

Voyeurism: Violation of Women's Right

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Abstract

The development of science and technology and its availability to large scale of society has made easier to capture the photograph, make video, MMS of someone engaged in private act, and circulate easily to others to be viewed without her consent. The roots of voyeurism go to ancient France where "voyeur" means "the one who looks". Voyeurism is generally defined as "a person who derives the sexual gratification from the covert observation as they undress or engaged in sexual activities. Criminal Law Amendment Act 2013 inserted a new section 354 (c) in Indian Penal Code 1860 clearly mentioned that women who has been watched, or recorded without her consent under any circumstances where victim could reasonably expect privacy, and victims genitals, buttocks, breasts have been exposed are made a punishable offence. The information Technology Act 2000 under section 66 (E) lays down the punishment for imprisonment of three years and fine not exceeding two lakhs on violation of privacy of victim for intentionally capturing, publishing or transmitting the image of private area of any one. Voyeurism is not violation of only national law but international conventions had also tried to protect the right of privacy of women. Supreme Court of India in series of Cases has defined Right to privacy as fundamental inherent right under Article 21 Right to life from Kharak Sing case 1963 to Justice Puttaswami case 2017 a landmark Judgement has been delivered by Supreme Court on Right to Privacy as fundamental guaranteed right under part III of the Constitution. A report released by Georgetown University's Institute for women peace and security (GIWPS) in 2019 India is ranked 133 out of 167 countries and is not safe for women. A report of NCW (National Commission for Women) 2018-19 shows in India total number of cases on Voyeurism was received as 142 and total numbers of cases on offences against women were registered as 19,279. The ratio of offences against women based on technology are increasing day by day. While gleaning all laws of different countries, it is very clear that the offence of voyeurism is, by and large, punishable only in case of non-consensual condition, it amplifies that law is applicable only in case where victim's consent was not obtained.

Keywords: Voyeurism, Voyeurism in Criminal Amendment Act 2013, Voyeurism in Indian Penal Code, Voyeurism and Information Technology Act, Voyeurism as cyber Crime.

Introduction

With the development of Science & technology and easily reach out of mobile and cameras have made easy to capture the photo and make video, MMS of someone engaged in private act and circulate easily to others to be viewed the image of the private area of person without her consent. Many times Cameras or viewing holes are placed in changing rooms, photography and MMS are circulated from public toilets, bath rooms, & hotels etc. Voyeurism is the act of a person who, usually for sexual gratification, observes, captures, or distributed the images of another person without their consent or knowledge (1).

Definition of Voyeurism

The roots of voyeurism go to ancient France, where voyeur means "the one who looks", a 'voyeur' is generally defined as "a person who derives the sexual gratification from the covert observation of others as they undress or engaged in sexual activities(2). A 'Voyeur' is defined as "a person who observes something without participating; one who gain pleasure by secretly observing another's sexual acts (3). J.C. Coleman in his pioneering work; Abnormal Psychology & Modern life has defined as "a clinical term employed in abnormal psychology, voyeurism refers of course, to individual's desire to obtain sexual gratification by viewing another's sexual organs or sexual intercourse of others (4).

Objective of the Study

Voyeurism is not only the violation of someone's right to privacy, dignity & reputation but also it transform into the gross violation of human rights of women laid down by national and international laws. Convention on Elimination of all forms of Discrimination Against women 18 December 1979 in its preamble, the convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. If a woman has agreed to engage in sexual act voluntarily, then videography the same and available to third person without the consent of women amounts the punishable offence. Article 21 of the Indian Constitution guaranteed the right to privacy & right to dignity as inherent right (5). Although Criminal amendment act 2013 has inserted Section 354 (C) as punishable offence but still there is requirement to brought changes in behaviour of people through more effective penal laws.

