

DIGITAL RAPE UPROOTING THE VALUES OF HUMANITY: UNVEILING THE UNSEEN

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“I just want to sleep. A coma would be nice. or amnesia. Anything, just to get rid of this, these thoughts, whispers in my mind. Did he rape my head, too?”

- Laurie Halse Anderson

Abstract

Digital rape is an offence which is quite nascent to Indian legal system as well as for people of India. There are some misconceptions regarding the term 'Digital' of offence of digital rape in the mind of a layman, and this article try to give a better understanding of the term 'Digital' as well as the whole concept of digital rape. The article discusses about concept of digital rape, its various instances, and amendments in rape law and Legal framework towards digital Rape in India, various forms of rape and repercussions of digital Rape.

Keywords: Digital Rape, forms of rape, amendments in rape law, repercussions of digital Rape

INTRODUCTION

This well-known legal quote emphasizes that “Right to life is not mere animal existence”. It means that a man can live without food for 15 days; a person can live without water for 6-8 days. But a person can't live without self-respect for even a minute. The most important require thing for living after food, shelter, and cloth is respect, without respect a person die thousands of times in one life. Various offenses can tarnish a person's reputation, but one of the most heinous crimes is rape, which not only physically violates the victim but also shatters their hope, emotions and sense of security. Rape victims often feel as if they are living life without any hope and even may prefer death.

Before the infamous Nirbhaya Gang Rape case there was no concept of Digital Rape, the sexual activity of penetration using fingers or toes without the consent of the victim was considered molestation only. It was after the Criminal Law Amendment followed by Nirbhaya gang-rape incident that new rape laws were introduced in the parliament and Digital Rape was classified as a sexual offense under Section 375 of IPC and section 3(b) of Protection of Children from Sexual Offenses (POCSO) Act. ¹

Therefore, it becomes very much necessary to discuss the concept of digital rape, various cases in which digital rape has been committed and offender has been punished. Besides, it is equally important to understand various forms (types) of rape committed against women. The author has also discussed the criminal law amendments made in the offence of rape and legal framework towards digital rape in India. The author has also discussed the physical and psychological impact of such brutality caused against women and made certain recommendations to minimize the trauma suffered by victim of digital rape.

OBJECTIVES OF THE STUDY

1. To study the concept of digital rape.
2. To study the amendments in rape law to current legal scenario as to digital rape.
3. To study the different forms of rape.
4. To conclude with proper recommendations

CONCEPT OF DIGITAL RAPE IN INDIA

In India, one often misunderstood term that has recently been making headlines is 'Digital Rape'. While the phrase may sound associated with the digital world, it is not. This term has nothing to do with computers,

¹ <https://www.thelawadvice.com/articles/understanding-the-concept-of-digital-rape>

phones, or any digital platforms but rather involves the traditional sense of the word 'digit'. In the arena of sexual crimes in India, 'digital rape' is a recently introduced term that is often misunderstood. The term, while sounding related to the world of technology, is not. *The word 'digit' here refers to fingers or toes, and 'digital rape' describes a non-consensual violation of the victim's body.* Understanding the term "digital rape" is crucial as it represents a significant step toward recognizing and addressing this form of sexual violence in India. The term 'digital rape' is comparatively a newer one. Previously such acts were considered molestation and not rape.

However, with the unfortunate incident of Nirbhaya in 2012, new rape laws were introduced in Parliament and the act was considered a sexual offence under Sections 375 and 376 and the Protection of Children from Sexual Offences (POCSO) Act.

The term was coined in 2013 to provide justice to victims of the heinous act.

Under the POCSO Act, the offender faces at least 5 years jail term. However, if a person is charged under Section 376, this punishment can be extended to ten years or even life imprisonment.²

FEW CASES OF DIGITAL RAPE

Akbar Ali case-

In the year 2019 a person whose name is Akbar Ali residential of West Bengal had went to Noida just to visit his daughter house in a family function. Where Akbar Ali had lured a girl child by providing her candies who was playing outside the house. Under the pretext of providing candies he took her to a room alone and digitally raped that girl child. Akbar Ali has booked under POCSO Act and punished with life imprisonment with fine of Rs 50,000.

