



# Crime of Stalking and Voyeurism in India: An Deplorable Act.

**Aishwarya Pramod Athawale**

Advocate

Session Court at Bhusawal

## **Abstract**

Crime is, “An act harmful not only to some individual but also to a community, society or the state (a public wrong)” Such acts are forbidden and punished by law.

The violence and the increasing crime is witnessed by everyone across the world in some or other sense. Article 13 of universal declaration of human right asserts that every individual has freedom of movement and no one is authorized to infringe the same although the perverted mentality of some people leads them toward commission of such crime. Indian constitution under article 19 (d) protects right of person to move freely, along with this we have rights and liberties guaranteed under article 21 of Indian constitution. One of the values specified in Preamble is Liberty it says there should be no coercive, unfair restriction upon any individual. The crime of stalking and voyeurism is one of a kind of harassment that not only violets individual freedom but it also restricts liberty of a person. Laws has been formulated to control commission of such crime but the present penal provision is unable to strangle the offence of stalking and voyeurism.

(keywords- stalking, voyeurism, NCRB, obscene act)

## Introduction

Crime has diversified form. Particularly the crime of stalking and voyeurism has potential to muddle the life of individual. In the year 2012 after Delhi gang-rape case entire India was outrageous for protection of women and was demanding stringent legal penalties and procedures for individual safety that's when a special committee name Justice Verma committee was appointed to probe into women related offences and according to report given by committee, the Criminal Law Amendment Bill, 2013 was introduced to amend the existing provision in criminal law in which many new offences including stalking and voyeurism was incorporated in IPC.

Crime of stalking and voyeurism has immensely increased, it can be due to leniency in punishment or due to most of the cases go unreported. Therefore, the structure of present penal provisions regarding stalking and voyeurism must be formulated stringently. That could help to implement strict punishment to accused and in return can help to reduce the issues and challenges faced by the victims of stalking and voyeurism. <sup>i</sup>

## Offence of Stalking and voyeurism in India.

### 354D. Stalking.--(1) 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, commits the offence of stalking<sup>ii</sup>:

But a conduct will not be considered as stalking if the man who pursued it proves that such act was done with the responsibility to prevent and detect crime entrusted to him by the State or in the particular circumstances such conduct was reasonable and justified.<sup>iii</sup>

In <sup>iv</sup>Akbar malik vs State on 14 December, 2017- The accused was following victim from months, at times he stared at her. When she was waiting for metro on platform, Accused came and he

clicked her photograph in his mobile phone. Thereafter, victim asked him to come to police and appellant started fleeing away. However, through staff of Metro Station he was apprehended.

After conclusion of investigation, chargesheet was filed in the court and charges were framed against appellant for offence under Section 354D IPC. Prosecution examined three witnesses. He was, thereafter, convicted.

In <sup>v</sup>State vs Jarif Ahmad on 11 May, 2018- In this case accused came running after the victim and gave her a slap and caught hold of her and started threatening to cause her injury with blade. In the meantime, two-three unknown boys, who were coming on the way, came to her rescue and saved her. Complainant also stated that the boy had been following her even earlier and one day he asked her to make friendship with him saying that otherwise he would throw acid on her face.

The appeal was made in the instant case against assailing the judgment of acquittal of accused by the trial court preferred by the State of New Delhi. It was held that the respondent (accused) before the Trial Court was acquitted of the charges of the offence punishable under Sections 354/354D/ 506 of IPC.

But the high court in the preferred appeal contended that according to the judgement of trial court, the victim's version does not contain any clear indication of disinterest by her and the same does not satisfy the ingredient of section 354D IPC is totally wrong and unsustainable. The witness has specifically deposed that she refused the accused's proposal made to her prior to the incident and accused refrained for one year that too after he was counselled by a third person on victim's request and thereafter, he again started following her are sufficient to establish the essential ingredients of section 354D IPC as the circumstances clearly show that accused kept trying repeatedly to contact the victim to foster personal interaction.

This kind of harassment is rampant across India, shows government data. In 2018, 9,438 cases of stalking – one every 55 minutes, on average – were reported in India, as per the National Crime Records Bureau. In 2018, India reported a stalking case every 55 minutes. The actual number may be even higher<sup>vi</sup>.

The cases of stalking and voyeurism that were reported has also seen a rise. It increased from 0.8 in 2014 to 1.5 in 2018. Also in 2018, 12,947 cases of stalking were registered all across India, a total cases of 9,438 were under investigation and 3,505 cases were pending from previous years according to NCRB data<sup>vii</sup>.