Review of Literature

The article published in Indian Bar Review "Electronic Voyeurism under Indian Information Technology Law Regime: Eyes Behind the Mirror" by Atin Kumar Das was studied during the research where researcher has tried to point out the present situation of voyeurism in modern technological era, where technology has made so easy to commit the offence and violate the rights. The research paper "women's Right to Privacy: Post Justice K.S. Puttaswami," by Prof. Nuzhat Parveen Khan has studied during the research on new dimension of Right to privacy of women in Indian Constitution under Article 21. Now Right to privacy has achieved the status of Fundamental Right Guaranteed under Part III of the constitution. Though it is not absolute right as such as all rights defined under this Part, voyeurism is also violation of Right to Privacy defined under this Part. Rights of women under Indian Constitution: an analysis by Jaspal Singh was concerned on International measures for protection of rights of women.

Voyeurism under Criminal Law (Amendment) Act, 2013

Criminal Law (Amendment) Act, 2013 inserted a new section 354 (C) in Indian Penal Code 1860 describes as voyeurism any man who watches, or captures the image of women engaged in private act in circumstances where she would usually have the expectation that not being observed either by perpetrator or disseminate such image shall be punished on first conviction with the imprisonment of either description for a term which shall not be less than one year, but which may be extend to three years, and shall also be liable to fine. And on second conviction with the imprisonment of either description for a term which shall not be less than three years, but which may be extend to seven years, and shall also be liable to fine.

For the purpose of this new section 354(C), "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 victims' genitals, posterior or breasts are exposed or covered only in underwear, or the victim using lavatory, or the victim is doing sexualact that is not of a kind ordinarily done in public place. Where the victim consents to capture of the image or nay act, but not to their dissemination to third persons and where such image or act is disseminated constitutes an offence under this section (6). Criminal Law Amendment Act 2013 states that voyeurism is one of the type of sexual harassment of women identified by this Act, the Section 354(C) clearly mentioned that women who has been, watched or recorded without her consent under any circumstances where victim could reasonably expect privacy, and where the victims genitals, buttocks, breasts have been exposed(7)

Voyeurism under the Information & Technology Act 2000

Section 66(E) provides that whoever intentionally or knowingly captures, publishes, or transmits the image of a private area of any person without her consent, under the circumstances is the violation the privacy of that person. Section 66(E) lay down as punishment for violation of privacy. Whoever intentionally or knowingly captures publishes or transmits the image of a private area of any person without her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment either description which may extend to three years or with fine not exceeding two lakh rupees or both.

Explanation- for the purpose of this section (a) - transmit means to electronically send visual image with the intent that it would be viewed by person or persons.

(b) - capture, means with respect to an image means to video tape photograph, film or record by any means.

(c) -private area, means the naked or undergarment clad genitals, public are, buttocks or female breasts.

(d) - publishes, means reproduction in the printed or electronic form and making it available for public.

Section 66(A) of Information & Technology Act has been struck down by Supreme Court's order on 24 March 2015 in the famous case Shreya Singhal vs. Union of India (8).

(e) - under circumstances violating privacy, means circumstances in which a person can have a reasonable expectation that (i) he or she could disrobe in privacy without being concerned that an image of his private area was being captured, or (ii) or any part of his or her private area would not be visible to the public, regardless of whether that person is in public or private place.

As such when one reads cumulatively section 66(E) punishment for violation of privacy, Section 67 punishment for publishing or transmitting obscene materials in electronic form. Section 67 (A) punishment for publishing or transmitting or material containing sexual explicit act, etc., in electronic form, the net result of section 67 is that computers and mobile users in India will have to become extremely careful whenever they are being taking photographs or MMSs or video from their or others mobile phone of

sexually explicit acts or conduct, section 72 penalty for breach of confidentiality and privacy, and section 79 exemptions from the liability of intermediary in certain cases(9).

Voyeurism: Violation of International recognition, Right to Privacy

Voyeurism is the grass violation of International recognition and affirmation of right to privacy of women, right to privacy has been tried out to secure through various international provisions. Although none of the Articles in US Constitution specifically mentioned the right to privacy, the Courts of United states had tried to incorporate this right by way of 9th amendment and through its judgement.

