Subject Name: Indian Penal Code
Topic Name: Voyeurism stalking etc

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Sec. 354C: Voyeurism

(Watching or capturing images of a woman engaged in a private act) [MMS/ Pornography Cases]

"*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.*

> *Explanation 1. For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.*
>
> *Explanation 2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where | such image or act is disseminated, such dissemination shall be considered | an offence under this section*."

Due to the 2013 Amendments, observing or capturing images of a woman during private acts, such as engaging in sexual activities or using a lavatory, is specifically covered under Section 354C of the Indian Penal Code (IPC). Unlike the Information Technology Act, 2000, which protects both men and women from voyeurism, the IPC provisions only protect women.

Explanation 2 in Section 354C is particularly relevant in cases involving MMS or pornography. A voyeur is someone who derives sexual gratification from secretly observing others while they undress or engage in sexual activities. Voyeurism involves observing, capturing, or distributing

images of individuals without their consent or knowledge, typically for sexual pleasure. This behaviour violates individuals' reasonable expectations of privacy regarding their bodies.

The provision aims to safeguard victims of voyeurism who have been watched or recorded without their consent in circumstances where they could reasonably expect privacy. Whether in public or private settings, individuals should have a reasonable expectation of not being observed while engaging in private acts.

This expectation is crucial, as voyeurism can occur not only in private spaces like homes but also in public areas where individuals typically expect privacy.

However, Section 354C requires that women must have an expectation of privacy, meaning they reasonably believe that no one will observe them. For instance, if a woman kisses her boyfriend in a public place like a metro or bus and another passenger merely sees it without gazing, it does not constitute voyeurism.

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Advancements in video and image capturing technologies have made it easier and more common to observe individuals engaged in private acts, both in public and private places, through surreptitious means. Instances of video voyeurism, such as the case of a store owner secretly recording female customers in a trial room, are serious violations of privacy rights and human dignity.

These incidents underscore the need for robust legal protections against voyeuristic behaviour to uphold individuals' right to privacy.

Voyeurism is considered a criminal offence in numerous jurisdictions worldwide, including Australia, the United States, Canada, and the UK. These countries criminalise the capturing of certain images, the observation of individuals, or both.

In response to the increasing threat of video voyeurism, the USA enacted federal legislation called the Video Voyeurism Prevention Act of 2004. This law prohibits knowingly capturing images of an

individual's private areas without their consent, particularly in settings where the individual expects privacy, such as bathrooms, dressing rooms, locker rooms, hotel rooms, and malls.

Voyeurism not only violates a person's privacy but also constitutes a grave violation of women's human rights, dignity, reputation, and honour, especially when the recorded images are circulated in the pornographic market. This violation persists indefinitely, as each viewing or transmission of the content perpetually retraumatised the victim.

The incorporation of voyeurism as a criminal offence in the Indian Penal Code (IPC) addresses several gaps in existing laws and sets a precedent for better protection of citizens' bodily privacy by the state.

With voyeurism now recognized as a crime under the IPC, the sale of pornography, invasion of privacy, and distribution of defamatory images are prohibited, instilling fear in the minds of potential offenders.



STALKING

Sec. 354D: Stalking

(Following a woman despite her disinterest, spying, etc.)

“Any man who -
follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
monitors the use by a woman of the internet, email or any other form of electronic communication; or

watches or spies on a woman in any manner, that results in a fear of violence or serious alarm or distress in the mind of such woman, or interferes with the mental peace of the woman, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that -
it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State {Prevention of crime); or
it was pursued under any law or to comply with any condition or requirement imposed by any person under any law (Compliance of law); or
in the particular circumstances such conduct was reasonable and justified (Reasonable conduct)
Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

The 2013 Amendments introduced Sec. 354D to address behaviours like following a woman, attempting unwanted personal interaction, spying, or monitoring electronic communications. This section outlines exceptions where such acts by men would not be considered under this provision.

Stalking typically involves repeated harassment or threats, such as following a person, showing up at their home or workplace, making harassing calls, leaving messages or objects, or property vandalism. Victims of stalking often experience mental distress due to the unwanted and obsessive nature of the harassment.

Stalking can occur physically or through electronic means, known as cyber-stalking, which can be even more invasive and detrimental to privacy. In any form, stalking infringes upon the victim's privacy, attempting to establish unwanted relationships and collecting personal information without consent.

Many countries, including Australia, the USA, and Japan, have laws criminalising stalking. However, India lacked appropriate legal response to stalking until the inclusion of Sec. 354D, IPC. Previously, victims had to rely on Sec. 509, IPC, which pertains to insulting the modesty of a woman but does not adequately address stalking.

Sec. 354D, IPC, addresses the shortcomings of previous laws by defining stalking as a standalone offence, regardless of the perpetrator's intent, and providing clear elements of the offence. By recognizing stalking as a distinct crime, the law protects victims' privacy rights and helps prevent potentially violent crimes.