Victims of eve-teasing or stalking may be women or men, it is not gender specific. Stalking is an unwanted or repeated surveillance by an individual towards another person and this behaviour is interrelated to harassment. Stalker monitors activities of victims infringing their right to life, liberty and freedom of movement. According to 2002 report by US national center - Any unwanted contact between people that directly or indirectly communicate threat or places the victim in fear is considered as stalking and it needs to be deterred by executing stringent penalties . In 2017 (crime and criminal tracking network and system) was developed for citizens to lounge E-complaints on this portal. And the records gave a visible stance that numerous cases of stalking and voyeurism were recorded, approximately 2,567 cases of stalking were reported in a month<sup>viii</sup>.

On average one case in every 55 minutes were reported in India, as per the National Crime Records Bureau (NCRB) report released in January 2020. This is more than double the cases (4,699) reported in 2014. Hence by 2.2% there is a steep rise in commission of such cases and only one in nine cases were reported to the police, said a 2015 study conducted by Commonwealth Human Rights Initiative (CHRI). Therefore many cases are likely to go unreported, it may be due to the sense of victims tarnishing their social image<sup>ix</sup>.

## **Voyeurism**

### **Explanation**

(ii) voyeurism- If 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. But if any person does so, at the behest of the perpetrator or disseminates such image to third person shall be considered to commit an offence under this section punishable 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 on the first conviction, and shall be punished with imprisonment of either description for a term which will not be less than three years, and may extend to seven years and shall also be liable to fine on a second or subsequent conviction<sup>x</sup>.

In Manoj Oswal vs Sakal Papers Pvt.Ltd on 6 August, 2013- THE HIGH COURT OF JUDICATURE AT BOMBAY said- A rapid increase in the use of computer and internet has given rise to new forms of crimes like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes<sup>xi</sup>.

In <sup>xii</sup>Bindu Venugopal vs M/O Agriculture on 28 February, 2018- Accused installed a camera just above the table of victim at the canteen to scrutinize and observe complainant and her two colleagues. Victim also alleged that since she and her colleagues belonged to a particular community, this indicated a strong regional bias on the part of the accused. She attributed a perverted and sick mind-set of the accused and therefore strict action was demanded against the accused. But due to lack of evidence no basis was found by the Tribunal to intervene in the said case and the accused was acquitted and further on appeal the case was dismissed.

There is steep rise in commission of crime and that needs to be deterred. Many incidents of voyeurism and stalking occur in a day. Thereby to protect the interest of victim, national commission and mission for women has been created for protection and empowerment of women.

**(i)National Commission Of Women** – National commission for women was formed by Indian government in the year of 1992 to raise the concern of women safety, and to improve their status also it worked for their economic empowerment, the commission takes into account the

issues and concerns of women community and address for authentic solution towards their problem and keep taking step for protecting women. The national commission of women has also received a large number of complaints and they have acted suo-moto in several cases for providing speedy justice to the victims<sup>xiii</sup>.

## **(ii) National Mission for Empowerment of Women**

National Mission for Empowerment of Women (NMEW) is an initiative of the Government of India (GOI) for protecting and empowering women holistically and to eliminate violence against women. It is an umbrella mission with a mandate to strengthen inter-sectoral convergence and facilitate the process of coordinating all the women's welfare and socio economic development programme across ministries and departments. While the incidence of rapes has continued to rise in India, the National Crime Records Bureau (NCRB) 2018 data also highlights the rising cases of voyeurism and stalking in the country, latest statistics in India incidents of voyeurism jumped to 1,393 cases in 2018 from 1,090 such cases in 2017, and 932 reported incidents in 2016<sup>xiv</sup>.

In 2013, a panel, headed by former chief justice J S Verma in its report following the December 2012 gang-rape had recommended making stalking and voyeurism punishable offence, with a maximum jail term of three years. In addition, the panel had also suggested that intentional touching, using obscene language or gestures should be treated as a sexual assault offences<sup>xv</sup>.

Usually voyeurism is the first step then comes stalking and then it is followed by rape. More often, the culprit is a boy who has been chasing a girl. If we start tackling the matter right at the level of voyeurism, it can also help stop rapes," said social activist and director of Centre for Social Research.

The crime of stalking is a bailable offence on its first conviction. Stalking is a kind of harassment that is rampant across the world. Victims of stalking suffer psychological distress, emotional harm and loss of self-esteem which hinders one's physical, intellectual or emotional development and is a matter of great concern and needs to be determined by stricter punishment and by setting up higher conviction rate.

Generally for voyeurism and stalking the punishment given under Sec 354 (C) and sec 354 (D) states that accused shall be punished 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 on the first conviction, and shall be punished with imprisonment of either description for a term which will not be less than three years, but which may extend to seven years and shall also be liable to fine on a second or subsequent conviction.

