

# CYBER VOYEURISM: A CRITICAL ANALYSIS

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## **ABSTRACT**

The livid pace of technology and the pathways for crime it has opened thus are limitless. With a click of a button, a point of a mouse or a move of a cursor, anyone can extract information about any individual within matter of seconds. The more sophisticated tools became, more severe the intentions of criminals. With simple recording tools such as camcorder, mobile phones and hidden cameras capable of embedding themselves in small spaces and further recording objectionable images of women in particular has caused fear in the minds of ladies going out for shopping or renting out hotel rooms. Cyber voyeurism may be around for a time longer than we might think, but it's aspects are changing with the changing time. And slowly but surely, this technological bane has began to stalk the very privacy and social security of women.

## **Introduction**

Ever since time immemorial, woman has been revered as a divine entity. With her stature depicted at-par with Godly manifestations, such as Parvati, Lakshmi, Durga etc. In Medieval culture, the status of women saw being elevated to the highest pedestal, with numerous female scholars, such as Gargi, Maytri producing literature and scriptures of utmost intellect. In more modern context, revolutionary women took up dissent and protest against dogmas and practices which demeaned women and deprived them of their dignity and rights. Numerous reformers raised voice against the tyrannical patriarchal society, thereby ushering a new era of anwed liberty and empowerment conferred upon women. In the present time, if we glance at our egalitarian world, there no field of work, of sphere of recognition where women haven't shared footing with their male counterparts. This, change in the general climate for the women, however

is not scot-free from any kind of perverse instance that might cause harm to the very integrity of women. Also ,this kind of mutation in our society is not any new phenomena, but one that has been in place and lividly growing over time. As society advances and resources evolve, there is no denying the fact the very fabric of pride, which showcases the female character in such esteemed regard, begins blemishing with conditions,radical thinking of the society and various other customary ills and traditions. Who once was considered as a ‘blessing by fortune’ gradually began to be seen as a ‘curse in disguise’. Whence one parents would honor her dagughter’s decision to marry the man which she admires with open arms, at time passed started regarding her puberty as symbol of disdain and would hurriedly marry her off at the ripe ageitself. Time changed, but for the woman it ,remained poised , only bringing with itself newer forms of malevolence, exploitation and hardships to be faced by her.

### **Introduction to Cyber Voyeurism**

It is a very harsh reality that even though females constitute almost half of the population in the country, they are still considered as the second gender. One that is more vulnerable, more prone to exploitation and abuse and lesser empowered and informed. As crimes and other untoward activities have been historically a major been big enough atrocities for women, yet in recent times, new and more appalling forms of crimes have began plaguing the womenfolk of our country, apparently the world over. Apart from the physical word, the cyber space is another vast, uncontrolled and unregulated space of virtual existence where majorly women have been at the receiving end of all kinds of indecencies and negative communication. What spells out the immense vulnerabilities of female internet users is the statistic that nearly 75% of all netizens facing the potential threat of internet related crimes are females.<sup>1</sup>While stalking, email bombing, hacking etc, are precedents in potential threat to cyber security *en masse* , Cyber Voyeurism, a sub set of cyber crimes pertaining largely to women, is a threat looming at large that tend to derogatize anddefame certain target individuals through a series of privacy breaches of a person’s private or intimate space. Voyeurism may be defined as an act of deriving pleasure from regarding others engaged in sexual or scandalous acts, and a person engaged in such pursuits

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<sup>1</sup> Deepshikha Sharma “*Cyber Crime in India : Are women a soft target?*” available at :  
<<http://www.legalserviceindia.com/legal/article-639-cyber-crime-in-india-are-women-a-soft-target.html>>  
(Accessed on May 12,2020)

may be called as a 'voyeur'.<sup>2</sup> Out of other cyber related crimes, voyeurism carries a high degree of anonymity as it can not always be anticipated as to whom may have documented, or have access to, such data to what purpose he/she might put it use.

With the advent of time and technology, the act of voyeurism in the digital space has been recognized as a cognizable offence under the IPC. After the heinous Nirbhaya Rape Case of 2012, that shook the very foundations of our country's criminal justice system. The Penal Code was vastly modified and amended to keep abreast with the ever-changing aspects of the crimes happening in the country. The Criminal Law (Amendment), Act 2013 inserted a several new provisions in the Code as a means to bring such culpable acts under the ambit of potential offences. Section 354C of the Act defined voyeurism as any act of "Any man who watches, 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, shall be held liable for a fine and imprisonment for a term of not less than one year"<sup>3</sup>. In simple terms, any person who, without the knowledge of a woman, videos or views and/or disseminates such visuals, her private parts, thereby outraging the modesty of her physical privacy is said to have committed voyeurism.

