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“LEGAL DEFINITIONS AND SOCIAL PERCEPTIONS OF DIGITAL RAPE

AUTHORED BY - KRISHNA VYAS

Abstract

This paper examines the legal definitions and societal perceptions of digital rape, a severe form of non-consensual bodily entry using fingers or other non-genital body parts. Despite its gravity, digital rape often faces legal ambiguities and cultural stigmas, resulting in inconsistent legal interpretations and societal responses. This study explores how various jurisdictions define digital rape, how societal attitudes influence reporting and prosecution, and the challenges victims encounter within legal systems. The paper employs a doctrinal research methodology, analyzing statutes, judicial decisions, and scholarly articles to understand the issue comprehensively. Through comparative analysis of jurisdictions such as the United States, the United Kingdom, and Australia, the study highlights discrepancies in legal frameworks and societal attitudes. Additionally, it delves into the psychological and emotional impacts on victims, emphasizing the need for better support and legal clarity. The paper concludes with recommendations for clearer legal definitions, improved legal handling, and enhanced societal education to support victims and ensure justice.

INTRODUCTION

In Latin digital comes from the word digitus which means finger. If the fingers, toes or other as the case may be another part of the body of the perpetrator not involving genitals used, it is digital Rape (Nath, 2022). Digital rape is a form of sexual assault that is often overlooked as not being considered "real" sexual violence, but is a severe form of non-consensual entry into the victim's body by using fingers, or any other body part, and not the perpetrator's genitalia. Legal challenges and cultural stigmas [819] surrounding the digital rape has led to inconsistent interpretations and responses in different jurisdictions, which is an issue given the extreme severity of these cases. Legal definitions that criminalize only the most extreme nonconsensual behaviors are required to avoid criminalizing 98% of the population due to their partaking in such actions, however, this disconnect between legal definitions and societal norms poses significant problems to victims when searching the justice system for redress. Perspective-taking should be as broad as possible

because the difficulties we have in the law and the cultural patterns are such that it is essential that we all be well informed and compassionate to deal with digital rape. In this paper, we explore how the phenomenon of digital rape was defined in legal terms in multiple jurisdictions and what individual opinions in society and what beliefs factor into the judgement of the crime.

RESEARCH QUESTIONS

1. How do the definitions of digital rape in law differ between varying jurisdictions?
2. Additionally, what are the viewpoints of society about digital rape and how does this affect reporting and prosecution of such offenses?
3. Again, what are the hurdles that victims of digital rape face within existing legal architectures when seeking justice?
4. Lastly, To what extent do cultural stereotypes regarding e-rape deter victims from reporting their experiences?

AIMS AND OBJECTIVES OF STUDY

1. To comprehensively analyze the legal definitions and interpretations of digital rape in various jurisdictions.
2. To examine societal attitudes and cultural perceptions towards digital rape and their impact on victims.
3. To identify the key challenges and barriers victims face in the legal and societal contexts.
4. Conduct a comparative study of statutes, policies, parliamentary debates, and legislation related to digital rape in different jurisdictions.
5. Analyze judicial decisions and legal principles to understand how digital rape is interpreted and prosecuted in various legal systems.

RESEARCH METHODOLOGY

The study uses doctrinal research methods to examine the legal aspects of digital rape. The research will be conducted like:

Primary sources: Statutes, policies, parliamentary debates, and legislation will be analysed to understand the existing laws on digital rape.

Secondary sources: Scholarly articles will be reviewed to gain insights from existing research. This combination of primary and secondary sources will provide a comprehensive understanding of the legal framework surrounding digital rape in different jurisdictions.

The analytical methods used in this study are descriptive and qualitative. It involves:

Verification of legislative history: Examining the development and evolution of laws related to digital rape over time. Analysis of legal principles: Identifying key legal concepts that apply to digital rape cases.

Review of regulations: Studying specific rules and guidelines set forth by authorities regarding digital sexual offenses.

Examination of judicial decisions: Analyzing court rulings that have shaped the interpretation and application of laws in this area.