Similarly, in Graphic Artist Maurice Ryder case-

Maurice Ryder an 80 year old person of Greater Noida sector 46 was a graphic artist who established his workshop in Shimla. Maurice took the custody of a 10 years old girl from one of his worker in Shimla as the girl's father was not having sufficient means to take care of his daughter and providing her the education. In year 2021 girl made complaint against Maurice Ryder that he was digitally rapping her from last 7 years.

Another incident where the Father committed digital rape on his daughter-

One FIR was filed in year 2022 in Greater Noida, by mother of a girl child against her husband for committing digital rape with his own daughter.

DIFFERENT FORM OF RAPE

- **Date Rape**

The term "date rape" is used to refer to several types of rape, broadly acquaintance rape, which is a non-domestic rape committed by someone who knows the victim, and drug facilitated sexual assault (DFSA), where the rapist intentionally drugs the victim with a date rape drug so that they are incapacitated. Acquaintance rape constitutes the vast majority of reported rapes, while DFSA is infrequent.

- **Spousal Rape**

Spousal rape also known as marital rape, wife rape, husband rape, partner rape or intimate partner sexual assault (IPSA), 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.

- **Rape of Children**

Rape of a child 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. When committed by a parent or other close relatives such as grandparents, aunts and uncles, it is also incest and can result in serious and long-term psychological trauma. When a child is raped by an adult who is not a family member but is a caregiver or in a position of authority over the child, such as school teachers, religious authorities, sports trainers (coaches) or therapists, to name a few, on whom the child is dependent, the effects can be similar to incestual rape.

- **Statutory Rape**

The age at which an individual may give effective consent to sexual intercourse is commonly set in most countries at between 14 and 18 years (though it is as low as 12 years in some countries). Sexual intercourse with a person below the age of consent is termed statutory rape, and consent is no longer relevant. The term *statutory rape* specifically refers to the legal proscription against having sexual intercourse with a child or any other person presumed to lack comprehension of the physical and other consequences of the act.

Any Sexual activity with a woman with or without her consent when she is below 18 years of age constitutes rape. A woman under the age of 18 is considered incapable of giving consent for any kind of sexual activity. The age of consent was raised from 16 to 18 by the Criminal Law (Amendment) Act of 2013.

² <https://www.outlookindia.com/national/what-is-digital-rape-man-booked-for-digital-rape-of-minor-sentenced-to-life-imprisonment-news-220339>

- **Gang Rape**

Gang rape occurs when a group of people participate in the rape of a single victim. Rape involving two or more violators (usually at least three) is widely reported to occur in many parts of the world. Systematic information on the extent of the problem, however, is scant.

- **Prison Rape**

Many women are raped by police or prison guards after they have been arrested. Also, rape is common between male prisoners to establish power.

- **Custodial Rape**

Custodial rape is rape perpetrated by a person employed by the state in a supervisory or custodial position, such as a police officer, public servant or jail or hospital employee. It includes the rape of children in institutional care such as orphanages.

In India, custodial rape has been a major focus of women's rights organizations, and has been an official category of rape defined under law since 1983.

Amendments in rape law and Legal Scenario towards Digital Rape in India:

The rape law under IPC had gone through a lot of amendments. In 1983, amendment was made and Section 376 (2), that is, Custodial Rape, Section 376 (A), that is, Marital Rape, and Section 376 (B to D), that is, Sexual Intercourse not amounting to rape were added. As per the Criminal Law Amendment Act (1983), revealing the identity of a rape-victim is an offence. Though this Act maintains more or less the same definition of rape, it introduces many new categories of offence of sexual intercourse by persons in custodial situation-such as superintendents of hospitals, remand homes, prisons, and police officials-with women in their custody. In cases of custodial rape, burden of proof lies with men and if a woman victim makes a statement that she did not consent, the court would believe that she did not consent.

