

ELECTRONIC VOYEURISM IN GLOBAL PERSPECTIVE

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INTRODUCTION

Man is a social animal. Though he is born as an individual human being, his survival rests on the societal interactions which begin with his family first. Growing with the age, he comes in contact with other members of the society and thereafter a process of knowing each other starts. Every member of the group, small or big eagerly wants to know more and more about the other members of the group. Social scientist, Erving Goffman, in his monumental work, "The Presentation of Self in Everyday Life," has described the situation as such: "When an individual enters the presence of others, they commonly seek to acquire information about him or to bring into play information about him already possessed. They will be interested in his general socio-economic status, his conception of self, his attitude towards them, his competence, his trustworthiness, etc. Although some of this information seems to be sought almost an end in itself, there are usually quite practical reasons for acquiring it."ⁱ Thus, it can be safely stated that man is curious by nature. "Though curiosity is a constant element in social life, and even gives rise to aggressive efforts to penetrate other people's secrets,"ⁱⁱ many social scientists have observed a rise in recent decades of a particular and dangerous form of curiosity, to which the term "Voyeurism" has been applied."ⁱⁱⁱ J.C. Coleman in his pioneering work, *Abnormal Psychology and Modern Life*, has observed that "as a clinical term employed in abnormal psychology, voyeurism refers, of course, to in individual's desire to obtain sexual gratification by viewing another's sexual organs or the sexual intercourse of others."^{iv}

According to Merriam-Webster dictionary, voyeurism has been defined as "the practice of obtaining sexual gratification from observing others." It is also defined as "the practice of taking pleasure in observing something private, sordid, or scandalous."^v Furthermore, Duhaime's Law Dictionary defines Voyeurism as "the secret viewing of another person in a place where that person would have a reasonable expectation of privacy, for the purposes of the viewer's sexual arousal."^{vi}

The term Voyeurism is from nineteenth century France.^{vii} According to I.D. Yalom, "Psychological literature attributes voyeurism to parental repression of curiosity impulses about sexual matters during adolescence or to the young adult's fears of inability to obtain satisfaction through heterosexual relations."^{viii} "The Voyeur's excitement," observes Westin, "comes in part from doing something forbidden and in part from watching persons who do not know that they are being observed. The "peeping Tom" of English history is the most common form of voyeur."^{ix}

In modern American social milieu, popular definitions of voyeurism are as broad compared to the psychiatric definitions which are as narrow. In the words of Clay Calvert's assumption in *Voyeur Nation: Media, and Peering in Modern Culture*, "the contemporary American culture defines Voyeurism not so much as a deviant psychopathology, but as a guilty pleasure enjoyed by anyone with a television set or computer."^x

DSM-IV (1994) defines voyeurism as the practice of looking specifically at "unsuspecting individuals, usually strangers, who are marked, in the process of disrobing or engaging in sexual activity."^{xi} Here, it is noteworthy that if psychiatric definitions of voyeurism were overly broad in the 1950s, 1960s, and 1970s, then popular uses of the term were exceedingly narrow. Though "peeping" or "peeping Tomism" had long been considered a crime, yet voyeurism began its slow entry into common parlance. The expression "peeping Tom" is thought to derive from the eleventh century story of Lady Godiva.^{xii} In America, beginning in the mid-1980s, psychiatry's focus on the biological and genetic aspects of mental illness narrowed in a significant way the notion of voyeurism as it pertained to psychopathology. Thus, "psychiatric notion of voyeurism grew smaller and more focused while popular voyeurism expanded and blurred."^{xiii}

In the meantime, popular culture's category of voyeurism seemed to grow as wide as psychiatry's was narrow. VTV shows, websites, movies, and a host of other artifacts and practices provided sufficient evidence to label America as a voyeur nation. Technology, media, and lax privacy laws combined to enabled all Americans to peer into the innermost details of others' lives with virtual anonymity. Anna Quindlen has described this position where these innermost details came to represent both individual and cultural identity as "the hallmark of a people with not enough time on their hands, people who have a to-do list instead of a life."^{xiv} Mary Louise Schumacher added in context of the American people that "Voyeurism hooked

us long ago."^{xv} "The ready availability of voyeurism marked not society's deviants, but society itself. Voyeurism is a practice that is imbued with power, gender, and other types of nonchemical imbalances that let us see the voyeur as an exaggerated extension of society, as well as an aberration from it,"^{xvi}