The 2013 Amendment has inserted various other provisions within the meaning of "Sexual Harassment" as a means to broaden the scope and impact of the Act. Such offences now falling under the purview of 'actionable offences' are 354A (making unwelcome lewd remarks), 354B (Physical assault) and 354D (Stalking). The Amendment, for the first time recognized Stalking and Harassment as acts of abuse against women.

### **Information Technology Act, 2000, the de-facto legislation**

The ever-evolving realm of cyber crimes needed some laws and regulations to curb their growth and provide specific relief to the victims. The IT Act 2000 became the prime legislation within the purview of offences related to electronic communication and cyber criminalism. Cyber

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<sup>2</sup>According to merriam-webster dictionary, *definition of voyeurism*, available at : <<https://www.merriam-webster.com/dictionary/voyeurism>> (Accessed on 13 May, 2020)

Indian Penal Code, 1860 (Act 45 of 1860) s. 354C

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Voyeurism too, having adequately been represented in the Criminal Code, finds representation in the IT, Act, by way of being a cyber-related offence, whereby section 66E (vide the 2008 amendment) defines cyber voyeurism as an umbrella term under 'violation of privacy'; an act punishable in way by which a person's, irrespective of gender, privacy has been violated or breached in a way his consent for such act of voyeurism was disapproved of by the person said victimized. Like various other sections of the IT Act, this too runs parallel to s.354C of the IPC in identifying violation of privacy. Despite being a grave offence with severe consequences, the quantum of punishment and penalty prescribed in the Act, among other such acts, is rather insufficient and non-punitive. Since the *modus operandi* of cyber criminals plying such demeaning act is virtual and digital, with which the legal-framework is not adequately equipped to tackle, the laws relating to sexual abuse in the cyberspace are quite lax in implementation under-utilized. If that is not enough, a section of society is concerned with the overriding authority of several provisions laid down in the act that supposedly eclipse other inalienable rights guaranteed by the Constitution. For instance in the case of *Shreya Singhal vs Union Of India, 2015*<sup>4</sup>, the Supreme Court struck down s.66A of the IT Act, for being in contravention with the provisions of Right to Speech under Article 19 of the Constitution. The judgement upheld the belief that 'meagre transmission of an electronic message to an entity, with an intention to despise, hold in contempt or criticize a particular view point, lest such transmission shall prompt mass unrest and disruption in the society, shall not be valid grounds for holding the said sender liable, thereby not curbing his natural right to speech and expression'.<sup>5</sup>

Similarly, laws relating to voyeurism and bodily encroachment may intertwine with the concepts of pornography and private use. The ease of technology has enabled procreation of scandalous materials such as sex tapes, pornographic films and adult material has made the prevalence of such acts almost widespread and unimaginable.

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<sup>4</sup>*Shreya Singhal vs. Union of India (2012) 12 SCC-73*

<sup>5</sup>Sanjay11, " *Shreya Singhal vs. UOI Analysis*", available at :  
<<http://www.legalserviceindia.com/legal/article-1128-shreya-singhal-v-uoi-analysis.html>> (Accessed on 14 May, 2020)

What's even harsh is the fact that state laws are usually incompetent or reluctant to weigh leverage on such offences. One can so easily document someone, even himself/herself, in an act of sensuality and upload on a public website, whereby the voyeur might abscond himself of any liability that might ensue. It is for these developments only that the Criminal Law (Amendment), Act 2013 took cognizance of these offences cropping up with the passage of time and made dedicated provisions for the apprehension of the same.

Despite these modifications, The criminal justice system in India has a long way to go in its war against cyber crime.