By employing this approach, the researchers aim to gain a thorough understanding of how various legal systems address the issue of digital rape

HYPOTHESIS

This study suggests that current laws and social attitudes in different places are not enough to deal with digital rape effectively. As a result, victims face many difficulties when trying to seek help and justice. Digital rape is a serious crime, but it often faces legal uncertainties and cultural misunderstandings that lead to inconsistent views and actions from different legal systems. These differences make it harder for cases to be resolved fairly and also contribute to the negative views society has towards victims, making them less likely to report what happened to them. Because of this, we must find a better way to handle digital rape cases by Creating clearer definitions in the law, Improving how these cases are handled legally, and Educating society about this issue By doing these things, we can provide better support for victims of digital rape and make sure they get the justice they deserve.

Historical Context of Digital Rape Legislation

Before 2012, many states, including India, would normally categorize digital rape under molestation. This mitigated the severity of the crime, attracting lighter penalties and not fully recognizing the victim under the law. This changed in December 2012 with the gruesome Nirbhaya case of gang rape and murder in Delhi. The case became a rallying point across the country and saw sweeping reforms in India's legal framework on sexual violence. Responding to the popular sentiment and recommendations made by the Justice Verma Committee, the Indian government came up with the Criminal Law Amendment Act, of 2013. It had provisions for

introducing far-reaching changes to the legal definition or classification of sexual offenses, including digital rape.

The Nirbhaya case altered the legal landscape of sexual violence in India. The *Mukesh & Anr vs. State for NCT of Delhi & Ors* case went on to convict the perpetrators, and they were later awarded the death sentence. The heinousness of the crime and its wide coverage in the media mobilized public opinion and brought far-reaching legal reforms.

The Criminal Law (Amendment) Act of 2013 broadened the definition of rape to include penetration other than penile. It said that all types of penetration, including digital penetration, come within the ambit of the term 'rape'. Thus, Section 375 of IPC was amended to bring digital penetration into its definitional fold to make it prosecutable along with rape like any other form of rape. This was apart from increasing the quantum of punishment for various forms of sexual attack, thus showing that the severity associated with sexual violence has increased.

Perhaps one of the biggest changes effected by the Criminal Law (Amendment) Act, 2013, was in s.375 IPC, where the definition of rape was expanded and improved. Non-penile penetration is within the revised definition. Further, it spells out digital penetration either by fingers or by any object as rape. This was a paradigm shift from the erstwhile legal regime, where the act was not adequately covered to bringing adequate severity against an act of digital rape.

The quantum of punishment for all types of sexual assaults was increased in the amendment. Now, according to the new law, the minimum quantum for rape would be seven years of rigorous imprisonment, extendable up to life or death in the worst case. For digital rape, the punishments were at par with the traditional ones, thereby ensuring an equal severity for the punishments of criminals. The change reflected a more solemn and subtle understanding of sexual violence, with full acknowledgment of how far-reaching the effect of digital rape is on its victims. It was in the wake of these demands that the Criminal Law Amendment Act of 2013 came about, defining various new offenses to make the law against sexual violence comprehensive, including stalking, voyeurism, and acid attacks. Along with this, the Act also improved the protective measures for the victim of VAW by providing medical examination and treatment, keeping the identity of the victim confidential, and increasing victim compensation schemes.

The Nirbhaya case and consequent legal reforms impacted a change in both legal and social perceptions of digital rape. On the legal front, an extended definition of rape and enhanced penalties brought forth the gravity of digital rape and provided more stringent legal provisions for prosecuting such offenses. Societally, the case and its media coverage raised awareness regarding the severity of digital rape and the need for more robust legal protection measures for victims.

Comparative Analysis of Jurisdictions

UNITED STATES

- Although there have been redefining efforts in different states, the definition of rape and sexual assault is left to the state in the United States. As such, generally speaking, digital penetration falls more under sexual assault than rape in most states. In this way, crime definitions and penalties can vary, sometimes causing discontinuities in prosecution for the act called digital rape.
- **People v. Liberta (New York, 1984)**¹: (people vs liberts, 1984) This case highlighted the issue of marital rape and the broader interpretation of sexual assault laws in New York. Although it primarily addressed marital rape, the case set a precedent for interpreting non-consensual acts, including digital penetration, under the broader category of sexual assault.