VOYEURISM AS GENDER- SPECIFIC

Gender has played an essential role in cases of surveillance through voyeurism. "The cultural codes and politics", observes Hille Koskela in her research paper, "of seeing and being seen are deeply gendered. There is same voyeuristic fascination in looking, in being able to see. It is clear that women have agency over their own practices of looking and can use both direct eye contacts and technologically mediated gazes as a means for resisting oppression. Nonetheless, it can be argued the female body is still an object of gaze in different way than the male body. This also applies to women being viewed through a surveillance camera. While men are more likely to be targeted in general, women are more likely to be targeted for "voyeuristic reasons" (Norris and Armstrong: 114). 'The offensive gaze' belongs to men."^{xvii}

The very instruments of voyeuring, the surveillance cameras or webcams have proved to be a significant source of sustaining this gender bias and even beyond that. Hille Koskela further elaborates that "surveillance cameras can be used as a means of harassment, producing deep insecurities while reinforcing women's perception that they are constantly looked at. In such cases, women are paradoxically marginalized while being at the centre (of the gaze), something that reproduces the embodiment and sexualization of women. Hence, women are justifiably worried about "Peeping Tom" voyeuristic aspects of surveillance."^{xviii}

In this connection, it is also noteworthy that surveillance tapes have often been misused, with gender playing an essential role. Security camera operators have videotaped women in intimate spaces; monitoring, recording, printing, circulating and selling these explicit images. This was managed, for example, by placing a camera in women's changing rooms to spy on them. "Images of surreptitiously recorded intimate or sexual acts have also been recirculated for commercial purposes, shown at parties, or placed on the internet."^{xix}

David Bell, in his article “Surveillance is Sexy,” has reiterated the findings of Hillier (1996) and Koskela (2002) by quoting a paragraph from Hillier as such: "Surveillance technologies such as CCTV have been linked to practices of voyeurism, too, for example when camera operators are found to focus their attentions in particular ways:

Male (CCTV) operators monitoring cameras located in womens toilets and artistes' changing rooms, as well as in the car parks and main body of the casino, had zoomed in on images of women's exposed breasts, genital areas and buttocks, together with couples fondling each other and having sex, generally "hidden" behind large indoor plants, and a woman urinating in the car park. Individual sequences from the four-year period had been edited onto one tape and shown locally at house parties by the operator (s) responsible. (Hillier 1996: 99).^{xx}

VOYEURISTIC SURVEILLANCE THROUGH THE ARTISTIC, LITERARY AND AUDIO-VISUAL MEDIUMS

As mentioned above, Clay Calvert's famous assumption about the America as a nation needs to be reemphasized once again. He has written that America had become a nation of voyeurs and Americans are obsessed with the mass consumption of information about others' apparently real and unguarded lives. To attain this objective, they are using VTV shows, websites, movies and a host of other artifacts and practices. What Calvert wrote about Americans is almost true about the rest of the world also. Voyeuristic surveillance had made inroads into print media, literature, art, and audio-visual mediums. Its exponential expansion during the last two decades can be attributed largely to the Internet activities. The representative features of such voyeuristic footprints in different fields can be stated as such:

(i) Print Media:

Popular references to voyeurism connoting deviance, perversion, and other inflections of the term's psychiatric, and indeed psychoanalytic, origins were reflected in the New York Time's notorious lead article on December 16, 1973, titled "Psychiatrists, in a shift, declare Homosexuality No Mental Illness". The theme of this article clearly contrasted the depathologization of “homosexuality” with the clearly pathological categories of psychiatric illness.^{xxi} Since then the portrayal of voyerism has taken the shape of "a certain semi-salacious

style of exposé journalism."^{xxii} The prominent among these are New York Confidential, Washington Confidential, USA confidential, and so forth.^{xxiii}