### **Precedents , from past to present**

- **The DPS , mms scandal**

If past history suggest anything, the can be inferred that acts of voyeurism and hidden-camera sex-tapsim are not things of the remote past. What's even more intriguing is the progressive drop in the maturity level of the both the actors, as well as the audiences that endorse such acts. Sex tapes, adult films and live-sex recordings etc. were prevalent among full-grown adults a few decades back. The Delhi Public School mms scandal, as it is popularly known till now, brought a whole new layer of notoriety to the culture of sensual pleasures. The case narrates the tale of two high school teenagers, whose behind-the-scenes steamy chemistry, was filmed by the boy and made viral on internet. Beginning as mutual video exchange on cell-phones, the two and a half minute video took to the pornography market, therein copies of the video selling as if a high-profile sex scandal had been busted. This incident happened in 2004, but even by today's standards, the the heinous act committed by the pair is seen as profane and downright loathsome. The defence? The children being minor attract moral consequences from societal mechanisms that questioned the up-bringing of children in elite societies, with the Juvenile Act being the the major forerunner dispensing judgement, rather than the criminal code. Apart from this, the act was consensual, but only partly i.e the girl in the video had no knowledge as to her act was being secretly recorded. The scandal exposed many serious flaws in the IT Act, the lethargy of big schools and colleges in imposing strict moral and ethical codes as well as the the line of demarcation separating a teenage

psychology from an adult one getting dissolved. The Voyeuristic aspect of this whole ‘Act’, in my opinion, remained how brazenly the disdainful clip was commercialized, circulated and even aired on televised media for the sake of ‘knowledgeable edification’. This incident went on to show, in its true form, how effortlessly any material of notorious value can be made to spread like wildfire, a.k.a made viral, with no moral or conscious participation of the one involved in such circulation or documentation ever necessary.

- **The Bois Locker Room**

Sixteen elapsed since, the vessels of technology might have metamorphosized, but tad not the mind sets behind them. True is the adage “with great power, comes great responsibility”. This line holds true for the countless subscribers of internet, social networking sites and web portals. Yet what transpired within the confines of a chat room of a popular social networking application is a fresh rude awakening in the era of responsible and positive communication. The incident, hence labelled as the “The Bois Locker Room” scandal took the entire internet by storm when a string of grossly lewd personal chats (dms), comprising of misogynistic and vulgar chides, coupled with photographs of girls’ faces been swapped by some other persons body, began making rounds in the mainstream social media. These obscene and abhorrent messages were supposedly exchanged by the members the eponymous social media group. The screenshots of the said chats were made public on the social account of the girl in question, who made allegations on the group’s patrons that their conversation suggested ‘rape threats’ and ‘defamatory actions’ directed towards the girl. Legal probe in this angle suggested a much bigger beavy of phtotos of girls, most of whom were unaware of their pictures being circulated, was being privately vulgarized and bodily objectified under the same banner. Further investigation revealed that the members of the groups (mostly teenage boys) had threatened the whistle blower lady with repercussions for exposing their so called racket. Several names came up, few were arrested, even one committed suicide in the midst of all this ruckus. As the layers of this, now apparently, well-thought out, well-executed orchestration, began to reveal, the one major inference that became crystal clear is that how easy and lifelike it has become to stage victimization, dehumanization, deface, defame, slut-shame etc. any particular tom, dick and

harry merely on the basis of outwardly appearance, behavioral traits or simply irrational demeanour.

### **Voyeurism and allied malpractices**

- **Child Pornography**

What many would perceive as a phedophilic pusuit to sexual exploit minors and children, child pornography is nothing but a new façade of child sexual abuse. In a report by The Indian Child Protection Fund, it was discovered that there was a steep rise in traffic of users desirous watching content abounding the theme of ‘teen sex’ or ‘child pornography’ on a leading global pornographic website<sup>6</sup>.The Prevention of Children from Sexual Offences ,Act 2012 has been instrumental in curbing numerous instances of abuse and exploitation against minors. Drawing effect from various sections of IPC and IT Act, the sadistic and depraved pleasure-pot such as child pornography has been stopped and it’s culprits nabbed by law enforcement. Yet , this newer form of ‘Marketable voyeurism’ needs to be more profoundly represented in IT act and the IPC, for the better interest of weaker and potentially vulnerable sections.

