

THE DEFINITION OF DIGITAL RAPE AND ITS LEGAL RAMIFICATIONS

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ABSTRACT

The term "digital rape" may bring up ideas of the web or the cyber world because there have been instances of sexual assault through digital channels. Any sexual offense done online, such as falsifying someone's online identity or abusing any online platform, is not considered "digital rape." It does, however, apply to the act of forcing one's fingers or toes into another person's intimate areas without that person's consent. The conduct has been referred to as "digital rape" since the word "digit" in the English language suggests finger, thumb, and toe. Up until December 2012, "digital rape" was classified as molestation rather than rape and did not meet that criterion. Because crimes committed under digital rape, which essentially involved a "violation of a woman's dignity using fingers, foreign material, or any other part of the human body, were not deemed a crime under any section," this highlighted numerous flaws in Section 376 of the IPC, which deals with sexual offenses. New rape legislation was passed in parliament after the horrifying Nirbhaya gang rape case in 2012, and the act was classified as a sexual offense. Yet, Indian laws solely designate female victims and male perpetrators, despite the fact that the phrase "digital rape" is gender-neutral and applies to all types of victims and offenders. According to numerous reports, the person who violated a woman's modesty or a child's dignity was someone they knew personally 70% of the time.

Keywords: rape, digital rape, sexual assault, intimate areas, fingers, foreign material, punishments.

WHAT IS DIGITAL RAPE?

Instead of being a virtual or digital sexual offense, as the word might imply, "digital rape" refers to the act of forcible penetration using the fingers or toes. The act has been referred to as "digital rape" because the word "digit" can refer to a finger, thumb, or toe in the English language dictionary. The phrase "digital rape," to the uninitiated, is relatively new because, in the past, similar acts were seen as molestation rather than rape. Despite the fact that the phrase is gender-neutral, rape victims are divided into two groups: major and minor. According to the

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statute, minor digital rapists are arrested under Section 375 and the POCSO Act, while major digital rapists would be tried under Section 375.

THE COINING OF THE PHRASE "DIGITAL RAPE"

In 2013, following the notorious Nirabhaya rape case, the term "digital rape" was coined. Eventually, it was included under a different portion of the Protection of Children from Sexual Offenses (POCSO) Act's new rape legislation. India didn't have legislation that offered justice to those who had been the victims of "digital rape" before 2013. The phrase "Digital Rape" was developed as a result of several cases. In another incident, an auto driver in Delhi sexually attacked a 60-year-old woman inside his car. She was struck with an iron rod. Although detained, the perpetrator was not found guilty in accordance with Sections 375 and 376 of the IPC. Similar to that in 2012, when a 2-year-old from Bombay was rushed to the hospital bleeding, the doctors discovered that she had a ruptured vagina despite the absence of any evidence of rape or sexual abuse. The girl's father had been piercing the girl with his fingers, it was eventually discovered. The father, however, was imprisoned but not convicted or punished in accordance with Section 376 of the CPL. They created a number of gaps in the laws governing rape, sexual offenses, and related issues. Earlier, the government had trouble handling these cases in accordance with India's rape statutes. The Supreme Court had to alter its definition of rape in light of the fact that there are other ways for a man to violate the dignity of a woman or child. The term rape was expanded in 2013 while keeping in mind all the aforementioned cases and horrifying criminal acts. This new definition defines rape as the act of forcing a penis, a foreign object, or any other part of the body into a woman's mouth, anus, or urethra. Lawmakers divide rape victims into two groups: majors and minors. Minor digital rapists are tried both under Sections 375 and 376 and the POCSO Act, whilst major digital rapists are arrested and tried in accordance with Sections 375 and 376.

THE DISTINCTION BETWEEN THE TERMS "CYBER RAPING" AND "DIGITAL RAPE"

Because there have been incidents of sexual assault through digital networks, the term "digital rape" may conjure images of the internet or the cyber world. Any sexual offense committed online, including impersonating another person or abusing any online platform, is not referred to as "digital rape." Yet, it does relate to the act of inserting one's fingers or toes without that person's consent into their private areas. Since the English word "digit" implies a finger, thumb,

or toe, the behavior has been referred to as "digital rape." As molestation rather than rape up until December 2012, "digital rape" did not fit that definition. After the horrible Nirbhaya gang rape case in 2012, new rape laws were established in parliament, and the conduct was labeled as a sexual offense.

THE TYPES OF RAPE

DATE RAPE: A "date rape," also referred to as an "acquaintance rape," is a non-domestic rape committed by a person the victim knows but has never lived with. The victim is purposefully given a date rape drug by the rapist in order to render them defenseless against sexual assault. The most common tactic is to contaminate the victim's beverage.

GANG RAPE: This word refers to several perpetrators raping a single victim. Rapes involving numerous attackers are frequently reported in many parts of the world. Section 376(2) specifies the punishments for taking part in a gang rape (g). It calls for harsh penalties, such as ten years in prison as a minimum and perhaps even life sentences for repeat offenders. Many have expressed their outrage in response to cases like the Nirbhaya Rape Case, the Bilkis Bano Gang Rape Case, etc.

