

The Law on Crimes of Stalking and Voyeurism in India with effect on Right to Live of the Victims

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Abstract

Crime against women has been a hurdle in India's development. The customs like sex being a taboo in India, Sati, Dowry and the lower status of women worsen the situation. From the last decade, we can see that there is a sharp number of crimes registered against women. Time by time new laws is required to be added for the safety of this section of the society. There will be no women in India if we do not act now.

The common thing between all offences is that it affects both the parties; one party is affected when the act is done and is known as a victim while the other one gets affected when the law punishes him and is known as the offender. Voyeurism and Stalking are two such crimes which are against the human body especially against a woman; which results in physically as well as mentally harassment.

Introduction

Voyeurism

It is an act to observe individuals who are naked, in the process of undressing or engaging in sexual acts. The person observed is usually a stranger and the act done is in order to have sexual pleasure or achieving sexual excitement. It is a type of psychosexual disorder in which the pleasure is derived from observing the sexual acts. The viewer is usually hidden from the view of others. It also involves listening to erotic conversations.

Voyeurism has been a part from around the evolution of mankind, cities and civilizations. This has been a part of the Roman Empire and Pompeii; even the Bible discusses this behaviour and says that this should not be accepted. It has lead to the invasions of privacy, stalking, sexual violence and other interpersonal difficulties. The modern digital era had helped a lot in increasing the activities of Voyeurism.

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Stalking

It refers to unwanted intrusions by a person into the life of another in a way that it causes fear². The victim of such an intrusion, use the methods to tackle with such intrusion, these methods are changing day to day activities, changing of human behaviour, avoiding people or places, avoiding and ignoring the pursuer. Meloy and Gothard define stalking as ‘the wilful, malicious, and repeated acts which lead to harassing of another person’s life.’³

It is an extra-ordinary type of crime and constituted by the repetition of routine behaviour. It is developed with the instances when the public figures started becoming targets of obsessional followers which leads to “risk and threat” to the high-profile figures within the society. Global discovery of stalking took place around in 1990 since then establishing constructive measures for the protection of victims is taking place. Its nature is a course of conduct intended to cause fear or detriment to the person who is getting staked and most of the stalkers are former partners who perform such act out of jealousy and anger which is the result of a relationship breakdown.

Criminal Amendment of 2013

Background of Amendment

The Criminal Law (Amendment) Act, 2013 was passed and it amended the existing laws regarding sexual offences in India. This big step was taken after 2012’s brutal gang rape and subsequent death of the physiotherapy’s intern in the nation’s capital, New Delhi. The act changed many existing provisions of criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

During the trial of the gang rape of 2012, there was a huge demand for speedy-trial and immediate prosecution. On December 23, 2012, a committee headed by Justice J.S Verma, Former Chief Justice of India was formed in order to come with the essential necessary changes in the criminal laws. The other members of the committee were Justice Leila Seth, a former judge of Delhi high court and Gopal Subramaniam, former Solicitor general of India. The committee requested all the eminent personalities including jurists, legal professionals,

² Troy McEwan et al, *Approach and Escalation in Stalking*, Journal of Forensic Psychiatry & Psychology 392(2012).

³ Reid Meloy and ShaynaGothard, *Demographic and Clinical Comparison of Obsessional Followers and Offenders with Mental Disorders*, American Journal of Psychiatry 258(1995).

NGOs, women's groups to provide their views in the essential amendments to the criminal law.

After taking cognizance of all the particulars the commission on January 23, 2013, submitted its recommendations saying "lack of god governance" as a cause of offences against women. The committee's 630 pages report which was completed in 29 days was appreciated nationally as well as internationally the report blamed the government, police insensitivity and gender bias for the rising crimes against the women in the country and also introduced new offences like disrobing a woman, voyeurism, stalking and trafficking.

The Criminal Law amendment act-2013 came into force from February 3, 2013, which amended as well as inserted new laws in the Indian Penal Code and other criminal laws. It increased the ambit of rape, trafficking of a person and also formulated punishment for the same. The amendment also added acid attack, act with the intent to disrobe a woman, voyeurism, and stalking.

