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# **ADDRESSING VOYEURISM IN INDIA:** **LEGAL IMPLICATIONS AND** **EFFECTIVENESS**

AUTHORED BY: D DONNA GADIEL<sup>1</sup>

## **ABSTRACT**

This paper examines the legal framework surrounding voyeurism in India, with a focus on the Indian Penal Code and related statutes. It delves into the provisions and penalties defined in the law, analyzing their effectiveness and limitations. The paper highlights the gender bias present in voyeurism laws and emphasizes the need for gender-neutral legislation to protect all victims. Furthermore, it explores the challenges associated with evidence collection, procedural aspects, and the role of intermediaries in handling voyeuristic content. Drawing on a comparative analysis of voyeurism laws in the United Kingdom, the United States, and Russia, the study underscores the need for comprehensive measures that address the changing dynamics of voyeuristic crimes in the digital era. It emphasizes the importance of public awareness campaigns to educate potential victims and perpetrators about the gravity of voyeuristic acts and the legal consequences involved. This research calls for legislative reforms that ensure comprehensive and gender-neutral laws, provide clearer definitions, enhance evidentiary standards, and promote better support mechanisms for victims of voyeurism.

**KEYWORDS:** *Voyeurism, United Kingdom, United States, Russia, Comparative Study*

## **INTRODUCTION:**

### ***1. PRESENT SCENARIO***

Women have long been victims of crimes such as rape, domestic violence, and sexual assault. Indian legislation acknowledges women's rights and has various provisions and laws that criminalize sexual offenses. These include provisions in the Indian Penal Code, The Sexual

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Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act and Rules 2013<sup>2</sup>, Protection of Children from Sexual Offences Act 2012<sup>3</sup>, Tamil Nadu Prohibition of Eve-teasing Act 1998<sup>4</sup>, and more. However, with the advent of technology, new crimes against women have emerged alongside these existing crimes like rape and dowry death. To address these evolving challenges, the Indian law has continually aimed to be progressive, introducing new offenses in The Criminal Law Amendment Act of 2013. It included Voyeurism under section 354C<sup>5</sup> of the Indian Penal Code, 1860. Voyeurism is a criminal act where someone watches, captures, and publishes a woman in a private setting without her knowledge. It can involve hidden cameras in places like changing rooms, swimming pools, or spying through windows or keyholes and the victims are often unaware of being watched. The person engaging in voyeurism is commonly known as a "voyeur" or "Peeping Tom."<sup>6</sup> Sex tapes and the sale of pornographic film CDs on the internet highlight deep divisions within Indian culture.

In Indian voyeurism cases, the voyeur must watch, capture, and publish someone's private acts. Unlike UK laws, the term "watching" is not clearly defined, which frequently causes confusion. Publishing obscene information electronically is punishable under the IT Act, but action is usually taken only when a complaint is filed. Victims need to report the offense, but in most cases, the voyeur observes without direct interaction or discreetly, leading to fewer reported incidents. Section 354C criminalizes a man who watches or captures images of a woman engaged in private activities without her knowledge. First-time offenders can be imprisoned for one to three years and fined, while subsequent convictions carry a prison term of three to seven years, along with a fine. The section incorporates the principle of reasonable expectation of privacy, similar to the United States. Section 66E of the Information Technology Act addresses the capture, publishing, or transmission of images of a person's private area without their consent, in a manner that violates their privacy. The offense is punishable by imprisonment for up to three years or a fine of up to two lakh rupees.

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<sup>2</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No.14, Acts of Parliament, 2013 (India) and Rules 2013.

<sup>3</sup> Protection of Children from Sexual Offences Act, 2012, No.32, Acts of Parliament, 2012 (India).

<sup>4</sup> The Tamil Nadu Prohibition of Eve-teasing Act, 1998, No.44, Acts of Parliament, 1998 (India).

<sup>5</sup> The Indian Penal Code, 1860, § 354C, No.45, Acts of Parliament, 1860 (India).