(ii) Literature

While talking of surveillance in literature, George Orwell's Nineteen Eighty-four almost inevitably springs to mind. It was a narrative of political surveillance. Few other novels on the political theme, like Franz Kafka's *The Castle* and *Surveillance* by Jonathan Raban are worth-mentioning. Other surveillance-based novels were written in the fields of science fiction, spy novels, police procedures, and techno-thrillers. However, in a literary novel, the Seymour Tapes (2005), the writer Tim Lott has depicted a voyeuristic family in which father covertly installs miniature surveillance cameras in his home."^{xxiv}

(iii) Art

One of the figures who engaged more rigorously with the potentialities of video surveillance in art was Bruce Nauman. His two pieces of art, namely, *Going Around the Corner Piece* (1970) and *Learned Helplessness in Rats (Rock and Roll Drummer)* (1988) bear testimony to it.^{xxv} Sophie Calle was the another visual/ conceptual artist who embraced the possibilities of surveillance. She focussed on the ways in which the personal practice of surveillance impacted upon the self, psyche, and the prospect of any relationship with another. Her works of such nature include *The Shadow* (1981), *Suite Venitienne* (1979) and *Address Book* (1983).^{xxvi}

The gendered nature of surveillance is further highlighted by Mona Hatoum in her works. In *Corps Etranger* (1994) and *Deep Throat* (1996), the artist has used an endoscopic camera inserted inside the orifices and passages of her own body to create footage of spaces rarely seen. "The reference to the famous porn film *Deep Throat* reminds us that the voyeuristic need to penetrate the unseen is neither neutral nor innocent, but Hatoum creates artistic environments from her footage of her own throat and intestines that are very different from any sexual fantasies."^{xxvii}

(iv) Films

Surveillance was not a major topic on movie theatre screens during the 1990s. Yet surveillance cameras and issues of data protection are prominent features in films such as *Thelma and Louise* (1991), *Demolition Man* (1993), *Fortress* (1993), *Menace II Society* (1993), *Silver*

(1993), *The Net* (1995) and *Snake Eyes* (1998) (Turner 1998; Lewin 2002). In 1998, the nexus between media and surveillance became the focus of *The Truman Show*. In this film, surveillance is carried out not for reasons of security, policing or control, but for entertainment, even if-or, to the contrary, precisely because- these life under observation is nothing, but ordinary (Marks 2005).^{xxviii} This movie was voyeuristically themed movie.^{xxix} Prior to this movie, *The Secret Cinema* (1967), *Hi Mom!* (1970) or *Death Watch* (1979) already "exploited the premise of someone being unwittingly the subject of media entertainment."^{xxx}

(v) **Television**

In the world of television, 1990s pronounced the arrival of "Reality" or "factual television" in which a new television format was employed which went for non-scripted or "authentic" events. "Reality" or "factual television" promises to present "life, as it is," to be based on non-fictional characters, emotions or events.^{xxxii} Popular culture presents an endless flow of "reality"-based "Voyeurism TV (VTV) television programmes such as *Survivor* and *Big Brother*.^{xxxiii} "Big Brother also offers such insights into the ways in which 'self-conscious pro-filmic subjects' play with surveillance."^{xxxiii} The viewer-voting structure of the show reveals the audience's expectations and tolerance for self-exposure, its voyeuristic tastes, and the relationship between exhibitionism and 'success'. As Mark Andrejevic (2004:175) puts it, shows like *Big Brother* depict "the economic potential of the exploitation puts it, shows like *Big Brother* depict' the economic potential of the exploitation of voyeurism (and exhibitionisms) in an era characterized by the increasingly important economic role of electronic surveillance."^{xxxiv} Similarly, another example of the voyeurism in the format of reality TV is *Temptation Island*.

