

## VOYEURISM: NEED FOR THE REFORM IN LAW

*Written by Divyanshu Modi*

*2nd Year BA LLB Student, Christ (Deemed to be University)*

---

### ABSTRACT

The eventual outcome of the Delhi gang rape made it different in relation to other gang rape cases in India. The tremendous scope of dissents by different common society constrained the legislature to (I) survey the current laws implied for rebuffing the rape and assault of women, (ii) set-up a different commission for the same and (iii) audit the part of the police in securing the well-being of women. Resultantly, a different board of trustees was confined in January 2013 to survey the legitimate circumstance and propose new laws if fundamental. This council, directed by Justice Verma introduced the Verma Committee report toward the beginning of February, 2013, which looked into the explanations behind disappointments of the law to secure the well-being of ladies and the lacunas in the current laws and framework, additionally proposed the consideration of laws controlling stalking including digital stalking and voyeurism in its agenda. This paper aims to discuss how the Verma Committee writes about crime against women. This paper discusses that psychological issue which of late has been perceived as a crime in the nation. Voyeurism as defined by the *Merriam Webster dictionary* basically means the practice of taking pleasure in observing something private, sordid, or scandalous. It has been studied by the psychologists that a voyeur may observe the subject from a distance, or use stealth to observe the victim with the use of peep-holes, two-way mirrors, hidden cameras, secret photography and other devices and strategies. This article looks at voyeurism as a crime and attempts to analyse that if, then, how the law stands satisfactorily for assurance of individual life and freedom. Through this examination, one could know how a psychological disorder ended up being a crime and why individuals should be treated using psychological treatments. Additionally, this article discusses, how administration of India has endeavoured to control the crime of voyeurism by passing the Criminal Amendment Act, 2013; which includes a new section, section 354(c) in the Indian Penal Code, 1860 which acknowledges one with the meaning of the term Voyeurism and punishment for the same. This

paper additionally recognizes the development of voyeuristic conduct and how it has made an awful effect on the general public and how if voyeuristic sentiments not controlled by the sufferer may bring about a greater harm on the society. This paper also tries to identify the flaw in the punishments provided under Section 354(c). Towards the finish of the paper, it will be examined that how the laws surrounded for the crime of voyeurism are required to be made more stringent or are the punishments for the crime need to be amended. This paper additionally examines the results that constrained the administration of India to outline another law which made voyeurism and stalking, crimes. This paper concerns itself as to why the voyeuristic individuals are to be treated psychologically and not put into prison.

**Keywords:** Voyeurism, Stalking, Psychological disorder, Crime, Criminal Law

## INTRODUCTION

In a perpetually altered society by human innovation, contemporary world has faced elementary problem of keeping the law in pace with modern day science and technology.<sup>1</sup> To be specific the video surveillance and other video capturing sources, with the help of which many intruders have intruded and breached right to personal life and liberty and privacy of many innocent people. Video surveillance and other video capturing sources have become smaller and more portable, more easily concealed, and more accessible to the general public, its ubiquitous application has contributed to today's cultural fascination with **voyeurism**.

Lady Godiva who was an 11<sup>th</sup>-century Anglo-Saxon woman who resided with her husband whose name was Lord Leofric, in Coventry village in England.<sup>2</sup> Dating back to 13<sup>th</sup> century, compassionate lady Godiva was concerned about the harsh tax burden that her husband had put on his subjects, appealed to him. Over and over for relief. At last, Leofric set forth a challenge that if his wife would ride naked through the town the tax would be remitted. Lady Godiva took the challenge and next day rode her horse on the main street of Coventry, covered only by her hair. According to one of the versions of this legend, a proclamation was issued that all the people would stay indoors and keep the windows of their house windows shuttered down while Godiva rides through the city.<sup>3</sup> According to another version, people stayed indoors voluntarily in order to appreciate the efforts of Godiva to remit the taxes imposed on them.<sup>4</sup> However, in the end, Leofric kept his word and tax burden was remitted.

The most important part is that another subplot in a later version of Godiva legend involves the role of a young tailor who is known as "Peeping Tom". According to the story, the lustful young tailor Tom had drilled a hole in the shutter so that he might see Godiva pass and he was struck blind as a subsequent punishment.<sup>4</sup>

---

<sup>1</sup> Lance E. Rothenberg, *Rethinking the privacy: Peeping Toms, Video Voyeurs, and the Failure of Criminal Law to Recognize a Reasonable Expectation of Privacy in the Public Space*, 2000

<sup>2</sup> Daniel Donoghue, *Lady Godiva: A Literary History of the legend* (Wiley-Blackwell,2003)

<sup>3</sup> Daniel Donoghue, *Id 2*.