<sup>6</sup> Sofia Bambri, *VOYEURISM: THE SILHOUETTED CRIME IN INDIA*, S. Bhambri & Associates (Sep.17,2022, 11:20 AM), <https://www.sbhambriadvocates.com/post/voyeurism-the-silhouetted-crime-in-india>.

## 2. *HISTORY OF VOYEURISM LAW*

Before 2013, Indian law lacked strong provisions to address the increasing number of crimes against women, including rape, stalking, and acid attacks. The high-profile gang rape case of Nirbhaya in December 2012 exposed the inadequacy of the Indian legal system to effectively handle such heinous incidents and bring perpetrators to justice. The Indian government faced severe criticism and public outcry regarding the safety of women in the country. Consequently, amendments were necessary to adapt Indian law to the current circumstances and combat sexual offenses.

In response, a committee chaired by former Chief Justice of India, J.S. Verma, was formed. The committee presented its report on January 23, 2013, leading to the passing of the Criminal Law (Amendment) Act of 2013<sup>7</sup>. This act introduced voyeurism as a criminal offense in India under Section 354C of the Indian Penal Code, 1860, along with other legislative amendments. The concept of voyeurism is rooted in the notion of a reasonable expectation of privacy. The committee recognized that various sexual offenses such as voyeurism, teasing, and stalking were treated as minor misdemeanours despite their serious impact on women's fundamental rights as well as their sense of self.

Additionally, the Information Technology Act of 2000 was amended in 2008<sup>8</sup>, and it came into force on October 27, 2009. The amendment introduced the concept of "electronic voyeurism" in India. This amendment drew inspiration from Section 1801 of the Video Voyeurism Prevention Act of 2004<sup>9</sup>, a federal law in the United States. The objective was to strengthen the legislation against voyeurism in light of technological advancements. With the widespread use of smartphones and internet connectivity, there emerged a serious threat to women's privacy and integrity, as they could be unknowingly recorded through covert means. Perpetrators could easily evade liability since they didn't need to be in close proximity to the victim while committing the crime. The incorporation of Section 66-E in the IT Act aimed to protect individuals' privacy in the context of technology, prohibiting the transmission of obscene and sexually explicit content.

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<sup>7</sup> Criminal Law (Amendment) Act of 2013, No.13, Acts of Parliament, 2013 (India).

<sup>8</sup> Information Technology Amendment Act, 2008, No.10, Acts of Parliament, 2009 (India).

<sup>9</sup> Video Voyeurism Prevention Act, 2004 (USA)

## REVIEW OF LITERATURE

### 1. UNITED KINGDOM:

Unlike India, the United Kingdom does not have an explicit constitutional provision for the right to privacy. However, the Human Rights Act of 1998<sup>10</sup> indirectly recognizes the right to privacy by giving effect to Article 8 and Article 10 of the European Convention on Human Rights (ECHR)<sup>11</sup>, which encompass privacy rights and freedom of expression. English legislation has thus acknowledged the right to privacy and protection against intrusion.

In England, the Sexual Offences Act of 2003<sup>12</sup> not only penalizes the act of observing and recording private acts of others but also the act of installing equipment or modifying structures with the intent to facilitate such offenses. This aspect differs from India, where a person cannot be punished solely for installing a camera unless there is evidence of recorded images or videos. The English courts have held that filming a sexual act without the consent of the female partner, even for personal viewing, constitutes a crime. Instances have occurred where individuals were sentenced to imprisonment, even in the absence of evidence that the recorded material was leaked. Indian laws are not as stringent in this regard.

However, similar to India, the UK laws criminalize the act of watching, capturing, and publishing people's private acts. Nevertheless, the UK legislation goes a step further by specifying that observation or watching must be deliberate and not incidental, thus avoiding punishment for accidental encounters. The Voyeurism (Offences) Act of 2019<sup>13</sup> amended the UK Sexual Offences Act of 2003 and established a dedicated provision for voyeurism. This act, which came into force on April 12, 2019, outlines the elements of voyeurism, including the creation or use of equipment to view genitals, buttocks, or underwear beneath clothing where they would not normally be visible. The act should be done for the purpose of sexual gratification or to cause humiliation, alarm, or distress. The maximum penalty for this offense is two years of imprisonment, and those convicted may be added to the Violent and Sex Offender Register in more serious sexual cases.

