
SECTION 77 OF THE BHARATIYA NYAYA SANHITA, 2023: A CONSTITUTIONAL AND GENDER-NEUTRAL CRITIQUE OF VOYEURISM LAWS IN INDIA

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ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS) has been introduced to replace the Indian Penal Code, 1860 with the aim of modernising India's criminal law in line with constitutional values and present-day social realities. The new legislation seeks to move away from colonial-era assumptions, respond to technological developments, and place greater emphasis on the rights and dignity of victims. Despite these objectives, certain provisions of the BNS continue to follow older legislative patterns without sufficient reconsideration. One such provision is Section 77, which deals with the offence of voyeurism.

Section 77 recognises only women as victims and only men as offenders. In today's society, where awareness of gender diversity has increased and digital technology affects individuals across all genders, such a gender-specific approach raises serious constitutional concerns. This article examines Section 77 in a simple and analytical manner, focusing on Articles 14 and 21 of the Constitution of India. By relying on key judicial decisions, particularly *Hiralal Harsora v Kusum Harsora*, it argues that voyeurism laws must be gender-neutral to ensure equality, fairness, and effective protection of privacy.

I. Introduction

Criminal law plays a vital role in any legal system. It defines offences, prescribes punishments, and protects individuals and society from harmful conduct. At the same time, criminal law reflects the social and moral values of a given period. As society evolves, the law must also adapt to remain fair, effective, and relevant.

In India, criminal offences were governed by the Indian Penal Code, 1860 for more than a century and a half. Although the IPC was a detailed and systematic code, it was drafted during British rule and did not always reflect constitutional principles or changing social realities. After the Constitution of India came into force in 1950, several provisions of the IPC were criticised for being outdated or inconsistent with fundamental rights.

To address these concerns, the Bharatiya Nyaya Sanhita, 2023 was enacted as a replacement for the IPC. The stated objectives of the BNS include modernising criminal law, removing colonial influence, and responding to contemporary challenges such as cybercrime and privacy violations. However, merely replacing legislation is not sufficient; each provision must be examined to ensure that it truly aligns with constitutional values.

Section 77 of the Bharatiya Nyaya Sanhita deals with the offence of voyeurism. While it aims to protect privacy and dignity, it does so by assuming that only women can be victims and only men can commit such offences. This assumption requires careful constitutional scrutiny.

II. Meaning and Nature of Voyeurism

Voyeurism refers to the act of secretly watching, recording, or capturing images of a person who is engaged in a private act, without that person's knowledge or consent. Such behaviour amounts to a serious violation of personal privacy and dignity. Victims of voyeurism often experience mental distress, fear, embarrassment, and long-term social consequences.

Earlier, voyeurism was commonly associated with physical acts such as peeping into private spaces. However, technological advancements have significantly expanded the scope of this offence. The widespread use of smartphones, hidden cameras, misuse of CCTV systems, and the rapid spread of content through social media platforms have made voyeuristic acts easier to commit and more harmful in effect.

Once private images or videos are circulated online, the damage caused is often irreversible. Even if the content is later removed, the fear of repeated circulation remains. Voyeurism therefore directly affects an individual's autonomy and right to privacy.

Importantly, voyeurism is not limited to women alone. Men, transgender persons, and individuals of diverse gender identities can also be victims of such acts. Similarly, offenders may belong to any gender. Any legal framework dealing with voyeurism must therefore reflect these social realities.

III. Legislative Framework: Section 77 of the Bharatiya Nyaya Sanhita

Section 77 of the Bharatiya Nyaya Sanhita, 2023 defines voyeurism as an offence committed when a man watches, captures, or disseminates the image of a woman engaged in a private act without her consent. The provision also prescribes punishment for such conduct.¹

The essential ingredients of the offence under Section 77 are:

1. The offender must be a man;
2. The victim must be a woman;
3. The act must involve watching, capturing, or disseminating images;
4. The woman must be engaged in a private act; and
5. The act must be done without her consent.

This provision closely resembles Section 354C of the Indian Penal Code, 1860. Despite the enactment of new criminal legislation, the legislature has retained the same gender-specific structure.

While the intention behind Section 77 is to protect women from sexual exploitation and privacy violations, its narrow framing creates constitutional and practical difficulties that cannot be ignored.

¹ Bharatiya Nyaya Sanhita 2023 s 77.

IV. Social Reality and Changing Understanding of Gender

Modern society has developed a broader and more inclusive understanding of gender. Gender is no longer seen as limited to binary categories of male and female. Indian constitutional jurisprudence has recognised gender identity as an essential aspect of personal autonomy and human dignity.

