

VOYEUR ALERT

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ABSTRACT

The age of religious beliefs and morals being uncritically accepted was revamped with the dawn of the 18th-19th centuries, which have often been termed as the age of rationality, scientific advancement and query. Subjects changed into citizens, businessmen into business person and the position of women in the society has changed drastically over the centuries but we still have miles to go. We still encounter- sexual violence against women, lack of socio-economic conditions which are a prerequisite for development and movements demanding rights for the citizens. We take pride in the progress and development around us over the last few years including socio-economic development, new treaties, scientific advancement, raising the living standard of the people but another thing that is on the rise that nations tend to hide is crimes against women. What use is the glory of the war, when the war was won by slaving and raping women? what use is of the new laws, when crime rate continues to rise and people falter in changing their mindset? Lighting of candles and holding protest marches are nugatory if the perpetrators go unpunished. Speedy justice, effective punishments for crimes and an independent judiciary are the need of the hour.

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INTRODUCTION

We all read about the incident where the union minister, Mrs. Smriti Irani noticed a camera pointing towards the changing rooms in a Fab India store in Goa and subsequently, lodged a complaint with the police, who registered a case under Sections 509 (outraging the modesty of a woman) and 354C (voyeurism) of the Indian Penal Code. Moreover, how can we forget the Pune webcam case of 2005 in which 2 people were arrested for installing cameras in the women's changing room? The laws for the protection of women had to be made more stringent due to an increase in crimes against women by 9.2% in the year 2014-2015 and the nationwide uproar stirred by the Delhi gang rape case also called the Nirbhaya case in which a 23-year old physiotherapy intern was brutally gang raped by six men in a moving private bus. To this effect, Justice Verma Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The committee submitted its report on 23 January 2013.

PROVISIONS BEFORE THE AMENDMENT

The amendment added, among other sections, section 354C to the Indian Penal code, before which there was no such provision. The section reads as follows-

“Whoever watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”

Before such an amendment was made section 67 of the Information Technology act and section 292 of the Indian Penal Code generally came into play. In Avnish Bajaj v State², the

² 3 CompLJ 364 Del, 116 (2005) DLT 427 (India).

Chief Executive Officer (CEO) of an e-commerce portal, Baazee.com uploaded and sold a video shot on a mobile phone of two children of a school having sexual intercourse. The CEO was charged under section 292 of IPC and section 67 of IT act for uploading and selling a video containing obscene acts. Section 67 of the Information and Technology Act, 2000 reads as follows

“Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

However, this section makes the materials published or transmitted “subjective.” It is unclear as to what might corrupt the mind of an individual. In Regina v. Hicklin case³, C.J. Cockburn formulated, “The test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. It is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character.”

This came to be known as the Hicklin’s test and has been applied in India in many cases but not all. However, the test has its own shortcomings. Due to its subjective nature, it would be difficult to determine the tendency of the matter charged as obscene. A subject matter might suggest impure and libidinous thoughts to one person but the same subject matter might not do so to another person.

The law related to obscenity in India was based on the ancient Hicklin test till a few years ago. However, the Supreme Court on 3rd February, 2014, discarded the age-old Hicklin test and proposed a new parameter named the "community standard" test in Aweek Sarkar & Anr

³ L.R. 3 Q.B. 360 (1868).

vs State Of West Bengal And Anr⁴. 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.”

In Indian scenario, in the case of Ranjeet D. Udeshi v. State of Maharashtra⁵ the Supreme Court admitted that Indian Penal Code doesn't define obscenity though it provides punishment for publication of obscene matter.

However, we circle around to the same question once again- what does one mean by community standards? The standards of a community are not defined anywhere and they change with time.

IDEOLOGICAL IMPEDIMENTS

To deal with the shortcomings mentioned above and the increasing number of cases of women being recorded in changing rooms, bedrooms etc. the Criminal Law (amendment) Bill inserted section 354C to protect the women against such offences and to punish the perpetrators. Even though the lawmakers introduced a better law its value has been significantly plummeted since most people, especially women are unaware of those laws. The victims who are aware of the laws do not report the crime as they fear it might tarnish their reputation in the society or they might be harassed by the police officers. The lack of knowledge about the various provisions of the Indian legal system on the part of the citizens and the law enforcing agencies poses as another barrier in the reduction of crimes. If a law

⁴ (2014) 4 SCC 257 (India).