Thus, there is no denying the fact voyeuristic trends have made sufficient inroads into the different branches of muse. The above-mentioned examples are just representative of what is happening in the society at a large scale. Norman Denzin has aptly summarized the existing situation. He argues that "in our 'cinematic society' the voyeuristic gaze has become ubiquitous through television, cinema and video. "The Voyeur is the iconic, postmodern self [.....] , we find ourselves, voyeurs all, products of the cinematic gaze" (Denzin 1995 :1)."^{xxxv}

Simultaneously, the conscious and sustained efforts are being made by the story are being made by the strong vested interests to enhance the voyeuristic streaks in the society at large. For this

purpose, dangerous appeal to the voyeuristic urges is being propagated through open and offensive newspaper and magazine advertisements and retail- sales outlets of firms distributing devices for surreptitious listening and watching.^{xxxvi} Most offensive of the advertisement is found in the various "men's" magazines. The advertisers display various devices for the purpose of peering into others' private lives. "Such ads, openly inviting customers to eavesdrop for fun and profit, contribute to the erosion of public morals standards."^{xxxvii} At the same time, the increasing share of voyeurism in public life has aggravated the problem of surveillance. Law enforcement observers believe that wiretapping and eavesdropping assignments, the private detective business, the polygraph profession, and similar activities frequently attract voyeuristic types. This circumstance is illustrated by the polygraph operators who deliberately use "embarrassing personal questions" on female subjects, despite scientific opinion that this procedure upsets the whole polygraph examination, and the wiretap experts (both police and private) who save tape recordings of intimate conversation and play these to their friends for entertainment."^{xxxviii}

VOYEURISM AND THE ROLE OF TECHNOLOGY

In this electronic era, technology is changing every day. The convergence of new technologies and sites of image making such as digital photography and video, the Internet, CCTV, cameraphones, webcams, reality TV and so on have contributed immensely in the propagation of voyeuristic culture among the masses. "Research on cameras with remote swivel and zoom capabilities indicates that a disproportionate number of women and minorities are being observed and recorded by white males. This raises a warning flag that suggests that a recording is only as objective as the person controlling the camera."^{xxxix} Jeff Hearn (2008 : 42) has aptly termed in a phrase, the "new sexual affordances" of these technologies.^{xl} "Cameraphones, for example, have radically transformed the practices of photography, bringing about both a heightened pervasiveness and a heightened intimacy."^{xli} Further, the cameraphone has enabled new impromptu opportunities to capture covert images, for example the 'upskirt' shot.^{xlii} Covert footages of celebrities raises the ethical issues. Capturing voyeuristic images without the knowledge or consent of the person so photographed and circulation of such images later on, are of larger concern which needs fresh and critical thinking.

VOYEURISM AND THE LAW: A GLOBAL SCENARIO

This is the common perception of most private citizens that they are protected from illicit video recording by the prevalent "Peeping Tom laws."^{xliii} On the contrary, they may not know that people taping without the knowledge or consent of the surveillees may not be breaking existing laws. Some states don't have Peeping Tom laws and others don't cover visual surveillance if the sound recording mechanisms are turned off. There are thousands of people being recorded, sometimes in very compromising situations or stages of undress, without their knowledge or consent. In the backdrop of prevalence of non-consenting exploitation, there is reason for concern.^{xliv}

The status of law against voyeurism in different parts of the world is given below:

(a) **Hong Kong**

Law Reform Commission's Review of Sexual Offences Subcommittee of Hong Kong has published a 93-page report in May, 2018, proposing the creation of a new offence of voyeurism to criminalize acts of non-consensual observation or visual recording of another person done for a sexual purpose. The forms of visual recording would include photography, video recording and the taking of digital images.^{xlv}

The said report has been published for a three-month public consultation. According to Eric Cheung Tat-ming, a legal scholar on the sub-committee said that "one of the conditions raised in our proposal is that the victim should be entitled to a reasonable expectation of privacy in the circumstances of the incident."^{xlvi} Under Hong-Kong's existing Crime Ordinance, "those who secretly photograph or videotape another person with electronic or digital devices for sexual fulfilment are usually charged with obtaining access to a computer with a dishonest intent. The maximum penalty for the offence is five years in jail."^{xlvii}

The said report, the third overall, is a part of the exercise of review of substantive sexual offences. The panel's next step is to compile a final report and then to review sentencing for the offences.

