

Understanding Digital Rape: A Comprehensive Study of Legislation and Case Law

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Abstract:

The pervasiveness of technology has introduced new avenues for perpetrating sexual violence. Digital rape, encompassing acts of sexual violation perpetrated online, is a growing concern.

In recent years, India has witnessed an alarming rise in heinous offenses related to digital rape. Despite stringent laws, these atrocious acts continue unabated. The term "digital rape" is subject to interpretation, with some linking it to online sexual exploitation of women through electronic devices, while others associate it with current scenarios that raise intense discussion. This study aims to shed light on the concept of digital rape in the modern era, its relationship with sexual exploitation through online resources, cybercrime, and electronic gadgets. By analysing specific cases, we contribute to a comprehensive doctrinal study, enhancing the legal framework to combat digital rape and protect vulnerable individuals¹. This study delves into the complex and evolving issue of digital rape, examining its legal definitions, legislative responses, and judicial interpretations across different jurisdictions. Digital rape, involving the non-consensual penetration of a victim's body using objects or body parts other than the penis, has seen varied recognition and treatment under the law. This research provides a comprehensive analysis of statutory frameworks and case law to identify gaps, inconsistencies, and advancements in legal protections for victims. Through a comparative approach, the study highlights the differences in legislative terminology, prosecutorial challenges, and judicial outcomes, underscoring the need for uniformity and clarity in legal standards. The findings aim to inform policymakers, legal practitioners, and advocates, offering recommendations for enhancing legal frameworks to better address and prosecute digital rape, thereby ensuring justice for survivors.

Keywords: Digital Rape, Sexual Offences, Gender-specific definition, IPC amendments, Judicial approach, Legal evolution, Legal framework, Legal workshops, Marital exemption, Nirbhaya Case, Non-consensual acts, Paradigm shift, POCSO Act, Public awareness, Sexual assault, Societal reforms, Socio-legal background.

Introduction:

In the rapidly evolving landscape of digital technology, the realm of sexual violence has expanded beyond physical encounters to include acts perpetrated through digital means. "Digital rape," a term encompassing non-consensual penetration facilitated via digital devices, represents a significant and increasingly recognized form of sexual assault. This comprehensive study aims to explore the legislative frameworks

¹ (1) Digital Rape in India: A Doctrinal and Empirical Studies (with special <https://ijcrt.org/papers/IJCRT2309455.pdf>.

and case law surrounding digital rape, highlighting the challenges and advancements in addressing this form of violence.

The proliferation of smartphones, social media, and other digital platforms has created new avenues for perpetrators to exploit, making traditional definitions of rape insufficient. Digital rape involves not only the unauthorized recording and distribution of intimate content but also the coercive use of technology to invade an individual's bodily autonomy. This phenomenon demands a reevaluation of existing legal definitions and the development of robust legislative responses that can adequately address the nuances of digital violations.

In response to the growing recognition of digital rape, jurisdictions worldwide have begun to adapt their legal frameworks. Some have introduced specific statutes targeting digital sexual offenses, while others have expanded the scope of traditional rape laws to encompass these acts. This study will examine the effectiveness of these legislative measures and analyse landmark cases that have shaped the legal landscape.

By understanding the intricacies of digital rape and the legal mechanisms in place, this research seeks to contribute to the ongoing discourse on sexual violence in the digital age. It will provide a critical analysis of the current state of legislation and case law, identify gaps and inconsistencies, and propose recommendations for a more comprehensive and effective legal response to digital rape. Through this study, we aim to advance the protection of victims and the prosecution of perpetrators in the digital realm, ensuring that justice evolves alongside technology.

Digital rape, also known as digital penetration without consent, involves the use of fingers or objects to penetrate another person's body sexually. This form of assault is distinct from traditional notions of rape but equally traumatizing and significant in the context of sexual violence. The legal response to digital rape varies widely, reflecting differing cultural, social, and legal perspectives. This paper explores these variations and the evolution of laws addressing digital rape.