⁵ A.I.R 881, 1965 SCR (1)65 (India).

exists only on paper and not in the knowledge of the citizens, the law is a mere formality. In an informal survey done in September 2013 it was found that no training was given to police officers regarding the new laws and punishments due to which more than two-thirds failed to define voyeurism and its punishments. How can a woman file a case of voyeurism if the enforcers of law are themselves not even aware of a crime called voyeurism? Regular workshops on law, legislations and amendments every six months in a simple language for all the citizens can work wonders because only an aware citizen can protect himself/herself.

How can we expect the rate of crime against women to reduce if the people who represent us in the political arena are of the following opinion-

“Boys make mistakes. They should not be hanged for this. We will revoke the anti-rape laws.” – Mulayam Singh Yadav, Samajwadi Party chief

“ I warn my opponents, if anything happens to my mothers or sisters, my party workers, I will not spare them, I will have the last word. I will make their family pay dearly. I will ask my boys to go there. They will rape them and leave.” – Tapas Pal, Trinamool Congress MP

“ One of the reasons behind the increase in incidents of eve-teasing is short dresses and short skirts worn by women. This in turn instigates young men.” – Chiranjeet Chakraborty, MLA, Trinamool Congress.

"Just because India achieved freedom at midnight does not mean that women can venture out after dark.” – Botsa Satyanarayana, former chief of Andhra Pradesh Congress Committee.

"To my understanding, consumption of fast food contributes to such incidents (rape). Chowmein leads to hormonal imbalance evoking an urge to indulge in such acts.” – Haryana khap panchayat leader Jitender Chhatar.

How will the crime rate reduce if the officers falter in their duties, if the officers pass the blame to others when confronted with questions and if the officers firmly believe in the ideology reflected in the above-mentioned statements?

MEANING AND EXPLANATION

To battle all the discrepancies in the law and to make a better yet simpler uniform law section 354C was introduced. The section can be divided into the following parts for a better understanding of the provision.

- Lack of neutrality in the section.
- Private act.
- Expectations of not being observed.
- Punishment for the offence.

LACK OF NEUTRALITY

A point to be noted is that Section 354C is not a gender-neutral law as the very first line of the section uses the word “woman”. It is a well-known and established fact that number of women being victims of sexual offences such as voyeurism, stalking, disrobing etc. is far more than the number of men being victims of the same. Even though the number of male victims of sexual offences is far less but that does not mean that the number is negligent or non-existent. A Delhi-based Centre for Civil Society found that approximately 18% of Indian adult men surveyed reported sexual violence, of those, 16% claimed a female perpetrator and 2% claimed a male perpetrator. Just because the proportion of men suffering from such offences is small does not mean we can shove the problem under a carpet of oblivion. There are victims of voyeurism in India who have no remedy under the law because they are males and their gender acts as a barrier between offences and justice. We have various acts for the protection of women such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 but no such acts have been introduced for the other genders.

The legal definition of sexual harassment according to the US Equal Employment Opportunity Commission (EEOC) is, "unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature." In my opinion, this is a gender-neutral definition and will provide all the victims of sexual offences with equality of opportunity to be heard. By framing an inclusive definition, we not only free the victims from the shackles of oblivion but also bring justice a step closer. The ideology that women are the

victims because they belong to the weaker sex has to end because mostly when roles are reversed no action is taken against a woman just because she is a woman. I find no reasonable explanation of why only a man can rape, why only a man can commit the crime of adultery or why only a man can be a perpetrator in the crime of voyeurism. Is it legally justified to give more advantage to women and to bind the society back in the shackles. Gender neutral laws take no rights away from women instead give men the right to move the court of law if they have been victims of a crime. Gender neutral laws are a win-win situation, the perpetrators get punished and the victim gets compensation regardless of their gender.

However, in my opinion, this is still a great amendment as it aims at protecting and safe-keeping the women who have been victims of various offences such as stalking, disrobing, voyeurism etc. India has taken a huge step for protecting the women, who form the larger proportion of the victims of various sexual crimes across the country.

PRIVATE ACT

We often read about videos and/or pictures of women being captured without their knowledge and/or consent while they were engaging in private acts but what constitutes as a private act? For the purpose of this section, “private act” includes-

“An act carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.”

Thus, private acts include all sorts of activities which are expected to be done in privacy such as changing clothes, bathing, sexual acts etc. Now, the women who have been victims of voyeurism have a remedy under the law due to this amendment with the perpetrator being punished for a minimum of one and a maximum of three years with or without fine on the first conviction and a sentence of minimum three years or maximum seven years with or without fine on the subsequent conviction.