UNITED KINGDOM

In the United Kingdom, the Sexual Offences Act 2003 provides a comprehensive framework for addressing various forms of sexual violence. Digital penetration (*r vs bree*, 2006) is explicitly included under the definition of rape. Section 1 of the Act defines rape to include penetration with a penis, while Section 2 and Section 3 cover assault by penetration and sexual assault, respectively, encompassing digital penetration.

- **R v. Bree (2007)**²: This case dealt with issues of consent and capacity to consent under the influence of alcohol. Although it primarily focused on penile penetration, it reinforced the importance of consent in all forms of sexual assault, including digital penetration, thereby strengthening legal protections for victims.

AUSTRALIA

- Sexual offenses are brought under the state laws in Australia, and the definition varies across states. Usually, it falls under sexual assault or aggravated sexual assault involving

¹ Citation. 64 N.Y.2d 152, 474 N.E.2d 567, 485 N.Y.S.2d 207, 1984 N.Y. 4916.

² (2007) EWCA Crim 804

digital penetration. In the case of New South Wales, for example, the Crimes Act 1900 defines sexual assault, including digital penetration as well.

- **R v. AEM (Snr); (2002)³** (R v Aem, 2002): This case involved multiple defendants convicted of aggravated sexual assault, including digital penetration. The New South Wales Court of Criminal Appeal upheld the convictions, emphasizing the serious nature of digital rape and setting a precedent for stringent penalties.

Psychological and Emotional Impact on Victims

In the case of victims of digital rape, the consequence of such actions at a psychological and emotional level might be very serious, multifaceted, and long-lasting. The impacts are understood to be long-term, mostly going beyond the initial contact or assault. This is important in rendering appropriate support and intervention to the victims.

Trauma and Post-Traumatic Stress Disorder (PTSD) (Kilpatrick, 2007): Similar to survivors of other modes of sexual violation, a victim of digital rape may be put through a lot of trauma. There may be sleep disturbances through nightmares, emotional numbing, anxiety, or bouts of flashbacks. Some of these characteristics are hugely incapacitating in daily functioning and may require therapeutic input. Harm to Safety and Trust The wrongdoing towards the victim's physical autonomy as an effect of digital rape may result in a loss of trust in humanity and a personal sense of safety. This lack of self-confidence may further "influence their inability to develop intimate relationships with others or to feel secure in one's environment." On the issue of digital rape, victims usually talk about some sort of general melancholy and anxiety. The stigma related to mental health problems within society, the judicial system, and the feeling of not being understood or supported may all exacerbate these issues.

Role of Education and Awareness Programs

Education and awareness programs play a critical role in addressing digital rape by fostering a better understanding of the issue, challenging societal misconceptions, and providing essential support to victims. These programs can help create a more informed and empathetic society, ultimately contributing to the prevention of digital rape and the improvement of responses to it. Here's how these programs can make a difference, (beres, 2019) By Raising Awareness and Understanding & defining Digital Rape: Education programs can clarify what constitutes digital

³ (2002) NSWCCA 58 at 103)-(143)

rape, emphasizing that it is a serious form of sexual violence. This includes highlighting the legal definitions, the nature of consent, and the severe impact on victims.

Dispelling Myths and Misconceptions and creating Awareness campaigns can address common myths and cultural misconceptions that trivialize digital rape or blame victims. These programs can shift societal attitudes and reduce stigma by providing accurate information. By Supporting Victims Resources and Support Services: Awareness programs can inform victims about available resources, such as hotlines, counseling services, and legal assistance. Knowing where to turn for help can significantly affect a victim's recovery and pursuit of justice.

Legal Education and Advocacy: Legal Rights and Procedures: Educating the public about the legal rights of victims and the procedures for reporting digital rape can empower victims to seek justice. This includes information on navigating the legal system and what to expect during the process.

Advocacy for Legal Reform: Awareness programs can advocate for legal reforms to address gaps in the current legal frameworks. This includes pushing for consistent definitions and penalties for digital rape across jurisdictions. Community and Institutional Engagement & School and University Programs that help Implementing comprehensive sex education programs in schools and universities that cover topics like digital rape, consent, and sexual violence can educate young people early on and foster a culture of respect and accountability.

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