

A Study of the offences of stalking, voyeurism and sexual harassment

The Indian criminal justice system has undergone a significant transformation in its approach towards gender-based offences, particularly those involving sexual autonomy, privacy, and dignity. Among these, the offences of stalking, voyeurism, and sexual harassment represent some of the most insidious forms of violence that women and other vulnerable individuals face in contemporary society. These offences do not always involve physical contact, yet their psychological and emotional impact is profound, often leading to fear, humiliation, and loss of freedom. The recognition of these crimes as distinct offences under the Indian Penal Code, through the Criminal Law (Amendment) Act, 2013, marked a major step towards aligning Indian criminal law with the realities of modern society and digital life.

Historically, the Indian Penal Code of 1860 did not contain explicit provisions addressing acts such as stalking or voyeurism. The focus of sexual offences under the colonial-era Code was largely limited to rape, outraging the modesty of women (Section 354), and insult to the modesty of a woman (Section 509). However, the evolving socio-cultural context and the emergence of new modes of harassment, particularly through technology and social media, exposed the inadequacy of these provisions. The December 2012 Delhi gang rape incident, popularly known as the Nirbhaya case, catalysed an unprecedented public movement demanding comprehensive reforms in laws dealing with sexual violence. The Justice J.S. Verma Committee, constituted to recommend changes to the criminal law, recognised that offences such as stalking, voyeurism, and sexual harassment represented serious violations of a woman's right to privacy and personal liberty guaranteed under Article 21 of the Constitution. Acting upon these recommendations, the legislature introduced specific provisions—Sections 354A, 354C, and 354D—through the Criminal Law (Amendment) Act, 2013, thereby creating a legal framework to criminalise such acts.

The offence of sexual harassment, codified under Section 354A of the IPC, was designed to address a broad range of unwanted physical, verbal, and non-verbal conduct of a sexual nature. It reflects the legislative intent to protect women from the pervasive culture of harassment that often manifests in workplaces, educational institutions, and public spaces. The section defines sexual harassment as involving unwelcome physical contact and advances, demands or requests for sexual favours, showing pornography against the will of a woman, or making sexually coloured remarks. Depending on the nature of the act, punishments range from rigorous imprisonment for three years to simple imprisonment for one year, along with fines.

The offence's underlying rationale lies in recognising that sexual harassment undermines a woman's dignity, equality, and freedom to participate fully in public life. The Supreme Court

in *Vishaka v. State of Rajasthan* (1997) laid the foundation for this legal understanding even before Section 354A was enacted. In that landmark judgment, the Court held that sexual harassment of working women violates Articles 14, 15, 19(1)(g), and 21 of the Constitution and that the State has a duty to ensure a safe working environment. The Court's guidelines, known as the Vishaka Guidelines, remained the principal framework for addressing sexual harassment at the workplace until Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In practical application, Section 354A IPC operates alongside the 2013 POSH Act, covering instances that may not occur within the workplace but still constitute harassment in public or private spaces. The courts have taken a consistent stand that the essence of the offence lies in the lack of consent and the subjective experience of the woman. In *Rupan Deol Bajaj v. K.P.S. Gill* (1995), the Supreme Court held that even a non-physical act, such as slapping a woman on her posterior in public, constituted an affront to her modesty and dignity, thereby amounting to sexual harassment. Similarly, in *State of Punjab v. Major Singh* (1967), the Court observed that any act that violates a woman's sense of decency and modesty, irrespective of her age or mental condition, could constitute an offence under Section 354. These cases demonstrate the judiciary's gradual recognition that sexual harassment is not limited to physical assault but includes any behaviour that degrades or intimidates a woman on the basis of her sex.

