Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/voyeur>.

³ (2006) All ER (D) 95 (Jan.)

⁴ Hatch, L., 'Voyeurism: What it is and What it isn't', *Psych Central*, available at <http://blogs.psychcentral.com/sex-addiction/2014/08/voyeurism-what-it-is-and-what-it-isnt/>.

⁵ Rebecca Ungarino, 'Tiny Cameras, Big Crimes: Peeping Toms Go High-Tech', *NBC News* (8 Aug 2014), available at <http://www.nbcnews.com/tech/security/tiny-cameras-big-crimes-peeping-toms-go-high-tech-n173151>.

Cyber voyeurism: The Indian scenario

While technology has clearly advanced by miles, there has been a lack of solid laws to regulate the use of new age gadgets. This alone has paved ways for the increase of sex crimes in the cyber world. Sexual harassment of women, outraging the modesty of a woman, rape are some of the offences that form a major part of the total number of sex crimes committed against women in India⁶. Cyber voyeurism, although a recent addition to this list, is perhaps capable of leaving a more devastating impact on the victim, as compared to the other crimes committed against women. Although it may not always leave a direct physical impact, it is capable of tormenting the victim emotionally and mentally.

The Criminal Law Amendment Act, 2013 inserted S. 354 C into the Indian Penal Code, criminalizing voyeurism. The section criminalizes acts of a man who watches or captures the images of a woman who is engaging herself in any private activities under those circumstances where she would, in usual cases, expect to be not being observed by the perpetrator or his accomplice.⁷ It penalizes first time offenders with an imprisonment for a term not less than one year, which could extend upto even three years, and makes him liable to pay a fine as deemed fit by the Court. Upon subsequent condition the period of imprisonment ranges from three to seven years along with fine. Also, Section 66E of the Information Technology Act provides for law against the capture, publishing or transmitting of the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person⁸. These laws, however, lacks efficiency in implementation, and thus seems to have had absolutely no impact at all in tackling cyber voyeurism in the country.

As per the statistics, about 42% of college students who are found to not have any previous criminal background have engaged in voyeuristic acts.⁹ Almost every new phone that is made available in the market today comes with a minimum of 5 megapixel camera, and access to superfast internet. About 80 percent of the youth have access to a smart-phone with these basic features. Besides, several types of spy-cameras such as pen cameras and button cameras are available at affordable prices.

⁶ 'Crime in India', Chapter 5 (National Crime Records Bureau, 2014), *available at* <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf>

⁷ The Indian Penal Code, 1860, S. 354C.

⁸ Information Technology Act, S 66E.

⁹ Michel Hersen, Samuel M. Turner, Deborah C. Beidel, *Adult Psychopathology and Diagnosis* (5th edition, Wiley, 2011) 544.

Already, a significant number of sex crimes committed against women are often left unreported, or are simply not dealt with in the appropriate manner. Even while looking into the number of cases of rape that is reported in India, a question arises as to the actual number of cases where justice is rightly served to the victim. It is said that for every reported rape case, almost 68 rape cases go unreported!¹⁰ One of the most peculiar features of voyeurism is that most victims are unaware that their private acts are being watched or captured by someone. And thus, voyeurism is one among the least reported sexual offences committed against women. However, even in cases where they find out about the possession of their images or videos with someone, they refrain from seeking the help of law enforcement as they fear the dissemination of their images or videos by the voyeur. There have also been instances where the voyeur threatens to disseminate the images, and the victims are forced to agree to the demands put forth by the voyeur. In some of the cases, the victims who are left in a state of mental trauma end up committing suicide due to fear of indignation and rejection from the society.

Recently, a popular South-Indian actress from Kerala was abducted and molested by her former driver, with the intention of capturing obscene images to blackmail her. The actress however made a bold move by reporting the incident to the police, and the investigation revealed that the prime accused in this case had committed similar crimes in the past as well.¹¹ It was revealed during the investigation that his previous victims refused to report the incident to the police out of fear of dissemination of the images, as it would affect their dignity and reputation.

Also notable is an incident in 2010 where two police officers were held responsible for the death of a 15 year old girl, as they misused their powers and recorded a multimedia clip of the girl after forcing her to strip in front of them.¹² In cases such as these, where people with a reasonable amount of power and influence

¹⁰ *Gender-Based Violence: A Guide for Capacity Building for Gender Responsive Police Service Delivery*, Institute for Development and Communication (2010), available at www.idcindia.org/wp-content/themes/idc/pdf/gender_based_violence_guide.pdf.

