Photographing a Woman without her Consent - No Law in India to Prosecute

I strongly feel that the technological enhancements facilitate our everyday life but at the same time create possibility of privacy violations. The rampant use of smart phones and burst of technology has also simultaneously increased the burden on legal system to update its archaic laws. There is an urgent need to amend our laws. The law must seek to protect one thing: the safety and well-being of women. Let us take a broad overview of the laws in India to understand this lacuna in our legal system. There is an urgent need to amend the Indian Penal Code by inserting an amended Section 509A to the prevailing Section 509, which prohibits a person from photographing a woman without her consent”. It is also necessary to create an all inclusive definition of Privacy as it stands today along with its growing relevance with the cyber world.

The Information Technology Act, 2000 for instance, in its entirety does not forbid “a person from photographing a woman without her consent”.

To elucidate my point further, a careful reading of Section 66E only concerns itself with: Punishment for violation of privacy if photographs of private parts are taken. Likewise Section 67 deals with, punishment for publishing and transmitting obscene material in electronic form. Section 67A deals with pornography; Section 67B deals with pornography concerning children.

Now Let us review the sections, in the Indian Penal Code, 1860.

Section 294 deals with -Obscene acts and songs; Section 354 deals with Assault or criminal force to a woman with intent to outrage her modesty; Section 509 deals with word, gesture or act intended to insult the modesty of a woman. There is a difference between Section 354 and 509. Section 509 specifically talks about the insult and modesty as premium ingredient of this offence against women as stated in Santha Vs State of Kerala. The intention to insult the modesty of a woman must be coupled with the fact that the insult is caused whereas Section 354 deals with outraging the modesty of the women. A suspected stalker has been arrested for clicking a woman on his cell phone at the Netaji Bhawan Metro station, setting the stage for a test case dealing with privacy in public places in the age of ubiquitous digital gadgets. The accused, a 35-year-old mechanic living near Park Street in Kolkata, has been charged with “insulting the modesty of a woman, by word, gesture or act” under Section 509 of the Indian Penal Code.

But all these sections are silent on the act of a man photographing a woman without her consent.

Let us take the Ruling of Machindra Chate’s appeal for squashing an FIR filed under Sec. 354 of IPC. Bombay High Court said “Even if you keep your hand on the shoulder of a woman, it is for the lady to comment on the nature of the touch, whether it was friendly, brotherly or fatherly.” The Supreme Court offered some clarity in a 2007 judgment about the term “outrage the modesty”. A precise definition of what constitutes a woman’s ‘modesty’ was given by the Supreme Court as “The essence of a woman’s modesty is her sex.” Further bench said in a judgment, “The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, would be an outrage to the modesty of a woman, and knowledge that modesty is likely to be outraged, is sufficient to constitute the offence.”

The urgency to seek an insertion of amended Section 509A in the Indian Penal Code, 1860 is based on the fact that burst of technology has invaded our lives in the form of ubiquitous mobile phones which means that photos are taken more frequently and the images are used by few for private sexual gratification. Ultimately then, this is a social malady.

The recent news in “The Times Of India” dated 10/02/2014 claims that in Mumbai a pub staff was arrested for filming women without their consent in the toilet, in this case the Mumbai police have imposed section 354 (molestation) and section 66 of information act , 2000.

A senior IPS officer in Karnataka has been booked by the Bangalore police for allegedly clicking ‘obscene pictures’ of two young women at a cafe-restaurant on the Cunningham Road. Police have registered a case of assault of a woman with intent to outrage her modesty and criminal intimidation. Police have also seized the mobile phone used to click the images.

Now let us take a look at various International laws. A female judge in Washington DC dismissed charges against a Virginian man, accused of voyeurism for allegedly taking pictures of women’s skirts at the Lincoln Memorial, saying that women should have no expectation of privacy in a public place. In another case a 40-year-old man was arrested in Kawasaki City, Japan for taking pictures of a young woman next to him on the train. The photos in question did not contain any sneaky stuff under the skirt shots. The law states that it doesn’t matter what you are taking a picture of, if the woman being photographed is made to feel uncomfortable or starts feeling anxious, you are liable to be arrested. Even so much as pointing a camera in the victim’s direction without taking a picture is grounds for arrest.

The point is with changing times and technology, more harm can be done with photos of a woman clicked without consent and then uploaded on the internet for viewing and gratifying sexual needs. In recent times, intrusion of privacy goes beyond the bedroom and has come out in public spaces as well. Privacy is defined explicitly in the following:

Case Law: R. Rajagopal vs. State of T.N. (1994): Auto Shankar & Nakkeeran - Right to privacy held to be implicit in Article 21. “It is the right to be left alone”. This “right to be left alone” includes right not to have your personal data collected, published or otherwise processed without your consent.

Conclusion & Suggestion: We need a law to take the notion of privacy in a public place seriously. The act of clicking photos of women at will by any gadgets without their consent is abuse of power by a man against women who by and large are vulnerable in public spaces. All it takes is one click to upload a snap to the internet, and the snap might exist on a server and circulate somewhere we are totally oblivious to. It also is unlawful to view and photograph people inside residences or other places where privacy is expected, even when the photographer is standing in public. The breach of the social norms can result in opprobrium, coercion, danger, and violence, and as such should not be ignored. Therefore an amendment of existing Section 509 by an insertion of Section 509A in the IPC that clearly defines the act of taking photographs of a woman without her consent as an offence is much required with consent as important ingredient. The nuisance and awkwardness caused by the indiscriminate use of mobile phone cameras to click photographs of women in a reckless and irresponsible manner and exploit the vulnerability of this section of society will be curtailed and public etiquette and social maturity will be infused through law and order.