<sup>4</sup> Perhaps most famously, in the Hebrew Bible, Ham, one of Noah's sons, sees his father drunk and naked within his tent, and tells his two brothers, who are outside. Genesis 9:20-27. The brothers, Shem and Japheth, then enter the tent backwards so as not to see their father's nakedness, and with eyes averted cover their father up. When he awakes, and discovers what Ham "has done to him" (there is some ambiguity about exactly what this means), Noah blesses Shem and Japheth, and curses Ham's son, Canaan. Interpretations of this story vary greatly, but the most straightforward one seems to focus on the traditional taboo on seeing one's parents nude, and the connotation that such nudity has of sexual intimacy and possible incest. See, e.g., John Seitze Bergsma

This story basically gives an idea that two charges would be mutually exclusive. If Godiva was engaged in the exhibition, then Tom was not a voyeur and if Tom was engaged in Voyeurism then Godiva could not be an exhibitionist.

This legendary story of Godiva gives rise to many questions related to sexual politics and marital relations, social class, deviance and normalcy, guilt and shame, and the line between private and public.

For the present purpose, this paper's interest in Godiva or Tom is narrower, but this legendary piece provides a very useful starting point for an inquiry into the underlying meaning of Voyeurism. One of the major offence that has been largely overlooked in the criminal theory of law. Voyeurism as a crime emerged into Indian society only after the Criminal Amendment Act, 2013 which came as result to the Justice Verma committee after one of the most popular and recent Delhi rape case or popularly known as Nirbhaya rape case.

Not only the Godiva legend but many of the instances have shown that voyeurism is still a necessary evil to control in the Indian society.

## **VOYEURISM: NEED FOR AMENDMENTS IN CRIMINALIZATION OF THE OFFENCE AND ESTABLISHMENT OF REHABILITATION CENTERS**

Voyeurism can be defined in two ways: as a behaviour and as a sexual disorder. In literal terms, a voyeur is "a person who derives sexual gratification from the covert observation of others as they undress or engage in sexual activities" (*Canadian Oxford Dictionary*). The voyeuristic behaviour is concerned with three things: the surreptitious nature of the observations; the private and intimate nature of what is observed; and sexual gratification.<sup>5</sup>

On the other hand, the second way in which voyeurism can be considered is as symptomatic of a sexual disorder. People suffering from voyeuristic behaviour also suffer from the sexual disorder. Also, the American Psychiatric Association have classified certain voyeuristic

---

and Scott Walker Hahn. "Noah's Nakedness and the Curse of Canaan (Genesis 9:20-27)." 121 *Journal of Biblical Literature* 25 (2005).

<sup>5</sup> *Supra* note 1.

behaviour as Diagnostic and Statistical Manual (DSM-IV). According to the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (APADSM)*:

*"Voyeurism is the act of viewing some form of nudity or sexual activity, accompanied by sexual arousal. To be classified as a sexual disorder, or paraphilia, voyeurism must be characterised by observing unsuspecting individuals, usually strangers, who are naked or engaging in sexual activity, for the purpose of seeking sexual excitement.<sup>6</sup> Usually, the people suffering from the voyeuristic behaviour do not seek any contact with the victim.<sup>7</sup> The perpetrator may masturbate while he/she observes the voyeuristic act, or more commonly, afterwards as a response to the memory that he/she observed."<sup>8</sup>*

Earlier voyeurism was believed to only be prevalent in a small part of the society, but this perception changed when Alfred Kinsey found that about 30% of men prefer coitus with lights turned on.<sup>9</sup> Also, a subsequent research shows that about 65% men are engaged in peeping through the peepholes, suggesting that this behaviour is widely spread throughout the society.<sup>10</sup> Corresponding to this research, it has also been found that voyeurism is one of the most common sexual law-breaking behaviours both in clinical and general populations or society.<sup>11</sup>

A person suffering from voyeuristic behaviour, to get over his lustful feelings may breach another person's fundamental right to **Privacy and Personal Liberty**. Voyeuristic behaviour may also lead to crimes which are of much higher intensity such as **Rape and Exhibitionism**. Voyeurism only emerged as a crime after the great tragedy of Delhi gang-rape case. When Justice Verma committee was appointed by the central government only six days after the incident of 22<sup>nd</sup> December 2012. The committee submitted its report within 29 days, i.e. on 23 January 2013.

---

<sup>6</sup> Metz, Jonathan M. (2004). "Voyeur Nation? Changing Definitions of Voyeurism, 1950–2004". *Harvard Review of Psychiatry*.

<sup>7</sup> *Id* 6.

<sup>8</sup> *Supra* note 5.