¹¹ 'Attackers clicked Semi-Nude pics of Kerala Actress, Planned to Blackmail', Deccan Chronicle, available at www.deccanchronicle.com/entertainment/mollywood/200217/malayalam-actor-assault-police-unearts-blackmail-plot.html.

¹² 'Cops sacked for blackmailing girls over obscene MMS', NDTV, available at www.ndtv.com/cities/cops-sacked-for-blackmailing-girls-over-obscene-mms-419314.

are involved, the victims often refrain from reporting the incident. Today, there are several instances like this where school and college-going girls are abused, and are then black-mailed. In most cases, they are blackmailed for money, or are further subjected to sexual abuse by the voyeur and his/her companions.

There are several cases where such videos/images are uploaded on the internet, and in most cases of voyeurism, the victims aren't aware of the fact that their private videos or images are uploaded on the internet. These are cases where one's privacy is invaded into, a woman's modesty is outraged, and in spite of having provisions for the protection of one's own privacy and human dignity, the system in our country fails to ensure the protection which it guarantees, merely because the case is left unreported and the victim is left to suffer the aftermath.

The number of hidden cam videos available on popular video-streaming sites such as YouTube is a clear example of this. If mainstream sites such as YouTube fail to filter its contents, only worse would be the condition of sites which are dedicated to porn and other adult content in the cyberspace. Countries like Indonesia, Vietnam and Middle East countries have succeeded in imposing a ban on porn from the internet. It is unacceptable that India has failed to filter out voyeuristic videos and images that are available online.

A typical search relating to hidden-cam videos on *YouTube* reveals at least one video showing sexually-explicit content, which is often uploaded to the internet without the knowledge of the victim. The community guidelines listed in the official website of YouTube clearly states that YouTube is not for pornography or sexually explicit content except for the purpose of education or art or as a part of a documentary¹³.

The IT Act, 2006 penalized publishing of obscene information in electronic form, but an action isn't taken in most cases until or unless someone files a complaint. Even though it is considered as a criminal offence, justice is served only when the victim reports of such an offence being committed against her. However, in almost all the cases, the voyeur does not interact directly with the subject of his interest, who is often unaware of being observed.¹⁴ This of course reduces the chance of such offences being reported.

¹³ 'Community Guidelines', *Youtube*, available at <https://www.youtube.com/yt/policyandsafety/communityguidelines.html>.

¹⁴ *Ibid* 4.

Though there are laws in the country which criminalizes such acts and guarantees protection to women in these aspects, it fails when the offence is left unnoticed & unreported. There are minute chances of the victim finding out about the dissemination of her video and hence justice is clearly being denied to her and the criminal is often left unpunished. It is obvious that one cannot report such an issue when she herself is unaware that her images are being recorded or captured. Thus, when such an offence is left unreported, neither the criminal is punished, nor the victim is served justice. Once the image is disseminated, there are high chances of it reaching a large section of the society before reaching the victim.¹⁵ An appropriate solution to this would be proper filtering of the images, recordings, video clippings etc. which are uploaded into the internet and blocking of such disseminated recordings and video clippings on the internet.

At present, our law is such that an action is taken to prevent further dissemination of the image only when the victim files a complaint. However, the chances are very minute that a victim will move a complaint in this regard. This is because, in most cases they are not aware of the fact that they have been victimized or targeted by voyeurs. And even in cases where they find out, they are more likely to not complaint due to fear of rejection from the society, and damage to their reputation and status. Many a times, the voyeurs take advantage of this situation and coerce the victims to give into their demands. The government or the law enforcement rarely makes any effort to tackle such incidents. These are areas which the Indian laws have clearly failed to deal with, these are areas where women have been left unaided and unguarded.

At this point, it is essential to examine the laws relating to voyeurism in other countries as well. The following part of this paper will attempt to compare the anti-voyeurism laws of India with that of other common law countries.

Anti-voyeurism laws in other common law countries

Canada

In Canada, anyone who publishes, prints, circulates, distributes or sells any recordings knowing that it was obtained by commission of voyeuristic acts, is also made punishable under the

¹⁵ Pamela Kulbarsh, 'Peeping Toms and Voyeurism Calls', *Officer.Com* (19 September 2016), para 3, available at <http://www.officer.com/article/10781911/peeping-toms-and-voyeurism-calls>.

Canadian Law.¹⁶ If the same was made applicable in India by incorporating a similar provision under the Indian law, YouTube and several other video streaming sites, would become liable for commission of voyeurism. This would have at least helped in persuading such sites to monitor and filter out its contents and uploads so as to avoid punishment.

