



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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NAVIGATING THE TERRAIN OF DIGITAL RAPE: IT'S NOT WHAT IT APPEARS!

Abstract

As the title suggests 'Digital Rape', the phrase is not what it appears. In India, one often misunderstood term that has recently been making headlines is 'Digital Rape'. It may also sound associated with the digital world but in reality, it is not. This term has not anything to do with computer systems, telephones, or any virtual platforms however as a substitute entails the traditional sense of the word 'digit'. In the arena of sexual crimes in India, 'digital rape' is a recently introduced term that is frequently misunderstood. It might be misinterpreted as associated with the arena of technology however, it isn't always. The phrase 'digit' right here refers to fingers or toes, and 'digital rape' describes a non-consensual violation of the victim's body. This guide pursuits to delve into the specifics of digital rape, its prison outcomes, and why its reputation marks a critical milestone toward justice. Let's delve into a detailed knowledge of what digital rape is, how it's treated legally in India, and why it's significantly a giant step in the direction of justice.

Keywords: Digital Rape, non-consensual, sexual crimes, molestation, assault, harassment.

Introduction

Recently the word 'Digital Rape' has created attention across the nation. Therefore, there may be conjecture that the word "rape" has something to do with the digital realm given in the prefix "digital". But technology such as computers, phones, laptops, or platforms owned by Meta have nothing to do with digital rape. The word is a compound word that comes from the English word "digit", which means "number" or an "integer". Rape is a crime that ruins the life of a person, and digital rape is a kind of it. These crimes prevent people from living the life they

deserve fully and trigger them with many traumas since society often victimizes people. Despite their gender, these crimes are a major concern for everyone due to the fact that they prevent people from living their lives as they see fit and violate both their fundamental and human rights. This necessitates attention, and by dissecting every nuance, this study aims to provide a thorough evaluation on strengthening the legal environment to prevent digital rape and safeguard those who are susceptible.

Historical Background

After the hideous Nirbhaya Gangrape case, there was a feeling of outrage in the country against different offences of sexual abuses that women have to face. Also, there was a dire need of evaluation, reorganization, and amending Legislative laws pertaining to crime against women. This led to the usage and for the first time the term 'Digital Rape' came into existence. In furtherance of this, Justice Verma committee was constituted on December 23, 2012, in order to thoroughly examine the laws associated with offences against women and develop recommendations for necessary actions to be taken for the purpose of closing any discrepancies and make the laws more women-friendly.

What do you mean by rape in India?

Sec.375 of IPC defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped or is of unsound mental health and in any case if she is under 18 years of age." This heinous crime has been categorized into many types; let's look at them:¹

Types of Rape in India:

- **Date Rape-** The term "date rape" is widely known as 'acquaintance rape,' which is a non-domestic rape committed by someone who knows the victim. It is a drug-facilitated sexual assault where the rapist intentionally drugs the victim with a date rape drug to get them incapacitated. The most common example is spiking the drink of the victim.
- **Gang rape-** It refers to a group of people who participates in the rape of a single victim. Rape involving two or more perpetrators is widely reported in many parts of the world. Sec.376(2)(g) gives the punishment for gang rape. It states that the perpetrators shall be

¹ Kakoli Nath, *What is Digital Rape? Laws and Punishment*, FINOLOGY BLOG (Sep. 5,2022), <https://blog.finology.in/Legal-news/digital-rape>

punished with rigorous imprisonment of at least ten years, which may even extend to life imprisonment for the offenders, along with a fine or both. The gang rape cases that outraged the public are the Nirbhaya Rape case, the Bilkis Bano Gang Rape case, etc.

- **Marital rape-** This rape is also referred to as spousal rape, which is rape between a married or de facto couple without one spouse's consent. Spousal rape is considered a form of domestic violence and sexual abuse. Exception 2 of Sec.375 is a barrier to the passing or recognition of this marital rape law as it states that “sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”, in certain cases, Courts stated it as 18 years instead of 15 years.
- **Child Rape-** It is a form of child sexual abuse. When committed by another child (usually older or stronger) or adolescent, it is called child-on-child sexual abuse. POCSO is the law governing sexual assault on children.
- **Custodial rape-** Sec.376A states that custodial rape occurs when the rape is done by a man in whose custody the woman is. The men can be any police officers, constables, etc., who keep the woman in custody. If they misuse their position to sexually exploit women, it is a very heinous crime. However, in 1983 this concept was given significance, and the meaning of the term ‘custody’ was broadened. One popular example can be the Mathura Rape case.
- **Digital rape-** is the forceful penetration of fingers and toes without the victim's consent and has nothing to do with online crimes. Let’s understand this form of rape in detail.