- **Revenge Porn**

A serious variant of non-consensual voyeurism , wherein the greed or resentment of one of the partners, result in the sexploitation of other is known as revenge porn. With the proliferating date and fraternizing culture , the privacy of certain individuals tend to come under threat by the hands of someone near and dear. A classic example – Boy and girl were dating each other, girl detached from the relationship non-amicably, resulting in the boy recording obscene and lewd imagery of the girl and circulating it on online media. Such acts are punishable under s. 354C and 499 of the IPC and s. 66 and 67 Of IT Act. At times, such graphic voyeurism is documented deliberately,with an intention to trap the

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<sup>6</sup>Mritunjaya Bose, “ *Online search for child pornography escalates in India after lockdown in India*” , available at : <<https://www.deccanherald.com/national/online-search-for-child-pornography-escalates-after-lockdown-in-india-827602.html>>(Accessed on 14 May 2020)

grievous victim into blackmailing him/her to extort money or any other valuable collateral .

### **Conclusion**

Cyber voyeurism has posed as new potential threat to women's security and privacy, with new instruments facilitating perpetration of such activities and a much lesser conviction rate. What makes this form of cyber crime so deceptive is the fact that the victims are generally unaware of their surroundings, that might be bugged with surveillance cameras, video recorders and other reckoners hidden from plain sight. From, hotel bathrooms, trail-rooms , public restrooms, the hazard of surreptitiously being watched always looms above women. Also, this practice has become a rapidly commercialized activity, with acts caught on secret cameras being put up for sale on the squeamish markets for hefty sums of money. Hindi Films like *Love ,Sex , Dokha* and *Ragini MMS* , widely popularized this clandestine industry. So what precautions are left with potential to-be victims of voyeurism?

### **Ensuring a safe environment**

Most voyeurs prey on the insecurity and gullibility of their victims. From a a legitimate physical interaction or simply a moment of privacy. Victims trust the other person, who generally end up exploiting the same person. It is utmost essential that, irrespective of gender, one must not disrobe, expose or denude their private body parts in any situation or location which seems suspicious or peculiar. Always frisking the environment before proceeding is a good precaution. For ensuring a congenial environment to indulge in physical activities, partners should not prefer public spots such as lodges and hotels, and most importantly reporting any such incidents of surveillance by any unsolicited party shall be more frequent and stringent.

### **Ban on Readily Available Obscene Material**

Even if such tapes, videos or clips are widely publicized or sold at online markets , there needs to some form of regulation or filter as to what is the nature of such media being made publicly available. Whether or it contains consensual indulgence, or was it acquired

through shady means. In worst case, whether the instrument behind such acts was coercion. In a case that emerged in the 80s, in the Iowa State of United States, a teenage boy was abducted and went missing for with no trace. After few years, the boy was identified in one of the pictures uploaded on a pedophilic website, wherein he posed as a model. Federal probe in the matter revealed that the boy was most probably abducted a racket that carried out such abductions of underage children for prostitution and production of snuff and pornographic material.<sup>7</sup> In series of events the Government of India levelled a ban on some 800 odd porn sites in 2015, citing a sizable surge in sex-related crimes, which were perpetrated by the growing consumption of pornographic material among the general population. As of today, circulation, public transmittal and sale of pornographic material is a punishable offence under s. 292 of the IPC. Additionally, stress need to be given by the government to try and reduce the influence of obscene and contemptuous material broadcasted on mainstream media networks and platforms.

### **Reformation of IT, Act**

Despite being the prime legislation dealing with matter related to cyber crime, The act has always been sacked for various inefficiencies it carry, even after being substantially restructured by the 2008 amendment. A clear-cut flaw that can be seen in pretext to the theme is that the term 'voyeurism' was first described in the Criminal Law (Amendment), Act, while IT act simply fails to highlight any pertinent section that contains the term 'cyber voyeurism' (S.67 broadly defines penalty for transmitting or publishing graphically obscene and objectionable material). Besides adding punitive repercussions to acts such as cyber voyeurism (among numerous other offence) is a much needed reform that needs the attention of the Government. Modifications in the Act need to be inclined towards making specific provisions to strengthen and better serve the interests of women, to make several offences cognizable within the definition of 'being

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<sup>7</sup>Mritunjaya Bose, " *Online search for child pornography escalates in India after lockdown in India* ", available at : <<https://www.deccanherald.com/national/online-search-for-child-pornography-escalates-after-lockdown-in-india-827602.html>>(Accessed on 14 May 2020)

bound to attract criminal liability' , as well as provide for setting up of resources, e-cells, empowerment and cyber literacy programmes for women and children, as well as establishment of state-funded cyber crimes units to conduct advanced research and probe into matters of cyber offences.

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