In United Kingdom, The right to privacy was protected by black letter of law, by the enactment of Human Rights Act 1998. The Article 8 provides 'the right to respect for private and family life'. Private life broadly covering the aspect like sexuality, body, personal identity, and personal looking, dress, forming and maintain relationship with others is protected by the act. And the equal and inalienable rights of all members of human family are the foundation of freedom, justice, and peace in the world" (10).

Preamble to Universal Declaration on Human Rights 10 December 1948 starts with "Whereas recognition of the inherent dignity and equal and inalienable rights of all members of human family is the foundation of freedom, justice, and peace in the world."

Article 12 of UDHR 10 Dec.1948 declares as "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, neither to attacks upon his honour and reputation, everyone has right to protection of law against such interference or attacks"

International Covenant on Civil & Political rights 1966 under Article 17 says:

(1) No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has right to protection of law against such interference or attacks

(CEDAW)Convention on the Elimination of All Forms of Discrimination against Women

On December 1879 it was adopted by United Nations CEDAW is an international legal instrument that requires countries to eliminate discrimination against women, many time s it is describes as international bill of rights of women, because of CEDAW women and girls around the world have been empowered to claim their human rights of gender equality, right to privacy, right to marry, divorce, adoption, give birth to child, and found family(11).

Voyeurism: Violation of right to privacy under Constitution of India

Right to privacy is not specifically guaranteed as fundamental Right under Constitution of India; however Supreme Court of India in a series of cases KharakSingh vs. State of UP(12). Govindvs. State of M.P. (13).Mathew, J. accepted right to privacy as an emanation from Article 19 (a), (d) and 21 has declared as inherent right under Article 21, right to life and

personal liberty .so far as right to privacy of women is concerned, Indian judiciary has tried to explain in number of cases

State of Maharashtra vs. Madhukar Narai (14).The Supreme Court has observed that 'even a woman of easy virtue is entitled to privacy, and no one can invade her privacyas and when she links.

Neeravs. L.I.C. (15) Supreme Court held that right to privacy of women would preclude such questions to be put to an answer candidates as modesty and self-respect may preclude an answer.

State of Punjab vs. Gurmit Singh (16). Supreme Court has consistently maintained that the offence of rape is violation of right to privacy of victim. Court observed that:

"It is sad reflection on attitude of indifference of society towards the violation of human dignity of victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical assault. It is often destruction of the whole personality of the victim. A murderer destroys the physical body of the victim; a rapist degrades the very soul of helpless female".

Ms X vs. MrZ (17).The wife filed a petition for dissolution of marriage on the ground of cruelty against husband under section 10 Divorce Act. The husband also claimed that wife had adulterous affairs with one person which resulted in family way. The pregnancy of wife was terminated at AIIMS and records and slides of tabular gestation were preserved in the hospital. The husband filed an application seeking DNA test of the said slides with a view to ascertain if the husband is the father of foetus. The court held that right to privacy, through a fundamental right forming part of right to life enshrines under Article 21, is not an absolute right. When the right to privacy has become a part of public document, in that case person cannot claim that DNA test will infringe her right to privacy. The foetus was no longer part of body when it has been preserved in hospital, the wife who has discharged the foetus cannot claim that it affects her right to privacy.

In Surjit Singh Thind vs. Kanwaljit Kaur (18).

The Punjab and Haryana High Court held that allow the medical examination to test her virginity is the violation of right to privacy inherent right under Article 21 Right to life and personal liberty.in the present case a petition was filled from the side of wife for nullity of marriage on the ground that husband was impotent, husband contended that marriage was consummated and wife was not virgin. In order to prove wife is not virgin husband filed a petition for her medical examination to virginity test. Court denied the medical examination to virginity test and held, it amounts the violation of right to privacy. The virginity test can not constitute the sole basis, to prove the consummation of marriage (19).