What actually is Digital Rape?

The phrase ‘Digital Rape’ is a gender-neutral term and is applicable to all kinds of victims and offenders. Digital Rape refers to the act of penetration using fingers or toes without the consent of the victim. Sec.35A of the Crimes Act, 1958² defines sexual penetration as introducing one’s fingers, thumbs, or toes into another person’s vagina. ‘A’ inserts its fingers, thumbs or toes (to any extent) into B’s anus. The term ‘digital rape’ is not officially defined in Sec.375 of the Indian Penal Code, 1860³. However, based on the nature of the conduct that comprises this offence, it can be deemed digital rape. The term ‘digital rape’ does not appear directly in either the Indian Penal Code, 1860 or the POCSO Act, 2012⁴.

² CRIMES ACT, 1958 NO. 6231 OF 1958

³ INDIAN PENAL CODE, 1860

⁴ Tanishka Tiwari, *What is the concept of Digital Rape in India?*, LAW INSIDER IN (Jan. 12, 2024, 18:36 IST), <https://www.linkedin.com/pulse/what-concept-digital-rape-india-lawinsiderindia-01bcc#:~:text=Punishment%20for%20Digital%20Rape,from%2010%20years%20to%20life>.

Legal Regulatory Framework in India

There was national indignation about various sexual abuse offences against women following the Nirbhaya Gangrape case. With recommendations of Justice Verma Committee brought the Criminal Amendment Act, 2013 included various changes in provisions and punishment of digital rape under IPC, CrPc, Evidence Act and POCSO Act. Earlier such heinous crime of digital rape involving a violation of a female's dignity using fingers, foreign objects or any other part of the human body was not considered a crime under IPC. It was penalised as Molestation in spite of rape under Sec.354 of IPC i.e. Assault on a woman with intent to outrage her modesty. The provisions dealing with the punishments under POCSO and IPC are:

Sect.3 of the POCSO Act⁵

Although changes in the definition of rape were made in 2013 under Sec.376 of IPC, under Sec.3 of the POCSO Act, insertion to any extent "of any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or making the child do so with him or any other person" was already considered as a penetrative sexual assault. In cases of digital rape, not only these two provisions are considered for inflicting punishments, but it can extend to a few other provisions as well. They are:

Sec.5(m) and 6 of the POCSO Act

Sec.3 defines penetrative sexual assault while **Sec.5(m)** of the POCSO Act defines aggravated penetrative sexual assault, which states that "committing penetrative sexual assault on a child below twelve years" is said to have committed aggravated penetrative sexual assault.

Under this section, punishment for aggravated penetrative sexual assault can range from rigorous imprisonment for a term of 20 years to life imprisonment (which includes the whole of the natural life) or even death. Also, there is an additional fine.

[Sec.6 (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of the natural life of that person and shall also be liable to fine, or with death.

⁵ THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 [NO. 32 OF 2012]

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]⁶

Under Sec.228A[2] of the IPC, no person can disclose the name of the rape victim, and if anybody discloses the name, he shall be punished with either description for a term which may extend to two years and shall also be liable for a fine.

Sec.114-A[3] of the Indian Evidence Act⁷, the presumption can be made as to the absence of consent in certain prosecutions for rape.

Sec.53(1)[4] of the CrPc, when a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such situations that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence it shall be lawful for a registered medical practitioner, acting at the request of a police officer, not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably mandatory to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

Sec.164A[5] of the CrPc⁸ states that the provisions for medical examination of the rape victim are given.

Sec.327(2)[6] of the CrPc, there should be an in-camera trial for all rape victims.