(b) Philippines

In 2009, the sex videos of celebrity physician Hayden Kho with various celebrity partners were highly publicised and shared online and later distributed through DVD in the streets and sidewalks. This caused a furore in Philippines and in response to this, the Congress passed Republic Act 1995 (Anti-Photo and Video Voyeurism Act of 2009) to prevent the publication and distribution of similar material in the future.^{xlviii} The law prohibits recording videos or taking photos of a sexual act, the male or female genitalia, and of the female breast, among others, without consent of the persons featured in the material. The law ultimately seeks to prevent the reproduction, distribution, and publication of said material regardless of whether or not the persons featured consented to the recording.^{xlix}

- **Prohibited Acts**

The Anti-Photo and Video Voyeurism Act prohibits the following acts:¹

1. The unconsented taking of a photo or video of a person or group of persons engaged in a sexual act or any similar activity, or capturing an image of the private area of a person, under circumstances in which the said person has a reasonable expectation of privacy;
2. The copying or reproduction of such photo or video recording of the sexual act;
3. The selling or distribution of such photo or video recording;
4. The publication or broadcasting, whether in print or broadcast media, or the showing of such sexual act, or any similar activity through VCD/DVD, the internet, cellular phones, and other similar means or devices without the written consent of the persons featured.

Prohibitions numbered 2, 3, and 4 will still apply even if the person or persons featured in the photo or video consented to the taking of the photo or recording of the sexual act.

- **Penalties**

The penalties for any person found guilty of violating any of the prohibitions enumerated under Section 4 of R.A. 9995 range from an imprisonment of 3 to 7 years and a fine of P 100,000.00 up to P 500,000.00 at the discretion of the court. Additional penalties are meted for the

following violators: juridical persons, public officers or employees, and aliens.^{li} Juridical Persons such as Corporations and Partnerships who violate this law will have their licenses or franchises automatically revoked and their officers held liable, including the editor and reporter in the case of print media, and the station manager, editor, and broad-caster in the case of broadcast media. Public officers or employees who violate this law shall also be held administratively liable, whereas aliens who violate the law shall be subject to deportation proceedings after they serve their sentences and pay the fines imposed.^{lii}

(c) Canada

In 2002, Criminal Law Policy Section of the Department of Justice, Govt. of Canada, put up a consultation paper on "Voyeurism as a Criminal Offence", seeking public response on the issues related to voyeurism. The Paper stated in its Introduction that there was no specific offence in the Criminal Code of Canada at that time that addresses voyeurism or the distribution of voyeuristic material. Truly, some of the existing provisions of the criminal code applied in some cases of voyeurism, such as those that involve child pornography or trespassing at night. But in the light of new and advance technology and the basic notions of freedom and privacy, found in a democratic society, a much-needed change in the code was felt by the lawmakers.^{liii} Ultimately, a new law came into being in November, 2005. Just after passing the law, the very first case under the ambit of new video voyeurism law came for trial before the Court. A man, named Winston Charles Patriquin in Nova Scotia, pleaded guilty to using a video camera to covertly tape a young child taking a bath. He also pleaded guilty to creating child pornography. Patriquin was charged under the new voyeurism section of the Criminal Code, making him the first case in Canada. The law makes it illegal to "surreptitiously observe or make a visual recording" for a sexual purpose.^{liv} The relevant section of the Criminal Code reads:

Criminal Code (R.S.C., 1985, c.C.-46)

Part V : Sexual Offences, Public Morals And Disorderly conduct.

Sexual Offences: Voyeurism

Act current to 2018-12-12 and last amended on 2018-10-17.

- **162 (1)** Every one commits an offence who, surreptitiously observes- including by mechanical or electronic means- or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if
 - (a) the person is in a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts, or to be engaged in explicit sexual activity;
 - (b) the person is nude, is exposing his or her genital organs or anal region or her breasts, or is engaged in explicit sexual activity, and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or
 - (c) the observation or recording is done for a sexual purpose.
- **Definition of visual recording**
 - (2) In this section, **visual recording** includes a photographic, film or video recording made by any means.
- **Exemption**
 - (3) Paragraphs (1) (a) and (b) do not apply to a peace officer who, under the authority of a warrant issued under section 487.01, is carrying out any activity referred to in those paragraphs.
- **Printing, publication etc., of voyeuristic recordings.**
 - (4) Every one commits an offence who, knowing that a recording was obtained by the commission of an offence under subsection (1), prints, copies, publishes, distributes, circulates, sells, advertises or makes available the recording, or has the recording in his or her possession for the purpose of printing, copying, publishing, distributing, circulating, selling or advertising it or making it available.
- **Punishment**
 - (5) Everyone who commits an offence under subsection (1) or (4)
 - (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
 - is guilty of an offence punishable on summary conviction.
- **Defence**

(6) No person shall be convicted of an offence under this section if the acts that are alleged to constitute the offence serve the public good and do not extend beyond what serves the public good.