V. Krishnan vs. V.G.Rajan (20).

In the case court held that for an abortion, though the guardian's consent is required, the minor's consent is also important an should be taken, the court further said consent of minor is important no one can take this right away from her.

Naz foundation vs. Govt. of NCT of Delhi (21).

The Delhi High Court upheld the sanctity of right to privacy of homosexuals by decriminalising Section 377 of IPC to the extent to criminalised consensual homosexual acts in private between adults; the Supreme Court in discordant note overturned the same in Suresh Kumar Kaushal & Another Vs. Naz Foundation (22),

Justice K.S.Puttaswami vs. Union of India (23).

In a historic Judgment the full bench constituted affirmed the right to privacy as integral component of Part III of constitution of India. Supreme Court has clarified that like most of other fundamental rights, the right to privacy is not an absolute right.

The question of whether or not privacy is fundamental right first arose in 2015 before a three Judge's bench of Supreme Court Challenge to Aadhar framework. The Attorney General had argued that although in series of cases Supreme Court has recognise the right to privacy but Part III of Constitution does not guarantee such a fundamental right since larger bench of the court in M.P. Sharma (8 Judges bench) and Kharak Singh (6 judges bench), had refused to accept the right to privacy was constitutionally protected, while rightly acknowledging that life under Article 21 is not a right to "Animal existence" Constitutently this bench referred the matter to a five judges bench to ensure "institutional integrity and judicial discipline". Thereafter five judge bench referred the constitutional question to an even larger bench of nine judges to pronounce the authoritative status of right to privacy

In the case Justice Chandrachud wrote the plurality opinion on behalf of four judges Kehar C.J., Agarwal J., Nazeer J., and himself. While remaining five judges Nariman J., Kaul J., Bobde J., Sapre J., and Chelameswar J., wrote concurring opinions. In this historic judgement bench unanimously recognised a fundamental right to privacy of every individual guaranteed by constitution, within Article 21 in particular and Part III on the whole. It explicitly overruled previous judgement of Supreme Court in M.P.Sharma and Kharak Singh's case which has held that there is no fundamental right to privacy under Indian Constitution. ADM Jabalpur vs. S.S.Shukla (24) is overruled to extent that it held that the aforesaid right to privacy may be surrender during emergency.

Chandrachud, J. observed fundamental rights emanated from the basic notions of liberty and dignity. Although Article 19 expansively enumerates some facets of liberty, this does not denude Article 21 of its wide scope and ambit. Privacy is concomitant of an individual's right to exercise control over his personality and find its origin in the notion of that certain natural or inherent rights are inseparable from human personality. The right to privacy imposes duty to state to protect the privacy of an individual, corresponding to the liberty that is to be incurred by state.

Conclusion & Suggestion

Voyeurism is violation of Right to Privacy of women guaranteed under Article 21 of Constitution and defined punishable offence under Indian Penal Code 1860 and Right to Information and Technology

Act 2000. There is the requirement of more effective penal laws for circulation, to get availability to watch video, MMS, image of someone engaged in private act without her consent. In historic judgement Puttaswami case (25). Chelameswar J. on right to privacy classifying into three category (i) that which involves invasion by State into a person's physical body, (ii) the information privacy which captures unauthorised uses of personal information and (iii) privacy of choice, or individuals autonomy over fundamental personal choices.

In India numerous legal provisions are made to punish the culprit who commits the offence of voyeurism against women, the other cases relating to women such as rape, outrageous of the modesty of women, sexual harassment, dowry death etc. are at high rate. A report released by Georgetown University's Institute for women peace and security (GIWPS) in 2019 India is ranked 133 out of 167 countries and is not safe for women. Annual report 2018-19 (NCW) National Commission for Women shows that, the commission received complaints in 23 categories of offences against women out of them stalking/ voyeurism was one of them. Nature wise total complaint received by the Commission on outraging the Modesty of women was 1128, Stalking / Voyeurism 142, and total offences against women was received by the Commission was 19279, (26).

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