Judicial responses

The recent cases in which court identified digital rape:

A 2- year old girl was bleeding as she was transported to the hospital in Mumbai. Her vagina was perforated, yet there were no indications of sexual assault or rape according to the examination results. Later, however, it was revealed that her own father was prodding his daughter with his fingers. Despite the father was detained, he was not tried and punished under Sec.376 of IPC, which regulates offences rape and sexual assaults.

⁶ Subs. by S.5, *ibid.*, for Section 6 (w.e.f. 16-08-2019)

⁷ THE INDIAN EVIDENCE ACT, 1872

⁸ THE CODE OF CRIMINAL PROCEDURE, 1973

In an another case, a 60-year old woman was digitally raped in Delhi. She was sexually assaulted by an auto-rickshaw driver, who used an iron rod to penetrate a 60-year old woman who was going for visiting her relative's wedding. Again, the driver was arrested but not convicted under Sec.376 of IPC.

This pointed out various loopholes in Sec.376 of IPC which deals with rape offences. Previously, such offences were not considered as crimes under any section. But by knowing that there are other different ways that a man can use to violate a woman or child's dignity. Supreme Court had to make changes to the definition of rape, hence, its scope was extended in 2013 Amendment Act.

In the case of *State v. Pankaj Chaudhary*⁹, the appellant Pankaj Chaudhary was convicted for the offence punishable under Sec.376 and Sec.377 read with Sec.511 of IPC. He was further convicted for the offence punishable under Sec.506 IPC. He was awarded various terms of imprisonment for different offences. In continuation of above case Supreme Court further interpreting the word 'Digital Rape' observed in case of *Aman Kumar v. State of Haryana*¹⁰, The Supreme Court observed that in order to find an accused guilty of an attempt with intent to commit a rape, the Court has to be satisfied that the accused, when he laid the prosecutrix, he not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. It was observed that indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Digital sex is considered as serious as the offence of rape in some countries. There is a proposal to amend Sec.375 IPC by the Government of India. It is proposed to make the definition of 'sexual assault' much wider which would include the penetration to any extent by a man by an object or part of the body (i.e. the penis) into the vagina or anus or urethra of a woman. Thus, the digital sex i.e. use of finger shall be included in the definition of "sexual assault" with severe punishment. For the present, the Appellant's act would be covered by the definition of an indecent assault as given in Section 354 IPC i.e. outraging the modesty of a woman.¹¹

⁹ State v. Pankaj Chaudhary (2011)

¹⁰ Aman Kumar v. State of Haryana (2004) 4 SCC 376

¹¹ G.P. Mittal, *State v. Pankaj Chaudhary on 17 August, 2011*, INDIAN KANOON (Aug 17, 2011) <https://indiankanoon.org/doc/613056/>

In the case of *Akbar Ali v. State of U.P.*¹², The first punishment has been given in the digital rape case in Noida, Uttar Pradesh. A case was going on in Surajpur District and Sessions Court on charges of digital rape of a 3-year-old in Greater Noida. In this case, 65-year-old Akbar Ali, accused, has been sentenced to life imprisonment. The court has also imposed a fine of Rs. 50,000/- on the accused. The case is of the year 2019. Akbar Ali was originally from West Bengal. In 2019, he had come to the village to meet his married daughter. It was during this time that he committed this incident. He had crossed the limits of cruelty by luring the girl with chocolates and toffees. The matter reached the court. The court found the accused guilty of digital rape. Life imprisonment has been sentenced against the accused under Sec.5/6 of POCSO Act and Sec.375 of IPC. Thus, this decision of Surajpur Court has been recorded as the first punishment in the country in a digital rape case.¹³

An 81-year-old sketch artist was arrested in Uttar Pradesh's Noida for the alleged 'digital' rape of a 17 year-old girl over a period of more than seven years. The suspect, an artist-cum-teacher, was arrested by officials of the local Sector 39 police station. An FIR was lodged against him under Indian Penal Code Sec.376 (rape), Sec.323 (voluntarily causing hurt), Sec.506 (criminal intimidation).¹⁴