Punishment in the cases of gang rape amounts to the rigorous imprisonment for term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine. Sexual intercourse by a man with his wife, who is living separately from him under a decree of separation or under any custom or usage without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.³

The Supreme Court says that the rape trials must end within 2 months as stipulated under law. The Supreme Court also directed trial courts to "strictly adhere" to existing norms while asking them to rule out the possibility of "maneuvering" through undue long adjournments. Section 309 of the Criminal Procedure Code (Cr.P.C) provides that in every inquiry or trial the proceedings should be held as expeditiously as possible and once the examination of witnesses begins the same shall be continued on a day-to-day basis till all the witnesses are examined. In cases that come under Section 376 (rape) and related offences under Sections 376 A to D of the IPC, the Cr.P.C. stipulates that "the inquiry or trial shall, as far as possible, be completed within a period of 2 months from the date of commencement of the examination of witnesses." The victim of rape suffers mental and psychological trauma, which must be addressed to provide a helping hand to enable her to cope with the trauma suffered and to tide over her immediate and long-term needs so that she is able to lead a dignified and meaningful life.

The IPC section on rape laws (Sections 375 and 376, IPC) reflects extremely antiquated ideas when it includes as an exemption clause- "*Sexual intercourse by man with his own wife, the wife not being under 18 years of age, is not rape.*" The law grants the husband total immunity if he rapes his wife merely on the basis of the marital relationship. It is a non-consensual violent perversion committed by a husband against his wife in which she is physically and sexually assaulted. Marital rape is far too common in Indian society. The UN Population Fund states that more than two-third of married women in India, aged 15-49 have been beaten, raped, or forced to provide sex. Roots of 'marital rape' can be traced in the statement of Sir Mathew Hale, England's chief justice during the 1600s, "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract." The movement against marital rape began in the 1970s, when women activists in America raised their voice for the repeal of the marital rape exemption clause and the expansion of the promise of equal protection to women. The significance of permission in every individual choice cannot be overemphasized. Even while married, a woman can preserve her right to life and liberty, as well as her body.

The Section 376 in dealing with sexual assault, in a very narrow purview lays down that, an offence of rape within marital bonds stands only if the wife be less than 18 years of age, once, the age crosses the permissible limit there is no legal protection accorded to the wife, in direct contravention of human rights regulations.

³ <https://www.indialegallive.com/laws-research-indepth/rape-date-rape-marital-rape-spousal-rape-custodial-rape-statutory-rape/>

Current legal position

In view of the recommendations of the Law Commission and the growing protest from the general public in response to gang-rape of a Delhi girl in December 2012, the Indian Parliament introduced the Criminal Law (Amendment) Bill, 2013, which was passed by both the houses in March and received President's assent in April 2013. It provides for amendment of IPC, IEA, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The offence of rape under Section 375 of IPC, have made both penile and non penile insertion into bodily orifices of a woman by a man an offence. The definition is broadly explained in some aspect, with acts like penetration of penis, or any object or any part of body to any extent, into the vagina, mouth, urethra, or anus of a woman or making her to do so with another person or applying of mouth to sexual organs (Cunnilingus or fellatio) without the consent or will of the woman constitutes the offence of rape.

The section has also clarified that penetration means "*penetration to any extent,*" and lack of physical resistance is immaterial for constituting an offence. Except in certain aggravated situations, the punishment will be imprisonment for not less than 7 years but which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term, which shall not be less than 10 years but which may extend to imprisonment for life, and shall also be liable to fine.

A new section, 376A has been added which states that if a person committing the offence of sexual assault, inflicts an injury, which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term, which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death. In case of gang rape, persons involved regardless of their gender shall be punished with rigorous imprisonment for a term, which shall not be less than 20 years, but which may extend to life and shall pay compensation to the victim, which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

Certain changes have been introduced in the Cr.P.C, 1973 and Indian Evidence Act, like the recording of statement of the victim has been made more friendly and easy, character of the victim is irrelevant for consideration, presumption of no consent where sexual intercourse is proved and the victim states in the court that there has been no consent, etc.