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<sup>10</sup> Human Rights Act, 1998 (UK)

<sup>11</sup> European Convention on Human Rights, Rome, 4.XI.1950.

<sup>12</sup> Sexual Offences Act, 2003 (UK)

<sup>13</sup> Voyeurism (Offences) Act, 2019 CHAPTER 2 (UK)

***UNITED STATES OF AMERICA:***

In contrast to other countries like Canada, New Zealand, and Australia, the United States of America has established a distinctive system known as the Sex Offenders Register, which sets it apart. Notably, this registry is accessible to the general public, further enhancing its efficacy as a preventive measure against heinous acts. The fear of being exposed and tarnishing one's reputation acts as a strong deterrent for potential perpetrators. Moreover, individuals with criminal records may face difficulties in securing employment due to the consideration of their past actions during the hiring process.

Following the footsteps of the United States, numerous jurisdictions have adopted similar laws that prioritize the right to privacy in public places. An illustrative case is *R v Hamilton*<sup>14</sup>, where the defendant argued that photographing women's skirts in a supermarket was permissible since privacy rights did not extend to public spaces. However, the court rejected this argument, recognizing the existence of a legal loophole that could potentially legitimize acts of voyeurism in public settings. Consequently, legislation has been amended in various regions, such as California, to encompass clandestine non-consensual filming "under or through" clothing in areas where reasonable privacy is expected. By including this provision, the intention behind the law becomes clear, i.e., to criminalize voyeuristic behaviors in both public and private domains.

***(i) Video Voyeurism Prevention Act of 2004***

The Public Law, enacted on December 23, 2004, brings changes to the Federal criminal code, making it illegal to intentionally capture, through video, photography, filming, recording, or broadcasting, the private area of an individual without their consent. This prohibition applies when the individual reasonably expects privacy in the given circumstances.

***(ii) RCW 9A.44.115***

The law on voyeurism provides detailed definitions for terms related to the offense. Voyeurism is classified into two degrees. First-degree voyeurism involves knowingly viewing, photographing, or filming someone without their consent in a place where they expect privacy or capturing images of their intimate areas without their consent. It is a class C felony. Second-degree voyeurism refers to intentionally photographing or filming someone's intimate areas without their consent and with the intent to distribute or disseminate the material. It is a gross misdemeanor and not considered

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<sup>14</sup> Criminal Code, 1996, § 137 (Russia)

a sex offense for sentencing or sex offender registration purposes.

## **2. RUSSIA:**

Russia does not explicitly address voyeurism in its Criminal Code. Instead, voyeuristic acts can be prosecuted as a "violation of privacy" according to Article 137 of the Criminal Code of the Russian Federation. This offense carries potential penalties of a fine in the amount up to 200 thousand roubles or salaries or in the amount of the wage or salary, or any other income of the convicted person for a period up to 18 months, or by compulsory works for a term of 120 to 180 hours, or by corrective labour for a term of up to one year, or by arrest for a term of up to four months. Additionally, prosecutors often overlook the infringement of citizens' privacy rights. This article covers violations related to the secrecy of personal correspondence, telephone conversations, mail, telegraphs, and other forms of communication, and can result in penalties ranging from an 80,000 ruble fine to correctional labor for up to one year.

## **METHOD:**

This research paper compares the various nation's laws with respect to voyeurism and therefore includes the analysis of National and International statutes of India, United States, United Kingdom and Russia. The mode of conduct of this research is through secondary data. The secondary sources of information have been taken from various Committee reports, reputed books, journals, international reports, magazines and newspaper articles, Government reports, commentaries, published electronic sources such as internet, e-journals, websites, and research papers of various scholars. The researcher has followed the Bluebook 20<sup>th</sup> Edition model for citing footnotes.