In an another case, also called “protector turns predator” in which 11-year-old child was subjected to digital penetration and sexual assault. The appellant had been convicted for the offences punishable under Sec.6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). Further, in view of Sec.42 of the POCSO Act, no separate sentence was imposed upon the appellant for the offence punishable under Sec.376 of Penal Code, 1860 despite being found guilty. Reference to the Supreme Court decision in *Mohd. Imran Khan v. State Government (NCT of Delhi)*¹⁵, wherein it was observed that:

¹² Vivek Kumar Singh, *Akbar Ali v. State Of U.P. And Another on 13 July, 2022*, INDIAN KANOON (Jul 13, 2022) <https://indiankanoon.org/doc/144844840/>

¹³ Rahul Parashar, *Digital Rape Case: Life Imprisonment to 65 year old Akbar Ali in Noida...*, NAVBHARAT TIMES (Sep 02, 2022, 10:54 am) https://navbharattimes.indiatimes.com/state/uttar-pradesh/noida/first-conviction-in-digital-rape-case-in-noida-court-sentenced-the-accused-akbar-ali-to-life-imprisonment/amp_articleshow/93941803.cms

¹⁴ Ritika Shah, *Noida: 81- year old artist held for 'digital rape' of minor for 7 years*, INDIA TODAY, (May 16, 2022) <https://www.indiatoday.in/crime/story/noida-news-artist-arrested-digital-rape-minor-seven-years-1949965-2022-05-16>

¹⁵ *Mohd. Imran Khan v. State Government (NCT of Delhi)*, (2011) 10 SCC 192

“It is trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person’s lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury.”

“...If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.” In view of the above background, Special Judge was persuaded to hold that there was no material to show that the victim was subjected to penovaginal intercourse by the accused. However, there was evidence to indicate that the accused committed penetrative sexual assault by way of digital penetration and sexual assault by touching and pressing breasts of the victim. “There can be no duality of opinion that the sexual assault cases are required to be dealt with sternly and the offenders deserve no leniency.”

The evidence laid in the instant case undoubtedly justifies the finding of penetrative sexual assault within the meaning of clause (b) of Sec.3 of the POCSO Act, 2012. The act also falls within the dragnet of clause (b) of Sec.375 of the Penal Code which defines the offence of rape, as substituted by the Criminal Law (Amendment) Act, 2013. Impugned Judgment of Conviction for the offences punishable under Sec.6 and 10 of POCSO Act, 2012 and Sec.376 (2) of IPC stands confirmed.¹⁶

The Seriousness of the Issue

Rape is not rape unless there is intercourse. For years, such arguments have been used to defend predators accused of sexual assault where forceful penetration of the vagina was done using any object or other body parts like fingers and toes. But now the Indian justice system has caught up and updated its understanding of sexual crimes, even including offences like digital rape. These concerns are not confined to the India only. A university student received a 3-year, 7-month & 3-week prison sentence for digitally raping an intoxicated friend with one year non-parole period. Another incident in which a college student was arrested for allegedly digitally

¹⁶ Bhumika Indulia, *Bom HC | Protector Turns Predator: 11-year old child subjected to digital penetration and sexual assault; HC upholds lower Court’s decision*, SCC TIMES, (2021)

<https://www.sconline.com/blog/post/2020/12/01/bom-hc-protector-turns-predator-11-year-old-child-subjected-to-digital-penetration-and-sexual-assault-hc-upholds-lower-courts-decision/amp/>

raping a friend who was intoxicated and unable to object. This was done to emphasise that women regardless of intoxication will have full legal protection. However, the judge didn't utilise the woman's intoxication as evidence to prove that she was also guilty of the crime. Instead, the offender was imprisoned to demonstrate that women are always entirely safer from criminals, regardless of their circumstances.

Solutions and Suggestions

The real issue with why horrible crimes like digital rape occur in society is that the law is applied laxly, the offenders have no fear of the law, and the offenders' mind-set needs to be entirely revamped. Otherwise, people will not respect the law of the land or the integrity of any individual, and this fear of a lawless society arises as to why anyone will have faith in the law. If they are assaulted in a democracy where they are guaranteed fundamental rights, including the right to life, which includes the right to live honourably and respectfully, but in that nation, they are not receiving justice from the entire legal system, and even they struggle with this.

