

Voyeurism

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Introduction:

Voyeurism is an act of gaining some sexual pleasure by looking at some private affairs that the person engaged thinks that is not monitored by someone. It is derived from a French word “voir” which means “to see”. When a person gains sexual pleasure and gratification from looking at sexual acts of others or when they are naked. Voyeurism is considered to be an offence under Indian law and as well as under many other countries too. But basically before considering it as an offence, Voyeurism is considered to be a psychosexual disorder and a form of Paraphilia. Normally this offence is done by male and a male voyeur is called as “Peeping Tom” or a “Jags” which originated from the Lady Godiva legend. And the offence is mostly done by male comparatively then females as the reported cases stands as a witness for it.

Voyeurism as psychological disorder, is proved through many studies and many psychologist have proved it as sexual disorder too. John Money in the year 1996 defined Voyeurism as “a paraphilia of the sollicitationalallurative type in which sexualerotic arousal and facilitation or attainment of orgasm are responsive to, and dependent upon, the risk of being discovered while covertly watching a stranger disrobing or engaging in sexual activity”. And also the Psychoanalytic theory gives rises to some of the few historical theories that brings out voyeurism. Psychoanalytic theory which was proposed in later 19th century is a theory that relates to personality organization gave a view that voyeurism arises from the failure of accepting “castration anxiety”.

As voyeurism primarily considered to be a psychological disorder the first question that arises out is whether the act is an offence or not.

Many countries have enacted statues regarding it as a crime but there are still some countries that have not yet recognized it. Even Indian law did not consider voyeurism as a crime till 2013³. Though some countries haven't considered it, most states prohibit taking photographs or videotaping of another person without their consent by observing that persons privacy. And the countries that consider voyeurism as crime and offence punishes the offender with imprisonment as the minimum penalty.

Voyeurism as a Paraphilic disorder:

Voyeurism, as seen earlier is considered to be Paraphilic disorder. Paraphilias is a kind of emotional disorder which is a urge that arises sexually in human and occur for over a period of time normally a minimum period of 6 months. This causes disaster to some functional area. And this kind of act is generally recognized in men as said earlier. There are some preventive methods to control these kinds of disorders, its typically in the hands of society to control in by way for taking some privacy steps and to avoid circumstances that result in accidental observation.

Voyeurism as a criminal offence:

Voyeurism as criminal offence, can be studied through certain elements in first hand as well as under secondary elements. The primary elements are for sexual purpose or sexual pleasure, intentionally, should monitor or record or any act a kind of it and the affected part should thought of having privacy. And the secondary elements also includes some of the primary elements too they are intention, should monitor or record or any act a kind of it, affected person should be in a state of undressed, the affected part should thought of having privacy, or when the affected party is engaged in sexual intercourse.

Voyeurism around the world:

Voyeurism as seen earlier is a criminal offence and there are different type of legislation in each nation governing it. Many states still have not recognized it as a crime but where as other countries have recognized it as crime before few decades. Many countries around the world regard it as an offence and punishes the offenders by imposing some strict penal too. As studying voyeurism around the world it is important to study the laws governing voyeurism under different legislations. And it is also necessary to note that voyeurism under common law countries is not recognized offence. Only when the common law countries enact legislation for governing voyeurism it is considered as an offence. Canadian law stands as a great example, until 1950 in Canada voyeurism was not considered to be an offence. In the case “Frey v. Fedoruk et al⁴” in the year 1947 it was held that voyeurism was not an offence but later in 1950 the Supreme Court of Canada gave a suggestion to parliament to create law for voyeurism as the court can’t do it as it would result in breach of peace. But only in the year 2005 on Nov 1st the Canadian government enacted law for voyeurism under section 162 of the Canadian Criminal Code.

And under English law the offence voyeurism was enacted in the year 2004. The crime was enacted under section 67 of the Sexual offence act 2003⁵.

In the case R. v. Turner (2006)⁶, the manager of sports centred captured video of four women taking shower and when the case went to the Court of Appeal he was held with nine month imprisonment. Even under American law nine states consider video voyeurism as a crime and consider that person as sexual offender. Under the federal video voyeurism act,2004 video voyeurism is considered as an offence and the offender is guilty of imprisonment. In New York, video voyeurism is considered to be an

emotional offence and the offender is punishable with 1-4 year of imprisonment. Other countries like Australia also consider voyeurism as criminal offence. And the criminal offence of voyeurism not only means watching but also includes capturing under many legislations of the world.