## **RESEARCH METHODOLOGY:**

The study employs a combination of doctrinal, historical, comparative, and analytical methods of legal research. The doctrinal method is used to examine the national and international legal framework pertaining to voyeurism. A comparative approach is employed to analyse existing and proposed modalities for protection against voyeurism, particularly in the legal systems of the United Kingdom, the United States, and Russia. The historical method is utilized to trace the origins of voyeurism laws, while the analytical method helps analyse the current situation in India and identify areas for improvement in the laws to enhance protection against voyeurism. For the

doctrinal research, the researcher collected statistical and other relevant data from various sources. Authoritative primary sources of information were gathered from national and international legislations. Additionally, case studies were included to provide insights into the present state of voyeurism and related crimes.

## ANALYSIS:

### 1. EVIDENCE:

In India, many instances of voyeurism remain unreported due to the stigma surrounding sexual abuse victims. Since offenders are only punished based on victim complaints, numerous voyeurs go unpunished. Proving voyeurism can be difficult, especially if the content was not filmed or published. Mere outrage of the victim's modesty is not enough to establish an offense, it requires intent or knowledge from the accused to outrage the victim's modesty. Thus, mens rea is crucial in proving a voyeurism case. In such cases, independent witnesses may not always be available, particularly when the act occurs in private. Therefore, courts rely on surrounding circumstances to verify the offense and consider the victim's oral testimony, which must be convincing and reliable.

According to the statistics provided by NCRB, there were 1,090 cases of voyeurism in 2019, and this number has slightly increased to 1,260 this year. Among the states, Andhra Pradesh has reported the highest number of cases, with 124 incidents. The year 2020 witnessed a significant decrease in the number of voyeurism cases, likely due to the COVID-19 pandemic and subsequent quarantine measures. The reasons behind this decrease are not fully clear, as it could be attributed to the effects of quarantine or potential difficulties faced by women in filing complaints. Nevertheless, there was an increase in the consumption of explicit content online during this period.

There were 1,513 reported cases of voyeurism in India in the year 2021, according to the NCRB. The state with the highest number of cases was Maharashtra with 210 cases, followed by Andhra Pradesh with 159 and Odisha with 148 cases. Mumbai had the most reported instances with 73, followed by Delhi with 22, Hyderabad with 18, Chennai and Kolkata tied for fifth with 17 each.<sup>15</sup>

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<sup>15</sup> *The perverse act of voyeurism: A shadow crime that is turning virulent* (26 Nov 2022, 1:55 pm)  
<https://www.barandbench.com/apprentice-lawyer/the-perverse-act-of-voyeurism-a-shadow-yet-virulent-crime>.

## 2. **PROCEDURE:**

In India, voyeurism carries a minimum imprisonment of one year, extendable to 3 years, and a fine for the first conviction.<sup>16</sup> It is a cognizable, bailable offense triable by any magistrate. For second or subsequent convictions, the minimum imprisonment is 3 years, up to a maximum of 7 years, and the offense becomes non-bailable. Section 320 of the same code specifies that voyeurism is not compoundable, meaning charges cannot be withdrawn or compromised after filing the case. To report offenses like sexual harassment, voyeurism, stalking, or rape, the victim can file a First Information Report (FIR) with a female police officer. The complaint can be submitted in writing or verbally, and a written copy must be provided by the officer. The offense is bailable for the first conviction but non-bailable for subsequent convictions.

## 3. **JUDICIAL PRECEDENTS**

The law of voyeurism is not gender-neutral and its validity was questioned. The act of assault or the use of criminal force on any man with the intention or the knowledge of “outraging his modesty” is not made an offence under the Penal Code. In the case of **Girdhar Gopal v. State**<sup>17</sup> as a violation of Article 14 and Article 15, wherein the constitutional validity of section 354 was questioned.