<sup>9</sup> Metz, Jonathan M. (2004). "Voyeur Nation? Changing Definitions of Voyeurism, 1950–2004". *Harvard Review of Psychiatry*.

<sup>10</sup> *Id* 9.

<sup>11</sup> The DSM Diagnostic Criteria for Exhibitionism, Voyeurism, and Frotteurism" (PDF). Niklas Langstrom. Retrieved 2013-04-04.

There is a need for the criminalization of such offences that are of sexual nature and also there is a need for the victims who are suffering from such a psychological disorder be treated psychologically. The Criminal Amendment Act, 2013 was highly criticized for being gender biased and giving women the legal authority to commit exactly the same crimes (for which they seek protection) against men and impunity. For the present purposes, the interest of this paper in Criticism to the gender biases and criticism is narrower but focuses on analysing the flaw in giving sentence for the crime.

Section 354(c) of Indian Penal Code 1860, added after the Criminal Amendment Act, 2013, which provides for the punishment for the crime. Section 354(c) states that “When any man observes, watches or captures an image of a female or a women who is engaging in a private activity where she expects of not being observed either by the perpetrator/voyeur or by any other person at the behest of the perpetrator/voyeur or disseminates such image shall be punished on first conviction with imprisonment of either description for a term 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, the person shall be punished with imprisonment of either description for a term which shall not be less than three years, which may extend to seven years and also would be liable to pay fine.”<sup>12</sup> The major flaw with the punishment provided under this section is that it doesn’t assure that a person who is convicted of the crime may get over his voyeuristic feelings. Instead of keeping the convict in prison for the first conviction of his for voyeurism, the convict should be put into a rehabilitation center so that he could be treated psychologically and set free, not arguing the total change in the punishments under the Indian Penal Code for voyeurism, if convicted second time should be imprisoned as it may deem fit to the judiciary. In many cases, it has been seen that psychological treatment of these kinds of Obsessive-Compulsive Disorders, has successfully made people control their lustful feelings.

Hence there is a need for the establishment of Rehabilitation Centers which will help the convicts of such offence be treated psychologically. Considering the treatment which was provided earlier i.e. Psychoanalytic, group psychotherapy and shock aversion, which have all been implemented with limited success.<sup>13</sup> There is also some evidence that shows that pornography can also be used as a form of treatment for voyeurism, but nowhere in terms of

---

<sup>12</sup> Section 345(c)- Indian Penal Code, 1860.

<sup>13</sup> Smith, R. Spencer (1976). "Voyeurism: A review of literature". *Archives of Sexual Behaviour*. **5** (6): 585–608.

psychology, it has been seen that putting the convict in prison has reduced his lustful feelings. This rehabilitation which would consist of professional psychiatrist would be of a great help for treatment of the victims of this psychological disorder.

One can assert that some individuals who engage in “nuisance” offences, such as voyeurism, may also have a propensity for violence based on behaviours of serious sex offenders.<sup>14</sup> With the establishment of such Rehabilitation Centers, will help in decreasing the crime rate of rape as people, who once would have gone through the treatment in the Rehabilitation centre would be able to control their feelings which would eventually lead to decrease in other higher intensity crimes.

## **JUSTICE TO THE CONVICTS: REHABILITATION OR IMPRISONMENT**

In this Chapter, it would be further discussed that how the justice should be done to the convicts of voyeurism, by keeping them in rehabilitation centres or putting them in prison. As argued in the previous chapter about the major flaw in Section 354 (c) of the Indian Penal Code, 1860. It would be further established why is psychological treatment important and how has psychological treatment proved to be helpful in controlling the voyeuristic feel of the people.

Although the term “voyeurism” has both psychiatric condition and a criminal offence, it’s the psychiatric condition of a person which leads to the crime. Therefore it is important to understand that the treatment of the convicts of the offence is of much more importance rather than punishing the person for the offence. The DSM-IV has defined voyeurism as an act of looking at “unsuspecting individuals, usually strangers who are naked, in the process of disrobing, or engaging in sexual activity.”<sup>15</sup> It has also been described as a disorder of sexual preference in the ICD-10.<sup>16</sup> It is very important that voyeurs should be treated in the rehabilitation centres when they are convicted for the first time. It can be observed that when a person who suffers from any sort of psychological disorder keeping him away from the society

---

<sup>14</sup> Jackson, B (1969). "A case of voyeurism treated by counterconditioning". *Behaviour Research and Therapy*. **7** (1): 133–4