Voyeurism, criminalised under Section 354C of the IPC, represents a more modern and technologically oriented form of sexual offence. The section defines voyeurism as the act of watching, capturing, or disseminating images of a woman engaging in a private act without her consent, where she has a reasonable expectation of privacy. The first conviction under this section may attract imprisonment of up to three years and a fine, while a subsequent conviction may result in up to seven years of imprisonment and a fine. The legislative intent here is to safeguard the privacy and dignity of individuals in a world where technology allows the surreptitious recording and sharing of intimate acts at the click of a button.

The Justice Verma Committee explicitly highlighted voyeurism as a serious violation of privacy, particularly in the digital era where mobile phones and hidden cameras are often used to exploit women. The committee argued that the non-consensual viewing or recording of private acts represents a direct infringement of the fundamental right to privacy. This understanding found judicial reinforcement in the Supreme Court's decision in *Justice K.S. Puttaswamy v. Union of India* (2017), which recognised privacy as a fundamental right under Article 21. Voyeurism, therefore, is not merely a moral wrong but a constitutional violation that strikes at the core of individual autonomy and dignity.

One of the earliest reported cases under Section 354C was the incident in which a Delhi-based law student filmed a woman in a shopping mall trial room. The case, widely reported in 2014, demonstrated the need for stringent enforcement mechanisms and also led to a broader public conversation about surveillance, consent, and gendered privacy. Courts have since

clarified that the offence does not require physical trespass but is made out whenever a person intentionally observes or records a woman engaged in a private act without consent. This includes acts such as photographing women in changing rooms, bathrooms, or private spaces.

Equally concerning is the offence of stalking, codified under Section 354D of the IPC. Stalking involves repeated following, contacting, or attempting to contact a woman against her will, or monitoring her use of electronic communication. The section distinguishes between physical and cyberstalking, recognising that harassment may occur both in physical spaces and through digital media. The punishment for stalking includes imprisonment for up to three years for a first conviction and up to five years for subsequent offences.

The significance of criminalising stalking lies in acknowledging the psychological terror and loss of personal security experienced by victims. Before the 2013 amendment, Indian law did not specifically address stalking; such behaviour was often dismissed as harmless pursuit or romantic persistence. However, in reality, stalking represents a form of coercive control that limits a woman's freedom and may escalate into physical violence. The judiciary has recognised this progression in several cases. In *Shri Deu Bajju Bodake v. State of Maharashtra* (2016), the Bombay High Court noted that repeated following, messaging, and attempts to contact a woman despite her refusal constituted stalking under Section 354D. Similarly, in the case of *R. v. Shiv Kumar Yadav* (2015), the Delhi High Court emphasised that the test lies not in the offender's intention but in the woman's reasonable perception of being harassed or followed against her will.

The digital dimension of stalking poses even greater challenges. Cyberstalking—where the perpetrator uses technology such as emails, social media, or tracking devices to monitor the victim—blurs the boundaries between public and private spaces. The Information Technology Act, 2000, particularly Sections 66E and 67, complements the IPC by penalising violations of privacy and the transmission of obscene material through electronic means. The convergence of the IPC and IT Act provisions underscores the legal recognition that technology has transformed the nature of sexual violence.

Indian courts have also grappled with balancing freedom of expression and privacy rights in cases involving voyeurism and online harassment. In *Shreya Singhal v. Union of India* (2015), the Supreme Court struck down Section 66A of the IT Act for being vague and unconstitutional, but simultaneously reaffirmed that online harassment and intimidation could be prosecuted under the IPC's sexual offence provisions. This jurisprudential balancing act illustrates the evolving understanding of privacy and consent in the digital sphere.

From a socio-legal perspective, the offences of stalking, voyeurism, and sexual harassment represent the intersection of law, gender, and technology. They highlight how patriarchy and digital modernity interact to create new forms of oppression. While traditional forms of harassment occurred in physical spaces such as streets or workplaces, the rise of digital

communication has extended such behaviour into virtual spaces, making the victim's experience of violation omnipresent. Legal scholars such as Flavia Agnes and Vrinda Grover have pointed out that the effectiveness of these laws depends not only on their textual strength but also on the sensitivity of law enforcement agencies. Despite progressive statutes, police often trivialise stalking or voyeurism as "minor offences" or "eve-teasing," reflecting deep-rooted cultural biases that normalise harassment.