MARITAL RAPE: Spousal rape is the term for a rape that occurs between a married or de facto relationship without the consent of one spouse. Domestic violence and sexual abuse are defined as violent and/or sexual acts committed against a partner. The enactment or acceptance of this marital rape statute is in question due to the language of Exception 2 of Section 375, which states that "sexual intercourse or sexual actions by a man with his own wife, the wife not being under fifteen years of age, is not rape."

CHILD RAPE: To victimize a child sexually. When another child or young person, usually one who is stronger or older, sexually abuses a child or young person, it is said to have occurred. The government passed POCSO in order to safeguard kids from sexual abuse.

CUSTODIAL RAPE: A male violates a woman while she is in his custody, in accordance with Section 376A, and is therefore guilty of custodial rape. The men could be any officers of the law (police, constables, etc.) in charge of holding the woman in custody. If they utilized their position of authority to sexually exploit women, that would be a horrific crime. But, in 1983,

the definition of "custody" was broadened to embrace new ideas and meanings. One example of this is the rape case in Mathura.

DIGITAL RAPE: Cybercrime has nothing to do with rape in the digital era, which is defined as the violent and unwelcome penetration of a person's fingers or toes. Let's dissect the particulars of this rape technique.

REPORTS REGARDING OFFENDER AND OFFENCE

Although prosecution is difficult, the offender was typically known to the victim in cases of digital rape. For instance, in June of this year, a father was accused of digitally raping his five-year-old child. In a different instance in 2021, an 80-year-old artist-turned-teacher was charged with seven years of continuous digital rape of a minor. Only 1% of cases of digital rape that were reported involved a stranger as the perpetrator. According to a survey, the victim knew the criminal 29% of the time through her social network. Digital rape is underreported due to the victim or her family's feelings of dread and shame, as we have observed in situations of sexual abuse. But there might be another explanation. Is it possible that because digital rape doesn't fit the traditional definition of rape, most people still do not consider it to be a serious sexual offense? It has been said in numerous publications that a person who violated a woman's or a child's dignity 70% of the time was someone she knew personally. Oftentimes, those who are close to the victim—her cousin, close friend, uncle (or other family members), neighbors, and in some stunning situations, her father—commit these crimes. In 29% of cases, the victim knew the criminal through their social network, such as their friends or coworkers. Perhaps someone they've never met before, such as on a date arranged by a friend or through a dating app.

CASE STUDIES OF DIGITAL RAPE WHERE THE CRIME WAS PENALIZED

Criminals attempt to digitally rape women and children just because they are not physically assaulting their bodies with their penis. The outdated rapist statute in India made it difficult for the government to handle such instances. It is for this reason that recent amendments to the definition of rape were introduced, ensuring that women would be properly protected from these heinous criminal crimes.

After the revision of the concept of rape, legal authorities have begun to implement severe penalties for those who commit digital rape, as evidenced in the following cases:

- A 65-year-old man from Noida West was given a prison term for digital rape. As the new definition of rape went into effect, a 65-year-old man from Noida West was first imprisoned but not punished or charged under Section 376 of the Indian Criminal Code for his crimes. A man named Akbar Ali lured a 3-year-old girl with toffees in Salarpur, Noida, and later took advantage of her defencelessness when the opportunity presented itself. He was initially exonerated since it was a digital rape case. On August 30, 2022, he was found guilty and given a sentence in accordance with section 5(m)/6 of the POCSO Act.
- A conductor who sexually assaulted a four-year-old girl on a school bus has been given a 20-year prison sentence. A report explaining an instance of digital rape where a school-age girl child was digitally raped by the conductor was published by Times Now news on December 12, 2018. The report said, "In their complaint to the police, the girl's parents alleged that the conductor sat next to the child on the school bus. He sexually assaulted her as the bus approached her residence in the city's Sector 56 area. The matter came to light when the minor complained to her parents about pain in her thighs. This prompted her mother to consult a doctor. Once the doctor suggested that she might have been sexually abused, the girl told her parents all about her ordeal, and an official police complaint was lodged at the Sector 56 police station."
- The conductor received a 20-year prison term and a 50,000 rupee fine. For digitally raping a buddy who was intoxicated, a university student was given a term of three years, seven months, and three weeks in prison, with a one-year non-parole period. These issues don't just pertain to India. There is new information about the case of digital rape every day. A college student was detained for allegedly digitally raping a friend who was ostensibly inebriated and unable to object. A university student is imprisoned for digitally raping a friend. This was done to demonstrate that, regardless of intoxication, women will have complete legal protection. But, the judge did not use the woman's intoxication as evidence to show that she was equally guilty of the crime. Instead, the offender was imprisoned to demonstrate that women will always be completely protected from criminals, regardless of what condition they are in.
- Six months in prison for a Stanford student. Published on June 6, 2016, is this case. The Stanford sexual assault case, which "contained the victim's whole statement on how it felt to be raped," was the subject of a piece in The Guardian. The victim's statement in

this particular case was very detailed. The statement demonstrated just how horrible and horrifying internet rape can be. It all boils down to the fact that a woman's dignity can be damaged even when she is not being sexually assaulted. And how digital rape can have an identical impact as physical rape. Over several weeks, this information made headlines. Several people held the opinion that the six-month sentence was excessive. Also, a longer time should have been imposed on the offender. The case is over, but the offender—who was placed in detention immediately after receiving his sentence—must register as a sex offender for the rest of his life.