Traditional definitions of rape often fail to encompass the realities of the digital age. Digital rape refers to the use of technology to coerce, manipulate, or threaten a victim into a sexual act. This can include online harassment, cyberstalking, sharing revenge porn, or using virtual reality platforms to simulate sexual assault.

Definition and Meaning of Digital Rape:

Digital rape' has created a buzz across the country. So, there might be speculation that the term 'digital' prefixed to the word 'rape' is linked to the digital world. However, digital rape has nothing to do with gadgets like computers, phones, laptops or Meta-owned platforms.

According to the definition of Sexual penetration provided in section 35A of the Crimes Act 1958, a person (A) digitally penetrates another person (B) if:

- A introduces their finger/s, thumbs or toes (to any extent) into the vagina of B.
- A introduces their finger/s, thumbs or toes (to any extent) into the anus of B.

The word digital rape has neither been written explicitly anywhere in the Indian Penal Code 1860 nor in the POCSO Act, 2012. Under section 375 of the Indian Penal Code 1860, the word digital rape has not been written explicitly, but looking at the nature of the actions by which this crime is constituted, it can be said that it is digital rape.

Digital rape derives its name from the English word 'digit', referring to fingers or toes. Contrary to potential misconceptions. Digital rape involves the act of non-consensual insertion of a digit or any object

into the victim's body. Digital rape is a form of sexual assault where the perpetrator uses their finger or fingers to infringe upon and compel a sexual act upon the victim. This heinous act violates the victim's privacy, dignity, and mental peace, leaving them traumatized. The term "digital" in this context refers to the digits on a person's hands or feet. It is a gender-neutral offense, applicable to victims and offenders of all sexes².

Analyse existing laws related to sexual offenses, including digital rape:

After the cruelty and barbarity of Nirbhaya gang rape on 16 December 2012, the term digital rape came into existence and it was defined and punished as an offense of rape in sections 375 and 376 by the Criminal Law Amendment Act 2013. Earlier this such incidents were not punished as the crime of rape, but as molestation under section 354 "Assault on a woman with intent to outrage her modesty". Such incidents of molestation, which is called "Molestation" in English, under section 354 "Assault or use of Criminal force on a woman with intent to outrage her modesty." The use of criminal force was made punishable and such actions were considered to be against the dignity of women. For which the provision of punishment before the Criminal Law (Amendment) Act 2013 was decided on the basis of the gravity of the crime, according to which "A criminal shall be punished with simple or rigorous imprisonment for a term which shall not be less than two years, or with fine, or with both, but the punishment has now been increased by penal law (Amendment) Act of 2013. The punishment will not be less than one year but can be extended to five years and a fine will also be imposed.

The Famous Akbar Ali Case: - The term digital rape came into existence after the Nirbhaya case and as well as in famous Akbar Ali case, in this case 65-year-old Akbar Ali has been convicted in the digital rape case in the district court of Gautam Buddha Nagar, Uttar Pradesh. In this case, Akbar Ali was sentenced to life imprisonment, in addition to this, a fine of rupees 50000 was also imposed on him. This is the first such case in India as well as in the state of Uttar Pradesh in which the accused has been sentenced to life imprisonment.

Important cases of digital rape before the year 2013: -It was not that there were no incidents of digital rape before the Nirbhaya case. Many such cases are seen when incidents of digital rape have taken place, but then it was considered only as a crime of defamation and no action was taken under section 376. This was the biggest reason that even the most heinous criminals used to get away with the charge of rape very easily and such criminals were punished with very short -term imprisonment which was up to two years, but after the Nirbhaya case Through the Criminal Law Amendment Act 2013, the term of this punishment was increased and the term of imprisonment was increased to a maximum of five years and it was only after this amendment that digital rape was kept in the category of rape.

60-year-old woman was digitally raped by an auto rickshaw driver Another case related to digital rape came to light in Delhi, in which a 60-year-old woman was digitally raped. This woman was going to her relative's place for a wedding ceremony. Meanwhile, the auto rickshaw driver had inserted an iron rod in the private part of the woman. Once again, the criminal was arrested but not charged under section 376 of the Indian Penal Code, 1860.