Another striking feature of this amendment is that within its purview it includes two types of cases from the “consent” point of view. In the first case, where the consent to capture pictures

or videos of a woman engaging in a private act is not given, the person capturing will be punished. In the second case, where the victim consents to the capture of images or videos, but not to their dissemination to third persons, the person capturing will not be held liable for capturing the pictures and/or videos but will be held liable if such image or video is disseminated. Such dissemination shall be considered as an offence under this section.

In the case *State Vs. Rahul*⁶ 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 section also states that "circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person". This not only includes the home of the victim but also includes places such as washrooms of a public place such as a restaurant, mall etc, and changing rooms of a garment shop etc. Above mentioned are the examples of certain places wherein a woman carries on a private act and usually has the expectation of not being observed by any other person. If, she is observed and/or recorded while engaging in a private act in such a place she can file a complaint against the person under section 354C of the Indian Penal Code.

PUNISHMENT

The perpetrators will be punished with imprisonment for one to three years with fine on the first conviction and imprisonment for three to seven years along with fine on the second conviction. The offence of voyeurism is a cognisable offence which means that a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.

A Delhi district court while dealing with a case of voyeurism awarded the accused with a year's simple imprisonment along with a fine of ten thousand rupees. Authored by Justice Susheel Bala Dagar, the portion in question reads:

"Voyeurism is a ridiculous form of enjoyment for men but a mental torture for women. Men who indulge in such enjoyment do not seem to realize that they are infringing on the

⁶ SC No.249/13 (India).

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.”

VIOLATION OF FUNDAMENTAL RIGHTS

The offence not only leaves a deep scar on the psyche of the victims but also violates their Fundamental Right enshrined in article 21 of the Indian constitution which reads as follows-

“No person shall be deprived of his life or personal liberty except according to procedure established by law”

This article has a wider view than what appears by the language at the first instance. In *Unni Krishnan v. State of A.P.*⁷ the apex court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

- (1) The right to privacy.
- (2) The right against solitary confinement.
- (3) The right against handcuffing.
- (4) The right against delayed execution.
- (5) The right to shelter.
- (6) The right against custodial death.

Since it includes the right to privacy and 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.

CONCLUSION

According to a recent report by the World Health Organisation (WHO) a higher prevalence of depression among women and working age adults (aged 11,16,17,42 20–69 years) has been consistently reported by Indian studies. Findings from National Mental Health Survey

⁷ A.I.R 2178, 1993 SCR (1) 594 (India).

(NMHS) have shown consistently higher rates for females across all age groups and among those residing in urban metros as compared to their counterparts. Prevalence reached its peak in the adult age group, with above 3.5% in females and above 3% in males aged 40 and above. The causes of depression among women may vary from multiple roles assigned to them, periods, pregnancy, lower status in the society, image of a perfect woman as portrayed by media, widespread gender inequality, increasing crimes etc. Yet, we never fail to make their lives harder by imposing rigid social obligations and societal norms on them. Every day we hear about women being harassed on the streets, burnt because the dowry was not enough or killed by the family because she was not a virgin. So much importance is given to the bodies of the women and none is given to her inner self. The ideology of men having a right to closely regulate the lives of women has not left us all, so even though it is 2017, but is it?

We still are living in a world where one out of every four women have been victims of a sexual offence. In a world where one out of every seven women have been victims of voyeurism. The cause of such a peril are humans themselves. The people who derive pleasure and gratification from capturing women indulging in private acts are psychologically sick. People who still believe in the patriarchal norms, the idea of a weaker sex, the idea of treating women like commodities, the idea of carefully regulating the lives women as they are incapable of doing so themselves etc. are the real culprits. This ideology is deeply imbedded into the social fabric of the perpetrators and hence laws cannot be as effective as they should be unless people are willing to change. Being a woman has become a task in itself. Women have to think multiple times before stepping out of the house, they need to dress according to the society and not according to their own choice, their abilities are questioned if they reach higher posts and they are blamed even if they are the victims. How will anybody develop or contribute to the development of the nation when the society is not letting them break free from the shackles. The practice of blaming the victim instead of the culprit has to end. There is only one reason for rape, that is not short clothes, weaker sex, rights of one sex over the other etc., it is the rapist. Similarly, in other cases of sexual violence the only person to be blamed and punished is the perpetrator and no one else. The perpetrators need to be punished irrespective of their criminal records, contacts with influential people etc. because punishments are not only reformative but also deterrent. Hopefully, with the new laws and punishments in place the number of cases of voyeurism will substantially go down.