DIGITAL RAPE PENALTIES

The IPC and POCSO Acts specify the penalty. According to the POCSO Act, the criminal will receive a five-year prison sentence, and if the offense is covered by Section 376 of the IPC, the sentence may be increased from 10 years to life in prison. The clauses governing POCSO's penalties are as follows:

Section 3 of the POCSO Act

Even though the definition of rape was changed in 2013 under Section 376 of the IPC, under Section 3 of the POCSO Act, any penetration of a child's vagina, urethra, or anus with " 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 regarded as penetrative sexual assault. Not only are these two provisions taken into account when imposing punishments in cases of digital rape, but they may also include a few more provisions. They are as follows:

Section 5(m) and 6 of the POCSO Act

While Section 3 of the POCSO Act defines penetrative sexual assault, Section 5 of the same Act specifies aggravated penetrative sexual assault, which is defined as "committing penetrative sexual assault on a child below twelve years ".

According to this provision, the penalty for serious penetrative sexual assault can be anything from a strict 20-year sentence to life in prison (which includes the rest of the natural life) or even the death penalty. There is also a further penalty in the form of an additional fine.

Additionally as per Section 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.

(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 the victim.”

INDIA'S MOST RECENT INSTANCES OF DIGITAL RAPE

In the most recent instance, a 65-year-old man in Noida West is accused of digitally raping a three-year-old girl. The event happened in Salarpur, a town near Noida, and involved a three-year-old daughter being subjected to digital rape by a man by the name of Akbar Ali. Using toffees to entice the young child, the man took advantage of her home aloneness. On August 30, 2022, the defendant received their sentence after being found guilty of the offenses listed in section 5(m)/6 of the POCSO Act. The offender was initially held without being punished or charged in line with Section 376 of the Indian Criminal Code, which designates rape offenses. A seven-month-old girl infant was digitally raped by a 50-year-old guy named Manoj Lala a few days ago beneath the Noida Phase-3 police station area. An 81-year-old sketch artist was detained in Noida in May 2022 on suspicion of allegedly 'digitally raping' a 17-year-old girl for more than seven years. According to the police, the suspect lived with the victim's little child as her carer. At a high-rise community in Noida Extension in June 2022, a 5-year-old child was allegedly the victim of digital rape by his father. The girl's complaints of genital soreness led to the discovery of the occurrence.

INDIA'S RAPE LAWS

Releasing the identity of a rape victim is prohibited by section 228A[2] of the IPC, and if you do, you risk receiving one of the two punishments mentioned above in addition to a fine. According to Section 114-A[3] of the Indian Evidence Act, a presumption regarding the lack of consent may be made in some rape proceedings. A person who has been detained on suspicion of committing a crime of a certain type or under circumstances that give rise to a reasonable suspicion that the person would possess evidence of the conduct of a crime may be examined, in line with Section 53(1)[4] of the Criminal Procedure Code. In accordance with Section 53(1)[4] of the Criminal Procedure Code, it is permissible for a registered medical

professional acting at the request of a police officer not below the rank of sub-inspector and for anyone acting in good faith to examine a person who has been detained on suspicion of committing an offense of such a nature and alleged to have been committed in such circumstances that there are reasonable grounds for believing that the examination will provide evidence as to whether or not the person committed the alleged crime. Section 164A[5] of the Criminal Process Code specifies the requirements for the rape victim's medical evaluation. In accordance with CrPC section 327(2)[6], every rape victim should undergo an in-camera trial. Thank goodness, the phrase "digital rape" has been added to the definition of "rape," and severe regulations are now in place to punish offenders who believe that rape in any form is not rape at all. Making anyone feel uncomfortable by words or acts is a crime, regardless of gender. Making someone feel uncomfortable at work, in public, on a bus, or even worse, in their own house, is one of the cruelest things someone can do, even though the word "rape" is harsh. Thus, harsh measures should be applied to anyone who does it, regardless of gender.

CONCLUSION

It was realized right away that India's rape laws needed to be changed in the wake of the Nirbhaya rape case. Until 2013, the definition of rape did not include digital rape. But, following a number of horrifying rape incidents, as mentioned above, the Supreme Court was forced to modify its definition of rape in light of the fact that there are other ways for a man to violate the dignity of a woman or child. The definition of rape was therefore expanded in 2013 to include forcibly accessing a woman's vagina, mouth, anus, or urethra by a penis, any foreign object, or any other part of the body. This was done in light of all these cases and horrible crimes. Just because the law is insufficient to hold accountable the predator should not be vindicated. It sends a strong social message of zero tolerance by charging the perpetrators. We should broaden our understanding of rape culture as a society. Awareness of rape culture beyond the traditional concept of a man assembling a woman is imperative. More awareness programs and conversations about how society can work together to curb these heinous crimes should be initiated.