<sup>15</sup> BhaveNet Clinical Capsule: Voyeurism, retrieved 29-11-2011

<sup>16</sup> ICD-10, retrieved 13-09-2008

and that to not for a long period of time, doesn't in anyway help the voyeur to overcome his feelings. It is better to treat the voyeur when first convicted as this would help him in overcoming his feelings. It has been seen that voyeurism has successfully been treated with a mix of antipsychotics and antidepressants. However, in this case, the patient had a multitude of other mental health problems. It can be concluded that intense pharmaceutical treatment may not be required for most voyeurs.<sup>17</sup>

Through the methods of treating obsessive-compulsive disorders, it has been seen that voyeurism has been treated successfully. Many multiple instances of successful treatment of voyeurism through putting patients on fluoxetine and treating their voyeuristic behaviour as a compulsion.<sup>18</sup>

Bringing in the Martha Nussbaum's concept of judicial spectatorship<sup>19</sup>, if a person, for example, has been convicted of the crime of voyeurism. If the judge judges as a judicious spectator and not as a judge judges, meaning that if a judge empathises with the victim and understands the psychological disorder which the convict is going through, it would be reasonable enough if he is put in the rehabilitation center for if he is convicted for the first time and should be observed. If there seems a reasonable change in the behaviour of the person it would be viable to set the person free and upon conviction for the second time, the person should be put up in prison as this would make that person realise that his acts are not reasonable and would try to change his behaviour himself in order to cope with the society.

Hence, it would be viable to say that conviction for the offence and to put the convict into prison for a crime which he himself cannot control and requires help to overcome it, it would be very helpful if he is provided for such treatment, which would ultimately help in controlling major crimes of much higher intensity such as rape as argued in the first chapter.

Hence it would be viable to state that imprisonment is not the only solution but treatment would be a much better and viable solution towards this psychological crime.

---

<sup>17</sup> Avidbegovic,e, "Cases of successful treatment of Voyeurism", 2008

<sup>18</sup> Metzl, Jonathan, ("From scopophilia to Survivor: A brief history of Voyeurism", 2004)

<sup>19</sup> Martha Nussbaum, Poets as Judges: Judicial Rhetoric and Literary Imagination, University of Chicago Law Review: Vol. 62: Iss. 4, Article 12



## CONCLUSION

Concluding the argument of voyeurism, its two aspects of the psychological condition and the criminal offence it would be correct to state that bringing out the *Criminal Amendment Act, 2013* and introducing the laws on voyeurism was one of the biggest steps taken by the Central Government. The rationale behind making this legislation was to understand different aspects of sexual crimes and trying to solve the root causes which ultimately leads to crimes such as rape. The *Nirbhaya rape case* has helped to bring major issues such as *stalking, voyeurism sexual harassment* etc. Even after the introduction of voyeurism as a crime the situation of rape cases and people involving in non-consensual sex has not improved due to the lacunae or flaw in the legislation. This paper has very well tried to explain how the position of rapes can be improved i.e. *reduce the crime rate of rape*. Also, this paper has tried to explain to an extent that why the only imprisonment is not enough but psychological treatment is equally important for the person who is convicted of the crime. This paper has also tried to an extent provide for the solution to *overcome the lacunae* in the legislation by establishing the need for the establishment of *Rehabilitation Centres*.

The paper also tries to show that how psychological treatment would help the convicts to control their obsessive-compulsive behaviour and eventually leading to decrease the crime rate of rape.

**BIBLIOGRAPHY**

1. **Voyeurism as a Criminal Offence: A Consultation Paper, 2002**, published by authority of the Minister of Justice and Attorney General of Canada, Department of Justice, Ottawa, Canada.
2. **Re-thinking Privacy: Peeping Toms, Video Voyeurs, and Failure of the Criminal Law to Recognize a Reasonable Expectation of privacy in the Public Space**, "American University Law Review: Vol. 49: Iss. 5, Article 5
3. **To See and Be Seen: Reconstructing the Law of Voyeurism and Exhibitionism**, Stuart P. Green
4. **Good Laws, Bad implementation, The Hindu**, Vasundhara Sirnate, Published on February 01, 2014.
5. **Beyond Looking: When Voyeurism Leads to Criminal Behaviour**, Wendy L. Patrick.
6. **Lady Godiva: A literary History of the Legend (Wiley- Blackwell, 2003)**
7. **Criminal Amendment Act, 2013**
8. **Indian Penal Code, 1860**
9. **Failure of governance root cause of crimes against women Verma committee, The Hindu**, Sandeep Joshi
10. **"Behave Net Clinical Capsule: Voyeurism"**
11. Metz, Jonathan M. (2004). "Voyeur Nation? Changing Definitions of Voyeurism, 1950–2004". *Harvard Review of Psychiatry*.
12. **Voyeur Nation: Media, Privacy, And Peering In Modern Culture**
13. **Exposed: Voyeurism, Surveillance, and the Camera Since 1870**