Voyeurism- Section 354C

This new provision was added under section-354C and says that 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 at the behest of the perpetrator or disseminates such image shall be punished. In the case of the first conviction, imprisonment is not to be less than one year but may extend to three years. Prior to this, there was no specific offence for this act under IPC, however, in Information Technology Act 2000, both men and women were protected and punishment up to 3 years or fine up to Rs. 2 lakh was subscribed for the offender.

The committee's report expressed its surprises on the fact that stalking, voyeurism, eve-teasing are perceived as minor offences, even though they are capable of depriving many individuals of their rights. Globally too, voyeurism is not declared as a crime under common law until specifically declared through legislation.

Stalking- Section 354D

Stalking is following a woman and attempting to foster personal interaction despite indication of victim's disinterest, spying, monitoring the use of any form of electronic communication. The act of stalking interferes with mental peace of person or causes distress,

fear of violence or alarm. Stalking may be committed both physically and through electronic media.

It was added under Section-354D of IPC after taking inspiration from Section-2A of Protection from Harassment Act, 1997 passed by British Parliament on November 25, 2012.

The Section-354D says that, if a man stalks a woman, he may be punished with imprisonment of up to three years for the first time and five years for subsequent convictions. However, the offence is subjected to certain exceptions like in case a person can show that his acts were under pursuance of any law, amount to reasonable conduct or in order to prevention of some crime. Initially, the crime was gender neutral but with the amendment of 2013 the term “whosoever” was replaced by “Any man”.

It is a form of harassment comprising of the repeated persistent following with no legitimate reason with the intention of harming, or so as to arouse anxiety or fear of harm in the person being followed. It can be through telephone calls, computer communications, letters, etc. The apex court in various cases had defined the importance of such laws as the protection of woman is of extreme importance to a civilized and cultured society.⁴ Also, the apex court issued some guidelines to all the state governments saying that before undertaking suitable legislation to curb offences against women it is necessary to take at least some urgent measures so that it can be curtailed to some extent.⁵

Provision of other countries

The countries are differentiated by boundaries and citizens but the offences are the same throughout the globe. Most of the countries had framed the laws with respect to these offences.

Voyeurism

In the US, criminal voyeurism statutes are related to privacy to the invasion of privacy laws. In the UK, non-consensual voyeurism became criminal in 2004, with the insertion of section-67, Sexual Offences Act, 2003. In Canada, voyeurism was added as sexual offences vide Section-162 in the Canadian Criminal Code. In India, where a woman has a reasonable expectation of her privacy not being breached by any intruder, who happens to be either

⁴Rupan Deol Bajaj v. K.P.S Gill, (1995) 6 S.C.C. 194.

⁵Deputy Inspector General of Police v. S. Samuthiram, (2013) 1 S.C.C. 598.

known or unknown to her, if that intruder either watches or captures the image of that woman while she is engaged in a private act, that intruder is guilty of the act of voyeurism. It is cognizable, bailable, and non-compoundable offence triable by a magistrate.

Stalking

Since the 18th century stalking is been prosecuted similar to offences like trespass, breaking and entering, criminal damage and threats to kill.⁶ The offence of stalking is defined through different definitions throughout the globe. For example, the New South Wales, the relevant legislation does not require a course of conduct in order for the establishment of the offence; a person can be found guilty of stalking if they perform a prohibited act on one occasion. And in California any person who wilfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.

Elements constituting the offences

The offences are formed after happening of certain acts which are also called as essential elements for the formation of that crime. Like for the offence of murder, the death of an individual must happen the same is here with the offence of

Voyeurism

- (i) A male offender
- (ii) Watching or Capturing or sharing the image or video of a Woman
- (iii) Where the woman was engaged in a private act
- (iv) And that woman was not having any expectation that anyone is watching her doing that act

Stalking

- (i) A male offender
- (ii) Who follows any women
- (iii) Follows for contacting her, in order to do personal interaction
- (iv) A woman has shown clear dis-interest in that man and his acts
- (v) That follow up can be done by electronics devices or digital methods too

⁶ R v Dunn, (1840) 113 E.R. 939.

- (vi) That follow up must not be for any purpose defended by law

Effect of these offences mentally and Right to live with dignity

The victims of these offences are affected by mental and physical harassment. As we read the victim are mostly women, therefore, the effects are much grave. This is the normal tendency that whenever a person is affected by any act then he has to suffer physically or mentally or both, the same is with the offence of Voyeurism and Stalking. Both are an unwanted intrusion in one's life by an intruder. And that intrusion affects our normal life from working to sleeping.

