VOYEURISM: FANTASY OR FELONY

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Introduction-

Criminal cases have significantly increased, according to 2019 data from the National Crime Records Bureau (NCRB). There has been a 1.65% increase in instances reported, a 7.3% increase in crimes against women, a 63.5% increase in cybercrimes, and an average of 87 rape incidents every day! One needs to be aware of the rules pertaining to various forms of crimes given the worrying increase in crime.

One of the greatest human achievements of all time is the Internet. In light of this, "voyeurism" is one of the most serious and pervasive cybercrimes in today's world, although it frequently remains unreported and unpunished.

With 252, Maharashtra reported the highest number of voyeurism instances, followed by Kerala with 126 and Madhya Pradesh with 163. Mumbai and Delhi both had the highest number of voyeurism cases among urban areas, with 47 and 31 respectively.

Origin:

Voyeurism is a concept that comes from the French verb voir, which means to see. Male voyeurs are frequently referred to as "Jags" or "Peeping Toms." However, that phrase is typically used to describe a man who keeps an eye on someone covertly and usually not in a public place. Voyeur is a French term that means "one who looks." It is the practice of watching individuals when they engage in activities that are typically considered private, such as having sexual relations or taking off clothing. The subject of voyeurism might not be connected to the voyeur in any manner.

Definition:

Voyeurism can be defined as a fascination with watching unaware individuals strip, get naked, or engage in sexual activity. A voyeur is the individual doing the spying. They are commonly referred to as peeping toms.

The fact that the person being seen is unaware they are being watched is a key component of voyeurism. Usually, the person is in a setting where they can expect some kind of privacy, like their house or another private space.

Essential elements-

- Voyeurism can only be regarded as an offence if it is carried out by any guy against any woman. The act must be undertaken by the man. The offence must be committed by any man, according to the code.
- Viewing or recording such act is crucial. The individual who committed the conduct had either watched the women's intimate activities or had filmed or captured their activities.
- The woman whose photographs are acquired should be engaged in some private activity and expect that no one will be watching or observing her. The images taken should be of some private activities.
The person who publishes those private photographs is the one who, after photographing a woman engaging in a private activity without getting her permission, publishes those images.

**Provision Under IPC:**

Article 354C) Any man who witnesses or photographs a woman engaging in a private act in circumstances where she would typically expect that she would not be observed by the perpetrator or by any other person at the perpetrator's direction or who publishes such an image shall, upon conviction, be punished with imprisonment of either description for a term that shall not be less than one year but may extend to three years, and shall also be subject to fines and other penalties.

Explanations:

- For the purposes of this section, a "private act" is any sexual act that is not typically performed in public, such as using a restroom or watching in a location where privacy would normally be expected under the circumstances and where the victim's genitalia, posterior, or breasts are exposed or covered only by underwear.
- When the victim gives their approval to the taking of the photos or performing of any act, but not to their distribution to other parties, and when such photo or act is distributed, that distribution is deemed a violation of this clause.

**Punishment:**

Anyone found guilty of this offence faces a first-time sentence of imprisonment of either kind for a term that must not be less than one year but may go as high as three years, as well as the possibility of a fine, and a second or subsequent sentence of imprisonment of either kind for a term that must not be less than three years but may go as high as seven years, as well as the possibility of a fine.

The second conviction after the first is not a second offence. The second or subsequent offence doesn't start until the accused has already been punished once for the act. Any first-class magistrate may try this offence and set bail.

**Need For Separate Provision:**

Despite the numerous legal measures put in place to hold those responsible for crimes against women accountable, cases involving women (such as rape, outraging a woman's modesty, sexual harassment, dowry deaths, etc.) are increasing quickly.

Voyeurism is a paraphilia that involves getting a sexual high from watching unaware others strip, get naked, or engage in sexual behaviour. It can also be characterised as the practice of watching someone secretly engage in activities such as sexual activity or undress that are typically thought of as private. The subject of voyeurism might not be connected to the voyeur in any manner. Even if voyeurism doesn't physically injure anyone, it does push the individual and cause mental distress. It is a major infringement of the right to privacy, which is a component of the right to life as stated in article 21 of the Indian Constitution, as well as a violation of the rights to equality before the law and equal protection under the law as stated in article 14. The term "private acts" refers to a woman...
engaging in sexual activity, using the restroom, or being undressed.

**Introduction To Indian Law:**

After a horrifying gang rape case involving a 23-year-old lady, the Justice Verma Committee was created, and as a result, the Criminal Law Amendment Bill, 2013, was enacted. The Committee's study examines privacy in light of various legal systems where the right to privacy is viewed as a right to individual growth and autonomy that provides a place for interaction even in public areas.

The group agreed that there was a need to reduce all sexual offences, and they proposed that voyeurism be penalised by up to seven years in prison and stalking or persistent attempts to contact a person by any means by up to three years. Trafficking will result in RI for seven to 10 years, while acid attacks could result in up to seven years in prison. The Code of Criminal Procedure (1973), the Indian Evidence Act (1872), and the Protection of Children from Sexual Offenses Act all saw revisions that affected various portions of the Indian Penal Code (IPC) (2012). The Indian Penal Code now includes several additional clauses and new offences include acid attacks, sexual harassment, voyeurism, and stalking.