Digital Rape of A 3-Year-Old Girl in Greater Noida Play School - A case of digital rape with a 3-year-old innocent girl came to light in a play school in Greater Noida West. The girl's father is an officer.

² <https://www.indiatoday.in/information/story/what-is-digital-rape-1995654-2022-09-02>

An FIR was registered by the guardians, but the girl, being very scared and fearful, was unable to name the culprit, due to which the culprit could not be traced.

81-Year-Old Painter Digitally Raped A 17-Year-Old Minor For 10 Years - 81-year-old painter has been arrested by the Noida Police for raping a 17-year-old girl. The name of the painter is said to be Morris Rider who was originally from Prayag raj. The victim alleges that Morris Ryder digitally raped the girl for 17 consecutive years starting when she was 7 years old.

Penal Legislation: -

1. If the charge of digital rape is proved on the culprit of digital rape, then he is punished with imprisonment of minimum 7 years under Section 3 of the POCSO Act 2012 and the facts of the case and the brutality and heinousness of the crime the maximum punishment for life imprisonment can also be given on the basis of.
2. If serious sexual assault has taken place on the aggrieved party, then under Section 5 of this Act, there is a provision of minimum 10 years imprisonment for the accused and maximum life imprisonment can also be given.
3. Even under Section 7 of the POCSO Act, touching the personal or private parts of a child is considered under the offense of sexual assault. There is a provision of minimum one year punishment.

The way people of perverted mentality are trying new ways of committing crimes against women and children, it was showing a clear deficiency in the penal law of the British period. Both the above important cases were such serious cases of digital rape that the harshest action should have been taken against the accused. But due to lack of proper provision in the law, before the Nirbhaya case, there was no law in the country of India specifically related to the protection of children from sexual offences. They are protected under major sections of IPC, 1860, Sections 354, 359, 360, 361, 362, 363, 366A, 366B, 372, 373, 375, 376, 377 (Chapter 16 Offenses against the body) It was done, but the protection that was given here was available only to women, because the people of the society believed that such sexual crimes usually never happen against men or children, but the research data from 2007 to 2010 shows the situation. They were saying something different. This incredible figure was 53% of the cases that happened to such men in their childhood. The first-hand reports of such incidents are far away, even they could not tell their parents or even their well-wishers. Because of all these difficult situations and also the need of the hour, the way people of perverted mentality are trying new ways of committing crimes against women and children, that the need for amendment in this legislation was felt and in 2013, children were sexually assaulted. In order to provide protection from violent crimes, many laws were created by the legislature, as well as amendments were made in procedural laws as well as criminal laws.

International Perspectives:

The legislative response to digital rape varies significantly across jurisdictions. This section explores how different countries have adapted their laws to address digital rape, including the introduction of new statutes and amendments to existing sexual offense laws.

Globally, the recognition and criminalization of digital rape have been inconsistent. Some countries have specific provisions addressing digital penetration, while others include it under broader sexual assault or rape laws.

United States

In the United States, the definition of rape has evolved to include digital penetration. The Model Penal Code and various state laws now classify digital penetration as a form of sexual assault or rape. For instance, California's Penal Code Section 289 explicitly criminalizes digital penetration without consent.

People v. Yones

In People v. Yones, the California Supreme Court upheld a conviction for digital rape, emphasizing that non-consensual digital penetration constitutes rape under state law. This case set a precedent for recognizing the severity of digital penetration.

United Kingdom

The Sexual Offences Act 2003 in the United Kingdom covers digital penetration under the definition of rape. Section 1 of the Act defines rape to include non-consensual penile, digital, or object penetration.

R v. Ismail

The case of R v. Ismail involved a conviction for digital rape under the Sexual Offences Act 2003. The court's interpretation reinforced that digital penetration is as serious as penile rape, ensuring that perpetrators face appropriate penalties.