The case of **R v. Jarvis**<sup>18</sup>, a Canadian high school teacher secretly recorded students using a pen camera without authorization. The Supreme Court concluded that the recordings violated the school board's policy, breached the trust between teacher and student, and infringed upon the students' reasonable expectation of privacy.

In the case of **State v. Shailesh**<sup>19</sup>, it was held that voyeurism is “a ridiculous type of enjoyment for men whereas it causes mental trauma to women”. Such acts infringe the Right to privacy of women and she feels unsafe in the places which are generally meant to be safe for women. In the case of **State v. Unknown**<sup>20</sup>, it was held that to prove the case under Section 354, IPC the video taken by the accused should contain obscene footage.

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<sup>16</sup> Code of Criminal Procedure, 1973, Sch 1, No.2, Acts of Parliament, 1974 (India).

<sup>17</sup> Girdhar Gopal v. State, 1953 CriLJ 964.

<sup>18</sup> R v. Jarvis, 2019 SCC 10.

<sup>19</sup> State v. Shailesh, CRL.A. 1025/2018.

<sup>20</sup> State v. Unknown, CRL.A. 1149/201.

In the case of **Kalandi Charan Lenka v State of Orissa**<sup>21</sup>, the accused was charged for the offenses under Sections 354-A / 354-D/ 465/ 469/ 506/ 507/ 509 of the I.P.C. read with Section 66-C/ 66-D/ 67/ 67-A of the Information Technology Act because he threatened the girl, made a fake profile in her name to sexually manipulate her and even published her obscene pictures because she rejected his marriage proposal. The accused was found prima facie guilty in all the cases and thus was convicted.

In **Govind v. State of Maharashtra**<sup>22</sup>, the court recognized the importance of privacy in safeguarding personal intimacies within the home, such as family, marriage, and child-rearing. While drawing on US privacy rights cases, the judgment primarily centered around state surveillance and bodily privacy.

## SUGGESTIONS:

The provision for voyeurism in IPC section 354C has flaws, particularly its lack of gender neutrality and failure to acknowledge male victims. Voyeurism has evolved with technological advancements, with content being uploaded online and permanently impacting victims. Cyber cells should be established to locate and remove voyeuristic content from the internet, while the liability of intermediaries in such cases needs clarification. Raising awareness about voyeurism laws is crucial, as many victims may not be aware of their legal protections. Measures like searches for hidden cameras can help detect and prevent voyeuristic acts. Offenders with voyeuristic tendencies may benefit from psychological counselling, therapy, support groups, and medication to address and control their behaviour. Victims may hesitate to approach the police due to societal humiliation and therefore, by prioritizing anonymity and involving women's organizations, a supportive environment can be fostered which in return leads to empowering victims and encouraging them to seek justice. This holistic approach addresses the social and emotional dimensions of victimization, enhancing efforts to combat voyeurism.

Consequently, voyeurism like some other crimes, continue to be woman-centric and fail to victimise men. There is a need for inclusion of men as potential victims of such crimes under the newly added provisions. Countries like the US, use terminology in their statute such as 'someone' to denote the crime being punishable against both men and woman.

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<sup>21</sup> Kalandi Charan Lenka v State of Orissa, 2001 II OLR 267.

<sup>22</sup> Govind v. State of Maharashtra, 1975 AIR 1378, 1975 SCR (3) 946.

## CONCLUSION:

This research paper explores voyeurism, specifically focusing on its legal implications under section 354C of the Indian Penal Code (IPC). A comparative analysis is conducted between voyeurism laws in the UK, US, and Russia. The study highlights the lack of evidence and procedural aspects related to voyeurism and emphasizes the need for landmark cases to improve understanding. It acknowledges that voyeurism and stalking primarily target women. The existing provisions of voyeurism laws are found to be insufficient and lacking clarity, which is a common issue globally. Legislative bodies must address this by improving punishments and establishing supportive provisions for evidence and procedures. Victims of voyeurism can experience significant emotional trauma similar to victims of rape or physical sexual abuse. The paper offers suggestions for enhancing voyeurism laws and better protecting victims.