United States of America

The US legislation on voyeurism¹⁷ is similar to that of Canada. However, US maintain a Sex Offenders Register. Although the same is seen in Canada and other countries like New Zealand, Australia etc. as well, the peculiarity of US is that the Register is publicly accessible.¹⁸ Such methods may help prevent potential offenders from committing the crime, as they would fear rejection from the society if their names are recorded in the register.

England

According to the Sexual Offences Act of 2003, in England, a person is made punishable for not only observing and recording private acts of others, but also for merely installing any equipment or altering any structure of object with the intention of enabling him or someone else to commit such an offence.¹⁹ This feature, too, is found to be missing under the Indian law. For instance, one cannot be punished for merely installing a camera or electronic device, until or unless a video or an image is found to be recorded using that device.

According to the English courts, even filming one's own sexual intercourse with a female partner without her consent or knowledge for one's own private viewing is punishable by law²⁰. In another English case, though there was no evidence that the recorded clip was leaked anywhere, the perpetrator was sentenced to imprisonment for a period of nine months²¹.

Upon comparing the laws in India with that of the US, UK and Canada, it can be understood that the Indian laws doesn't strictly criminalize websites like YouTube or similar streaming sites for displaying voyeuristic videos obtained using spy cameras or hidden cameras from hotels, hostels, washrooms etc. More

¹⁶ *Supra*, sub-section 4.

¹⁷ Video Voyeurism Prevention Act, 2004.

¹⁸ 'Studies question effectiveness of sex offender laws', *Science Daily* (30 August 2011).

¹⁹ Sexual Offences Act 2003, England, S. 67.

²⁰ *R v. Wilkins*, Inner London Crown Court (2010).

²¹ *Ibid* 6.

stringent laws in this regard could prove to be apt in compelling such sites to carefully filter their content and block sexually explicit contents.

Apart from making amendments to the law or making the laws more stringent, cyber voyeurism should be combated by incorporating simple, cost-effective methods such as hosting awareness camps, seminars etc. The following part of this paper will focus on such methods.

Effective methods to be adopted to combat voyeurism

Combating voyeurism is not an easy task, and it cannot happen by merely passing laws which impose longer terms of punishment. Tackling voyeurism requires planning and cooperation from all sections of societies, from the police to the normal store owners. Bathrooms, washrooms, changing rooms in busy malls, hotels, restaurants and even hostels are common places where voyeurs hide their cameras.²² It is not practical to expect a rapid increase in the number of such cases being, but what can be done is creating awareness among people to make them cautious of such crimes occurring around them. It could start with NGOs and other agencies coming together to host awareness camps and seminars in schools, colleges, parks etc. with open access for the public. The best possible means to tackle voyeurism is by being self-conscious of one's environment and surroundings.

The government could set up agencies to run a periodic check on restaurants, hotels, clothing stores, malls, and other places which are open to public. Such places should be checked routinely for breaches in privacy. If found to be faulty in ensuring such protection, then heavy fines and other penalties should be imposed on the store owner. Laws which would facilitate this would prove to be more effective in combating voyeurism than those laws which only seeks to punish the voyeur. This would impose a duty on the store keepers or managers to ensure privacy protection in their stores.

Also, the cyber cell should keep a watch on sexually explicit content that's available and shared through video streaming sites and other sites with video downloading features. If videos are found which are understood to be taken without the knowledge of the person who is featured in the video or the image. As discussed earlier in this paper, there are so many voyeuristic videos and clips available in the cyberspace. Any person with access to

²² *Ibid* 13, para 16.

internet can easily find out many of the sites which promote the upload, download and viewing of such contents. The cyber cell with access to technology and other services provided by the government, can easily manage to take down a reasonable amount of voyeuristic content from the internet.

Conclusion

Since time immemorial, women have often been discriminated against, and have lacked empowerment though they have made significant contributions to various spheres of human life. There are legislations and various constitutional provisions which provide for special laws for protection of women, however the effectiveness of these laws have always remained susceptible to criticism.

One of the most peculiar features of voyeurism is that most victims are unaware that their private acts are being watched or captured by someone. The impact which crimes like voyeurism create on the victims is not something to be looked upon lightly. The victim's life could undergo drastic changes, and very often it leaves them in a state of emotional trauma which could be compared to that of a victim of rape or physical sexual abuse.

There is an immediate need for the government and the law enforcement agencies to take up the issue of cyber voyeurism, and prevent more lives from being tormented by lust driven sex maniacs on the internet. With more and more people gaining access to the cyberspace, it is essential that their privacy, and other rights are given due protection. A system which fails to respect and safeguard the privacy of its citizens surely needs a refurbish. Incorporating the suggestions discussed in this paper could prove to be an effective solution to the issues surrounding cyber voyeurism in India, if implemented properly.