In *National Legal Services Authority v Union of India*, the Supreme Court recognised the legal rights of transgender persons and held that they are entitled to equal protection under the law.² The Court emphasised that laws must be inclusive and sensitive to gender diversity.

In this context, a criminal law provision that restricts protection only to women appears outdated. Voyeurism is essentially an offence against privacy, not against a specific gender. Limiting legal protection to women ignores the lived experiences of other individuals who may suffer similar violations.

V. Problems with the Gender-Specific Framing of Section 77

The gender-specific nature of Section 77 gives rise to several serious concerns. First, it excludes male victims of voyeurism from legal protection. If a man's private activity is secretly recorded or shared without consent, Section 77 does not provide a remedy.

Secondly, the provision excludes transgender persons and individuals of other gender identities. Such exclusion is inconsistent with constitutional values and judicial recognition of gender diversity.

Thirdly, the law assumes that only men can be offenders. This assumption is not supported by social reality, as individuals of any gender can engage in voyeuristic conduct. These exclusions result in unequal treatment of persons who suffer similar harm.

VI. Right to Privacy under Article 21

Article 21 of the Constitution of India guarantees the right to life and personal liberty. Over the

² *National Legal Services Authority v Union of India* (2014) 5 SCC 438 (SC) paras 54–60.

years, the Supreme Court has interpreted this provision broadly to include various rights necessary for a dignified human existence.

In Justice KS Puttaswamy (Retd) v Union of India, the Supreme Court held that the right to privacy is a fundamental right protected under Article 21.³ The Court recognised bodily privacy, informational privacy, and decisional autonomy as core components of this right (paras 298–299).

Voyeurism directly violates the right to privacy by intruding into a person's private space without consent. Such harm is equally serious regardless of the gender of the victim. Therefore, a law aimed at protecting privacy must operate in an inclusive and non-discriminatory manner.

VII. Article 14 and Reasonable Classification

Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. While reasonable classification is permitted, such classification must satisfy two essential conditions: it must be based on an intelligible differentia, and it must have a rational nexus with the object sought to be achieved.

Section 77 classifies victims and offenders solely on the basis of gender. The object of the provision is to prevent voyeurism and protect privacy. There is no rational basis to assume that only women require protection or that only men commit such offences. As a result, the classification fails the test of reasonableness and violates Article 14.⁴

VIII. Judicial Precedent: Hiralal Harsora v Kusum Harsora

In Hiralal Harsora v Kusum Harsora, the Supreme Court examined the constitutionality of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005, which limited the definition of 'respondent' to adult males.⁵

The Court struck down the words 'adult male' as arbitrary and unconstitutional, observing that women could also be perpetrators of domestic violence (paras 31–33). The exclusion was held to violate Article 14 of the Constitution.

³Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1 (SC) paras 298–299.

⁴constitution of India 1950 art 14

⁵ Hiralal Harsora v Kusum Harsora (2016) 10 SCC 165 (SC) paras 31–33.

IX. Application of Hiralal Harsora to Section 77 BNS

The reasoning adopted in Hiralal Harsora applies directly to Section 77 of the Bharatiya Nyaya Sanhita. Both provisions are based on stereotypical assumptions about gender roles. Restricting the offence of voyeurism to acts committed by men against women suffers from the same constitutional defect and is therefore vulnerable to challenge.

X. Need for Gender-Neutral Criminal Law

Gender neutrality in criminal law does not dilute protection for women. Instead, it strengthens the legal framework by focusing on the nature of the harm rather than the gender of the individuals involved. In the context of voyeurism, a gender-neutral provision would ensure protection for all victims and accountability for all offenders.

Such an approach is more consistent with constitutional values of equality, dignity, and personal liberty, and better suited to addressing offences in a digital society.

XI. Conclusion

Section 77 of the Bharatiya Nyaya Sanhita, 2023 seeks to address the serious offence of voyeurism, which involves a grave violation of privacy and personal dignity. However, its gender-specific framing limits its effectiveness and raises serious constitutional concerns.

In light of Articles 14 and 21 of the Constitution of India and judicial precedents such as Hiralal Harsora v Kusum Harsora and Justice KS Puttaswamy (Retd) v Union of India, the continued exclusion of certain victims cannot be justified. Reforming Section 77 into a gender-neutral provision is therefore not only desirable but necessary to ensure equality, dignity, and comprehensive protection of privacy in a modern digital society.