

Sexual Offences in Cyberspace

Online action and content can have legal implications

Most users neither know nor understand the impact or the possible consequences of their online activities. Fostering among them empathy and ethical and moral behaviour can address some problems they may face online, such as bullying, harassment, etc. An awareness of the legal implications of some of their online actions may also help to curb any desire to show extra bravado under the illusion that their actions online are anonymous and that "nobody will ever know".

Voyeurism and violation of privacy is a legal offence

Section 354C of the Indian Penal Code (IPC) makes it a crime to view and/or capture the image of a girl or woman in private acts, where she thinks that no one is watching her. This includes a woman, using a toilet, or who is undressed or in her underwear, or engaged in a sexual act.

It may not be a crime if a girl or woman agrees to taking her private photos, but it can certainly be risky. She must expressly consent to both, watching/taking pictures as well as sharing them, for it to not be treated as an offence. The offender in cases of voyeurism can be punished with three to seven years of imprisonment and a fine.

While the IPC Section 354C can only be used by girls and women, Section 66E of the Information Technology Act is gender neutral. On video voyeurism, it states: 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 Rs 2 lakhs or with both.

Explanation : For the purposes 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 undergarment clad genitals, pubic area, buttocks or female breast publishes" means reproduction in the printed or electronic form and making it available to public

D

"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.

Sending obscene material without the consent of the recipient

Section 354A of the IPC, dealing with sexual harassment, includes the act of showing pornography against the will of a woman. Section 67 of the Information Technology Act punishes sharing obscene material in electronic form. The punishment can be jail for five years and a fine of Rs 10 lakhs. Section 67A of the act punishes sharing material containing sexually explicit acts in electronic form with jail for seven years and a fine of Rs 10 lakhs. The provisions of the Information Technology Act are not gender specific and apply to everyone.

Publishing or transmitting obscene material in electronic form

According to Section 67 of the IT Act, whoever, publishes or transmits or causes to transmit in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to Rs five lakhs and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to Rs 10 lakh.

Section 67A (Inserted vide ITAA 2008) provides for punishment for the offence of publishing or transmitting material containing sexually explicit act, etc. in electronic form. Whoever, publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to Rs 10 lakhs and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to Rs 10 lakhs.

Section 67B addresses transmission of material depicting children (including nude or sexually explicit pictures of self, if a child). Whoever,

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| A | publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or |
| B | creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or |
| C | cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or |
| D | facilitates abusing children online or |
| E | records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, |

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to Rs 10 lakh and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to Rs 10 lakh:

Sexual harassment

Section 354A of the IPC provides for punishment of jail between one and three years for making a demand for sexual favours and making sexually coloured remarks towards a woman. Section 509 of the IPC deals with words, gestures or acts which intend to insult the ‘modesty’ of a woman.

The IPC may not be very clear about the meaning of modesty of a woman but the Courts usually make the determination based on the circumstances surrounding the incident. The Supreme Court referred to ‘modesty’ as “feminine decency” and a “virtue that women possess due to their sex”.

For this section to apply, the offender should have uttered any word, made a gesture or sound, or exhibited any object, or intruded on the privacy of a woman, with the intention that this should be seen and heard by the woman. This section provides punishment of a term of simple imprisonment up to three years. If someone found your contact details online and tries to contact you constantly against your will, then Section 509 considers it an intrusion of privacy intending to insult the modesty of a woman.

While the above-mentioned laws are gender specific and apply only to women, other laws apply generally. Section 294 of the IPC punishes any obscene words uttered in a public place. Section 295A of the IPC punishes words, either written or spoken, which insult someone’s religions or religious beliefs while Section 3(1)(x) of the Prevention of Atrocities against the Scheduled Castes and Scheduled Tribes Act deals with caste-based abuse.

According to Section 11 of the Protection of Children against Sexual Offences (POCSO) Act, a person is said to commit sexual harassment to a child when such person with sexual intent;

A

utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

B

makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or shows any object to a child in any form or media for pornographic purposes; or

C

shows any object to a child in any form or media for pornographic purposes; or

D

any other means; or repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or

E

threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

F

entices a child for pornographic purposes or gives gratification therefore.

G

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable for fine.

The threat of physical injury or harassment can be more intimidating. Depending on the nature of the threats, this could fall under the purview of Section 503 of the IPC. This section deals with threatening to injure any person, their reputation, or their property. The punishment for criminal intimidation is given in Section 506 of the IPC. The offender can be punished with jail for seven years and a fine.