The clause of first conviction and second or subsequent punishment determines that punishment will be lenient to accused on his commission of such offence and on the second or repeated commission of same offence he will be severely punished, the clause “shall be punished with imprisonment of either description for a term which will not be less than three years but which may extend to seven years and also liable to fine on a second or subsequent conviction” clearly determines the leniency of punishment but on his second commission of such act he is severely punished, why the accused committing such offence against women is not punished severely in his first conviction, but rather he is given a second chance to commit the same offence again and then he is punished severely.

This kind of leniency in punishment encourages perpetrators to explicitly commit a crime. Usually stalking is the first step of felonious mindset of accused and such crime must be deterred by applying stringent penal provision to prevent further commission of a more rigorous crime. In <sup>xvi</sup>Laxmi v union of India the famous acid attack, accused used to stalk Lakshmi she complained about him but due to lack of evidence, his act of stalking remained unpunished, whereas complaint of stalking made by Laxmi against perpetrator wounded his ego and he took a rigorous step of throwing acid on her face and disfigured her life. After this incidence of Acid attack, related laws were more stringently applied in India. But the crime of stalking which determines the initial stage of criminal mentality has considerable leniency in punishment.

If the crime of stalking is tackled properly at initial level it can also help to stop commission of more rigorous crimes like rapes, murder acid attacks and therefore there is an utter need to deter stalking by explicating strict punishment.



## Conclusion-

Stalking and voyeurism have increased in number, commission of such crime leaves a stigma and disrupts the life of victim. The unjust or prejudicial treatment of different categories which was earlier given to different categories of people on the ground of race, age, sex or disability might have stopped but the concept of discrimination in broad sense also include event or chain that a person experience for instance insult, racism, unequal behaviour, harassment is also form of discrimination, and stalking and voyeurism is a form of such harassment and that needs to be deterred through stringent application of law.

<sup>i</sup> Mullen, Paul E.; Pathé, Michele (January 2002). "Stalking". *Crime and Justice*. 29: 273-318. doi:10.1086/652222. JSTOR 1147710. S2CID 224799375.

<sup>ii</sup> Ratanlal and Dhirajlal-The Indian Penal Code-35<sup>th</sup> edition, 2017 (Revised by Justice KT Thomas, MA Rashid).

<sup>iii</sup> Analysis of section 345D IPC,1860-march 7, 2022- by M. Manaswini Reddy- <https://blog.ipleaders.in/analysis-section-354d-ipc-1860-with-case-laws>.

<sup>iv</sup> Criminal appeal no.: 79/2017 vs state ( Govt. of Nct of Delhi) on 14December, 2017.

<sup>v</sup> CA No.06/16, IN THE COURT OF MS. SUNEMA SHRMA,ADDL. SESSIONS JUDGE- 03(SOUTH), NEW DELHI.

<sup>vi</sup> <https://scroll.in/article/952903/in-2018-india-reported-a-stalking-case-every-55-minutes-the-actual-number-may-be-even-higher>

<sup>vii</sup> <https://www.youthkiawaaz.com/2021/07/love-stalking-dilemma>.

<sup>viii</sup> Maharashtra police- service for citizen- crime and criminal tracking network and systems (CCTNS )-“ Empowering Police Through it” <https://citizen.mahapolice.gov.in/Citizen/MH/index.aspx>

<sup>ix</sup> National crime record bureau, empowering Indian police with information technology- <https://ncrb.gov.in/en/Crime-in-India-2020>

<sup>x</sup> <https://tilakmarg.com/acts/indian-penal-code-ipc-section-354-c-voyeurism/> & <https://prolawtor.com/criminal-force-and-assault-ipc-notes-for-llb-pdf/>

<sup>xi</sup> CRIMINAL APPELLATE JURISDICTION- CRIMINAL WRIT PETITION NO.314 of 2012

<sup>xii</sup> OA No.426/2017-CENTRAL ADMINISTRATIVE TRIBUNAL-MUMBAI BENCH, MUMBAI.ORIGINAL APPLICATION NO.426/2017

<sup>xiii</sup> National commission for women- <http://ncw.nic.in>.

<sup>xiv</sup> National commission for empowerment of women- <https://evaw-global-database.unwomen.org/en/countries/asia/india/2010/national-mission-for-empowerment-of-women>

<sup>xv</sup> <https://www.livemint.com/news/india/voyeurism-and-stalking-highest-in-mumbai-delhi-says-data-11578655314549.html>

<sup>xvi</sup> WRIT PETITION (C)NO.129 OF 2006