Mentally

Victims of stalking and Voyeurism when exposed to threatening behaviors over prolonged periods of time then their experience as described by them is "emotional or psychological rape", "psychological terrorism" and "rape without sex". It is difficult to move on from any such unwanted intrusion in your life which is also acting as a threat to your life. The offences like stalking and voyeurism can affect the mental peace of any individual, causes distress etc.

The Victim of the offences can move in different directions in order to attain relief from the harassment;

Moving outward

1. Seeking support from others
2. Hiring a security guard
3. Applying for a restraining order

Moving against

1. Deterring
2. Attacking
3. Legal actions

Moving Away

1. Avoiding
2. Changing routine
3. Installing security measures

Moving with

1. Maintaining direct interaction with the offender
2. Negotiating
3. Suggesting

Moving Inward

1. Psychotherapy
2. Empowering using alcohol, drugs

Right to live with dignity

Both the offences are privacy violators which at last as both involve spying the individual in private areas ranging from dressing rooms to the workplace without her consent. Strategizing a peep show is not good enough and peeping into the private life of an individual and not letting it be private anymore leads to a life without dignity. That intrusion must not be allowed and privacy must be kept private as privacy is an important aspect of personal liberty.⁷ Here we are not only talking about a socially normal women, stalking whom or capturing her up skirt images are invasion in her private life but also for a prostitute because she also has the right to live with dignity under Article-21 of the Indian Constitution, therefore, no person can stalk her or watch when she doesn't want so. Even the Supreme Court said that unchastity of a woman does not make her "open to any and every person to violate her person as and when he wishes".⁸

Gender Neutrality of Provisions

In any law, there are some offences which can only take place against a specific gender. Like in Indian Penal Code an act of dowry death can only be done against women. But there are some laws which as per the provisions made, are only for a specific gender but they must be gender neutral for the betterment of the society. Offences like rape, voyeurism and stalking are such offences which must be gender neutral. A man or woman both can be stalked by any gender and same in case of Voyeurism.

The lawmakers must understand that at a time when we are claiming for equal gender rights then the discrimination on such a point can be a hurdle in our aim of gender equality. It is

⁷NeeraMathur v. L.I.C, (1992) 1 S.C.C. 286.

⁸State of Maharashtra v. Madhukar Narayan Mardikar, (1996) 1 S.C.C. 490.

true that according to the situation of women in our society their safety is always at preference but it doesn't mean that this facility must be provided after taking the rights of men. There is no drawback in providing this facility to men with women and hence must be provided.

Abuse of these provisions

These provisions of the Indian Penal Code are for safeguarding the women's life from unwanted intrusion and invasion of their privacy. Therefore the only parties getting the benefit of these laws are the females. Being on an upper edge provides them with various opportunities and sometimes they use this power abusively. With a number of legal provisions, the number of cases filed increased which also involves a large number of false cases.

In the offences like stalking and voyeurism, it is very difficult for the defendant to prove his innocence. Any girl after a break-up can sue his former partner for voyeurism alleging that he is sharing her personal videos and photos with others or he got them without her consent. Same is in the case of stalking a little wrong assumption on the part of a woman that certain guy who was not actually following her is following her can lead to a big problem.

Even a woman in order to take revenge can use these tactics. Like there were certain cases where the women cheaters alleged of being stalked by an individual who was cheated by them and he was following them in order to catch them. Therefore the provisions must be stricter, which also punishes the individual in case of a false case.

Conclusion

An individual proficient in studies can achieve a Nobel, a good tennis player can achieve a large number of grand slams and a person in a bad condition can do a crime, but then also all humans are same. The conditions in which a person is living can lead to happening of different events. Both Voyeurism and Stalking are crimes done due to mental illness; therefore, it must be corrected and not punished. In spite of punishing at a very early age there must be the psychological treatment given to that offender which, I guess will be the best step towards the betterment of the society. Also, I find it interesting that the things we engage in, in order to get satisfaction ends up causing more harm than good. And Voyeurism and Stalking are at the top of my list.