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Candid camera assertions in the Zaheera Sheikh case are the latest in the list of cases involving hidden cameras that have been reported in India. These cases have brought to the forefront the undesirable consequences of use of hidden cameras.

A couple of years back, the Tehelka scam took the country by storm when Bangaru Laxman was recorded, by means of a spy camera, accepting money, a picture later telecast on all major television channels. In a recent case involving a BPO company, photographs of employees having sexual intercourse, taken by the company's spy camera, were leaked over the Internet. This was done without any attempt to hide the identity of the employees.

Recently, a schoolboy recorded a sexual encounter with his fellow girl student on his mobile phone camera, which later got forwarded to mobile phones all over the country and splashed on the Internet. Soon after, pictures of Kareena Kapoor and Shahid Kapur "lip-locked" were splashed all over the media. Midday claimed to have got the picture from again an MMS doing the rounds and shot by a person who was sitting on a table adjacent to the stars at a restaurant. Photographs of a Tamil actress, Trisha, having a bath have also been all over the Net, though she claims it's not her in the pictures.

All these cases demonstrate that the use of hidden cameras has various consequences—legal, social and otherwise. The law of the issue of hidden camera has not yet evolved in our country. Digital camera and other mobile devices come within the term 'computer' as defined under Section 2 of the Information Technology Act, 2000. Further, the photographs and output of digital cameras are indeed data and information in the electronic form under the same provision. However, there are no specific provisions impacting the use of digital cameras as regulating the same is not the stated objective of the Indian cyber law. From the legal perspective there are various challenges raised by use of hidden cameras. Hidden cameras are a kind of surveillance of individuals and distinctly invade his/her right to privacy.

In India, unfortunately, we do not yet have a dedicated law on privacy. The Supreme Court, in various cases including the famous PUCL Telephone Tapping case, has held that the fundamental right to life in Article 21 of the Constitution of India does include the right to privacy. However, this right is only applicable against state action and does not include within its ambit breach of privacy by private individuals.

Today, an affected person has no remedy against use of hidden cameras. The IT Act 2000 does not touch the issue of breach of privacy in the electronic medium. However, publishing, transmitting and causing to be published obscene electronic information, including output of digital cameras and mobile phones, is punishable under Section 67 of the Information Technology Act, 2000, with 5-year imprisonment and fine of up to Rs 1,00,000.

World over, there are various laws that cover the use of hidden cameras. In the US, law-enforcement agencies and police-licensed private detectives are allowed to use the cameras only under certain circumstances and under carefully controlled conditions. Licensed private detectives can use them for collection of evidence but not in a sting operation. The FBI alone can mount a sting operation.

In some US states like Alabama, Arkansas, California, Delaware, Georgia, Hawaii, Kansas, Maine, Michigan, Minnesota, New Hampshire, South Dakota and Utah, the installation or use of any device for photographing, observing or overhearing events or sounds in a private place without the permission of the people photographed or observed is against the law.

South Dakota and Florida have camera phone voyeurism laws as well. Several states have laws prohibiting the use

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of hidden cameras in certain circumstances, such as in locker rooms or restrooms, or for the purpose of viewing a person in a state of partial or full nudity. The US Congress recently passed a federal law aimed at curbing illicit clicking of federal government property such as federal buildings, national parks or military bases. The law also makes it illegal to use an electronic device to snap pictures of naked or partially clothed people in places where they have a reasonable expectation of privacy, such as bathrooms or dressing rooms. Exceptions are made for law enforcement, intelligence and prison work. The law imposes a fine of up to \$100,000 or a year in prison or both on violators.

Saudi Arabia and Kuwait are some of the other countries which had either banned or restricted the use of camera phones. In Australia as well, the Australian Mobile Telecommunications Association (AMTA) has set down guidelines for use of camera phones by customers in a responsible manner and detailed their legal obligations. In Korea, all cellular equipment manufacturers need to install a loud beep which must be audible to people present in a specified radius just before clicking the phone camera.

India has yet to come up with any law restricting the use of camera phones despite the various crimes that have taken place using the same. There is an urgent need to come up with legal guidelines to regulate hidden camera usage. The law needs to be amended so as to include specific provisions relating to the right of privacy of individuals in the context of the electronic medium, and for providing effective remedy and substantial justice to the affected parties. The Government also needs to ban the use of mobile cameras in sensitive places and Government offices. The important issue is that reasonable restrictions need to be imposed for the good of the general public.

When there are growing noises from all quarters that the IT Act should be amended, this occasion should be seized by the Government to come up with appropriate provisions relating to hidden camera use. Only in effectively regulating the use of hidden cameras lies the way ahead for a vibrant IT economy like ours.

The writer, Supreme Court advocate Pavan Duggal, specialises in cyber law

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