- **Question of law, motives**

(7) For the purposes of subsection (6),

(a) it is a question of law whether an act serves the public good and whether there is evidence that the act alleged goes beyond what serves the public good, but it is a question of fact whether the act does or does not extend beyond what serves the public good; and
the motives of an accused are irrelevant.

(d) U.K

In United Kingdom, Section 67 of the Sexual Offences Act 2003 deals with voyeurism. Section 67 reads as follows:

- **"67 Voyeurism**

(1) A person commits an offence if-

(a) for the purpose of obtaining sexual gratification, he observes another person doing a private act, and

(b) he knows that the other person does not consent to being observed for his sexual gratification.

(2) A person commits an offence if-

(a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining, sexual gratification, a third person (B) doing a private act, and

(b) he knows- that B does not consent to his operating equipment with that intention.

(3) A person commits an offence if-

(a) he records another person (B) doing a private act,

(b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act, and

(c) he knows that B does not consent to his recording the act with that intention.

(4) A person commits an offence if he installs equipment or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection.

(5) A person guilty of an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.^{lv}

Voyeurism Cases

(i) R. Vs. Hussain

[Aylesbury Magistrate Court]

In this case, the defendant, a male, in a sports centre unisex changing area, recorded a female in an adjacent cubicle doing a private act, with the intention, and for the purpose of obtaining sexual gratification, look at an image of that person doing the act, knowing that the person did not consent to the recording the act with that intention, contrary to section 67 (3) and (5) of the Sexual Offences Act 2003. The defendant pleaded guilty and was sentenced to a community order for a 12-month period, an unpaid work requirement of 100 hours, and a notification requirement under the Sexual Offences Act 2003, Schedule 3.^{lvi}

(ii) R. Vs. City of Westminster Magistrates Court

In this case the defendant was charged with 2 separate offences of committing an act outraging public decency by behaving in indecent manner, namely using a mobile phone to film up a woman's skirt on the London underground system, and retaining the images. The defendant pleaded guilty. He was sentenced to a Community Order, being restriction by way of electronic tag for a period of 3 months between the hours of 7.30 p.m.- 6.30 a.m.; a Sex Offenders Prevention Order for a period of 5 years not to have in possession a mobile telephone with a camera/ video facility or other image retaining device, and prosecution costs of £ 85.00.^{lvii}

(e) U.S.A.

Technological change is at the heart of much information privacy law. At the turn of the twenty-first century, New York passed Stephanie's Law, which makes it illegal to use a device to secretly record or broadcast a person undressing or having sex when that person has a reasonable expectation of privacy. The statute is named for Stephanie Fuller, whose landlord secretly taped her using a camera in the smoke detector above her bed.^{lviii}

In United States, states are struggling to keep up with rapidly advancing technology that makes it easier than ever for high-tech Peeping Toms to spy on their victims. Consequently, a total of 34 states have made video voyeurism a felony, with added prison time, under certain circumstances, such as for repeat offenders, when the victim is a child or for distributing images. Voyeurs in some states have recently been sentenced to as many as 12 years in prison." At least two, Illinois and Nevada, passed legislation in the year 2007 to increase penalties. More states are moving to penalize taking pictures of private body parts, even in public places such as parks and malls- dubbed "up-skirting" and "down-blousing" by some in law enforcement."^{lix}

Lawmakers have in the last few years endeavoured to address so-called video voyeurism as a separate crime, adding stiffer penalties for modern day voyeurs. "Today, in more than half the states, it is still only a misdemeanour in most circumstances to secretly take pictures of a person when they have a reasonable expectation of privacy, according to the National Center for Victims of Crime, which tracks such legislation."^{lx}