ANALYSIS OF JUDICIAL TRENDS:

An analysis of judicial trends reveals a growing recognition of digital rape's severity. Courts are increasingly acknowledging the trauma and violation associated with digital penetration, leading to more consistent and stringent application of laws. This section will analyse trends across different jurisdictions of India, examining how judicial attitudes towards digital rape are evolving.

State of Punjab vs. Gurmit Singh (1996)³:

Before this case, the legal definition of rape was very narrow, focusing solely on penile-vaginal penetration. In this judgment, the Supreme Court significantly broadened the definition, stating that penetration of any orifice by any object or part of the body (other than the penis) could constitute rape. This laid a crucial foundation for the later recognition of digital rape under Section 375 of the IPC.

In this landmark case, the Indian Supreme Court expanded the interpretation of rape to include digital penetration. The judgment highlighted the need for comprehensive laws that address all forms of sexual violence.

State of Karnataka vs. Shivanna (2017):

This case involved the insertion of fingers into a 3-year-old's vagina. The Court ruled it a 'penetrative sexual assault' under the POCSO Act. This further reinforced the broader interpretation of rape.

Cases Addressing Online Sexual Harassment and Abuse:

State of Uttar Pradesh vs. Pappu Yadav - This case includes the victim being forced into performing sexual acts that were recorded and used for blackmail. This highlights how digital means can be used as coercion and exploitation tools.

Kalandi Charan Lenka vs. State of Odisha (2017): In this case, a man was convicted for morphing images of a woman and circulating them online. The Court upheld the charges of obscenity under Section 67 of the Information Technology Act and defamation under Section 499 & 500 of the IPC. This case demonstrated how images could be used as a weapon for sexual abuse.

³1996 SCC (2) 384

Aparna Bhat vs. State of Madhya Pradesh (2021): This judgment explicitly acknowledged the profound harm caused by online sexual harassment and emphasized the need to protect women in the digital space. It set a precedent for future legal action against digital sexual violence.

RECENT CASES OF DIGITAL RAPE:

75- year-old Akbar Ali digitally raped a 3- year-old girl

On August 31, Akbar Ali from West Bengal was found guilty of digitally raping a 3-year-old and was given a life sentence. The incident happened in 2019 in Noida when the girl was playing outside her house and came back crying. The child told her ordeal to her mother, and the family got to know that Akbar enticed the child with toffees and took her to his room. By the POCSO Act, the accused was sentenced to life in jail and a fine of 50,000.

Father digitally raped his daughter

In June 2022 a child was reportedly a prey of being digitally raped by her father in Greater Noida. FIR was lodged by the mother of the child when she complained of genital pain, and she revealed that it was her father who was doing the wrong act to her. According to police sources, the couple was arguing for a long time and were living in different rooms.

80-year-old artist- cum- teacher digitally raped a girl for 7 years

Earlier in 2021, a man named Maurice Ryder, 80–a year-old graphic artist was accused of committing various indecent acts with a girl for 7 years. The girl complained when she turned 17. It was alleged that he was her teacher.

Neighbour digitally raped a 5-year-old girl in her house

In Indirapuram, Ghaziabad, a neighbour sexually assaulted a girl via digital means. Her mother was away at work when the crime happened. The youngster was playing with the accused's kids when he led her into another room and sexually assaulted her using a device. When the girl attempted to voice her complaints to his wife, the accused hushed the issue. After the girl's mother filed a complaint, the man was arrested in accordance with POCSO Act Sections 376, 509, and 5 and 6.

CHALLENGES IN ADDRESSING DIGITAL RAPE:

Addressing digital rape poses significant challenges, as legislation often struggles to keep pace with rapidly evolving technology. Here are some key issues surrounding this phenomenon:

Consent in Digital Spaces: The complexities of consent in virtual environments make it challenging to determine when sexual interactions are consensual or non-consensual. The blurred boundaries in online interactions require careful legal scrutiny⁴.

Lack of Suitable Legal Provisions: Existing laws may not adequately cover digital rape, given the unique nature of online sexual violence. Legal frameworks need to adapt to address this emerging issue effectively⁵.