- Sensitization of the system: In India, individuals employed by the government or judicial apparatus must first become sensitive to the victimization of sexual assaults. This can be achieved through raising awareness, but until full awareness permeates society, laws dictating the proper conduct of governmental or judicial personnel toward victims must be in place.
- Communication and transparency: Since rape is irreversible once it occurs, we must take action to prevent it. This can be done by bringing transparency to society, which will start with the general public and end with the government by disclosing all relevant data in a public forum. From there, talk can be commenced at various institutions and public influencers, and eventually, people will begin to recognize the issue and become enthused about stopping it.
- Reformation of offenders: Usually, when the government formulates policy, it takes the victim into consideration, which is right. However, concentrating solely on the victim will not benefit society as a whole. In addition to protecting victims, we also need to reform them, so we should create policies pertaining to them. For example, we should ensure a fair and quick trial so that offenders don't have to serve out the full sentence of years in prison before their case is resolved. Psychologists should assess whether there is a possibility of reformation, and if so, we should work toward it while keeping the focus on victims' rights.

- Blaming of the victim must end: When someone is abused, society as a whole begins to point the finger at them, telling them how they ought to have behaved in a given circumstance, how they ought to have dressed, and a host of other things. However, this behaviour needs to stop. Instead of paying attention to the offender, we need to make them feel like they have committed a horrible crime. If they do this, there's a chance that they will be transformed.
- Terminate Sexual Violence: If we look around, we will discover that there are a lot of jokes about sexual violence. This behaviour normalizes sexual violence, which is something that needs to stop. There are only two ways that this can happen: either they experience the same thing themselves, or people will become aware of it through the openness and communication that we previously discussed in the society, making people aware of how serious the issue is.
- Regulations to balance the power discrepancy: In society, sexual violence also occurs when the perpetrator feels that they have more authority than the victim in a given organization, institution, office, etc. As a result, they dare to ask for sexual favors, and when they don't get what they want, they misbehave because they think the victim won't speak up because they hold higher positions. Therefore, the government must create policies that will allow anyone to speak up without fear, and the Indian government has initiated laws to that end, but they all need to be more rigid.
- Institutional education: It's possible that more people are attending educational institutions in India, where the literacy rate is rising. As a result, the government should launch campaigns to help students understand the importance of getting consent before engaging in any sexual activity, the consequences of assault, and how to start thinking distinctively to start respecting the feelings of people of different genders.¹⁷
- Role of media and its accountability: The media has an important role in society because they are the ones who set public discourse topics and trends. In this regard, the media's role is crucial in ensuring that people have access for accurate information and other related matters. As a consequence, they have a responsibility to discuss issues such as digital rapes and other sexual offences. By interviewing victims and allowing them to represent themselves in person or anonymously, the media can help to break down rigid mentalities.

¹⁷ Shivanshu Shivam, *Digital Rape-A Life Distorting Trauma*, THE AMICUS QRIAE
<https://theamikusrqiae.com/digital-rape-a-life-distorting-trauma/>

Conclusion

In summary, the phrase "digital rape" is used to describe digital rape incidents. In the instance of digital rape, the offender violated and coerced the victim into performing a sexual act with one or more of his fingers. To put it simply, someone is charged with digital rape if they used their finger or fingers to pierce the victim's vagina without the victim's consent. Rape is a highly repugnant offense. Furthermore, the purpose of coining this phrase was to shield young ladies from the oppressive use of plain language. However, prior to 2013, there was no legislation passed by our Supreme Court that gave victims of digital rape access to justice. This was due to the fact that, before 2013, the phrase "digital rape" did not exist.

Disclosure, knowledge, training, education and strict implementation with reformation policies are also recommended. As a society, we must do more than just provide consolation to victims of sexual exploitation; we must educate the public and make them aware of the challenges that survivors face in their lives after being raped through the system of government and media communication. In addition, we must disseminate the idea that everyone has the right to life and that everyone should respect others' integrity and their lives. Only then will cases involving children, the insane, and the elderly be averted. In a democratic country like India, we must demand the things we want from society and the law. In order to create a respectful society where everyone has the strong legal support for living a life of morality, each and every person who believes they can positively impact society should take the initiative and work towards that goal.

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