

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

1043.[s 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 purposes 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.]

COMMENTS.—

This is a new provision prescribing an offence based on the suggestions of the Justice JS Verma Committee, constituted in the aftermath of the December 2012 Nirbhaya rape incident. During the deliberations, the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing', etc., are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement. The Committee was of the view that it is not sufficient for the State to legislate and establish machinery of prosecution, but conscious and well-thought-out attempts are required to be made to ensure the culture of mutual respect is fostered in India's children. Preventive measures for the initial minor aberrations were deemed necessary to check their escalation into major sexual aberrations.

The definition of this offence has the following ingredients:

(I) If a person—

- (i) either watches,
- (ii) or captures the image.

(II) of, a woman engaging in a private act.

(III) in circumstances where she would usually have the expectation of—

- (i) either not being observed by the perpetrator
- (ii) or not being observed by any other person at the behest of the perpetrator.

1043. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section. 7 (w.e.f. 3-2-2013).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

1044.[s 354-D] Stalking.

(1) Any man who—

- (i) 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**
- (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:**

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or**
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or**
- (iii) in the particular circumstances such conduct was reasonable and justified.**

- (2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term 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 may extend to five years, and shall also be liable to fine.]**

COMMENTS.—

The definition of this offence has the following ingredients:

(I) If a man—

- (i) follows a woman and contacts or attempts to contact such woman,**
- (ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication,**
- (iii) or watches or spies on a person**

(II) to foster personal interaction repeatedly

(III) despite a clear indication of disinterest by such woman

So, when despite a clear indication of disinterest by woman, if she is followed by a man either in person or through the electronic medium then he is guilty of the offence of stalking as defined in this section

[s 354-D.1]Eve-teasing.—

The Indian Journal of Criminology and Criminalistics (January–June 1995 Edn) has categorised eve-teasing into five heads, viz., (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In *Vishaka v State of Rajasthan*,¹⁰⁴⁵ the Supreme Court has laid down certain guidelines on sexual harassments. In *Rupan Deol Bajaj v KPS Gill*,¹⁰⁴⁶ the Supreme Court has explained the meaning of 'modesty' in relation to women.¹⁰⁴⁷

Supreme Court Guidelines on Eve-teasing

Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1. All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship, etc., so as to monitor and supervise incidents of eve-teasing.
2. There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
3. Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
4. Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
5. State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.
6. Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship, etc.
7. Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.
8. The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities

including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

[*Deputy Inspector General of Police v S Samuthiram*.^{1048.}]

^{1044.} Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3 February 2013)

^{1045.} *Vishaka v State of Rajasthan*, (1977) 6 SCC 241 .

^{1046.} *Rupan Deol Bajaj v KPS Gill*, (1995) 6 SCC 194 [LNIND 1995 SC 981] .

^{1047.} *Deputy Inspector General of Police v S Samuthiram*, (2013) 1 SCC 598 [LNIND 2012 SC 755] : AIR 2013 SC 14 [LNIND 2012 SC 755] . See the Box with 'Supreme Court Guidelines on Eve-teasing'.

^{1048.} *Deputy Inspector General of Police v S Samuthiram*, (2013) 1 SCC 598 [LNIND 2012 SC 755] : AIR 2013 SC 14 [LNIND 2012 SC 755]

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 355] Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

State Amendment

Andhra Pradesh.—*The offence under section 55 is non-cognizable, bailable and triable by any Magistrate vide A.P. Act No. 3 of 1992 section 2 (w.e.f. 15-2-1992).*

COMMENT.—

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults. An accused person while under trial struck a Sub-Inspector of Police who was in the witness-box giving evidence against him. It was held that he was guilty of this offence.^{1049.}

^{1049.} *Altaf Mian*, (1907) 27 AWN 186.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 356] Assault or criminal force in attempt to commit theft of property carried by a person.

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 357] Assault or criminal force in attempt wrongfully to confine a person.

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 358] Assault or criminal force on grave provocation.

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same Explanation as section 352.

COMMENT.—

This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

The word "last" in the Explanation is inaccurate. Instead of the words "the last" the word "this" only should have been used.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 359] Kidnapping.

Kidnapping is of two kinds: kidnapping from ¹⁰⁵⁰[India], and kidnapping from lawful guardianship.

COMMENT.—

The literal meaning of 'kidnapping' is child stealing.

Kidnapping is of two kinds. But there may be cases in which the two kinds overlap each other. For instance, a minor may be kidnapped from India as well as lawful guardianship. A bare perusal of the provisions clearly shows that the legislature did not confine to constitute the offence only if a minor girl is taken away from the place where she used to reside but the emphasis is upon taking away the girl from the "lawful guardianship". Sections 359 and 361, IPC, 1860 do not spell-out any territorial jurisdiction for committing the offence. In my view the rigour of the law travels with the ward/subject and any person involving himself or herself in the offence of kidnapping or procuring a minor girl at any point of time would also come within the purview of sections 359 and 361, IPC, 1860.¹⁰⁵¹.

¹⁰⁵⁰. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.

¹⁰⁵¹. *Taru Das v State of Tripura*, 2008 Cr LJ 3143 (Gau).