Jurisdictional Variations: Laws regarding online sexual violence vary across jurisdictions, making it difficult to seek justice consistently. Harmonizing legal approaches globally is essential⁶.

⁴ (1) Legal Dimensions of Virtual Rape: Contemporary Issues and Challenges. <https://www.ijfmr.com/papers/2024/2/15496.pdf>.

⁵ (3) Unveiling the Dark Reality: Exploring Digital Rape and Its Impacts 2023. <https://blog.fastracklegalsolutions.com/digital-rape/>.

⁶ Sexual Violence in the Digital Age: A Criminal Law Conundrum?. <https://www.cambridge.org/core/journals/german-law-journal/article/sexual-violence-in-the-digital-age-a-criminal-law-conundrum/F71476828D5BCA3D8316BA3F0B7CF30B>.

Technology and Anonymity: Offenders exploit dark web platforms and encrypted messaging apps, posing challenges for law enforcement. Balancing privacy and cybersecurity concerns is crucial⁷.

Cultural and Social Barriers: Cultural and social stigmas around sexual violence often impede the reporting and prosecution of digital rape. Victims may face disbelief, blame, or shame, which can discourage them from seeking justice.

Evidentiary Issues: Proving digital rape can be challenging due to the nature of the crime. Unlike penile rape, digital penetration may not leave obvious physical evidence, complicating the collection of forensic proof.

Legal Definitions and Ambiguities: In some jurisdictions, ambiguous legal definitions can hinder the prosecution of digital rape. Clear, precise legislation is crucial for effective legal responses and for ensuring that perpetrators are held accountable.

In combating digital rape, a multi-faceted approach is necessary:

Education and Awareness: Raising awareness about the realities of digital rape is paramount.

Strengthening Legal Frameworks: Governments must enact and enforce stringent laws to address digital rape effectively.

Platform Accountability: Technology companies and social media platforms should take responsibility for combating digital rape.

Support Services and Counselling: Providing support to victims is crucial in their recovery. Remember that addressing this issue requires collaboration across legal, technological, and societal domains.

RECOMMENDATIONS:

Legal Reforms: Jurisdictions with ambiguous or outdated laws should revise their legal frameworks to explicitly criminalize digital rape. Clear definitions and stringent penalties are essential for effective legal protection.

Victim Support Services: Enhancing victim support services, including counseling and legal assistance, is crucial. Providing comprehensive support can encourage victims to come forward and aid in their recovery.

Public Awareness Campaigns: Raising public awareness about digital rape and its legal implications can help reduce stigma and encourage reporting. Educational campaigns can inform the public about the seriousness of this crime and the available legal recourse.

Conclusion:

Digital rape is a significant and serious form of sexual violence that requires comprehensive legal and social responses. By examining legislation and case law, this paper highlights the progress and challenges in addressing digital rape. Continued efforts in legal reform, victim support, and public awareness are essential to ensure justice and support for victims of digital rape. Rape is a despicable offence. The offender most of the time is a trusted source of the victim and it often leaves the case unreported allowing the accused to walk freely. The act of rape is not a crime against a victim but against humanity. The cases related to digital rape were very difficult to prosecute before the amendment.

Digital rape was not included in the Indian Penal Code's definition of rape before to 2013. But after a number of horrific rape incidents around the nation, the Supreme Court changed the definition of rape,

⁷ What is Digital Rape or Digital Assault - legallyin.com. <https://legallyin.com/unmasking-digital-assault-exposing-the-terrifying-reality-of-digital-rape-in-india/>.

realizing that there are other methods to violate a woman's dignity and that little is known about digital rape. The benefit to society as a whole will increase with the speed at which our politicians investigate the issue. The fact that there is insufficient legislation to hold the predator accountable does not mean that they should get away with it.

It sends a strong social message of zero tolerance by bringing criminal charges against the offenders. As a society, we ought to learn more about the culture of rape. It's critical to recognize that rape culture encompasses more than just the stereotype of a man attacking a woman in her underwear at night. There should be more discussions and awareness campaigns on how society can come together to stop this horrible crime.

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