Voyeurism under Indian law:

Voyeurism under Indian law, have been recognized as crime just before few years. Until 2013 India did not recognize, only by Indian Penal Code amendment act 2013 India recognized voyeurism as a crime and gave a separate provision for it with some penalties too. Though Indian Penal Code is one of the oldest law that prevail over a period of time, it recognized it as a crime later only. The response from the society and many cases created the necessity to enact the special provision under the criminal law. Even now under Indian law voyeurism is considered to be a sexual offence. And this provision for voyeurism was created under Indian Penal Code to improve the safety of women and punish the offenders who are indirectly involved in sexual intercourse. And the main fact is to be noted that not only under IPC but also under Information Technology act 2000 voyeurism is discussed indirectly. So under section 354(c) of IPC defines voyeurism as “Any man who 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 or disseminates such image 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.” And

section 66E of Information Technology act 2000 defines "Punishment for violation of privacy. Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both." This clearly speaks about violation of privacy which is one of the element of voyeurism as seen before. Studying about penal aspect of voyeurism it is also necessary to note that even Article 21 of the Indian constitution deals with right to privacy and India is the only country to have right to privacy as fundamental right and it ensures right to privacy of each individuals and it was recently upheld by the Supreme court in the case of Justice K.S. Puttaswamy v. Union of India⁷. By act of voyeurism Article 21 is violated (i.e) a person's right to privacy is getting violated causing even mental disturbance. The Amendment act of 2013 not only made changes in IPC but also added some provisions in the Code Of Criminal Procedure, 1973 and Evidence act, 1872 also. The section 53(A) of the evidence act speaks about voyeurism as an offence but generally and not separately or exclusively about it. Though there is an amendment made and new law is formed regarding voyeurism some effective or even more strict punishment can be made is the view of many and even that's can be found out through many cases. There are many cases that are frequently reported on voyeurism which clearly brings up a view that few changes or some effective law can be enacted related to voyeurism. Many cases have been discussed for past few years for voyeurism among that the famous issue which was taken up by "Smriti Irani⁸" where four men was arrested under section 354C, 509, 201 of IPC and under section 66E of IT act, 2000 when Smriti Irani found pin hole camera which they told as CCTV camera in dressing room which

affected a person's right of privacy and resulted in voyeurism⁹. Then in Tamil Nadu, Dr. L. Prakash issue¹⁰ stands for voyeurism indirectly, Dr. Prakash was an orthopaedic surgeon, he is infamously known as the sex doctor. He was arrested on December 2001 for recording videos and photos of women engaging in dressing and also posted it online. In 2008 he sessions judge found that he is guilty and sentenced him with seven year rigorous imprisonment under IPC and Information Technology act, 2000, Immoral Traffic (Prevention) act, Indecent Representation of Women (Prohibition) act, 1986 and the Arms act 1959. All this was running concurrently and he was also fined up to Rs. 1 lakh. While allowing the appeal petition partly, the division bench said that Prakash as already completed 13 years and 3 months of his imprisonment and they confirmed the judgement given by sessions court. But they modified the imprisonment to one of the period he has already completed but fined him up to Rs. 1,19,000 in eight weeks. And held that once he pays off the fine is would be released. And he set free too. The recent case "Chintu @ Arvindra Sen v. The State of Madhya Pradesh¹¹" in the year 2016 held the offender is punishable under section 354-C and 509 of IPC are bailable and for the offence under section 66 c and 67 of information and technology act with the maximum punishment of three years.

Conclusion:

Thus as seen earlier in this study tries to bring out voyeurism as one of the dangerous criminal offence which is recognized only by some nations and not others. Though voyeurism is an offence it is to be noted that from the eyes of medicine it is first of all a sexual disorder or paraphilic disorder which easily occur in men. But considering this as a disorder alone will surely result in bad phase. So considering it as an offence is not wrong in any case. And it is also to be remembered that only in the 21st century most nations have confirmed it as an offence.

Even under Indian law only by the criminal amendment act 2013 voyeurism was inserted as an offence and still many feel that this provision is not strict enough to control some sexual offence like voyeurism. It is also to be noted that the penal for voyeurism under Indian law is less than other countries and there is no special provision for electronic voyeurism too. As regard to this offence the awareness and moral values that's lacking among people plays a major role. So it's necessary to create awareness and the moral values should be thought enough by the society and it's also necessary to create some effective punishment that can reduce crimes like this which affects the modesty of women. Thus it is also necessary that other countries which have not yet recognized voyeurism as an offence should recognize it as a serious offence and should legislate strict penal codes to ensure the protection of privacy of individuals and India should also make some effective acts for this kind of offence which includes treatments for the offender.

(Endnotes)

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- 3 <https://www.medianama.com/2013/04/223-criminal-law-amendment-to-include-cyber-stalking-harassment-and-voyeurism-cis-india/>
- 4 [1950]S.C.R 517.
- 5 Sexual offence Act 2003, <https://www.localsolicitors.com/criminal-guides/voyeurism-laws-and-offences>
- 6 (2006) All ER (D) 95 (Jan)
- 7 Justice K.S.Puttaswamy (Retd) and Anr v. Union of India And Ors ,24th August 2017.
- 8 <https://m.timesofindia.com/india/Smriti-Irani-Voyeurism-Case-Main-accused-identified-says-crime-branch/articleshow/46892487.cms>
- 9 <https://timesofindia.indiatimes.com/india/Smriti-Irani-voyeurism-case-Goa-Police-summons-Fabindia-CEO-MD-and-9-other-employees/articleshow/46832481.cms>
- 10 CrI.A.No.770 of 2011/ (CrI.A.No.478 of 2014)
- 11 MCr. C. NO.20757of 2016