**Limitations of law-**

The law of voyeurism is still being developed and has some significant gaps. First off, the term excludes any morphed or manipulated images or films of the victim that the offender has created by swapping the victim's face from a non-intimate photo into any pornographic one. Although it does not come inside the definition of voyeurism, this will have a severe negative impact on the victim. Second, the provision does not acknowledge that men can also become victims of voyeurism and is not gender neutral. Therefore, the legislation needs to close these two loopholes so that criminals are held accountable and voyeurism incidents can be reduced.

**Voyeurism under Information Technology Act, 2008:**

The Section 66E IT Act, 2008 acknowledges the need to safeguard the human body from obscene and unjustifiable intrusion by video technology, and appropriately guards against the crime of video voyeurism, which tramples on one's privacy and dignity by secretly filming or photographing unaware people.

According to the IPC, sending pornographic content (images, pictures, videos, or texts) to a woman via social media constitutes sexual harassment. According to Section 354A of the IPC, emailing or showing a lady sexually explicit or pornographic material without getting her permission constitutes sexual harassment. A 3 year prison sentence, a fine, or both may be imposed on the offender of such a crime. If the woman agreed for the photos to be taken but not for these personal images to be posted online, it is a crime. This offence carries a possible sentence of 3 to 7 years in prison as well as a fine. According to Section 67A of the IT Act, if sexually explicit content is uploaded online, the offender faces up to a 10 lakh rupee fine and five years in prison.

**Voyeuristic Disorder VS. Voyeurism**
There is a very thin line between the two, i.e., voyeurism and voyeuristic disorder, as both are entirely different concepts. Voyeurism is defined as the act of enjoying or taking an interest in watching someone undress, become naked, or engage in sexual activity; the interest of the voyeur is more oriented toward watching such an activity than the person performing it; it only alludes to an interest. A person might masturbate while seeing any kind of sexual content, for instance.

On the other hand, voyeurism can occasionally develop into a paraphilic disorder called voyeuristic disorder. The term "paraphilic disorders" refers to sexual fantasies or cravings that commonly lead to a person being ill. They might involve children, inanimate objects, or unwilling people. By definition, voyeurism implies that the subject of the observation (the individual being viewed) does not consent to the activity.

Although studies show that sexual motivation is the most dominant and leading driving force in human beings and is considered to be normal behaviour, the feeling of arousal while observing someone undress or engage in sexual activity from a distance refers to an individual's voyeuristic interests. However, casual voyeurism can become problematic when an individual takes steps that violates a person's expectation of privacy or their right to informed consent, it constitutes a serious sex offence.

If someone behaves in a way that violates another person's expectation of privacy in their home, locker room, or a similar setting, or if they start filming or photographing someone else without that person's consent, or if they enter a location illegally in order to observe people acting in a way that makes them frustrated or stressed out when they can't engage in those behaviours, those actions can be extremely concerning and Voyeuristic Disorder is characterised by persistently feeling guilty after engaging in these actions on a regular basis.

**Landmark Judgement:**

R v Jarvis

**Facts:** At Beal Secondary School (School), in London, Ontario's Thames Valley District School Board, Ryan Jarvis (Jarvis) taught high school students. He used to instruct pupils between the ages of 14 and 18 and was never the subject of any claims regarding his behaviour or his ability to educate. Without the students' permission, Jarvis created recordings of himself filming female classmates using a pen with a camera built in. He was not given authority to do this by either the school nor the school board. When the coworker learned of this, he told the school's principal, who then told the police. It was discovered that there were 17 active videos of 30 different people, 27 of whom were female students at the school. The females' chest regions were the main subject of the audio and video recordings. For engaging in voyeurism, Jarvis was charged under section 162(1) (c) of the Criminal Code of Canada.

**The section states:**

Anyone who secretly observes—including by mechanical or electronic means—or secretly records—if the recording is done for a sexual purpose—a person who is under
circumstances that give rise to a reasonable expectation of privacy—commits an offence.

Judgement:

The trial judge came to the conclusion that Jarvis' actions were immoral and in violation of his duty to his profession. Jarvis was declared not guilty of the crime and was freed because the recording made for a sexual purpose of the test could not be satisfied.

But the recording broke both the school board's regulation and the trusting connection between a teacher and a pupil, thus the Supreme Court of Canada ruled him guilty. The videos specifically targeted female pupils, frequently highlighting their breasts. The pupils would never anticipate a teacher recording their school in such a way. They evidently had a legitimate expectation of privacy.

Conclusion:

Despite the numerous legal measures put in place to hold those responsible for crimes against women accountable, incidents involving women—such as rape, outraging a woman's modesty, sexual harassment, dowry deaths, etc.—are increasing rapidly.

India is ranked 133 out of 167 countries and is not thought to be a safe place for women, according to the second report published in 2019 by Georgetown University's Institute for Women, Peace and Security (GIWPS), which considers inclusion, justice, and safety of women as three main factors along with 11 sub indicators.

Women's safety in our society can be improved by the inclusion of voyeurism as an offence in the Indian Penal Code, 1860 under section 354C, as well as by some advancements in communication technology.