In 1998, Susan Wilson discovered that a neighbour had been video-recording her family's most private moments in their Monroe, La., home. There was no Louisiana statute under which the culprit could be punished. Wilson successfully lobbied for passage of a state law that made video voyeurism a felony. It also prompted more than 30 states to impose penalties for videotaping people without their knowledge.^{lxi} In 2004, a new federal legislation, the federal Video Voyeurism Prevention Act of 2004 was passed. Sponsors of the federal legislation cited Wilson's experience when pushing for the bill's passage.^{lxii} This Act makes it a crime to "intentionally capture an image of a private area of an individual without their consent and knowingly do so under circumstances in which an individual has a reasonable expectation of privacy." The statute applies to images captured on federal property.^{lxiii} The law applies to

military bases, ships and aircraft as well as national parks and government buildings. Violators could be fined as much as \$100,000 or sent to prison for up to a year, or both.^{lxiv}

U.S. Code § 1801- Video Voyeurism^{lxv}

“(a) Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

(b) In this section-

(1) The term "capture", with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

(2) The term "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

(3) The term "a private area of the individual" means the naked or undergarment clad genitals, public area, buttocks, or female breast of that individual;

(4) The term "female breast" means any portion of the female breast below the top of the areola; and

(5) The term "under circumstances in which that individual has a reasonable expectation of privacy" means-

(A) Circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

(B) Circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

(C) This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

(Added Pub. L. 108-495, § 2 (a), Dec. 23, 2004 (118 Stat. 3999).

(f) India

The growing menace of video surveillance, especially related to women and children, has spread its wings in India also. In the present era, technology has made rapid strides. This has led to the widespread use of hidden cameras and other sophisticated instruments of surreptitious photography. Such instruments and cameras are easily available in the consumer market. As a consequence, the legislature has come forward to protect the privacy of individuals in the electronic ecosystem. The present Section 66E has been added in the Information Technology Act, 2000 to provide for the offence of violation of privacy. This provision seeks to penalise capturing, publishing and transmission of images of the "private area" of any person without their consent "under circumstances violating the privacy" of that person. This looks strikingly similar to the background in which Samuel Warren and Louis Brandeis espoused their landmark treatise, "The Right to Privacy" [(1890)4 Harv L Rev 193] in the context of the commercialization of the Kodak camera.^{lxvi}

In order to check the ill-effects of such activities, the Indian Parliament has passed the Criminal Law (Amendment) Act, 2013 which became effective from 2.4.2013. By this Amendment in the Indian Penal Code, a new section 354-C was introduced for tackling voyeurism. This Section reads as follows:

"354-C. Voyeurism.- 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."

In this connection, Section 66-E of The Information Technology Act, 2000 also deals with voyeurism with the help of electronic means. The section reads as follows:

"66-E. 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.

Explanation. - For the purpose of this section-

- (a) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;
- (b) "capture", with respect to an image, means to videotape, photograph, film or record by any means;
- (c) "private area" means the naked or underground clad genitals, public area, buttocks or female breast;
- (d) "publishes" means reproduction in the printed or electronic form and making it available for public;
- (e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that-
 - (i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or
 - (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place."

The essential ingredients of Section 66E are as follows:

- (a) that a person has to intentionally or knowingly capture, publish or transmit;
- (b) the image of a private area of any person;
- (c) without his or her consent;

(d) under circumstances violating the privacy of that person.

Here, it is pertinent to note that the following important acts need to be performed:

(i) **Capturing:** As per the explanation to Section 66E the word "Capture" with respect to any image implies a video tape, photograph, film or records by any means. Nowadays, the prevalent norm is to capture images by using computers and communication devices. Their misuse is increasing day by day.

(ii) **Transmitting:** The word "transmit" has been defined by the Explanation (a) to mean to send a visual image electronically with the intent that it be viewed by a person or persons. Thus, transmission done using computers, computer networks, computer systems, computer resources as well as transmission done using the communication devices are incorporated within the ambit of transmitting. This is because of the fact that transmission is done by computer resources and communication devices by electronically sending the concerned images over computer networks.