The age of consent has been increased to 18 years, which means any sexual activity irrespective of presence of consent with a woman below the age of 18 will constitute statutory rape.

Analyzing the Repercussions of Digital Rape: Physical and Psychological:

Brutal crime like "Digital Rape" creates a profound psychological impact on victims.. While the physical violation in digital rape is undeniable, the psychological trauma inflicted on victims is profound and often overlooked. Victims may suffer from a range of mental health issues including, but not limited to, post-traumatic stress disorder (PTSD), anxiety, depression, and suicidal ideation. These effects underscore the necessity of appropriate mental health support for victims alongside legal recourse.⁴

Understanding the Impact:

INDIAN SCENARIO

Several startup companies have emerged in India in the recent past (Jain, 2017). According to a report by Zinnov, there are around 170 AI related startups in India and these have received an investment of \$36 million in total (India-based..., 2018). 64 out of these are located in Bengaluru. These are working in the domains of healthcare, e-commerce, finance, etc. Tuplejump, a startup helps the clients visualize the data while taking a decision. It has been acquired by Apple. ClearTax is developing a solution for e-filing using documents directly. Aindra is developing devices with computer vision ability for the applications like facial recognition, detection of cervical cancer, etc. A list of example startups in India is given in Table No. 1. Edge Networks has developed a solution to match the job profiles with the job seekers. It helps the companies reduce the time and money spent on hiring. Fluid AI has developed a solution to work as gesture controlled assistant. When a customer approaches any product, the system helps with the information just like a human does. It is meant for use in shops to reduce the operational cost. Flutura has developed a solution called Cerebra which collects data on the conditions of the machines and analyzes to advise on the repair schedules, etc. This is expected to reduce the down time of the machine and increase its life. Heckyl collects information on several issues to assist people in stock trading. It is meant for investors, fund managers, brokerage firms, etc. Mad Street Den supports use in searching for products using captured photos. ShopR360 has developed a video analytics solution which can be used to analyze CCTV videos. It can distinguish staff from the customers and helps in the strategic placements of the products in the stores. Niki.ai has developed a solution which can be used for developing conversational assistants for placing orders like booking cabs, payment of utility bills. The client list of Niki.ai includes HDFC Bank, Oxigen Wallet, Ticketgoose. SigTuple is focussing on the affordable solutions for medical diagnosis using AI a microscope and a cell phone. Socialcops develops solutions to assist in decision-making. It assists by visualization of the collected data. PHRAZOR from

⁴ <https://www.centurylawfirm.in/blog/digital-rape-in-india-decoding-its-intricacies/>

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CONCLUSION AND SUGGESTIONS

After above discussion, it can be said that digital rape is a heinous crime violating woman's bodily integrity and honour besides various crimes committed against women. It is not only the worst but also an inhumane form of barbarism which can be prevented not only through stringent laws but basically by spreading awareness amongst the people in general as to the values of humanity. If any crime is to be ended then it is very important to know the factors that lead an offender to commit crime to this grave extent so that problem can be remedied in its true sense. Also, awareness programmes would lead to curbing this type of menace more effectively.

SUGGESTIONS

1. Raising Awareness:
Despite its lack of connection to the digital realm, the term itself is likely to pique curiosity and interest among the public. Thus people at large shall be made aware of this term and seriousness of the issue.
2. Providing sex education:
Experts are of the opinion that sex education and the understanding of gender equality which is also known as gender sensitization will help in reduction of rape cases and sexual abuse. There should be a positive conversation about sex and not always connect it with violence.
3. Providing counseling to the victims:
Proper counseling to such victims may reduce psychological trauma inflicted upon them and thereby save them from falling prey to depression.
4. Community Engagement:
Engaging the community in "Digital Rape" discussions can help foster a sense of responsibility and solidarity. It can encourage individuals and organizations to combat such abuse proactively.

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