The judiciary has made commendable efforts to interpret these provisions in a gender-sensitive manner. In the case of *State of Maharashtra v. Madhukar Narayan* (1991), the Supreme Court declared that no woman, regardless of her profession or conduct, forfeits her right to privacy and dignity. This principle forms the philosophical foundation for interpreting Sections 354A, 354C, and 354D. The courts have also underscored that evidence of a woman's past conduct or sexual history is irrelevant in determining offences of this nature, consistent with Section 53A of the Indian Evidence Act.

Despite these developments, several challenges persist. The first is underreporting. Victims of voyeurism and stalking often refrain from filing complaints due to fear of stigma, social backlash, or disbelief from authorities. Secondly, enforcement is inconsistent. Many police officers remain unaware of the specific ingredients of these offences, leading to misapplication of provisions or dilution of charges. Thirdly, procedural delays and the absence of victim protection measures in lower courts often discourage survivors from pursuing justice.

Legal experts such as Justice A.P. Shah and Prof. Upendra Baxi have argued that these offences must be viewed not as isolated acts of individual deviance but as manifestations of systemic gender inequality. The law must therefore focus equally on prevention and deterrence. Educational initiatives, public awareness campaigns, and digital literacy programs are essential to change societal attitudes that normalise harassment. The Justice Verma Committee also recommended that the State invest in gender-sensitisation training for police, judiciary, and media, ensuring that cases involving sexual autonomy and privacy are treated with the seriousness they deserve.

A crucial area for reform involves expanding the gender neutrality of these provisions. At present, Sections 354A, 354C, and 354D apply only when the victim is a woman and the offender a man. While this reflects the statistical reality that women are disproportionately targeted, it excludes male, transgender, and non-binary victims, thereby violating the constitutional principle of equality under Article 14. Comparative jurisdictions such as the United Kingdom and Canada have adopted gender-neutral definitions of sexual offences, focusing on consent and privacy rather than the gender of the parties involved. Indian law, too, must evolve in this direction to ensure inclusivity and consistency with international human rights norms.

Another debated issue is the adequacy of punishment. Critics argue that the prescribed penalties, especially for first-time offences of voyeurism and stalking, are too lenient given the trauma inflicted on victims. Others caution that excessive criminalisation without rehabilitation mechanisms may be counterproductive. The balance, therefore, lies in a combination of proportionate punishment, effective enforcement, and preventive education.

From a constitutional standpoint, these offences represent the extension of Article 21 jurisprudence to the realms of privacy, dignity, and autonomy. The recognition of these rights as fundamental in the Puttaswamy judgment reinforces the constitutional validity of Sections 354A, 354C, and 354D. They are not merely penal provisions but instruments to secure substantive equality under Articles 14 and 15 and to guarantee every individual the freedom to live without fear or coercion.

The offences of stalking, voyeurism, and sexual harassment under the Indian Penal Code signify the evolution of criminal law in response to contemporary social realities. They reflect a broader shift from viewing sexual violence merely as physical assault to understanding it as a continuum of violations of privacy, dignity, and autonomy. While legislative reform has been significant, the effectiveness of these provisions ultimately depends on their interpretation, implementation, and the sensitivity of the institutions enforcing them. The Indian judiciary has played a crucial role in giving these offences constitutional depth, interpreting them in light of fundamental rights and human dignity. Yet, much remains to be done. The persistence of social stigma, inadequate enforcement, and gender bias in investigation continue to undermine the law's transformative potential. For these provisions to achieve their intended purpose, they must be accompanied by a broader societal transformation that recognises consent, equality, and privacy as the cornerstones of human interaction. Only when the law, society, and institutional practice converge on these principles can India truly claim to have moved towards a gender-just and rights-based criminal justice system.