(iii) **Publishing:** According to the explanation appended to main section 66E, publishing means reproduction in the printed or electronic form and making it available for the public.

The Explanation to Section 66E also defines the term "private area" which includes the naked or undergarment clad genitals, pubic area, buttocks or female breast. In that way, the law has incorporated a very restrictive definition of the term "private area of any person". It is also worth mentioning here that the view of privacy under this provision is limited to bodily privacy. "It is not in consonance with the present broad conception of privacy as enunciated in modern Indian constitutional law that includes a number of facets of human dignity and personality."^{lxvii}

Further, it is imperative that the said capturing, publishing or transmitting the image of a private area of any person has to be, without his or her consent.

Explanation (e) to Section 66E provides for the circumstances which amount to violating privacy. These refer to two situations. First, the circumstance within which he or she could disrobe in privacy, without ever being concerned that an image of his/her private area was being captured. Secondly, the term also includes therein circumstances where a person could have a reasonable expectation that any part of his or her private area would not be visible to the public. This is regardless of the place, private or public. This provision broadly covers all

aspects pertaining to the female and male organs. In the light of huge number of MMS controversies that have happened in India, this provision is extremely relevant. In the famous DPS MMS case, the mobile phones had been used to capture a girl giving oral sex to the boy, a co-student, in a prominent school in Delhi. Thus, if any person now makes an MMS, of any person regarding his private areas under circumstances violating his or her privacy, such an act is an offence punishable with imprisonment which may extend to three years or with fine which may extend to two lakh rupees or with both. this provision can also prove to be a deterrent against the peeping toms, spy cameras and web cameras which are installed without permission of concerned persons, so as to invade their privacy. Such an act is now brought within the ambit of criminal penalty to be punished under Section 66E of the amended Information Technology Act, 2000.^{lxviii} Also it is expected that instances of video voyeurism, especially mobile video voyeurism, are likely to be specifically covered within the ambit of Section 66E of the aforesaid I.T. Act, 2000.

From the bare perusal of the two provisions of two different Acts on voyeurism, it is amply clear that the provisions contained in the I.P.C. are more comprehensive and the punishment is also more stringent. Sec. 354-C of the IPC also includes the term "watches" while section 66-E of the IT Act, merely deals with "captures, publishes or transmits" As a consequence, mere watching for voyeuristic pleasure is also punishable under IPC. Secondly, the minimum punishment in the IPC under Section 354-C on a second or subsequent conviction is not less than three years, which may extend to seven years, and shall also be liable to fine. There is no such provision (for second or subsequent conviction) in the IT Act. Similarly, under IPC, fine is mandatory in both the situations while under the IT Act, the fine is optional i.e. the imprisonment may or may not be with fine. One can get rid of the punishment by paying a maximum fine of Rs. two lakhs only. Looking at the enormity of the crime, this dilution of punishment under the Information Technology Act is beyond reason. The trauma and utter shock through which a woman passes, when she knows about that her nude images are there on electronic mediums for everyone to see, can be easily understood by any sensible human being. Such display causes an irreparable loss to her dignity as a human being. That is why there must be more stricter punishments for the perpetrators of such crimes who are black spots on the face of the civil society.

Here, while gleaning through all the above-mentioned laws against voyeurism of different countries, it is very clear that the offence of voyeurism is, by and large, punishable only in cases of non-consensual conditions. That implies that the law is applicable only in cases where the victim's consent was not obtained first. This is so because voyeurism primarily is associated with "surreptitious conditions". But suppose a woman whose nude pictures, either of whole body or her private parts, are captured surreptitiously and later on her consent is obtained through inducement or fraudulent means and captured images are disseminated through electronic media or even manually, the irreparable loss to the prestige of that victimized woman could never be undone. Moreover, this will encourage the vicious practice of pornography which is an evil omen for the society. Hence, the lawmakers must amend their laws on voyeurism by adding "consensual" also so that a death blow could be dealt to this horrible practice of voyeurism in any form using any medium of dissemination. This will also strengthen the concept of right to privacy for every citizen in his private life.

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